## *THE DIVISIONAL COURTS—ONTARIO.*

By the Ontario Judicature s. 70 it is provided that "Every Divisional Court of the High Court shall be composed of three judges, unless from illness or other unavoidable cause a third judge cannot be obtained, in which case it may be composed of two members, provided that in case of divided opinion upon any matter argued, the same shall, at the election of either party, be re-argued before a court of three members."

By a strange fatality it has happened that in the majority of the sittings of the Divisional Court which have been held during the present year only two judges have sat. During the year 1898 we believe the Divisional Court sat somewhere about 67 days, and of these sittings we believe it will be found that on about 42 days three judges sat, and on 25 days only two judges sat. During the present year there have, we believe, been about 73 days' sittings, but, on about 40 days only two judges sat. This has been due, no doubt in a large measure, but not entirely, to some of the judges being compelled to absent themselves in order to attend election trials, and as no one can expect judges to be in two places at once, the absence of judges from the Divisional Courts on that account must perforce be excused. But there seems to be a defect in the judicial machinery when some means cannot be found for complying with the obvious intention of the legislature that the normal number of judges in a Divisional Court shall be three, and that two shall be the exception. The result during the past months of this year has been that two has been the normal number, and three the exception. We draw attention to this matter because we believe it is the cause of inflicting grave injustice on suitors. In the first place great delay is occasioned in bringing cases to a hearing, as it is well known that cases have had to stand from court to court, owing to counsel objecting to proceed before two judges. And in the next place, where cases are heard before a two judge court, it involves the suitor in the possible expense of two arguments in case the court differs, or a possibility of having to submit to an adverse decision, whereas, if the court had been fully constituted, he might have been successful. Take for instance the recent cases, of *Denier* v. *Marks* and *Earle* v. *Marks*, where appeals were had from orders refusing security for costs. The actions were brought against the defendant, who was resident abroad, by the plaintiffs, who were