There is no such judgment, unless this transcript filed and entered be one, and that, as appears to me, is not such a judgment, because the transcript does not contain what the statute requires."

In *Hope* v. *Groves*, 14 C.P. 393, it was held that a transcript of a judgment to the County Court, regular on its face, was a nullity, it being shown as a fact that the transcript did not disclose the true nature of the proceedings taken in the Division Court, which were commenced by writ of attachment and not by an ordinary summons. John Wilson, J., said that the legislature had pointed out the way to make judgments of Division Courts judgments of the County Court, and, the statutes not having been complied with, he held all the proceedings taken upon the so-called County Court judgment void, and set aside a sale of land had upon a *fi. fa.* issued upon a judgment apparently regular on its face, but defective in fact, as appeared when the actual proceedings had in the Division Court were enquired into.

In *Burgess* v. *Tully*, 24 C.P. 594, it was expressly held that an execution against goods and chattels must issue out of the Division Court in which the judgment was originally recovered, and be returned *nulla bona*, before a transcript of the judgment could be transmitted and filed in the County Court. That case was like the present one, in that there had been a transcript to another Division Court, and execution against goods issued in this last mentioned court and returned *nulla bona*. All proceedings under a judgment similar to the one in question, in all respects as to its defects, were held void. The judgment is therefore bad on its face, in not showing the issue and the return of *nulla bona* against goods of an execution in the Division Court in which the judgment was originally recovered. It is a nullity and cannot be amended or cured, because the statutory condition has not been performed which enables it to be made a judgment of the County Court.

Next, can the circumstances of the judgment, being a nullity, be set up by the sheriff, the defendant, as an answer to an action against him for negligence? The case of *Lane* v. *Chapman*, 11 Ad. & El. 966, is directly in point; for there it was expressly held that a marshal who was sued for an escape could avail himself of the defence that the judgment was a nullity. Lord Denman, in that case, says that the question to be determined was whether the judgment was absolutely void, under certain statutes, for he said: "If it was, no reason has been assigned or authority cited that satisfies us that the marshal might not avail himself of its being void as a defence to the action."

Mr. Aylesworth referred to an amendment made to section 218 of the Division Court Act passed in 1882; but, after careful consideration of that amendment, I fail to see that it in any way qualifies or varies the statutory requirements necessary to constitute a Division Court judgment a valid judgment in the County Court.

I must, therefore, direct the verdict herein in favor of the plaintiff to be set aside, and judgment entered for the defendant with costs.

MECHANICS' LIENS.

(Reported for THE CANADA LAW JOURNAL.)

WATSON *v.* KENNEDY.

Mechanics' lien—Summary proceeding to enforce—53 Vict., c. 37, s. 25—Jurisdiction of Master—Claims of other lien holders—Costs.

The expression in the Mechanics Lien Act, 53 Vict., c. 37, ss. 25 & 26, "lienholder entitled to the benefit of the action," means one who has substantial, not apparent, rights which are capable of being enforced in the action.

Therefore, a lienholder who, on the day the plaintiff instituted his proceedings, appeared to have a registered lien on the property in question, but who, the day preceding, had signed a discharge which was not registered until after the registration of the Master's certificate in this action, was held not to be entitled to the benefit of the action, and the plaintiff could not add his claim to the other lienholders' claims, so as to make the aggregate amount sufficient to give the High Court jurisdiction.

Where a statutory tribunal has no jurisdiction over the subject matter of a proceeding, it can award no costs.

Observations on the jurisdiction of a Master, under the act simplifying procedure in mechanics' lien actions (53 Vict., c. 37), to add parties to the summary proceedings under that act.

[Toronto, Nov. 7th, 1891.

This was a proceeding to enforce a mechanics' lien begun in the Master's office under the provisions of the act to simplify the procedure for enforcing mechanics' liens, 53 Vict., c. 37.

The facts sufficiently appear from the judgment.

Church for the plaintiff.

O. Macklem, Cooper, and Poole, for other parties.