

be demanded by the clerk of the applicant. A copy of the claim and other papers necessary to the proper understanding of the case, is to be sent at the same time. What are *necessary* papers must depend on the circumstances of each particular case and the grounds of application, and no general rule can be laid down. All these proceedings should be entered by the clerk in the Procedure Book, in regular order, viz.: the time when application received—when delivered to Bailiff to serve, and when returned—and the mileage,—or when transmitted by mail to a party resident out of the Division—when transmitted to Judge—when decision received—and what the decision is—and when communicated to the parties.

The Rule provides that the delivery of the papers to the clerk shall operate as a stay of proceedings, until the Judge's final decision is communicated: the clerk will of course observe this direction, and if an execution has been issued, will notify the bailiff that the proceedings are so stayed.

When the Judge's decision has been received, both plaintiff and defendant are to be notified of it "by mail or otherwise," (it is immaterial by what means the clerk does so, if he only brings the fact to their notice). It may be observed that in cases where the first trial is before a jury, *called by one of the parties*, the clerk should summon a jury on the new trial ordered. If the Judge has decided to hear the parties in the matter of the application, the time and place appointed for that purpose should be specially communicated "if the applications be refused, or if the party applying fail to comply with the terms imposed by the Judge, the proceedings in the suit shall be continued as if no such application had been." The terms imposed may be the payment of the costs of the former trial—the giving securities to satisfy any judgment, finally obtained—the payment into Court of the amount of debt and costs for which verdict has been rendered, or the like. The time, within which these terms are to be complied with, will be specified in the Judge's order for new trial, and should the party fail to comply with them within the time so specified, an execution may issue on the judgment as in ordinary cases.

We would again repeat that every proceeding in this matter should appear in the Procedure Book.

BAILIFFS.—Besides the protection spoken of in previous numbers, there is this valuable provision in aid of officers acting under D. C. Acts, in respect to actions brought against them. "The plaintiff shall not recover in any such action, if tender of sufficient amends shall have been made before such action brought; or if after action brought a sufficient sum of money shall be paid into Court by or

on behalf of the defendant." (D. C. Act, sec. 107.)

First of the *tender of amends*: where an officer finds that he has acted illegally, as by a seizure of a third party's property (which of course he should give up as soon as he discovers his error,) or the like, he should at once take the precaution of tendering to the party injured a sum of money amply sufficient to make amends for the trespass or wrong committed, that the party may have no excuse for bringing a subsequent action (this is the straight forward, honest course, and the politic one too).

In making the tender, care should be taken to produce the cash, and the offer should be unconditional and unqualified, or in all probability it would be held to be no legal tender. It is not always easy to determine what would be an adequate sum to compensate the party, but it is better in this particular to be on the safe side and tender something beyond what would make amends for the illegal act, and its consequences to the party injured. An officer himself may have an independent private claim, or note or account against the party, and think it will be sufficient to propose to credit the sum offered by way of amends on such claim; or if the note or account is insufficient for the purpose to tender a part and the note or account for the residue: but this is not a good tender; as before mentioned, the amount must be offered in cash. If an action is brought after tender made, the amount offered should be paid into Court (we are now speaking of actions in the D. C.), and a notice similar to that given in the Dec. number should be served, inserting specially "that before this action was brought, sufficient amends were tendered by him to the plaintiff for the matter alleged against him in the plaintiff's claim, and that the amount so tendered, viz.: £ , hath been paid to the Clerk of this Court for the plaintiff." The defendant must be prepared to prove at the trial the fact of tender, should the plaintiff proceed with the action; unless the plaintiff is able to prove a claim exceeding the amount tendered, he cannot recover in the action. It may be observed in addition, that although a party may in the first instance refuse to accept the sum tendered, yet if he alters his mind at any time before action commenced, and states to the officer that he is willing to accept in satisfaction the sum previously offered—and the officer does not pay him, the legal benefit of the previous tender is lost.

Payment into Court.—On this point there is little to be said: if an officer has not tendered amends, and an action is commenced against him, and there is no defence to the same, he should pay into Court a sum sufficient to cover the utmost claim that can be proved against him, with the costs, up to the time of such payment, and give notice similar to that in case of tender of amends, to the plaintiff,