

4thly. As to the disposal he may have made of any property.

Now, whatever may be the cause, it appears in many cases that creditors suing out judgment summonses have no very definite object in view; they have some vague notion of its efficacy, or suppose that their business is to be done by the Judge; that he is to institute a rigid examination, to "ferret out" grounds for commitment—in fact, that he is to act as counsel for the plaintiff. Such a course would be foreign to the Judicial station; and although a County Judge, if a case of fraud be presented to him, or if from the questions asked he perceives ground for a strict inquiry, which a defendant evinces a determination to evade, may follow up and push home questions—yet plaintiffs should understand that they themselves must come prepared with some tangible ground upon which to examine, and, which they can, support by evidence; yet how common is it for plaintiffs, when asked by the Judge on what ground or point it is they desire to examine the defendants, to say—"he has owed the money for a long time and I want my own," or something to that effect, and no more. But a plaintiff has no right to bring up a defendant in this way unless he can make out some fraud or improper conduct against him, or elicit information as to property existing; and a plaintiff renders himself liable in costs to defendant if he wantonly and without reasonable cause issue a judgment summons.

It is recommended that no defendant be brought up on a judgment summons unless the plaintiff can show or has reason to believe that some of the before mentioned grounds exist, or will be able to show that the defendant earns or might earn something above what is necessary for the support of himself and family.

Being in such a position then, let the plaintiff when the case is called on at Court, state at once that he is desirous to have the defendant examined upon oath, and when he is sworn let him examine, asking such questions as seem necessary to establish the ground he goes upon.

If the plaintiff have witnesses he can then have them examined unless the defendant in his examination has admitted all they could prove. If by the examination or evidence it is shewn to the Judge satisfaction:—

1st. That the defendant in incurring the debt or liability has obtained credit from the plaintiff under *false pretences*, or by means of *fraud*, or *breach of trust*, or has *wilfully contracted* such debt without having at the same time a reasonable expectation of being able to pay or discharge the same.

2nd. Or has made or caused to be *made any gift*

delivery, or *transfer* of any property, or *removed*, or *concealed* the same *with intent to defraud creditors*.

3d. Or if it appear that the defendant then has or has had since judgment obtained sufficient means and ability to pay the debt and has not paid it.

Then the plaintiff will be entitled to an order to commit the defendant to gaol for a period not exceeding forty days, as a punishment for his misconduct.

Unless in gross cases of fraud, plaintiffs will find it more to their advantage to ask for an order to pay by instalments and our own experience has led us to believe that such is the surest means of collecting a judgment from a "hard case." If an instalment be not paid the defendant may be brought up from time to time to answer for the default. And those who would brave the consequences of a judgment summons where the amount was ten or twelve pounds, would not be inclined to do so on account of a monthly instalment of fifteen or twenty shillings.

If when the case is called on the defendant do not appear, the plaintiff should request the Judge to make an order to commit him, which the Judge will always do *upon application* to him, not otherwise, if the summons have been duly served and there be no excuse given for the defendants non-appearance.

MANUAL, ON THE OFFICE AND DUTIES OF BAILIFFS IN THE DIVISION COURTS.

(For the Law Journal.—By V.—.)

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Sale of Goods (continued).

So soon as the sale is over, the Bailiff should with all convenient speed, deliver to purchasers the articles bought by them. In case a lease or term for years, belonging to the person against whom the execution has issued be sold, the Bailiff should perfect the sale by executing a proper deed of assignment to the purchaser, for until this be done the term will remain vested in the lessee: (*Playfair v. Musgrove et al*, 14 M. & W. 239; *Doe d. Hughes v. Jones*, 9 M. & W. 372.) If the lease be in writing and the Bailiff has obtained possession of the document, he may execute the assignment by a deed endorsed thereon. However assigned, the lease, when in possession of the Bailiff, should be handed over to the purchaser, but there the Bailiff's duty ends, with respect to this description of chattel.

Return of Execution.

Forthwith after the execution is completed, the Bailiff should return the result to the Clerk of