

and legitimate use are yet but imperfectly understood. It will be our aim in this, and one or two succeeding numbers, to explain their objects, uses, and the proper and most efficient mode of carrying them into effect.

The powers given by the 91st and subsequent sections of the Division Courts Act, are for the discovery of property fraudulently concealed or withheld by a judgment debtor—the enforcement of satisfaction by the debtor—and the punishment of fraud. The Hon. Mr. Justice Burns, in a very valuable letter published in 1847, on Division Courts, thus urged the necessity of giving such powers:—

“The want of such a power in the country has been felt as a real grievance by a large portion of the community. It is true that the power to punish for fraud in certain cases was provided for by the 8th section Stat. 5, Wm. IV., and some convictions have taken place under that Act, but the provision falls far short of what is necessary to discover the truth, and affords no remedy whatever to the creditor as to the matters complained of; the whole of the circumstances of the fraud must be proved by other than the testimony of the party; for unless the defendant seek the protection or indulgence afforded him by different statutes providing for such, no power is given to ask him a single question about his property. Creditors feel that the Act is almost a dead letter, for when property is to be made away with, concealed, &c., the intent constitutes the crime, and that intent, unless the parties wished to run into the meshes of the law with their eyes open as to the consequences, would be confined as much as possible to the immediate parties concerned, who could not be examined as witnesses against each other, for as both are rendered liable to misdemeanor, neither would be bound to criminate himself.

The small creditor would find, were he to proceed under this Act, that it would cost him to follow up the tedious and troublesome remedy by indictment more than any benefit he would derive; besides in case of failure exposing himself to a malicious prosecution, in a case too, where, if the defendant could have been interrogated as provided for by the Act, the creditor might triumphantly have succeeded in punishing the party, and might have made such discovery as would have led to the ultimate payment of his debt.”

And Judge Gowan, in an address at one of his Courts, immediately after the provision came into force (1st February, 1851), which was published at the time, thus refers to the subject in connection with what had been said previously by Judge Burns:—

“The learned Judge (Burns) wrote in 1847; since then the evil has been on the increase. Various fraudulent acts have been resorted to by unprincipled debtors to get rid of honest debts, and so universal has it become that from the contagion of example unthinking, short-sighted people have, with a view merely to gain time or bring a creditor to accept “payment in stock,” or the like, “put their property out of their hands,” as the common phrase is.

“The ability to elude detection, from the defective state of the law, fostered this system of fraud, although parties often found, with all their ingenuity—for “honesty is the best policy”—that even a harsh creditor is better to deal with than a false friend. Add to this, the credit system is very general in this country, and improvident persons are often allured by the facility for obtaining credit to purchase articles not absolutely needed, and for payment anticipate the produce of a crop even before the grain is in the ground.

“This new provision will be a brain blow to fraudulent practices, and will also be some check on persons about to

contract debts who have no reasonable certainty of being able to discharge them afterwards.

“The powers given are for the discovery of the property withheld or concealed, and for the enforcement of such satisfaction as the debtor may be able to give, and for the punishment of fraud.

“The last is by no means to be understood as imprisonment for the debt due. Under the Statute, a debtor cannot be imprisoned at the pleasure of the creditor merely, without public examination by the Court, to ascertain if grounds for it exist in the deceitfulness, extravagance, or fraud of a debtor. The man willing to give up his property to his creditors, ready to submit his affairs to inspection, and who has acted honestly in a transaction, although he may be unable to meet his engagements, has nothing to fear from the operation of this law. It is the party who has been guilty of fraud in contracting the debt, or by not afterwards applying the means in his power towards liquidating it, or in secreting or covering his effects from his creditors, upon whom the law looks as a criminal and surrounds with danger.”

Thus much with regard to the objects of these clauses so well put by learned Judges intimately acquainted with the subject.

The 91st Section enables any person having an unsatisfied judgment in a Division Court to summon the party against whom he has obtained judgment to appear before the Judge at a sittings of the Court, when he may be subjected to examination *upon oath*, on all or any of the following matters:—

## COTEMPORARY LITERATURE.

### THE MARRIED WOMAN QUESTION.

There are few subjects connected with the improvement of our jurisprudence, which have excited a more lively and a more general interest than the glaring imperfection of the law respecting married women. The unequal measure of justice dealt out to the husband and wife, in almost every particular, had long been matter of complaint; but, within the last two or three years, partly from accidental circumstances, and partly from friends of law amendment having directed their attention to the necessity of singling out the more gross instances of injustice—it may be said oppression—and consulting how far these might be met by practical and practicable remedies, the public mind has been directed to the two points of most importance, and to these alone; but with a concurrence of opinion exceedingly general, and with unprecedented earnestness. These points are, the state of the law or rather of its practice touching divorce, and the matters connected with it, and the law touching the property of married women. That some material change must be made in the half-judicial, half-legislative procedure by which a dissolution of the marriage tie is effected appears now inevitable; although it is far from probable that any measure will, at least in the first instance, be carried, which shall meet the exigency of the case, by placing both sexes and all classes of the community upon an equal footing, and by substituting a penal enactment for the admitted opprobrium of our law, the action of criminal conversation. But we purpose at present to point the attention of our readers towards the other great subject of