were, in fact, false, they were struck out by the Court, and the plaintiff had leave to sign final judgment. Order 10 arrives at the same result by legislative enactment, and provides for substantially the same practice. Rule 80 provides that the judge may, if he think fit, order the defendant to attend and be examined upon oath ; or to produce any books or documents, or copies or extracts therefrom. The learned judge in that case, amongst other reasons, laid stress upon the fact that such practice would give the Division Court "power to examine persons situate in other parts of the Province it may be, than in the County (within) which such Division Court is established."

I am by no means sure that this case cannot be fairly regarded as an authority against the plaintiff's contention, but I need not decide this, for I do not feel that it would be a wise or just exercise of the discretion allowed by sect. 244 to introduce this practice. Nothing can be clearer than this, that where a judge advances beyond legislation, or in any way carries the law or practice beyond its former boundaries, he must see to it that his extension cannot work injustice. Whatever there may be of inequity in the law as he finds it, is no concern of his, but it is his duty not to lay down any rule or make any precedent which he sees may, in cases which would be governed by such rule or precedent, work a wrong. If I grant this summons, and so introduce this practice into the Division Courts of this County, I must grant a summons in every case where application is made upon like material, and it will be contrary to all experience if, before long, some defendant does not "disclose such facts as may be deemed sufficient to entitle him to defend the action," and at the trial establish his defence and get judgment in his favour. Meanwhile he has has been put to expense which may amount to a large percentage on the claim which he has successfully resisted in answering the interlocutory summons. It must always be returnable at the county town ; so that a defendant living in a remote division, whom the Legislature has carefully protected from the trouble and expense of having to make his defence away from home, is compelled to incur an outlay and submit to an inconvenience entirely inconsistent with the spirit of the Division Court Act. But it is not the worst that would follow. A defendant in the County Court or in the High Court, having succeeded under such circumstances, would have taxed to him his costs of answering this summons ; but in the Division Court there is no provision for his getting these costs, and so a serious injustice would be done him. On the other hand, the plaintiff, if successful, would get his costs of serving this summons (see Division Court Rule 2 and Schedule of Bailiff's fees). The practical working of this principle of practice would soon shew that this is no mere imaginary difficulty. If this plaintiff, with his claim for $35, can have his summons for this defendant, who lives only ten miles from town, another plaintiff with a claim for $10 cannot be refused a summons for a defendant who lives forty miles off, or for that matter, in a distant county hundreds of miles away. What is the defendant in such case to do, if he believes himself to have a good defence? Shall he spend the amount of the claim in costs, which he can not be recouped, or shall he meekly submit to the wrong?

The introduction of this principle into a court for the trial of small causes, even if this injustice could be got over, would make a procedure which was intended to be simple and inexpensive, complicated and burdensome. It must be borne in mind that Order 10 is not confined to actions where the plaintiff's claim is ascertained by the signature of the defendant, but extends to all actions where the plaintiff seeks to recover a debt or liquidated demand in money arising from a contract expressed or implied. This covers nine out of ten of the cases which come before Division Courts. But if it came to be generally understood that any plaintiff with his petty claim who had confidence in the goodness of his cause and in the weakness of the defence, could make an application, and, if successful, get his costs from the defendant, and if he failed not be liable to the defendant for costs, a state of things would grow up which would make the Division Courts little short of a public nuisance. How far this principle might wisely be applied to the extended jurisdiction, with proper provisions as to costs, is only for the Legislature to say ; but until it chooses to make some change in the law, I shall regard it as the exercise of a sound discretion to leave the matters as it has left them.

Summons refused.