

CORRESPONDENCE.

Division Courts.

TO THE EDITORS OF THE LAW JOURNAL.

Gentlemen:—As you are thoroughly acquainted with the procedure and practice of the Division Court Act and the new rules lately promulgated, would you kindly favor your numerous readers with an early reply to the following queries:

1.—Is it the duty of the clerk of a Division Court to deliver an execution to the bailiff of his Court when ordered to issue execution by a party in whose favor it is due;—or is it incumbent on the party to deliver it to the bailiff himself?

2.—Can an execution be said to be issued to a bailiff, by the clerk merely filling up the blanks in it, without giving or sending it to a bailiff of his court?

3.—Does a clerk comply with the requirements of the Act and Rules who neglects to deliver an execution to a bailiff of his court when at the instance of the plaintiff he has been ordered to issue execution?

4.—What are the hours a clerk should keep his office open for business; is there any enactment or rule of court on this point?

5.—Has a plaintiff a right to demand and himself receive from the clerk a writ of execution against goods and chattels of defendant?

6.—In case a clerk had been ordered to issue an execution and he delayed issuing it for twenty days and until after the defendant's goods had been exhausted on a *fi. fa.* from one of the Superior Courts issued ten days after the execution in the Division Court was ordered to be issued; would it be a good answer for the clerk (on an action against him for negligence in not issuing the execution) to say that it was not his duty to deliver it to the bailiff, and to say that no damage was caused by not issuing but by non-delivery to a bailiff; the execution not having been issued till after the levy by the sheriff on his *fi. fa.*?

7.—Is it necessary that any orders given to a clerk of a Division Court in his office, in reference to a case in his court, should be in writing?

As bearing on the above queries allow me to refer you to sections 36, 42, 52, 79, 135, 139, of the Division Courts Act, and new rules Nos. 92 and 150, also form 4 of the Procedure Book in the new rules.

Having already extended this beyond my original intention, I remain, yours truly,
INQUIRER.

[The clerk is to have an office at such place within the Division, for which he is clerk, as the judge may direct. His duties are to be performed *in* and not *out* of the office (see rule 76, *et seq.*); and neither the Act nor the rules prescribe office hours, but the judge can do so; when hours have not been prescribed by the judge, the clerk should be in his office at all reasonable hours and times, as occasion and emergencies may require. We see nothing in the Statutes or Rules which requires him to travel to the bailiff, wherever that officer may happen to be, or to send to him in order to procure execution of process; it is his undoubted duty, however, to deliver process to the bailiff at his own office, when the latter goes there for the purpose of delivering process for service or execution.

Executions are issued at the request of the party prosecuting the judgment, and if the plaintiff wishes to avoid any risk from delay, he should sue out the process, and he has the right to take it to the bailiff, or see that it is delivered to him at his own option: see sec. 135.

An execution cannot be said to be issued to a bailiff by the clerk merely by filling up the blanks in it: (see *O'Brien's D. C. Act*, p. 63, note *f*, and p. 65, note *g*.) It ought, also, to be signed by him, and sealed with the seal of the court, and endorsed; and then it should be delivered to the bailiff at the clerk's office. We find no rule like that in the English County Courts (No. 23), which requires the bailiff to attend once, at least, every day at the office of the Registrar of the court for the purpose of receiving process for service or execution; and there is no provision made here for the clerks sending process to the bailiff, except upon the request, and at the expense of the party prosecuting the judgment. Any failure or neglect to deliver an execution to the bailiff on the first opportunity, would subject the clerk to the loss of all fees in the suit, and the payment of any loss or damage resulting from the delay (see Rule 98).

It is better for all orders to be given to the clerk in writing, as that precludes a possibility of denial or doubt on either side. Some methodical clerks keep order books, as well for the purpose of preventing plaintiffs from denying their having given orders for execu-