

ing the goods by virtue of the execution, provided the arrears do not amount to more than one year's rent, and if they do, then the party at whose suit the execution is sued out, paying the landlord one year's rent, may proceed to execute his judgment as he might have done before the act; and the sheriff, or other officer is hereby empowered and required to levy and pay to the plaintiff, as well the money so paid for rent, as the execution money."

The Division Court Act provides, (sec. 176), that so much of the statute of Anne, as relates to the liability of goods taken by virtue of an execution, shall not apply to goods taken in execution under the powers of any division court. But the landlord of any tenement in which any such goods are so taken, may, by writing under his hand stating the terms of holding, and the rent payable for the same, and delivered to the bailiff making the levy, claim any rent in arrear, then due to him, not exceeding in any case the rent accruing due in one year.

Sec. 177. In case of any such claim being so made, the bailiff making the levy shall distrain as well for the amount of the rent, claimed and the costs of such additional distress as for the amount of money and costs for which his warrant of execution was issued.

Sec. 180. No execution creditor under this act, shall satisfy the debt out of the proceeds of the execution and distress, or of execution only when the tenant replevies for the distress, until the landlord who conforms to this act, has been paid the rent in arrear for the periods hereinbefore mentioned.

Under the statute of Anne, it has been decided that an action for money had and received will not lie by the landlord against the sheriff for money made by the sheriff when he has an execution against the tenant's goods, and sells for enough to satisfy the rent as well as the execution.

This statute does not empower the sheriff to sell for, or on behalf of the landlord, it excuses the sheriff from selling at all when rent is claimed, until or unless the execution creditor shall pay the rent, and then it empowers the sheriff to sell for his benefit as well for the rent as for the execution money; while under the Division Court Act, the bailiff sells for, and on behalf of the landlord as upon a distress, and the creditor is not to be paid his debt until the landlord has been paid his rent.

It is true that under the statute of Anne, neither the sheriff nor the execution creditor, before levy, actually pays the landlord his rent, yet the sheriff sells for enough to satisfy both rent and execution money; but in strictness the sheriff cannot be called upon as a debtor by the landlord to pay over the rent; the remedy must be in another form.

In case the execution creditor has under the statute of Anne paid the rent, and the sheriff under the express terms of that act, does levy for the plaintiff as well the rent as the execution money, I conceive there is not the slightest doubt that the sheriff becomes a debtor to the execution creditor so paying such rent as well for the rent as the execution debt which he levies, and makes for him and under his express direction, and by the authority of the statute and of the writ.

In such a case, the creditor might sue the sheriff for money had and received, and so it would seem to follow that this money may be

attached as a debt due to this execution debtor to satisfy a demand of another execution claimant against her.

I think that the present judgment debtor, Mrs. Gray, the landlady for whom the rent was made—assuming it to have been made for her—has a claim for debt against the bailiff, and could maintain an action against him for money had and received in respect of this rent, and therefore the claim is one which can be attached to satisfy her judgment debts.

It was not argued before me whether money in the hands of the bailiff could or could not be attached. I see it laid down in the practice that it is attachable; and I see no reason or principle why it should not be, and I do not therefore feel this to be a difficulty in my way.

As before stated, the two facts of rent being due at all, and whether the sheriff sold for it, and made it, are strongly disputed. As I cannot determine these points, and have not sufficient information before me if I desired to do so, I must therefore order that the judgment creditor may proceed against the garnishee under the 291st sec. of the C. L. P. Act.

Costs to abide the result of that proceeding.

ENGLISH REPORTS.

COURT OF EXCHEQUER.

HARDING V. HALL.

Distress—Bailiff—Right to sell for expenses.

A bailiff who seizes goods under a distress warrant, if his authority to sell on behalf of the landlord is then withdrawn, has no right to go on and sell for his expenses.

[April 18, 1866, 14 W. R. 646.]

This was an action for the conversion of two horses and a waggon, and the question in dispute was whether they were the property of the plaintiff, or had passed to the defendant by a valid sale.

The case was tried before Pigott, B., at the last Staffordshire assizes. The plaintiff was the father-in-law of one Barton, and took a bill of sale of Barton's effects, including the property in question. Barton's landlord also put in a distress for rent, and the bailiff who distrained seized the goods in question with other goods on the premises. The bailiff held the goods on behalf of the landlord, and also of the plaintiff, as the bill of sale creditor. The attorney, who acted, both for the plaintiff and for the landlord, then paid out the landlord, and directed the bailiff to withdraw on behalf both of the landlord and the plaintiff. A dispute then arose as to the fees payable to the bailiff, and whether he was entitled to double possession-money or not. The bailiff thereupon removed the horses and waggon, and sold them to pay his fees and expenses. The defendant became the purchaser at the sale. The learned judge directed the jury that the bailiff had no right to sell, and a verdict was found for the plaintiff, with leave to move to enter a verdict for the defendant if the bailiff had power to sell.

H. Matthews now moved accordingly—There is no direct authority upon the question. But a sheriff may sell for his poundage, although ordered to withdraw by the execution creditors, *Alchin v. Wells*, 5 T. R. 470; *Watson on Sheriffs*, 83. And the case of a bailiff is analogous.