

DIVISION COURTS.

OFFICERS AND SUITORS.

CLERKS—Answers to queries.

To the Editor of the U. C. Law Journal.

MR. EDITOR.—Several of our Division Court Clerks are a good deal perplexed as to the charges they ought to make for some of the services they are called upon to perform. One or two now occur to me, on which the "tariff" is as silent as the dead.

The one—The Revival of a Judgment.

The other—The common case of making one Judgment pay another Judgment!

There are of course extra services here, and assuming that the Clerks are entitled to be paid for these services—the tariff does not make any provision for it—and there is hardly safety in that worthy class applying to their case the advice (given in Scott's Marmion) of, Charge! Charge! Charge!!

I fling these queries into your sanctum "per request" of a suffering Clerk, and I am quite sure that that class generally will "present arms," to mark their approval of your "coming to the charge!"

I am yours, &c., R. N.

The good old days are gone, the age of chivalry has passed. We cannot wake the silence of the woods with "England and St. George," or ring out, "Charge for the golden Lilies."

So much for our poetic correspondent. Now for a drop of comfort for R. N.'s friend, the disconsolate Clerk. Seriously, we think there is authority in the tariff for remuneration in respect to the services mentioned.

Revivor of suits under the 73rd section of the D.C. Act, are in the nature of actions—the plaintiff "recovers" in the suit—a summons is issued—a judgment is rendered—and the fees are claimable as for entering an account, and issuing a summons, &c.

When leave to issue execution is necessary, and is obtained under the 67th Rule, there must be an order by the Judge, which must appear in the procedure Book, and we think it comes within the 8th item of the amended tariff, for a fee on order will also be payable to the fee fund.

With regard to the proceedings on cross judgments (51st section D. C. Act) there may be some question, but the better opinion seems to be that an application to the Judge is necessary to give effect to the entry of satisfaction of judgment; in such case the charges last mentioned would be payable. If the Judge makes order at the hearing of a second case that one judgment should be set off against the other, it involves an order in two causes, and would appear to warrant an extra charge for the entering a second order.

To the Editors of the U. C. Law Journal.

GENTLEMEN.—Feeling the importance of uniformity of practice among D. C. Clerks, I beg to ask the following questions on mileage:—

Double mileage—The two defendants in a suit live at the same place, say 10 miles from Clerk's office, and Bailiff serves each with a copy of summons on same day: Query, Is Bailiff entitled to single mileage of 10 miles or to double mileage of 20 miles?

Circuitous mileage—A defendant lives 10 miles west from Clerk's office, but Bailiff, in performance of his various duties, requires first to go 10 miles south, then 10 miles west, making various services on the route; from thence he travels 10 miles north to serve defendant in question: Query, Is Bailiff entitled to the direct mileage of 10 miles, or to the circuitous mileage of 30 miles?

I have always found difficulty whenever the above cases occur—Bailiff contending that the larger sum is the legal one, defendants, the lesser.

Yours, &c., A SUBSCRIBER.

Devon, December, 1856.

Double mileage—The Bailiff is only entitled to single mileage: to serve the defendants in the particular suit he has only travelled ten miles; there is but one affidavit, and in it he cannot swear that "he has necessarily travelled twenty miles to make such service." In taxation the Clerk should disallow all over ten miles, having knowledge of facts as above set forth.

Circuitous mileage—In computing mileage, each case is to be considered as if it stood alone; and the amount to be regulated according to the distance by the most direct travelling route from the Clerk's office to the place where the defendant is served. If in the performance of other duties the Bailiff reaches the defendant's residence by a circuitous route, and then affects service in the way above suggested, it can give him no claim to extra mileage: a charge based on such a calculation would be illegal and oppressive. A Bailiff convicted of charging in that way would be liable to the severest penalties of the Act.

As a general rule, if a Clerk knows how far the defendant's residence is from his office, and finds larger mileage charged; in taxing the costs he should enquire into the circumstances, for it is obviously the Clerk's duty to protect the public from illegal and oppressive charges.

SUITORS.

Goods bargained and sold, (continued.)

Earnest or part payment—A part payment, however small, takes the case out of the invalidating operation of the Statute, but the money must be actually paid over: and it has been held that drawing the edge of a shilling across the hand of the vendor, but not left with him, but returned to the buyer's own pocket, (a customary form of concluding a bargain in England,) is not equivalent to earnest or part payment within the meaning of the Statute.

Where A. was indebted to B. in £4, and it was verbally agreed between them that A. should sell