

to act in disposing of the rights of parties. The parties concerned are, the claimant, who is deemed the plaintiff, and the execution creditor, who is deemed the defendant (see rule 53), in the issue that is to be tried for the purpose of ascertaining which of them—claimant or judgment creditor—is entitled to the goods under seizure.

The provisions of this section are intended solely for the protection of bailiffs, though the bailiff is not bound to take advantage of them, and in many cases when he finds upon enquiry that the claim set up is clearly fraudulent, or without a shadow of right, he would not do so; and in such a case he might safely take a sufficient indemnity from the plaintiff and proceed to sell. If, however, he finds it necessary for his protection to take out an interpleader summons, he should be prompt in making his application. The provisions do not apply to conflicting executions, it being the duty of the bailiff to pay the first execution creditor. See *Bragg v. Hopkins*, 2 Dow. 151.

The rule has, however, been altered as far as the Superior Courts are concerned, by the late act of 28 Vic. cap. 19.

Where an execution plaintiff directs goods to be seized, or persists in opposing the claimants title to them after they have been seized, and the issue is decided in favour of the latter, he has a good right of action against the former for damages sustained by the seizure; and the result of the issue is conclusive as to the claimant's right to the goods, *Harmer v. Gouinlock*, 21 U. C. Q. B. 260; *May et al. v. Howland et al.*, 19 U. C. Q. B. 66.

It has been decided, that in interpleader issues, contrary to general rule, the judge of a Division Court may try the question of property in goods, even though the inquiry may involve the title to land, *Munnie v. McKinley*, 15 U. C. C. P. 50; 1 L. C. G. 8.

The disposition of the goods seized is, during the pendency of the interpleader issue, in the absence of any special order by the judge, left to the discretion of the bailiff. It is very common for him to take a bond for the production of them, but this course, though advantageous to the person who shall eventually prove to be the owner, is not without risk to the officer. His safest course is to sell the goods and pay the proceeds into court; or else, if the articles are not perishable, nor likely to deteriorate rapidly in value, nor be expensive to keep, he might deposit them in a safe place under his own control. The character of the parties and the nature of the goods will generally be a guide to him.

In *Harmer v. Cowan*, 23 U. C. Q. B. 479, the defendant, a bailiff, seized certain goods under an execution, which were claimed by the plaintiff. The bailiff intending to apply for an interpleader summons, sold the goods subject to the claim. The price of the goods was not paid to the bailiff, and they were to remain in his custody until judgment should be given on an intended interpleader application, which was subsequently adjudicated upon. *Hagarty, J.*, said, 'However we may be inclined to agree with the plaintiff that a bailiff cannot make a conditional sale, we do not see how we can therefore turn his objectionable proceedings into an absolute sale, vesting the property in his vendee. We incline to consider the sale wholly nugatory, and that the execution was not executed, and the goods still

remained in the words of the act, 'taken in execution.'

Had we space, we could reproduce many notes of equal learning and equal value from this inestimable little book. In form and size it is just what it ought to be. The mechanical execution of the book is all that can be desired, and reflects great credit on the well known publishers, Messrs. W. C. Chewett & Co.

The additions of "all other acts and portions of acts affecting proceedings in Division Courts," and the Table "showing all the Division Courts in Upper Canada, their several limits and names of officers," are valuable adjuncts to the work. The former renders the book still more complete in the hands of the professional man, clerk, bailiff, or Division Court agent. The latter recommends the book to the patronage of all merchants and others whose dealings are extensive, and who, in consequence, must need information as to the limits of the numerous Division Courts in Upper Canada and the names of their officers, in order to the speedy and satisfactory collection of debts in the proper Courts.

The Index to the work is both full and complete. Without it the usefulness of the book would be impaired: with it every page is available to the inquirer without loss of time. Some authors imagine that their work is done when the last line is written, and that they need not at all concern themselves about the "mere mechanical preparation of an index." Were an author to write merely for himself we should not quarrel with this idea. But as we know that most authors write for public patronage, it is their duty to do all that is necessary to make their books as widely useful as possible. Nothing to this end is more necessary in the case of a legal work than a full index. Mr. O'Brien, mindful of all that was necessary to the completeness of his work, has not forgotten this desideratum.

ROBT. A. HARRISON.

APPOINTMENTS TO OFFICE.

CORONERS.

WILLIAM ROBERTSON, of the village of Lanark, Esquire, to be an Associate Coroner for the United Counties of Lanark and Renfrew.

THOMAS P. ECKHARDT, of the township of Markham, Esquire, M.D., and WILLIAM LAPSLEY, of the township of Scarborough, Esq., M.D., to be Associate Coroners for the United Counties of York and Peel.

ALEXANDER THOMPSON, of Blyth, Esquire, M.D., to be an Associate Coroner for the United Counties of Huron and Bruce. (Gazetted June 16, 1866.)

DEPUTY JUDGES.

EPHRAIM JONES PARKE, of Osgoode Hall, Esquire Barrister at Law, to be Deputy Judge of the County Court in and for the county of Middlesex. (Gazetted June 9, 1866.)

ISAAC FRANCIS TOMS, of Osgoode Hall, Esquire, Barrister at Law, to be Deputy Judge of the County Court, in and for the United Counties of Huron and Bruce. (Gazetted June 16, 1866.)

CLERK OF COUNTY COURT.

JAMES MACFADDEN, of St. Mary's, Esquire, to be Clerk of the County Court, in and for the county of Perth.