

## DIVISION COURTS.

### OFFICERS AND SUITORS.

**CLERKS.**—The following letter shows how necessary it is that there should be some medium of communication in order to a uniform practice by the Officers of these Courts:—

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

As there are many questions asked for the purpose of receiving answers through the medium of your valuable periodical, I have one also to propose; it is with regard to Clerks of Division Courts taxing costs. Now, I will suppose a case:—A plaintiff enters a suit with a claim of £20, and after the case has undergone an investigation, obtains a judgment for 20s. only; of course the summons issues with costs endorsed according to the amount of claim. Now, the question is, whether the fees under "defended" and "order" should follow according to the claim, or according to the amount of judgment. My own practice is to tax the latter fees in proportion to the amount of judgment. Am I right?

Your obedient servant, JOHN WILLIAMS,  
St. Vincent, Feb. 6, 1857. } Clerk, 3rd D.C., Co. Grey.

In every County, with which we are acquainted, the practise is otherwise, and in the County of Simcoe we happen to know the Judge has given express direction upon the point. There is an obvious distinction as to fees, and while it would lead to confusion and create a difficulty in auditing, to have a shifting grade in respect to fees belonging to the Fee Fund, it may be a matter of justice, that the defendant should not be called upon to pay the costs of the higher grade, if the plaintiff has improperly entered a claim for an amount exceeding that which he is entitled to recover: but this last is entirely a question for the Judge, and not for the Clerk. At the hearing the Judge may apportion the costs as he thinks fit, (D. C. Act, sec. 83) but this will in no wise affect the collections for the Fee Fund. To explain: A plaintiff enters a claim for £25; upon the trial it appears plainly that he never had a claim beyond £2, that in fact the demand as to £25, was an attempt to defraud. In such case the Judge would give the plaintiff judgment for £2 with costs, (if given at all) to be taxed according to the lowest grade, namely, as for a claim not exceeding £2. The effect would be this: The plaintiff having entered and represented his claim as good for £25 would pay fees accordingly, about 12s. 6d., (for Fee Fund) but would be entitled to only 1s. 7d. from the defendant, and would lose the difference.

By the 14th section of the D. C. Act and the 3rd section of D. C. Ex. Act, fees are required to be paid by the plaintiff or party on whose behalf such proceeding is to be had in the first instance on or before such proceeding. And so all fees are paid, or must be supposed to be paid before final judgment is pronounced by the Judge; now up to the

moment the Judge has given his decision, the Clerk's only guide, in grading the suit, is the plaintiff's claim, and we are clearly of opinion that the amount of claim at entry must, at all events and including the final judgment, govern the Clerk in making collections for the Fee Fund.

**BAILIFFS.**—Our intelligent correspondent from *Burford* draws our attention to Bailiffs' Fees. He speaks of Clerks having little expenditure as compared to Bailiffs, who have constantly to put their hands in their pockets to meet some disbursement or another. We give a portion of the letter in the words of the writer:—

I know that if the Act does not compensate them sufficiently they will and do look for some means not strictly legal to meet the deficiency; the same remark applies to the Division Court Clerks, who, in their imagination, think they are far from being as well paid as the Bailiff, get up a tariff of fees purely of their own invention, and charge items which I cannot find in the tariff, and even go so far as to tax parties (defendants) the whole amount of fees, where the case has been settled before the Court sat, even a day or two after the service of the summons, as if *though the case had been adjudicated before the Judge*. Now, I imagine that such things ought not so to be, and some plan ought to be devised to compensate both parties sufficiently, in a legal manner, without resorting to such disreputable practices. I would propose that the Bailiffs in each County meet at their County Town, and discuss the matter among themselves, and appoint a Committee or delegates to draw up an improved Tariff, with a petition to Parliament to grant the same.

I think that all sums over £5 should be a personal service, with a fee of 1s. for such service, and 6d. per mile travelling fees, and all actual disbursements of tolls; and that where the Bailiff cannot make the money on an Execution, he be allowed the mileage, as in very many cases parties, when brought up with judgment summons, have been found to have put their property out of their hands, to gain time or save the property from the process in the hands of such officer. It is a great hardship for the officers of Division Courts to travel so many miles and not receive any compensation.

It is needless for us to say, that illegal charges render the party guilty liable to severe penalties, and we hope the writer has been misinformed in the particulars to which he refers. As respects the remuneration to Bailiffs, we are prepared to admit it is insufficient, and we believe that a proper representation would secure redress. Union is all important in matters of this kind, and we venture to predict that any partial movement on the part of Bailiffs will be of no avail. With so numerous a body scattered all over the country, there are of course serious obstacles to combined action, but they are by no means insurmountable. It only requires that the matter should be taken in hand by a few intelligent and energetic officers in order to put the proceeding in train.

The proposal of a meeting in each County is a good one, and we would suggest that the proceedings of each County should be forwarded to a central Committee, with instructions to prepare upon it proper memorials, to be afterwards circulated in