

DIVISION COURTS.

OFFICERS AND SUITORS.

CLERKS—Answers to queries by.

For convenience sake, I have caused the common heading of particulars to be printed in the margin of summons and copy, thus: "— of —, claims of — the sum of —, the amount of the account *hereunto annexed.*" As the accounts are handed in, I wafer them to the face of the summons and fill in the blanks. Now I am told by a "learned gentleman" that in point of fact the accounts are not *annexed* but *prefixed*, and that therefore the terms of the Statute are not complied with, and I am threatened with applications at my next court to dismiss the suits and make me pay the costs. Will you "advise me in the premises?"—A. C.

The "learned gentleman" is no doubt learned in language, but he has yet to learn what is due to his honourable calling. His *quirk* is worth nothing. There is no Judge who would give effect to such a trifling and absurd objection. The object of particulars is sufficiently answered by the form adopted, for the plaintiff's account is brought to the defendant's notice, and this is all that is required.

"Is the Clerk bound to draw the plaintiff's particulars in a difficult action of Tort, and if he does draw it and it is wrong, is he liable to the plaintiff who loses his case in consequence?"—M.

The Clerk is not *bound* to prepare the particulars of the plaintiff's demand for him; it is not within the scope of his official duties. Should the Clerk draw particulars which are found to be incorrect, he incurs no legal responsibility for the imperfect performance of a *friendly office*. But M. appears to forget that the Rules provide for amendments and give ample powers to the Judge, and if an amendment be applied for at the right time, we do not see how a mistake in the particulars can affect the decision of the case on the merits. The plaintiff may be liable to some costs, but that is the worst that can come of mere mistakes in particulars of claim.

"A suit was entered under the 90th sec. of the Act on a note seized which was payable to one A. B., (the original defendant) but I omitted to add the note required by the 19th Rule. After the service of the summons the present defendant paid A. B. (the nominal plaintiff,) the amount of the note and costs and took his receipt. There is no mistake but what he knew that A. B. had no claim to the note, but that it was sued upon for his creditors—and I can prove it; but as I unfortunately omitted the proper "caution," I wish to know if the loss is to fall on me?"—Cll.

Certainly not. The object of the cautionary notice required by the 19th Rule of Practice is in this case to inform the party that the payee of the note had no power to discharge the suit or receive payment; according to your statement he was already informed of that fact. There was no absolute necessity therefore to put him on his guard. With

his eyes open he has committed a *fraud*, and the payment in question will avail him nothing. You must be careful to have proof at the hearing of what you state you can prove.

BAILIFFS—Answers to queries by.

A. B.—It is the duty of a Bailiff to endorse on Executions the date when received by them from the Clerk, as well as the date of seizure, and if two Executions against the same person are given to a Bailiff, he should endorse the time of receiving each in such manner as may shew which Execution was first handed to him.

S.—The fees for service in Interpleader cases will be regulated by the value of the goods claimed: you can state the value of the goods in your written application to the Clerk to sue out interpleader summonses.

In another place will be found a further portion of the Bailiff's Manual. The next number will enter on the duties of the office.

SUITORS.

The Hearing or Trial, and the conduct of parties in reference thereto.—The causes entered for trial at a court are set down for hearing in the order in which they were in the first instance entered with the Clerk; if there be a jury case it is first disposed of, and unless the Judge should see cause for proceeding differently the other causes are then taken up in regular order and gone through with. The adjourned cases that stand over from the last court are usually put at the head of the list. It is not usual to strike out a cause when the parties do not appear at the first call; that is, if the Court has not been sitting for half an hour or longer after the hour appointed for the Court, they are commonly "put aside for the present" or placed at the foot of the list, but the practice in different Courts vary in this particular. It is always advisable that the plaintiff should be present at the opening of the Court, or immediately after, even though his case should stand low on the list, for all those previously entered may be put below his, or be otherwise disposed of. As to the defendant, it is essential that he should be present, for the case may be called on in his absence and judgment by default pass against him; punctuality is necessary to dispatch, and if parties suffer from their own negligence, they have no right to complain. The plaintiff may appear by attorney or by agent, if he finds it convenient to apply personally: any neighbour or member of the plaintiff's family may act as agent, but an appearance by some one must be made on the plaintiff's behalf.