

the Court; and it is expressly provided (Rule 12,) that every Bailiff levying and receiving any money shall, within three days after the receipt thereof, pay or transmit the same to the proper officer; i. e., the Clerk of the Court. (D. C. Act, sec. 53.)

Bailiffs should be particular in observing these requirements, for it is their duty to do so. They will also consult their interests by punctuality, for if money made be not duly paid over, it will be the duty of the Clerk to deduct the Bailiff's fees upon the execution, under the provision of the 14th section which by the Bailiff's neglect are forfeited to the fee fund;—and further it is enacted by the 59th section of the Division Courts Act, that if any Bailiff shall neglect to return any execution within three days after the return day thereof, the party having sued out such writ may maintain an action against the Bailiff, and his securities on the security covenant, and may recover therein the amount of the execution with interest, or a less sum in the discretion of the Court, according to the circumstances of the case.

An execution cannot be said to be properly returned till it be handed to the Clerk at his place of business, with a brief statement in writing, signed by the Bailiff, endorsed thereon, showing what he has done upon such execution. This statement will, of course, vary according to the circumstances of each case, but it should in all cases be certain and definite. Usually it is that the defendant has no goods, or that the amount of the execution has been made, or that part of the amount has been made, and no goods as to the residue:—

The following forms would be suitable.

Return of the Goods.

The within named — hath not any goods or chattels in the — of — whereof I can make the debt (or damages) and costs to be levied as the within warrant commands me.

Dated &c. _____,

Bailiff.

Return when money made.

By virtue of this warrant to me directed, I have made of the goods and chattels of the within named — the debt (or damages) and costs within mentioned, and have paid over the same to the Clerk of the — Division Court, County of — as within commanded.

Dated, &c. _____,

Bailiff.

Return when part has been made and no goods as to the remainder.

By virtue of this writ, to me directed, I have made of the goods and chattels of the within named — to the value of

—, and have paid the same over to the Clerk of the within named Court—and I certify that the said hath no more goods or chattels in the — of — whereof I may make the residue of the said debt (or damages) and costs or any part thereof as the within warrant commands me.

Dated, &c. _____,

Bailiff.

CONTEMPORARY LITERATURE.

THE LATE FRAUDS.

It appears now manifest that the proposed change in the criminal law, making a breach of trust a punishable offence, though clearly necessary and likely to prove salutary will not, without more, effect the purpose of preventing those frauds, of which of late there have been such glaring instances, and which seem generally on the increase. The measures propounded respecting breaches of trust, we have more than once brought under the view of our readers. The Law Amendment Society, at the desire of its president, fully inquired into the subject, and found that the offence was much more frequently committed than had been supposed, and especially among traders of an inferior description. The bill proposed as the result of their investigation, was confined, as Lord Brougham had recommended, to the case of trustees appropriating trust funds to their own use, and thus committing the breach of duty for their personal benefit. His lordship has since given a preference to the measure proposed by Mr. Cox in the *Law Times*;¹ but we incline to prefer the plan of the Society. One thing, however, is apparent, that the Government, according to the announcement of the Lord Chancellor, is resolved upon proposing to extend the Bankers' Act to all trustees, whether receiving payment as agents or not, and surely to this there can be no possible objection. It has lately been urged in the House of Lords, by Lord St. Leonards, that care must be taken to protect trustees from the risk of falling within the scope of the enactment, when they violate their duty without a criminal intent. We conceive that there will be found no difficulty in giving them this protection, if indeed they have it not, in the punishment being confined to those who take property only held by them in their fiduciary character, and employ it for their own profit, and not in the manner prescribed by the terms of the trust. That nothing done under a resulting trust should be within the provisions of the Act, is clear. No one of course can be affected by its provisions who has not either declared a trust or acted as a trustee, and in that capacity received money or other property. The suffering trustees to receive remuneration, is another essential point of all such measures. But though this improvement of our law is of great moment, indeed absolutely necessary to remove from it the stigma under which it now labours—of being the only system in the civilized world which does not treat the greatest of frauds as any offence at all; there yet remain other instances of a scandalous nature, of acts which every man regards as highly criminal, being yet either certainly beyond the scope of our criminal jurisprudence, or so near its outermost verge as to make more than doubtful their falling within the boundary line.

¹ Letter to Lord Radnor: *Law Mag. and Rev.*, November, 1856.