scribed: "A promissory note for $195, including interest, dated 24th April last past, *and payable on the 1st November next*, to McPherson, Glasgow & Co., or order, which said note I signed as a joint and several maker with the said defendants, but only as a surety for them, the amount of which note I have paid to the said McPherson, Glasgow & Co.," &c., &c.

The attachment issued in the usual way to the sheriff, who seized all the property of the defendants, which was already in the hands of the bailiff of the Division Court, under seizure upon executions issued upon judgments in that court against the defendants, at the suit of one Backhouse and others, judgment creditors.

Mr. Ellis, attorney for Jugurtha Backhouse, one of the judgment creditors, presented a petition to the judge of the court, setting forth, 1st, his judgment and execution; 2nd, that the affidavits upon which the fiat for the attachment was issued were insufficient, and the proceedings thereon irregular, because, 1st, the plaintiff, being a Quaker, had not complied with the 1st section of the Con. Stat. of U. C., cap. 32, in first affirming that he was a Quaker, and, 2ndly, in affirming to the contents of the affirmation in the form of words prescribed by the statute: "I, A. B., do solemnly, sincerely and truly declare and affirm that," &c.; and that, in the absence of observing the form prescribed, the affirmation could not have the force and effect under the Insolvent Act of an affidavit, as required in the 7th sub-section of the 3rd section; and because, 2nd, the affirmation, such as it was, was sworn before the plaintiff's attorney; and because, 3rd, the affidavits of the other witnesses, proving the fact of defendants' insolvency, bore date before the plaintiff's so-called affirmation; and because, 4th, there was no sufficient debt to constitute plaintiff a creditor, so as to justify the adoption of these proceedings, by which defendants' estate was sought to be placed in compulsory liquidation. There were other objections taken to the proceedings, which it is not necessary to enumerate.

A summons was granted in the usual way for plaintiff or his attorney to show cause why the proceedings should not be set aside. The summons and petition were served on Saturday, the 10th October, returnable on the next Tuesday forenoon, the 13th October.

On Tuesday, the 13th October, Mr. McLean, attorney for plaintiff, attended to show cause, and objected, 1st, that the service of summons was insufficient under section 11, sub-section 9, of the Insolvent Act, which requires one clear day's notice, and cited the case of *Leffur* v. *Pilcher*, 1 Dow. N. S. 767; *Francis* v. *Beach*, 9 U. C. L. J., 266. 2nd. That the copy served was not a true copy. 3rd. That the petitioner here cannot, and that none but defendants can object to any irregularity in the proceedings, and cited section 3, sub-sections 3 and 4, and Arch. Prac. 12th edition, 1472; *Parker* v. *Howell*, 7 U. C. L. J., 209. 4th. That the informality or insufficiency complained of should be clearly set out on the affidavits, petition and summons, and cited section 11, sub-section 13, of the Insolvent Act, and Arch. Prac. 12 ed. 1476 and 1475. 5th. That the mode whereby a creditor is to obtain rights under his execution are provided for by the Insolvency amendment Act of 1865, section 16, by petition, signified to the assignee and others interested. And lastly, as to the debt which constituted the plaintiff a creditor, in so far as the note of McPherson & Glasgow was concerned, that there is an implied promise to pay the plaintiff on the part of the defendants, so soon as an act of insolvency was committed.

Ellis, in reply, insisted that there was an implied authority for the petitioner to move to set aside the proceedings under sub-section 10 of section 3, the words "*any petition*," &c., also under the amended act, 1865, section 16, and cited *Parker* v. *McCrae*, 7 U. C. C. P. 124; and as to the liability of defendants for money paid by plaintiff, as their surety, cited *Andrew* v. *Hancock*, 5 E. C. L. R. 490; *Sprague* v. *Hammond*, 6 E. C. L. R. 37; *Gibson* v. *Bruce*, 44 E. C. L. R 214; *Howlby* v. *Bell*, 54 E. C. L. R. 284.

On the same day the following judgment was delivered by

Hughes, Co. J.—As to the service of the petition upon plaintiff's attorney, I consider it was quite sufficient to give the plaintiff one clear day's notice of it, to serve it as it was alleged to have been served on the evening of Saturday, returnable on Tuesday morning, within the meaning of the 9th sub-section of the 11th section, in the absence of any rule of court requiring papers in insolvency to be served before a particular hour. I do not know, and it was not shown, at what hour the petition and summons were served, nor is it shown by any affidavit that the copy served was not a true copy. The affidavit put in for the petitioner shews that Mr. Charles Ermatinger served them on Saturday, the 10th October, instant. Mr. McLean pointed out, in the copy of the petition he produced, some trifling and unimportant verbal defects and clerical errors, (just such as a clerk recently articled, and unaccustomed to copy legal documents, often makes,) but which in this case were not calculated to mislead; it was a sufficiently perfected copy to enable the plaintiff's attorney fully to understand what the purport of the petition and application were. I therefore overrule that objection, for he received all the notice that was necessary.

As to the 3rd objection to the petition, I have met with some difficulty in satisiying myself, in view of there being no provision authorising the setting aside proceedings for irregularity at the instance of any other than the defendant. I know that it was at one time doubted whether a judge of a District Court, in vacation, had authority to set aside an interlocutory judgment, or give time to plead, because the District Court Act then existing, which constituted the court, and its practice did not specially prescribe such authority, and therefore the defect was subsequently supplied by the passing of 9th Vic. cap. 2, of the statutes of Canada. The judge of an inferior court is always held by the superior courts to be confined to the powers and jurisdiction conferred upon him by statute.

There is no doubt whatever that were this a proceeding which I could amend, I have full power conferred upon me by the 14th sub-section of the 11th section of the Act of 1864. On