and the written judgments prepared and sent to the clerk of the court some days before that day, were too late, and although the statute of Elizabeth may not in words apply, because there was no jury, yet the cases are within the intent and spirit of the statute, and the practice prevails in such cases. *Black* v. *Wesley*, 8 U. C. L. J. 277. He referred also to Arch. Pr. 10 Ed. 1265, 1313; and sections 61, 64, 86 and 106 of the Division Courts Act; *Cox* v. *Harrt*, 9 Burr. 759.

Reg v. *Scaife*, 21 L. J. M. C. 221, shews that a Judge in Chambers has power to send back proceedings removed by *certiorari* from an inferior court.

Adam Wilson, J.—It is laid down that a *certiorari* does not in general lie to remove proceedings in an inferior court after judgment, and perhaps cannot do so at all, unless for the purpose of granting execution. *Kemp* v. *Baine*, 8 Jur. 619.

It will not be granted after judgment by default signed and damages assessed, *Walker* v. *Cann*, 1 D. & R. 769, but it will be granted after judgment by default, but before the enquiry of damages has been had. *Godley* v. *Marsden*, 6 Bing. 433.

The 61st section of the Division Courts' Act provides, that "in case the debt or damages claimed in any suit brought in a Division Court amounts to $40 and upwards, and in case it appears to the judges of the Superior Courts of Common Law that the case is a fit one to be tried in one of the superior courts, and in case any judge grants leave for that purpose, such suit may by writ of *certiorari* be removed from the Division Court into either of the said superior courts, upon such terms as to payment of costs or other terms, as the judge making the order thinks fit.

Under this section, I think the legislature intended by the language used, that the suit should be removed before trial; the expressions "debt or damages claimed, and the case being a fit one "to be tried," shew that the demand must be yet in claim, that is, not adjudicated upon and yet to be tried, in order to be removed.

In these cases they had been tried and were reserved for consideration under sec. 106 of the act. The written judgments were prepared and sent to the clerk before the writs were delivered.

The plaintiff might, before the judgment was actually pronounced, have taken a nonsuit under sec. 84 of the act; and for that, and perhaps for other purposes, the judgment pronounced by the judge is put on the same footing as the verdict of the jury when there is one, but I think it is not for the purpose of removal of causes under section 61 of the act.

If it were otherwise, great and unnecessary trouble might be occasioned to the judge and to the parties and witnesses concerned, and a party might hold his writ in reserve until he had discovered what the judges opinion was, and withhold the same, if the opinion was favourable to him, and enforce it if it was adverse. Nothing could be more mischievous to the administration of speedy justice in such popular and benefical courts. The case of *Black* v. *Wesley*, shews this effect should be given to the statute of Eliz., if it can be properly done, and I think it may, under the fair exposition of section 61 of the Division Court Act.

I have not referred to that part of the summons relating to the delay in entering an appearance, because from the circumstances detailed, time would have been given for that purpose if the writs could have been maintained; neither have I referred to the merits of the case, which are so fully explained, and which shew apparently a case of some hardship against the defendant; but the facts were heard by, and I have no doubt strenuously urged before the judge who tried the suits, and yet after time for reflection he considered the plaintiff entitled to recover.

I think the order must go, and with costs, to be paid by the defendant Edward Bathie.

Procedendo awarded.

CHANCERY.

(*Reported by* Alex. Grant, Esq., *Barrister at Law, Reporter to the Court.*)

Shaw v. Cunningham.

Judgment creditor—Lien.

The lien of registered judgment creditors is not preserved by a bill filed before the 18th of May, 1861, but to which they were not made parties until after that day. *The Bank of Montreal* v. *Woodcock* (9 U. C. Chan. R. 142), overruled.

This was a suit of foreclosure. It was commenced before the 18th of May, 1861. After that day, three judgment creditors were added in the Master's office as parties, and the master reported that they had a lien on the property prior to the mortgage of the defendant *Blackett*. From this report *Blackett* appealed, contending that under the statute (24 Victoria, ch. 41), the lien of the three judgment creditors was gone. The Master's report was founded on *The Bank of Montreal* v. *Woodcock*. The judgment creditors insisted that the decision was correct; and if not so, yet, having been acted on ever since, should not now be disturbed. The question was argued before the full court.

Buchanan v. *Tiffany* and *Hawkins* v. *Jarvis*, 1 Gr. 98, 257; *The Bank of Upper Canada* v. *Thomas*, 9 Gr. 329; *Juson* v. *Gardiner*, 11 Gr. 23; *Byron* v. *Cooper*, 11 Clk. & F. 556; *Plowden* v. *Thorpe*, 7 Clk. & F. 137, were referred to

Blake, Q. C., for the appeal.

Crickmore, contra.

Vankoughnet, C.—We are of opinion that the decision in *The Bank of Montreal* v. *Woodcock* cannot be maintained, and that its having been acted on since is not a sufficient ground for refusing to give effect to what we consider the true construction of the statute.

CHANCERY CHAMBERS.

(*Reported by* Henry O'Brien, Esq., *Barrister-at-Law.*)

Re Sproule.

Solicitor's lien on deed—No right beyond that of client.

Where a solicitor prepared a deed and mortgage for a purchaser, and delivered them to the vendor's solicitor, (but without any stipulation as to lien,) who after the execution of the deed returned it to the solicitor for the purchaser.