

The 249th sec. of the Common Law Procedure Act was held, in the case of *Nelson v. Jarvis*, 13 U. C. C. P. 176, not to authorize the renewal of writs of *fiats* oftener than once. This construction was put upon it, from the fact that the words "and so from time to time during the currency of the renewed writ," which occurred in sec. 21, relating to writs of summons, and in the English Common Law Procedure Act, relating to final process, had been omitted in the 249 sec. of our act.

In consequence of this decision, this section was amended by the 2 sec. of the 27 Vic., cap. 13, which enacted that sec. 249 should be amended by inserting after the "expiration," in that section, the words "and so from time to time during the continuance of the renewed writ," and that such words shall be hereafter read and construed as constituting part of the act.

By the construction this court put upon the 249th sec. as it originally stood, the *fi. fa.* in the case before us was void, and if so the plaintiff's land were not encumbered by it; but the question is, whether we are to construe the 2nd sec. of the 27 Vic., cap. 13, so as to give it a retrospective effect. The words themselves seem to preclude such a construction, for they are "shall be hereafter read." The first section of the same act has reference to an amendment of it in regard to the sale of lands, under execution against a mortgagor, and here, as in the second section, the words "his heirs, executors, administrators or assigns," are to be read after the word "mortgagor," where it occurs in sections 257, 258 and 259, but the phraseology is quite different, and would give more scope to argue that it was intended to apply retrospectively, for it is said whenever the word "mortgagor" occurs in the said sections, it shall be read and construed as if the words "his heirs, executors, administrators or assigns, or person having the equity of redemption" were inserted immediately after such "mortgagor."

Construing the words in the second section according to their literal meaning, and as different from the words in the first section, which it was argued was intended to be retrospective, though as to this we express no opinion, we think the second section has no retrospective operation, and therefore the *fi. fa.* of *Darling v. Miller et al.* in the hands of the sheriff of Grey, on the 18th day of August, 1863, against the lands of the plaintiff, was not an encumbrance on his lands so as to make the insurance effected under plaintiff's policy void.

This case has not been broadly presented to us, as to whether this execution would have constituted an encumbrance within the meaning of the act under which this company was formed, and we offer no opinion on this point.

The rule will be drawn up to enter the verdict for plaintiff on the first issue.

*Per cur.*—Rule accordingly.

#### HOPE v. GRAVES.

*Ejectment—County Court—Fi. fa. lands—Attachment—Division court judgment.*

Ejectment having been brought to recover the possession of premises sold and conveyed by the sheriff to the plaintiff under a writ of *venditioni exponas*, issued upon a county court judgment, based upon a division court judgment, recovered on proceedings commenced by attachment and summons issued the same day, the transcript of the judgment of the division court not however showing that the proceedings were commenced by attachment.

*Held*, that the sale under the writ of *venditioni exponas* was void, by reason of the transcript of the judgment from the division court not having shown that the proceedings in that court were commenced by attachment.

(C. P., E. T. 27 Vic.)

That as an action of ejectment to recover a piece of land containing forty-four square perches, lying at the intersection of Third street and Stuart's lane, in the city of Kingston, which the plaintiff claimed by virtue of a deed from the sheriff of the United Counties of Frontenac, Lennox and Addington, bearing date the 15th day of July, 1863. Defendant denied title of plaintiff, &c.

The case was tried at the last assizes held at Kingston before A. Wilson, J.

The plaintiff put in a transcript of the judgment of the first division court of the United Counties of Frontenac, Lennox and Addington, in which Isaac Hope, the now plaintiff, was plaintiff, and George Graves, the now defendant, was defendant, in these words:

"In the first Division Court of the United Counties of Frontenac, Lennox and Addington, between Isaac Hope, plaintiff, and George Graves, defendant, the following proceedings were had: On the 15th day of May, A. D. 1861, a summons requiring the defendant to answer the plaintiff's claims for debt amounting to forty-five dollars and — cents, was issued out of this court in this cause according to the statute in that behalf. On the 15th day of May, A. D. 1861, the said defendant was duly served with a copy of the said summons and of the particulars of the plaintiff's claim. At the sittings of the said court, holden on the third day of September, A. D. 1861, at the court house, Kingston, the said cause came on to be tried, and the following judgment was then and there rendered by the court; Judgment for the plaintiff for forty-five dollars debt and ten dollars and sixty-one cents costs of suit, to be paid forthwith. On the nineteenth day of September, A. D. 1861, a writ of execution upon the said judgment was duly issued out of the said court by the clerk thereof, which said writ of execution was directed to B. Fitzpatrick, a bailiff of the said court, and commanded him to levy the sum of fifty-five dollars and sixty-one cents of the goods and chattels of the said defendant. On the nineteenth day of October, 1861, the said bailiff returned the said writ of execution with a return thereto in the following words—"No goods."

Pursuant to the Upper Canada Division Court Act, I, Edwin Annesley Burrowes, clerk of the said Division Court, in the United Counties aforesaid, do certify and declare that the foregoing is a faithful transcript of the judgment and proceedings in the above cause, as shewn, and as appears by the original entries and records of the court.

Given under the seal of the said court, this 23rd day of November, 1861.

(Signed,) E. A. BURROWES,  
Clerk."

[*ts.*]

This transcript was filed and entered in the county court of these united counties on the 26th of November, 1861, and on the same day a *fi. fa.* against goods for \$55 86 was issued upon it. This writ was returned and filed on the same day "no goods." On the same day an execution for \$55 86 was issued against lands returnable in twelve months. This was returned on the 27th of August, 1862—"I have levied of the lands and tenements of the within defendant to the amount of one shilling, which lands and tenements I have on hand for the want of buyers." On the 12th of February, 1863, a writ of *venditioni exponas* was issued, and on the same day given to the sheriff. On the 15th of July, 1863, the sheriff sold and conveyed the land in question to the plaintiff for one hundred and twenty-seven dollars, by virtue of the said writs.

Copies of the proceedings in the division court were put in, from which it appeared that on the 15th day of May, 1861, the suit had been commenced by an attachment which had issued on the affidavit of the plaintiff in the usual form; that on the said day the bailiff levied on a house and lot near Eagle Foundry, Kingston; that on the same day a summons was issued against the defendant, which, with the plaintiff's claim annexed, the bailiff swore "he served on the 15th day of May, 1861, by delivering a true copy of both, by nailing them to the door of the defendants last residence."

John Duff was sworn and said, he was clerk of this division court and had the office book in court, in which the judgments of the division court are entered. He finds the judgment of Isaac Hope against George Graves entered for \$45 debt and \$10 61 costs, in all \$55 61, on the 3rd day of September, 1861. The entry is in the handwriting of Mr. Burrowes his predecessor. The summons was returnable on the 28th day of May, 1861, but at this court it was adjourned to the July court, and from this court to the September court, when judgment was given. On the 19th September, 1861, an execution against goods was issued, and the bailiff returned it "no goods."

Sir Henry Smith, Q. C., moved for a nonsuit on the following grounds.

1st That the transcript is not according to the statute for the purpose of maintaining the proceedings which have been had under it.

2nd. That the writs issued under the transcript do not follow it.