

in the conclusion of my learned brother that the execution against lands was void because it was not addressed to a bailiff of the 7th Division Court, and there was, therefore, no *nulla bona* return by a bailiff of the Court in which the judgment was recovered. . . . [Jones v. Paxton, 19 A. R. 163, referred to and distinguished.]

In framing sec. 230 of R. S. O. ch. 60, 57 Vict. ch. 23, sec. 8, is recast, and the provision as to the *nulla bona* return is at the beginning instead of at the end of the section, and it is not that a return shall be made by a bailiff *of* the Court in which the judgment was recovered, but "by a bailiff *in* the Court in which the judgment was recovered."

I have been unable to find any amending Act antecedent to the Revised Statutes making the change which was made by substituting "in" for "of." The change, however, in my opinion, made an important alteration in the law, and was not the result of a slip in the work of revision. . . .

By sec. 107 of the Division Courts Act, where an execution is required to be executed elsewhere than in the division in which the action is brought, it may, in the election of the party, "be directed to be executed by the bailiff of the division in or near to which it is required to be executed, or by such other bailiff or person as the Judge or clerk issuing the same orders." . . .

The object of the provision (sec. 230), I take it, was to prevent an execution against lands being issued until the goods of the debtor had been exhausted, or it was ascertained that he had no goods within the county in which the judgment was recovered, and to prevent the costs of unnecessary proceedings being incurred—an object which is better attained if the course allowed by sec. 107 is taken than if that of directing the execution to the bailiff of the Court in which the judgment was recovered is adopted.

It may well be that it was to meet this case that the change was made in the course of the revision, and the provision as it now stands may well be taken to mean that the return of *nulla bona* may be made by any bailiff who may under the Act lawfully execute the process, and that his return is to be made in the Court in which the judgment was recovered, "in" being the equivalent of "into" or "to."

However that may be, upon the point in question the provisions of sec. 230 are not, in my opinion, in effect the same as those of the repealed Act the place of which that section took, and as respects transactions, matters, and things subsequent to the time when the Revised Statutes took effect, the provisions contained in them are to prevail: 60 Vict. ch. 3, sec. 9, sub-sec. 3.