manner as to include the costs which the plaintiff is liable to pay to the defendant, for whom a verdict has been found (secs. 196, 197). But to be entitled to any defence, the bailiff must have pleaded the general issue "by statute" (sec. 198, and see *Sayers* v. *Findlay et al.*, 12 U. C. Q. B 155).

Under the Imperial Act 24 Geo. II. it has been held that the officer will not be entitled to the protection of the statute when he does not act in obedience to the warrant, and so under the Division Court Act as already noticed, or if he refuses or neglects to give perusal and copy he may be sued like any other person, and even if it be given, but there is no remedy against the clerk, the bailiff will himself be liable. Thus if a bailiff has a warrant for a certain amount, which before seizure is tendered to him, but he refuses to take it unless fees which he claimed are paid him, and no such fees are due, then if the bailiff afterwards seized for his fees the clerk would not be liable for this act but the bailiff would, and no demand of perusal and copy would be necessary (*Cotton* v. *Kadwell*, 2 N. & M. 399); or if a bailiff, having a warrant to levy a small sum, seizes an unreasonable and excessive quantity of property, the bailiff would be liable without demand, but the clerk would not be responsible (*Sturch* v. *Clarke*, 4 B. & Ad. 113). The mere payment of the amount of a warrant to the execution creditor will not in all cases have the effect of superseding the same, at least not to make clerk and bailiff liable because of a levy thereafter, as the following case upon the English County Courts Act will show.

A. obtained judgment in the County Court against the plaintiff, who was ordered to pay the debt and costs by a specified day to the clerk of the court. The money not being paid, a summons was issued under the 9 & 10 Vic. c. 95, s. 98, calling upon the plaintiff to attend and show cause why he had not paid. The plaintiff did not attend as required by the summons, and upon proof of the personal service upon him the judge, under sec. 99, ordered him to be committed for seven days or until he should sooner be discharged by due course of law. Under this order the clerk of the court issued to the bailiff a warrant of commitment, upon which the amount of debt and costs was endorsed, and under which the plaintiff was arrested. Before his arrest, but after the issue of the warrant, the plaintiff paid the debt and costs to A, who wrote a letter to the clerk of the court informing him of the fact. The plaintiff having sued the clerk and bailiff far false imprisonment—*Held* that the action could not be supported, as the order and warrant were regularly issued and were in force at the time of the arrest and were not superseded by the payment to A. and the notice to the clerk of the court (*Davis* v. *Fletcher*, 2 E. & B. 271).

CORRESPONDENCE.

Acting under false colour of Court Process.

To the Editors of the Law Journal.

Gentlemen,—I wish to obtain your opinion on the following case. An individual is in the habit of adding the following in print to his bill for goods: "The Division Court Act requires a party sued to pay the costs of the judgment, and under the circumstances therein mentioned to commit a defendant not paying for 40 days. You are required at your peril to pay the above account." Is it legal in the party to do this, and if not what means could be taken to punish him. An answer will much oblige. Yours truly,

A Clerk of D. C.

[We have no doubt the party may be found guilty of felony under the 181st section of the act, as knowingly acting or professing to act under false colour of process of the court. *R.* v. *Evans*, 7 Cox C. C. 293, and *R.* v. *Richmond*, 8 Cox C. C. 200, are leading cases bearing upon the subject. The matter, at all events, is a fair one for judicial enquiry.

The mode of proceeding would be for the party complaining to lay an information before a magistrate for the offence, under the 181st section, putting in proof the document that our correspondent speaks of, and the service of it by the party complained against. The magistrate would then issue process for the appearance of the party, when evidence should be taken making out a *prima facie* case, which it would be the duty of the magistrate to send to the assizes for trial by indictment, taking recognizances from the complainant, the witnesses, and the defendant, in the usual manner.]—Eds. L. J.

Jurisdiction—Amending particulars.

J. M.—A Division Court judge has no power to deal in any way with a case beyond the jurisdiction of the court; and if the particulars disclose on their face a cause of action not within the jurisdiction, the judge should at once stop the case. He has no power to amend the particulars by substituting a cause of action which he has power to take cognizance of Our correspondent should have sent us a copy of the particulars.

UPPER CANADA REPORTS.

QUEEN'S BENCH.

Reported by C. Robinson, Esq., *Q. C, Reporter to the Court.*)

Wallis, Executor of Samuel Harrold v. Nelson Harrold.

Use and occupation.

Executors may sue for use and occupation of testator's land during his lifetime, but such action will not lie where the agreement has been that the tenant should pay in produce, not in money.

[Q. B, H. T, 27 Vic. 1864.]

The declaration claimed money payable by defendant to the plaintiff for the defendant's use during the lifetime of the testator, and by his permission, of a messuage and lands of the testator, and for the defendant's use after the death of the testator, by permission of the plaintiff as executor, of a messuage and lands