

tiffs and others, besides entailing a large amount of labour upon the bailiff, who receives no pay for mileage if service is not effected. Some persons have remarked that the Division Court bailiffs, *in this country*, are generally farmers. I beg to contradict this assertion, and will guarantee that fifteen bailiffs out of twenty have no other occupation than the duties appertaining to their office; all have to keep a horse and vehicle, and, if the government intend there should be respectable and responsible persons employed, let the tariff of fees be such as will insure it. I feel confident, if the above plan be adopted, it will afford general satisfaction.

In conclusion, let me add one word in behalf of the clerks. I think it unjust, with the present low tariff, to compel clerks to furnish books, forms, stationery, &c.. Surely the fee fund ought to afford this disbursement, and then leave a good margin for the judges salaries.

Your obedient servant,

CLERK.

*Charge of an indictable offence before J. P.
—Power to hear evidence for defence.*

TO THE EDITORS OF THE LOCAL COURTS GAZETTE.

Gentlemen,—Will you kindly answer the following question which is one of importance to our local magistracy:—Have Justices of the Peace, before whom a party charged with an indictable offence is brought for commitment, power to hear evidence for the defence?

To give you a case in point: A person is brought before two or more Justices of the Peace charged with the crime of rape: there is no question as to the crime having been committed: the prosecutrix swears positively as to the identity of the accused, but his counsel however offers to prove an *alibi*; have the magistrates any authority to go into such a defence?

Con. Stat. Canada, Cap. 102, sec. 57, says, "When all the evidence offered *upon the part of the prosecution against the accused party* has been heard," that then the Justices are to proceed to decide, &c.

I am yours, &c.,

CIVIS.

Port Hope, 14th Jan., 1867.

[At present we do not think evidence for the defence can be adduced, but the point is an important one and requires further consideration.—Eds. L. C. G.]

Payment of Fees to Registrar of Surrogate Court.

TO THE EDITORS OF THE LOCAL COURTS' GAZETTE.

By the 64th Rule under the "Surrogate Courts' Act," "the fees payable to the Fee fund, and to the Judge and Registrar on business and proceedings in the Surrogate Courts, as well as postages, when necessary, *shall* be paid to the Registrar *in the first instance* by the party on whose behalf such proceedings are to be had, *on or before* such proceedings." Now, if fees are not paid in first instance, will the above rule prevent the Registrar from recovering the same through the Division Courts? And because he was good or simple enough to credit a party, has he no remedy? Your opinion in the next *Gazette* will much oblige

A REGISTRAR.

Berlin, 18th Jan., 1867.

[We think that the provision as to payment of fees *in the first instance* was made for the benefit of the officer and not to prevent him from recovering them afterwards if not paid, when he had a right to insist that they should have been.—Eds. L. C. G.]

Judge Hughes' Circular — Residence of defendant.

TO THE EDITORS OF THE LOCAL COURTS' GAZETTE.

SIRS,—I have observed from time to time several remarks and criticisms upon my circular to the clerks of Division Courts of this county, dated 26th August, 1864, published in your 10 vol. fol. 237. Amongst others, I find that Mr. Durand has made allusion to what I consider a very important point in the letter; *i. e.*, where I make reference to the words, *nearest to the residence of the defendant*, which occur in the Stat. 27 & 28 Vic., cap. 27, sec. 1. The position which I took was supported (as I thought) by the case of *Lake v. Butler*, 30 E. L. & Eq. R. 264; 5 Ell. & Bl. 91. I thought that the judgment of the late Lord Campbell, C. J., made the case quite plain, and I never could entertain a doubt of the complete application of that decision to the words quoted; a perusal of the arguments of counsel and judgments of the judges will point out various other instances in which a similar position had been previously taken and successfully maintained.

There were points in the circular to which allusion has been made by others, but none of any great importance; for instance, exception