An insertion of this communication in your excellent *Gazette*, together with such remarks as you may deem appropriate, will much oblige Yours, &c.,

C.

[We gladly publish the above communication, which speaks for itself. Space does not now admit of a more extended reference to the subject, which is of some doubt and difficulty. At some future time we shall return to it.—Eds. L. C. G.]

New trials in Division Courts—Application for on day of hearing, when both parties present.

To the Editors of the Local Courts' Gazette.

Gentlemen,—Would you be so kind as to inform me, through the medium of your valuable Journal, whether it is the practice in Toronto and in the counties in the vicinity, for the judge of the Division Court to refuse to allow an application for a new trial to be made before him during the sittings of the court at which judgment was given, both plaintiff and defendant (and all the witnesses) being present.

A case of the following nature lately occurred, in which I was concerned for the defendant. A. sued B. on a promissory note given by B. to A. on the supposed completion, according to contract of certain ovens, which A. was to build for B., but which were, after settlement, discovered upon use, to be so defectively done, that they fell in; the defect not being discernable from any inspection of the work. This note B. therefore disputed, having had no value, and upon other grounds.

The court having been held rather earlier than usual, neither plaintiff or defendant were present at the time when case was called, but judgment was given for the plaintiff. Both plaintiff, defendant and witnesses arrived shortly after the opening of court, and thereupon I asked the judge whether he would hear an application for a new trial, as both parties were present, and also the witnesses, and it could be determined in a few minutes; but this he at once refused to do, without making the slightest enquiry as to the grounds of the application. I still urged the application, stating that the amonnt was small, and the costs of making a regular application by affidavit and serving papers would be considerable, and could be saved if the application were heard then; but the judge still refused to look into the matter in any way. This does not seem to me to be at all in accordance with the spirit and intention of the Division Court Acts and Rules. I was the more surprised by the refusal to hear this application, as Judge Gowan in the County of Simcoe, always permits such application to be made and determined before him at same court where judgment is given, when possible to do so.

If the judge, of Division Courts were to take the same course as that adopted by the judge from whose ruling I dissent, a most beneficial part of the Rule relating to new trials, would be perfectly useless.

A Subscriber.

[We entirely agree with our correspondent, as to his view of the practice. Economy and speed are two most important elements in Division Court administration. Both parties being present, the application for a new trial might have been heard and disposed of in a few minutes, and the case could, we think, under the wording of Rule 52, have been gone on with at that court, unless sufficient and reasonable cause were shown to the contrary. But however this may be, Rule 52 is express that applications for new trials may be made and determined on the day of hearing, if both parties are present. Irrespective of this, we question very much whether the judge was not wrong, in the first instance, in giving judgment for the plaintiff when no one, as far as appears, attended on his behalf. The practice adopted in the County of Simcoe is, we believe, the same as that which obtains in all other counties of which we have cognizance.—Eds. L. C. G.]

Constables' fees.

To the Editors of the Local Courts' Gazette.

Dear Sirs,—A person is charged before a a justice of the peace with a felony, say forgery, and a warrant is handed to a constable for his apprehension, and the prisoner is arrested and carried before the justice who issued the warrant. On the investigation of the case, the justice finds that there is not sufficient evidence to convict the prisoner for trial, and so discharges him. The constable makes out his bill, swears to it, it is certified by the magistrates and passed by the auditors at Quarter Sessions, but payment is refused by the Government at Quebec because the case