

## DIVISION COURT JURISDICTION.

tice Robinson in *Doe dem. Anderson v. Todd*, 2 Q. B., are much in point. "That 'misera servitus' which is said to exist where 'jus est vagum' is so justly dreaded in these times that no one can consent to admit that there exists in any tribunal an arbitrary discretion." In trivial matters the principle might be tolerated, but in questions of any importance it is unwise and unjust.

The limit of \$40 is suggested as a reasonable one, and because no judgment for a less amount is a charge on lands. Any judgment over that should be a matter of record, and the issues should appear by documentary evidence. The expense, too, of proceeding to judgment directly in the County Court, under an inferior scale of fees, would not be much, if any, in excess of the indirect method of suit to judgment in the Division Court and removal by transcript to the County Court, as in nearly all contested cases in the Division Court of over \$40, legal advice is taken and counsel is employed, whose charges are paid by the party employing him and are regulated by no tariff. It would be much fairer that the fees of lawyers employed should be subject to taxation with the costs of the cause and should fall upon the unsuccessful party. The fact that the opposite party will probably employ a lawyer, and be put to expense he will have himself to pay, frequently leads to groundless suits and obstructive defences. It seems but right that the unsuccessful party should pay all the costs incurred through his default, and that a suitor for a sum of \$40 should be at liberty to entrust the conducting of his case to one skilled in the law, whose fees should form a part of the costs incident to the litigation. The penalty of costs, too, is the only check on speculative or vindictive suits. A direct suit in the County Court would prevent such difficulties as those in *Burgess v. Tully*, 24 C.P.

The absence from the Division Courts of these badges and insignia, thought important in the other Courts from their effect upon the popular mind, and the conducting of cases by laymen with an excess of zeal, but without knowledge, and often

gentlemanly instincts, or by the litigants themselves, to whom even greater license is allowed, destroy the gravity and solemnity all important to the investigation of truth, and introduce instead a feeling of colloquial contention and disputation, a want of restraint and respect, the presence of a judge is not sufficient to preserve, and a recklessness of statement and assertion incident to a common altercation. It is notorious among those who practise in Division Courts that they have a bad pre-eminence for hard and unreliable swearing. A local paper styles them "sink holes of iniquity." Although the rule of law is relaxed which forbade a counsel being also a witness, the indecency of the thing still continues.

The excessive charges made by clerks and bailiffs, who virtually fix their own remuneration, has been pointed out so forcibly by the Inspector of these Courts, that it is only necessary to add that experience fully corroborates his statement. There is, however, but one effective check, and that is the employment of attorneys to conduct suits, and the taxation of all costs by them before the Clerk of the Court as in County and Superior Courts.

Perhaps the greatest and most general ground of complaint among suitors is the delay in getting money made under process of the Court, and the large proportion of cases sued in which nothing is ever realized. Persons who have much experience in the Courts frequently remark that they might as well forgive the debt as sue for it in the Division Court, and that the costs of those suits in which nothing is made are apt to exhaust the proceeds of suits in which the debt is recovered. As in Pharaoh's dream, the lean kine devour the fat kine. The percentage of unproductive suits is much greater than in any other Court, and is owing in a large measure to the absence of some one to watch the suit who would know the duties of the officers of the Court and hold them responsible for their performance. The same remark applies to the delay of bailiffs in making returns. A bailiff of one of these Courts seized goods and held them under seizure for six months, stating, when ever pressed by the plaintiff, that he could