

A Judge of the Superior Courts, or County Courts, on the application of a creditor who has obtained judgment against a debtor, may order that any debts due to him from a third party (such third party being technically known as the *Garnishee*) shall be attached to answer the judgment, and may order that the *Garnishee* (when the amount claimed from such *Garnishee* is within the jurisdiction of a Division Court) shall appear before the Clerk of the Division Court within whose Division the *Garnishee* resides, at his office, at some day to be appointed in the said order by the Judge, for the purpose of ascertaining whether he, the *Garnishee* denies or admits the debt, and to give him an opportunity of paying it, if so minded, without further trouble.

[Having reached our assigned limits, the continuation of this article is postponed till next number.]

B A I L I F F S .

Duties of, acting under Executions—Provisions of a late Act.

Our attention has been requested to a provision "in the Common Law Procedure Act, 1857," and as it is most important that Bailiffs should have early intimation of it, we think it preferable to omit the portion of the serial article—the *Bailiffs' Manual*—for this number, in order to insert this information.

Section 24 of the Act referred to is as follows:—

"Where a writ against the goods of a party has issued from either of the said Courts, or from any County Court, and a warrant of execution against the goods of the same party has issued from the Division Court, the right to the goods seized shall be determined by the priority of the time of the delivery of the writ to the Sheriff to be executed, or of the warrant to the Bailiff of the said Division Court to be executed; and the Sheriff, on demand, shall, by writing signed by him or his deputy, or any clerk in his office, inform the Bailiff of the precise time of such delivery of the writ, and the Bailiff, on demand, shall shew his warrant to any Sheriff's officer; and such writing purporting to be so signed, and the endorsement on the warrant showing the precise time of the delivery of the same to such Bailiff, shall respectively be sufficient justification to any Bailiff or Sheriff acting thereon".

This enactment is to determine the question of priority where there are executions from the Superior Courts in the Sheriff's hands, and also executions from a Division Court in the Bailiff's hands, to be executed against the same defendant. There could be no difficulty in cases where there were several writs from a Division Court in the Bailiff's hands; he would of course seize under the first. But as the goods are held from the time an execution is delivered to the officer entrusted with the execution of it, questions of considerable difficulty might arise but for this provision. The substance of it is to place executions from all Courts on a common footing, and that executions from the Superior Courts shall have no precedence over executions from the Division Courts, but priority of time is to govern in all cases.

Now, as the time of the delivery of the writ or warrant to the proper officer to be executed is the criterion by which to determine the right to the goods, the first consideration that presents itself is the evidence by which this time of delivery is to be made appear. The direct, if not the best evidence of this, in respect to a Division Court execution, is the endorsement on the warrant, which should of course agree with the entry in the Clerk's books.

The author of the *Bailiffs' Manual*, speaking of executions from the Division Courts only, says:—"The day when received should be endorsed by the Bailiff on the execution, and if there be more than one against the same defendant the hour of receipt should be stated on each, to show the order in which the executions came into his hands."—(*L. J.*, Vol. 2, page 202.) The enactment under consideration renders the performance of this duty more necessary, and calls for greater care and further precision, and both Clerk and Bailiff should be careful to make the proper entry.

In every case in which a Clerk issues execution to a Bailiff he should enter the day and hour he issues it, and the name of the Bailiff, if there be more than one for the Court, to whom it is delivered; and such Bailiff should, before he leaves the Clerk's office, make an endorsement on the execution, stating in words at length—it will be preferable to figures—the day and the hour when he received such warrant to be executed, and should sign such endorsement.

The endorsement may be in the following form:—

* On this twentieth day of August, A.D. 1857, at _____ o'clock in the _____ noon, this Warrant was delivered to me to be executed by the Clerk of _____ Division Court of the County of _____, at his office in the Township of _____.

Witness my hand,

Bailiff of the said Court.

Officers should bear in mind, that if by "any neglect or omission" the plaintiff is delayed, or loses the benefit of his execution, the officer in default will be responsible to him in damages.

(To be concluded in our next.)

S U I T O R S .

Punishment of Fraudulent Debtors—the "Judgment Summons" Clause in the Division Courts' Act.

Although what are commonly called the Judgment Summons Clauses have been in force in the Division Courts since January, 1851, their object and scope seem to be but imperfectly understood by the general run of suitors. No doubt, tens of thousands of pounds have been collected under their pressure that would never otherwise have been obtained, but their whole

* This endorsement could be easily printed in blank on the writs of execution.