POPULAR PAPERS ON ENGLISH LAW.

BY A SOLICITOR.

II.—"PUT HIM IN THE COUNTY COURT."

THE County Courts, as now constituted and amended by successive statutes, have jurisdiction in various matters, including what is technically known as "equitable" jurisdiction, previously enjoyed by the Court of Chancery only. But it is for *the recovery of small debts under* £50 that their aid is chiefly sought,* and in this short paper I propose to treat only of that part of its business. Let us take an imaginary case and, for the sake of learning the process, carry it into and through the court.

You are a tradesman; you have supplied goods on credit to a resident in your town; the account has been standing for some time, and he does not pay it; you know he has the means of doing so, and rather than "stand out" of the money any longer and lose interest on it, you determine to sue him for it—to "put him in the County Court."

Now the first thing is to see whether the County Court can settle your claim for you: that is, has it jurisdiction? If your claim is not more than £50 (whether on a balance of account or not) it can do so; and even in claims involving more than £50, the court may adjudicate the case if both parties consent. We will take your claim to be £25, and we see at once that the proper place for redress is one of the County Courts. But which court? The plaint (all actions are commenced by plaint) must be entered at the court in the district of which the defendant, or one of the defendants, *dwells or carries on business.* Supposing, however, your troublesome debtor has within the last few days left the neighbourhood and gone to another part of the country, into another County Court district. Even then, by leave of the judge or the registrar of the court (the "leave" is obtained as a mere matter of form, without difficulty), you may enter your plaint in the court of your own town, because it is that of the district in which the defendant shall have dwelt or carried on his business at "any time within six calendar months next before" the entry of the plaint, or, at least, it will come under the definition of the place where "the cause of action wholly or in part arose." Writing, as I probably am, as much for the benefit of Londoners as of country folk, an exception ought to be here mentioned, that where the plaintiff dwells or carries on business within one of the metropolitan districts, or in the City of London, and the defendant dwells or carries on business within any one of those districts, or within the City of London, the summons may issue either in the plaintiff's or defendant's district.

* In 1876, as appears from a Parliamentary return, there were 929,150 plaints entered for sums not exceeding £20; 17,378 above £20 and not exceeding £50; and by agreement above £50, 168 only.

Before proceeding further with our action, it will be well to make clear *who* may sue and be sued.

I am taking it for granted that you, my imaginary plaintiff, are of full age. But supposing you had been an "infant" (that is, under twenty-one years of age), could you have commenced this action for the price of goods sold in your own name? No, you could not. An infant can sue in the same manner as if of full age for any sum of money not exceeding £20 which may be due to him for wages or piece-work, or for work as a servant; but in all other cases (such as our supposititious one) he has to get his "next friend" to attend with him at the registrar's office, and the plaint will not be entered until the next friend has given an undertaking in writing to be responsible for the costs, and the latter becomes virtually the plaintiff, although the cause proceeds in "the name of the infant by such next friend." An infant can only appear in the character of defendant by a guardian, the judge being empowered to appoint any person in court, or even the registrar, to be such guardian, when necessary. It is useful, too, to remember that any executor or administrator may sue and be sued in the same way as if he were a party in his own right.

Now, then, to enter the plaint, assuming that you have made up your mind that the court is the proper one, and will have jurisdiction in your case. You must first go to the office of the County Court, and upon application to the registrar, or his clerk, he will enter the particulars of the plaint in a book, stating the names (the surname of the defendant, with or without initials, will be sufficient, if the plaintiff does not know the Christian name) and last known places of abode of the parties, and the substance of the action. In every case where the sum sought to be recovered exceeds forty shillings, it is necessary to furnish, at the registrar's office, "*particulars of demand*," which are treated as part of the summons. As to these particulars, the general rule seems to be that a defendant is entitled to such particulars of the plaintiff's demand as will give him that information which a reasonable man would require respecting the matters against which he has to defend himself. In your own matter it will be necessary to give particulars of all the goods which you have supplied to the defendant and which he has not paid for, although you may have furnished them to him many times before; supposing, however, he has paid you some money "on account of" his debt, you are not obliged to show this in your particulars, but you *may* do so in order to save the expense of proof by the defendant.

At the time of entering the plaint the registrar will give you a *plaint note*, impressed with the seal of the court to show its official birth. Now, this plaint note is an important document, and should be taken care of; it had better be placed in the pocket-book, and

always carried about with you. For on the face of it are printed these words:—"*Bring this note when you come to the court or to the office for any purpose connected with this cause.*" It is surprising how many plaintiffs overlook this most simple direction, in spite of its being printed generally in bold, heavy type. The object of having it always produced on these occasions is, of course, to furnish the officials with the distinctive number of the plaint (which appears on every such note) for reference, and also with evidence of the plaintiff's, or his solicitor's, authority. Again, the following notification is made on the same paper:—"Money will be paid out of court *only* on production of this note, and upon your or your agent's *personal attendance.*"

The plaint note, after stating the court and names of the parties, and showing the fees paid by you on entering the plaint—which, of course, you will seek to add to your claim and recover from the defendant—informs you that "the above cause was entered this day, and will be tried" at such a place (*i.e.*, the court) on such a day, and at such an hour. This is for your own information. The defendant gets supplied with his by a more unpleasant medium—the *summons*.

The form of this document needs no description; it naturally gives all the information which you supplied at the outset to the registrar, and it summons the defendant to appear at the sitting of the County Court appointed upon the plaint note which you have. The date of the summons must be the day on which you enter the plaint, and it is treated as the commencement of the suit. If the summons has been issued "by leave of the court," or of the registrar, that fact is stated on the face of it.

The next step is to "serve" the summons. With this you have nothing to do; the registrar hands the summons over to the high bailiff of his district forthwith, and it is the duty of the bailiff to see that it is served upon the defendant. The service must be effected at least ten clear days before the "return of the summons"—that is, before the day on which the defendant is warned to appear. No summons or other process may be served on Sunday, Christmas Day, Good Friday, the day following Good Friday, or any day appointed for a public fast, humiliation, or thanksgiving, or on days on which the County Court offices are closed; but such days are counted in the computation of the time required in respect of such service. Except in special cases (where the defendant is on board ship, or down in a mine, or in certain other places difficult of access), the summons must be served either upon the defendant personally, or by delivering it to some person, apparently sixteen years old, at the house, or place of dwelling, or place of business of the defendant. No place of business, however, is deemed the place of business of the defendant unless he is the master, or one of the masters, of it. Whenever the defendant keeps his house, or place of dwelling or business, closed in order to prevent the bailiff from serving him, it is sufficient to affix the summons on the door. And if the defendant forgets himself so far as to use threats of violence towards the bailiff, that official is allowed to leave the summons "as near to the defendant as practicable."

Supposing, as before suggested, that your debtor is now residing within another district, the registrar sends the summons by post to the bailiff of the "foreign court," and it is served by the latter.

By important Acts of Parliament, called the Statutes of Limitation, certain claims are barred after the lapse of certain periods. In the case of an ordinary debt, for instance, if the creditor obtains no admission of the debtor's liability (by part payment, by written promise, or the like) within six years after the money first became due, the debt ceases altogether. And if any acknowledgment of the liability is made, "the statute begins to run," as it is termed, from the date of acknowledgment. To prevent any such limitation of the plaintiff's right of action, by reason of the defendant keeping out of the way to avoid being served with the summons, you, the plaintiff, are allowed to issue successive summonses, which bear the same date and number as the first, and are a continuance of it. Each is in force for twelve calendar months from the time of issue; and, if you take care to issue it before the expiration of the previous summons, it will be sufficient to prevent the operation of the Statutes of Limitation, by extending the period of six years until you succeed in getting the defendant served.

Let us assume that he has been duly served. What is he going to do? Will the summons frighten him, and will he pay the money at once? If so, he must pay it into court, together with the costs incurred by the plaintiff, five clear days before the return-day, so as to allow the registrar to give you due notice of such payment, and prevent your incurring further expense in preparing for trial. The defendant, nevertheless, may make such payment at any time before the return-day, subject to an order to be made by the judge upon the defendant to pay any costs occasioned by the delay in payment. If you accept the amount so paid into court, and give immediate notice to the registrar and the defendant, stating your acceptance, the action will abate. But in default of such notices the cause will proceed to a hearing.

Endorsed upon the summons the defendant will find instructions what to do in other cases. If he *confesses* your claim, he is told to sign and deliver his confession to the registrar five clear days before the day of hearing; but he may deliver his confession at any time before the cause is called on, subject to the payment of any further costs which his delay may have caused you to incur. Judgment may also be taken by *agreement* if you and your debtor can agree as to the amount due and the mode of payment; in which event you have both to sign a memorandum of agreement before the registrar or a solicitor. In either of these cases the defendant will have to pay only half of the fee which would otherwise be payable on the hearing in court. If the defendant admits a *part* only of your claim, he may pay such part into court, with costs proportionate to its amount;

and by so doing he will avoid having to pay further costs, unless you succeed at the hearing in proving a claim against him exceeding the sum which he has so paid in. Whenever the defendant intends to rely upon what is called a *special defence*—such as a set-off, infancy, coverture (*i.e.*, marriage—the plea of a married woman), a Statute of Limitations, or a discharge under a Bankrupt or Insolvent Act—he is obliged to give notice of it to the plaintiff, so as to allow the latter to combat the plea if he thinks fit. As we have taken an ideal case, and intend to carry it into court, it will be necessary to select for your debtor a ground of defence, and let him make the best fight he can. One probable defence in this, an action for £25, which has been long owing to you "for goods sold and delivered," would be the Statutes of Limitation. It has been already explained that, in the case of a debt of this nature, *six years* is the period allowed by the statutes to the creditor within which he may prosecute his claim, and after that time he is shut out from all remedy whatsoever, unless he has succeeded in obtaining an acknowledgment of the debtor's liability, so as to make the statute "begin to run" afresh. Well, we will suppose that your debtor intends to rely upon the limitation defence. He, in effect, tells you—"It may or may not be true that I did owe you the money once; but you have allowed six years to pass without enforcing your claim, and I intend to shelter myself behind the protection of the Statutes of Limitation." This being a "special defence," he has to give to the registrar a notice of it in writing five clear days before the day appointed for the hearing. *Clear* days, it should be explained, are reckoned by excluding the first and last; so that if the hearing is fixed, say, for January 20th, the notice must be in the registrar's hands not later than the 14th. Of course the notice of special defence is immediately communicated to you, the plaintiff, and you set about preparing your "case."

It is not likely that you will require any witnesses, or that they will help you in this matter. What you have to do is to try and find some such admission of the defendant's debt, made within the last six years, as will "take the case out of the statute." Let us suppose that in hunting among your papers you light upon a letter written to you by the defendant two years after the debt was first incurred—that is, four years ago. In this, however, he merely promised to "make a payment on account within a month," and, although this is sufficient to keep alive your claim to something, it is still open to your debtor to dispute the amount when you get into court. No, you had better look further; and if you put your hand upon a letter sending £10 in part payment, and promising "to pay the balance, £25, as soon as possible," you have got something to work with. Assuming that no other payment has been made to you, you may walk into court with confidence. The day of the hearing arrives: you go to the court-house in your own proper person, if you choose; it is not necessary that you employ an advocate. The parties to any action may conduct their own proceedings in court, and they, and their wives, and all other persons may (with one exception) be examined either for the plaintiff or defendant. The defendant must appear in court to answer the plaint. Before the case is called on, the hearing-fee has to be paid by you; this is calculated at the rate of two shillings in the pound on the amount of the claim; so in your case it will be fifty shillings. Of course, if you obtain a judgment, this will be added to your other payments out of pocket (you will have paid a fee of twenty-five shillings, or one shilling in the pound, on entering the plaint), and be paid by the defendant. It is scarcely necessary to say that if the facts are as we have assumed, and you take your letter from the defendant in your hand as the answer to his plea of the Statute of Limitations, the judge will give judgment in your favour. Let us take this as having happened.

The judgment will be for the full amount of your claim, the £25 debt, and the costs which you have incurred, amounting probably altogether to £30. This being a "judgment for a sum exceeding £20," the judge orders the defendant to pay immediately, or within fourteen clear days from the judgment. You may, however, consent that the money be paid by instalments, and then the judge fixes the periods at which the instalments shall fall due. In all cases, whether of payment forthwith or by instalments, the sums ordered to be paid must be paid *into court*, and the registrar gives you notice of every such payment, when you attend at the court to receive it. Default of payment renders the defendant liable to imprisonment for contempt of court, a power which is exercised by the judge with merciful discretion.

In case you refuse your consent to instalments, and the judge orders payment within fourteen days, the defendant will be "in default" if the order is not obeyed. The amount is then recoverable by an execution against the goods of the defendant. You apply to the registrar, and he will issue under the seal of the court a writ of *fieri facias* (so called from the opening words of the writ, anciently written in Latin—"You shall cause to be realised," &c.), abbreviated into *fi. fa.*, as a warrant of execution to the high bailiff. In obedience to this precept the bailiff will put in a distress, and sell enough of your debtor's goods and chattels to pay the judgment debt and the further expenses of the execution.

Without troubling about further remedies, I trust you may now be congratulated upon having recovered your long-standing debt, together with every expense you have been put to in suing for it. You will agree with me that it is a great boon to have such an easy means of compelling payment of our just demands now placed at our disposal; and if you have followed me through the foregoing sketch of a very simple case, you will be able to realise the immense benefit conferred upon the community by the County Court Acts, and how it comes that so great a number (nearly *one million*) of separate plaints have been entered in a single year.