

~~I may claim for my opinion that it is at least impartial and disinterested. The proposed change would mean for the County Court Judge a very substantial diminution of his work and his responsibility.~~

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4.—*Suggested Improvements in County Court Procedure.*

BY JAMES J. SHAW, K.C.,

*County Court Judge of Kerry.*

[Read Friday, 27th February, 1903 ]

“ UNDER the present County Court jurisdiction and procedure, it is almost impossible to recover debts.” These are the first words of a printed statement adopted by the joint Committees of the Dublin Chamber of Commerce, and the Dublin Mercantile Association. They are sufficiently startling, and, if true, call for very drastic reforms in County Court Procedure. But when I find that about 50,000 decrees are obtained in Ireland every year, 5,500 out of the Belfast Recorder’s Court alone, and that the vast majority of these are for shop and other debts, I think the statement that “it is almost impossible to recover debts,” in the Irish County Courts must be regarded as very rash. My own experience is that there is not the slightest difficulty in recovering a just debt in the County Court if creditors avail themselves of the facilities that are offered them. The only difficulty that ever arises is from the delay of creditors in suing for their debts. Shop keepers in county towns hardly even think of suing their customers till the debt is nearly barred by the Statute of Limitations, and thus create difficulties of proof for themselves, and give opportunity for the raising of defences which the lapse of time and the fallibility of human memory render it hard to meet satisfactorily.

But it is much easier to obtain a decree than to realize the money which the decree represents ; and in my opinion the chief defects in the County Court system relate to the mode of execution of decrees. If traders found as little difficulty in executing their decrees as they do in obtaining them, their lot would be a comparatively happy one. I wish to draw attention to two or three defects in the powers of the County Courts as to the execution of decrees, and I am glad to say that as regards the existence of these defects and the mode of remedying them, I am almost entirely in agreement with the authorities of the Dublin Chamber of Commerce and the Dublin Mercantile Association.

1. The County Courts in Ireland have no power to attach debts due or accruing to the execution debtor, or to make an order for their payment to the execution creditor. It very often happens that a debtor, who has no goods which can be seized under the decree, has debts owing to him which could be attached and made available for the payment of his own debt. The English County Courts have power to enforce execution of their decrees by attachment of debts due or accruing to the execution debtor, and there is no reason why the Irish County Courts should not have the same power. The County Courts Bill introduced by Lord Ashbourne in the House of Lords last Session contained a clause giving this power to the Irish County Courts, and it is probable that any Bill which may be introduced in the present Session will contain the same provision.

2. A decree of the County Courts cannot be executed by seizure and sale of any interest in lands, or of any growing crops. "It shall not be lawful to seize or sell under any Civil Bill execution any term of years, or any estate or interest in lands." (27 & 28 Vict., cap. 99, s. 29). For growing crops see 26 and 27 Vict., cap. 62, s. 2. If the decree of the County Court is for a sum exceeding £20, it may be removed by *Certiorari* into the High Court and when so removed execution may issue, and chattel interests in lands may be seized. It seems absurd that the parties should be put to the expense and trouble of moving for a *Certiorari* and obtaining execution out of the High Court. If the execution is successful it adds largely to the burden of costs on the debtor; if it is unsuccessful, the creditor has to pay all the costs in addition to the loss of his debt. In a County Courts Bill introduced by Mr. Justice Madden when he was Attorney-General, it was provided that under any Civil Bill decree for an amount exceeding £20, chattel interests in land and growing crop might be seized in execution, and thus all the expense and trouble of an application to the High Court saved. I never could see any reason why this simple remedy for an admitted defect should not be adopted. The application to the High Court, which is at present necessary, serves no good purpose, and is a pure waste of time and money.

3. But the great defect in the powers of the County Court for the execution of their decrees arises from the relation between the Court and the Sheriff. The Sheriff, whose duty it is to execute the decrees of the Court, is not an officer of the Court, and is not responsible to it in the execution of his duties. He can, of course be sued like any other person for negligence or breach of duty, but unless in a case in which he is sued, the

Court has no power to call him to account for the mode in which he discharges his duty. He is, moreover, paid by fees for executing decrees, and it is pretty well known that the fees, especially in cases of small debts, do not pay the Sheriff and he is consequently under a great temptation to avoid the execution of decrees in small and troublesome cases. What is really needed, in order to make the recovery of small debts easy and convenient, is a complete change in the mode of execution of Civil Bill decrees.

I propose that the execution of Civil Bill decrees should be taken out of the hands of the Sheriff altogether. I propose the appointment of an officer, somewhat like the High Bailiff of the English County Courts, who should be an officer of the Court, directly responsible to the Court and discharging his duties as an executive officer of the Court's decrees entirely under its control and direction. I would have this officer paid by salary, and not by fees, so that he should have no pecuniary interest in doing one part of his work and neglecting another. His duties would be as follows :—

(1.) He would be the responsible officer for the service of all processes of the Court. He would select his own staff of process-servers, but every process to be served would be lodged at his office, and it would be his duty to see that it was served on the proper person, in the proper manner, and at the proper time. He would keep a book in which every process received for service would be entered, with the date of its receipt, how and when it was served, or, if not served, why it was not served. He would account to the Judge at the commencement of every Sessions for the processes he had received, and the manner in which he had dealt with them. At present, solicitors and others who have processes to serve have to deal with a number of uneducated, irresponsible persons who have no head or organization, nobody to supervise or control them, and who can play tricks in the service of processes with little danger of detection.

(2.) The new officer would be responsible to the Court for the execution of all the decrees and orders of the Court. As soon as the Sessions in each town or district were over, the decrees, or such of them as were intended for immediate execution, would be placed in the hands of the High Bailiff. He would have his own staff of bailiffs under him, selected by himself, and responsible to him. As soon as a decree was realized, it would be his duty to pay the money received with the fees for execution into the hands of the Clerk of the Crown and Peace, who would pay over the amount of the decree to the execution creditor, and account for the fees to the Treasury. At the commence-

ment of the following Sessions, a report would be made to the Judge of what had been done in respect of the decrees of the Sessions preceding, and an account rendered of the money received and of what had been done with it. If any decrees were left unexecuted the High Bailiff would be required to explain why they had not been executed, and if the Judge thought the explanation unsatisfactory he should have power to fine, or, in extreme cases, to dismiss the officer for neglect of duty. It would, of course, be open to any suitor to lay before the Judge any case in which he had reason to complain of the action, or want of action, of the High Bailiff. In this way there would be constant supervision over the execution of decrees, and it would be impossible that neglect or delay on the part of the responsible officer should escape detection and punishment.

4. These are roughly the main defects I have observed in the County Court jurisdiction. So far as relates to the execution of decrees, I may be permitted to say a word about another matter to which I slightly alluded at the opening of this paper. In my experience great mischief is done both to debtor and creditor by the length of credit which is commonly given in cases of small debts and by the delay in proceeding to recover them. Every Judge, I think, must have felt how difficult it is to ascertain the truth of the case when the transactions are very old, and one of the parties (as is usually the case) has kept no account except in his memory. I would propose that nobody should be allowed to sue for a debt under £2, except at Petty Sessions under the Small Debts Act of 1859. That would compel the creditor to sue within twelve months after the debt had been incurred, as otherwise it would be irrecoverable. I would reduce the period within which a debt could be recovered in the County Courts to three years. That would give ample time to everybody, and would diminish the chances of fraud or mistake enormously. It would also improve the habits of the people as regards thrift and forethought; and would prevent many poor people from sinking into a slough of debt from which they can never extricate themselves. I would at the same time make a Civil Bill decree available for execution without renewal for three years and no longer. The expenses of continual renewals are very burdensome, both to debtors and creditors. I would allow the Civil Bill decree to run for three years, which would give ample time for its execution if it could be executed at all, and I would not allow it to be renewed.