

settled, after execution being returned "no goods," without serving out Judgment Summonses, through a wholesome fear on the part of defendants, of being brought up under it. Why? because (to use the language of Judge Gowan, in his published exposition of the law,) "the powers given are for the *discovery of property* withheld or concealed; the enforcement of such *satisfaction* as the debtor may be able to make, and for the *punishment of fraud*."

Is it not a fact, patent to every one acquainted with the Courts, that a legion of "genteel swindlers," so soon as the law came into force, began to feel qualms of conscience respecting "little accounts" due their Tailors, Hatters, Bootmakers, &c., &c., and by timely payment, saved their creditors, from the fashionable "out fitter" downwards, "the painful necessity of a resort to the 91st." And that swindlers of every grade, suddenly thereafter, found it just possible by reducing their expensive pleasures, to save something for their creditors. And ingenious fabricators of fictitious bills of sale, found it very inconvenient when called upon to explain how it was that they were surrounded with this world's goods, while the Bailiff of the Courts declared they had "no goods whereon to levy."

But the great cry against the Judgment Summons clauses, was the number of commitments under it, and the long periods of imprisonment. Now what do we find in the statement before us? 142 warrants issued on all grounds, (default in appearance—not applying means—fraud, &c.,) or one warrant to every 71 cases! Then as to the actual commitments, only 11 persons found their way within the walls of the gaol—or one actual commitment to every 909 cases!!! Now how comes it that only 11 out of 142, were actually committed. The plain inference is, that 131 of these defendants, found means of payment at the last moment, rather than go to gaol.

Well, for how long were these 11 actually confined? for 76 days in all, the longest term of any of them being 20 days—the greatest number under 10 days.

Surely here is no evidence of harsh dealing by creditors, or suffering by debtors. The *Toronto Leader* took a fair view of the question when it was before the Legislature, and did not join in the onslaught upon the valuable provision referred to. The editor of that journal, will see in the facts set down, strong evidence that his course was the wise one; and the trading community are greatly indebted to it, for giving the weight of its influence against hasty legislation.

We have been informed, that at the next session, another effort will be made for the repeal of the 91st clause. Last session it was modified, perhaps improved, but we reiterate, that with careful and judicious exercise of the jurisdiction, the provision needed no alteration—that if injustice was

wrought under it, the fault lay not in the law, but the way in which it was administered. We look upon it as the backbone of the small debt Court system, and the only effective means of reaching unprincipled debtors owing debts under \$100; and we hope, for the sake of creditors, that evidence such as the above, will have its due weight.

The same effort is being made in England, as in this country, to do away with a similar clause.

Our former articles on the subject, were republished by the *Law Times*, as "a valuable contribution to the controversy" going on, and it adds, in no small degree, to the strength of our position, to find that the views we advocate, are also those of one of the first legal periodicals in Great Britain.

EXECUTIONS FROM THE DIVISION COURTS.

In the November number, (page 250) we answered a question put by Mr. Jones, as to the priority of executions.

Our attention has been directed to a recent communication in the *Leader*, questioning our views. As we do not pretend to be infallible, any more than others of the legal fraternity, and are very far from being "more in love with our own opinions than with truth," we would have been happy to have given a place in our columns to the communication in question, which, for aught we know, may have been written by the paid legal adviser of some of the parties concerned.

Lawyers differ frequently, and Judges occasionally, and it would not be a matter of surprise, if amongst the numberless questions appearing in the *Law Journal*, there were some, the correctness of the answers to which were questioned.

The *Law Journal* has been in existence five years, and we do not remember more than two or three instances, in which our views were objected to. Yet we would very gladly induce discussion on important topics, with well informed parties actuated by a like motive with ourselves, viz., to inform and assist officers of the Courts. We are willing to assume that such was the motive of the *Leader's* correspondent, although his method of showing it was not the usual one in such cases.

The really important ground we took, is found in the first paragraph of our answer, that we know of *no decision* that executions from the Division Courts, do not take priority from the time of delivery to to the Bailiff, but only from the time of actual levy; adding, that in absence of any such decision, "we are inclined to doubt if such is the law."

Our opinion remains unchanged, and we have yet to learn that the point has been decided.