

proceedings from the unavoidable difficulties of communication, he could not be apprized. Of this rule, Boulton took advantage. Boulton instructed his student James B. MacCauley, later Mr. Justice MacCauley, to make an affidavit that Randall's place of abode in the Home District was not known to him; on the 17th of July he posted up the demand in the Office, and four days later judgment was obtained by default.

The rule referred to, was of a most extraordinary nature,—

“If the defendant's place of abode be not in such District, then the demand of plea shall be entered in the Office, accompanied with an affidavit, stating that the defendant's place of abode within such District is not known to the Deponent”.

To take such an oath must have done violence to one's conscience, inasmuch as it clearly implies that the place of abode is in the District, but is not known to the party making the affidavit; but if his place of abode was in the District, the rule did not apply and the defendant should have been served personally with the demand. This rule was formulated by the Hon. Thomas Scott, Chief Justice, the Hon. William D. Powell, and the Hon. Mr. Justice Campbell, the latter two of whom became successively Chief Justices of the Province. They were all men of the very highest ability and standing, and it is fair to suppose that on account of some conditions existing at the time, it was advisable to have the affidavit made in this way, instead of a simple oath that the debtor had no place of abode within the District. The wording, however, of the rule, and the practice under it, were unfortunate.

As will be explained later, Boulton neglected to observe three very important rules of Court in obtaining his judgment, the observance of which would have given Randall an opportunity of knowing what was being done. Randall later claimed that he was waiting to be served with the demand of plea, and not having been so served, he was under the impression that Boulton was not proceeding with his claim. The judgment was therefore obtained without his knowing it. Boulton immediately issued a writ of *fi fa* directed to the Sheriff of the Home District against the goods and chattels of Randall, knowing at the time that Randall was not living in the Home District