

changes which have been made by the Legislature at its last session, affecting the Division Courts.

By a reference to the August number of the *Upper Canada Law Journal*, pages 199 and 200, you will find two Acts of Parliament copied, to the provisions of which I wish to call your especial attention.

The first of these statutes affects the procedure of the Division Courts, and by its provisions the 72nd section of the Consolidated Statute on Division Courts, and Rules numbers 20 & 21, and Forms numbers 1 & 2, are virtually superseded.

You will observe that this new statute does not give a general jurisdiction over all causes and suits which are the proper subjects of litigation in the Division Courts. For instance: The Division Court of any one County has no such general jurisdiction conferred upon it that it has the right to entertain a suit when the cause of action has arisen, and the defendant lives in another County from the one wherein the Court is held, unless the Court be in the Division, and the sittings held at a place nearest in point of actual distance (as the crow flies) to the residence of the defendant or defendants. Nor are you to suppose that this new act alters the law in cases where there are more defendants than one, and one defendant resides in one County and one or more defendants in another or other Counties, unless the Court in the one County whence the summons issues is held nearest to the residence of all the defendants. Nor does this Act give the Division Court the power to entertain a plaint or cause against a defendant in an adjoining County, unless the cause of action arose in the Division wherein the Court is held, or unless the place where the Court is usually held is nearest to the usual residence of the defendant.

With regard to the service of the summons, the new act provides that in cases where a suit is entered in a Division Court nearest to the residence of the defendant, but in a different County, the bailiff of the Court out of which it issues is to serve it ten days before the return day, as provided before for ordinary service, and he may travel to serve in an adjoining County, and receive payment for doing so.

It is necessary that you should be very particular in this matter of extended jurisdiction of the Court, or otherwise you will get yourself and the bailiff involved in trouble, and perhaps have actions of trespass brought against you; for the act is so merely exceptional in its provisions, that many, no doubt from misunderstanding them, will be unwittingly led into committing illegal acts.

The great danger exists in the execution of writs, process, and proceedings under the Act, and enforcing executions and warrants of commitment; for although the first section enacts that any suit cognizable in a Division Court may be entered, tried, and determined in the Court, the place of sitting whereof is the nearest to the defendant, irrespective of where the cause of action arose, &c., the second section only authorises the service of the summons by the bailiff out of his own County, and does not authorise a bailiff to execute a writ of replevin in a County where the defendant resides, nor to seize goods under an attachment, nor to enforce any other writ before judgment.

It is quite clear that after judgment, executions against goods, &c., of the defendant, and all other writs, process, and proceedings to enforce the payment of the judgment (whatever these "*writs, process, and proceedings*" mean, I confess I do not) may be issued to the bailiff of the Court giving judgment, 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 recorded; but the power is limited to this provision, and the bailiff cannot seize goods of a defendant in a third or adjoining County, supposing goods were found there. It is often the case that three Counties border upon each other, and the bailiff must not allow himself to be tempted into the third County, although, under the peculiar circumstances, he is authorised to seize in either of the two Counties first referred to.

I apprehend that process of attachment and of replevin, not being to enforce the payment of a judgment, cannot be issued by the Clerk to another County, or executed by a bailiff therein, out of his own County, and that the law with regard to these processes stands as it did previously to the passing of this Statute. I also apprehend that the power to enforce executions against goods generally, is not enlarged from what was in existence before this Statute; beyond the simple case of enforcing a judgment against a defendant who has been summoned out of his own County to a Division nearest his place of residence, and judgment recovered thereupon, regardless of where the cause of action arose, under the provisions of the new Act.

The Commission of Judges who framed the existing rules and forms, if they ever sit again, may make some decisions under this new act, or may pass some rules for carrying out its provisions. In the meanwhile it would be better for you to exercise caution regarding it; for whilst I should be most anxious to render the act as effectual and beneficial as it was intended to be to suitors and others, for whose convenience it was intended, you must recollect that we have no right to assume powers, or override or outstrip the provisions of an Act of Parliament, or to endeavour to apply its provisions to persons for whom it was not intended.

In all cases which come within its provisions, when you summon a defendant from an adjoining County under this Act, the affidavit of the bailiff must run thus, viz.:—"I swear that this summons and claim annexed thereto were served by me on the — day of —, A. D. 186—, by delivering a true copy of both personally to the defendant."

(Or where the amount claimed is under \$8)—

"By handing the same to and leaving them with the wife of the defendant," or "with the servant of the defendant," or "with A. B., a grown person, being an inmate of the defendant's dwelling or usual place of abode, trading or dealing," &c., as the case may be, (see section 77 of the Division Court Act,) "and I further swear that the place of sitting of this Court is the nearest to the residence of the defendant (or defendants as the case may be), who resides on Lot No. — in the — concession of the Township of —, or at — in the County of —, and that I necessarily travelled, &c., — miles to do so," &c.