## DIVISION COURTS.

TO CORRESPONDENTS.

*All Communications on the subject of Division Courts, or having any relation to Division Courts, are in future to be addressed to "The Editors of the Law Journal, Barrie Post Office"*

*All other Communications are as hitherto to be addressed to "The Editors of the Law Journal, Toronto."*

### RECENT LEGISLATION—A VALUABLE REFORM IN PROCEDURE.

A valuable bill of Mr. McConkey (the member for North Simcoe) was passed through the House at the very close of the session, having been read twice and finally passed the same day—it is now law. A friend has sent us a copy of the Act, the substance of which we subjoin. The preamble declares "That it is desirable to lessen the expense of proceedings in the Division Courts, and to provide, as far as may be, for the convenience of parties having suits in these Courts." Section 1 enacts "That any suit cognizable in a Division Court may be entered, tried and determined in the Court, the place of sittings whereof is the nearest to the residence of the defendant or defendants, and such suit may be entered and tried and determined irrespective of where the cause of action arose, and notwithstanding that the defendant or defendants may at such time reside in a county or division other than the county or division in which such Division Court is situated and such suit entered." Section 2 enacts that the summons in such case may "be served by a bailiff of the court out of which it issues, in the manner provided in the 57th section of the Act, and upon judgment recovered in any such suit" execution against goods and other process "to enforce the payment of the judgment, may be issued to the bailiff of the court, and be executed and enforced by him in the county in which the defendant resides, as well as in the county in which the judgment was recovered." Section 3 incorporates the Act with the Division Court Act, the foregoing provisions to be read as inserted immediately after section 71, and the power to make rules vested in the judge is extended to the provisions of the Act.

This brief and plain enactment is a most decided improvement in the law, and the objects indicated in the preamble—to lessen expense and convenience parties—we believe this new law is eminently calculated to secure. It is sound in principle, and we are only surprised that an alteration so desirable was not effected long since.

It is obvious enough that the court to which litigants and their witnesses may most conveniently go to trial is the court in which a suit in the Division Courts should be commenced. The venue clauses in the statute had this in view in providing that suits might be entered where the defendant resided, or where the cause of the action arose. Section 72 had this object also in view, but it could only be done on a judge's order founded on affidavit previous to action brought, and the proceeding was consequently dilatory and cumbrous. The Act under consideration enables a cause to be instituted (without any previous order) of right in the court most convenient to the defendant, irrespective of county lines. Every one acquainted with the country knows that it would be a physical impossibility to set off Upper Canada into divisions of a uniform size, with the place of holding the court in the centre of each; and so, all over the country, a man may reside in one division while the nearest court to him is in another division in the same or an adjoining county. Thus, a man may live within a mile of a court but out of his division, while the court for the division in which he lives is twenty or thirty miles distant—and the expense and inconvenience of suing him in his own division would be consequently great. This Act gives an appropriate and safe remedy. One effect will be to throw more work on some of the judges, but the public will be the gainers. This is a "law reform" of the right kind, and its benefits will be found decided and lasting.

## UPPER CANADA REPORTS.

### QUEEN'S BENCH.

(*Reported by* C. Robinson, Esq., Q.C., *Reporter to the Court.*)

BIGGER v. HOWIE.

*Dower—Offer to assign under C. S. U. C. ch. 28, sec. 7—Evidence.*

The offer to assign dower required by Con Stats. U. C. ch. 28, sec. 7, to deprive the demandant of costs, is proved by a *bona fide* offer, shewing a concession of demandant's right, and a readiness to do what is requisite to render it; it is not necessary that the land should be staked out or assigned

The issue being upon such offer, it appeared that a demand having been made under the statute the tenant served a notice on demandant admitting her right, and appointing a day on which he would be upon the land to assign her dower. On that day no one appeared, but on the next day demandant's son and another person sent by her came, and the tenant pointed out to them a cleared field, which he said he would give, with one-third of the bush land. This was not accepted, nor did they tell the tenant what they required

*Held*, that the evidence was sufficient to go to the jury, and the court refused to disturb a verdict for the tenant.

Remarks upon the uncertainty of the present law as to dower.

[Q. B. E. T. 27 Vic.]

Dower, *unde nihil habet*, in lot No 155, in the township of Stamford, as widow of William Bigger, heretofore her husband, with averment of demand in writing of the dower before the commencement of this suit, according to the statute, and that the tenant hath not offered to assign it. Declaration entitled, October 17th, 1863.

Plea.—That the tenant did within one month after the service of the demand, and before the commencement of this suit, offer to assign to the demandant her dower in the said lands, and has always been ready and willing to render her dower to the demandant, and rendereth the same here in court.

Replication, traversing both allegations in the plea, concluding with a verification and prayer of judgment for the dower, and damages for the detention. Issue.

The trial took place at Welland, in March last, before *Hagarty*, J.

The defendant began. It was admitted that the demandant served her demand of dower on the 16th of May, 1863. On the 8th of June following, the tenant caused a notice in writing to be served on the demandant, admitting her right to the dower claimed, and stating her willingness to assign dower to her, and appointing Wednesday the 10th of June, 1863, at 1 o'clock p m., at which