

4 of section 111 therefore clearly means that judgment may be entered by the clerk on the order of the judge as soon as the time elapses that would have had to elapse had no defence been entered, instead of waiting until the date of the regular sitting of the court for which the summons had issued.

If the bailiff seizes an article upon which the execution creditor afterwards claims to hold a lien, and forbids sale, is the bailiff entitled to any costs?

Ans. I think not. If the claimant were some one other than the execution creditor, and the claim was valid, the bailiff would not be entitled to costs, and I think it can make no difference that the claimant happens to be also the execution creditor. It is certainly a hardship upon the bailiff, but I see no escape from this conclusion.

3. Can a clerk issue a subpoena for a witness to attend any other court than his own?

Ans. Yes, a Clerk can subpoena a witness to attend any Division Court in the same County in which his own Division is situated, but not to attend any court outside the County. The subpoena may be served anywhere in Ontario, Sec. 131, D. C. Act.

3. (a) If the decision in an Interpleader suit is in favor of the Claimant, has the bailiff any lien upon the goods for costs? (b) If not, who pays Bailiff's costs, and costs of Interpleader Summons, trial etc.?

Ans. (a) No. (See page 341, O. P. R., Vol. 12). (b) Plaintiff may make himself liable for Interpleader costs by garnisheeing payment; otherwise Bailiff is responsible.

4. Can the clerk receive and enter a defence after the 8 or 12 days after service has expired?

Ans. No. If he were to do so he might become liable to the plaintiff for delaying judgment and execution.

5. Can any further proceedings be taken on Division Court judgment after a Transcript has been issued to the County Court?

Ans. No.

6. Is the Clerk bound to make copies of claims for service, regardless of their length?

Ans. The Clerk has a right to demand sufficient copies.

7. Can further proceedings be taken in the Home Court without a Judge's order, after Transcript of Judgment has been issued to another Division Court?

Ans. Yes, if the proper affidavit is filed with the Clerk, under Sec. 24, D. C. Act, 1889.

8. Can the Clerk renew an Execution without an order in writing from the Plaintiff?

Ans. The Clerk cannot renew an execution without an order from Execution Creditor or his agent. All such orders should be in writing.

9. Should the Clerk enter a defence which comes to him by mail not accompanied by 25 cents fee for entering the same?

Ans. He may refuse to enter it until 25 cents is paid, but if he does enter it without payment of the fee he must look to the Defendant, or the person who entered the defence, for the fee, and cannot charge it as costs in the case against Plaintiff. If he refuses to enter the defence he should at once notify Defendant or his agent that he refuses to enter until fee be paid; and if it is not paid within 8 or 12 days provided by the Statute, (Sec. 109 and 176 D. C. Act) he should not receive the fee and enter the Defence afterwards.

10. If after trial the Clerk issues a Transcript to another Division Court, and afterwards, within the 14 days after the entry of judgment, a new trial is applied for, what is the duty of the Clerk?

Ans. His duties are not prescribed, except to the effect that upon an application for new trial being made, proceedings must be stayed. I should say that the Home Clerk

should forthwith notify the Foreign Clerk of the application for new trial, ordering him to stay seizure, sale or other proceedings on the transcript until advised of the judge's decision on the application, but not abandon goods if already under seizure, only in that case to postpone sale.

11. Can a Clerk issue garnishee summons attaching money in his own hands as Clerk?

Ans. Yes.

12. If a garnishee pays money into court either before or after judgment against him, is the Clerk justified in paying the same to the Primary Creditor immediately after judgment against the Primary Debtor, without regard to the time allowed by the judge?

Ans. Yes; he must do so if judgment is such that he could issue execution.

13. Is the Clerk bound to notify the Plaintiff of a Nulla Bona return to execution on judgment obtained in his own court?

Ans. No, but it pays to do so as a general rule, but no fee can be charged for such notice.

14. Shall the Clerk demand more than 25 cents fees when receiving a Defence? I have been accustomed in addition to charge 15 cents for the notice to Plaintiff, and postage.

Ans. The only fee which can be demanded from the person entering a defence is the defence fee, 25 cents. The other costs consequent on the entering of a defence, viz., for notice, taxation, and postage, are costs in the cause, and may be charged in the first instance to the Plaintiff.

15. A special summons is served, and defence entered next day, whereupon the plaintiff immediately applies to the judge, under Sec. 111 D. C. Act, to set aside the defence, and for the Clerk to enter judgment, the Plaintiff then demands that an execution be issued forthwith. Should the Clerk enter the judgment and issue execution before the ordinary return-day of the summons, viz: the 12th or 17th day after service?

Ans. If the judge's order was merely to set aside the defence, the clerk should not enter judgment until the return-day of the summons. If the judge's order was to enter judgment, without specifying when judgment should be entered, it is doubtful if the clerk should enter it before the return-day, although the Statute is by no means clear. But if the judge's order directed that the judgment be entered forthwith, the clerk should enter it forthwith, without regard to the return-day. The responsibility would then be on the judge, not upon the clerk, if the judgment were improperly so entered. By Sec. 111 D. C. Act, subsection 4, the judge clearly has power to order judgment forthwith as to part of a claim, and it would seem a reasonable inference that having power as to part of a claim, he shall also have power as to the whole claim. But the Statute is silent as to that, and I have been unable to procure any authoritative opinion upon the question.

16. A suit is entered in court mixed between a claim for money advanced and damages for non-fulfilment of contract, should a special or ordinary summons be used?

Ans. The clerk must use an ordinary summons, if special is used the defendant has the right to make application to the judge to have clerk's judgment set aside and to enter his defence.

The Minister of Education has introduced measures to consolidate and revise the High and Public School Acts. This is a move in the right direction, if by consolidation is meant the separation and classification of the various clauses relating to High Schools, Public Schools, rural school management as distinct from those of towns and villages, under distinct and separate headings. The heterogeneous mixture of clauses relating to different schools in the present school laws has often been a worry to trustees and others in search of information.