

With all due deference to the learned judge's decision, I think the position untenable, on the following grounds:—first, the enactment 27 & 28 Vic. cap. 27, sec. 1, authorizes a party to sue another in the Division Court *nearest* to the defendant's residence, irrespective of where the cause of action arose, without any order whatever (as I understand it) on the part of the judge, giving him leave to do so. And, consequently, it appears to me impossible to hold that any leave is necessary under such circumstances. Hence, the conclusion inevitably arrived at is, that under whatever other enactment an application of the kind could be made, it would be improper and unnecessary to apply for leave from a judge to do that which the statute 27 & 28 Vic. cap. 27, expressly authorizes parties to do.

The Act is remedial in its character, intended, as it would appear, to do away with the necessity of applying to the judge for a special order, where the plaintiff desires to sue the defendant in the Division Court *nearest* his residence. But not in its effect repealing the 72nd sec., where convenience and economy, under its provisions, might be gained.

Second, the application, in my opinion, is properly made under the 72nd sec., which seems exactly to provide for cases like the present. The preamble of the clause, announces its intention, which is, to render the procedure in the Division Courts "*more easy and inexpensive to suitors*;" and the clause itself gives the judge power to authorize by special order a suit to be tried in "*any division in his county, adjacent to the division in which the defendant resides*." The 20th General Rule of Practice then prescribes the form of affidavit, which may also be made on oath to the same effect, *vice voce*, at any sittings of the Court, and on which the special order may be obtained. This power of making an order, upon such an affidavit and under such circumstances, is vested in the judge by the Legislature, for the wise and beneficent object of lessening the expense of suits; and wherever the provisions of this section apply, although the judge may withhold his consent; for the statute is *permissive*, not *compulsory*, it would appear to be the duty of the judge to grant it, being satisfied of the desirability of the order.

Third, that the Act of 27 & 28 Vic. cap. 27, is an extension of the provisions of the 72nd sec. of the Division Court Act, and does

not abrogate them, is drawn from the reading of the 3rd sec. of the new Act, the first and second sections of which are to be construed as part, incorporated with and inserted after, the 71st section of the Division Court Act.

If these reasonings be just, I think the following inferences are fairly deducible:—first, that it is not necessary to shew in the affidavit, that the court in which the cause is sought to be tried is the *nearest* to the defendant's residence, if it is plainly shown, that it would *lessen the expense of the parties* to have the causes tried in *that* court. 2nd, that the application is properly made under the 72nd sec. of Division Court Act; and that it would be improper to apply for an order under the 1st sec. 27 and 28 Vic. cap. 27.

By giving your opinion in the above case in your valuable paper, you will much oblige me and perhaps put right some who, like me, may be misled by the same views.

Yours respectfully,

LECTOR LEGUM.

[The 72nd section of the Act enables a judge to consider the convenience of the intended plaintiff as well as the intended defendant. The terms used being obviously designed to include both, viz.:—"place of residence of certain parties," "such parties," "inexpensive to suitors;" and the form given shews the broad view taken by the judges. In the case put we think that an order might well have been made under sec. 72.

The 27 & 28 Vic. cap. 21, does not repeal section 72. It has, however, (to use the words of the writer of "The Law and Practice of the Division Courts," a gentleman of high attainments and large experience) "to a great extent left the provisions of sec. 72 of little practical value, but there are yet cases not covered by that Act in which sec. 72 may be brought into play with a view to convenience and economy in procedure."* In our judgment, the case as put by our correspondent is one of the kind.

In bringing an action under 27 & 28 Vic., no leave of the judge is necessary. The plaintiff enters the suit of right, but he must be prepared, if necessary, to shew at the trial that the tribunal is the one nearest to the defendant's residence.—Eds. L. C. G.]