entitled to her pound of human flesh, let her have it, and the execration of the civilised world at the same time, if it be so nominated in the bond. But let it not be said (even by slaveholders) that there are English statesmen of English judges,

> Who palter with them in a double sense:
> And keep the word of promise to the ear,
> But break it to the hope.

DIVISION COURTS.

THE LAW AND PRACTICE OF THE UPPER CANADA DIVISION COURTS.

(*Continued from page 52.*)

CHAPTER II.

Of the Division Courts from their Institution to the Consolidation of the Public General Statutes, A. D., 1841 *to* 1859.

The Provinces of Upper Canada and Lower Canada having been united by an act of the Imperial Parliament, "the Province of Canada" was proclaimed upon and from the 10th of February, 1841. In the month of June in the same year, the Provincial Parliament assembled, and at an early period in the session, Mr. Attorney-General Draper, (now Chief Justice of the Common Pleas) introduced a bill to repeal "the laws in force in Upper Canada for the recovery of small debts, and to make other provision therefor." It was based on the recommendation in the report before spoken of, and with some trifling exceptions became law, the 4th & 5th Vic., cap. 53.

By this statute Courts of Request were abolished, and Division Courts established in their stead. Six divisions were to be laid out in each district by the magistrates in sessions; every division to constitute a court, with resident clerk and bailiff; periodical sittings to be held in each, and jurisdiction as to amount fixed at ten pounds.

So far the reformed system of local courts resembled the original; the added provisions, numerous and comprehensive, were in their details admirably adapted to the business transactions, and to the actual condition of things in the country. A particular examination here of the new provisions would be out of place, for the whole substance of the statute being embodied in the existing law, these provisions must be discussed at length under the several heads to which they relate, we may however, indicate the leading features in the act.

The courts were in each district to be presided over by a resident judge, a barrister of a certain standing, who as sole judge was empowered to decide the cases coming before him in a summary manner, and in the event of illness or absence could depute a barrister to act for him. When the sum claimed exceeded £2 10s., a jury could be called, at the instance of either party, to try the case, and the verdict of a majority was received.

The jurisdiction as to subject matter, and to parties, was enlarged. Clerks were to be paid by salary, the fees on proceedings being funded to meet the expenses of the courts, and if these proved insufficient the difference was to become chargeable on the Consolidated Revenue Fund of the Province. Every district judge was empowered to make rules for regulating the practice in his own courts, and a summary remedy was given against officers guilty of extortion or misconduct.

Thus "the old and valued principle of bringing justice home to every man's door," enunciated in the first page of our legal history was re-affirmed, and courts which with all their defects and abuses half a century's trial confirmed the necessity for, were continued, but placed on a sounder basis, and re-modeled to suit the requirements of the country.* And looking at the act (4 & 5 Vic., chap. 53) in the light of twenty years' experience, on two points only can substantial exception be taken to the enactment, viz, the majority verdict and the independent rule-making power, instead of one set of rules for the whole of Upper Canada† while at least one most valuable principle in the law, payment of clerks by salary, has been abandoned, contrary it is believed, to the interest of suitors and the general good.‡

The statute 4 & 5 Vic., chap. 53, was limited to four years; when this period drew to a close, the new tribunals working satisfactorily, there was no disposition to return to the old order of things, and by the 8th Vic., chap. 37, the Division Court law was made perpetual.

By this last act some changes were also made, the number of courts was limited to not less than three nor more than nine in each district; payment by fees was substituted for salary in the mode of remunerating clerks, and

* A similar system of local courts was established in England in 1846, just *five years after it was introduced in Upper Canada.*

† Both of these provisions were amended by the Legislature. With respect to rules it was probably considered that all the district judges would by common consent agree on one set, but that was not done, and although at a subsequent period the rules for one of the Counties, which had been approved of by all the judges of the superior courts, were at their instance, printed by order of the government, and the concurrence of all the county judges sought therein, all did not concur, and the evil of variations in the practice if mitigated was not quite got rid of till the year 1854, when a uniform practice was applied to the whole of Upper Canada, under the rules framed by a Board of county judges, appointed for the purpose.

‡ The injurious consequences of the fee system, the corruption and vexations attendant upon it, has been a matter of complaint from the earliest times. The payment of clerks of courts by salary, instead of fees, long since recommended by the English common law commissioners, is now universal throughout England. It was felt that fees was a bad mode of remuneration, the system giving a strong interest to the fee-gatherer in litigation—in the number and protraction of suits. And moreover that the general funds of the country ought to bear a large share of the expenses in the establishment of courts; and it seems obvious enough, that as the machinery of justice must at all events be kept up, to make such courts self-supporting, is to levy an income on the necessities of the humbler suitors. The *Law Journal* of Dec., 1859, thus refers to the subject, "The fee system as applied to services by clerks of courts, is not without strong objections, and the plan of payment by salary instead of fees is certainly sounder in principle, for the general funds of the country ought to bear all the expenses of the establishment of courts of justice. Then why should a person seeking his rights be charged in his individual capacity when all the requisite legal machinery is in existence, and his claim creates no fresh public expense?"