

conable time before the time so appointed for his appearance as aforesaid, it shall be lawful for such Justice or Justices of the Peace to proceed *ex parte* to the hearing of such information or complaint, and to adjudicate thereon as fully and effectually to all intents and purposes as if such party had personally appeared before him or them in obedience to the said summons."

Sec. 12 contains a more full re-enactment of the same provision, viz. :—

"That if at the day and place appointed in and by the summons aforesaid for hearing and determining such complaint or information, the defendant against whom the same shall have been made or laid, shall not appear when called, the Constable or other person who shall have served him with the summons in that behalf shall then declare upon oath in what manner he served the said summons; and if it appear to the satisfaction of the Justice or Justices that he be duly served with the said summons in that case, such Justice or Justices may proceed to hear and determine the case in the absence of such defendant: or the said Justice or Justices upon the non-appearance of such defendant as aforesaid may if he or they shall think fit issue his or their warrant in manner hereinbefore directed, and shall adjourn the hearing of such complaint or information until the defendant shall be apprehended."

The *ex parte* hearing of a case must be conducted with as much regularity and deliberation as though the defendant were present, and Magistrates should require strict proof of the matter charged, take down the evidence and conduct the whole enquiry in all its stages, even with a more jealous care for form and accuracy than if the defendant was actually present; for his absence in no way justifies a loose mode of proceeding,—nor can such absence be taken as an admission of the truth of a charge, or as raising a presumption of guilt against a defendant.

MANUAL, ON THE OFFICE AND DUTIES OF BAILIFFS IN THE DIVISION COURTS.

(For the Law Journal.—By V.)

CONTINUED FROM PAGE 87.

SPECIAL OR NON-PERSONAL SERVICE OF SUMMONS.

The 24th sec. of the D. C. Act providing that a copy of the summons shall be served on the defendant, thus enacts: "and delivery of summons and account to the defendant's *wife* or *servant*, or *any grown person* being an inmate of his dwelling-house, or usual place of abode, trading or dealing, shall be deemed a good service, where the amount claimed does not exceed two pounds." Premising, as in the case of *personal* service, that it is for the Judge to say what amounts to proof of due service, we proceed to notice the provision a little in detail. It is sufficiently obvious that the Legislature must

have presumed that the object of the summons will be sufficiently answered by the *substitutional service* prescribed; but in considering what service is a good service, the object to be accomplished, namely, notice to the defendant what is the claim against him, and when and where he is to answer it, must be steadily kept in view.

Delivery to the defendant's wife, it is probable may be made, not merely at the defendant's dwelling-house but any place where the officer may find her; a woman with whom the defendant cohabits and holds out to the public as his wife, although not actually so, would doubtless be held to answer that description within the meaning of the section, but the wife *in fact*, if *separated* from her husband and living apart from him, would not come within the spirit of the enactment.

Delivery to the defendant's servant: "Servant" as here used, seems evidently to mean a menial servant, one who boards and sleeps in his master's house, at all events "an inmate of his dwelling-house" or usual place of abode or business; the terms employed would probably include domestic servants,—farm servants,—book-keepers and shopmen,—but would not extend to day labourers, contractors for job-work, or other persons employed for a particular object, not residing *under the defendant's roof*.

Delivery to any grown person, &c.: It is very difficult to assign any exact meaning to the term "grown person"; the literal meaning would seem to be *full grown*, but that probably is too confined an interpretation to give the words in the connection in which they appear, and might lead to needless particularity: if any particular rule was suggested as to age, a young person about the age of fifteen would seem to us a "grown person" within the meaning of the section. The person served should be one in the employment of the defendant, or related to him or some one who may be reasonably supposed to have intercourse with him, and from whom he is likely to receive the summons; and therefore the necessity for the Bailiff making proper enquiries, so as to be able to insert in the affidavit, or state at the hearing, the name of the person with whom he leaves the summons, and the relation in which such person stands to the defendant.