

ONTARIO LEGISLATURE.

Fourth Parliament—First Session.

TORONTO, Feb. 10.

The Speaker took the chair at three o'clock.

DIVISION COURTS.

Mr. HARDY, in moving the second reading of his Bill to extend the jurisdiction of Division Courts, said that it was proposed to increase the jurisdiction of Division Courts from \$100 to \$200 in that class of cases where promissory notes, mortgages, or other written agreements had been signed by the debtor. Ordinary cases of tort and replevin were increased from \$40 to \$60. In order that the character of the Court might as far as possible be preserved it was provided that cases involving claims of over \$100 should be placed at the foot of the list, unless in special cases. Where an agreement had been made to pay at a certain place, the case might be tried in the division in which that place of payment was situate, subject to a change of venue being made on application of the defendant, and upon his showing that the case can be more conveniently tried in the division in which he himself resides. But by consent of both parties the case might be tried in any division. Where the suit was against a clerk or bailiff the case might be tried in an adjoining county, as the judge, having confidence in his clerk or bailiff, would not care to sit upon any case in which either was the defendant. In cases involving claims for more than \$100, the judge might in his discretion direct a fee of \$5, or not in any case more than \$10, to be paid to the attorney of the successful party. The legal practitioners throughout the Province would not consider this any fee at all, particularly where it was a large case occupying all day; but the Government had thought it advisable to make this provision, with a view of keeping the expenses of these suits at as low a point as possible. It was argued by some that no provision should be made for payment of a fee to an attorney, as it would destroy the distinctive character of the Court. But the Government believed that it would rather tend to maintain this character, particularly in cases where it appeared that there was no reasonable defence. In cases where the claim exceeded \$100 an appeal would lie, but it would be found in practice that such appeals would be very few in number. Upon a certified copy of the evidence being filed before the Court of Appeal the trial on appeal would be held before one judge of the Court of Appeal, who would sit weekly, and the total amount of costs, excluding actual disbursements, was not to exceed \$15. This would prevent attorneys from advising appeals simply to make costs. It was just as well not to make the appeals simple, as they would encourage suitors to appeal. The Bill provided also for the duties, powers, etc., of the Inspector of Division Courts. This officer had been appointed under John Sandfield Macdonald, and he was to be regarded as a useful and necessary officer. There were in each county from four to twelve clerks appointed; and it had been thought while the officers under the judges of the Court of Appeal were appointed by the Government, that there was no reason why the appointment of the various clerks and bailiffs in towns, cities, and villages should not be vested in the Lieutenant-Governor. The appointments would then be made by a Government responsible to this House and to the people. It might be asked, why not extend the power to the officers in the rural districts? But it was thought that in outlying districts less accessible to the Government it would be well to leave the appointment in the hands of the judges. Section 31 and subsequent sections proposed to make certain changes in the jury laws of Division Courts. It was not proposed to do away with juries in these Courts, but to provide that those who were called on these juries from year to year should receive reasonable remuneration for their services. It was provided that each juror should receive one dollar per day. It was proposed to establish a jury fund by imposing a tax

on all suits coming up for trial. By fixing a tax of say five cents on all cases involving sums between \$20 and \$60; on sums from \$60 to \$100, ten cents; and on all sums over \$100, twenty-five cents, by this means a jury fund would be formed of about \$3,500. While it might be fairly conceded that better justice could be obtained in County Courts than in Division Courts, nevertheless there were other advantages in connection with the latter—such as speedy justice, less distance to travel, and less expense—which made them essentially a poor man's Court. While, by the regulation increasing the jurisdiction to \$200, the old functions of the Division Courts would be to a very large extent changed, the new Act provided that the new class of cases admitted should not be taken up until the others were disposed of. He thought the Bill would amply widen the jurisdiction of these Courts, and yet not effect too radical a change.

Mr. MEREDITH said that the manner in which their large business had been conducted by the Division Courts was the best answer to any objection to the extension of their jurisdiction. (Cheers.) There was no doubt public opinion had been strongly in favour of the extension of this jurisdiction. He regretted that the extension proposed by the Government was but a trifling one. He saw no reason why ordinary accounts up to \$200 should not be examined in the Division Court, and he trusted that before this Bill passed the House it would be amended so as to further extend its provisions. He strongly opposed the change allowing the collection of legal costs by the successful party. The effect would be to crowd the Court with attorneys on both sides, and so change the present character of the Court. If the provisions with regard to appeal were not extended they might as well be left out. The appeal should be to a single judge of Queen's Bench or Common Pleas. He advocated the introduction of a clause providing that no appeal should lie unless the parties had given notice before the case was heard of their intention to appeal. This would obviate the trouble and delay of taking the evidence in cases where it was not necessary. The Opposition had session after session protested against the continuance of an Inspector of Division Courts. When he was appointed, collections of costs were made by law stamps, and now since the abolition of that system the office of Inspector might be done away with. The change in the system of appointment of clerks and bailiffs was entirely unnecessary. The fees would be no less than under the present system; but perhaps the Provincial Secretary meant to say that as the emoluments were large the Government should have the division of the patronage. (Opposition cheers.) It was all very well to talk about Government responsibility. The change meant simply that the power of appointment should be taken from gentlemen who would make it on fair grounds and put into the hands of gentlemen who, it was not unfair to say, would be actuated by considerations of political favouritism. The policy of the Government had been throughout to centralize power in their own hands. The whole system of patronage in this country was a vicious one and debasing to the politicians. This Bill, as introduced, would make a litigant who did not care to have his case tried by a jury pay the costs of those who did. He trusted that the Bill would not pass until some of the amendments he had suggested had been made. (Opposition cheers.)

Mr. FERRIS would like to see a wider jurisdiction of the Court provided in the Bill. He was opposed to the fixing of a fee, and would approve of leaving it to litigants to employ an attorney or not as they chose. He favoured the proposition to vest the appointment of officers in the Government. Sometimes it was found that the county judges failed in making as good appointments as should have been expected, and they were often hampered by political and other considerations in making these appointments. The whole scope of the Bill was in the right direction, but he thought there were some of its provisions which might be improved. Some provision should be made ensuring suitable