

## DIVISION COURTS.

### OFFICERS AND SUITORS.

#### CLERKS & BAILIFFS.—*Execution returns by Bailiffs, and examination thereof by Clerks.*

We have been requested to direct our attention to the examination of these duties with a view to the information of officers.

It is important that Bailiffs should from time to time make such returns as will enable suitors to ascertain what is done under executions in which they have an interest. The 12th Rule accordingly provides that Bailiffs levying and receiving money under process shall, within three days after the receipt thereof, pay over, &c., the same to the proper officer—that is, to the Clerk who issues the Execution. And Bailiffs are required to deliver to the Clerk a return or statement on oath showing what has been done on Precepts given to them for execution. This Return is to be made according to Form 68 in the Schedule of Forms, and it is needless to add, for the Bailiff is required to swear to it, that great care should be taken to make it “full, true, and correct.” The examination of this return forms a very important part of the Clerk’s duty, and is directed by 7th Rule, which provides that it shall be the duty of the Clerk to examine such Returns, and if found correct and complete, within ten days after the receipt thereof, to endorse a certificate to that effect on the Return; if found incorrect or incomplete, it becomes the duty of the Clerk to notify the Judge thereof, who will call the Bailiff to account for the error or omission.

The duty we have said is an important one—it is so both to Suitors and Clerks—to Suitors, that their rights may have all the protection an Officer on the spot can best afford—and to Clerks because the examination being a part of their duties, suitors suffering loss in consequence of neglect, may be able to recover damages in an action against them.

The manifest object of Rule 7 is to secure the supervision of a resident officer, who has personal knowledge of the matters embraced in the return, or the means of readily obtaining such knowledge—one who will act as a proper check on the Bailiff and report him, if he fails to perform his duty.

Should the Bailiff omit to deliver returns at the proper times, the Clerk will of course report the omission to the Judge.

When the returns are before the Clerk, he has ten days within which to make the necessary examination.

The particulars respecting this examination, we shall notice in detail. In the first place the Clerk will see that the proper number and style of cause is inserted; that the nature of the process is cor-

rectly given; that the date when received—the amount to be made—the amount paid to the Clerk—and when paid, are correctly given. All these particulars the Clerk will be able to check by his books.

The “amount levied” the Clerk must of course take, as stated in the return, as also the time when levied. With respect to the “amount of Bailiff’s” charges, this includes all the fees and disbursements the Bailiff has authority to exact.

The amount of these in ordinary cases, will vary very little, except in respect to mileage; and the travel the Clerk will in general know by the affidavit of service of the summons in the cause.—Should the charge under this head be very large and apparently in excess of the authorised charges, the Clerk may well require an explanation from the Bailiff; for he, the Clerk, is required to certify that he finds the return correct in every particular to the best of his knowledge and belief. It is the obvious duty of Clerks not to wink at any overcharge by a Bailiff, but to protect parties from imposition, so far as lies in his power.

Under the head of “Remarks,” any necessary explanation may be inserted; and in case nothing can be made under an execution, the return “no good” should be set down: if the execution has been stayed by the plaintiff’s orders, the fact should appear under this head, and the Clerk may require the Bailiff to produce the plaintiff’s written order for “stay.” When the property seized is claimed by a third party, it should be mentioned, and the name of the claimant given; and the same if all the defendant’s available property be under seizure by the Sheriff, or by a Bailiff. When notes, &c., are seized, the same should be explained; in fact, the returns should disclose everything necessary to give full information to the plaintiff of what the Bailiff has been doing toward securing his claim.

These returns the Clerk must allow every one interested, that is, all parties having executions due, to examine without fee; and he must retain and file them in his office for future reference.

### SUITORS.

#### *Evidence—Sale of Goods.*

*Delivery to an agent.*—A contract made by an agent as such is in law the contract of the principal; the agent is considered merely as the conduit: he is simply the medium by which the contract is effected. His assent is merely the assent of the principal; he need not therefore be competent to contract for himself; so that infants, married women, &c., may act as agents for other persons.

Where goods are delivered to an agent, the seller may in general sue the principal.