

## DIVISION COURTS.

## OFFICERS AND SUITORS.

## CLERKS.

We have received the subjoined communication, which speaks for itself. We commend the matter of it to the candid opinion of the public, and the example of Mr. Eyre we trust will be followed by other Clerks. All who are competent to express an opinion or offer a suggestion on the subject should do so without delay.

It is from the collected opinions and suggestions of practical men that wise, safe, and permanent reforms may be best devised. Mr. Eyre's scheme is well worthy of grave consideration, should it become necessary to tax suitors, but we think it would not be asking too much if we in Upper Canada called for the necessary disbursements in procuring safes to be paid for out of the general revenue of the Province. We build our own County Gaols and Court Houses, and that is more than the people of Lower Canada do.

*To the Editors of the U. C. Law Journal.*

GENTLEMEN,—The necessity of providing fire proof safes for the prevention of Court books and papers in the offices of D. C. Clerks from being destroyed by fire has for some time engaged my attention, in consequence of the numerous fires which have occurred in this and neighbouring towns, especially the fire which occurred at Peterborough some time since, when Mr. Dennistoun's valuable books and papers were burnt, as were also the papers of the County Court Clerk and Custom House.

The following scheme suggested itself to my mind a long time since, and I submitted it to more than one County Judge, who expressed their approbation of it, and I have been about to submit it to your readers several times, but press of business, sickness, and the expectation that some other Clerks would take the matter up, have prevented me. It appears to me that the several plaintiffs are more interested in the safe keeping of the records of the proceedings in a suit than are the defendants. The defendant when sued may not be possessed of any property whereon to levy the amount recovered against him, yet in after years he may become possessed of property out of which the Bailiff may be enabled to make the amount of debt and cost upon an execution, but before issuing which it would be necessary to refer to the proceedings in the cause entered in the Procedure Book. The scheme I propose is as follows:—That a fire proof safe of sufficient capacity should be furnished to every D. C. office in the Province, to be paid for in the first instance by the County Municipality, the cost to be re-paid, with interest, from the following source:—On all suits entered the following fees should be paid to the Clerk by the Plaintiffs on entering the same, viz., where the amount sought to be recovered does not exceed £2, three-pence; £5, six-pence; £10, nine-pence; £15, one shilling; and exceeding £15, one shilling and three-pence. The several Clerks to account for these fees received by them, and pay them over to

the County Treasurer quarterly, to be by him credited to the Municipality from time to time, until the whole amount so previously advanced shall have been re-paid with interest, when the fees should cease to be collected in, the County having paid for their safes. This would be done in most Counties in from two to four years.

I give the preference to safes over fire proof vaults from the fact that the Divisions are often altered, even in old settled Counties, where the place at which the office is held has to be also changed. Again, the offices are generally kept in the private residences of the Clerks, and upon change of Clerks by death, removal, or resignation, the safe, with the books and papers, could be transferred to the new Clerk, whilst a vault, being built on private property, could not be transferred. Other arguments might be adduced to prove that preference should be given to safes. Safes of sufficient size (regard to be had to the business done or likely to be done for some years to come) can be purchased at from £40 to £50 each, at the Messrs. J. & J. Taylors', Toronto, from whom I bought one for myself last January at £25, capable of holding all the books in my office necessary to be preserved, and the papers of the current Court, with two drawers for cash or papers.

I am, gentlemen, yours,

THOMAS EYRE.

## ANSWERS TO QUERIES.

[Questions in relation to the law and practice of Division Courts have, for the sake of convenience in reference and otherwise, been assigned a place in this department of the Journal. These questions are usually too long, and in many instances require answers too lengthy for insertion in the place usually assigned to such matters.]

Correspondents will always find their communications acknowledged in the next issue after receipt whether answered in that number or not. To ensure an answer in the following month such queries should be in the hands of the editors two weeks at least before the day of publication.]

"E. T."—A judgment was obtained in the D. C., of which I am now Clerk, in the year 1848. Execution was issued thereon within one month after judgment obtained, and in due course returned endorsed "No Goods." The plaintiff recently learning that the defendant has since acquired means wherewith to pay the debt and costs applied to me as Clerk of the Court in which the judgment was obtained to issue an alias execution. This I have refused to do upon the grounds that the judgment was obtained more than six years since, and D. Courts not being Courts of Record the issuing of the execution is barred by the statute of limitations.

The plaintiff on the other hand contends that an execution having been issued in the suit "within one year from the time of obtaining such judgment," as provided by the 67th Rule, I am bound and ought to issue an alias execution. Who is correct, the plaintiff or myself?

The point is by no means free of doubt, and the safer course would be in all cases like that put to ob-