

collecting arrears of taxes a commission of five per cent. to be deducted from the amount collected, the collector is also paid for his trouble in collecting, either by a commission on the amount, or such other remuneration as may be allowed by the municipality employing him; so that the charge of \$2 is only for the extra trouble of making a distress. If the collector or sheriff could charge a commission of five per cent. to the debtor on making a distress, as well as the amount allowed by law or by the municipality, he would in fact receive a double commission, and it would be his interest to harass and distress unnecessarily those whose taxes it was his duty to collect with as little harshness as possible. In this case the defendant has charged \$5.60 for his costs and poundage; if he had sold the goods distrained he would be entitled to \$2, but as the money was paid immediately on the distress being made, I think he would only be entitled to charge half that sum, or \$1, for his costs. He must therefore refund \$4.60, the amount collected by him in excess of fees.*

CORRESPONDENCE.

TO THE EDITORS OF THE LOCAL COURTS GAZETTE.

GENTLEMEN,—A. rented a farm from B., verbally at twenty-five pounds per annum. Some three or four months ago, an execution was coming against A., and B. took out a landlord's warrant and sold for his rent; now the execution creditor serves B. with a summons to appear in court in order to recover his claim from him. Is he bound to appear, or has the execution creditor a claim against him. Should he not have replevied the property. Your answer will confer a favour on

Yours respectfully,

BAILLIFF.

[The above is not sufficiently explicit to enable us to help our correspondent. But in any case, it scarcely comes within our province to answer, as the matter of it does not appear of importance except to the parties concerned.—Eds. L. C. G.]

Transcripts of Judgment in Division Courts.

TO THE EDITORS OF THE LOCAL COURTS' GAZETTE.

GENTLEMEN,—Will you permit me to offer a few remarks on the communication from your correspondent "C," in the last number of the *Gazette*.

After providing for the sending of a transcript of judgment from the clerk of a Division

Court in one county to the clerk of a Division Court in another county, the 139th section, cap. 19, of the Consolidated Statutes of Upper Canada enacts, that "all proceedings may be taken for the enforcing and collecting the judgment in such last-mentioned Division Court by the officers thereof that could be had or taken for the like purpose upon judgments recovered in any Division Court."

Under this clause, no direction to the receiving clerk from the party to the suit is required, as your correspondent maintains; nor is a certificate by the one judge and an order by the other rendered necessary.

The 137th section of the statute requires such certificate and order in this event, viz., "If the person against whom the judgment has been entered up *removes to another county without satisfying the judgment.*"

Your correspondent contends that, after a transcript has been sent, the clerk who sends it has no further control over the suit. There seems no sufficient reason for this opinion. On the contrary, the fair and reasonable view appears to be, that he possesses the exclusive right to have a return made, and the money, if recovered, remitted to him.

However, as doubt exists in some quarters, the best course is to have the matter set at rest by legislation.

Your obedient servant,

Jan. 5, 1866.

M.

Transcripts of Judgment—Uniformity of Practice in Division Courts.

TO THE EDITORS OF THE LOCAL COURTS' GAZETTE.

GENTLEMEN,—In the December number of your "*Gazette*," I observed a communication signed "C." on the law and practice in reference to Division Court Transcripts. As your correspondent truly remarks, much diversity of opinion exists among clerks on the two points to which he specially alludes. His evidence goes to show the necessity for some mode whereby more general uniformity of practice can be obtained; so that the carrying out of the intention of the law may not be to such an extent, a matter of "opinion." If, for instance, a convention of the officers of the courts could be got together, and an understanding come to, which would result in more uniform practice, than now obtains, it would be desirable, for although as "C." observes, the business of the courts has much

* In answer to a question from Mr. Bruce, the Judge intimated that, in his opinion, the bailiff would be entitled, in addition to the \$2. to possession money in case of a person being left in possession, or to any necessary disbursements caused by the removal of the property for the purposes of sale.