

and the only disqualifications by Common Law which need be referred to, are—the holding some office incompatible thereunto, and the want of skill and ability.

Where two offices interfere with each other, there is, of course, an objection to the same person holding both; and a Clerk or Deputy Clerk could not also hold the office of Bailiff (2 Inst., 100), for he would be subject in one of his capacities to his own correction in the other, and the office could not be carried on with impartiality and efficacy. So “where the multiplicity of business, and the time and place of its execution, would prevent two offices being duly administered by one person, there would, doubtless, be a bar to their being so held,” and the same person acting as Bailiff of two different Division Courts would manifestly come within this rule.

Want of skill is either *implied by law* as in the case of minors, or is *apparent in fact*. Persons under twenty-one years of age are *deemed by law* incapable of the skill necessary in such an office; by the Division Courts’ Acts, ministerial officers are required to give security by executing a covenant as well as a bond for the due performance of their duties; which instruments minors have no capacity to execute, and so they are clearly disqualified, and incapable of holding the office of Division Court Bailiff. *Skill and ability in fact* is matter of determination for the Judge: but any one not under the disqualifications before referred to, who has the necessary bodily ability, who can read and write, and has some knowledge of accounts, is capable of holding the office.

The Statute gives the Judge the power of appointing “one or more” Bailiffs, but there is nothing to show that they are to constitute *one officer*, so that if more than one Bailiff be appointed to a Court, each may do all legal acts required of a Bailiff by himself and in his own name alone (see *Thompson v. Farden*, *Mame. & Geo.* 535; *Conegal v. London and Blackwall Railway Company*, 5 *Man. & Gr.* 219.)

No form or manner is prescribed by the Division Courts Act for the appointment of Bailiffs, and it may be that as the Judge has a mere power of appointment by the Act, like other powers it may be exercised by parol (1 *Ld. Raym.* 166, *Co. Litt.* 616,

4 *Rep.* 30,) but on the other hand, as the power of nomination and appointment seems evidently to be delegated to the Judge *in his judicial capacity*, the appointment ought properly to be made under the official seal of the Judge, or by order of Court, (see 11 *Co. Rep.* 4), but even if the appointment be by invalid means, and the party acting is not really an officer but has only an apparent authority, yet are his acts as such valid, and what he does in possession and under colour of office, will be valid: (*Bac. Abr. Court*, pl. 22, *Ld. Raymond* 661.) In the whole view of the question the safest course is for the Judge to appoint, under his official seal, and when the necessary securities are given to pass the order of appointment.

The following are suggested as the form of appointment by the Judge, and the form of order thereupon:—

*Judges Act appointing Bailiff.*

I ———, Judge of the County Court of ———, by virtue of and in pursuance of the powers to me given and belonging by the Upper Canada Division Courts Acts, do hereby constitute and appoint *John Sharpman* of the Township of ——— in the County of ———, Yeoman, the (or a) Bailiff of the First Division Court of the said County, to hold the said office during my pleasure.

Given under my hand and official seal at ———, this ——— day of ——— A.D. 185—.

—————, Judge.

*Order for the Appointment of Bailiff.*

In the First Division Court for the County of ———

It is ordered upon the appointment of ———, Judge of the County Court of the said County that *John Sharpman* of the Township of ———, in the County of ———, Yeoman, be and he is hereby constituted and declared the (or a) Bailiff of this Court.

Given under the Seal of the Court at the sittings thereof this ——— day of ———, A.D. 185—.

By the Court.

—————, Clerk.

The Judge will of course, on appointing a Bailiff, prescribe the amount of security under the 22nd sec. of the Division Courts Act, which provides that every Bailiff appointed shall give security for such sum and with so many sureties as the Judge for the Division Court for which he acts, shall see reason to direct, by entering into a covenant according to the form given in the Schedule to the Act marked “C.” or in words to the same effect, for