

SULLIVAN, C.J.:—This is an application to set aside a statute execution issued upon a judgment entered in this case, or to reduce the amount of the levy endorsed on the execution. It was made to Mr. Justice Fitzgerald at Chambers and by him referred to the Court.

The grounds upon which the application is based are:—

First. That although the execution is issued upon a judgment on a warrant of attorney in which there is no stipulation dispensing with two years' notice of sale in the case of freehold estates and one years' notice in the case of leasehold estates, yet the defendant's lands being freehold, are advertised to be sold, and the execution is returnable within a shorter period than two years from its date.

Secondly. That the amount of the levy endorsed on the execution is excessive; that it is more than the amount authorised by the judgment, and that it includes a sum for interest not warranted by the judgment.

With reference to the allegations in the first ground concerning the shortness of the notice of the sale of the lands and the time named for the return of the execution, even assuming them to be well founded they would afford no sufficient reason for setting aside the execution, and of course, none for reducing the amount of the levy. But they are not well founded.

Before the passing of the Act 24th Victoria ch. 5, the law required that on a sale of freehold land under an execution, two years' notice of such sale should be given, and that in the case of an execution against leasehold land one years' notice of such sale should be given; but sec. 8 of that Act provides that "any party executing a warrant of attorney on which judgment is proposed to be entered may, in the defeasance to such warrant of attorney dispense with the two years' notice of sale in the case of freehold estates, or the one year's notice of sale in the case of leasehold estates, and limit the time to be notified in either case to any less period, not less, however, than six months."

So the law remained until the passing of the Act, 38 Vict. ch. 11, which provides that "whenever execution shall issue upon any judgment recovered in the Supreme Court of Judicature, other than judgments entered up "by virtue of" or "referred to in" the 8th Section of 24 Vict. ch. 5, six months' notice of sale of the lands and tenements levied upon