

mitting to the decision of the magistrates to undergo the certain and positive loss of a large amount of custom.—*Solicitor's Journal.*

## THE LAW & PRACTICE OF THE DIVISION COURTS.

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In some particulars the language of this section and section 71 of the act are identical, and will be noticed in examining the general provision.

The place of sittings of a court, as respects the residence of defendant, is by the clause the main point in respect to jurisdiction. By section 69 of the act, the judge may appoint, and from time to time alter, the places within each division at which the Division Courts shall be holden. This appointment, like all other acts of the county judge, is made by order, and any change must be in like manner by order. As has already been observed in another place, no alteration should be made while summonses are current for the attendance of parties at a particular place, and due notice must of course be given of any change made in the place of sittings.

The act of 27 & 28 Vic. contemplates one place of sittings of a court, and it is apprehended that an order to hold a court in two different places alternately would, at least since the passing of that act, be bad; and in view of its provisions, alterations should be sparingly made, and not without a long previous notice. It would appear that the condition of things at the time when a suit is entered, would determine the question of jurisdiction, and an alteration in the place of holding a court, made after a suit entered, would not affect the power of the court to hear and determine it. Thus: suppose a party to reside within four miles of the place of sitting of a court in a county adjoining the one in which he lives, and the place of sitting of the court for the division in which each party lives to be fifteen miles from his residence, if action brought against such party for a debt incurred in his own division, the plaintiff would have the right to sue him in the court in the adjoining county, the place of sittings being only four miles distant; but if the place of sittings of the party's own division is, after the suit entered and before the hearing thereof, brought within two miles, then would come the question, could the court determine the case? The language, "and

such suit [that is, the suit properly entered] may be tried and determined irrespective of when the cause of action arose," would go to show that the suit being rightly entered, the particular court had cognizance for final adjudication, but the point is not quite free from doubt.

The court, under this section, must be the *nearest* one to the residence of the proposed defendant: the right is a special one, and if there be a court having its sittings nearer to the defendant's residence than the one in which the suit is brought, the latter court would not be authorized to deal with the case under this section. In measuring distance, it would be scarcely practicable to measure according to the actual distance by road in a new country, and where roads are constantly straightened or changed, to do so would involve great difficulty in fact; nor would it be always easy to say what was a road, or whether a "short cut" over private property or ungranted land should be regarded as a road in measurement. The distance, it seems clear, is to be measured, not by the nearest mode of access, but by a straight line in the horizontal plane, or "as the crow flies," according to the common phrase. An analogous provision in the English County Courts Act is, that certain actions may, at the option of the parties, be brought in the superior courts. "Where the plaintiff dwells more than twenty miles from the defendant," &c. These words have undergone judicial construction. In *Lake v. Butler* (3 E. & B. 92), it was held that the twenty miles were to be measured in a straight line on the horizontal plane, and not by the nearest public mode of access. The point was also considered in *Stokes v. Grissel* (14 C. B. 678). Lush, in the argument, urged that the twenty miles should be measured by the road, and not in a straight line. "The county court bailiff's fees," he urged, "are regulated by the distance they have to go. The question is, not how far one man is from another, but what distance he has to go." Jervis, C. J.—"Then a man may one day be without the twenty miles, and one day within, by altering the road." *Reg. v. Saffron Walden* (9 Q. B. 76) has been relied on by the other side. That was a decision on the Poor Law Act, 4 & 5 Wm. IV., cap. 76, sec. 68, by which it was enacted that no person should be deemed, adjudged or taken to retain any settlement gained by virtue of any possession of any