Held 2. That Statute 23 Vic., cap. 33, does not extend to the service of attaching orders, but only applies to the service of process, &c.

Semble, that an order to attach should not be granted unless the amount of the debt be in some manner described in the affidavit for the debt, and that at all events, a summons to pay over should not be granted unless the amount be so stated.

[Chambers, July 15, 1865.]

This was an application for an order to pay moneys alleged to be due from the garnishees to the judgment debtors, on policies of insurance.

The attaching orders had been issued by Mr. Justice John Wilson upon an affidavit in each case, made by the attorney for the judgment creditors, to the effect that the garnishees were indebted to the judgment debtors upon policies of insurance against fire, and stating that the garnishees were resident within the jurisdiction of the court.

S. B. Harman, showed cause. He in each case filed an affidavit of F. H. Heward, Esq., the agent of the company in Toronto, in which he swore that the company is an English company, having its head office in Liverpool and not within the jurisdiction of the court. Mr. Harman thereupon contended on the authority of *Lundy* v. *Dickson*, 6 U. C. L. J. 92, that the debt, if any, could not be attached, as there were no means by law provided for the service of the garnishees.

Robt. A. Harrison, supported the summons, and argued that the service upon the Toronto agent of the companies was sufficient, under the C. L. P. A. taken in connection with the Statute 23 Vic., cap. 33, which was passed since the decision of *Lundy* v. *Dickson*. He also argued that the garnishees having at all events appeared by counsel, should not be allowed to take the objection that they had not been properly served, and had thereby waived the irregularity, if any, in the service, referring to *Ward* v. *Vance*, *Thompson*, garnishee, 9 U. C. L. J., 214.

Morrison, J.—In the case of *Lundy* v. *Dickson*, Sir John Robinson held that where the garnishee is a foreign corporation, service of an attaching order on an agent in Upper Canada of the corporation, is insufficient to bind the company; The C. L. P. A. only authorising the service of a writ of summons upon the agent of a foreign corporation, for the purpose of commencing an action. But Mr. Harrison contended that under the provisions of Statute 23 Vic., ch. 33, sec. 7, passed after the C. L. P. A., the service in this case is one binding upon the company; and that if not within the letter of the statute, such a service is within the spirit and intention of it.

Whatever may have been the intention of the Legislature, the act itself does not extend the provisions of the C. L. P. A.; but in the case of foreign insurance companies, it appears to me, rather restricts the service of process upon such corporations, to certain cases.

The 5th clause enacts that before any such (foreign) insurance company shall transact any business, it shall file (if transacting business in Upper Canada) in one of the Superior Courts a copy of its charter and power of attorney to its principal agent or manager under its seal and signed by the president and secretary and verified by the oath of the agent or manager; which power must expressly authorise such agent, manager or sub-agent, as to risks taken by such agent to receive process in all suits and proceedings against such company in this Province, for any liability incurred herein, and must declare that service of process on the agent, for such liability, shall be legal and binding to all intents and purposes, and waiving all claims of error by reason of such service.

The 6th sec. enacts that after a copy of such charter and such power are filed, any process in any suit or proceeding against the company, for any liability incurred in this Province, may be served upon such manager, &c., in the same manner as process upon the proper officer of any company incorporated in this Province, and proceed to judgment and execution, &c.

Under these provisions, which are solely applicable to fire insurance companies not incorporated within the limits of this Province, the only service, it seems to me, authorised upon their agents, is that of process in certain actions and under certain circumstances, and in my opinion, these clauses cannot be extended to the service of a garnishee order and summons.

I note that in the affidavits upon which my brother Wilson granted the attaching orders, the attorney for the plaintiffs swears that the company is within the jurisdiction of this court; which statement was essential to their obtaining the orders. The ground for that allegation is not stated in either of the affidavits. On the other hand, the agent, Mr. Heward, upon whom the attaching orders were served, swears that the company is an English one, having its head office in Liverpool, England, and not within the jurisdiction of this court; and on the argument it was not really disputed that the company is as described by Mr. Heward.

I may also remark that the amount of the debt alleged to be due by the company, is not stated in the affidavits upon which the attaching orders were granted. Each affidavit merely states that the company was indebted to the judgment debtor upon a policy of insurance against fire. Neither affidavit states the amount of the insurance, nor that the property insured was destroyed by fire, nor that any adjustment took place, &c. I am rather inclined to think, that upon such an affidavit, the order ought not to have been made, at least the summons to pay over should not have been granted. Richards, J., in *Melbourne* v. *Tulloch*, 3 U. C. L. J. 184, refused to grant a summons to pay over, where the amount was not stated.

I am of opinion that the attaching orders should be rescinded, and the summons discharged with costs.

Order accordingly.

Robinson v. Shields.

Set-off of judgments—One in Superior Court and the other in a Division Court—Allowed.

Held, that a judgment in a Division Court may be set off and allowed against the judgment of a Superior Court of Record.

[Chambers, July 19, 1865.]

C. McMichael obtained a summons calling on the plaintiff, his attorney or agent, to shew cause why satisfaction should not be entered on the roll in this action to the amount of $108.97, being the amount of certain judgment for $100