

DIVISION COURTS.

OFFICERS AND SUITORS.

Officers.—We understand that the Judge of the Co. Court of Simcoe has issued an order to the officers of his Court, to register all letters enclosing papers transmitted under the provisions of the Statute for service or execution in out Divisions or other Counties, as well as letters of notice necessary to be sent by Clerks to *parties* in suits. The loss of some letters, enclosing papers, which it was found impossible to trace, gave occasion for the order referred to. When letters are registered, there is more security to parties and officers; the expense is trifling, and as a necessary postage it is taxable, as part of the costs; it would be better, therefore, that it should be done in all cases. In those Counties in which no such order has been made, we would suggest to Clerks their drawing the attention of the Judges to the matter; for such a regulation will be only a partial benefit unless extended: it should be adopted generally in Upper Canada.

We have received from Mr. Otto Klotz, the very intelligent Clerk of the Second Division Court of the County of Waterloo, the following communication. We refer to what was said in the February number respecting the manner and form in which officers should send subjects for examination, or put queries: this communication of Mr. Klotz comes up to the mark—it is as follows:—

“The following questions, relating to Division Court business, are matters of difference between various Clerks, and I therefore deem it proper to lay them before you.

1. When Transcript of Judgment is sent to a Clerk in due form, Execution thereon issued, Return thereto made by Bailiff, in what manner is the Clerk, to whom Transcript was sent, to make his return to the Clerk that sent Transcript?

Some Clerks return Transcript by writing the return on the back of it; others return Transcript, and notify by a mere letter whatever may have been done in the matter; and where a number of Transcripts are sent, make a return to them in form of a list: others, again, make a separate return for each Transcript, stating style of cause, date of receipt of Transcript, date of Execution, date of return and nature of return attested by the seal of the Court and signature of the Clerk.

2. Are the transmitting and receiving Clerks of Transcripts of Judgment respectively entitled to the fee of 1s. for transmitting papers or receiving papers?

Note.—I am alluding to the two last-mentioned fees in Schedule A. 18 Vic. cap. 125.—Some Clerks charge it, and some not.

3. Are Bailiffs entitled to mileage on Executions by them returned *Nulla Bonâ*, or to the like effect, where no money is made?

4. Are Bailiffs entitled to mileage on Summons not served by them, although they may have actually travelled a certain distance to the place where plaintiff directed that the defendant resided, but could not serve defendant, either because he had removed, absconded or concealed himself, or because no such party ever lived there?

5. Are Bailiffs, upon service of Summons sent from another county, entitled to the fee of 1s. for attending to swear?

Some Clerks allow mileage in both cases (3 & 4), others only in the 3rd, and others not at all.

Some Clerks allow the 1s. (in 5th), others only when Summons is served out of Bailiff's own Division, and others do not allow it at all.

Since all Clerks and Bailiffs of Division Courts act under the same law, and are to be guided by the same tariff of fees, their charges should be uniform; and I am of opinion that if these matters are discussed in your *Journal*, this uniformity, so much required, may be established.”

We willingly give our views on the questions proposed.

1st. The object of the Division Courts Law is to facilitate, as much as possible, the recovery of small demands; and with as little inconvenience, as may be, to suitors. The Legislature evidently contemplated that the machinery of the Courts would be worked out chiefly by the Clerks, and in order to do this effectually there must be system and completeness in the performance of their duties.

The Transcript is directed to the Clerk, is the foundation of the execution to be issued by him, is a *quasi* record of his Court, and ought therefore to be retained. Regular returns should be made to the Clerk sending Transcript by Clerk who receives it, under his hand, and authenticated by the seal of his Court. The form of Return is not essential, provided it shows all necessary particulars. The tabular form would seem to be the most convenient—stating style of cause—date when Transcript received—date when Execution thereon issued—date of Bailiff's Return and nature thereof. Any number of Transcripts received from the same Clerk may be included in one Return, if it is desirable to do so.

2. We think they are; at all events it seems quite clear that the *transmission* fee is taxable; the term “for service” in the schedule seems sufficient to cover the charge; and it may reasonably be so construed. In *Webster's Dictionary* we find the following definitions:—

“Service.” *Actual duty; that which is to be done in an office.*

“Serving” *performing duty.* “To serve an attachment.” *To levy on the person or goods by seizure.* “To serve an execution.” *To levy it on goods, &c.* “To serve a warrant.” *To read it and seize the person.*

3. Clearly not—as there is no “levy,” and no “money made.”

4. Certainly not, an allowance for mileage in such cases would open the door for fraudulent delays, and is not taxable.

5. The affidavit may be said not to be *drawn* till the necessary blanks are filled in; therefore, when