AMENDMENTS OF THE DIVISION COURTS ACT.

ALL things considered, no act of the Ontario Legislature has been so often tinkered up, amended, re-modeled or reformed as the Division Court Act. The legal profession look every year for some change or other, in fact it seems as if the legislative intent was in a constant state of ebb and flow, flux and reflux, in respect to it and a number of other acts. No one is optimistic enough to expect that the efficiency of the court will be improved by these amendments; change for the sake of change seems to be the governing principle. This should not be. Formerly, laws were deemed too sacred for change, now, they seem to be made for inexperienced members of Parliament to experiment upon, to be cut and carved up at pleasure like so many Dutch cheese. The laws should, of course, be changed to suit changed conditions, but these changes are not to be made haphazard and at random, but only after due care and consideration. A (slight) knowledge of the rudiments of English grammer and composition applied in the forming of many of the original acts, would do away with the necessity for many of the amendments. The amendments are, in a good many cases, nothing but corrections of the bungling and ill-considered legislation of the previous session. The causes are not far to seek, everyone is deemed by the constitution to be fit and proper persons to legislate. Nearly every member of our Legislature thinks that he is specially called to frame and fashion the laws of the land; that his duty to his constituents would not be fulfilled unless he leaves the impress of his genius on the statutes. It requires training or apprenticeship of some kind to become even printer's devil, but no experience is required on the part of those who make and mar our laws. In most departments of life the consciousness of their inexperience and incompetency deters most men from attempting what nature never intended them to do, but not so with our legislators.

This of course does not apply exclusively to the Division Courts Act, nor does it apply to every act. There are a few other acts upon which the Legislature periodically turns it microscopic eye. One of these is the Ditches and Watercourse Act. This act is the peculiar preserve, the special field of operation of a certain class in the Legislature, which poses as the representatives of the farming interests. These apostles of Ceres would no more think of letting a session pass without some amendment or other to this act, than would a judicious nurse think of dispensing with the regulating spring physic, and so with the Assessment and the Municipal Acts.

But to return to the Division Courts Act. The annual amending act of the Division Courts Act is before us. This act, unlike most of those of previous sessions, contains some changes that will be of real value to those interested (or to the trade) in collecting small debts. The first seven sections of the amending act contain unimportant provisions, and are mostly of the nature referred to above, and it would be of no interest whatever to our general readers for us to discuss them.

Section 8 repeals sections 223 to 226, inclusive, of the original act. These sections of the old act provided for the transfer of Division Court judgments, where the amount remaining unsatisfied thereon was $40 or upwards, to the County Court of the county in which the defaulting debtor had lands. This was a somewhat cumbrous, circuitous and expensive method to reaching the lands of a judgment debtor in case the money could not be made out of his goods. Section 8 of the amending act repeals said sections 223 to 226 inclusive and substitutes therefor a simple, direct and speedy way of reaching the debtor's lands. The change is one of procedure rather than an enlargement of rights and remedies. The plaintiff must still have recourse first to the debtor's goods to satisfy his judgment, and it is only after his failure to realize out of the goods that he can sue on execution in the Division Court against the debtor's lands. This execution is directed to the sheriff of the county in which the defaulting debtor has lands, and it is realized upon in the same manner and has the same force and effect as if issued out of the County Court. It is also provided that until the judgment is satisfied the party entitled to the same may pursue the same remedy for the recovery thereof as if the judgment had been obtained in the County Court. It is also provided, in case the money is not made out of the debtor's lands, the person entitled to the judgment may proceed by garnishment or judgment summons or otherwise in the Division Court, subject to certain conditions. Under the repealed clauses the Division Court ceased to have any jurisdiction as soon as the judgment was transferred to County Court: but under this amendment the creditor loses none of the summary remedies in the Division Court, besides having them augmented by all the remedies which the County Court affords for the recovery of judgment debts. Section 8 with its sub-sections is carefully drawn. The intention is clearly expressed and the provisions adequate.

Section 21 of the amending act is a new departure which provides for a reduction in the court fees on all claims which do not exceed $10. The fees are reduced about a half. We insert verbatim the sub sections A of this section as follows:

"To the clerk for all services rendered by him as such clerk, from the time of entering the action or suing out a judgment or interpleader summons up to and including the entering of final judgment, or final order on any such judgment, or interpleader summons in case the action proceeds to judgment or final order, $1.25."

The meaning of the above provision is not very clear. Is it the intention to place the clerk's fees for judgment summons at $1 25, or is the $1.25 to cover the costs of issuing the special summons as well as any judgment or default summons that may be required to be issued in the suit? It is now the practice of the clerks to make judgment summons separate suits and not as they should be, simply proceedings in the original suits. This being the case, we take it that it is the intention of the Legislature that $1.25 be paid for the cost of issuing of each summons and all proceedings thereunder, whether it be a special, an interpleader, or a judgment summons.

"In case the action does not proceed to judgment or final order, the fees heretofore or that may hereafter be payable but not exceeding in the whole the said sum, $1.25.

"For issuing writ of execution, warrant of attachment, or warrant for arrest of delinquent and entering the return thereto, 50c."

A corresponding reduction is made in bailiffs' fees. This amendment is in the right direction, but the reduction of fees, if our interpretation of the clause is correct, will be found in practice to be very inconsiderable, as but a very small percentage