

oath, when such facts are not within his personal knowledge. Besides it can scarcely be expected of the Clerk to keep note in his mind of the witnesses who attend, &c., particularly as under the late Rules he will require to give his undivided attention to the Judge's *viva voce* decision in each case, in order to enter the minute of judgment correctly in the Procedure Book.

Our advice, then, to Clerks, is (as a general rule) to require an affidavit of disbursements to witnesses, that Suitors may be protected against fraudulent claims, (the expense to them would be trifling, the protection great)—that Clerks may be able to determine properly as to whether the claim made is just, and the amount disbursed within the tariff—and that they may have a written document to fall back upon should the taxation be afterwards questioned.

The allotted space at our command will not allow the subject to be closed in this number; in the next we will give suitable forms and examine further this point, as well as taxation generally.

BAILIFFS.—Punctuality should characterize Bailiffs in all their proceedings; at best the remuneration allowed to them is miserably small, but small as it is it may be reduced “to nothing per day and find themselves,” unless strictly punctual in the discharge of their duties. Deficiencies in this particular may arise from an easy disposition; *but though Officers may be quite free to exercise generosity in their own private concerns, they have no right to interfere with the claims of other people; no right to delay a party in the recovery of his demand,—pity is due to the plaintiff, who may suffer as much by delay, as well as to the defendant, and an officer should not venture to deal with the rights of other men as if they were his own.* It may arise from neglect:—*but when any one undertakes an office, he is inexcusable if he fails through indolence to perform its duties.* The want of punctuality may also arise from fraud, though we hope such cases are rare; *we have nothing to say to this class, and if they catch it no one sheds tears.* Lastly it may, and most commonly does, arise from ignorance of the serious responsibilities incurred by delay. To point out to those officers whose attention it may have escaped, and to remind all, we intend noticing a clause in the Division Courts Act respecting Executions.

The 59th section of the 13 & 14 Vic. c. 53, amongst other things provides “that if any Bailiff “shall neglect to return any writ of execution “within three days after the return day thereof,” an action may be maintained against him and his bail, and the party suing out the execution shall recover the amount of the execution and interest,

or a less sum in the discretion of the Judge or Jury according to the circumstances of the case. This is a most stringent enactment, for whether the debtor has goods or not the creditor has a *prima facie* right to recover the full amount of the execution and interest from the Bailiff or his bail, unless the writ has been duly returned—that is, delivered to the Clerk with the Bailiff's answer, *nulla bona*, or otherwise, endorsed—within three days. The propriety of making an early seizure is therefore obvious, that the necessary notice may be given in time for a sale before the return day, if the amount of the execution be not in the meantime paid.

In an action against a bailiff for not returning, the only evidence necessary for the plaintiff is, of the date of issuing the writ of execution, and the non-return thereof *within* the time prescribed; that the bailiff has since made a return will be no answer to the action, the party's cause of action is complete, and the bailiff liable for the amount when the three days have expired.

But—to throw in a little consolation—if the officer has blundered without intending wrong, there is prospect for partial relief. For example; if the debtor had not any property at the time the execution issued, or while it was in force, or had property only to a small amount, the Judge or Jury having a discretion to fix the amount will take the circumstances into consideration, and may, in the former case, allow only a small sum to cover the creditor's trouble in the matter, in the latter case allow in addition the value of the goods which might have been seized and no more. And perhaps, also, there are other circumstances that could be urged in mitigation of damages. The burden of proof will be on the Bailiff to shew that the plaintiff is not in justice entitled to recover the full amount of execution and interest, and he should be prepared with all necessary witnesses to establish the circumstances in his favour. When a judgment is given for the whole claim it is not improbable that the creditor may be required by the Judge to transfer the judgment to the Bailiff, so that, if the debtor acquired property afterwards, the Bailiff might be able to obtain partial indemnity.

SUITORS.—A word to Suitors on the subject of Witnesses. Have those you require summoned in good time: if you have reason to believe that any one of them will not be willing to attend, give the officer or party who serves the Subpœa money to tender to him, according to the distance required to be travelled. You will see in this number, page 61, the scale of fees. When the trial is over, pay your witnesses as soon as possible, and give in a return to the Clerk, who will, if necessary, prepare the affidavit of disbursements for you. Take this