

affidavit substantially violating this order; nor shall any affidavit violating this order be used in support of, or opposition to, any motion, without the express permission of the court.

WM. HUME BLAKE, C.
J. C. P. ESTEN, V. C.
J. G. SPRAGOE, V. C.

DIVISION COURTS.

THE D. C. ACT.—DECIMAL CURRENCY.

The Consolidated Statutes will probably be brought into force in December next; and as many doubtful points have been settled, we recommend officers of the Division Courts to an early examination of the Consolidated Act.

It is not contemplated to distribute the Consolidated Statutes generally; but as all officers of courts of justice ought to be provided with the body of the law which is to guide them, we do not see how the Government can avoid supplying clerks with a copy of the Division Court Consolidated Act at least. No doubt it will be printed in convenient form by some enterprising publisher for every Court in Upper Canada, as has been done in former years. The Queen's Printer is not likely to have struck off any extra numbers of any particular Act. But we would now direct special attention to one point,—that sums of money are mentioned in the Consolidated Statutes in decimal currency, and that the entries in books and accounts will be in dollars and cents after the 1st January next. Clerks should keep this in mind when ordering a new supply of forms, and otherwise prepare themselves for the coming change.

NEW RULES.

The alterations in the Division Courts Acts, since 1854, when the Rules were issued, have loudly called for a revision of the present Rules. Now there are strong additional grounds for urging it. The Courts will be henceforward governed by a single statute: all the provisions affecting them being brought into one act.

The language used in this act is much simplified, and several doubtful points definitely settled by the Legislature. An improved and simplified act needs a corresponding improvement in rules, and all the references require to be amended in the rules and forms.

The existing rules are "continued in force," but subject to the provisions of the new act. As the rules now stand, we fear they will be found embarrassing in practice to officers and suitors. In some particulars they are calculated to mislead (unless great care be taken) rather than to assist.

Under these circumstances, we would, on behalf of officers and suitors, earnestly urge a revision of the Rules and Forms, so as to make them harmonize with the consolidated act, and to adapt them in language and arrangement to its subject matter.

This ought to be done early next year; and as it is desirable that the rule making judges should act on the fullest information, we recommend the judges and officers of the courts to communicate their ideas as soon as possible through this journal. In such communications the subject might be placed under two heads; *first*, as to changes desirable in the existing rules and forms—what rules should be omitted, and in what particulars the retained rules and

forms might be improved in language; *second*, what new rules and orders should be given.

We make no doubt but that the judges would be anxious to hear in this way from their brother judges and officers of the Courts, as well as from suitors, and to learn the views of all as to the best mode of giving full value to the statutory enactments, and simplifying procedure in the courts.

It would be quite out of the question to expect these gentlemen to correspond with the numerous body who will be engaged in working out the law, or with those who are to avail themselves of the Division Courts jurisdiction; but all the advantage of a correspondence may be gained by the plan we suggest, and we trust that all concerned will see in our proposal additional evidence of our desire to promote the efficiency of the Courts, and the interests of such of our subscribers as are officially or otherwise connected with these valuable tribunals,—the Upper Canada Division Courts.

CORRESPONDENCE.

To the Editors of the Law Journal.

GENTLEMEN,—Will you allow me to put a case, and ask your opinion on it? It is a matter of very general interest to the country at large; and I may remark that no particular case has arisen in my practice, which makes me desirous of obtaining your opinion.

Jones owns in fee simple a lot of land. He sells to Smith, who does not record his deed until after a certificate of judgment against Jones has been recorded by a judgment creditor. Some time after the registration of the certificate of judgment, Smith records his deed. Which holds the land: the certificate or the deed to Smith?

Or again: suppose the conveyance to Smith to have been a mortgage, under circumstances similar to the above; which would hold: the certificate or the mortgage?

In other words, is the 3rd section of 13 & 14 Vic. cap. 63, in force—and if not, by what act was it repealed? And has there been any decision of the courts to the effect, that in the second case put (that is, the mortgage), as Jones had conveyed his legal title, even though the certificate of judgment was first recorded, it could only bind Jones's interest, that is, his equitable title?

The deed or mortgage must be supposed to be dated before the registration of the certificate.

Oblige me by replying to this in your next issue.

Your obedient servant,
INQUIRER.

October 12, 1859.

[Our correspondent will find all his questions answered in the article on the "Law of Registered Judgments," in our last number. In reading that article for answers to his queries, he will have to consider the following rules, which seem to be deducible from the Act:

1. That registration is *prima facie* evidence of title in the party whose name appears in the last deed, &c., of a lot of land.
2. That those (purchasers, mortgagees, or judgment creditors) who neglect to avail themselves of the Registry laws will have to suffer the consequences of their neglect.
3. That subsequent conveyances or judgments may cut out prior conveyances or judgments, by obtaining prior registration.

And from these he will see that in the cases he presents, the following will be the result:

1. Jones's deed (or mortgage, for by the act they stand in the same position) to Smith, not having been registered, owing