

querist amongst the number) may not have the back volumes.

In interpleader cases, *the value of the goods in dispute* regulates the grade in which the fees are to be charged. The bailiff should state the value in his application for the summons. If he do not, it will be settled at the hearing. In the meantime, the Clerk would appear to be warranted in claiming the highest fees, subject to be reduced at the hearing.

We may remark that in this opinion we are supported by the author of "The Bailiff's Manual," who has, at our request, kindly set down his views on the point.

2. The interpleader is in effect a suit between the claimant and the judgment creditor. By rule 53, "the claimant shall be deemed the plaintiff, the judgment creditor the defendant;" and if both claimant and defendant reside at the same place, and are served on the same day, we are of opinion that but single mileage should be allowed in taxation.

"A CLERK WHO DOES *his Duty*," complains of gross inattention on the part of a certain Clerk in another county, "in the transmission of summonses sent to him for service, which frequently arrive long after the court day at which they are returnable is passed;" and also that he "cannot get any return from the same Clerk upon transcripts of judgments sent to him to be levied; and (that) he will not even answer the letters sent to him, asking him what is done." Our correspondent desires us to publish the name of the alleged "delinquent," and to administer to him "the castigation such conduct deserves."

We object to do this. The parties interested can bring an action against the officer and his sureties, and recover damages on proving the facts alleged: or if the bringing an action would be attended with serious inconvenience to the parties, they should forward a statement of the officer's conduct to the County Judge, accompanied with an affidavit showing the state of things. Upon this the Judge would at once act, and if the officer were in default compel him to make restitution, or remove him from office. It is no doubt "very important that Clerks should act faithfully, and so as to secure public confidence," but, unless in gross cases, we cannot undertake to "castigate," except the ordinary remedies which are open to suitors have been tried without effect.

Is a Clerk of Division Court entitled to charge 1s. for filing and swearing to affidavit on confessions. Also can a clerk charge 3d. receiving fee on a summons that has not been served when the Bailiff fails to effect a service. You will confer a favour by answering the above question in your most valuable paper.

T. M.

The usual and better practice is for the Judge to take *viva voce* proof of execution of confessions, and this is commonly done at the opening of each Court. Should the Judge, however, require the affidavit to be in writing, the clerk will be entitled to 6d. only. The charge for entering bailiff's returns, is allowable in every case, whether service be made or not.

SUITORS.

Commitment on Judgment Summons.

It has been suggested to us by a County Judge, that some "notes of cases tending to explain the scope and meaning of the grounds on which a defendant may be committed—such as *breach of trust*, &c.—would be exceedingly useful to suitors as well as officers in the Division Courts. * * * It would be just in place, after the matter in your last number. I do not mean," says our correspondent, "a regular treatise, but short cases, or notes of them, without reference to the order in which the grounds of commitment are inserted in the 92nd clause."

Willing at all times to receive suggestions from well-informed quarters, we act now on the hint, which we thankfully acknowledge.

Breach of Trust.—A case decided some years ago at Northampton County Court, England, under an enactment similar to our own, will serve to throw light on what is and is not a breach of trust, within the meaning of the 92nd section of the Division Courts Act.

Lake v. Shipp.—It appeared that plaintiff and defendant were in the habit of buying cattle together, and that on a particular occasion defendant obtained from plaintiff £—, on the pretence that he had bought cattle to that amount, would sell next day, and give plaintiff his share of the profits. A day or two afterwards defendant told plaintiff he lost the money at cards, but promised to pay plaintiff back the amount. An application was made to commit the defendant, on the ground that he was entrusted with the money for a specific purpose, and that his playing at cards with it was a breach of trust.

"His Honor Judge Wing held that it was necessary plaintiff should give strict proof that the *credit was obtained* on false pretences, or by fraud or breach of trust."

The plaintiff contended that it was unreasonable to suppose that the words "*obtaining credit*" applied to the breach of trust; for in every case where there was a breach of trust, credit must have been obtained previously, for the trust must have been created prior to the breach being committed.

"His Honor stated that it was clear the section was very ill drawn, and probably it might have been intended to have borne a different signification; but he was bound by the plain grammatical construction of the words; and it was clear that the words 'by means of fraud or breach of trust,' must be read in connection with the words 'has obtained credit.' Unless, therefore, plaintiff could show that at the time defendant obtained the money he made use of false pretences, or that he obtained it by fraud or breach of trust, no subsequent misappropriation or breach of trust would bring him within the meaning