

Northwick v. Walton, 15 C. B. 501; *In re Walsh*, 1 E. & B. 383; *Buckley v. Hann*, 5 Ex. 43; *Herniman v. Smith*, 10 Ex. 659, were cited in support of the application.

DRAPER, C. J., delivered the judgment of the court.

The 71st section of the Division Court Act enacts that "any suit may be entered and tried in the court holden for the division in which the cause of action arose, or in which the defendant, or any one of several defendants, resides or carries on business at the time the action is brought."

The words "cause of action" have, in the English County Court Act, been repeatedly determined in England to mean the whole cause of action; in other words, whatever the plaintiff must prove to entitle him to recover. See *Northwick v. Walton* (15 C. B. 501), *Herniman v. Smith* (10 Ex. 659), and the cases therein referred to. Our statute gives a plaintiff two alternatives. The one, to enter his suit in the court for the division in which the cause of action arose, the other in the court for the division in which the defendant or any one of several defendants resides or carries on business at the time the action is brought.

Now, what is the cause of action in this case? Not the contract only, but the contract and the breach, for which the plaintiff claims damages. The first was made at Brantford, but the fish were to be and were delivered to the plaintiff at the railway station at Goderich. The breach of contract alleged is, that the fish there delivered were unsound, &c., and if true, this breach occurred at the place of delivery stipulated for by the contract. The cause of action, therefore, arose partly at Brantford and partly at Goderich, and the plaintiff must bring his action according to the second alternative. The rule *nisi* must issue.

Rule *nisi*.

CORRESPONDENCE.

TO THE EDITORS OF THE LAW JOURNAL.

GENTLEMEN,—Your opinion on the following points respecting the practice of the Division Courts, will be of service, as there are different views taken by different persons.

1st. Has a bailiff a right to purchase at the auction sale of the clerk of his court?

The 157th section of the Division Court Act is the only clause I know of, touching upon the prohibition of officers purchasing at bailiff's sales; and I do not think there is anything in that clause to prohibit a bailiff purchasing at a sale made by the clerk; but still the clause seems to prohibit any bailiff or clerk from purchasing at the sale (under execution) of any other bailiff.

2nd. Can a plaintiff have his judgment transferred, by "transcript and certificate," from one division to another in the same county?

The power given to transfer judgments from one court to another is given in the 139th section of the Act. I think the clause gives the power to a plaintiff to have a judgment transferred to any other division. If not, suitors would often lose their claims. Say A. lives in division 1, where he has a judgment against B., who lives in division 6, of the same county, but twenty or twenty-five miles distant. A. has execution issued, and given to the bailiff of division 1. The bailiff has to travel twenty-five miles, and B. tells him he has "no goods." The bailiff, not finding any goods, has his long trip (which he is compelled to make) and gets no fees; and suppose the bailiff finds goods, the costs would be much more than if sent by transcript from division 1 to division 6. Furthermore, the bailiff of No. 6 division may know of goods, and could collect from B., when the bailiff of division 1

would know nothing of B.'s affairs. The 73rd section provides plainly for the sending of summonses for service to any division, and the same rule ought to apply to the collecting of the claim. What is your opinion?

CLERK 6TH DIVISION COURT, CO. NORFOLK.

Dec. 28, 1863.

[1. The 157th section does not in terms touch the case put by our correspondent. The prohibition relates to sales under executions, which are never directed to clerks. The sales under section 213 are under process of the court, and it would open the door to improper conduct if officers were allowed to purchase at such sales. We have no doubt the judge would discountenance the practice as one likely to give rise to suspicion of collusion, if not encourage unfair dealing.

2. It is extremely doubtful whether a judgment can be transferred, under section 139, to another division in the same county. Our impression is that it cannot. Our correspondent has shown in a clear and pointed manner that the power ought to be given, by exhibiting the inconvenience and evils that might arise from the want of it.—*Eds. L. J.*]

Ottawa, Dec. 28, 1863.

TO THE EDITORS OF THE LAW JOURNAL.

GENTLEMEN,—Twenty-two years have elapsed since our local judicial establishments, as now constituted, came into operation in this country, and we have had some opportunity of judging how far they have answered the end designed by those who introduced the present system.

No subject is more worthy the consideration of an enlightened statesman than the judicial establishments of a progressive and educated people, and therefore many of our most patriotic and learned men devote much of their time and talents towards rendering the administration of justice as perfect as possible. As you have always manifested a deep interest in our County and Division Courts, I take the liberty of submitting a few observations, the result of experience from the first enactment relating to Division Courts.

The chief duty of a Judge is to do right; the next is, as far as possible, to give satisfaction to suitors. I trust that in both cases the County Court Judges have been in some degree successful. To expect that in every case both interested parties should be satisfied, would be unseasonable. The judge, no doubt, often feels disappointed, and perhaps unhappy, when he discovers signs of disapproval of his decision manifested by men who ought to know better; but with the upright and pains-taking judge, the *mens conscia recti* is the staff and stay of his life.

We have in Upper Canada no less than thirty-three distinct, separate and independent judicial establishments, each presided over, with one or two exceptions, by a single judge, who, the law says, must be a barrister of five years standing. Each man measures out justice—particularly in the Division Courts—according to his own idea of equity and good conscience, upon his own responsibility, and from his decision there is no appeal. What may be equity and good conscience