and convey, but allowing the outgoing sheriff to execute any conveyance of land sold by him while in office.

I certainly understand that these sections were intended to reduce to reasonable certainty the very unpleasantly vague state in which the law previously stood. Section 268 gives an intelligible definition of what shall be a legal inception of an execution against lands. It is pressed upon me by counsel that the act leaves the law as enunciated in Doe *Miller* v. *Tiffany* untouched. In the absence of any express decision to that effect, I am unwilling to believe that the section in question is so apparently useless.

But even without the intervention of the C. L. P. act, I do not think that enough was done in this case to bring it within the decision of Doe *Tiffany* v. *Miller*, and I do not understand that case as going the length required by the present plaintiff.

Sir J. B. Robinson says (Ib. 6 U C. Q B. 437): "We have here the sheriff going with a writ (as may be fairly presumed); which commanded him to sell Miller's lands, entering on lands which he saw him in possession of, and which he knew he owned, and which it was therefore, as we may suppose, in his mind to seize and sell as being subject to the writ. When we consider that he went to Miller for that purpose, which in the nature of things he must have declared, and took from him a list of his lands, both in the town and out of it, omitting only those which he saw him actually seized and possessed of, and which he knew the extent of, &c., I think we should, in support of the execution which the law favours, and in protection of the purchaser, look upon him as declaring to defendant, 'I come under the authority of these writs, which I hold, to seize your lands, both those on which I see you living, and of which I have knowledge, and any others which you may possess in this district of which I have no knowledge, which lands I shall proceed in due course to sell under these writs.' That is, I think, the plain construction and effect of Mr. Jarvis's conduct according to his evidence, and it is as formal an act of seizure as we have any reason to suppose takes place in all or any of such cases."

Macaulay, J.: "Upon the best consideration, I think that if a sheriff, before leaving office and before the return day, takes proceedings under a *fi. fa.* lands, which constitutes an overt act towards execution, and equivalent to seizure of goods sufficient as between the creditors and debtors, as by entry, with the declared purpose of seizing, taking possession of the title deeds, or adopting some other symbol, as laying hold of the knocker of the door, the limb of a tree, &c, acts usual in giving livery of seizin in feoffments, which I consider would be a laying on of the executions that he may proceed to advertise and sell afterwards, though out of office, and after the return day. * * If he entered, not meditating any proceeding against those lands, but merely inquiring of the defendant what land he had, and took a note of these as returned by him, it would not be a seizure; but if he entered knowing the lands to be the defendant's, and with intent thereby to commence the execution; if he entered on these lands as defendant's, and also so entered in order to inquire of other lands, it would be evidence of a seizure. * * I think the evidence warranted the inference that the ex-sheriff did by actual entry seize and levy on these lands with defendant's knowledge while in office, and long before the return day, and that such incipient proceeding was duly kept alive until the sale."

Draper, J., dissented from these judgments. "I understand these two very learned judges to have arrived at their conclusion on the special facts of the case, and that the acts of Mr. Sheriff Jarvis were evidence of a seizure of the lands and a laying on of the executions."

Their language, quoted above, seems clear as to that view. I am far from thinking that they would have held it sufficient for the sheriff to have sat down in his office the day before the writ expired, copy out a list of lands he heard defendant owned, and send it to the *Gazette* and another paper to be advertised long after the writ was spent. I have wholly misconceived their expressed views if they support plaintiff's contention.

In another ejectment between same parties, in 10 U. C. Q. B., the same point is again noticed. The court adheres to its former view. Mr. Justice Burns, who had in the interval joined the court, gave a judgment agreeing with that formerly delivered. Some of his expressions are quoted by plaintiff as in his favour, *e. g.*: "I do not see that the sheriff could well have done anything more towards a beginning of the execution, short of making an actual and formal entry upon the lands, and that I think he was not bound to do. It seems that he followed up his first act by publishing an advertisement of the sale before the expiration of the writ, though of course that was done after he ceased to hold office. If he had remained in office, I think the publication of the advertisement would, without any other act done by him, have been an inception of the writ, and it appears to me there may be other modes of beginning an execution against lands besides the publication of the advertisement, and otherwise than by an actual and formal entry upon the land."

I repeat that, in my judgment, even before the C. L. P. act, there was no legal inception or laying on of this writ against lands during its currency sufficient to support any subsequent advertising or sale thereunder.

I further think that the C. L. P. act clearly defines what shall be an inception, and that in either view the plaintiff fails, and that the summons must be made absolute to set aside the writ, or rather, I suppose, all proceedings thereunder.

I feel the utmost difficulty in deciding (if necessary so to do,) whether the plaintiff's judgment has been paid or not. Having given it the best consideration in my power, I think it a case in which the opinion of a jury should be taken if possible. and following the course adopted in cases where a judgment is attacked as fraudulent, I should direct that the parties should proceed to the trial of a feigned issue; that defendant, Streeter, should be plaintiff, and the now plaintiff, Reynolds, the defendant.

That the question to be tried shall be, whether the judgment recovered was paid or not before the issuing of the *fi fa.* against lands, and that the trial take place at the next fall assizes for the county of ———. All question as to costs reserved.

If I had the power I should direct that plaintiff and defendant be admissable as witnesses.

Order accordingly.

Grimshawe v. White et al.

Writ of summons in ejectment—Issued in blank—How taken advantage of—Precipe—Second action stayed while former pending—Practice.

The practice of issuing writs of summons in blank by officers of the court is not to be sanctioned or approved.

Where a ground of objection to a writ of summons is that it was issued in blank, the facts connected with its issue must be clearly laid before the court, for nothing will be intended in favor of such an objection.

The fact that a writ of summons in ejectment in some respects varies from the precipe on which it issued is no ground for setting aside the writ, for the precipe is no step or proceeding in the cause.

Where an action of ejectment was brought by plaintiff against three defendants, whereon a verdict was rendered for plaintiff, and plaintiff afterwards, without discontinuing his action, commenced a second action of ejectment against two of the defendants for the recovery of the same premises, an order was made that unless plaintiff elected to discontinue one or other of the two suits, and gave the costs of the suit discontinued, the proceedings in the second action should be stayed.

(Chambers, March 18, 1864.)

Defendants obtained a summons calling on plaintiff to shew cause why the writ of summons herein and the services and copies thereof upon the said defendants should not be set aside with costs for irregularity in the following particulars;—

1. That the said writ was not duly issued by the deputy clerk of the crown and pleas for the United Counties of Northumberland and Durham, by whom it purports to have been issued.

2. That no precipe on sufficient precipe for the said writ was filed with the said deputy clerk before the same was issued.

3. That the said writ was altered without authority (after the same was issued,) by the plaintiff or his attorney.

4. That no sufficient venue is stated in the margin of the said writ, the venue being laid in the United Counties of Northumberland and Durham, instead of the proper county of the said united counties.

Or why all proceedings in the action should not be stayed on the ground that at the time of the commencement thereof another action for the same cause was and still is pending against the defendants at the suit of the plaintiff.

Or why all proceedings herein should not be stayed on the ground that the costs of a former action for the recovery of the