

## DIVISION COURTS.

## TO CORRESPONDENTS.

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## THE LAW AND PRACTICE OF THE UPPER CANADA DIVISION COURTS.

## CHAPTER V.—(Continued from page 122.)\*

The following forms of appointment by Judge and order thereupon are suggested for use:†

## JUDGE'S ACT APPOINTING CLERK OR BAILIFF.

I, Judge of the County Court of the County of \_\_\_\_\_, by virtue and in pursuance of the powers to me given and belonging by the Division Courts' Act, do hereby appoint A. B., of the &c., Yeoman, Clerk, (or "Bailiff," or "a Bailiff") of the Division Court of the said County, to hold the said office during my pleasure. And I do direct that the said A. B. shall give security for the due execution of his office by entering into a covenant in the manner and form required by the statute, with two sufficient sureties; the specified liability thereunder as against the said A. B. to be not less than \$ \_\_\_\_\_, and as against the said sureties not less than \$ \_\_\_\_\_ each. such sureties to be approved by me.

Bond to Her Majesty, } Given under my hand and seal at  
A. B. bound in \$ } \_\_\_\_\_, this \_\_\_\_\_ day, of  
two sureties each in \$ } 186.

Judge.

## ORDER FOR THE APPOINTMENT OF OFFICER, CLERK OR BAILIFF.

In the Division Court in the County of \_\_\_\_\_

Upon the appointment by the Judge of the County Court of the said County, of A. B., of \_\_\_\_\_ yeoman, as Clerk, (or "Bailiff," or "a Bailiff,") of this Court, and it appearing that the said A. B. has given the security required by law, it is ordered that the said A. B. be and he is hereby appointed and declared the Clerk (or "Bailiff" or "a Bailiff") of this Court.

Given, &c. By the Court. Clerk.

Before the order of appointment is passed the Judge, as already observed, should ascertain the sufficiency of the officer's sureties, and endorse his approval on the security covenant, the provisions in the 25th and 26th sections of the act being to enforce proper security before the officer acts; and whether the enactment be directory or imperative, the neglecting to settle the amount and approve the sureties would be a failure of duty on the part of the Judge.‡ (See *Miller v. Tunis*, U. C., C. P. R., vol. 10, page 425.)

As the Judge is required to approve the sureties and

declare them sufficient for the sums in which they are bound, the power of making judicial investigation before approval is implied, and in cases where the Judge has not personal knowledge of the fact of sufficiency, and indeed in all cases, it seems proper that the sureties should justify by affidavit showing what they are worth over and above their debts.

The form of security covenant is given in schedule A to the Act, and follows closely, though not exactly, the form of covenant to be entered into by Sheriffs under cap. 38 Consol. Stats. U. C. There is no covenantee named, nor is the amount that each of the covenantors may be called upon to pay under the deed specified, and, according to the form, they may be treated either as jointly or severally liable, though the covenant is in fact a joint covenant. The proviso at the end of the deed that no greater sum shall be recovered under the covenant against the several parties than the deed specifies, is not a part of the undertaking of the covenantors, but it makes it the duty of the court to see that none of the parties to the deed shall be compelled to pay under it more in all than the sum which has been set opposite to his name, (see *McArthur v. Coole* 19 Q. B., U. C., 482; *Miller v. Tunis*, 10 C. P., U. C., 424 and sec. 149 of the Act, latter part.) The 27th sec.

provides who may avail themselves of and sue as covenantees on this covenant—namely, any person suffering damage by the default, breach of duty or misconduct of the Clerk or Bailiff. The language of the covenant in this particular is "damage of any person being a party to any legal proceedings."

Further reference to the covenant need not be made here, as it will fall more in place when remedies thereunder against the officer come to be treated of.

## COVENANT BY CLERK OR BAILIFF.

(Form A. subjoined to the Act.)

Know all men by these presents, that we, J. B., Clerk (or Bailiff as the case may be) of the ( ) Division Court, in the County of \_\_\_\_\_, S. S. of \_\_\_\_\_ in the said County of \_\_\_\_\_ (Esquire), and P. M., of \_\_\_\_\_ in the said County of \_\_\_\_\_ (Gentleman), do hereby jointly and severally for ourselves and for each of our heirs, executors and administrators, covenant and promise that J. Clerk (or Bailiff) of the said Division Court (as the case may be) shall duly pay over to such person or persons entitled to the same all such moneys as he shall receive by virtue of the said office of Clerk (or Bailiff, as the case may be) and shall and will well and faithfully do and perform the duties imposed upon him as such Clerk (or Bailiff) by law, and shall not misconduct himself in the said office to the damage of any person being a party in any legal proceeding: nevertheless it is hereby declared, that no greater sum shall be recovered under this covenant against the several parties hereto than as follows, that is to say:

Against the said J. B. in the whole, \$ \_\_\_\_\_  
Against the said S. S. ....  
Against the said P. M. ....

\* A portion of the matter has been reprinted to correct an error, and the form having been in a previous number erroneously printed as a note.—Eds. L. J.

† The forms are from those used by one of the most experienced County Judges in Upper Canada.

‡ In *Miller v. Tunis* an omission of this nature was pointedly rebuked by Chief Justice Draper—and had the course pointed out by the statute been followed the parties in that case would have saved the expense.