

## DIVISION COURTS.

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## THE LAW AND PRACTICE OF THE UPPER CANADA DIVISION COURTS.

(Continued from page 234).

## OF THE SPECIAL PROVISIONS RELATING TO THE PROTECTION OF CLERKS AND BAILIFFS, AND TO THEIR PUNISHMENT FOR MISCONDUCT.

## PROTECTION OF OFFICERS.

The duties of officers, often complicated and difficult to carry out, bring them constantly in unpleasant contact with suitors; and, taken from the body of the people, clerks and bailiffs cannot be supposed to know the law in all its bearings on their varied duties; so that if liable to vexatious actions for every little error or slip in the performance of their duties, men could not be induced to accept the office. It seems, therefore, but just that they, as other subordinate officers of the law, should be enabled to act without fear. Express provision has been made to protect them from insult, and from personal injury or interference while in the discharge of their duties. The Legislature, moreover, as in the case of constables and other public officers, has provided specially for the reasonable protection of clerks and bailiffs acting in good faith, although they may fall into trifling errors, or commit unintentional wrong. Indeed several of the provisions for their protection are taken from statutes long in force, for the indemnity of peace officers in the performance of their official duties.

Of the clauses in the statute on this subject, some relate both to clerk and bailiff; others relate to the bailiff only, and those acting in his aid. They are nearly all classed amongst the "penal clauses" in the act.

The first in order is section 182, which, while it relates generally to contempts in the face of the court during the actual sittings of a division court, specially refers to officers of the court, and, if nothing more, would show the duty of protecting from insult those who, from their position in court, are under peculiar restraints as subordinate officers. The enactment as to this point provides, that if any person wilfully insults any officer of a division court during his attendance in court, the judge may order the offender to be taken into custody, and may enforce a fine not exceeding twenty dollars upon such offender, and in case of non-payment may commit to gaol for a month.

The enactment in section 183 is kindred in character, and, indirectly at least, bears upon the protection of officers. During the actual holding of the court, every bailiff shall exercise the authority of a constable, with full power to prevent breaches of the peace, &c., in the court-room or building, or places adjacent.

Section 184 relates more particularly to direct assaults upon officers, and the rescue of property seized. It is as follows:—"If any officer or bailiff, or his deputy or assistant, be assaulted while in the execution of his duty, or if any rescue be made, or attempted to be made, of any property seized under a process of the court, the person so offending shall be liable to a fine not exceeding twenty dollars, to be recovered by order of the court, or before a justice of the peace of the county or city, and to be imprisoned for any term not exceeding three months; and the bailiff of the court, or any peace officer, may in any such case take the offender into custody, with or without warrant, and bring him before such court or justice accordingly."

The clerk is not mentioned by name in the section, as the bailiff is, but obviously comes within the meaning, being an officer of the court. The words are, "any officer or bailiff, or his deputy or assistant." The object of the clause is to protect all officers; and as to the rescue of goods, by section 208 all property seized under an attachment against an absconding debtor, is to be forthwith handed over to the custody and possession of the clerk. The design is to make the rescue of any property in the custody of the law penal; and it cannot be reasonably doubted that clerk and bailiff are within the spirit of the enactment.

The enactment in this section is cumulative, and a party assaulting an officer could be indicted for the common law offence. It may here be remarked, that so far as relates to a criminal proceeding, the process of the division court is as much a justification to the officer by virtue of the statute, as a writ of execution out of a superior court to the sheriff. Upon an indictment for an assault upon a county court bailiff in the execution of his duty, the production of the county court warrant for the apprehension of the prisoner was held to be sufficient justification of the act of the bailiff in apprehending the prisoner, without proof of the previous proceedings authorizing the warrant, even though the judgment be obtained in the one county, and the warrant sent for execution into a different county.

The county courts in England are similar to our division courts, and section 184 of the Division Courts Act is taken from the 114th of the County Courts Act 9 & 10 Vic. cap. 95, and nearly word for word the same.

It would seem that deputy clerks and bailiff's assistants are within section 184.