

DIVISION COURTS.

OFFICERS AND SUITORS.

Clerks, liability of.—By the 14th section of the Extension Act, it is enacted, that no action shall be brought against any person acting by order or in aid of a bailiff, for anything done in obedience to any warrant under the hand of the Clerk and the seal of the Court, unless a demand of the copy of the warrant has been made, &c.; and in case of compliance before action brought, a verdict must go for defendant, unless the Clerk who signed the warrant has been joined in the action; and if a verdict shall be given against a Clerk, then the plaintiff shall recover his costs, to be taxed “so as to include the costs, such plaintiff is liable to pay to the defendant for whom such verdict shall be found as aforesaid, and in any action to be brought as aforesaid, the defendant may plead the general issue, and give the special matter in evidence at any trial to be had thereupon.”

This, at first blush, seems a severe enactment, but will not operate hardly if Clerks are careful in making proper entries in the Procedure Book in the prescribed form, as well as drawing up warrants issued according to the guides given in the Schedule to the Rules, and duly sealing them—for the liability of Clerks can only extend to acts done by them which are not commanded or authorized by the Judge. Thus, if an order is made by a Judge which he had no jurisdiction to make, and the Clerk draws up and issues a warrant in accordance with the order, he will not be responsible. But if the order or judgment given by the Judge is properly within his jurisdiction, and the Clerk draws and enters it irregularly, and issues a warrant thereupon, he will be liable. “It would be absurd to throw upon the Clerk the duty of reviewing the decisions of the Judge, his superior officer. The Clerk is a mere ministerial officer to carry into effect the order of the Judge, and cannot be liable in trespass for the mere performance of his duty, cast upon him by the express language of the Act of Parliament.”

SUITORS.

Evidence—Sale of Goods.

Delivery to Wife (continued.)—After a man has separated from a woman with whom he has cohabited, and who is not his wife, he may discharge himself from liability, even for necessaries subsequently supplied, by proving that they were not lawfully married.

Where a husband wrongfully turns away his wife there is an implied credit for necessaries, which, as

a wrong-doer, he is not permitted to repel. In such a case he cannot by a general advertisement in the newspaper, or even by a particular notice to individuals not to trust her, exempt himself from a demand for necessaries suitable to his station and circumstances, furnished to her whilst so living apart from him, even by a person who had been desired by him not to trust her.

If a husband personally ill-treat his wife, and be guilty of cruelty towards her, so that, from reasonable apprehension of further personal violence, she is obliged to quit his roof, he is responsible for necessaries to the same extent as if he had expelled her therefrom, and under such circumstances, a request by him, that she would return, will not determine his liability for necessaries supplied to her during their separation. Where a wife is guilty of adultery, and either elopes from her husband or is expelled from his roof on that account, or even when, being compelled by his cruelty to leave him, she is afterwards guilty of this offence, and he refuses to receive her, he is not liable even for the bare necessaries of life supplied to her after her adultery and during their separation, although he do not generally or specially notify persons not to trust her.

Goods sold to wife before marriage.—The husband is liable jointly with his wife, during the marriage, upon all contracts made by her while she was single, how improvident soever they may be, and although he may have received no fortune with her. The husband, however, cannot be sued *alone* on such contracts, but *the wife must be joined* in the action with him.

ON THE DUTIES OF MAGISTRATES.

SKETCHES BY A. J. P.

(Continued from page 143.)

When the Oath and Affirmation should be administered.—The proper time to swear the witness is before he gives any testimony, and not to take down his examination, read it over to him, and then swear him to the contents. A witness ought whilst giving testimony, to be under the solemn obligation of an oath to speak the truth. Magistrates should understand that the oath is to be administered to the witness *before* he is examined and not afterwards. [1] Speaking of the objectionable practice of taking down the examinations of a witness before he is sworn, Stone, in his work on the Practice of Petty Sessions, observes: “A witness may inadvertently or perhaps wilfully state some particulars erroneously in the first instance, which when after-

[1] Per Abbott, C.J. Reg. v. Keddry; 6 D. & R. 734.