In *Davis* v. *Fletcher et al.*, 22 L. J. Q. B. 429, A. obtained judgment in a County Court against the plaintiff, who was ordered to pay the amount by a certain day to the Clerk of the Court. The money not being paid, a summons was issued under the 9 & 10 Vic. c. 95, sec. 98, calling on the plaintiff to attend and shew cause, &c. The plt. did not attend as required by the summons, and upon proof of the personal service upon him, the Judge, under the 99th section, ordered him to be committed for seven days, or until he should be sooner discharged by due course of law. Upon this order, the Clerk issued to the Bailiff a warrant of commitment, upon which the amount of debt and costs was endorsed, and under it the plaintiff was arrested. *Before his arrest*, but after the issuing of the warrant, the plaintiff paid the debt and costs to A, who wrote a letter to the Clerk of the Court, informing him of that fact. The plt. having sued the Clerk and Bailiff of the Court for false imprisonment, it was held that the action could not be supported, as the order and warrant were regularly issued and were in force at the time of the arrest, and were not superseded by the judgment to A, and the notice to the Clerk of the Court. See the 95th and 96th sections of the Division Court Act, which are copied from corresponding sections (the 102nd and 110th) in the English County Courts Act. See also No. 58 in the Division Courts Forms, which is taken from the English Form.

According to the Division Court Rule No. 10, the Clerk is required to endorse on the warrant of commitment the debt and costs in gross up to the time of delivery to the bailiff for execution: and though we have no rule corresponding with the English Rule No. 133, it would appear that the Bailiff, at any time before delivering the defendant's body to the custody of the gaoler, should discharge the defendant out of custody on receiving the amount endorsed on the warrant.

(TO BE CONTINUED.)

DIVISION COURTS—SET-OFF—JURISDICTION; RIGHT AS TO COSTS OF R. R.—SETTING ASIDE AWARD—JUDGES ROBING.

We have received the report of rather a singular decision in a Division Court for one of the Eastern Counties, as communicated to us, by a member of the profession, as follows:—

"Assumpsit to recover the amount of an account for painting. The plts. account was admitted, except the price per day, which was proven. Defence, set-off; a promissory note made by the plt., payable to C. L. or order by the payee, was offered as a set-off. His Honor the Judge held, that proof of the delivery of the note by the payee, without his endorsement to the deft., was sufficient to set off the note against the proven claim of the plt., without shewing any agreement between the parties for that purpose."

It is difficult to understand on what principle this decision is or could be based. A set-off is in the nature of an action, and requires the same proof to support it. Had the deft. sued the plt. on this note, could he have recovered, wanting the important link of endorsement to complete his title to the note. Promissory notes belong to almost the only class of choses in action which are capable of transfer, so as to enable the transferee to maintain an action in his own name, when assigned and delivered in the customary way; otherwise they can only be sued by the original creditor, or the person who first had the right of action. There are many other objections to this decision, and nothing we can see to support it; but the matter is so clear that it is needless to dwell on it.

Two cases arose at the last assizes for the County of Simcoe, on the right to costs, involving a question of jurisdiction under the D. C. Acts. The one was a special action on the case against a mill proprietor for penning back water by his dam, whereby a small piece of woodland belonging to plt. was overflowed. The verdict was for £3. A certificate for costs was moved for, but opposed on the ground that the case might have been brought in a D. C.; the action being a "personal action" for a sum under £10, and not falling within the excepted objects of jurisdiction enumerated in the first section of the D. C. Act of 1853.

The other was also an action on the case for maliciously, &c., suing out an attachment from the D. C., not having reasonable or probable cause, &c. The verdict in this case was for £4 5s., and the motion for certificate was opposed on like grounds. In this case the question appeared to turn on the meaning of the words "malicious prosecution," actions for which are excepted from the D. C.'s jurisdiction. It was contended for the plaintiff that the proceeding by attachment was in the nature of a malicious prosecution, and that these words covered not merely malicious prosecutions (for criminal matters) as commonly understood, but every legal proceeding or prosecution where the process of the Courts was abused for malicious purposes.

The learned Judge, Judge Richards, reserved the questions. Any decisions which may be made, we hope to lay in a future number before our readers.

The practice on references in the D. C. is beginning to develope itself. We have some cases before us on applications to set aside awards. As yet they appear to be decisions more on general Law, than on any peculiar features in the D. C. jurisdiction, two of which before Judge McKenzie, of Kingston, we may mention. In *Gleeson* v. *Gleeson*, the award was set aside on the ground that the arbitrators refused to hear important evidence for