JOURNAL

OF THE

STATISTICAL AND SOCIAL INQUIRY SOCIETY

OF IRELAND.

PART LXXXVI.

I.—*The Practice of the Commercial Court.*

BY CHARLES A. STANUELL, ESQ., M.A.

[Read November 24th, 1905.]

I MUST preface my remarks upon this subject by stating that the Commercial Court to which I allude has no existence in Ireland, and therefore I am at a disadvantage in dealing with a system of judicial procedure with which I have no personal experience. I am somewhat in the same position in which an English lawyer would be if he were to attempt to address an English audience on the practice of the Estate Commissioners.

At the same time, it may serve a useful purpose to show how far the great commercial and mercantile classes have been able to bend the rigidity of judicial procedure, and for this purpose I propose to give a brief account of what is called in England the "Commercial Court," though really it is a separate list of a certain class of Common Law or King's Bench Actions.

In my account I propose to rely upon Mr. Mathew's *Practice of the Commercial Court*, supplemented by information obtained from professional brethren in England.

The complaints of commerce against the state of the law are of very ancient standing. Legal procedure, from the veneration with which law is regarded, and the immense difficulty attendant upon its satisfactory alteration, is an institution which it is very hard to change; and though the reign of Queen Victoria was marked by immense legal reforms, law has always lagged behind the general progress of the country.

The complaints of merchants existed before the great

Judicature Acts of 1873 and 1875 in England and of 1877 in Ireland, and a Royal Commission issued in 1874 a Report which on the whole was hostile to the wishes of the merchants. It showed on its face a great anxiety to point out the advantages of the existing system, and extraordinary ingenuity in putting forward somewhat imaginary defects in any other possible system.

In particular the Report pointed out that although certain foreign countries possessed commercial tribunals, there was much diversity as to the constitution of the Court and the mode of procedure. For instance, Belgium, France, the German States and Prussia, though possessing Courts, differed as to whether the judge of the Court should or should not be a professional lawyer. Indeed, reading between the lines of the Report, it was pretty evident that beyond admitting the fact (which could not be denied) that the existing procedure was universally condemned by the litigants, the Commission were divided in their views, and by no means clear as to the nature of the remedy to be applied, or even if any remedy was to be applied.

Still the Report did succeed in getting as far as one suggestion, and that was that the proper tribunal for commercial cases would be a Court presided over by a legal judge assisted by two skilled assessors. In fact the procedure was to be somewhat like the original procedure of the Judicial Rent Commissioners.

I may perhaps remark that years afterwards when the Commercial Court was established, this peculiar suggestion of getting three men to do the work of one was not adopted.

It is remarkable that Sir Sydney Waterlow, representing commerce on the Commission, declined to sign this report, and his reasons for this set out in a few words the essence of what the representatives of commerce wanted, and the grievances of which they complained :—

" I am unable to agree in all the recommendations of this report, and therefore do not sign it. I feel very strongly that in a great commercial country like England tribunals can and ought to be established where suitors might obtain a decision on their differences more promptly than in the Supreme Courts as at present constituted and regulated. Those who support the present system of trying mercantile disputes seem to regard them all as hostile litigation and lose sight of the fact that in the majority of cases where differences arise between merchants and traders, both parties would rejoice to obtain a prompt settlement before a legal tribunal duly constituted, and to continue their friendly commercial relations. The present system too frequently works a denial of justice, or inflicts on the suitors a long-impending, worrying law-suit, the solicitors on either side

pleading in their clients' interests every technical point, and thus engendering a bitterness which destroys all future confidence and puts an end to further mercantile dealing.

"It is essential that the procedure of our mercantile Courts (whether called tribunals of commerce or by any other names) should be of the simplest and most summary character."

The report of the Royal Commission was issued in 1874 but nothing was done consequent upon it. Possibly it was thought that the great Judicature Acts of 1873 and 1875 in England and in Ireland, 1877, would secure an improvement of commercial procedure and render change unnecessary. The Judicature Acts, however, did nothing to expediate business or simplify the procedure; in fact they rather increased the complications. Motions for discovery or disclosure of documents were perpetually being made or resisted: in fact in 1892 it was remarked in the *London Times* that the importation of Chancery procedure into the Common Law Courts had placed within the reach of the litigant and his advisers, various weapons for the delay of progress previously unknown or out of his power.

On the 10th August, 1892, eighteen years after the publication of the report of 1874, the same paper confessed that:—"The bulk of the disputes of the commercial world seldom found its way into Court." The technicalities of the procedure and the dilatoriness of the proceedings were such that judicial proceedings were abandoned in favor of some mode of arbitration, however inefficient as a legal instrument. In fact, it was found that as the Court would not help them the merchants adopted a wide-spread system of contracting themselves out of legal proceedings and of mutually agreeing to refer their disputes to arbitration.

This, very naturally, led to a considerable decrease of commercial litigation, and this is probably the reason why the next move came from the Bar and the English Law Society, and as a result of a Joint Committee these bodies urged that a separate list should be established for the entry of commercial cases in London and Middlesex, and that this list should be disposed of apart from all other work of the Queen's Bench Division.

Substantially, however, nothing could be done during the lifetime of Lord Chief Justice Coleridge. He had been urged by all classes, even by other judges, to initiate changes, but a commercial court would involve a commercial judge, and he was totally opposed to a change which involved the suggestion that all the members of the Bench were not equally fit to cope with every subject of litigation. He thought that all judges were, or ought to be considered, capable of dealing with all classes of cases.

I may mention here that I think that Lord Coleridge's position was untenable. It is simply absurd to suppose that all judges can keep themselves acquainted with the various technical terms, trade customs and usages connected with commerce so as to deal with them expeditiously. No doubt a judge can, and does, master the intricacies of a case including various technical terms, if he gets time and explanations, but to dispose of such matters with expedition he must be accustomed to these strange expressions, trade customs, nautical terms, and use them without a mental translations into ordinary language.

I will take four colloquial expressons well known in such cases :—" B.L.," " C.P.," " F.O.B.," " C.O.D."—the man who is accustomed to such cases does not have to translate them into " Bill of lading," " Charter Party," " Free on Board," " Cash on delivery," an ordinary judge would have to, at least, consider, and probably ask for explanations.

Two of the judges, Lord Justice Bowen and Mr. Justice Mathew, had taken up the matter about the same time as the Bar and Law Society, and on much the same lines, and they wrote a joint letter to Lord Coleridge suggesting that there should be separate lists in the Queen's Bench Division, one for mercantile and the other for general causes ; this was in 1891, and the matter came before the Council of Judges in August, 1892, but Lord Coleridge, as already stated, was hostile to any change. He was of opinion that if the facts did not suit the law, so much the worse for the facts, and no alteration was made until his death in 1894. Reform then became possible, for he was succeeded by Lord Russell of Killowen, who was much more favourable, and in February, 1895, the famous " Notice as to Commercial Cases," which was really based on the letter of the two judges and the suggestions of the Joint Committee of the Bar and Law Society, was issued. It was published on the 9th Ferbuary, but curiously enough, is not dated.

I have printed a full copy of this notice as an appendix to this paper, and will only give a summary, or rather explanation of its provisions.

It is divided into twelve sections, briefly as follows :—

1. The first section states in very wide terms what are to be considered commercial cases. They are such as arise out of the ordinary transactions between merchants and traders, but beyond saying that " among others " they relate to the construction of mercantile documents, exports or imports of merchandise, affreightment, insurance, banking and mercantile agency, no definition is attempted, and a very wide discretion is left to the judge before whom commercial business is to be brought.

2. The second section directs a separate list to be kept of these cases, but application for a transfer to it must be made to the judge charged with commercial business.

3. The third section lays down that town applications to transfer are to be made to the commercial judge direct. Country cases might be transferred by consent of the parties.

4. The fourth section provided for the transfer of pending cases.

5. The fifth section, though very short, is somewhat technical. Those of my audience who are acquainted with legal arrangements are aware that there exists a procedure under which what is termed a "specially endorsed writ" can be issued, to which no defence can be pleaded unless leave be given by a judge on an application by the defendant. This section lays down a practice that in a case of a specially endorsed writ where leave to defend *had* been given, the cause might after this permission be transferred to the commercial list.

6. The sixth section is also short but important. It enables applications to be made to dispense with the ordinary rules of evidence. Any lawyer who has had to deal with the formalities required to make, say an Indian judgment, available in the United Kingdom, or get an affidavit perfected in a foreign country, when the nearest British Consul is perhaps 500 miles distant, will appreciate the utility of the procedure in saving time, trouble, and expense.

7. The seventh section enables an application to be made to the commercial judge for judgment on any point of law after the writ or originating summons has been issued, and before the general question is argued. For instance a law point may arise as to whether a bargain is or is not binding, having regard to the provisions of the statute of frauds, which requires certain contracts to be in writing. Under this section of the order this point may be argued without touching on the facts of the case, and very often, it has been found, the decision on the law point settles the rest of the case.

8. The commercial judge, by consent of the parties, may —without requiring pleadings—make such an order as he thinks fit for the speedy determination, in accordance with existing rules, of the question really in controversy between the parties. This is practically the converse of section 7, as it enables a number of legal points to be laid aside and the question of fact decided.

9. Under the ninth section parties may agree beforehand to treat the judgment of the commercial judge as final instead of going through appeal after appeal, a plan which

immensely facilitates all parties, as it becomes unnecessary to keep elaborate records of the proceedings on the first hearing.

10. The tenth section permits an application to be made to the commercial judge to fix an early date for the hearing of any cause or matter. This section has been utilised to an enormous extent, though in a somewhat curious manner, as I shall show further on.

11, 12. The eleventh and twelfth sections were formal, the eleventh fixed the date for the first sitting of the new court, 1st March, 1895, and assigned the work to Mr., now Lord Justice, Mathew, nephew of the celebrated Father Mathew, and one of the judges who had joined in the letter to Chief Justice Coleridge: the twelfth directed country commercial cases to be tried as usual at the Assizes.

Since that date various other judges have presided in what has come to be called the "Commercial Court," and a recognised practice in regard to pleadings, admissions, evidence and inspection of documents and the like, has been the result, which I will deal with very briefly later on.

It was remarked by the author of the *Introduction to the series of Commercial Cases*, for they now form a distinct series of Reports, (which are not in our law libraries), that if the legal advisers were willing to assist the Court, commercial disputes might be settled as promptly by a judge as by an arbitrator, but this could only be done if he were acquainted at the earliest stage of the proceedings with the nature of the plaintiff's and defendant's case. It was also pointed out that this course could only be taken effectively if the respective solicitors were willing, and if they made a careful inquiry into the facts at the beginning and were consequently able to give the judge full information at the start. It was found that in the vast majority of cases this desire to facilitate and willingness to give information could be relied upon, and as a consequence of this the practice or usage of the Court has been gradually modified. It is now the course of procedure upon the application to transfer a case to the Commercial Court for the judge to ascertain, upon the making of the order for transfer of the case to the commercial list, what directions are needed to secure a trial at the earliest convenient date, and to give them then and there.

Indeed it is stated that many cases are settled as the result of this preliminary discussion, which is borne out by the statistics, which show that only about two-thirds of the cases transferred actually go to trial, while in many others the judge has been able to make a note of the questions which the parties have expressed their intention of raising,

though I have not been able to obtain statistics on this latter point.

The ordinary form of order for directions is as follows :—

" Upon hearing (counsel or solicitor) on both sides : It is ordered :—

" That the action be transferred to the Commercial list.

" That points of claim be delivered by the plaintiff in seven days.

" That points of defence be delivered by the defendant in seven days.

" That lists of documents be exchanged between the parties in seven days and inspection given in three days afterwards.

" That the action be tried without a jury.

" That the date of trial be fixed for 19 .

" That the costs of this application be costs in the cause.

" Dated the day of 19 ."

It will be at once seen that this is a very great acceleration in point of speed over the usual proceedings prior to a trial. There is no actual necessity for any pleadings, except the points of claim and the points of defence, and judging by those I have seen they are short. I had the curiosity to count the words in one of each : the " points of claim " contained 221 words, 3 legal folios of 72 words each and five over ; the defence was longer, it contained 288 words, exactly 4 legal folios of 72 words each.

In connection with this simplification of procedure, I learn from a London solicitor that :—

" It is almost the invariable practice instead of making an order for a commission to take evidence abroad for an order to be made at the hearing of the summons to transfer to allow affidavits to be read as evidence, or mere business books or documents to be read as evidence, subject of course to the right of the other side to dispute the accuracy of the statements therein contained."

It should be added that interrogatories are seldom asked for, and that in lieu of affidavits of documents, directions may be given when it appears necessary, to furnish lists of documents, and to allow inspection. This throws upon the respective solicitors the responsibility of producing the various documents, that is to say, trusting to their honour to produce the various documents instead of going through the formality of obtaining a list on oath, but they

have been informed as officers of the Court that the withholding of a material document will be treated as a breach of professional duty, and so far as I know the plan works well, while it saves the time required to prepare the lists so that the required documents may be bespoken all the earlier.

As regards expediting the business of the Court by avoiding issuing commissions, I will take an ordinary case. Passing over a case when a commission to take evidence in New Zealand in pre-telegraph days took thirteen months, and the party after all refused to give evidence, I had a case in New York. The Commission from start to finish took from 23rd July, 1901, to 24th January, 1902, just six months.

In the Commercial Court commissions are practically unknown, and instead there are substituted :—

1. Mutual admissions.

2. The exercise of the powers conferred by Order XXX, rule 7 of the Rules of the Supreme Court, which enacts :—

"On the hearing of the summons, the Court or a Judge may order that evidence of any particular fact to be specified in the order shall be given by statement on oath of information and belief, or by production of documents or entries in books, or by copies of documents or entries or otherwise as the Court or Judge may direct."

I may mention that this rule is not included in the Irish Code.

3. Consent of the parties to allow the judge to act on the materials submitted to mercantile arbitrators.

The main fact, however, seems to be that the same judge has the case before him from the beginning to the end; in plain language he knows the case, having all the various steps before him, and this enables him to dispense with an immense amount of explanations and detail which have to be provided for at great expenditure of time, care and expense, when the case may happen to be brought before any one of the judges who may happen to be sitting, and not before the judge who previously had it before him.

I may here mention that I have myself personally experienced as a member of the Solicitors' Discipline Committee, and as a magistrate at sessions, the enormous difference it makes, whether a person has or has not had previous acquaintance with a case or not. In the one event he has to deal with an entirely novel state of facts, and in the other, he has a memory and possibly written notes of what has already taken place.

The continuance of the Court is perhaps the best proof of its success. It was commenced by the Order of February 1895, and it has been working ever since, and my London friends say that it is popular both with the litigants and the legal profession.

It should be remarked that the notice did not create a Court with a procedure, rules and practice to itself, and it did not lay down any rules possessing statutory force: it merely stated that arrangements had been made as to distribution, and that if, in the course of such cases, any modification of the rules and orders of the Supreme Court were made, it was only done with the consent of the parties.

I may mention here that as a matter of fact, there is now in the newest edition of the English Rules, General Order No. 30, which has no counterpart in Ireland, and which is specially conversant with the Commercial Court, but it does not revolutionise procedure.

As regards the business transacted, no definition was even attempted, but among others, the following may be noted:—

Those arising out of the ordinary business of merchants and traders, such as the construction of mercantile documents, export or import of merchandise, affreightment, insurance, both fire and marine, banking and mercantile agency, mercantile usages, cases arising out of dealings on the Stock Exchange.

A list of thirty-seven cases disclosed that sixteen of them were for the carriage of goods by sea, six for breach of charter party; five for balances of freight; and five damages to goods.

Procedure.

I will endeavour to be brief with this branch of my subject, for though interesting to a certain class it is highly technical, and few except barristers and solicitors would grasp the "short cuts" allowed by the procedure of the Court.

A writ is issued in the ordinary way, and the application is made to the commercial judge to have the case transferred to the Commercial List. Either party may make the application, and when the application is granted the words "Commercial List" are then added after "King's Bench Division."

Summons to Transfer and for Directions.

This is now a Court application, though originally made in Chambers. It may be made by a solicitor or a junior counsel, and is made in open court, there being two lists, one for

barristers and the other for solicitors. If a solicitor appear in a summons in which he is opposed by counsel, he usually has a special allowance made to him. Speaking generally, the fee for instructing counsel on this summons is always allowed, whatever the case may be, but as the solicitor who conducts a case in Court saves a fee to counsel, and perhaps a brief as well, it is not fair that he should have more work for less pay.

I should perhaps, mention here that the English practice before a Judge "in chamber" differs essentially from the Irish. In England the judge "in chamber" sits practically in his own room; in Ireland a judge in chamber sits in his usual court, though he may or may not wear his robes.

The practice of hearing the summons for directions in the Commercial Court in open court was originally intended to enable members of the legal profession to see how the practice should be carried on, a difficult thing to learn in the semi-privacy of a judge's chamber in England, but it proved to have additional advantages in simplifying procedure for by making the summons a Court one, it enables several matters to be disposed of at once, and now the "order for transfer" not only effects that process, but usually provides for the delivery of points or (as a layman would call them) "heads" of claim and of defence, the exchange of documents, which as already explained includes "discovery" or disclosure of documents, the mode and date of trial and the costs. As regards these points, I learn from a London friend who has been most kind in assisting me that the longest interval between the order for transfer and the actual trial is seven weeks and the shortest is fourteen days. In the end of March, 1905, a special case connected with war risks in which the "Law Guarantee and Trust Company" was concerned was even more expedited. It is manifest that to do this the case must have been practically examined and preparations made on both sides before even the writ was issued.

The time allowed for pleadings and such formal steps can therefore be, and usually is, made very short, seven days for the claim, seven for the defence, seven for exchange of lists of documents, three days for inspection. As regards documents, lists are prepared by each side, and exchanged immediately after the defence has been filed, and each bespeaks what copies he may require from the other. The solicitors, as officers of the court, have been informed that the withholding of a material document will be treated as a breach of professional duty. There is also a system of arranging admissions, when the pleadings are closed and inspection has been made, and this materially helps the procedure, as if the antagonist knows what you can prove by possibly expensive means, he may admit informal proof

so as to limit the expense, he being in his turn treated in the same way. I shall refer to this point again under the head of evidence. I should, perhaps, add that all the pleadings are settled by counsel.

The general hypothesis of a trial in the Commercial Court is, as stated in the Introduction to the Reports of Commercial cases, that whereas an ordinary action proceeds upon the supposition that each litigant is ignorant of the other's case, a commercial one proceeds upon the opposite view, and it often happens that the judge when the summons to transfer is heard, makes a note of the questions which the parties intend to raise, and sometimes the endorsement on the writ and the note taken by the judge are treated as a sufficient statement of the claim and the defence, and the action is ordered to be tried without pleadings. Or, if a record of the defence be deemed necessary, the solicitor for the defendant is ordered to write to the solicitor of the plaintiff a letter stating what the grounds of defence are, and the letter is treated as a statement of defence.

Pleadings are thus simplified, and indeed practically dispensed with where the facts are actually or substantially undisputed, and in addition a trial without pleadings may be ordered where though the facts may be in dispute the circumstances enable the parties to treat them as agreed, for instance if there be a preliminary point of law which if given one way or the other may put an end to all the litigation, such for instance as the statute of limitations.

This may seem somewhat technical, and perhaps an illustration may best show how the procedure works. I will take an actual case :—

An Insurance Company insured the plaintiff's ship, the *Bawnmore*, against loss by fire. The ship was also insured with other underwriters against other risks, and on her voyage was driven ashore, and after being stranded for some thirty-six hours was burnt.

I fear I must explain here that a vessel may be a " total loss," or a " constructive total loss," the first needs no definition, but a " constructive total loss " is when the ship is not actually destroyed, but so damaged, that although she could be repaired it would cost more than the amount of the insurance to repair her.

In this case the defendant company pleaded that they had only insured the vessel against fire, and that at the time of the fire she was already a " constructive total loss," in other words that their liability was just as much at an end

when she stranded as if she had been sunk, in which case as they were only liable for fire, they would have been free.

Under these circumstances, when the summons for transfer was heard it was ordered that the question whether the defendant was relieved of liability if it could be shown that the vessel was a constructive total loss should be argued as a preliminary point, as if it were decided that the policy expired at the stranding, then there was no use in going any further.

As already mentioned, the summons to transfer is the very first step, and it will be at once seen that such a clearing of the ground is much in favour of expedition, no evidence was required.

I am, of course, dealing very briefly with the point.

Evidence.

Most mercantile men are well aware that perhaps the chief expense of commercial litigation is the payment of witnesses, or perhaps, I should say more comprehensively the obtaining of the evidence. I remember paying three witnesses five guineas a day and their expenses for four days running, and the amount obtained against the defendant was not half the amount, while much of it could have been put into an affidavit. In the Commercial Court both parties are expected to assist, for unless by consent the judge has no special power in regard to the ordinary rules of evidence. The practice of the court in this respect may be stated as follows :—

1. Admissions. Where the facts are not in dispute, or where only some of them are in dispute, the parties are encouraged to make admissions, formal or informal. For instance, if an owner of a ship or other property die, the parties would be expected to admit the death and not to insist on having it proved by the attendance of a witness.

2. Preliminary point of law. I have already given an illustration of how, to avoid the necessity of an inquiry, an order can be made for the argument of a point of law as a preliminary.

3. Informal proof. Where it is difficult to obtain strict evidence of the facts except at great expense, or after great delay, the parties are advised to treat as evidence such documents as are available. As an instance of this I will again resort to an illustration. My client, a Bank, held an Indian judgment prepared in the ordinary form of the Court. No one doubted its authenticity, but the rule there was absolute that

except by consent it must be authenticated by the seal of the court. In the Commercial Court the solicitor or counsel would be expected to waive a purely technical objection: in my case the lawyer on the opposite side had no discretion, nor encouragement to exercise it, for we have no Commercial Court, and the result was a weary delay of, I think two months, certainly six weeks, while the document went out to Calcutta or Madras, I forget which, and came back smeared with an india-rubber stamp like a postmark, while his client paid interest meanwhile at six per cent., not to mention the other expenses.

The reports of Commercial Cases contain many such instances, notably the admission as evidence of depositions before a receiver of wreck and similar matters. Of course, I am not saying that any essential point is admitted, but the practice is for the parties to agree as to what constitute essential points.

Commissions.

These are practically unknown. Instead of making an order for a commission to take evidence abroad an order is made to allow affidavits to be read as evidence, or mere business books or documents to be read as evidence, subject of course to the right of the other side to dispute the accuracy of the statement therein contained.

Again, correspondence is frequently read without objection, although the originals are not produced and the copies not proved in any way. If objection were made it is believed the Judge would be bound to allow or sustain the objection, but an unreasonable objection would tell against the party objecting, and hence the practice is now universally recognised.

Exchange of Documents.

The discovery or disclosure of documents as existing here is a fruitful source of delay. The preparation of the affidavit takes much time and gives practically no information. The commercial judge gives a simple direction that each party shall produce all documents for the inspection of the other. Lists of documents are exchanged, and in the preparation of these the entire responsibility is cast upon the solicitors for the parties. As officers of the Court they are expected to act in the spirit of the order, and the concealment of a relevant document is regarded as a breach of professional duty. Each solicitor bespeaks what copies he wants from the list supplied to him.

There are, however, two points which are deserving of attention :—

1. The greatest care is taken to have the trial on the day already fixed for it, the longest interval between the summons to transfer and the trial being seven weeks and the shortest fourteen days, while if a case be settled the Court expects to be informed at once so that some other parties may have the vacant day.

2. The briefs are not prepared in the ordinary way but are simply short digests. I am informed that it is a common experience in a very important case for the brief to contain simply two or three pages, being in the nature of a digest of the important points. I need hardly say that there is a taxing officer accustomed to deal with this practice, who does not measure the remuneration by the mere length of the documents.

It remains to consider whether an extension of the procedure would be a benefit to Ireland.

I do not think it is necessary to go into the procedure of a trial. The peculiarities of the Court rather consist in a clearing away of all the preliminary questions than in introducing a new procedure. In fact, one of my London friends wrote : "The notice (of February 1895) cannot be said to vary the procedure of the ordinary course which is still binding upon the Commercial Court as on the other Courts."

I have no hesitation in admitting at once that it would be a considerable assistance to our struggling commerce, which needs every assistance it can get, and as regards the possibility of establishing the same court and procedure in Ireland there is no theoretical difficulty ; it would only need the publication of a notice similar to that issued in England, in February, 1895.

So much for the theory, but as to the practice matters are different. I do not think we have business to keep a court going, and such a court (being intended for expediting business), must be readily and at all times available.

This might perhaps be met by providing that the Bankruptcy Judge, who at present only sits in that Court on two days in the week, should devote three days to it, and take charge in addition of the commercial business as part of his work.

I have, however, been reminded that the Bankruptcy judge sits in the King's Bench on other days, and that his increased duties might interfere with the working of the Divisional Court, the more so as two of the other judges of the Division have to deal with Admiralty and Probate. This is a matter which I must leave to those who are far better qualified to give an opinion. Speaking as a private individual

I think it might be met by reducing the number of judges required for a Divisional Court.

Even if this were not possible, I think that at all events a considerable improvement could be effected if a writ could be marked as a commercial case, and then allowing discovery as a matter of course, together with a preliminary meeting before a Judge at which each party should state the points at issue, with a view to entering into some arrangement as to admitting points which are not really important to the issue to be admitted, Take the case of the Indian judgment I have already mentioned.

It may be said that this might be done by the parties entering into consents, but this would be to leave the solicitors liable for negligence if with the best intentions they "tried to take a short course." Hence my wish to provide for their security by showing that they had submitted the point to the Judge.

There is also the very important question of fixing a day for the trial and adhering rigidly to it, a very serious matter in commercial cases when merchants and traders have to attend with books which are in daily use.

The establishment of such a court is, however, a question for those who at present suffer by the absence of this procedure. I should be very happy to give every assistance in my power, but the matter rests rather with those who are directly interested, speaking generally, with the Chambers of Commerce, which are largely composed of merchants, traders, bankers, and shipowners, all of whom are vitally affected.

APPENDIX.

HIGH COURT OF JUSTICE.—QUEEN'S BENCH DIVISION.

COMMERCIAL CAUSES.

NOTICE.

The Judges of the Queen's Bench Division desire to make in accordance with the existing rules and orders, further provision for the despatch of commercial business as herein provided.

1. Commercial causes include causes arising out of the transactions of merchants and traders; those relating to the construction of mercantile documents, export or import of

merchandise, affreightment, insurance, banking and mercantile agency, and mercantile usages.

2. A separate list of summonses in commercial causes will be kept at Chambers. A separate list will also be kept for the entry of such causes for trial, but no cause shall be entered in such list which has not been dealt with by a judge charged with commercial business, upon application by either party for that purpose or upon summons for directions or otherwise.

Commercial causes may be transferred from the Chancery Division to the Queen's Bench Division in accordance with the existing practice.

3. With respect to town commercial causes it is considered desirable, with a view to dispatch and the saving of expense, that all applications shall be made direct to the judge charged with commercial business, and with respect to country commercial causes applications may, by consent of the parties, be made to him in like manner.

4. As to commercial causes already entered for trial, application may be made to such judge by either party to enter the same in the commercial cause list.

5. Applications in commercial causes under Order 14 shall be made as heretofore, but where leave to defend has been given such causes may be dealt with like other commercial causes.

6. Application may be made to such judge under the provisions of the Judicature Act, 1894, and the rules thereunder, or by consent, to dispense with the technical rules of evidence for the avoidance of expense and delay, which might arise from commissions to take evidence and otherwise.

7. Applications may also be made to the judge, after writ or originating summons, for his judgment on any point of law.

8. Such judge may at any time after appearance and without pleadings make such order as he thinks fit for the speedy determination, in accordance with existing rules, of the questions really in controversy between the parties.

9. Parties may, if they so desire, agree that the judgment or decision of such judge in any cause or matter shall be final.

10. Application may be made to such judge in urgent cases to fix an early day for the hearing of any cause or matter.

11. Summonses may be entered in the list of commercial summonses on and after Wednesday the 26th day of February next; these will be heard by Mr. Justice Mathew, who, on February the 1st day of March next, will sit, and thenceforward will, until further notice, and as far as is practicable, continue to sit *de die in diem* for the despatch of commercial business. Where necessary, other judges of the Queen's Bench Division will assist in the disposal of commercial business.

12. Country commercial causes will be tried as is usual at the Assizes.

BY ORDER.

APPENDIX B.

RULES OF SUPREME COURT, ORDER 30, RULE 7, REFERRED TO ON PAGE 372.

"On the hearing of the summons, the Court or a Judge may order that evidence of any particular fact to be specified in the order shall be given by statement on oath of information and belief, or by production of documents or entries in books, or by copies of documents or entries or otherwise as the Court or a Judge may direct."

2.—*Canals and Waterways of Western Europe.*

BY E. A. MONTMORENCY MORRIS, ESQ., M.A.

[Read Friday, December 15th, 1905.]

A HISTORY of the waterways of the world would tell a great part of the story of early human migration and the rise and growth of commercial intercourse. In early days, it was by rivers rather than by forest tracks that primeval peoples became acquainted. Roads and canals followed as the first artificial highways, and, finally, with the application of steam power, came the rail-road. With the advent of the railway, canals played a much smaller part in the economy of transport; and throughout the world, with the exception of the Low Countries, business men ceased to attach much importance to the canal as a factor in the transport system. But as time went on, and the capacity of railways in solving the question of goods traffic was recognised to be limited, attention was again given to inland navigation. The digging of the canal across the Isthmus of Suez, a colossal feat of engineering at the time, aroused the world, and set men thinking, that perhaps, after all, the day of canals had not passed. From that time until to-day, but more especially during the last fifteen years, there has been a considerable revival of interest, in Europe and in the United States, in the question of canals and inland waterways. It came to be recognised that it is not only in the item of cheapness that water transport excels. It possesses other advantages. As General Rundall, R.E., pointed out in the memorandum, "The Policy of Water Carriage in England," which he put in when a witness before the Royal Commission on Canals in 1883, canal traffic has the following good points:—

1. It admits of any class of goods being carried in the manner, and at the speed, which proves to be most economical and suitable for it without any interference with any other class.