

## CORRESPONDENCE.

*Statute of Limitations saved by Division Court process—Continuances in Courts not of Record.*

TO THE EDITORS OF THE LOCAL COURTS' GAZETTE.

SIRS,—I read in your September number an enquiry on this subject from a Toronto correspondent; and as I have had occasion to examine into the same questions in my own practice, I copy what I believe to be good law, from Moseley on Inferior Courts, p. 190:

"The action must be commenced within the six years from the day of the accruing of the plaintiff's rights to sue. And the mode of issuing and continuing a writ in the Superior Courts, in order to save the Statute of Limitations, is not probably applicable to Inferior Courts; for it was given by the Uniformity Process Act, which is only applicable to the Superior Courts, as appears from its commencement; and the regulations in this respect have reference only to writs issued by the authority of that Act."

I think it out of the question for any one to insist that "continuances" should be entered, to save the Statute of Limitations, in Courts not of Record, like the Division Courts.

Under the old practice of the King's Bench in England (I quote from Tidd's Practice, 8th ed.), "Where a writ is sued out to avoid the Statute of Limitations, it should regularly be *entered* on a roll and docketed, with the sheriff's return thereto, and continuances to the time of declaring," &c. Now, substituting the word "bailiff" for "sheriff" here, how, I would ask, would it be possible to enter a continuance in a court wherein there is no docket, and the proceedings are not enrolled?

Again, looking at the practice in this respect in the County Courts in England, which are Courts of Record (see 9 & 10 Vic. cap. 95, sec. 3, Imp. Stat.), I find, under rule 12, the practice to be, "Where the summons has not been served, the judge may, in his discretion, in order to save the Statute of Limitations, direct another summons or succession of summonses to be issued, bearing the same date and number as the first summons."

The Division Courts' Act makes no reference to this subject, but gave certain judges the power to make rules, and declared certain rules to be in force. The only rule which they did

make affecting this question was the 18th, (still in force); it reads thus: "The ordinary summons on demand, &c., shall be issued according to the form to these rules appended, &c., and the issuing thereof shall be the commencement of the suit; and every summons shall be numbered to correspond with the demand or claim on which it issues, and dated as of the day on which the same was entered for suit, except in the case of alias or pluries summons, which shall be dated on the day on which it actually issues." On referring to the form (No. 6), it will be found there is no direction given as to when or how often "alias or pluries summonses" are necessarily to issue; so that it may be inferred in all reason, in the absence of a direct rule, such as I have shown exists in the County Courts in England, the action is commenced when the *first* summons issues; all subsequent process is intended to give the defendant notice of it, and nothing more is necessary; and so soon as an opportunity occurs for effecting a service (no matter, I think, at what space of time afterwards) the plaintiff should sue out an alias; and not effecting a service of *that*, then a *pluries* summons, &c., until service of process is completed.

To suppose or insist upon any other system than this, would, to my mind, be oppressive to the plaintiff, and no manner of good to the defendant, but the reverse; for it would make a jurisdiction, intended to be as inexpensive as possible, in a case like that mentioned by your correspondent, very cumbersome and costly, without serving any purpose whatever.

If it were intended to be otherwise than I suggest, surely the learned judges who framed our Division Court Rules, and the Superior Court judges, who approved of them, would, with the English Rules before their eyes, have followed them in this respect.

I have the honor to be, Gentlemen,

Respectfully,

Union, Nov. 10.

UNION.

*Municipal Law.*

PRESTON, NOV. 17, 1868.

TO THE EDITORS OF THE LOCAL COURTS' GAZETTE.

GENTLEMEN,—Will you kindly inform me whether section 259 and sub-section 23 of section 355 of the Municipal Act (29 & 30 Vic. cap. 51), are applicable to *all* informations, complaints or prosecutions that may be brought under the Municipal Act, or whether