

than to the one in his own county. This may often occur in new townships and settlements, or where highlands or small lakes occur.

Unless, therefore, the defendant can travel through the forest, over highlands or through the lake, he would be compelled to go much further to the court in the foreign county, than to the court in his own county.

On the other hand, if two constructions are to be put upon this section, varying as to the nature of each locality, then an evil will arise. The question is, should the reading be "*the nearest available road*," or "*the nearest as the crow flies*?"

Another construction put upon this act is, that the words "writs, process, and proceedings," will not warrant the service or enforcement of ulterior proceedings on a judgment summons and order to commit issued on a judgment summons and order to commit, issued on a judgment obtained under the above section, and does not extend to interpleader process on the execution issued on such a judgment.

I have my own opinion on these questions, but they do not coincide, I happen to know, with at least one County Court Judge.

Another question, which is now very commonly raised in the practice of Division Courts, is whether, after the lapse of six years, judgments of Division Courts can be enforced, although executions may have issued or may not have issued?

The question may be asked in this manner, —Why should a question or fact once adjudicated on be again adjudicated; or upon what principle of natural justice should a man lose his debt, when, having obtained a judgment on it, and done all he could to recover it, yet has to wait simply because the defendant has no goods and runs away, or even if he gives time from motives of lenity? A judgment of a Division Court may not be a judgment of record, but it is a record on a book, and settled by the act of law. In this case, too, I happen to know there is a difference of opinion among County Court Judges.

Another question arises frequently in Division Courts as to the liability of bailiffs or clerks' sureties. Take first this case: The sureties are bound by covenant under seal. A bailiff returns an execution, *nulla bona*, when he either might have levied and made the money and did not, or he has actually made the money and concealed the fact. The

plaintiff in the execution searches the office of the clerk and finds the return, supposes it correct, yet, after six years—perhaps ten years—finds out that the bailiff has been derelict in duty, has received the money, or been guilty of some gross misconduct. Are the sureties liable on their covenant after six years, or how long after?

Take, secondly, the question in such a case, or either of them, is the bailiff entitled to notice of action?

A third case occurs as to sureties, in this way:—Sureties covenant generally that the bailiff shall not misconduct himself to the injury of any person being a party in a legal proceeding. Suppose the bailiff receives the money of a defendant when he has no execution—after he has returned it or whilst he is suspended—are the sureties liable?

It seems a great hardship they should not be so, because often, in such cases, the bailiffs represent to the defendants that they are entitled to receive payments. I do not give it as my opinion that the sureties are liable, but there is room for grave doubts.

Another question often occurs as to the manner of reckoning time in services of notices in the Division Court. I have had occasion to differ very much, and consider several clients of mine have suffered greatly by the judgments or opinions of at least one judge on this point. In the services of notices of set-off, payments, and the Statute of Frauds and Limitations, one construction is to hold that the day of service counts, but not the court day. Another, and I think the true one, is to hold that, in all these cases, there should be six full or clear days' notice, as in the case of the service of a summons there must be ten clear days' notice. I contend that the words "at least six days before the sitting or hearing" means legally clear days. To support this opinion I refer to Arch. Prac. last ed. 181, and the case of *Young v. Higgins*, 6 M. & W. 49; 8 Dowl. P. C. 212. The words, "not less than six days," "at least six days," are the same as "at least six clear days."

As I do not desire to make this communication too long, I will not now allude to some other questions in my mind, but would feel happy to have the opinion of the Editors of your valuable Journal on these different questions.

CHARLES DURAND.

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