In England a creditor may pray to annul a fiat, even although privy to the very act on which he grounds his objection to the fiat, (see Arch. Prac. in Bank. 394,) or any party not a creditor who can shew he sustains a grievance from the fiat, as a trustee under a deed which the fiat will overreach (idem 395); even a stranger summoned to give evidence before the commissioner, can petition to annul the fiat, and the plaintiff in an action to which an attorney (the bankrupt) had been attached for not putting in bail in pursuance of his underta ing, had a sufficient interest to annul the fiat (idem 395); an adjudication must be supported by all the legal requisites (see *ex parte Brown*, 1 D. M. & G. 456; 1 Doria & Macrae, Bankruptcy, 322,) so that on the whole I think the petitioner here, who swears he is, and whose petition sets forth how he is a creditor, has in this court a sufficient interest to give him a *locus standi* upon an application of this nature, notwithstanding the decisions of the judges at Common Law in the cases cited, and of *Wilson* v. *Wilson*, 2 Practice Rep. 374.

Then it was further objected that the informality and insufficiency complained of should have been clearly set out in the petition, or affidavit, or summons. This no doubt would be a sufficient objection in an ordinary court of law, with an established set of rules or practice; but in the absence of all such, and with a summons referring to a petition and papers filed and served, specially setting forth that plaintiff's affirmation was informal and insufficient in law in several respects, I think it is all that any court or rules of practice could reasonably require

The first of these objections is that the plaintiff, a Quaker, did not affirm as required by law. The 1st section of the C. S. of U C., cap 32, is a permissive enactment for the *relief and benefit of particular sects*, and after having first made the declaration presented as to their membership of the particular society, provides that they "may make the affirmation or declaration in the form therein following," that is to say: "I. A. B., do solemnly, sincerely and truly declare and affirm," &c Both declarations are requisite, and the making of the one and dispensing with the other does not so comply with the statute as to give the affirmation of such privileged persons as the plaintiff the same force and effect as an oath taken in the usual form. In Upper Canada the creditor, under the 7th sub-section of the 3rd section, must, by "*affidavit*" of himself or any other individual, show, to the satisfaction of the judge, that he is a creditor of the defendants, &c. There were three ways in which he might have acted: either by swearing to the necessary affidavit himself, or getting some one else to act as his agent and make the affidavit, or to have complied strictly with the 1st section of the Con. Stat. of U. C., cap. 32, whereby "*the affirmation or declaration would have the same force and effect, to all intents and purposes, in all courts of law and equity, and all other places, as an oath taken in the usual form.*" He did neither; and in the absence of either I think the attachment, and all proceedings under it, irregular, and must be set aside.

As to the objection that the plaintiff's affirmation was made before Mr. McLean, the plaintiff's attorney prosecuting the attachment, the case of *Ex parte Coldwell*, 3 DeG. & S, 664, cited in 1 Doria & McRae, 322, shews that it is invalid and unsustainable, because the mere circumstance of the affidavit filed in support of the petition for adjudication being sworn before a Master Extraordinary in Chancery in England, who was solicitor to the petitioning creditor, was held to be not sufficient for annulling the adjudication; and in the absence of any rule of practice I must hold the 25th section of the amendment Act of 1865 has been sufficiently complied with here.

I do not think it necessary, at present, to go into the other grounds taken on the petition, as to the existence of a sufficient debt whereon to ground a fiat for attachment so as to constitute the plaintiff a creditor of the defendants, because it would take up more time than I have at my disposal. I will, however, say that I have very strong doubts as to whether a person who is a surety, as this plaintiff was, can legally go and pay up a promissory note before it is due, for the purpose of adopting proceedings in insolvency, and claim to be a creditor of the defendant, as this plaintiff has done. He might, perhaps, upon a regular transfer of a negotiable note, on which he is endorser, but I doubt if he could where he is merely the joint maker with the defendants, as their surety. (See *Ex parte Brown*, 1 D. M. & G., 461, and *Ex parte Greenslock*, DeGex., 230).

It is therefore ordered that the judge's fiat and the writ of attachment be set aside and quashed, and that all proceedings under it be also set aside and annulled, with costs.

QUEEN'S BENCH.

Regina v. Law and Gill.

Conviction—Practice.

On applications to quash convictions the convicting Justice must be made a party to the rule.

McMichael obtained a rule calling on Law and Gill to shew cause why certain convictions against them should not be quashed, and the prosecutor be permitted to proceed with the complaint against them, on the ground that the magistrate had no jurisdiction in the matter, for several reasons set out in the rule.

On the rule being moved absolute, *Harrison*, Q. C., shewed cause, and objected that the convicting magistrate was not made a party to the rule, and that he had no notice of this application, referring to the case of *Regina* v. *Peterman* (23 U C R. 516).

McMichael supported the rule, contending that it was unnecessary the Justice should be notified of the application.

Morrison, J., delivered the judgment of the Court.

The books of practice afford very little information as to the form of the rule in applications of this nature. We have looked into many of the reported cases of motions to quash convictions, both in the English Courts and our own. During the last few years applications of this nature have been frequently made, and we find that in cases in this country the convicting Justice is called upon in the rule to show cause. See *Regina* v. *Shaw* (23 U. C. R. 616), *Regina*