

*The Question of Division Court Costs.*

TO THE EDITORS OF THE LOCAL COURTS' GAZETTE.

GENTLEMEN,—I observe in the December number of the *Local Courts Gazette*, a long and elaborate article, from the pen of your Brampton correspondent, Mr. Agar. He seems to have taken upon himself the championship of all the clerks and bailiffs of Ontario, and moreover, writes as if some one had done these officials a grievous wrong. He has set up an imaginary opponent, and for the pure delight of the thing, has, *shillalah in hand*, struck about him in all directions; even going so far as to allude to the ghost of the departed. There are some persons so constituted, that they cannot argue on a mere abstract question, or discuss a subject, without getting into a passion with the opposing party. There are some persons who think mere rant, argument, and have no idea of the logical effects of their assertions. Your correspondent seems to think that because my name is concealed and his known, an advantage lies on my side. I do not perceive the force of this. And if any one is to blame for obtruding his name before the public, surely your fertile correspondent is the one. He came out, *as large as life*, with *name, locality and office*. The motive for so doing may be judged. Some people who try to break the heads of others, are sure to break their own. Your readers cannot care a straw, whether a *learned division court clerk* is arguing, or a writer who signs himself by a fictitious name. If they are capable of appreciating an argument, they will examine the assertions, arguments and conclusions. Your correspondent is at fault too in other respects, in supposing that your readers are *all interested, as he is, in increasing Division Court fees*; and are as ignorant, as he seems to be, of the principles of the Common Law.

I suppose, in writing my letters, that your readers, are, to a considerable extent, persons acquainted with legal principles. In my first and second letter on "the *question of Division Court costs*," I mentioned that there were two well known principles of law that might be looked at in this discussion. One was that in construing acts of Parliament, creating courts of inferior jurisdiction, courts of law were always careful not to extend their powers by *implication*. They are bound to act strictly within their *positively defined provisions*.

Another principle was, that, *as at common law, costs were not given*—or that costs were

the creature of *positive statutes*—so neither superior or inferior courts could create *tariffs, or items of costs*, of their mere motion, and unless empowered to do so. I do not know whether your correspondent can see the force of this line of reasoning. At all events in his two long letters he has ignored it. I wrote my first letter for the purpose of disposing of, or setting right, vexed questions as to costs, in the Division Courts. I had no idea of quarrelling with any one, alluded to no one in particular, had not the remotest idea of hitting your very *hot Brampton Clerk on the head*, nor of getting into a *wrangle with so learned a man*. My object was entirely patriotic, disinterested and even favorable to the officials in Division Courts. For whilst I pointed out the error and illegality of such people making a tariff of costs for themselves, I admitted that the law in many things wronged them, pointing out some grievances. Your correspondent by his letters, flies into half abuse of me for this, and would rather that I had done the last and *concealed the former*! Such a view betokens a mind warped by mere *present interests*. In my first letter your correspondent says, that I asserted that some clerk had charged me a *fee fund* fee for a certificate of a judge, on an execution, endorsed under the exemption of property act of 1861. My assertion of the fact was positive, and your correspondent in his first letter, *politely says he does not believe it!* Yet in his last letter he thinks he has not been guilty of any discourtesy. This reminds me of the Irishman at Donnybrook fair, who seeing the bald *pate of a friend, knocked him down* from the mere love of the thing! I do not know whether your correspondent is an Hibernian or not. This reminds me of what he says about charging "*nulla bona fees on his executions*." He replies to my assertions "that his late Judge Boyd did not allow his bailiffs to charge fees for returning executions "*nulla bona*." He says I always was in the habit at my court (at Berwick, I suppose) of charging (or allowing to the bailiffs) these fees, and Judge Boyd never forbade it. But (says he) *it is true, I never asked him the question, whether it was right or wrong!* Pray then, how does he know that Judge Boyd would have allowed them? Is this his idea of the duty of a public officer? Is this his idea of honesty in making charges? Upon a parity of reasoning he might have charged *one dollar* for