

## DIVISION COURT JURISDICTION.

7. The costs in the Division Court are in proportion to the amounts recovered, larger than in the County Court.

8. The increase of the jurisdiction of the Division Court would practically be merely a transfer of County Court cases to a Court of inferior machinery with many disadvantages, and no appreciable benefit. The increased jurisdiction necessitating more careful investigations would so lengthen the sittings of that Court as to impose increased expense on suitors, and thus assimilate that Court to the present County Court.

There should not be a counsel fee taxed against the losing party, as this would render the Court no longer the "Poor Man's Court;" moreover such a provision would increase litigation. This opinion is expressed in respect of the Court as it now stands.

We are of opinion that the mercantile community are not so satisfied with the Division Courts that they would like to see the jurisdiction increased. In cases of importance the client is compelled to employ a solicitor to urge the execution of the process of the Court, and in that event he would prefer getting the benefit of the machinery and services of the officers of the higher Court."

The following is the answer of the Kingston Bar to the circular of the Attorney-General :

"The members of the Kingston Bar, having met to consider the several points proposed in your circular respecting the Division Courts of this Province, would respectfully submit the following as their strong and unanimous opinion on the several questions submitted.

1. As to the expediency of an increase being made in their jurisdiction.

We most decidedly think that any increase in the jurisdiction of the said Courts would be inexpedient, and would advise, on the contrary, that their jurisdiction be reduced and limited to claims, both in contract and tort, not exceeding the sum of \$40. Should this be done, and claims above \$40 transferred to the County Court, we would suggest that an inferior scale of costs be framed for actions in that Court in which

the amount recovered is below the sum of \$100.

These views are forced upon us by considerations, some of which may be briefly stated.

Justice and truth are much less effectually secured by allowing suits to come to trial without any preliminary system of pleading, such as exists in all other Courts. By such a system of pleading, the real points in issue between the parties are evolved from the controversy; without it, the parties come to trial in the dark, are frequently surprised by unexpected matters of dispute or grounds of defence, or subpoena unnecessary witnesses at additional cost and inconvenience to prove facts never denied.

The power to examine the parties to a suit before trial and to obtain discovery of documents is in the highest degree advantageous, and has been wisely extended to the Courts of Common Law, where it gives the greatest satisfaction. No such power exists in the Division Court, nor could it be successfully introduced while parties conduct their own cases. The inquiry could not be confined within proper and legal limits by persons unacquainted with law, and would become disorderly, ill-tempered, and degrading to the dignity that should characterize the administration of justice.

The law administered by the several judges in the different Division Courts is frequently so uncertain, diverse, and fickle that it is impossible to decide one's rights or liabilities without actual suit, or to advise clients with any confidence on matters within its jurisdiction. The power of the judge to decide according to law, equity or good conscience has been held, in *Siddall v. Gibson et al.*, 17 Q. B., to enable him to dispose of cases within his jurisdiction according to his own ideas of law and good conscience, whether his ideas are right or wrong, and from such decision there is no appeal. This destroys the safeguard of law, and makes the judge an irresponsible arbiter, and a man's rights to depend on the habit of mind, state of temper, caprice or indigestion of the judge who may chance to try the case. The words of Chief Jus-