

name of office," &c.; and the words "but cannot be issued to the bailiff in another county" are merely declaratory. It is quite clear (in our judgment) that the 18th sec. of the recent act does not at all imply that an execution can issue out of the county: "execution or other process is required to be served or executed elsewhere than in the division in which the action is brought," &c. "Required," must be held to be lawfully required, and the Division Court Act does not empower writs to be executed out of the county, except in certain specified cases, and the forms 77, 80, and 84 clearly show this.

We do not think it at all probable that any clerk would be disposed to take the responsibility of directing an execution to an irresponsible person in or out of the county, so that no evil is likely to arise out of the enactment. It is well, however, that every enactment affecting these courts should be closely watched and boldly criticised, and our friend Mr. Klotz has a naturally acute mind and long experience in the courts. Although it is scarcely apropos to the present matter, we take the liberty to repeat a remark respecting Mr. Klotz, made by the Chairman of the Board of County Judges, viz., that Mr. Klotz had submitted a carefully prepared and well considered paper to the Board, which was found very useful and commended itself in every way to favorable consideration.]—Eds. L. J.

Renewal of Executions in Division Courts— its abuse.

TO THE EDITORS OF THE LAW JOURNAL.

MESSEURS EDITORS:—Since the Act of 1868-9 giving garnishee powers to Division Courts, it has become very common to renew Division Court executions, under the power given in 32 Vic. chap. 23 sec. 24, in our Province. This section in the Act is alluded to, and a form given, by rule 158, new rules. Now section 26 of the new Act, 32 Vic. chap. 23, expressly amends section 141 of the Division Courts Act, and adds these words to that amended section, "but may from time to time be renewed by the clerk at the instance of the execution creditor (that is the execution first issued), for thirty days, from the date of such renewal, in the same manner and with the same effect as like writs from the Courts of Record may be renewed, under the provisions of the Common Law Procedure Act."

I fear, in many parts of the country, that this excellent and necessary new provision will be (if it is not already), liable to be used to the injury of execution creditors. It is easy to see, that if a clerk or a bailiff can take it upon himself to issue renewed executions, from time to time, that a large profit may be made out of the privilege, which was conceded chiefly for the benefit of execution creditors. On these renewals the clerks charge also for "enforcing" as they call it, the old execution. The first execution is returned to the clerk, and a fee charged, and he issues it again, to the Bailiff who may again renew it, if he has the power, to suit his convenience. I happen to know of instances where executions have been renewed several times, by the officers of the Division Courts, without any authority from the execution creditor. Such things are illegal. No one can authorise this but the execution creditor or his agent. The Judge might in some cases interfere. It will be remembered, that by section 2 of the new Act, an execution cannot issue on a judgment by default, but at the "instance of the plaintiff." It is well that the law should be guarded in this respect. Human beings are such, that they will be constantly inclined to encroach on the privileges of the law if not looked after.

The duty of the Bailiff is to make the money on his execution within thirty days. When that time has run, the execution in his hands is dead. He must, and ought to return it. He has no right, and the clerk should not take any order from him, to renew the execution. The moment he does this he oversteps the law. If the execution creditor gives no orders the matter rests. It may be said, that in some instances the Bailiff might be under the necessity of returning "goods on hand for want of buyers," or might have seized goods just before the expiration of the writ, and have no time to sell. What is he to do in such cases? Must he lose his fees, and cease to act further, because the plaintiff will not act? The new Act and the rules do not allude to such cases. It is supposed, that every plaintiff will only be too glad to make his money and renew the execution. At all events, the bailiff and the clerk cannot usurp his powers. The writ does not belong to them. I am persuaded that, already many instances all over the country have occurred, of the abuse of the power to renew executions.

The Judges have by the new tariff greatly