

The word used in the tariff of fees is "enforcing." "To enforce an execution" is to levy it on goods. Receiving an execution, holding it a month in a bailiff's hands, entering it in a book, and returning it "*nulla bona*," is not "enforcing an execution." If the law is at fault—if the language is at fault—let the legislature remedy it. No court can legally order the payment of, much less a mere individual charge costs, when the law does not specifically name them. In construing tariffs of fees, as well as Acts of Parliament, we must give words or expressions their ordinary English meaning. We must not say "to enforce" means not to do so. Then, if bailiffs were to charge 75c. for returning an execution "*nulla bona*" on executions for \$60, their fees would equal those of Superior Courts. The sheriff cannot charge that sum on his return to an execution of *nulla bona* for \$400 in the County Court. He can charge for receiving and for returning only, in which his fees are ordinarily only 35c., at most 60c. In the Queen's Bench the fee would be, at most, \$1 25, on an execution for thousands of pounds. If the law had intended bailiffs to make a charge of "*nulla bona*" fees, it would have said so, distinguishing the mere return of *nulla bona* from the actual enforcing.

Mr. Agar speaks of the great hardships of bailiffs travelling, without being paid, to try to enforce executions. All this I admit. The Barrie case alluded to in the communication referred to, tried before Judge Adam Wilson, supports my view of the law. There Judge Wilson laid down the doctrine that a bailiff could not legally charge for feeding cattle seized—could not charge for storing goods—could only charge what the tariff allowed.

Mr. Agar attacks the assertion "that the costs in Division Courts are larger proportionately than those in the County Courts." But it is even so. I can sue a note in the County Court of \$400, and I pay for the summons 62c. I pay the sheriff, say \$1 for service, and the lawyers' costs would be \$6, if paid on service, at most. If I enter a \$60 suit in the Division Court, I must pay a deposit at once of \$4, and if the party lives out of the County I must pay more.

Mr. Agar questions the assertion that a \$20 suit often causes \$20 costs in these courts. My experience in Division Court matters leads me to think that this assertion is correct. I

know, as he says, that there are many duties performed by clerks and bailiffs not paid at all, and others paid too niggardly; but we must submit to the law until altered. I believe that the tariff requires to be remodelled, and the divisions consolidated. I would reduce the number of Division Courts, and in many things increase and make plain the tariff.

A COMMUNICATOR.

October 8th, 1867.

*Appeals from Magistrates' Decisions—By whom costs of appeal should be paid.*

TO THE EDITORS OF THE LOCAL COURTS' GAZETTE.

GENTLEMEN,—Will you kindly answer the following for the information of our magistracy?

A. B. summons C. D. before a magistrate for breach of a municipal by-law. Magistrate finds C. D. guilty and fines him. C. D. appeals; conviction is quashed; who should pay the costs of appeal, A. B. or the magistrate? Observe, A. B. laid his information as a private individual, say for abusive language being used towards him; the notice of appeal is addressed to the magistrate, not to A. B.; in fact A. B. does not take the slightest notice of the appeal, and his name only appears incidentally in the course of the proceedings.

I presume, where a corporation, through their officer, prosecute for breach of one of their by-laws, and the mayor is the convicting magistrate, and the conviction is quashed on appeal, that the corporation would be required to pay the costs; but is there not a distinction between this and the other case I have put, where the name of the complainant does not appear on record?

I am, yours, &c.,

A SUBSCRIBER.

[The court is not bound to order costs to either party, but the costs must be paid as the court directs. We do not know of any authority to order magistrates to pay costs in such cases. In the latter case the corporation would probably be ordered to pay the costs.

—Eds. L. C. G.]