

that Division Court bailiffs cannot sell a leasehold interest in lands. Again, it is contended by some that green or growing crops cannot be sold under Division Court executions. The bailiff takes upon himself to sell a right of entry to some person, to go some months after his sale upon land, and there cut and harvest crops attached to the freehold, or grass that was not sown, but which is a part of the freehold. Would not a purchaser going on land by virtue of such a sale, and cutting crops so sold, be held to be a trespasser? Such things are not (until cut and harvested) strictly goods and chattels; and, besides, the execution at the time is spent; on the other hand, it is only in force 30 days, though it may be renewed. A *sheriff* may clearly sell under a *fi. fa.* against goods, growing crops.

The policy of the Division Courts Act, it may be argued, only intends that bailiffs should sell simple goods and chattels, such as may be handed by the officer selling to the *vendee at once*: (see *Duggan v. Kitson*, ante.) Bailiffs may sell promissory notes, bonds and specialties to secure money: see 22 Vic. c. 45, s. 13, p. 455, Con. Stat. Can.; but it is questionable if they could sell a mortgage secured on land, and which is in reality an interest in land, generally for large sums, and requiring registration to retain priority. They may sell the interest of a mortgagor in chattels mortgaged; such is the custom in England, and a clause in our statutes (see above act) authorizes sheriffs to sell such interests, and seemingly refers to bailiffs of Division Courts: see *Squair v. Fortune*, 18 U. C. Q. B. 547.

Bailiffs, in executing writs, cannot break an outer door; they must execute the writ within thirty days; must advertise eight *clear days*; must sell, it seems, (by a late decision, which has been referred to at length in this Journal,) within the division in which the goods are seized. But how can this be done where the suit has been brought in the nearest division, and the defendant lives, perhaps, in another county from that in which the court is held, and has his goods in the other county? Certainly, if the bailiff can serve the summons, he ought to have the right to go and seize the goods under the writ issued on the judgment?

A bailiff has no right to remain on land (except a sufficient time to remove) and sell the goods thereon; he cannot sell them on the premises without the defendant's consent: *Blades v. Arundale*, 1 M. & S. 711.

A clerk or bailiff has no right to renew an execution without the plaintiff's consent, nor can the bailiff return "*goods on hand for want of buyers*." There is no provision in the law allowing this, nor is there any provision allowing a bailiff to charge any other fees than those *specifically named in the tariff*.

An English act, 56 Geo. 3, chap. 50, sec. 1, authorizes sheriffs to sell in England, under certain circumstances, straw, chaff, turnips, manure, hay, grasses, roots, vegetables, in or upon lands. Usage in England and in Canada allows sheriffs to sell growing crops in the ground. And these cases in England seem to warrant him in so doing: (*Peacock v. Parsons*, 5 Moore, 79; 2 B. & B. 362; 1 Salk. 268, and see Chitty's Arch. Prac. title Execution.) But the sheriff cannot sell growing grass: (*Scoval v. Boxall*, 1 Y. & J. 398; 9 Price, 287.)

These cases seem to look upon growing corn as "*goods and chattels*." If they be strictly so, or goods and chattels within the meaning of the Division Courts Act, why should not bailiffs of Division Courts sell them? If it be said they cannot sell any interest in lands, as in *Duggan v. Kitson*, under their warrants, so too it may be said a sheriff under a *fi. fa.* against goods cannot sell any interest in lands. The statute 11 Geo. 2, chap. 19, sec. 8, allows landlords to distrain on and cut growing crops in the green, and to cut long after sale.

In England, under the County Courts Act (similar in many respects to our Division Courts Act), it has been held that even a lease for years may be sold by a bailiff of the County Court: *Hughes v. Jones*, 9 M. & W. 372; *Westmoreland v. Smith*, 1 M. & R. 137.

Money, or a watch, or any article on the person of a defendant, cannot be seized on a bailiff's execution: *Sunbolf v. Alfort*, 3 M. & W. 576.

Bailiffs frequently have great trouble under the exemption laws, thus:—suppose a threshing or wood sawing machine, or a horse, be seized, which is worth \$100 or \$200, and the execution be for \$100, the law allows the debtor "*his implements of trade or chattels, ordinarily used in his calling or trade*," to the value of \$60. What is the bailiff to do? He may offer the chattel, and, if he cannot get more than \$60, he may possibly sell it. But if more is offered, his duty is even less clear. Now there has been no express decision on this point, but the better opinion seems to be that if the article be really worth more than