

DIVISION COURTS.

OFFICERS AND SUITORS.

CLERKS.—*Subpœna before Arbitrators.*—The 5th sec. of the D. C. Act of 1853 enables either of the parties to a suit to obtain from the Clerk of a D. C. a summons requiring the attendance of witnesses before the arbitrators. We are asked to notice this provision and suggest how Clerks should act under it.

In looking at the clause the first point noticeable in respect to the Clerk's duties, is that an *Order of Reference* to arbitration must have been actually made, before the Clerk will be authorized to issue summons. It will not be sufficient that an actual reference has been made *by the parties*—a proceeding common in practice; but it must have been sanctioned by an *order of the Court*. The parties may obtain summons "from the Clerk of any Division Court." We take this to mean the Clerk of any D.C. in which the suit has been entered and the order made; the same words are used in the 48th sec. of the D.C. Act, and have always been considered to mean the Clerk of the Court in which the suit is entered; and this appears to be the view taken by the Commissioners as a reference to Forms 13 59 & 63 will shew.

By the provision in the clause (the 5th) parties making default may be punished in the manner provided in the 48th section, and under that section the proceeding, it is clear, would be in the Court where the suit was entered; see form 59. If any other Clerk than the one in whose Court the order of reference was made could issue the summons, there would be a difficulty in respect to acting without production of the order of Reference, and also as to the taxation of costs; on the whole we conclude that the meaning above given is what was intended by the terms *any Clerk, &c.*

The summons is to require the attendance *before* the arbitration—that is, at some particular place, on a day and hour named—this is to be ascertained by the arbitrator's appointment, which should be produced to the Clerk, and left with him or annexed to the summons; the more convenient way will be to insert the time and place of appearance *in* the summons. It will not be proper for the Clerk to issue the subpœna in blank; the authority he acts under is derivable solely from the statute; and sec. 40 of the D.C. Act requires that every summons shall be entirely filled up, and shall have no blank at the time of its delivery to the Bailiff, or *any other person*, to be executed.

The form of summons in such case may be as follows:—

In, &c.

Between, &c.

You are hereby required to attend before —, the arbitrator (or arbitrators) to whom this cause stands referred, at the house of —, in the Township of —, on the — day of —, A.D. 185—, at — of the clock in the forenoon of that day, being the place and time appointed by the said arbitrator for a meeting upon the said reference, to give evidence in the above cause on behalf of the above named —, &c., (conclude as in form No. 13.

Or if the appointment be annexed to summons, and intended to be served with it on the witness, say:

— To attend before —, the arbitrator (or arbitrators) to whom this cause stands referred, at the time and place mentioned in the annexed appointment, &c.

We think, however, the first form preferable.

BAILIFFS.—In an action commenced against a Bailiff for seizing goods it may be open to him to sue out Interpleader under the 7th sec. of the D.C.E. Act, when the proceedings in the action will be stayed and the Judge of the D.C. will make such order on the Interpleader respecting the disposal of the goods seized and the costs, &c., as may appear to be just. But it will sometimes happen that a Bailiff neglects to avail himself of the ample protection this clause affords, and is put to his defence on the action against him.

The action will be in one of the Superior Courts or in a Division Court, according to the value of the goods seized. We do not purpose noticing, at present, actions in the Superior Court, but if the suit be in a D. C. and the Bailiff seeks to defend himself under the protection of the D. C. Act, he must give notice in the proper way and in due time; it is upon that point we have a word to say. Section 107 of the D. C. Act enacts that actions against any person for anything done in pursuance of the Act—and a Bailiff acting *bonâ fide* under an execution comes within that description—shall be, 1st, laid and tried in the County where the fact was committed;—2nd, shall be commenced within six calendar months after the fact was committed; 3rd, that at least one calendar month's notice of action in writing shall be given to the defendant before the commencement of suit:—(there is also provision for tender of amends, but of this hereafter.) If any one of these three defences exist, in order that the Bailiff may avail himself thereof, it becomes necessary to give notice to plt. under the 43rd sec. of the D.C. Act, which provides that the dft. may avail himself of any relief or discharge under any statute, on delivering a notice thereof in writing to the plt. or leaving it 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. As to the form of notice, the dft. is not held to the same particularity as in defences under other Statutes; for he is allowed to