Subsequently, Mr Tate caused to be conveyed and placed on the quarries, for the use thereof, various implements used in quarrying, in value exceeding $2,000

During the month of July, 1858 the defendant Joseph Ellis, as a tenant here, was placed by Mr Tate in possession of the quarries and quarrying implements

On 9th December, 1859, John Melling, the plaintiff, became the purchaser of the quarries, quarrying implements, &c, defendant then still being in possession

When plaintiff so purchased he forbid defendant to quarry or to remove or meddle with any of the quarrying implements Notwithstanding, defendant set plaintiff at defiance

Plaintiff then instituted an action of ejectment to recover possession of the quarry, and an action of detinue to recover possession of the quarrying implements, and in the latter action claimed a writ of injunction to restrain the defendant from selling, removing or disposing of the quarrying implements

On 7th August last, plaintiff applied to Mr Justice Burns and obtained an order for an *ad in erum* writ of injunction, and on same day caused the writ of injunction to be issued

The injunction, so far as material, was in the following form:

"Victoria, by the Grace of God, &c.

"To Joseph Ellis, of the Township of Niagara, in the County of Lincoln, his agents and servants, or any person under his direction or control, and every of them, greeting.

"Whereas, on the sixth day of August, in the year of our Lord one thousand eight hundred and sixty, an order was made by the Honorable Robert Easton Burns, one of the Justices of our Court of Queen's Bench at Toronto, pursuant to the Common Law Procedure Act, 1856, in an action depending in our said Court, wherein John Melling is the plaintiff, and you, the said Joseph Ellis, are defendant, that a writ of injunction do issue to restrain you the said Joseph Ellis, and your agents and servants, or any person under your direction or control, from selling or disposing to your own use, or removing any of the quarrying tools, implements, goods or chattels, in or about the said premises, belonging to the plaintiff, and of which a list is hereinafter given.

"We therefore do hereby strictly enjoin and command you, the said Joseph Ellis, and your agents or servants, or any person under your direction or control, and every one of you, that you and every one of you do from henceforth altogether and absolutely desist from selling or disposing to your own use, or removing any of the quarrying tools, implements, goods or chattels in or about the premises belonging to the plaintiff, &c., &c, and of which the following is the list, namely, &c, until our said Court shall make order to the contrary

"Witness, the Honorable Sir John Beverley Robinson, Baronet, Chief Justice of our said Court at Toronto, this seventh day of August, in the year of our Lord one thousand eight hundred and sixty "C C Small"

On 8th August last, defendant was personally served with a duplicate original of this writ of injunction, and at the time of the service of the writ the quarrying implements, or a large portion of them, were in possession of the defendant.

Both the action of ejectment and the action of detinue were tried before Mr. Justice McLean, at the last assizes for the County of Lincoln

Between the day of the service of the injunction and the commission day of the Assizes, the defendant and his agents, in violation of the terms of the writ of injunction, removed or caused to be removed from off the quarries, all the quarrying implements for which the action of detinue was brought.

The defendant defended the action of detinue in person, and in open court boasted that he had made away with the quarrying implements so that plaintiff should never see one of them. It was sworn that the defendant was not a man of means.

Mr R. A Harrison thereupon for plaintiff, on affidavits showing the foregoing facts, made application to a Judge in Chambers for an *ex parte* order for a writ of attachment against defendant. The affidavits showed good grounds to suppose that defendant, if informed of the application, would immediately abscond to escape the consequences of his contempt *Mr. Harrison* argued that notice to defendant of an intended application for a writ of attachment would operate as a notice to defendant to leave the Province in order to escape the consequences of the writ if issued, and urged that the writ should issue without previous notice to defendant—leaving him when in custody to purge himself if possible of the contempt Reference was made to Consol Stat U C cap. 23, ss. 9, 11, 12, 13, p 275, Com Dig Chancery, D 3 (Attachment); Eden on Injunction, 75; Drewry on Injunction, 405, 406; *St John's College* v. *Carter*, 4 Ml & Cr 497; *Angerstein* v. *Hunt*, 6 Ves. 487

The application having been the first of the kind made to a Court of Common Law since the Common Law Procedure Act, Mr. Justice Hagarty, to whom the application was made, took time to consider, and on the following day delivered judgment

Hagarty, J.—I can find no authority to warrant me in ordering the issue of a writ of attachment for the violation of the terms of a writ of injunction without a previous notice of some kind to the defendant There is no instance in which personal service of a notice has been wholly dispensed with in case of an attachment, though there may be some cases in which an incomplete personal service has been ordered. I have consulted the Vice-Chancellors of Upper Canada, and they are not aware of any such authority On the contrary, they inform me that the settled practice of their Court is otherwise

Where the injunction operates strictly by way of restraint, the proper course, according to the books, is either to move that the defendant be committed for breach of the injunction, or to move that he be committed unless he show cause at a future day to the contrary. If the first course is adopted the motion must be made on personal service of a notice of motion on defendant.*

The learned judge referred to 2 Daniel's Ch Pr 1264; *Pearce* v. *Crutchfield*, 14 Ves. 206; *In re Morris*, 22 L J Q B 417; *Swinfen* v. *Swinfen*, 1 C. B. N. S. 364; *Thomas* v. *Rawlings*, 28 L J. Ex. 347; 33 L. T. Rep. 186.

The following order was thereupon made and issued.

John Melling, *Plaintiff*, v. Joseph Ellis, *Defendant* } Upon reading the writ of injunction issued in this cause, the affidavit of service thereof, and the affidavits on which said writ was issued, and upon reading the affidavit of plaintiff and others filed yesterday in this cause, I do order that the defendant stand and be committed for contempt in violating the terms of the said injunction, and that a writ of attachment do issue for the arrest of his body for said contempt, unless he the said defendant, his attorney or agent, do upon the second day after the day of personal service of this order, shew cause to the contrary.

Thomas John Cottle and John Barwick v Isaac Morris.

Ejectment—Service of Writ on Defendant's Wife—Allowance

Where the writ of ejectment was served on the wife of defendant (she being at the time in possession of the *locus*) and stating that her husband was in the United States on an application for an order to allow the service under the particular circumstances of the case an order was made allowing the service as of the date of the order.

(5th December, 1860)

This was an action of ejectment The writ of ejectment was served on the wife of the defendant She was at the time of the service in possession of the *locus in quo*, and stated that her husband had gone to reside in the United States of America.

It appeared that defendant was at the time of the service of the writ of ejectment a resident in the City of Philadelphia, in the United States of America, and was there engaged as a hand in an iron foundry.

Jackson for plaintiff, obtained a summons on the defendant, his attorney or agent, to shew cause why the service of the writ of ejectment and notice of claim attached thereto effected on the wife of the defendant, should not be deemed good and sufficient service, and why the service should not be deemed as good and sufficient, for all subsequent proceedings as if personal service had been effected on the defendant.

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* Subsequently plaintiff adopted this course in preference to the order nisi and having caused defendant to be personally served with notice, Mr Justice Burns, upon the production of the notice and affidavit of service, ordered the attachment to issue.