a very efficient one. We do not like to refuse to consider his queries put in the above letter, or some others which he has sent, and to which we will attend bye and bye. But we cannot, as a general rule, be expected to answer all moot or mooted questions on *Division Court law*, or any other subject. In cases between private parties, we have no disposition to save the parties the proper fees that should be paid to a professional adviser; and, moreover, we can hardly be expected to give, every month, for nothing, a number of opinions which, if obtained in the usual way, would cost many hundred dollars. So much for "defining our position." We will now give some few short answers to our friend's queries, presuming further, that we only give opinions, and if, after all, the Judges "decision" should be contrary to our "opinions," *I. A.* must not be annoyed, or too much surprised.

First. The reading of Schedule A. is not difficult. It gives mileage "where" certain things are done. The expression of one thing, excludes any other which is not expressed. So there can be no mileage where money is *not* "made;" nor can there be mileage where neither is money made, nor the case "settled *after the levy.*" But in either of these events, there will be mileage.

Second. There can be no fee for "enforcing," unless the writ has been enforced by sale, or by *collection* of the money by some means by the Bailiff, during the currency of the writ.

Third. Section 52 may be literally followed. In the event of the Bailiff not becoming, for any such reasons as above suggested, entitled to mileage, &c., the Clerk has only to refund the money to the litigant who has deposited it.

Fourth. The Consolidated Statutes are not yet proclaimed as law.

Fifth. As to transcripts, and remitting money. The Clerk need not, we think, remit any money by post, without written instructions to do so. These instructions would cast the risk on the party who gives them. But if he remits without instructions as to the mode, and there is a loss *in transitu*, the loss is the Clerk's. A suitor cannot complain, for all the Clerk need do, is to have the money subject to the suitor's order. The money obtained under a transcript is the suitor's money. If the Clerk who sent the transcript, gets the money sent back *to him*, he gets it as *agent* for the suitor, we should say, rather than as Clerk; and of course, any instruction from him as to the mode of remitting, would be a reasonable protection to the other Clerk. The fact is, the transcript is under the suitor's control, the moment the one Clerk has sent it to the other, as desired by the suitor.—EDS. L. J.]

To the Editors of the Law Journal.

DERRY WEST, 30th June, 1859.

Gentlemen,—An action was brought against the sureties of a deceased Clerk of a Division Court, for money alleged to have been paid him in his lifetime. The case is as follows: A. brought an action against B. to recover about £4 12s. 6d. and got judgment for the amount; execution was issued against B. and returned "no goods was on;" B. was brought up on a judgment summons and an order made to pay 10s. per month; the first month was paid and the 10s. duly entered on the clerk's books; before another instalment was paid the clerk died. Sometime after, A. asked B. why he was not paying the money? B., in answer, said, I have paid the whole of your claim to the clerk in his lifetime, which my wife can prove. A. brings the action against the above sureties and calls on B.'s wife as evidence; the agents for the defendants objected to her being sworn, on the grounds that she was not a competent witness, but urged that the clerk's books should be produced, and the entries in said books to be the legal evidence between the parties, agreeable with the statute in such case made and provided. The 49th section of the Division Court Act for 1850 was referred to, and read by the Judge and by the defendants' agent. The Judge paid no attention to the section alluded to, although he read it, but gave judgment for plaintiff upon the evidence of B.'s wife. *Query*—whether is B.'s wife or the clerk's books to be relied on as evidence in a court of justice? Your opinion on the *law of evidence referred to will* confer a favor upon the defendants, and also upon your servant and subscriber.

J.-T.

[The wife was a competent witness. The weight to be given to her testimony was for the acting Judge to determine. The entries in the clerk's books are made evidence in certain cases certainly, but here there was an allegation of fact, *no* entry in respect to which appeared in the clerk's books. Such evidence as that in this case one would think needed corroboration of some kind.—EDS. L. J.]

To the Editors of the Law Journal.

Galt, July 25th, 1859.

GENTLEMEN,—Upon the strength of your known willingness to give information upon questions of general importance, I beg to submit the following case:—

A sues B in a Division Court for a certain sum, say $50. B, under the 27 sec. of 16 Vic., cap. 177, files a plea of *tender before action* of $30, and pays the same into court, in full satisfaction of A's claim. The clerk immediately communicates notice of such plea and payment to A, *who does not* within *three days* after notice of such payment, *signify to the* clerk his intention to proceed for the balance of his demand, notwithstanding such plea. Do the words "*all proceedings shall be stayed*" operate as a final bar to the action, and preclude A from prosecuting his claim for the balance of his demands? In the event of want of notice being agreed at the trial, can the Judge overrule the objection and order the case to proceed, or can the Judge adjourn the case under the 26th section of the same act and allow A some further time within which to give notice of his intention to proceed?

An answer in your next issue is most respectfully requested.

I am your obedient servant,

A. M.

[The words "all proceedings shall be stayed," ought we think be regarded as directory, and not operating as a final bar to the action. The judge might therefore, the circumstances warranting it, adjourn the case at the expense of A.—EDS. L. J.]

CORRECTION.

In letter of John Holgate, page 154—July number—second last line of the communication, for "*be satisfied that its intention absolutely necessary,*" read "be satisfied that its *retention* is absolutely necessary."

U. C. REPORTS.

COURT OF ERROR AND APPEAL.

(Reported by THOMAS HODGINS, Esq., LL. B., Barrister at law.)

(Before ROBINSON, C. J., DRAPER, C. J. C. P., MACAULAY, ex. C. J. C. P., MCLEAN and BURNS, J. J., SPRAGGE, V. C., and RICHARDS, J.)

BECKIT v. WRAGG.

Dormant equities—Trustees—Fraud—Laches—Principal and Agent.

A party who held a bond for a deed of a lot of land, on which he had erected a saw mill, became involved in 1834, and assigned his interest thereunder, and all his other real and personal estate, to certain of his creditors, as trustees on the express trust that said trustees should sell such and so much of the same as was necessary (except said lot and saw mill); should work the saw mill and sell the lumber made thereat, and collect outstanding debts, and apply all moneys so realized—1st. To pay the interest due on the bond; 2nd. To pay the expenses of the trust; 3rd. To pay the debts due to the creditors; and 4th. To pay the assignor any surplus, and to re-convey the premises, and thereupon the said creditors released the debts due to them. The trustees appointed one of their number (G. B. W.), to act, who was not a creditor, but agent of one (W. & Co.), and as such agent he signed the deed and also the release. He shortly