

DIVISION COURTS.

OFFICERS AND SUITORS.

CLERKS.—Taxation of costs—Witness fees.—
 (Continued from page 62.) As soon after the Court as possible, the Clerk should receive from the successful party an affidavit of his disbursements to witnesses. The affidavit can be made before the Clerk of any D. C., and forwarded by mail or otherwise to the clerk in whose court the judgment was rendered, and may be by the party or his agent. At latest the clerk should be put in possession of it the day before execution is due, according to the order of the Court, as he has commonly general directions at the time of entering the suit to proceed and collect the amount claimed, which dispenses with a special direction to sue out execution, when the time given by the Judge has expired. Either of the subjoined forms will answer, the latter where there are a number of witnesses will be found more convenient in practice:—

Affidavit of disbursements.

In the &c.

Between A.B., plt ;
 and C.D., deft.

A.B. of &c., Yeoman, (or E.F. of &c., agent for the above-named plt.) maketh oath and saith, That —, —, and —, did attend under subpoena as witnesses in this cause, on the part of the plaintiff, at the last sittings of this Court, and were each, in the judgment and belief of deponent, necessary and material witnesses on his (or the plt's behalf),—that the said witnesses did each necessarily travel — miles in coming to (or returning from) the place where the said Court was held, and that the said witnesses have been paid on behalf of this deponent (or the plt,) — shillings each for their attendance in Court and travelling expenses.

A.B. (or E.F.)

Sworn, &c.,

Clerk, &c.

A more general form.

In the &c.

Between A.B., plt ;
 and C.D., deft.

A.B. (or C.D.) of &c., the plt ; (or deft) [or E.F. of &c., agent for A.B. (or C.D.) the plt (or de^{ft})] maketh oath and saith, That the several persons whose names are mentioned in the first column of the schedule at the foot of this paper written, were each, in the judgment and belief of deponent, necessary and material witnesses on his [or the said plt's (or de^{ft}'s)] behalf, and were subpoenaed and did attend at the last sittings of this Court as witnesses, as aforesaid, one day each,—that the said witnesses respectively travelled in going to (or returning from) the said sittings, as deponent hath reason to believe, and doth verily believe, the number of miles respectively mentioned in figures in

the second column of the said schedule opposite to the names of each of the said witnesses respectively, and that the several and respective sums of money mentioned in figures in the third column of the said schedule opposite to the names of the said witnesses respectively, have been paid on behalf of deponent [or the plt (or deft)] as in the said schedule set forth for attendance in Court and travelling expenses, as witnesses in this cause.

A.B. (or E.F.)

Sworn, &c.,

Clerk &c.

Schedule referred to in the foregoing affidavit.

1	2	3
Names of witnesses	Miles travelled one way.	Sums paid
John Hearwell.	20	£0 12 6
Thomas Seewell.	10	7 6
James Value.	5	5 0
		£1 7 0

It is probable that where a witness comes a long distance by speedy conveyance, the Judge would at the trial order a less sum to be allowed than the tariff calls for; for example, if a party travelled 80 miles by "rail," and was able to come to and return from the Court the same day, and the fare was only 20s., the Judge would not, probably, allow more than 25s. or 30s.; but it seems to us that the Clerk has no such discretion, therefore, in cases seeming to require a special order, application should be made to the Judge.

We have hitherto spoken of witnesses resident within the County, attending under subpoena from the D. C.,—but under the proviso in the 48th sec. of the D. C. Act, a subpoena may be obtained from the Superior Courts to bring a witness from any part of U. C. When a witness attends under such subpoena, his allowance is according to the scale settled in the Superior Courts, which is as follow:—

Fees to witnesses.

To witnesses residing within three miles of the Court	
House, per diem.....	2 6
To witnesses residing over three miles from Court	
House, per diem.....	5 0
And for every twenty miles travel.....	6 0

To Professional men.

Attorneys, Barristers, Physicians and Surgeons, 20s. per day, when called upon to give evidence in consequence of any professional service rendered by them, or to give professional opinions.

Surveyors.

When called upon to give evidence of any professional service rendered by them, or to give evidence depending upon their skill or judgment, 10s. per diem.

In taxing disbursements to such a witness, the clerk should have the subpoena from the Superior Court under which the witnesses attended laid before him, together with an affidavit of the dis-

* Where there is no travel, the paragraph as to travel will of course be left out.

† Travelling expenses per mile are only allowed for one way—going or returning—when different the higher travel may be taken.