the cause may grant the certificate, notwithstanding the verdict be within the jurisdiction of the inferior court. A judge cannot certify, in my opinion, when there is no verdict which enables him to say the court has possession of the couse; that is, I mean cannot certify under the different statutes.

Then as to the rule of court. The case of *Jones* v. *Reid* was decided before the new rules, but I apprehend there has been no difference in that respect. The 155th rule is that costs shall be taxed on the scale of the inferior courts, if there be no special order of a judge, in any action of the proper competence of the county court *in which final judgment shall be attained without a trial* If the plaintiff had gone to the master with an award upon which he could have obtained a final judgment, and was entering up that judgment, then the master would have been right. This is not such a case. The plaintiff proceeds upon the award and not upon any judgment, and therefore the question is just this, whether, when an award is made in a case where no verdict has been taken, but the parties are proceeding upon the award, it is to be considered as a final judgment within the meaning of the 155th rule. I think it is not, and therefore the master was wrong in thinking he had jurisdiction to deal with costs on the smaller scale.

The case of *Jones* v. *Reid* was decided in the Practice Court, from which there could be no appeal, but this case being in Chambers the defendants have a right to apply to the court to rescind my order if my view of the law be incorrect.

The summons for revision must be absolute, but it will be without costs.

BALFOUR v. ELLISON ET AL., EXECUTORS OF ÆNEAS SAGE KENNEDY.

Judgment—Right of subsequent creditors to move against.

A judgment will be set aside on the motion of a subsequent judgment creditor only when it has been procured by fraud, and the process of the court thus abused If a nullity upon any other ground, a stranger cannot be prejudiced by it; and if irregular only, he has no right to complain.

J. B. Read, on behalf of a subsequent judgment creditor, moved to set aside the judgment issued in this cause, and the *fi. fa.* issued thereon. Several grounds of objection were taken, and among others, that if such judgment is intended to be a judgment by default of defendant's appearance to the action, the said judgment is not justified by the writ of summons filed, as the judgment contains no copy of the special endosement on said writ, as required by the statute in that behalf: that the said judgment is fraudulent and void as against creditors of the said Æneas Sage Kennedy, deceased, on account of the plaintiff having caused the same to be entered without sufficient authority from the defendants so to do; or on the ground that, if such authority was given, it was by the plaintiff's collusion, or that of his attorney or agent, and for a much greater sum than ought to be recovered by the plaintiff against the estate of the said Æneas Sage Kennedy: that there is no judgment to warrant the *fieri facias* issued, the judgment signed in this cause not being against the estate of the said Æneas Sage Kennedy, or even against the defendants as his executors, but against the defendants personally.

BURNS, J.—The question raised by the affidavits of Bown, a subsequent judgment creditor, that the plaintiff's judgment was a collusive one, and fraudulent, is met by the plaintiff, and I think anything like fraud or collusion is sufficiently answered and repelled, and therefore I can neither set aside the judgment nor grant an issue to try the validity of it upon that ground.

All the other objections resolve themselves into regularity of the plaintiff's proceedings, and certainly there seems no want of points of irregularity as the papers stand at present, but perhaps they may be amended and set right upon an application for the purpose. The plaintiff's judgment was not obtained upon a specially endorsed writ, as would appear by the judgment, though the writ of summons was specially endorsed. The affidavit of Mr. Read, attorney in this suit for the defendants shews that an appearance was entered by him, and after service of the declaration he suffered judgment by default as the least expense to the estate.

The writ of *fi. fa.* in the sheriff's hands does not appear to be supported by the judgment, certainly, for the judgment is not entered against the defendants as executors. If Bown can obtain a priority over the plaintiff by reason of there being no judgment to warrant the execution, then he can do so by notifying the sheriff of it, and to proceed upon his execution, but I know of no authority which authorises a stranger to the action asking the court to interfere with the proceedings of another party, whether those proceedings amount to an irregularity or to a nullity. If the proceedings are void the stranger cannot be prejudiced, and if irregular only, he cannot complain. I know of no other ground of interference than when it is complained that the power and process of the court is used for a fraudulent purpose. See *Perrin* v. *Bowes*, (5 U. C. L. J. 138.)

Rule discharged, with costs.

UNITED STATES REPORTS.

IN THE QUARTER SESSIONS OF SCHUYLKILL COUNTY.

THE COMMONWEALTH v. HELLER.

The separation of the jury after a sealed verdict had been agreed upon in a case of misdemeanor, is not good cause for a new trial.

PARRY, P. J.—After the jury had retired to deliberate upon their verdict, the court adjourned until the afternoon; but before the judges had left the bench, the constable in charge of the jury informed the judges that the jury had agreed upon their verdict, and were ready to deliver it. The president judge (one of the associates being present and concurring) directed the constable to tell the jury they might seal up their verdict and bring it into court when the court met that afternoon. Neither the defendant nor his counsel were present when this direction was given. In giving this direction the president judge followed the practice of his predecessor on the bench, and in accordance with his own impression of the practice in similar cases. At the opening of the court in the afternoon, the jury delivered a sealed verdict to the court, finding the defendant guilty. The verdict was recorded by the clerk, and acknowledged by the jury as their verdict, in the usual form.

These are the facts on which the reason assigned for a new trial is founded, and presents for decision the question, "Whether the separation of the jury by permission of the president judge, after the sealing of their verdict, and before its rendition in court, is a valid ground for a new trial."

Lord Coke says (Co. Lit. 227, b.) "By the law of England, the jury, after their evidence given upon the issue, ought to be kept together in some convenient place, without meat or drink, fire or candle, which some books call an imprisonment, and without speech with any, unless it be the bailiff, and with him only if they be agreed. After they be agreed, they may in causes between party and party, give a verdict, and if the court be risen, give a *privy* verdict before any of the judges of the court, and then they may eat and drink, and the next morning in open court, they may either affirm or alter their *privy* verdict, and that which is given in court shall *stand*. But in *criminal cases of life or member*, the jury can give no privy verdict, but they must give it openly in court. And hereby appeareth another division of verdicts, viz., a *publick* verdict, given openly in court, and a *privy* verdict given out of court before any of the judges as aforesaid." "After the verdict is recorded, the jury cannot vary from it, but before it be recorded, they may vary from the first offer of their verdict; and that verdict which is recorded shall stand; also, they may vary from a *privy* verdict."

In Jacobs' Law Dictionary, under the word "Verdict," it is stated, a privy verdict is "given out of court, before one of the judges thereof; and is called *privy*, being to be kept secret from the parties until it is affirmed in court;" (1 Inst 227.) But a privy verdict is, in strictness, no verdict; for it is only a favor which is allowed by the court to the jury for their ease; the jury may vary from it, and when they come into court may give a contrary verdict, but this must be before the privy verdict is recorded; (5 Mod. 351.) No privy verdict can be given in criminal matters which concern *life*, as felony, &c.; but it must be openly in court;