the origin of the fire. *Held*, that plaintiffs could not recover more than the special rate agreed upon, without proving negligence of the defendants.—*Farnham, Kirkham & Co.* v. *The Camden and Amboy Railroad Company*, 7 Am. Law Reg. 172.

ONTARIO REPORTS.

COMMON PLEAS.

(*Reported by* S. J. VANKOUGHNET, Esq., *Barrister-at-Law, Reporter to the Court.*)

EATON v. SHANNON

Insolvency — Substitutional service of attachment — Judges power to rescind his order for.

A Judge in Insolvency has power to rescind an order made by him for substitutional service of a writ of attachment; and in this case the Court, on appeal, refused to interfere with an order for such rescision.

[17 C. P. 592—M. T. 1867.]

Appeal in Insolvency from the decision of the Judge of the County Court of Perth.

The judge on the 6th of December, 1866, made an order that the writ of attachment issued against Shannon as an insolvent, should be served by sticking up a true copy of the same in the office of the Clerk of the County Court of the County of Perth, and by leaving another copy with Mrs. Duffie, of St. Mary's, the mother-in-law of the defendant, and that true copies of this order should be served in like manner, and that such service should be deemed good service of the attachment and order.

The affidavits on which this order was made stated that the defendant had left Canada in the year 1862, and had from that time continued to reside in the United States, and, it was believed, in some part of the State of Pennsylvania, but that his residence could not be discovered, although efforts had been made to find it out, and that the only relation he had, who was known in Canada, was Mrs. Duffie, of St. Mary's, his mother-in-law, and that she had been asked where the defendant's residence was and, although it was believed she knew where it was, she refused to divulge it, and further, that the defendant owned a lot of land in the township of Logan, in the said County.

On the 26th of July, 1867, Shannon petitioned the Judge to set aside the writ of attachment, or the service of it on various grounds, stating, after alleging several irregularities in the proceedings, that he had never received value for the promissory notes on which the attachment had issued, and that they were barred by the Statute of Limitations; and that he had for the last two years been the owner in fee of lot number 19, in the 14th concession of Logan, and had been for several years before that the lessee of the lot from the Canada Company, and that the property was worth $1,500: that one Nicholson had been in charge of the lot for him ever since he had left Canada, and had constantly been cognizant of his address in the State of Pennsylvania: that his last place of residence in Canada was on the said lot, where he had resided several months with his family previously to his leaving Canada: that he had visited the farm at least once a year, and sometimes oftener, since his residence in Pennsylvania, and had been at St. Mary's on nearly every occasion of his coming here: and that he had seen and conversed with the plaintiff in his store at St. Mary's, and had done so about two years ago: that his place of residence while absent from Canada had been in the Town of Newcastle in Pennsylvania, where he was well known, and he could easily have been found if enquired for: that he did not think Mrs. Duffie knew where his residence was, as he had not been on good terms with her: that he had not been aware any proceedings had been taken against him till the day before his petition, and that he had not left Canada or remained from it with intent to defraud or delay the plaintiff, or any other person or persons, of any claim he or they had against him.

Upon this application, the Judge, on the 26th of July, 1867, issued a summons calling on the assignee to shew cause why the attachment or the service thereof, and all proceedings under it, should not be set aside for the reasons aforesaid; and upon hearing the parties on the 15th of September he made an order that the order which directed the service of the writ of attachment, the services of the said writ, and all subsequent proceedings, should be set aside for irregularity, and he reserved the question of the costs of such application until the determination of the suit.

Against this order the creditor petitioned, upon the following grounds:

1. That from the paper which he submitted to the Judge he was entitled to the order for substitutional service.

2. That the order could not be rescinded, and especially after the proceedings which had been taken upon it, and after the time which had elapsed since it had been made.

3. That the Judge might appoint any method he might see fit for effecting service of the writ, and having exercised his discretion, it could not be set aside, unless the order for such service had been obtained by fraud.

In Michaelmas Term last, *C. Robinson*, Q C., shewed cause:—The Judge's order appealed from setting aside the service of the writ was on a matter of practice only, and this Court will not interfere with the decision in such a case: *Tadman* v. *Wood*, 4 A. & E. 1011. The facts fully justified the order which is appealed from.

J. A. Boyd, contra:—This appeal lies against th order, for an appeal lies generally against all orders, and matters of practice may be the subject of appeal: *Whitaker* v. *Crocker*, 2 L. M. & P. 76; *Ensor* v. *Griffin*, 7 C. B. 781.

The original order of the Judge cannot be impeached or contradicted by new facts: *Kilkenny Railway Company* v. *Fielden*, 2 L M. & P. 125. The appellant has not established a full case, for he only shews that his last place of abode was in Logan, and not that was his last known place of abode.

A. WILSON, J., delivered the judgment of the Court.

The defendant left the Province in 1862, and he was not proceeded against as an insolvent till about the end of 1866.

The Judge had power under the Act of 1865, s. 4, to make the order he issued for service to be made in the manner he had directed; but the suggestion is that these proceedings were not fairly, though regularly, taken.