BAILIFFS—*Answers to queries by.*

The Judge has adjourned a case, and ordered an amended account to be served on defendant: am I, as Bailiff, entitled to charge for the service and mileage?—J. C.

Certainly, if served by you; it is a *proceeding* in the cause within the meaning of the Act for which a Bailiff is entitled to the Fees.

May I request to be informed before whom the affidavit of Justification mentioned in the Schedule of Bailiffs' Fees is to sworn, or can the Bailiff himself take the oath? He is authorized to swear appraisers.

Before any County Judge, Divison Court Clerk, or Commissioner for taking affidavits, as provided for in sec. 33 of the D. C. Extension Act. The Bailiff has no authority to administer any Oath but that to appraisers.

SUITORS.

When the Judge has ascertained what are really the points in dispute, he will call on the parties for their proofs. The plaintiff commonly begins and when required by the Judge to prove his demand, he should state the name of his witness, who will be called by the Bailiff of the Court. When the witness appears and is sworn, the plaintiff should question him, so as to draw out the facts within the witness' knowledge; or, if he feels himself incompent to do so, should state to the Judge what he expects to prove by the witness, who will then be examined by the Judge. After the plaintiff has concluded his examination, the defendant has the right to cross-question the witness, and when he has done, the plaintiff may put any further question that may be necessary to explain properly any thing stated in cross-examination: and thus the plaintiff goes through with the examination of all the witnesses.

After the plaintiff has concluded his case, the defendant in like manner calls his witnesses, and the plaintiff has the right to cross-question them. The parties should not interrupt each other in the examination of witnesses, as it will never serve any good purpose to do so, but on the contrary produces much confusion, as well as needles irritation.

When the evidence on both sides is closed, the Judge gives judgment, stating, if it seem necessary, his reasons; to which, it seems almost unnecessary to add, the parties should listen with respectful attention.

It would be out of place here to discuss the question of evidence generally. But two general rules may be stated which guide all Courts in the investigation of disputed facts.

1st. No evidence will be admitted but such as is relevant to the questions in dispute.

2nd. The best evidence which the case admits ought to be advanced, if it can be had—and if it cannot, then the next best; but the foundation for *next best* (secondary) evidence must be first laid by showing that the *best* evidence cannot be procured. In our next some points of evidence in cases of ordinary occurrence will be explained, in connection with the above guiding rules.

ON THE DUTIES OF MAGISTRATES.

SKETCHES BY A J. P.

(*Continued from page* 104.)

THE HEARING.

We now come to consider the proceedings when both parties appear before the Magistrates, and before entering upon *hearing on the merits*, it seems in place to notice the subjects: first,—of private adjustment; second,—of preliminary objections.

Of Compromises by the Parties

In cases of personal injuries, trespasses, disputes between master and servant, and in all such like cases, where the mischief is confined to the complainant, and does not involve the interests of the public or compromise the public peace, it is competent for the parties in any stage (before judgment) of a proceeding for summary conviction, to compromise with the sanction of the Magistrates before whom the matter of complaint is to be heard; but where the offence is of a public nature, or felonious in character, it is not legally the subject of a compromise.[1] If, therefore, when a case is called on, the parties express a desire to settle the case amongst themselves, and the Justices have the facts before them, showing the nature of the charge, it will, as a general rule, be proper for them to lend their sanction to an adjustment—should the case be one in which a compromise may be lawfully made. But where the facts are imperfectly known to the Magistrates, it will be proper to enter on the hearing so far as may be necessary to obtain evidence on which to form a judgment—whether the case is one that may be *legally* compromised, and compromise should be permitted, or whether the public interests require that the case should be proceeded with. If the case be one that *may* be legally compromised, the discretionary power to compel the case to be proceeded with would not appear to extend beyond injuries to the person, or offences accompanied with force of an indictable character. In matters of trespass, disputes between master and servant, and like cases, which partake more of civil injuries than criminal offences, it would seem that the parties could enter into a compromise of their own accord, and so supersede the necessity for a judicial investigation. In this last class of

[1] Kier v. Leeman, 6 Q.B., 308; 9 Q.B., 867.