

where the plaintiff shall have any demand against two or more persons, partners in trade or otherwise, jointly answerable, but residing in different Divisions, or one or more of whom cannot be found, it shall be sufficient if any one of such persons be served with process and judgment may be obtained and execution issued against the person served, notwithstanding others jointly liable, may not have been served or sued. And where Judgment is obtained against a partner of a firm, and the Judge certifies that the demand was strictly a partnership transaction, the property of the firm may be seized under the execution on such judgment.

The act of one partner made *with reference to business transacted by the firm* will bind all the partners, although in matters *wholly unconnected with the partnership* one cannot bind the other.

(TO BE CONTINUED.)

## ON THE DUTIES OF MAGISTRATES.

SKETCHES BY A. J. P.

(Continued from page 182.)

### Mode of Taking Down the Evidence.

In England the custom has to some extent prevailed of omitting to take down the Evidence formally and at length, and this laxity is sought to be excused on the ground of its not being necessary to set out the evidence in the conviction. [1] Speaking of this course of proceeding, an English writer on the practice of the Petty Sessions [2] pronounces it altogether wrong, "and founded on the erroneous supposition that as the general form of conviction obviates the necessity of setting out evidence, there is no mode by which the proceedings, with regard to the taking of the evidence, can be reviewed by the Court above. It is true that if a Magistrate has only to satisfy *himself* of the sufficiency of the evidence, he can probably do this more expeditiously and pleasantly by dispensing with the tedious and irksome task of writing down in minute detail the testimony of the witnesses; but although modern statutes, by doing away the necessity of setting out the evidence in the conviction and taking away the writ of *certiorari*, have thrown much greater protection round the Magistracy, yet there are still various modes by which the proceedings may be incidentally brought under the searching review of the Superior Courts, and by which the fortuitous errors and misapprehensions of the careless and unwary, as well as the designed and wilful perversions of the malicious and corrupt may be severely visited."

It is confidently submitted that in every case of summary conviction the evidence given, so far as

material, should be taken down, and then be read over to and signed by the witness as well as the Magistrate, and that the depositions, informations, and other papers in a cause should all be put together, endorsed, and carefully preserved by the Magistrate for future reference.

It will be proper for the Magistrate who officiates as chairman, to conduct the examinations, take down the evidence, and manage the business in like manner as the County Judge at the Quarter Sessions, or the duty of taking down the evidence may be committed to the Magistrate's Clerk.

The proper mode of taking down a deposition is in the first person, and as nearly as possible in the words used by the witness, that is, so far as regards the facts bearing on the enquiry, and which come within the witness' own knowledge; but hearsay statements, and matters apart from the enquiry in hand, should not be committed to writing. In actual practice it will be found to be a saving in time to let an ignorant person, when examined as a witness, tell his story in his own way, and then to commence committing to writing when he has concluded, rejecting of course extraneous and unimportant statements.

It has been already observed that *before* a witness is examined he should be duly sworn, and not allowed to make his statement first, and then when that is taken down to swear him to the truth of it. The practice of swearing a witness to an examination not taken on oath cannot be too strongly reprobated.

## MANUAL, ON THE OFFICE AND DUTIES OF BAILIFFS IN THE DIVISION COURTS.

(For the Law Journal.—By V.)

CONTINUED FROM PAGE 183.

*Duties after Court.*—The duties of a Bailiff after Court are as important and arduous as those already treated of, and he should bear in mind that the successful party in a suit has now incurred and paid all the costs attending his judgment, and naturally looks for promptitude in collecting the amount and the costs out of pocket. The Bailiff's services are required for this purpose, and they must be cheerfully and zealously given.

*Levy on the Goods of the Defendant.* This forms the chief, and as it is generally the most important part of a Bailiff's duties after Court, it will be first considered; his duty in arresting and conveying to prison a defendant, or a party convicted of contempt will be noticed afterwards.

[1] See *Nixon v. Nenny*, 1 Gale & D. 370. [2] Stone, 88.