

The want of a uniform practice in Division Courts, which is to be regretted, gives ground for an impression that, too much discretionary power is left with officials, and that more laxity is evinced in carrying out the intention of the Act, than perhaps is consistent with a right interpretation thereof, or the interests of parties concerned; hence, I think the great importance of uniformity of practice, which desirable result your excellent journal aims at, and affords the opportunity of bringing about, by means, not only of your own recommendation, but also by inviting discussion, and the expression of practical opinions on the subject.

In your September number appear some comprehensive remarks supplied by Mr. Otto Klotz on the subject of issuing executions; and specifying fictitious sums as costs on summonses for foreign or local service, on which I certainly think his learning and your expressed opinion are in accordance with the intention of the Act, as well as just towards defendants.

It appears to me, unreasonable, as in one case quoted, by Mr. K. that the Judge's order should supersede the plain reading of the 53rd section, rendering it imperative on the Clerk to issue executions without consulting plaintiffs, who of course should be the best judges of the extent of lenity or severity to be exercised towards parties against whom they may have judgments. It is easy for a plaintiff when entering suits, to instruct the Clerk as to the promptness of action required in any particular suits, as doubtless, entering a number of cases, a discrimination of treatment would be observed towards the respective defendants, on the principle that circumstances alter cases.

With respect to specifying costs on summonses, I would remark, that in my opinion, if the blank which we find in the Form of Summons be filled with any other than the correct amount of costs actually made up to the issuing, (and "return fee,") of said summons, in the case of its being for foreign service the Clerk is misled, he has to overcharge the defendant; should the claim be settled before the summons is returned to the issuing clerk, or, in the case of a home service, if the defendant should pay the claim to the bailiff at the time of service. In these cases, excessive costs would be exacted, and a grievous wrong committed which would be prevented by uniformly and invariably specifying the true amount of costs at each respective stage of a suit. If it be argued—as I have heard it, that the insertion of costs is an empty formality, why insert any amount? But, the intention of the Act is evidently to guide the bailiff, or foreign Clerk, in making up his bill of costs when defendant settles before Court day.

In your September number appears also a communication signed "Sigma," asking information concerning the recording of a Division Court judgment, in the County Court; and while on the subject I would ask you,—Suppose a Division Court judgment to be recorded in the County Court, and that the defendant's property is encumbered to its full value for more than twelve months after said record is made, is the validity of the judgment damaged, or may it be enforced at any period subsequent, if the defendant have lands whereon to enforce it, whether it may be on the land previously encumbered, and since then relieved, or on lands acquired since the judgment was registered?

In your October number I find Mr. Klotz commenting on the want of authority for the sale of account books belonging to absconding debtors, seized under attachment. I think with Mr. K., that "it would be judicious to extend the 90th clause of the Division Court Acts of 1850, so as to include books of account." Yet, as he quotes the instance of one County Judge directing a Clerk in reference to issuing executions without consulting plaintiffs, would it be a great stretch of authority to have the debtors of an absconder summoned before him, to show cause why said debts should not be paid to the Division

Court clerk, and that his Honor make an order, authorizing the clerk to grant receipts, which of course would be valid.

I am disposed to think Gentlemen, that if the power to garnishee were included in the Division Court Acts, it would tend to increase the facility of "making" amounts which are not now collectable, and of course making the Acts more effective in their working, at once doing away with the irregularity supposed above. Am I right in supposing that the introducing of garnishment in Division Court practice, would meet the difficulty Mr. Klotz speaks of?

I would now ask you,—Suppose an unsatisfied judgment in favor of a party who is defendant in another suit, it may be in the same Court, or in another Division,—is it competent for the bailiff to attach, by virtue of execution, said judgment (on behalf of the plaintiff) in the hands of the clerk, and will the clerk be exonerated from blame or liability, by paying said judgment when collected to the attaching bailiff? I know of one case in point, where the bailiff of a foreign Division, attached a judgment as described, which in due course was paid to him, the Bailiff on this occasion seeing the indorsement of the Clerk in the matter, quoted the authority of an eminent Ex. County Judge who had construed the judgment to be a "security for money" therefore seizable. In this case the defendant whose property the judgment was, acquiesced in the matter, but, in the event of opposition being manifested would the bailiff and clerk be justified?

I have noted your opinion contained in the last (November) number of the journal, on questions mooted by Mr. Klotz in reference to the division of proceeds of sale on executions, where several issue against one defendant. And I infer from the tenor of your remarks, that in cases where any doubt exists as to the application of any particular section of the Division Court Acts, we are where a parallel exists to be guided by the practice of the Superior Courts.

Most respectfully yours,

J. H.

[We are much pleased to see that the example of our valued correspondent, Mr. Klotz, is not altogether lost. The above communication is one of the same description as those he constantly sends us, and such as our columns are always open to receive. Having ever taken a deep interest in all matters relating to Division Courts and their improvement, we always hail with pleasure any evidence of a corresponding feeling given by any of their officers; for there is no system, however perfect, which may not be abused by the indifference or ignorance of those appointed to carry out its details; and on the other hand, an efficient officer and one who wishes to perform his duties properly, will always be able to make the best of those defects, or seeming defects, which can never in any system be wholly overcome or avoided.]

Such letters as the above show a strong evidence of ability, intelligence and desire for the improvement of the law, and the practice of the Courts, of which the writers are officers, in our opinion highly commendable and worthy of imitation.

We shall now proceed to notice the questions asked or discussed by our correspondent, J. H.

With respect to the question of County Court Judgments by transcript, &c., it is one of general law which does not come within the limits to which we are obliged to confine ourselves in giving opinions, but we may say that the judgment has the same effect as if it had originally been obtained in the County Court, so far at least as regards the defendants lands, and that the lapse of a year will not affect its validity.

We are inclined to consider that giving garnishee powers to Division Courts would be an improvement. There is no reason why a judgment creditor in the Division Courts should not have the same means of enforcing payment of his debt as in the Superior Courts, and it is more than probable that had the Common Law Procedure Act been in force when the Division