

INTERPLEADERS IN DIVISION COURTS.

Interpleader issues have been, and seem likely to continue to be, sources of perplexity to practitioners and trouble to suitors; but at the same time, proceedings of this sort are doubtless of great practical benefit to such persons as are unfortunate enough either to be execution creditors, execution debtors, or claimants. This perplexity is perhaps partly owing to a very general false impression as to the precise legal nature of interpleader proceedings. Speaking on this subject a learned judge says, "In effect, the feigned issue (between the claimant and the execution creditor) and judgment thereon is no more than an interlocutory proceeding in another suit, in the nature of an interlocutory judgment, wherein the court are subsequently to act in disposing of the rights of parties." Another judge says, "It is like an interlocutory proceeding in another action. * * It is not strictly a suit in the eye of the law." (See *Salter v. McLeod*, 10 U. C. L. J. 299.) These remarks should be borne in mind in considering the subject.

Our readers will find in another column the report of a case on this subject (*Munsie v. McKinley et al*) of considerable importance to those connected with Division Courts.

The first point there decided is that a judge of a Division Court may, notwithstanding the provision in the statute depriving those Courts of jurisdiction where the right or title to lands comes in question, try an interpleader issue as to goods, even though the enquiry may involve the question of title to land.

The other part of the case, to which we desire at present particularly to draw attention, is with reference to the intervention of a jury in interpleader cases.

A jury had been summoned at the instance of the plaintiff, which was objected to by the defendant, on the ground that there was no provision in the act for juries on the trial of such issues. The judge overruled the objection, and the defendant then brought up the question before the Court of Common Pleas.

Section 119 of the Division Court Act permits either party to have a jury in actions of tort when the amount sought to be recovered exceeds ten dollars, and in all other actions when such amount exceeds twenty dollars. The next section points out the course to be adopted by the parties requiring

a jury. Section 175 says that the judge shall adjudicate upon the claim, and make such order, &c., as to him seems fit. The wording of these sections seems to preclude the idea that a jury can be had in interpleader issues as in ordinary cases, on the application of either party. Such is the opinion we have before expressed, and agreeable to this was the decision in the case before us.

In giving judgment on this point, the learned judge said—"In regard to the question as to whether the judge alone is to adjudicate upon the claim in interpleader, or may summon a jury, or whether either party may require a jury, we think the directions of the statute are plain: 'The County Judge having jurisdiction in such Division Court shall adjudicate upon the claim.'"

It has been considered, however, by several of the most able of our county judges, that they could, under section 132, order a jury to be empannelled, to assist them as it were in coming to a conclusion upon "any fact controverted in the cause" before them; and this course has often been taken, and with much advantage, for there is no class of cases in which the assistance of a jury would occasionally be more welcome to a judge than in interpleader issues.

We must not, however, hastily conclude from this decision that section 132 (which does not appear to have been referred to by counsel or by the Court) is inoperative in cases of this nature, but we desire to draw the attention of our readers to the decision, and we may have occasion to refer to it again.

SUNDAY TRAVELLERS.

The subject of the sale of intoxicating liquors to travellers on Sundays, and who are *bona fide* travellers, has lately come up for discussion both here and in England.

Section 254 of our Municipal Act prohibits the sale or disposal of intoxicating liquors to any person whomsoever, from or after the hour of seven o'clock on Saturday night till eight o'clock on the morning of the following Monday, and during any further time on the said days and any hours on any other days during which by any municipal by-law all places for the sale of intoxicating liquors, or the bar-room thereof, ought to be kept closed, *save and except to travellers lodging at, or ordinary boarders lodging at, such places; except for*