

DIVISION COURTS.

OFFICERS AND SUITORS.

CLERKS.—The Clerks of Division Courts, conveniently distributed as it were over Upper Canada, and being generally men of education, integrity and ability, conversant too, to some extent, with legal proceedings, present a machinery complete in all its ramifications for carrying out the provisions of any law needing local management.

The manifest tendency of legislation, of late years, has been towards decentralisation, until justice has now been brought almost literally to every man's door. And as the work of decentralisation proceeds, the officers of Division Courts, it is apparent, will be called upon to bear a portion of the burthen of it, at all events for a time.

The great barrier to the extension of local administration has ever been the difficulty in finding the requisite number of agents to carry it into effect—agents both capable and trustworthy. The proper selection of a requisite number of subordinate agents all over the country can never be satisfactorily made by the central power. It is otherwise where the power of selection is delegated to a responsible functionary resident in each county, who is placed in an independent position and beyond the reach of irregular influences. Now, the body of Division Court officers being selected by the local Judge, acting in most cases upon actual personal knowledge, are men of superior caste, and such men are more solicitous to receive an appointment of the kind when proceeding from such a source and made upon principles having reference solely to the fitness of the officer. A tenure also under such circumstances is more certain and satisfactory.

In several Counties we are acquainted with Clerks taken exclusively from amongst the *most* intelligent class; indeed, in the Courts we are most familiar with, *Simcoe*, with two exceptions, the Clerks are Magistrates or Reeves, in some cases both, and include the Warden of the County.

The natural result of all this is, that throughout Upper Canada, with some few exceptions, the public are well served; and they and their servants in the Legislature, in any new local work to be performed, will first think of Clerks of Division Courts as the very best persons to do it.

This was the case last Session, and a valuable provision in the Law of Debtor and Creditor, which operated injuriously in some particulars, has been greatly modified and improved by making Division Court Clerks in certain cases sub-officers as it were of the Superior Courts.

The act of last session, chap. 58, sec. 4, contains the provision to which we refer.

We propose to notice it briefly, with a view to informing Clerks to some extent upon this new duty cast upon them.

According to our custom, these remarks shall be as much as possible divested of technicality.

A word on the Law of Attachment of Debts due to Judgment Debtors.

To remedy a defect in the law, a provision was made in 1856, under which a party obtaining judgment against another could seize the *debts* due to the latter, and compel payment thereof to himself, in order to obtain the fruits of his judgment. This most advantageous provision enabled judgment creditors to recover their demands in cases where there were no goods or other tangible property to seize; but the judgment debtor had, nevertheless, debts due to him from third parties, which were made available to the original creditor. So soon as it was discovered, by examination of the debtor or otherwise, that certain persons were indebted to him, they were called upon, by order of a Judge, to appear before him and either admit or deny the debt. If they admitted it, an order of the Superior Courts was made upon them to pay it. If they denied it, a proceeding was had still in the Superior Courts to determine the matter.

This, so far as debts of a large amount were concerned, operated well enough, but where the debts were of small amount—five, ten, or twenty pounds—it operated most harshly. The person owing the judgment debtor could only be proceeded against by *him* in the locality and through the Division Courts for recovery of the amount claimed, or the determination of any difficulty respecting it; whereas, under the law spoken of, the *judgment creditor* could call the debtors of *his* judgment debtor before the Judge of the Superior Courts, or a County Judge at the County Town, and take subsequent proceedings in some of the Superior Courts, and thus great and needless expense and loss of time were incurred.

The remedy by the late Act is this: parties have only to appear *before the Division Court Clerk in their own Division*, and admit or deny the debt; if they deny it, *the proceeding to enforce it or determine the justice of the claim is through the Division Courts.*

Duties of Division Court Clerks under the 4th Section of the County Courts' Amendment Act, 1857.

Before proceeding further, it may be necessary for the better understanding of the matter, to give the substance of the enactments.