

cording to this interpretation, I have allowed the Bailiff of this division, the above fee on all those summonses served by him, that were "sent" to this office for service, whether the defendant happened to be served in this division or not, and also on all those summonses issued by this Court, and by him served out of this division.

The several clauses in the Division Court Acts relating to service out of the division, appear to me to show that the Legislature entertained the view that Bailiffs, strictly speaking, are only made Bailiffs for their respective divisions and not for the whole County or Province; but that in cases of emergency or for facilitating the business of the Court, and for the more effectual operation of the Acts, they are also allowed to effect service beyond the limits of their respective division. The last Act, (1855) distinctly states in section 2, that a Bailiff shall not be required to travel beyond the limits of the division for which he is Bailiff, which I think confirms my view. If then it was supposed by the Legislature that, as a general rule, Bailiffs do not travel beyond the limits of their respective divisions, but that suits entered, where defendant resides in another division, are sent to that division for service; and for attending to swear to such service the Bailiff shall receive a fee; then the meaning of "out of the division" does not allude to the Bailiff but to the Summons. If the Bailiff serves a summons without the limits of the division for which he is Bailiff, and such summons has been issued in another Division, then he is certainly entitled to the fee, as long as it remains in the tariff, (whether he performs an extra duty or not is not for the taxing officer to investigate,) for that summons is served not only out of the division from which it was issued, but also out of the division for which he is Bailiff. On a "foreign summons," if served by him, he is entitled to the same fee, since it was issued in another division, and it is but reasonable that a fee be allowed to him since these summonses often require his immediate attention. He has often for one single summons to attend at the clerk's office to make affidavit of service. These summonses sometimes come at a time when he is otherwise engaged for his own Court, and for his extra trouble and loss of time he should be paid, and I think the Act fully authorizes the fee.

Owing to a difference of opinion on this subject, between several of my correspondents and myself, I asked the question in the *Law Journal*, Vol. II, page 41, to which (on page 42) the answer was given, which slightly differed with my own practice. In the spring of 1857, the same question again came up and was submitted to the judge who ruled:

That the Bailiff be allowed the fee of one shilling for the attending to swear to every affidavit of service of summons, when such summonses had been served out of the division from which it had been issued.

Respectfully yours,  
OTTO KLOTZ.

[Our correspondent thinks before he writes and understanding his subject, expresses himself well and to the point. Indeed he leaves us little to say. We have no doubt at all that a hearing fee is chargeable. There is a hearing and a very important one too. The 93rd section of the Division Courts Act, even speaks in terms of a hearing. The words are the judge "before whom such summons shall be heard."

To the Editors of the *Law Journal*.

GENTLEMEN,—Your opinion on the following will oblige.

#### CASE No. 1.

A. is Bailiff of a Division Court, and an execution is placed in his hands against the goods and chattels of B., and under it he seizes property which he leaves on the premises of B., taking a bond that the same would be delivered up when demanded. In the meantime the Bailiff advertises the property for sale; and on going to the defendant's premises it is given

up to him. The Bailiff exposes the property to sale; but for want of bidders postpones it and re-advertises it, leaving it still in the defendant's possession. A. then, in pursuance of his last notice, goes again to the premises and effects a sale under the execution.

*Query.* Is the Bailiff entitled to mileage taxable against the defendant for going to sell, and for mileage going to sell after the postponement?

#### CASE No. 2.

A. is Bailiff of a Division Court, and an execution is placed in his hands against the goods and chattels of B., and under it he goes to B.'s premises to make a seizure, but finds no property, it being concealed, and place of concealment unknown to the Bailiff. A. is afterwards informed where the property is, and effects a seizure and sale.

*Query.* Is the Bailiff allowed mileage for going to make a seizure which he did not effect, as well as for going to make the seizure which he effected: and in short is a Bailiff entitled to mileage for going to sell in any case?

A COUNTY JUDGE.

#### CASE No. 1.

[The fair reading of the law seems to us to warrant the construction that mileage necessarily travelled to enforce an execution may be allowed.

Suppose a defendant reside ten miles from the Clerk's office; the Bailiff goes to this house to enforce the execution, and finds in the defendant's possession property which it would be difficult to remove, or the removal and keep of which to the day of sale would eat up half the property available. It would certainly be serving both plaintiff and defendant to allow the property to remain in the possession of the latter till the day of sale; and in practice the Bailiff usually does so, upon being properly secured for its forthcoming.

At the time of seizure the Bailiff puts up advertisements for sale and leaves for the performance of his duty on other matters elsewhere. When the day of sale arrives he must of necessity be present to sell the property and in doing so he is acting in the enforcement of the execution.

In the case put our opinion is that the Bailiff would be fairly entitled to mileage for his three trips—all necessary to enforce the process of execution.

#### CASE No. 2.

We think the Bailiff is not entitled to mileage, as against the defendant for going to make the seizure which he did not effect. The latter part of the query is answered in case No. 1.—Eds. L. J.]

## THE MAGISTRATES' MANUAL.

BY A BARRISTER-AT-LAW—(COPYRIGHT RESERVED).  
Continued from page 35, Vol. V.

### SUPPLEMENT—SUMMARY TRIALS—COMMITTAL.

If the person charged confess the charge, or if the Recorder or Police Magistrate after hearing the whole case for the prosecution and the defence, find the charge to be proved, then he may convict and commit the offender to the Common Gaol or House of Correction, there to be imprisoned with or without hard labour for any period not exceeding three calendar months. \*

*Form of Conviction.*—The conviction may be in this form:

—, To wit:

Be it remembered that on the — day of — in the year of Our Lord — at —, A. B., being charged before me the un-

\* 20 Vic., cap. 27, sec. 1.