

TRIBUNALS OF COMMERCE.

parties, or, if he thought the circumstances of the case required it, at his discretion, select two persons who should sit with him, and advise him during the progress of the case on any point upon which their special knowledge would be of use. In special cases it might also be competent for the Judge to call in the assistance of assessors who are not upon the local rota. But we are strongly of opinion that these mercantile or scientific assessors should not have any voice in the decision, and that the whole responsibility of the decision should rest with the Judge.

We think that in cases in which an appeal is allowed there should be power for the Judge or Court to call in the assistance of like assessors.

Our opinion is that the assessors should be paid for their services in Court, but not receiving any other remuneration. We think that for moderate fees the services of gentlemen possessing sufficient knowledge and independence to afford the requisite assistance to the Judge could be obtained. Their fees should be costs in the cause.

These provisions, we venture to think, would supply the Judge with the requisite practical or technical knowledge to enable him to do justice between the parties. We hope that the Legislature will always provide sufficient judicial strength to obviate the great complaint as to delay, and that under the new judicial system, of which the Judicature Act is the first fruit, effectual rules will be established to meet the other great grievance of expense.

We hope soon to be in a position to lay before Your Majesty our further Report upon other matters included in our Commission, which have not been already disposed of."

Here follow the signatures of the Commissioners, commencing with Lord Selborne, followed by Lord Cairns, Lord Hatherley, Chief Justice Cockburn, &c.

Mr. Acton S. Ayrton expresses his individual views on some points as follows:

"In signing this Report, I am unable to concur in the reasons assigned for deeming it inexpedient to place the mercantile members on a footing of equality with the legal Judges of the Tribunals proposed to be invested with power to decide commercial cases. The argument that the uniform administration of the law would be impaired has, I believe, been usually urged against proposals for withdrawing causes from the Courts at Westminster, and remitting them to inferior Tribunals. It was suggested

that this evil would arise from the establishment of County Courts, and from the extension of their jurisdiction, but it is proved by experience that no such evil has arisen, nor does it arise from the exercise of the judicial functions of the Courts of Quarter Sessions or Petty Sessions, or the stipendiary or unpaid magistrates, although their decisions in criminal cases, and in certain civil cases, affect the rights and liabilities of the public in as great a degree as the decisions of Tribunals of Commerce would affect the commercial community.

It appears to me that when a dispute arises in the course of a commercial dealing, the compulsory settlement of it by a Tribunal may be regarded as only a continuance or a conclusion of the transaction, and that it is unreasonable to insist that the parties interested shall, as a condition of having their dispute determined, be required, at an enormous cost and inconvenience to themselves, to create a precedent for the benefit of society, and to add a rule of law to a commercial code.

I venture to think that it is not necessary to regard the decisions of particular cases as such precedents, but where parties desire, as now sometimes happens, that a rule of law should be established, regardless of the trouble and expense of litigation, there would be no difficulty in carrying the case from a Tribunal of Commerce to the Supreme Court of Justice for that purpose.

I consider that the advantages which would result from placing the legal and commercial elements of the Tribunal on an equality, outweigh the objections. The legal Judge could exercise sufficient influence over his commercial colleagues to prevent them from acting contrary to settled law, but the sagacity and experience of the commercial men would in general be of more service to the suitors in the decision of their disputes than the legal knowledge of the Judge.

The advantage of a Tribunal of Commerce does not, however, consist merely in the constitution of the Court, but it is in the mode of procedure. It seems desirable to have a guarded formal and somewhat tardy procedure through legal agents, where the judicial power is entrusted to a single State Judge, not only for the protection of the suitors against each other, but against any abuse of power on the part of the Judge. Nor does the ordinary litigation in these Courts require a more summary mode of procedure. But commercial disputes frequently demand a very speedy decision, as well as special treatment whilst under adjudication, such as those arising out of dealings relating to the