The writer in the "*Leader*," refers to the language of the Chief Justice in *Culloden* v. *McDowell*, 17 U. C. Q. B., 359, and couples the remark by the Chief Justice, "it is not to be assumed that an execution from an Inferior Court, binds from the time of delivery to the Bailiff," with a statement of his own, "*and* the appeal was allowed, and the judgment of the Court below reversed."

Now the judgment of the Court below was reversed, because founded on a misconception of the facts. The learned Judge below "assumed that it had been proved that the execution from the Division Court *came to the Bailiff* before the assignment had been made, under which the plaintiff claims." Whereas the evidence was, that although a writ had issued in January, he did not receive the execution until the 2nd of March, just one month *after the assignment* under which the plaintiff claimed, which assignment was made on the 2nd of February.

Take the language of the Chief Justice without omission. He says, "the writ, indeed, was issued in January, but that did not signify. It could not bind the property *before it came into the Bailiff's hands*. If, indeed, it could before an actual seizure was made, for it is not to be assumed that an execution from an Inferior Court, binds from the time of its delivery to the Bailiff."

The reportor's head note, goes quite as far as the case warrants. It is, "Executions from a Division Court, do not bind the property *before they are placed in the Bailiff's hands;* quære whether before actual seizure." The *quære* seems scarcely to be warranted by the incidental remark, "for it is not to be assumed, &c." That point was neither argued nor decided. But then, the recent Statute, 20 Vic. ch. 57, sec. 24, contains a provision which apparently settles the point. It enacts as follows:

> Where a writ against the goods of a party has issued from either of the said Courts, or from any County Court, and a warrant of execution against the goods of the same party has issued from a Division Court, the right to the goods seized shall be determined by the priority of the time of the delivery of the writ to the sheriff to be executed, *or of the warrant to the bailiff* of the said Division Court *to be executed;* and the sheriff, on demand, shall, by writing, signed by him or his deputy, or any clerk in his office, inform the bailiff of the precise time of such delivery of the writ; and the bailiff, on demand, shall show his warrant to any sheriff's officer; and such writing, purporting to be so signed, and the endorsement on the warrant showing the precise time of the delivery of the same to such bailiff, shall respectively be sufficient justification to any bailiff or sheriff acting thereon.

The substance of the provision is, that priority of time is to govern precedence in all cases; and it assumes, and impliedly requires, that the precise time of the delivery of the warrant to the Division Court bailiff is to be endorsed on the warrant.

The other point is not so important. The question of abandonment is a matter of evidence. What is commonly called by officers a receipting bond, is in the nature of a receipt for the goods seized, as having been delivered over to certain named parties, and to be returned for sale at a day named—making, in fact, these parties bailees of the goods for safe-keeping till the time for sale; at least such is the tenor of the instruments called "receipting bonds" which we have seen. Our opinion was, "the fact of the bailiff who first seized not having removed the goods or put a keeper in possession, cannot be construed into an abandonment of the seizure."

In the case put, both of the Division Court executions *were in force* at the time of the last seizure, and there was a bailment of the goods, as we understood the facts. In the case of *Castle* v. *Ruttan* (4 U. C. C. P. 252), the sheriff allowed the debtor not only to remain in possession, but to *carry on his business* (that of a druggist), as before seizure. It was *after the return day of the first writ had expired*, that the second execution came to the sheriff; and under these circumstances it was that the second writ was held to take precedence of the first. In several other particulars this case differs from the one put by Mr. Jones.

But after all, the main question is, whether Division Court executions take priority from the time of delivery or the time of actual levy. The point is one of general importance, and we should like to see the question raised before the courts. Until decided to the contrary, we must retain the opinion we expressed.

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