

Dubuc, J.]

RITZ v. SCHMIDT.

[March 14.]

Practice—Service of process—Leave to defend—Setting aside judgment.

Motion by the defendant Frose to set aside the judgment recovered by plaintiffs against the defendants by default for possession of a farm and a writ of hab. fac. poss. and the proceedings and delivery of possession thereunder. The plaintiffs bought the land in question at a sale held by order of the Court in a suit commenced by one Russell to realize the amount of a judgment against the defendant Schmidt, and had obtained an order to the Court vesting the title in them; but, as defendants had refused to give up possession, this action was necessary. Defendants made affidavits that they had never been served with any statement of claim and had no knowledge of the proceedings in this action. They also denied service of any papers or notices in the former suit in which the vesting order had been made, and claimed that the same had never in any manner been brought to their knowledge and that they had a good defence to the action on the merits; that the land in question was the homestead of the defendant Schmidt before he conveyed it to the defendant Frose; and that the land was exempt from sale under legal process. The affidavit of service on the defendants stated that true copies of the statement of claim had been personally served on the defendants by delivering the same to, and leaving the same with, the defendants respectively at their houses and that they refused to accept the same and the bailiff left the copies at the houses on the land described in the affidavits.

Held, on the authority of *Thompson v. Pheny*, 1 Dowl. 441, that personal service requires that the process should be shown to have come to the notice of the person to be served, or that he has been informed of the nature of the process, when it will be sufficient to throw it down before him and leave it there; and, as such was not shown to have been done in this case, the service was not effectual, more especially as the defendants were Mennonites, and did not understand English; and that defendants should be allowed to put in their defence to the action within fifteen days.

The evidence disclosed on the affidavits as to the merits of the defence raised not being satisfactory or convincing.

Held, following *O'Sullivan v. Murphy*, 78 L.T. 213, that none of the proceedings should be set aside in the meantime, and plaintiffs should be allowed to remain in possession of the property. Costs of the application reserved until after the trial of the action.

Phippen, for plaintiffs. *Wilson*, for defendants.

HUTCHINGS v. ADAMS.

Principal and agent—Assignment for creditors—Sale of goods.

Appeal from a County Court. One Pifer, who had been carrying on a business as a general trader in Oak Lake, being in embarrassed circumstances, made a transfer of his stock in trade and other property to the defendant in trust for certain creditors, and a written agreement was entered into between Pifer and the defendant which provided among other things that the former