

and execute; but they are silent in regard to the "*person*" referred to in section 18.

The reason why neither the Legislature by said act, nor the Judges in their new rules, have laid down any measure regarding the duty of such "*person*" whom the Judge or Clerk may order to serve or execute process, appears to me very simple; and in my humble opinion, that reason was, because they knew that they had no power over such an irresponsible individual, and they therefore made no provisions regarding the duties of him or her. But why the Legislature gave power to Judges and Clerks to appoint, at their option any irresponsible person to serve or execute important documents, I have in vain endeavoured to discover.

Bailiffs have to give heavy security for the faithful performance of their respective duties, they are as a body, with few exceptions, not overpaid, they are required to be ready at all times to serve or execute process, there are very few divisions without a bailiff, and if so, this is only temporarily, as vacancies are soon filled again; it is therefore unjust to take away from them business which legitimately belongs to them. But this is by far the least act of injustice that may arise by the exercise of the power conferred upon Judges and Clerks by ordering irresponsible persons to serve or execute process. The plaintiff may thereby sustain serious losses, and that even without redress.

The plaintiff, who in good faith ordered execution, may not elect to order how it shall be executed, but trust to the Clerk, whom he considers a responsible officer of the Court, that he will properly attend to the matter. The defendant resides in another County, and the Clerk, finding by rule 34, that he cannot direct the execution to a Bailiff of that other county, does for some reason or other, issue the execution to some irresponsible "*person*," as he is allowed to do by the 18th section. That irresponsible person, however, neglects to make return thereto, or he may have collected the money, but decline to pay it over, and may have absconded. Where now is the redress for the plaintiff? He may blame the Clerk, but he may not be able to prove wilful negligence of that Clerk, who shields himself by the authority vested in him by that 18th section, and the probable result will be, that the plaintiff loses all chance of recovering his judgment. And thus, by this mysterious word

"*person*," the operation of the Division Courts' Acts, which heretofore, as far as the responsibility of the Officers of these Courts is concerned, was considered safe and reliable, is now rendered uncertain, insecure and unreliable.

It may be true that no such case has yet occurred, and it may be a long time before it will occur, but it cannot be denied, that by exercising that power, such or similar cases may happen, and will, if they take place, prove a hardship to the plaintiff; neither can it be denied that the power conferred upon Clerks at least, is of a most arbitrary nature, and affecting the regular working of the Courts; and last, not least, it must be conceded, that the 18th section, even if the words "*or person*" were omitted, contains ample provision for the speedy service or execution of any summons, execution, subpoena, process or other document, since that section provides, that the same may be served or executed by the Bailiff of the Division *in or near* to which they are required to be executed; thus giving plaintiffs, Judges and Clerks, a choice between two, three or more Bailiffs, viz.: the one "*in*" the Division, and every one in the several adjoining Divisions; and I entertain serious doubts whether there is any Division in the Province of Ontario, in which process would be better and safer served or executed by an irresponsible person, than by a Bailiff of the Division Court.

I remain respectfully yours

OTTO KLOTZ.

Preston, Nov. 18, 1869.

[Our correspondent has brought very acute observation to bear upon the enactment to which he refers, and no doubt there is much difficulty in determining what is really meant. We leave his remarks to elicit observation from other officers, merely remarking for the present, that we think that the clause gives the power to the judge to make the order, whether he had issued the process or not; but confines it to the clerk *who issued the process*.

Then, our correspondent, we think, is not quite right in supposing (if we correctly understand his meaning) that a clerk can issue an execution into another county. There is nothing in the Division Court law to authorize it. Rule 34 provides how a writ of execution issued to another division is to be directed; to the officer, not by name, but "by