

## DIVISION COURTS.

## OFFICERS AND SUITORS.

**OFFICERS.**—*Attachments: Custody of property seized.*—"The Common Law Procedure Act of 1856," which comes into force on the 21st of this month, has in several particulars a bearing on the Division Courts. In respect to Attachments against absconding debtors there is a very important provision with which it is necessary officers should be at once acquainted. We have therefore procured a copy of the Act; one of the changes referred to is in the words following:

Sec. LVI.—If any Sheriff to whom a writ of attachment is delivered for execution, shall find any property or effects, or the proceeds of any property or effects which have been sold as perishable, belonging to the absconding debtor named in such writ of attachment in the hands custody and keeping of any Constable or of any Bailiff or Clerk of a Division Court, by virtue of any warrant of attachment issued under the provisions of the Act of the Parliament of this Province, passed in the Session held in the thirteenth and fourteenth years of Her Majesty's reign, intituled *An Act to consolidate and amend the several Acts now in force regulating the practice of Division Courts in Upper Canada, and to extend the jurisdiction of the same*, it shall be the duty of such Sheriff to demand and to take from such Constable, Bailiff or Clerk all such property or effects, or the proceeds of any part thereof as aforesaid, and it shall be the duty of such Constable, Bailiff or Clerk on demand by such Sheriff and notice of the writ of attachment forthwith to deliver all such property, effects and proceeds as aforesaid to the Sheriff, upon penalty of forfeiting double the value or the amount thereof; to be recovered by such Sheriff with costs of suit, (which Sheriff shall, after deducting his own costs, hold and account for such penalty as part of the property and effects of the absconding debtor); Provided always that the creditor who has sued out such warrant of attachment may proceed to Judgment against the absconding debtor in the Division Court; and on obtaining Judgment and serving a memorandum of the amount thereof and of his costs to be certified under the hand of the Clerk of the Division Court, he shall be entitled to satisfaction in like manner as and in rateable proportion with the other creditors of the absconding debtors who shall obtain a Judgment as hereinafter mentioned.

The course that Sheriffs will probably take under this clause will be to serve on the Clerk or Bailiff a note in writing, demanding the property attached or the proceeds thereof—and with this notice the officer should at once comply, handing over the property to the Sheriff or his authorized agent on request. It may however be found convenient for the Sheriff to allow the property seized, particularly if difficult of carriage, to remain in the Clerk's hands, the latter holding it as his, the Sheriff's, agent; but that course will be purely discretionary with both parties, for the Sheriff will be under no obligation to allow the property seized to remain with the Clerk, nor will the Clerk be bound to take charge of it for him.

The 57th sec. entitles a Division Court attaching a creditor, on obtaining Judgment, to share propor-

tionally with other creditors, when distribution of defendant's property is made. The section reads thus:

"When several persons shall sue out writs of attachment against any absconding debtor, the proceeds of the property and effects attached and in the Sheriff's hands, shall be rateably distributed among such of the plaintiffs in such writs as shall obtain judgments and issue execution, in proportion to the sums actually due upon such judgments, and the Court or a Judge may in their discretion, delay the distribution, in order to give reasonable time for the obtaining of judgment against such absconding debtor; and every creditor who shall produce a certified memorandum from the Clerk of any Division Court of his judgment as aforesaid, shall be considered a plaintiff in a writ of Attachment who has obtained judgment and issued execution, and shall be entitled to share accordingly. Provided always, that when the property and effects of the absconding debtor shall be insufficient to satisfy the sums due to such plaintiffs, none shall be allowed to share, unless their writs of attachment were issued and placed in the hands of the Sheriff for execution within six months from the date of the first writ of attachment, or in case of a warrant of attachment, unless the same was placed in the hands of the Constable or Bailiff before or within six months after the date of the first writ of attachment."

The "memorandum" referred to in this clause may be in part according to the form numbered 53 in the general forms; but the memorandum, or more properly certificate, should also show that the attachment was sued out in the case, and that certain property of the defendant's was seized thereunder and delivered over to the Sheriff. In case there is no writ of attachment issued in the Superior Courts against D. C. defendants, the proceedings in the Division Court in attachment cases will continue to be according to the present practice in these Courts. We should be glad to have some note furnished to us of the first proceedings under these clauses and the practice that may be adopted.

## CLERKS—Answers to queries by.

I hereby take the liberty of asking your opinion of the 52nd Rule for the Practice of Division Courts, relative to an application for a new trial. A. B. has obtained a Judgment forthwith against C. D.; an order has been given the Clerk to issue an Execution; in the meantime C. D. makes an application for a new trial, in which application statements are made as matters of fact which require proof, but C. D. refuses to make affidavit to said facts, and insists upon the Clerk taking in the application by itself. Is the Clerk warranted in taking in the application, and staying further proceedings without an affidavit in support of the facts stated in the application?

The 52nd Rule of Practice provides that the "grounds" on which a new trial is sought for, "if matters of fact requiring proof shall be supported by affidavit." If the sole ground be a pure matter of fact, and one of which the Judge could not have had knowledge, and it is not supported by affidavit, the delivery to the Clerk will not operate as a stay to the proceedings. But if several grounds are mixed up, some requiring an affidavit in support