DIVISION COURT CASES.

COUNTY OF CARLETON.

BANK OF OTTAWA v. SMITH AND MARSHALL.

Division Courts—Action against bailiff and surety for not returning execution.

Declaration in covenant against defendant Smith, as Bailiff of the 4th Division Court of the County of Carleton, and his surety, Marshall, under section 221, Division Court Acts, for non-return of execution within three days after return day and also for false return.

Demurrer on the ground that the declaration did not state that the Bailiff's fees were paid at the time of the issuing of the execution.

Summons to show cause why demurrer should not be set aside and judgment as for want of a plea.

Mosgrave showed cause, and contended that section 51 of the Division Court Acts made the payment of fees a condition precedent, and that unless this payment were made, the Bailiff was not obliged to make a return.

McCaul, for the rule, contended that the Bailiff had a right to demand that his fee should be paid to the Clerk at the time the execution was given to him, but if he did not do so, and accepted the execution, he and his sureties were liable, under section 221, to an action on their bond, where he made a false return of the execution, or did not return it within three days after the return day thereof.

LYON, J. J., set the demurrer aside with costs.

CORRESPONDENCE.

Interest after maturity of debt.

To the Editor of the LAW JOURNAL.

SIR,—There has been a good deal of discussion among the profession on the vexed question of interest when the agreement or security is silent as to the rate after the maturity of the debt.

Cook v. *Fowler*, L. R. 7 H. L. 27, indicated the true principle to be that interest on the maturity of the debt and in the absence of any agreement as to the rate after such maturity, sounds in damages only; and if the rate before the maturity of the debt was unreasonable, it was inferred that the parties saw fit to make no agreement respecting the rate of interest after such maturity, and consequently only statutory interest could be collected. But it is impliedly stated that if the interest were not unreasonable, perhaps the result of the case might have been different. The case of *Dally* v. *Humphries*, 37 U. C. Q. B. 514, goes no further. The writer, however, is informed that in all computations in the Masters' offices and by officers in the Common Law Courts the practice now is to allow only the statutory interest in all cases where the instrument or agreement is silent as to the rate of interest after the debt becomes payable.

The judgment of Cotton J., in the recent case of *Goodchap* v. *Roberts*, L. R. 14 Chy. Div. 49, seems to question the application of this principle in cases of redemption (and we may infer the same rule would apply in foreclosure suits).

Apparently in such suits if the interest stipulated were the usual rates paid by mortgagors, and the mortgagor had gone on paying interest which the mortgagee had applied on his interest at the rate stipulated by the mortgage, but without any express sanction of the mortgagor, the mortgage in question could only be redeemed on paying the larger interest.

A. B.

To the Editor of THE LAW JOURNAL.

DEAR SIR,—I enclose you, as a curiosity, the enclosed *modest* crying-up of one's *wares*:—

———— ————,

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