It sets out a judgment for $55 61. The writs against goods and lands are for $55 86.

3rd. The defendant's name in the entry on the book of the clerk of the county court is George *Grass*, instead of George Graves.

4th. The amount remaining due on the judgment is not entered in the clerk's book.

5th That the transcript should have set out the attachment and the proceedings had upon it.

S. Richards, Q. C., for the plaintiff, answered.

1st. That the transcript recites the amount of the recovery in the court below correctly.

2nd. The writs differing from the transcript by twenty-five cents are not void, at most it is an irregularity.

3rd. The difference in the clerk's book is at most an irregularity.

4th. The amount due not being stated, it must be presumed all is due.

5th. The transcript is according to the forms as set out in the rules of the division courts.

The learned judge ruled—

1st. That the transcript was sufficient on its face.

2nd. That the executions issued upon it were not warranted by it.

3rd. That the transcript ought to have set out the proceedings by attachment

4th. That it not appearing that any part of the judgment had been paid, it was not necessary to enter in the clerk's book what the amount is, remaining due.

The jury found a verdict for the plaintiff subject to the above objections.

It appeared that the original entry in the clerk's book had been *Grass*, corrected to Graves.

During last term *Sir Henry Smith*, Q. C., obtained a rule calling on the plaintiff to shew cause why the verdict should not be set aside and a nonsuit entered, pursuant to leave reserved, on the above grounds taken at the trial.

S. Richards, Q. C., shewed cause. He contended, 1st. That the transcript was in form, according to the Division Court rules, made under the statute and sanctioned by the judges of the superior courts of common law, see Rules, page 60, form 52. It sets forth all that the 142nd section of the 22 Vic., cap. 19 requires. 2nd. The variance between the amount of the judgment as mentioned in the transcript, and the amounts mentioned in the writs of *fi. fa.* against goods and lands, is at most an irregularity, and does not make the writs void. 1 Arch. Prac. 11 edn. 595; *Webber* v. *Hutchins*, 8 M & W. 319; *King* v. *Birch*, 3 U. C. Q B. 425; *Doe Elmsley* v. *McKenzie*, 9 U. C. Q. B. 559. 3rd. That the entry in the clerk's book is directory; that however the name was entered, it appeared correctly at the trial. 4th. That it is only where part is claimed that it is necessary to make an entry of what is remaining due. 5th. That the attachment is a collateral proceeding, which it is not necessary should be stated as a proceeding, for by the transcript it appears the defendant was served with a summons.

Sir H. Smith, Q C., in support of the rule, contended that the proceedings had not been set forth in the transcript in accordance with the 142nd sec. By the transcript it was to be inferred that the defendant had been personally served with the copy of summons, but on inspection of the proceedings themselves the defendant had not been served The transcript shewed a judgment as if obtained in the ordinary way; the proceedings that it was obtained under attachment proceedings. The transcript should agree in every particular with the original proceedings. The 77th section requires personal service where the amount claimed exceeds eight dollars. The variance in the mandatory part of the *fi fa.* is fatal if it vary from the judgment, and the amount due ought to be entered in the book of the county court clerk. Every thing should strictly conform with the requirements of the statute. He contended also, that the proceedings being between the same parties, the plaintiff was bound to shew that the original and all the proceedings had been properly conducted. He cited *McDade dem O'Connor et al.* v. *Defoe*, 15 U. C. Q. B. 386; *Jacomb* v. *Henry*, 13 U. C C. P 377; *Thillipson* v. *Mangles et al*, 11 East 516; *Readshaw* v. *Wood et al*, 4 Taunt. 13; *Farr* v. *Robins*, 12 U. C C. P. 37

JOHN WILSON, J —As division courts are not courts of record, the legislature has not thought fit to allow them to issue writs against lands, but in order to enable judgment creditors to reach the lands of judgment debtors, it has provided a method by which its judgments may become judgments of county courts which are courts of record having the power to issue executions against lands. This court, in the recent cases of *Farr* v. *Robins*, and *Jacomb* v. *Henry*, has had under its consideration the mode by which judgments of division courts can be made judgments of record, and what is required to be brought from these courts to county courts to sustain writs of *fi. fa.* against lands and sales under them. A new question arises in this case. A principle of natural justice requires that he, against whom a judgment has been recovered, should have personal notice, or such other notice as the legislature has provided or the courts deemed reasonable notice of such proceedings as would, in the ordinary course, terminate in a judgment against him. The 77th section of the Upper Canada Division Courts Act, except in cases commenced by attachment, requires personal service of every summons where the claim exceeds eight dollars. In cases commenced by attachment in that court the act has provided for the mode in which service has to be effected. Where an attachment has issued, and no summons previously served, and the defendant has not appeared, the same may be served either personally or by leaving a copy at the last place of abode, trade or dwelling of the defendant, with any person there dwelling, or by leaving the same at the dwelling if no person be found there The transcript, on its face, appears all right, but "the proceedings in the cause" are not set forth as the 142nd section requires. When the proceedings are examined we find an affidavit of the plaintiff which authorised the issuing of an attachment against the defendant; we find the attachment and the summons both issued on the same day; we find the summons and the claim of the plaintiff served "by nailing them to the door of the defendant's last residence," but it is no where shewn that it was served by leaving a copy at the last place of abode, trade or dealing of the defendant with any person there dwelling, or by leaving the same at the dwelling and shewing that no person was found there. The summons required the defendant to appear and answer on the 28th of May, 1861. He did not appear, and it was adjourned to the July court. Again he did not appear, and it was adjourned to the September court. He did not then appear, and judgment was given against him.

The transcript ought to have shewn, at least, that the suit was commenced by attachment, and that the summons had been served so as to warrant the subsequent proceedings, but it shews none of them. On the contrary it shews that "the defendant was duly served with a copy of the summons;" but he was not duly served. These are strong reasons why the transcript should shew that the proceedings were commenced by attachment, for there may have been goods or money in the clerk's hands applicable to the judgment. A defendant, against whom a judgment has been obtained by attachment, cannot be examined as to his effects under a judge's order, but under this transcript as it now stands the defendant might be subject to such examination by the judge of the county court, who would have no official knowledge that the proceedings in the inferior court were by attachment. In accordance with the opinions expressed in the two cases referred to, we do not think this transcript can be sustained to authorise its being made a judgment of the county court, on which the writs could be issued, by virtue of which the defendant's lands were sold. We think the plaintiff must be nonsuited.

Per cur.—Rule accordingly.

COMMON LAW CHAMBERS.

(*Reported by* ROBERT A. HARRISON, Esq, *Barrister-at-Law*)

IN THE MATTER OF JOHN CARMICHAEL.

Habeas corpus—Certiorari—Vacation—Return to writs—Remand of prisoner—Invalidity of warrant—Amending warrant.

Held, 1 That a warrant reciting a coroner's inquisition, and stating the offence as follows—that J. C "stands charged with having inflicted blows on the body