

DIVISION COURTS.

OFFICERS AND SUITORS.

CLERKS—Answers to queries by.

J. L. puts several questions as to his duties and responsibilities in the payment over of monies, &c.; the answers to which may be more conveniently thrown into the form of observations on the point.

There is a good deal of difficulty in respect to the payment over of monies to the parties entitled to the same: strictly speaking, when the amount of a claim is paid into Court, the Clerk should hold until the person entitled appears to demand it, or some one on his behalf presents an authority in writing to receive the money: but if this rule was strictly carried out, it would be inconvenient in the extreme to suitors; and yet we see much difficulty in a Clerk being otherwise properly protected. In England the practice is to give what is termed a "plaint note" when entering the suit, and on the after production of this document, not otherwise, the party is entitled to receive his money; but a new plaint note may be obtained by order of the Court, if the old one be lost. In our Division Courts no charge could be allowed for such a document, and in any case the practice seems more adapted to Courts where the suitors are not personally known to the Clerk; the reverse of which is the case in nearly every Division. All that can be done by Clerks is to make the best of the present practice; they should however bear this in mind, that they must be able to produce vouchers, properly a receipt in the Procedure Book, for all monies paid out. We shall notice a few of the common methods of transacting business, offering thereon such observations as occur to us. In the case of Stove and Fanning-Mill Pedlars, &c., their accounts and notes are usually put in by some person professing to be an agent for the plaintiff: well, these demands sued upon and the money made, to whom should it be paid? The Clerk would certainly be guilty of *laches*, and render himself personally liable for the amount in case the plaintiff did not receive the money, if he paid to any one but the plaintiff's agent. An order in writing, signed by the plaintiff, may therefore in all cases be reasonably required by a Clerk before he pays over monies; doubtless payment to the person who originally left demands would be held to be sufficient, but it may not be possible for the Clerk in all cases to prove the identity of the person, particularly if there be collusion with intent to defraud. The method we would recommend in such cases would be to require the professed agent to make out a list of the claims given in, to sign it and leave with the Clerk; afterwards when the money is paid

out to obtain the agent's signature to the usual receipt in the Procedure Books; there would then be at least something to show towards proving identity. Another method taken by some Clerks is to give a receipt requiring it to be produced when a subsequent application is made, and before the money is paid out; but it is very doubtful if the Clerk would be justified in holding the money until his receipt was produced, and in any case that practice is attended with much inconvenience.

Parties sometimes leave notes, directing them to be sued in the name of a third person; in such cases it will be always prudent to ask the party to make out a memorandum in writing of the direction, and sign it; or if the party declines doing this, the Clerk can inform him the demand cannot afterwards be paid to him when collected without a written order from the plaintiff.

It is usual when any clerk in the employment of a merchant or dealer, who is accustomed to transact his business, calls for money, for the Clerk of the Court to pay it over when he is personally cognizant of the fact of such employment, and no doubt it would be held a good payment; but to avoid after question, particularly where there is a large business from plaintiffs who employ a number of Clerks, it will be well to obtain general directions in writing from the plaintiff, specifying the different persons in his employment to whom monies may be paid: it is the common practice also to pay monies to any Attorney-at-Law who represents himself as having authority from the plaintiff to receive it, and this without requiring a written order to be produced. As a general rule it seems safe to pay under such circumstances; but the order may be called for if the Clerk thinks it necessary to his safety.

In case of the death of a party having money in Court, the Clerk should pay only to the executor or administrator who has proved the deceased person's will, or taken out letters of administration to his estate; and the Clerk may require the letters Probate or letters of administration to be produced, if not otherwise satisfied that the party is entitled to act in the character he assumes. If the amount is small and the property left is so trifling as not to bear the expense of Probate or administration, the Judge would probably on application of the party best entitled, make an order to pay over the money in Court without the expense of administering, &c. It may happen that a Clerk pays money on a forged order; and on this point we are particularly questioned as to how the Clerk is to be satisfied of the forgery: our reply is that the Clerk can only know that the order is a forged one by the prosecution and conviction of the alleged offender, and we are certain that no Judge would make