delayed entering appearance to this action of ejectment, but at the last moment made up his mind to enter an appearance, and sent the proper instructions to his agent at Brantford.

The agent went on the last day, and found that judgment by default had been signed about five minutes before he reached the office.

Then defendants' attorney moved to set aside the judgment by default, on an affidavit of merits, upon the usual terms of paying costs. The merits he shewed were these: That defendant had been owner of this land, and was still in possession of it: that plaintiff claimed title as purchaser from one Daniel Murphy, vendee of the sheriff of the county of Brant, under an execution against the lands of defendant and one Kirkland, at the suit of the said Daniel Murphy: that that was a judgment in the Queen's Bench for about £40 damages and costs, the true debt being about £17; but at the sheriff's sale the land was bid off by one Alfred Watts for £10: that the sale was brought about by a fraudulent collusion between the plaintiff, Murphy, and the sheriff of Brant; and that there were various irregularities in the proceedings by execution for sale of the land, which irregularities were specified.

On shewing cause against the summons to set aside the judgment by default in the ejectment, on which a writ of *hab. fac. pos.* had been issued, but was not executed, the plaintiff shewed that he claimed not only under the sheriff's sale in Murphy's judgment —which sheriff's sale was made on 31st January, 1860—but also as purchaser from Alfred Watts (son of plaintiff) who was vendee of the sheriff of the county of Brant, at a sale by the sheriff made on 7th February, 1860, upon a *fi. fa.* on a judgment obtained by this plaintiff, Charles Watts, against defendant, Joseph Loney, and Kirkland.

Upon this cause being shewn (the debt in this judgment being £500 and upwards, and obtained by confession) Mr. Justice Richards, before whom the summons to set aside the judgment in ejectment was heard, discharged the summons with costs, but allowed defendant, Joseph Loney, to renew his application to set aside the judgment, if he could shew any merits as against plaintiff claiming under this double chain of title.

The second application was heard before the Chief Justice of Upper Canada: the defendant, however, not having paid the costs of the first application.

The judge (Burns, J.) who granted the latter summons, granted at the same time a summons in the second-named cause, on the application of the plaintiff, Charles Watts, on the defendants, Joseph Loney and Henry Kirkland, in the case of Charles Watts against them, to satisfy the judgments in which case the land was sold, to shew cause why the judgment roll in that cause should not be amended as of the day when the judgment was entered.

1st. By inserting in the roll the date of the entry of said judgment, viz., 14th May, 1857.

2nd. By filling up the blanks left in the roll for that purpose, the sum of £3 15s. 5d., the amount of taxed costs.

3rd. And also filling in the aggregate amount of damages and costs, being £1003 15s. 5d.; which sum was in the roll left blank.

4th. To amend the *fi. fa.* against goods, by making it correspond with the judgment and præcipe; and directing the writ to the sheriff of the county of Brant, instead of the sheriff of Wentworth (to whom it was erroneously directed.)

5th. To amend the *fi. fa.* against lands in the same manner—the same error having been committed in it.

6th. To amend the said writ against lands, by inserting £1,003 15s. 5d., instead of £3003 15s. 5d., erroneously inserted therein.

7th. To amend a similar error in the writ of *venditioni exponas* against lands, and *fi. fa.* for residue.

8th. And to amend any other errors or imperfections in any of the said proceedings, arising from the mistake or oversight of the officer of the court.

The defendant, Joseph Loney, besides relying on these errors, or some of them, as rendering the sheriff's sale invalid, under which the plaintiff, Charles Watts, claimed, filed an affidavit also, in which it was sworn that he believed that the judgment debt of Charles Watts was satisfied before the sale—by a chattel mortgage which defendants had given to him of all their stock in trade, and their goods—and by assignment of a mortgage made by a third party to defendants. And he shewed that while these applications were pending, that he had filed a bill in Chancery against the plaintiff to compel him to account for what he received under a power of sale given to him in the chattel mortgage.

Carroll, for defendants, among other things, contended that the judgment was satisfied before the land was sold under it, and produced a verified copy of a bill filed in the court of Chancery against plaintiffs at the suit of defendants.

Harrison, contra, cited Har. C. L. P. A. 131, note *a*, 605; *Tay* v. *Hall*, 18 L. J. Q. B. 13; Chit Forms, 7 Edn., 478, and 9 Edn., 1461; *Wright* v. *Landell*, Tay. U. C. R. 416; *Edison* v. *Hogadone*, R. & Dig. "Amendment," III. 14; *Doe d. Spafford* v. *Brown et al*, 3 U. C. O. S., 92; *Doe d. Boulton* v. *Ferguson*, 5 U. C. Q. B., 515.

ROBINSON, C. J.—As to the summons obtained by the plaintiff for amending. The accumulation of errors in the judgment and subsequent proceedings in the case of Charles Watts against Loney and Kirkland, is something quite surprising and unaccountable; so great indeed as to make one hesitate to exercise a discretion in amending proceedings which may be called a mass of mistakes. And I must at least take care not to incur the risk of possible injury to any third party by curing such defects.

I allow the 2, 3, 6 & 7 amendments asked for, which will cure the imperfections in the judgment of omitting to shew the amount of the taxed costs, and the aggregate amount of damages and costs; and will also correct the errors in stating the amount in the *fi. fa.* against lands, and in the *venditioni exponas* and *fi. fa.* for residue to be £3003 15s. 5d., instead of £1003 15s. 5d., as the amount will stand in the judgment roll when amended.

In all these amendments there is something to amend by: the errors are apparent, and no one, as it appears to me, can be injured by them.

I grant the first amendment moved for, of inserting in the judgment roll the day when the judgment was entered, which was very heedlessly left blank; though I have some hesitation in doing so, from an apprehension that it may possibly lead to inconvenience or loss, from the effect it may have in regard to the time of land being bound by the judgment.

I decline to allow the writs of execution to be amended by now addressing them to the sheriff of Brant, instead of Wentworth, after the sheriff of Brant has acted upon them without authority. The plaintiff, however, has my permission to apply to the court for those amendments. (*a*) I do not feel clear in allowing them.

If the title of the purchaser will not be affected by the irregularities in the writs against goods and against lands, which founded the *venditioni exponas* and *fi. fa.* for residue on which the sale took place, then the refusal to allow the amendment will not signify. If, on the other hand, there is in those extraordinary errors, anything fatal to the title, under the circumstance of the plaintiff on the writs being himself the purchaser at sheriff's sale, then I am not satisfied that I could properly make such amendments.

The amendments which I allow are to be made on payment of costs.

Then as to the defendants' application to set aside the judgment by default, on the affidavit of merits; and, of course, on the common terms of paying costs of the judgment, and execution issued upon it, and the costs of opposing the application. It is to be observed, on the one hand, that in the bill which the defendant has filed in Chancery, and which he has himself brought before us, in order to shew that he is in earnest in seeking a remedy on the ground of the judgment being satisfied before the land was sold upon it, the defendant himself has stated that he has no defence at law to the ejectment; and I confess I am much inclined to believe that his attorney thought so, and on that account omitted to appear to the writ till he was too late to save his time.

If one could clearly see this, certainly it would be a strong argument against interfering with the judgment. But Mr. Miller's affidavit states the case somewhat differently; and besides, when the defendants' appearance was in fact taken to the proper office only a few minutes after the judgment was signed, it would be too rigid, I think, to refuse to allow an opportunity of defence,

(*a*) Subsequently upon the application of the Plaintiff to the full court, these amendments were also allowed, (*Watts* v. *Loney et al*,) C.P., T.T., 1860.—EDS. L.J.