

It may be briefly observed in respect to accounts required to be rendered by clerks, that if not duly delivered to him after the usual quarter days, or, as allowed by order in Council, within the ten days thereafter, and the monies collected paid over, the County Attorney should promptly report the default to the Judge, as well as to the Minister of Finance, and, if occurring at the period when the half yearly accounts are to be made by him (U. C. Consol. Stats. cap. 20, sec. 3), he is not to delay rendering them because all the returns have not been delivered, for the act is imperative that the accounts shall be rendered to the Minister of Finance at the times stated, and the monies, if a surplus, paid over within ten days to the Receiver General.

The fee fund monies coming into his hands "shall by the County Attorney be applied to defray the *disbursements required on account* of the County and Division Courts," &c., as well as the Judge's salary and allowance (U. C. Consol. Stats. cap. 20, secs. 3 & 5). What would fall under the head of "*disbursements required*," &c., it is not easy to determine, nor does it appear that any general order in Council has been passed to define. The words no doubt are sufficiently large to embrace all the current expenses of the Courts, but the County Attorney would probably not feel justified in acting on the large construction suggested, without an order in Council or special directions from the Crown Law Department.

THE CLERK AND BAILIFF.

The chief operative part of the Division Court system is carried on by the Clerks and Bailiffs, and on their fitness, fidelity and activity, the advantage to the public from these courts must in a large measure depend. To this end no doubt it is made the duty of the Judge to appoint officers, that he in the exercise of his duty may by previous scrutiny ascertain their qualifications.

Sec. 31 of the Act provides that for every Division Court in a Judicial District there shall be a Clerk and one or more Bailiffs, and the right of appointing to the office of Clerk or Bailiff is vested in the senior or the acting Judge of the County Court of the particular county in which the courts are respectively situated (sec. 23). No qualification for the office of Clerk or Bailiff is prescribed by the act, so that the choice is discretionary, subject only to the following restrictions, viz., the *Clerk or Bailiff* must be a British subject (sec. 21); and no County Court clerk, practising barrister, or solicitor, shall be appointed *Clerk* (sec. 22).

But the Judge's right of appointment is subject to common law qualifications, that is, to the appointment of such persons as are qualified by common law; and no doubt also it would be subject to the law relating to the sale of offices,

and forfeited by persons infringing its provisions.—(Mosley's Courts, 12-52.)

As a general rule, all persons of a sound mind are by common law capable of holding office; the only disqualification which need be referred to being want of skill and ability, and the holding of some other office incompatible therewith. Want of skill is either implied by law as in the case of women and infants, or is apparent in fact.—(*R. v. Stubbs*, 2 Term Rep. 406.)* Persons under the age of 21 years are presumed by law incapable of the skill necessary to the proper discharge of the duties of an office. Whether such presumption be arbitrary and conclusive need not be considered, for Clerks and Bailiffs are required to give security by executing a covenant, as well as a bond for the due performance of these duties, before they can enter thereupon (secs. 24, 25, 26, 27); which instruments minors have no capacity to execute, and so they are clearly disqualified from holding such office.

Skill and ability in fact is a matter for the determination of the Judge, with reference to the nature of the particular office. The Clerk ought to be a person of good education, having a fair acquaintance with book-keeping and the mode of transacting business in the country. The Bailiff should be able to read and write correctly, and have some knowledge of accounts, besides possessing the necessary bodily ability; and it need scarcely be added that probity should in every case be considered amongst the elements of fitness for office. In our mixed population, the knowledge of another language may be desirable, as there are many settlements of Gaelic, French, or German speaking people, who know only their mother tongue, and to them at least it would be a greater advantage to be able to transact business directly with the officers of a court without an interpreter. All these are considerations for the Judge in the exercise of the important discretionary power of selecting Clerks and Bailiffs.

CORRESPONDENCE

To the Editors of the Law Journal.

IN THE 10TH DIVISION COURT OF THE UNITED COUNTIES OF YORK AND PEEL.

This was an action brought by a Mr. Wilkson, against William Elliott and John Howell, sureties for the late John Coul, bailiff of said division. The grounds of the action were as follows:—On the 13th of November, 1858, an execution was issued on behalf of said plaintiff, and placed in the hands of said bailiff for collection, and no return was made

* In respect to women it is said that the implication of law as to the want of due skill to exercise a ministerial office is not arbitrary, so as to utterly incapacitate them, but the Court will judge in its discretion whether an office be of such a nature as a woman can perform (*R. v. Stubbs*, 2 T. R. 406); but it is not at all probable that any woman in Upper Canada would be found sufficiently "*strong minded*" to take the opinion of a Judge as to her skill and ability for a Division Court officer.