

DIVISION COURTS.

TO CORRESPONDENTS.

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THE LAW AND PRACTICE OF THE UPPER CANADA DIVISION COURTS.

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Not only the Town, Village, or place is to be appointed, but the particular building in which the courts are to hold their sitting should be designated by the judge. In England court-houses are provided, furnished, and maintained at the public expense, for holding similar courts to our own.*

No such provision has been made for the Division Courts, and the voluntary and gratuitous aid of the Municipalities or residents of a Division, is commonly invoked to secure a place for holding these courts, the Legislature neither by a tax on the suitors, (as is done for the Superior Courts at Osgoode Hall,) nor otherwise having supplied the necessary funds.†

* The English Statute 19 & 20 Vic., cap. 108, sec. 85, provides that "the expenses of building, purchasing or providing any messuages and lands for the purposes of the County Courts, and of repairing, furnishing, cleaning, lighting, and warming the court-houses and offices, and of payment of the salaries of necessary servants for taking charge of such court-houses and offices, and of supplying the courts and offices with law and office books and stationery and postage stamps, and the disbursements of the high bailiffs in conveying to prison persons committed by the Courts, and all other expenses incident to the holding of the said courts, shall be paid by the Commissioners of Her Majesty's Treasury out of any monies to be from time to time provided for such purposes." Cox. C. C., p. 5.

† Mr. Justice Burns, an early friend of the Division Court system, and at one time a County Judge, in proposing some amendments in our system in a letter published by him in 1847, thus refers to the subject. "The clerks in the Division Courts of the Province as the law stands, are compelled to furnish at their own expense, the books necessary for the records of the court; and yet these books are made public property. This has always appeared to me to be very unjust to the clerks. It will be seen that by the English Act such an expenditure can be provided for. There has been another oversight committed in our Act in not allowing the judges to permit the clerks to retain other current expenses of the courts, such as for fuel, lights, and the use of rooms to hold the courts in. It has happened that the judge has been obliged to adjourn the court after going to the place appointed for it, because the person at whose house it had been holden took it into his head to withhold the premises. It has also been the case that the judge has been obliged to pay out of his own pocket for fuel to warm the room; and when he has been unable to finish his cause list before dark, to pay for candles rather than adjourn over till next day. No one could imagine that either the judge or clerk should pay these charges, or should be obliged to furnish a room. It is true that the hospitality of the people in the country is great in respect of these accommodations; but it is not right that the courts should depend upon that, or that it should be expected that individuals should furnish such things gratuitously for the community. There must have been an oversight in the Legislature which I should propose now be remedied by merely adopting the provisions of the English Act." The Act referred to by Judge Burns, was the County Court Act of 1846, and at a later period the following remarks appeared in the *U. C. Law Journal*: "The Division Courts are not private establishments, they are public tribunals for the administration of justice, established by law, regulated by law, and for the benefit of the whole community. * * * In the Superior Courts offices are provided for the officers at the public expense, and all accommodation necessary for due and regular administration of justice. But the Division Courts, to which the main body of

There are many and grave objections to holding a court of justice in a tavern, and the sittings should not be held in such a place if it be possible to procure another for the purpose. The practice of transacting public business of a quasi judicial nature in a tavern has been emphatically condemned by the Legislature in a provision of the Municipal Act, which expressly prohibits the holding a Municipal election in a house of public entertainment where spirituous liquors are sold‡ and the principle of such a prohibition applies with greater force to courts of justice. The reasons that induced the legislative provision should prevail with the judge to keep his courts out of taverns.§

In determining then where the sittings of the court are to be held; it becomes necessary to ascertain what building accommodation can be secured for the decent and orderly conduct of business. If a Town or Township Council Chamber, School-house or other public building in a Division, will be placed at the disposal of the officers of the court on court days, lighted and warmed as occasion requires it should be chosen. The appointment of two places in a Division for holding the court alternately, seems warranted by the very broad language used in section six. "The judge may appoint and from time to time alter the time and places within such Divisions where and at which said courts shall be holden." And although such an arrangement tends to produce errors and confusion in the business, cases may occur where the public convenience can possibly be served

"suitors resort, are left entirely unprovided for. Why this invidious distinction—why this strange anomaly? All courts of justice are equally under the State, and all should be placed on the same footing. The suitors in the small courts pay quite as much in proportion towards the maintenance of the tribunals they resort to as suitors in the superior courts. Let at least their own money be applied for their own benefit, if the necessary expenses we have referred to are not disbursed from the public purse. There is something decidedly wrong in the state of things which throws upon the clerk of a court the expense of renting a building in which a public court is to be held. There is no more reason that he should do so than any suitor in the court. Every dollar disbursed in this way is so much of a contribution from the individual clerk towards supporting the administration of Justice. Is the Country too poor to support the necessary establishments? If it be then let not the court fees be applied to any other purpose than the support of the courts in which they are collected. The Division Court clerks are not over-paid by any means; and yet that 'all things may be done decently and in order' in the courts they are connected with, they must put their hands in their pockets and pay for public property and public accommodation. We look upon it as exceedingly unfair that this forced benevolence should be squeezed out of clerks; and the instances are very numerous. Occasionally town or township hall, or other building belonging to some private association, is allowed to be used for holding Division Courts; but in all such cases it is a mere matter of asseverance and courtesy, and the privilege is at any moment liable to be refused, by which much unseemly trouble and annoyance might be caused to officers and suitors." *U. C. L. J.*, Vol. 5, p. 81.

‡ Municipal Act, sec. 81.

§ "Division Courts are often obliged to be held in taverns; and we know of more than one instance in which tavern keepers have gone to the expense of erecting a building for their accommodation. The inducement for doing this is easy to conjecture, and the effect produced by the contiguity of a bar-room on the order and decorum of the court may be imagined." *U. C. L. J.*, Vol. 5, p. 81. Far better would it be in the interests of order and morality to hold a court in a school house or other like place in the most remote corner of a Division, than in the very centre of it in a tavern.