leaving him to proceed for any further claim at his peril.

As a practical suggestion, we would recommend officers, in claims alleged against them for unascertained damages, to lay the matter before one or two disinterested and respectable neighbours; ask their opinion as to the amount of damages sustained and then tender, and pay into Court something more than the amount they fix; and afterwards call them, if required, as witnesses at the trial.

SUITORS.—*What the Defendant should do between the service of Summons and the Court-Day.*

(Continued.)

Having noticed in the last number what should be done by defendants with a view to save unnecessary costs, where the claim against them is wholly or in part correct, we come to *Defences*. Unless the defence be "statutable" there is no need of the defendant's giving any notice thereof to the plaintiff, for he can appear and state it by word of mouth at the hearing. It is beyond the scope of these remarks to enter on a dissertation of what defences come within the meaning of the term "statutory defences," (as used in the D. C. Act, sec. 43.) The ordinary defence of this description are *set-off* and the *Statute of Limitation* (i.e. where a debt or claim is "outlawed.") And as a general rule, every defence on the ground that the contract or claim is voidable by any particular Act of Parliament, is a "statutory defence," and notice thereof in writing must be given.

The object of such notice is to prevent the plaintiff being surprised by the defence set up, and to give him a chance to obtain proof (if able) to resist it; which is but reasonable and just.

Whenever a written notice of defence is necessary under the statute, it should be served as soon as possible after the defendant receives the summons; the time and mode of service is prescribed by the statute as follows:—notice thereof in writing shall be delivered to the plaintiff, or left at his usual place of abode, if within the division: or, if living without the division, to the Clerk of the Court, at least six days before the trial or hearing. Short, suitable forms of notice are provided in "the Rules," and these, and other forms in general use, the Clerk will always have on hand.

The Notice is headed in the same way as the notice mentioned in the last number, and shortly states that "the defendant will set off the following claim, on the trial, viz.:" &c., or that the defendant intends to give in evidence and insist on "the following ground of defence, viz.: that the claim he has been summoned for is barred by the Statute of Limitations (*or as the case may be*), and such notice is to be signed by the defendant. One of the statutory defences, that of set-off, requires a more particular and special notice: it is in effect a cross action, and as we have filled our allotted space, observations on it must be deferred to the next number.

(TO BE CONTINUED.)

ON THE DUTIES OF MAGISTRATES.

SKETCHES BY A J. P.

(*Continued from page 5.*)

THE WARRANT TO APPREHEND.

WHERE default is made in appearing to a summons, and it is deemed advisable, instead of proceeding *ex-parte* to bring up the defendant, as would be the proper proceeding where he is likely to abscond, the course is for the magistrate to satisfy himself, by the oath of the constable or other party who served the summons on the defendant, that it was duly served a reasonable time before the day named therein for his appearing, and *then* to issue the warrant: but it is quite in the option of the magistrate whether he will issue his warrant, or proceed *ex-parte* with the hearing of the case, notwithstanding the defendant's absence.[a]

Before the passing of the recent act, it was generally considered that where statutes empowered justices "*to cause the offender to be brought before them*," that this implied an authority to use compulsory process, and empowered them to issue a *warrant or summons in the first instance*, according to the justice's discretion,[b] and the like where the offence included a breach of the peace, or was of an indictable nature.[c]

The statutes relating to injuries to the person,—petty larceny, and malicious injuries to property,[d] and other modern penal statutes, gave *express* authority to justices to issue a warrant in the first instance, if they deemed such a course expedient; but by the recent act[e] more extensive powers are conferred upon them in cases of information laid for *any offence punishable upon summary* conviction. Sec. 2 enacts as follows:—

"*The justice or justices before whom such information shall* have been laid, may, if he or they shall think fit, upon oath or affirmation being made before him or them substantiating the matter of such information to his or their satisfaction, instead of issuing such summons as aforesaid, issue in the first instance his or their warrant for apprehending the person against whom such information shall have been laid," &c.

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[a] 16 Vic. c. 178, sec. 2.

[b] R. v. Simpson, 10 Mod. 328, 341; Bane v. Methuen, 2 Bing. 63; and 2 Hawk. c. 13, sec. 15.

[c] See cases in note [b] and 1 Str. 44.

[d] 4 and 5 Vic. chaps. 25, 26, and 27.

[e] 16 Vic. c. 178.