

DIVISION COURTS.

OFFICERS AND SUITORS.

ANSWERS TO CORRESPONDENTS.

To the Editors of the Law Journal.

OWEN SOUND, January 15th, 1859.

GENTLEMEN,—As the Parliamentary Session is about to commence, and as experience has shown that petitioning for an increase of Bailiffs' fees is a most unprofitable business, I have concluded to inquire if you thing that an application to the Legislature to be heard, either by counsel or one of own number, could be considered as any more promising in ultimate effect, or if your knowledge and ingenuity can suggest anything that we can do to propitiate a measure of justice on behalf of bailiffs?

I shall receive most gratefully from yourselves, or any other or others, any information touching the manner in which the First Division Courts in other Counties are dealt with. I have been told that in some Counties, not only are the sittings of the Court uniformly held in the County Court room without demur, but that the Clerk is provided with an office in the Court House. Here, sometimes on one pretext sometimes on another, the sittings are held sometimes in a vacant store, at others in a room so small that the Judge and his officers are crowded together most unseemly in a corner, leaving scarce space enough for the litigants in a single case, the rest having to stand outside, furnishing a stranger with a very strange idea of an "open Court;" sometimes in a dilapidated and deserted log school house, with holes in its sides large enough to pull a sleigh through, and through which holes the pigs intrude; at this instant I am under orders to prepare a garret for the ensuing sittings, and that too for a Division which, in 1857, had 3000 suits, and last year had approaching 2000. Our office, too, is kept in an inflammable frame building. I think I am not a nervous man, but I must confess to a very sensible increase of the "circulation," whenever I think of the "books," and the thousands of promissory notes and other important papers in that combustible little shell, while a suitable office in the Court House (not used by the officer for whom it was provided) is occupied by a private person. We are continually reminded that Division Courts are County Courts by the various forms and proceedings of the first (or as the case may be) Division Court for the County of, &c.; and "the Journal" intimates that the Division Courts are modelled after the County Courts of England. Indeed it is plain that the Division Courts are County Courts, but that the sittings are held at various places for the convenience of suitors.

I am sincere in my desire to do up my business in an orthodox way, and consequently was much puzzled by noticing that Mr. Klotz's Bailiff (and under Mr. Klotz I would expect everything to be done notably) had paid in the whole of the proceeds of a sale under several executions to the Clerk, thus burdening him with the labour as well as the responsibility of applying the money. The mode of applying that you direct has been my practice, and I have always done it myself, never perceiving that it was anybody else's business to do it. I have searched, enquired, and cogitated on the matter without being able to connect the practice in Mr. Klotz's office with any authority either positive or inferential, and shall consider myself under the pressure of a favor in receiving in any way anything elucidatory.

On page 13 of the *Journal* for this year I notice a form of Bailiff's return, &c., "pursuant to the 11th Rule." It appears that "this method has saved" Mr. Klotz "considerable labour," and you say the practice is attended "with much convenience and satisfaction to all concerned." Hereupon I beg

to say, first, that the "Form" (for such an one) is manifestly incomplete without a column showing *when* the summons was received by the Bailiff: second, that I shall feel suitable grateful to the compiler of that form if he will exhibit the method by means of which he eliminated the heading, sub-headings, or any part of the said form out of "the 11th Rule;" thirdly that I make no doubt but that such a return would save any Division Court Clerk "considerable labour," but at whose cost? why the Bailiff, who already makes one sheet return gratuitously, and the *Law Journal* seems to promise him the felicity of having to make another at (as I suppose) a like liberal rate: and lastly, that I can conceive of the *convenience* the returns would be to the Clerk and the suitors, for what would save him labour would save them time, and they must be very strange people indeed if they did not derive satisfaction therefrom. But having got my copy of the *Journal* only to-day I have not had time as yet to discover where the Bailiff's share of the *convenience* is to be found. As for his quota of the *satisfaction* I must suppose that to consist in the gratification that he in common with all good men naturally feel in the knowledge of having done a kind action. It has not been the practice in our Court to make such returns, but I will mention that after Court, when the work is done, and time and opportunity serve, I present my account with the Clerk; I make it columnar as thus, number, style, miles, amount, with such remarks as each case may require, such as, subpoena, paid witnesses, attachment, charges, &c., &c. The date of service I do not mention, that is on the summons and is not necessary to the account which is not sworn to, as the bulk of what is paid for is sworn to before. With my best wishes for the *Journal*,

I am, Gentlemen,

Your obedient Servant,

PAUL DUNN.

[On the subject of Bailiffs' fees we can add nothing to the suggestions before offered in the pages of this *Journal*. The subject must be kept alive, and members of the Legislature reminded from time to time of the grievance complained of. Perseverance in a good cause is everything; and Bailiffs should not despair if justice to them be deferred.

As to permission to be heard at the Bar of the House, it would be idle to think of it. The proposition would not be listened to for a moment. But let the voices of the members be heard *within the bar*, exposing the evil and urging a remedy, and the object will before long be attained.

We had no idea till informed by our correspondent's letter that the use of the Court House for holding the Division Court is denied in any County in Upper Canada. We incline to think that Grey must be the only County wherein "The Peoples' Court" is excluded from the building erected by the peoples' money for public accommodation. True the Courts of Record, Nisi Prius, County Court, Surrogate Court and Quarter Sessions may not be interfered with, and the Division Court appointments if clashing with these Courts must give way. But when not doing so we are at a loss to understand on what principle they are excluded from the use of the Court House. The County Councils are *bound* to provide accommodation for the Courts of Record only, but that accommodation when not required for those Courts, ought surely to be available for other Courts of Justice. The evil in the County of Grey must be cured in the locality, and if the subject be properly laid before the authorities or the public, we have no doubt of the result. In the City of Toronto the Division Court Clerk is provided with an office, and has the use of a fire-proof vault in the Court House.

With respect to our correspondent's remarks on the subject of Bailiff's returns we deem it unnecessary to say anything.—Eds. L. J.]