over plaintiff's guess, which was in fact the nearest, and decided to sell the piano at auction and divide the proceeds among three other persons, who had all three guessed another figure. At this auction the piano sold for $300 after plaintiff forbade the sale. This was the only evidence offered as to the value of the piano, excepting the defendants' advertisement describing the piano as above, and by which the latter, on cross-examination, said he meant it was worth $800. The trial judge assessed the damages at $300.

Rule to increase the damages refused. TUCK, C.J., dissenting.

E. P. Raymond and *G. D. Hazen*, in support of rule. *L. A. Currey*, Q.C., contra.

Full Court.] MACPHERSON *v.* SAMET. [June 15.

County Court appeal—Costs—Attachment.

An appeal had been allowed with costs from the decision of the York County Court setting aside a writ of capias and the service thereof. The plaintiff took out the clerk's allocation for the costs and served it upon the defendant with a demand for the costs.

Held, on a motion for attachment for non-payment of the costs, that plaintiff's remedy was under s. 75 of the County Court Act, which provides that the costs "shall be certified and form part of the judgment of the Court below."

Rule refused. But the Court intimated that it did not wish to be understood as holding that in no case could an attachment be granted for non-payment of the costs of a County Court appeal.

C. E. Duffy, in support of rule.

Full Court.] EX PARTE ISAAC SAMET. [June 15.

Two actions in different Courts on two promissory notes, both overdue when first action was brought.

A capias was issued against the applicant in the York County Court on a promissory note for $110, and a few days later another capias was issued at the suit of the same plaintiff, out of the City of Fredericton Civil Court, against him on a note for $53. Both notes were overdue and owned by the plaintiff when the first action was brought. An order nisi for a writ of prohibition was obtained to prohibit the City Court from proceeding in the second action on the ground that plaintiff could not split up his claim and bring them in different counts.

Held, that the applications could be so brought.

G. W. McCready, for application. *C. E. Duffy*, contra.