vision is, that in case an execution be returned *nulla bona* a transcript of judgment setting the bailiff's return, &c., may be obtained *by the parties;* and upon filing the transcript with the Clerk of the County Court, the judgment creditor has the same remedy as if the judgment was obtained in the County Court. For this transcript the fee of 25 cents may be charged.—Eds. L. J.]

To the Editors of the Law Journal.

London, 20th Sept., 1859.

Gentlemen,—I find that not only in the locality in which I reside, but in other places in the country, magistrates think they have the power to bring almost every kind of work within the Master and Servants Act. I have known suits before magistrates, for threshing done by a threshing machine; upon contracts with railroad companies and other corporations, for wages earned months after the employment ceased, &c.; all which is clearly illegal;—and I thought that by mentioning the matter in your valuable paper, I might do something towards keeping magistrates as well as other parties out of trouble, and induce persons who are aware of similar facts in other localities, to draw attention to them, and give instances of actions brought before magistrates beyond their jurisdiction, and which should have been brought in the Division Courts.

J. T.

[We have heard something of this before, and some cases of the kind have come under our own notice, upon appeal from convictions by justices of the peace, which were quashed by the Court of Quarter Sessions. A similar case is now, we understand, before the Court of Queen's Bench.

We shall be happy to hear further on the subject. To use a common expression, magistrates should be very careful lest they "burn their fingers" in assuming jurisdiction under the Master and Servants Act. The law was not intended for the recovery of *debts*.—Eds. L. J.]

U. C. REPORTS.

IN CHAMBERS.

(Reported by C. E. English, Esq., M.A., Barrister-at-Law.)

McKenzie v. John Keene and Anna Keene, (Administratrix of the late Thomas Weir.)

Practice—Stay of Proceedings—Writ of Certiorari.

Setting aside judgment and execution in Division Court by a County Judge thereof.

A order for a writ of certiorari to bring up a case from a Division Court will not be granted after judgment and execution regularly issued and money made and paid over, although a new trial may have been granted subsequently by the Judge of the Division Court.

Quære.—Can a Division Court Judge set aside a judgment and execution regularly made on an application to him for a new trial, when the papers were not regularly filed with the Clerk of the Court.

26th March, 1859.

The particulars of this case appear in the judgment.

Robinson, C. J.,—The Plaintiff sued in a Division Court of the County of Hastings upon a demand for 78 dollars, against the late Thomas Weir, and got judgment in his favour 2nd November, 1858.

Immediately after the trial the defendants applied for a new trial to the Judge of the Division Court; and instead of leaving the affidavits and papers on which they moved with the clerk, they left them in the hands of the Judge (which was contrary to the 52nd rule of the Division Courts).

The plaintiff opposed the application, and filed affidavits.

Sometime after the new trial was moved (not stated when) the Judge not having yet decided upon the application, the Clerk of the Court although, (as stated,) he knew of the application for a new trial, yet as he did not know of it *officially*, the papers never having been left with him, issued an execution against the goods, in the hands of the Administratrix, and the money was made and paid over to the plaintiff.

After the money had been so paid over, the Judge granted a new trial and sent his order to that effect to the Clerk.

The defendants applied to the judge for an order upon the plaintiff to pay the money into Court, to abide the event of a second trial, but the Judge refused alleging that he had no means of compelling obedience to such an order. He thought the new trial must proceed; and if the defendants were successful, they might sue the plaintiff for the money as being wrongfully retained.

Under these circumstances the defendants applied to me in Chambers under the 85th sec. of the Division Court Act, 13 and 14 Vic., chap. 53, for a writ of certiorari to remove the case into this Court.

1st.—In the expectation that if this Court were in possession of the case, it would compel the plaintiff to pay the money received by him into the court.

2nd.—Because as the defendants allege there are difficult questions of law to be determined, and also a question of forgery, or no forgery, of a receipt.

I decline to grant a certiorari in the face of the statement that execution has issued and that the money has been made and paid over to the Plaintiff under it.

The defendant may apply in term, if so advised.

The delivery of the affidavits and papers on which a new trial was moved, to the *Clerk*, is made by the Division Court rules, a stay of proceedings, and that is a proper and convenient regulation.

The failure to do it in this case led to the issue of execution, because, according to the practice, the proceedings on the judgment were not stayed.

Whether the Judge can, under the circumstances, set aside his judgment and execution is for him to consider; but while all remains as it is, the case is disposed of and a certiorari cannot properly go in a cause not pending.

Summons refused.

Corlay v. Roblin.

Practice—Writ of certiorari—Full costs—Affidavits—Irrevelant matter—Costs.

An order for a writ of certiorari to issue to bring up a case into a superior court, entitles the defendant to the full costs of that court, if he succeeds in the action, without any certificate of the judge who tries the cause.

Costs for superfluous or irrevelant matter introduced into affidavits will not be allowed, and in extreme cases the Judge will disallow costs for the whole affidavit.

The particulars of this case appear in the judgment.

Richards, J.—This was a summons dated 23rd June, calling on defendant to shew cause why the taxation of costs before the master should not be set aside, on the grounds that such costs were taxed without an order of any judge, or why the taxation should not be reversed and the master be directed to tax merely Division Court costs to the defendant.

The action was originally commenced in the First Division Court of the County of Hastings, and a trial was had before the judge, who directed in favor of the plaintiff.

A new trial was obtained on the condition that the defendant should summon a jury to try the cause.

The case was afterwards taken up into the Superior Court by certiorari; and on the trial a verdict was entered for the defendant.

The learned judge, by whom the certiorari was directed to issue, made no order in relation to the costs; and the master, on the taxation of costs, allowed the defendant full costs of defence, but declined to tax the costs of procuring the certiorari and of the writ itself, as there had been no direction given in relation to these costs by the judge who ordered the certiorari to issue.

For the plaintiff it was contended, that the judge having omitted to give any direction as to the costs, the defendant was not entitled to more than Division Court costs; he himself having taken the case into the Superior Court. He referred to *Brookman* v. *Wereham*, 20 L. J. Q. B. 278, S. C. 2 L. M. P. 233, *Levi* v. *McRae*, 22 L. J. Q. B. 311, and Pro Statute 13 & 14 Vic., cap. 53 sec. 79, 85, and Chitty's Archd. Vol. 1 page 446 to 449, 9th edition.

Defendant contended, that *prima facie* he is entitled to costs, having succeeded in the action, the Superior Court not being