

DIVISION COURTS.

OFFICERS AND SUITORS.

CLERKS—Answers to queries by.

Judgment Summons—Defendant resident in another County.

We have been kindly favored with the following paper on the important questions submitted in our last month's issue. The writer has handled the subject with much ability, and as we entirely agree in the conclusions arrived at, and finding our own ideas more briefly and better put than in an article we had ourselves prepared, we prefer inserting the following in lieu of our own:—

I consider the Division Court to be a tribunal of a purely local and limited jurisdiction, and that its judgments, orders or decrees, can only be enforced in the way pointed out by the Act of 1850, or the amendment Acts of 1853 or 1855; the 91st sec. of the Act of 1850, authorizing the summoning and examination of debtors against whom orders or judgments have been obtained as to their means of satisfying the same, &c., does not confine the proceeding to judgments of the Division Court in which the judgment or order has been given or made, but extends it to "any unsatisfied judgment or order in ANY Division Court," and authorizes the summons to issue from any Division Court within the limits of which the defendant, in the suit, shall then dwell or carry on his business. Then by the Act of 1853, sec. 2,—that and the former Acts are to be read and construed as one Act, &c.

The 30th sec. provides, "that the summons under the 91st sec. of the Act of 1850 may be issued from the Division Court wherein the judgment was obtained, as well as from the Division Court within the limits of which the defendant shall dwell or carry on his business; and thereupon such further proceedings may be had thereon as if such summons had issued in the manner pointed out by such section."

Now, what are those "further proceedings"? and how and where are they to be taken? Was it contemplated that the Judge who should hear and determine such summons had any jurisdiction over a person out of his County? I think that previously to the passing of the Act of 1853, there existed no power in the Division Courts of summoning a party for any purpose out of another County into the County of which the Court formed a Division Court; and that a *Judgment Summons* could only be resorted to as a remedy, after the defendant had left the County in which judgment was obtained, by summoning him to the Court of the Division in which he might dwell or carry on his business; that the "further proceedings" authorized the Judge, who might hear the summons, (if he should think fit) to order that the defendant should be committed to the common gaol of the County in which the party summoned should be resident, (see sec. 92 of D.C.A. 1850);—and that under

the 95th sec. of D.C.A., 1850, when an order of commitment is made, the Clerk was to issue under the seal of the Court a Warrant, directed to the Bailiff of any Division Court within the County; who, by that Instrument was empowered to take the body of the person, (within the County of course) and the gaoler of the County was bound to receive and keep him, &c., until discharged, &c. Then the 97th clause, I think, relates to and provides for a case where, after summons issued and served, and perhaps order for commitment made, the defendant leaves the County, (although the specific words are "shall be out of the County;"—it cannot surely be inferred that those words mean at the time of summons being issued and served) then that the Bailiff of the Court might either execute the warrant himself in any County or place where such party might be, or send the same to the Clerk of any other Division Court within the jurisdiction of which such party shall then be, &c.; and when such order of commitment should have been made, and the person apprehended, he was forthwith to be conveyed, in custody of the Bailiff or officer apprehending him, to the gaol of the County in which he was apprehended, and kept therein for the time mentioned in the warrant, &c., unless, &c. So that the conclusions I have come to respecting the Acts of 1850 and 1853, are that a Judgment Summons could not issue from one County to another after the debtor had left the County in which judgment was rendered—that he might be summoned from any part of the same County to the Court in which it was so rendered; and that if he removed to another County after being summoned, and the Bailiff authorized to commit him, that Bailiff might follow him for that purpose, or authorize the Bailiff of that County to act upon the warrant; in either of which cases the defendant should be committed to the gaol of the County in which he was apprehended.

Now, the question arises, how is all this affected by the statute of 1855? I think not in anywise. I think that that statute merely extends the jurisdiction of the Division Courts so as to enable them to try causes and pronounce judgments therein within their former jurisdiction "in amount," when the defendant does not reside in the Division or County where the cause of action arose and that the service of summons refers exclusively, in so far as that Act is concerned, to the original commencement of such suits, and not to any subsequent proceedings thereupon; and that under the 3rd sec. of the last named statute the plaintiff, having an unsatisfied judgment, should apply for a transcript of the judgment, and take or send it to the Clerk of any other Division Court, whose duty it is upon its receipt to enter it in a Book, &c.; whereupon "all other proceedings shall and may be had and taken for the enforcing and collecting such Judgment in such Division Court by the officers thereof, that can be had or taken under the U. C. D. C. Acts, upon Judgment recovered in any Division Court for the like purpose."

D. J. H.

N.B.—The misprint of 18 Vic. cap. 130 instead of cap. 125, in our last number, the reader will please correct.

See 101-121.
160.