

the bailiff fails to make service in sufficient time, in others the clerk is negligent, and the papers are not returned to the "Home Division" in time for action by the court. In both cases the officer in default is liable in damages to the party injured by his misconduct.

The duty is prescribed by the 73rd section of the statute and Rule 21. The clerk, on receiving the papers, with the necessary fees, is *forthwith* to deliver them to the bailiff of his court for service, and the bailiff's duty is to serve the same, and *forthwith* make return thereof to the clerk of his court (in manner required by Rule 11), and the latter it is provided "shall *forthwith* transmit the papers by mail" to the clerk of the home court.

It will be observed that the bailiff is to make return, not in the *time* but in the *manner* required by Rule 11. It is suggested to us that bailiffs, from the reference to Rule 11, suppose the duty done if a return be made four days before the court. This is a most mistaken view, and, if delayed so long, the papers would not, in the great majority of cases, reach the home clerk's office till after the return day. Every bailiff ought to know that the summonses sent from other courts must be served from fifteen to twenty days before the return day thereof (sec. 76). And he should use due diligence to effect service in good time, and promptly make the necessary affidavit, before his clerk. In some of the rural divisions there is only a weekly or bi-weekly mail, and hence the importance of the clerk, in the words of the act, "*forthwith*" transmitting the papers by mail "to the home court."

When papers do not come to hand in time for action by the court in consequence of the foreign clerk's neglect, it is quite clear that the fees for service, &c., as against the plaintiff are not earned, and if prepaid may be recovered back by the plaintiff with damages and costs from the delinquent officer.

SAVING EXPENSE IN PROOF.

When a plaintiff enters a suit in a Division Court, whether upon an account, a promissory note, or upon any other demand, he usually comes to the Court prepared with witnesses to prove his account, the signing of the note, or other facts—in a word, he has *all* the witnesses necessary to sustain his demand, for if he fails to have them at court, and the

defendant denies the claim, there must be an adjournment, or the plaintiff is nonsuited with needless costs in either case. In the other view; when the cause comes on for trial, the defendant probably objects only to one or two items in the account, or admits the making of the note or other fact necessary to be proved, but takes other ground of defence, for example, payment, satisfaction, set-off; and so it is unnecessary to call the plaintiff's witnesses; but all have been brought to Court and must be paid. And yet it is such a simple proceeding, before the trial, to narrow a case down to the points really in dispute. If people must have their differences settled by law, let it be done as cheaply as may be. Why allow needless expenses to be heaped up?

It is a matter of surprise to those who attend Division Courts to notice how rarely people avail themselves of the excellent provisions of Rule 30, the substance of which, as respects defendants, is as follows: To save unnecessary expense in proof, the defendant may give the plaintiff notice in writing that he will admit on the trial any part of the claim or any facts that would otherwise require proof, and after such notice the plaintiff will not be allowed expenses incurred for such proof.

A form of notice is given, but as the Rules are in the hands of but a few, and the book now out of print, we subjoin a form that will answer the purpose:

In the ——— Division Court for the county of ———, between ——— plaintiff, and ——— defendant.

The plaintiff is required to take notice that the defendant will admit at the trial of this cause (*here insert what is intended to be admitted, as—*"the following items, viz. ——— in the account sued on," or "all except ——— in the account sued on," or "the signing of the note sued on," or *as the case may be*). Dated, &c. ——— defendant.

If the defendant has also a set-off, he should annex a copy, adding to the notice, "and the defendant will, on the trial, set off the claim hereto annexed." This notice must be served on the plaintiff, or left at his usual place of abode, six days before the trial, either by the bailiff or by any literate person.

When it is remembered that the expense of witnesses to prove a long account may be from five to ten dollars, it is well worth while to the defendant to give the notice suggested;