

DIVISION COURTS.

OFFICERS AND SUITORS.

CLERKS—Answers to queries by.

{ County of Waterloo,
{ Hawksville, 5th May, 1856.

To the Editors of the U. C. Law Journal.

GENTLEMEN,—

A. B. has an unsatisfied judgment in this Court against C. D. of the County of Wellington; a transcript of the entry of judgment, pursuant to the Act 18 Vic., cap. 130, sec. 3, has been sent to J. C., Esq., Clerk of the Court for the Division in which C. D. resides, who issued execution. The Execution has been returned "*nulla bona*." A. B. the plaintiff has ordered out a Judgment Summons. (1) If C. D. appears under judgment summons, and the Judge should make an order for his committal, can our Bailiff arrest him under my warrant and take him to the gaol of this county, he being a resident of another County? (2) If C. D. disobeys the summons, and our Judge makes an order for his committal for contempt, how is it to be done?

M. P. E.

The right solution of these questions is of great importance, and the very loose and doubtful way in which the D. C. Acts are framed, renders the construction of the clauses bearing on the question a task of considerable difficulty. Officers of the Division Courts, for all may be affected by a mistaken course of action, are in no small degree indebted to Mr. E. for giving publicity to the points submitted. We will examine with care, and give the result of our investigations either in the editorial of *this* number or in the July issue; an off-hand answer we could not venture to make in time for this "form." We would be glad to hear if any of the County Judges had judicially considered the subject, and we invite observations from well informed parties.

The first difficulty to our mind is, does the last D. C. Act (sec. 1) disable the warrant of a Judge from being executed out of the limits of his own County? If not, does the 97th sec. of the D. C. Act meet the questions proposed? Was it contemplated by the Legislature that the defendant should be brought to the gaol of the County from which the warrant issues? If not, regarding the form of the warrant and the general bearing of the Judgment Summons clauses, is the gaoler of the County in which the defendant lives, and is arrested, authorized to receive the prisoner, if another gaol be the place of confinement mentioned in the warrant; and, should a Habeas Corpus be sued out, could such warrant be held, on the face of it, to authorize the defendant's detention? Can the Judge be held to have authority under the Statute, to make an order to commit to any gaol out of his County?—These and many other points will require to be

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incidentally considered. It would be easy to give a reply in general terms to the questions proposed, but the more useful course will be to enter fully upon their discussion, giving our views and such information as may be received from others.

T.M.—If a witness attends under subpoenas and gives evidence in several cases for the same plaintiff, but against different defendants, can his fees be allowed in each case?

If the witness gives evidence in several cases, neither plaintiffs nor defendants the same, is he entitled to double, treble fees, &c. according to the number of cases he is subpoenaed in?

A witness attending and being examined on different trials is nevertheless entitled only to the single fee according to the Tariff, and his expenses should be apportioned equally among the several cases, unless otherwise ordered by the Judge. In practice it is not unusual where the fees are large and the demands vary very much in amount, (for example, one for £2 and the other for £10) to direct the apportionment to be according to amount, and not equally.

A.C.—Where is the minute (No. 60) of order for fine for contempt to be entered in the Procedure Book, when it is on a witness examined in a cause.

It may be entered in any place in the Procedure Book having the suitable heading, giving the style of the Court. The most appropriate place, in any case, we would think, at the end of the suits entered for the then sittings.

BAILIFFS—Answers to queries by.

J. H. states a case in rather a round-about way; it may be reduced to a very brief question:—*Can a term for years be taken in execution under a warrant of execution from a Division Court?* Our opinion is, that it can, but when sold, the Bailiff should execute a bill of sale to the purchaser, and if he has obtained possession of the lease under which the defendant holds, hand it over at the same time.

SUITORS.

Conduct of the Parties at the Trial.

The first thing we would say under this head to *both* parties is,—remember you are in a Court of Justice, and do not allow angry feelings to betray you into any breach of decorum. Keep your temper! the man who flies into a passion is no match for the man who keeps cool; the former is always sure to forget something important to his case. Do not for a moment suppose you will gain any advantages by abusing your adversary; the object of a trial in Court is to elicit truth, and not to listen to angry contention: remember yours is not the only case to be heard—there may be numbers of persons

See 12. 1. 1856.