sheriff's hands, he will get the whole amount of the execution."

Leith shewed cause for the sheriff, referring to the section of the act above quoted, and (the learned judge having on the argument expressed an opinion that the first execution creditor should be a party to or have some notice of the application) he filed the refusal of the first execution creditor to withdraw his writ or to take a return of *nulla bona*.

Ferguson, contra.

ADAM WILSON, J.—This section of the act is calculated to give great embarrassment to sheriffs and to create great difficulty to execution creditors.

A first execution creditor determined to protect the debtor, might, under various pretexts, retain his writ by renewals in the sheriff's hands for years, and hamper all subsequent creditors in proceeding against lands, although it was notorious there were either no goods or but an insignificant amount of goods to be seized upon the first writ, and that none of the subsequent creditors would get a farthing from the personal estate of the debtor. Yet because the first creditor must have his writ first returned and so come in first upon the lands, all the others must wait just as long as he could contrive to baffle them, although it was also notorious that there were lands sufficient to satisfy all the creditors together.

It is an inconvenient method of securing to the creditor, first against goods, the like rank against lands to which he is plainly entitled, and from which rank he was so often excluded, because there happened to be some trifle of goods to apply on his writ and on his writ alone. In consequence of which, while his writ was prevented from being returned, all the writs after his were at once returned "no goods," and the subsequent creditors were enabled to issue writs against lands and displace the first creditor from his just priority.

A simpler way would have been to have authorised the *fi fa.* to issue against both goods and lands at once, with a stay of proceedings against lands till the goods were exhausted—in which case no difficulty of any kind would ever arise, and one execution would answer in every case instead of two.

In this instance, I think it appears that the goods of the debtor in the county of York have been exhausted, and therefore I think I should order the writ of this plaintiff to be returned, because, notwithstanding this exhaustion, the first execution creditor refuses to withdraw his writ or to take a return of *nulla bona*, and it is quite plain his conduct should not be allowed to delay this plaintiff.

I am inclined to think that though the sheriff may be prevented by this provision from returning, of his own mere motion, a second or subsequent writ, in cases within the act, until he returns the first writ, the court is not necessarily excluded from directing or controlling its own process, as in *Omealy* v. *Newell*, 8 East. 364, where it was held that though the plaintiffs were prohibited since the 12 Geo. I. cap. 29, from arresting defendants without an affidavit of debt first made, this did not prevent the court or judge from making an order to hold to bail, "without the affidavit and other requisites which are prescribed in respect to arrest by the mere act of the plaintiff himself."

This plaintiff has served a notice on the sheriff to return his writ, then a rule to return it, and now a summons calling upon him to shew cause why he should not be attached for not doing so, and he has been engaged in this business for the last four weeks; yet I am not able to give him costs, for I cannot say the sheriff is to blame in requiring the aid of the court or a judge to interpret this clause, nor can I say that he could have acted at all without the direct order of the court or judge to do so, nor can I give the sheriff his costs for appearing here and explaining the case, nor can I give them to the first execution creditor who has also been affected by this proceeding in which he may or may not take any concern.

I must also add I am not quite satisfied with my own part in this curious proceeding. But according to the best judgment I can form, I shall order the sheriff to return the writ in question, "no goods," (although Reed's writ is still in his hands, because the goods of the defendants have, as I think, been exhausted, and because Reed will not withdraw his writ nor take a return of "no goods" under these circumstances) and if such return be made, the summons will be discharged. But if the sheriff do not make such return in four days, the order will go for an attachment for his contempt in not returning the writ.

CORRESPONDENCE.

The Question of Costs in the Division Courts.

TO THE EDITORS OF THE LOCAL COURTS' GAZETTE.

GENTLEMEN,—In the September number of your Journal there appeared a long and well-written letter from a correspondent, T. A. Agar, Clerk of the 1st Division Court, Co. Peel, in answer to some remarks in your July number, on the subject of Division Court costs. The letter of Mr. Agar contains a few *ill-natured remarks* and expressions which had better not have been used, but is upon the whole so well written, and even witty, that one can well pass over its faults and admire its ability. From his point of view—that of an interested official—he argues well and plausibly.

I have the pleasure of knowing Mr. Agar very well, and know him to be a careful and efficient officer, and also one who does not omit to collect where he considers himself entitled to them, all fees that he thinks chargeable under the somewhat imperfect and uncertain Division Court tariff of fees; not that he is wrong in charging all legal fees. But he is not the "out County Clerk" who was alluded to in the article referred to, as taking illegal fees on an application for a new trial.