

DEATH OF CHIEF JUSTICE MOSS—JURISDICTION OF DIVISION COURTS

success, and trust that the field may prove large enough for both of us.

It is provided by section 5 of the D. C. Act, 1880, that in all suits in which "the sum sought to be recovered" exceeds one hundred dollars, the judge shall (if no agreement not to appeal) take down the evidence in writing. It has recently been held by His Honor Judge Sinclair, in *Bank of Montreal v. Statten*, that this duty is not required in interpleader issues, as the right of property in goods, and not the recovery of a money demand, is the question to be tried. We understand, however, that it is the practice of many experienced judges to take down the evidence in any important issues of the kind spoken of, so as thus to be on the safe side; and it is evident that such a course might, under certain circumstances, be conducive to the ends of justice.

THE JURISDICTION OF DIVISION COURTS.

The note of a decision of Judge Ardagh, referred to in our last number (*ante* p. 3) presents a point of much interest in connection with the D. C. Act of 1880. For, although we consider there is no ground for the claim of increased jurisdiction, yet, men high in the profession, and whose opinion is entitled to weight, take the contrary view. For our own part we entirely agree with the learned judge referred to.

The point is this: Under section 14 of the Act above mentioned, it is provided that in all cases where the jurisdiction is not contested or disputed by defendant, primary debtor, or garnishee, by means of a notice left with the clerk, the jurisdiction shall be considered as determined and established.

It is now attempted to be set up that a claim for an amount in excess of the sums mentioned in sections 54, &c., of the D. C. Act, may be recovered in this Court if no objection is made as required by section 14 of the late Act.

Although the subject has been already treated elsewhere, a few words here may help those not already convinced to arrive at what we submit is a proper conclusion.

It will be observed that section 10 of the Act in question provides that, "any suit *within the jurisdiction of the Division Court* may be entered, tried, and fully disposed of by the *consent* of all parties, in any Division Court."

After drafting this section no doubt it occurred to the framer of the Act to provide for two contingencies—the first, where the jurisdiction was objected to, and secondly, where it was not objected to. Section 11, evidently, is intended to cover the first case; for, though nothing is said about any dispute as to the jurisdiction, still, in view of the section presently to follow (treating of such dispute), it can only refer to a case where the proper objection has been taken.

Section 14, then, provides for the second contingency, and it is no doubt inserted to give legal effect to the saying that "silence gives consent." It is very improbable that a plaintiff could ever obtain the *consent* of a person against whom he was about to take legal proceedings to *any* step he (plaintiff) was about to take. So that it would be the duty of the judge before whom the case might be tried, upon its being shown to his satisfaction that that particular Court had no jurisdiction to order the transfer of the case to its proper Court, provided *no consent were filed*.

To do away with the necessity for this, and still with reference to section 10, section 14 was added; and we must therefore treat this latter section as if the words used in section 10, "any suit *within the jurisdiction of the Division Court*," had been imported into it. It must be clear, then, that the words "disputing the jurisdiction," in section 14, must refer to jurisdiction as *between the several Division Courts* in the province, and not as between a Division Court and a Court of higher jurisdiction—in short, a jurisdiction as to