ary a declaration had been filed and served on defendant's attorney in the cause, and that the defendant had duly filed and served certain pleas to this declaralion.

On application to the judge of the County Court of the county of Wentworth these pleas were, on the 17th of February, 1865, ordered to be struck out, on the ground that the pleas were not applicable to the cause of action set out in the declaration.

On the 23rd of February the defendant obtained a writ of *certiorari* addressed to the judge of the County Court to return the proceedings in the cause into the Court of Common Pleas.

On the 27th February the plaintiffs signed judgment against defendant for $202 71 damages, and $12 92 costs, and thereupon issued execution for damages and costs, and placed the same in the hands of the Sheriff of Huron and Bruce. This writ was subsequently returned, and a writ against lands placed in the sheriff's hands, where it still remains.

When the pleas were set aside defendant was allowed six days further time to plead before plaintiffs should be at liberty to sign judgment.

The writ of *certiorari* was delivered to the County Judge of the county of Wentworth, on the 28th February, and he returned the proceedings into this court on the 8th March following.

On the 10th March the defendant applied for a summons in the County Court to set aside the judgment, execution and all subsequent proceedings with costs, on the ground that the judgment was signed after the issue of the *certiorari* removing the cause; and that a final judgment could not have been properly signed in the cause, as it was signed as if the demand of plaintiffs had been for liquidated damages, whereas the claim was an unliquidated one, and final judgment could be signed thereon; or, why proceedings should not be stayed until term; or, why such other relief should not be granted as to the judge might seem meet.

The judge refused to grant this summons on the ground that he had returned the papers in the original cause into this court, and had no further jurisdiction over the same.

The plaintiff's attorney stated that the 17th of August was the first day on which he had received intimation or notice that any proceedings had been taken to remove the cause from the County Court into this court.

The parties were heard on both motions in the first instance.

R. Martin, for plaintiffs.—The proceedings in the court below were quite regular and proper. The *certiorari*, not having been delivered until after judgment entered and execution issued in the court below, proceedings under it were irregular and inoperative, and the writ ought not to have been obeyed. The plaintiff's attorney had no notice of the writ, and proceeeed in good faith and took further proceedings in ignorance of what the defendant was doing in this respect. The defendant was guilty of *laches* with respect to the *certiorari*, as well as in not taking steps to put in his defence in the court below within the time given him for that purpose: *Rex* v. *Seton*, 7 Term Reports, 373. The proceedings taken by defendant are in effect asking the court to reverse the judgment of the judge in the County Court, without appealing from such judgment or bringing a writ of error. There is no doubt that the County Court had jurisdiction in the matter, and even if the judge was wrong in any decision he had made, the court would not grant a prohibition: it is only in cases where it clearly appears the inferior courts have no jurisdiction the prohibition will go: *Kemp* v. *Balne*, 8 Jur. 619, S. C. 1 D. & L. 885; *Fox* v. *Veale*, 8 M. & W. 126; *Toft* v. *Rayner*, 5 C. B. 162; *Thomas* v. *Ingham*, 14 Q. B. 710. He also cited, *Re Bowen*, 21 L. J., Q. B. 10; *Hollis* v. *Palmer*, 2 Bing. N. C. 713; *Hodgins* v. *Hancock*, 14 M. & W. 120; *Chapple* v. *Durston*, 1 C. & J. 1; *Joseph* v. *Henry*, 119 L. J. Q. B. 369; *Siddall* v. *Gibson*, 17 U. C. Q. B. 98; *Ellis* v. *Webb*, 8 C. B. 614.

C. Patterson, contra.—The writ of *certiorari* was issued before judgment was signed in the court below, and the judge having returned the record and proceedings in the court below, no further proceedings could properly be taken in that court. The judgment signed in the court below is really an interlocutory judgment, though entered as a final judgment, and therefore the *certiorari* was served before final judgment in the court below. The judgment in the court below ought to be treated here as an interlocutory judgment only.

The court may order a *certiorari* after judgment: *Grocnvelt* v. *Burwell*, 1 Salk. 263; *Benn* v. *Greatwood*, 6 Scott, 891; Ch. Pr. 10 ed. 942; Tidd's Pr. 8 ed. 401.

Richards, C.J., delivered the judgment of the court.

The 43rd of Elizabeth, cap. 5, seems to have been framed for the purpose of preventing delay by the issuing of the *certiorari;* also to prevent defendants, having learned the evidence against them, from providing themselves with false witnesses to rebut it. By that statute the judge or other officer of the inferior court, to whom the writ is delivered, is to proceed to try the cause, unless the writ be delivered before the jury, which is to try the cause, have appeared, and one of them has been sworn.

The statute of 21 James I., cap. 23, seems to have been passed for furthering the object of the statute of Elizabeth, and is entitled, "An Act for avoiding of vexatious delays caused by removing actions and suits out of inferior courts." The second section provides that the judge, to whom the writ is directed, shall proceed with the cause as though no such writ was sued forth or delivered to him unless the writ was delivered before issue or demurrer joined, so as the said issue or demurrer be not joined within six weeks next after the arrest or appearance of the defendant to the action.

There have been many decisions as to the practice to be pursued in relation to the removal of suits pending in inferior courts in England, and the result of these decisions seems to be that, in all cases where it is intended to have the subject matter of the suit disposed of in the court above, it is necessary that the writ should be delivered to the judge of the inferior court before the judgment is entered in that court, and, when interlocutory judgment has been signed and the jury sworn, if the writ has not been delivered to the officer before the jury is sworn, a *procedendo* is awarded.