

tain "leave of the Judge" to issue execution. The application is *ex parte*, and would be granted as a matter of course on affidavit showing that the judgment is still unsatisfied, and that the parties to it remain as when judgment was given. Our own opinion (rather opposed to that of E. T.), based on the 10th sec. of the D. C. Ex. Act, and the 67th Rule of Practice, is that leave is not necessary. We believe that there is some conflict of opinion amongst the County Judges on the point, and it is just such an one as requires to be settled by a rule.

Quehph, October 22, 1857.

May I request at your earliest convenience your opinion, through your valuable *Law Journal*, upon sec. 2 of 20th Vic. cap. 63, whether the words "or in any other Court of Law or Equity in Upper Canada" apply to Division Courts?

ALFRED A. BAKER, Clerk.

Our present impression is that they do, and we are informed that they have been understood in that sense by some of the County Judges. Any professional man may raise the question at a sittings of a Division Court.

We should be glad to hear of any decision on the point.

J. J.—Are Bailiffs of Division Courts entitled to poundage when they do not actually sell, but instead thereof give the defendant time to procure the money himself?

According to the strict language of the item in Schedule A to the D. C. Act, the Bailiff does not appear to be entitled to the 2½ per cent. except upon actual sale. We should like to see the opinion to which you refer, for we know that "the Bailiff has frequently far more trouble waiting on the faith of promises than he would have had if a sale were at once made;" and should our views be changed by an examination of the "opinion" we will *gladly* announce it.

A "Division Court Clerk" puts the following case, and asks our opinion on it:—

A. owes B. a debt. A. leaves the country; B. takes out an attachment; the bailiff being from home, the attachment is put into the hands of an ignorant constable, who seizes a trunk belonging to A. (supposed to contain notes), but does not return the attachment for some days after. The constable seals up the trunk without opening it, and as it is some miles from the Clerk's house, puts it in charge of a *safe* person, where it now lies nominally in the Clerk's hands. Query—Should the Clerk open the trunk and find out if there is anything in it liable to be sold?

We see no objection to the Clerk ascertaining the contents of the box if the plaintiff wishes him to do so; but until the articles seized are duly returned to him, he should not concern himself about them.

#### SUITORS.

##### *Commitment on Judgment Summons.*

In accordance with a previous announcement, we

continue our selection of English County Court cases in illustration of this subject.

*Garrett v. Anderson*, in the Middlesex County Court, A. Amos, J.

"The original cause of action was to recover the sum of £5. 5s. for a quarter's rent, which amount the defendant (who is a widow) was ordered to pay on the 20th of the same month."

The defendant was brought up on a judgment summons. The solicitor for the plaintiff stated "that he should be able to satisfy the Court that the defendant was not justified in taking the house; and would submit that by refusing to give up possession, the defendant had contracted a debt without reasonable means of payment. The plaintiff had offered to forgive the defendant the rent, but the latter refused to quit the premises on the ground that she had no place to go to. He submitted that this was a case which clearly came within the meaning of the clause of the Statute which enacts that if it shall appear to the Judge that the defendant has incurred a debt under false pretences, or has wilfully contracted such liability without reasonable expectation of being able to pay the same, the Judge may order such defendant to be committed to prison for any period not exceeding forty days. He should be able to satisfy his Honor that the defendant did incur this debt under false pretences, having represented herself to be a person of property when she took the house, and that she would shortly come into possession of £1000 through the death of a brother. At that time she was and has since been in the receipt of parochial relief. In proof of that fact he had obtained the relieving officer's certificate, and confidently submitted that the defendant had, by refusing to give up possession of the house, coupled with the facts he had stated, incurred a debt without reasonable expectation of payment, and had subjected herself to imprisonment."

This statement having been borne out by evidence, the Court held that the defendant remaining in the house was equivalent to a declaration of being able to pay, and ordered her to be committed for seven days."

#### MANUAL ON THE OFFICE AND DUTIES OF BAILIFFS IN THE DIVISION COURTS.

(For the *Law Journal*.—By V.—.)

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##### *Claims by Third Parties to Goods seized (continued).*

By the 6th section of the D.C. Ex. Act, it is enacted that the landlord of any tenement in which goods are taken in execution may, by any writing under his hand, or under the hand of his agent, to be delivered to the bailiff making the levy, claim any rent in arrear then then due to him, "which writing shall state the terms of the holding and the rent payable for the same."