

WHAT SHOULD BE A QUORUM OF JUDGES.

dual opinion. Where arrived at merely by the exercise of powers of the intellect, the strength of a tribunal must be measured by that of its most gifted member. It may be weakened, but can scarcely be strengthened, by adding the judgment of an inferior mind to that of a superior. For a tribunal which has to decide such questions therefore, there can be but one reason—and that but a poor one—for having more than one judge, namely, the difficulty of selecting the best man. When, however, the questions depend upon practical judgment and experience of men and things, the case is very different. In such a case the greater aggregate amount of experience which is brought to bear upon any disputed point, the more satisfactory will be the decision.

Now, we think that the cases which come before the equity courts can more often be decided by the application of abstract principles, than those which the common law courts have to deal with. Such a distinction may be thought by some rather fanciful, and undoubtedly the rule, if it is one, is qualified by many exceptions. There is, however, one practical distinction between the business of the common law courts *in banco* and the Vice-Chancellors' courts, which is most important as regards the number of judges required—that is, that the business of the former is principally of an appellate character. We refer, of course, to the New Trial paper, which occupies by far the greater portion of the time during which the courts sit *in banco*. In a considerable number of these cases the decisions of the jury upon the evidence is reviewed by the court. The power of the court, while it is one which every one, experienced in the occasional results of trial by jury, admits ought to be possessed by the court, is yet one which all will agree ought not to be exercised by one, or even two judges. Indeed it is now a common cause of complaint, that the opinion of the one judge who tried the case, is allowed by the other members of the court to have too much weight with them, to the exclusion of their own judgment. Other cases again, in the new trial paper, involve the question of misdirection, which is a direct appeal from one judge to the court on a matter of law. In others, where the point has been reserved, the appeal is often from a merely formal decision of the judge, given for the purpose of bringing the point under consideration of the full court. Here, therefore, we have at all events the deliberate opinion of a judge that the point is one worth discussing, and as to which he does not care to rely on his own unassisted judgment. This may be thought not an insufficient reason why the tribunal to decide the point should be composed of several, and not of a single judge. Besides the new trial paper, the courts *in banco* are occupied with motions, the special paper, and in the case of the Court of Queen's Bench with the Crown paper. Now, many of the motions are for new trials, and to these of

course the remarks made upon cases in the new trial paper apply. Others are appeals from judges at chambers, which seem to us to require a full bench of judges. Others, again, are applications for the exercise of the discretion of the court in various matters, upon which the decisions of a bench are more likely to be satisfactory, because less likely to be arbitrary, than those of an individual judge. Some few motions, doubtless, are made to the court principally on matters of practice, which might well be disposed of by a single judge, but these occupy but a very small portion of time, and, although they might with advantage be heard, together with the chamber business of the judges under the new rules, before a practice court, we think they do not afford any argument for materially reducing the number of judges sitting *in banco*. As to the special paper it consists of demurrers and special cases. Here, the law has to be applied to admitted or agreed states of facts. As regards special cases, however, it has become a common practice to state certain facts, leaving the court to draw the same inferences that a jury might have done as to other facts which may be material to ascertain the rights of the parties. In these cases the judges really act as jurymen, and the number of independent judgments may be of importance. In other cases, in the special paper, there can be no doubt that the weight and authority of any decision will depend more upon the reputation of the judges who gave it for legal knowledge, than upon their mere number. Here, therefore, if the selection of the judges on the ground of their legal knowledge could be guaranteed, the tribunal might consist of a less number of judges than at present, and even of a single judge. With regard to the Queen's Bench Crown paper, a few of the cases are appeals from magistrates and the like, and of considerable practical importance; but as Chief Justice Cockburn lately remarked, most of the Crown paper days are occupied by the court in trying to make sense of other people's nonsense. Either some hopelessly inconsistent sections of Rating or Public Health Acts have to be reconciled and applied by a kind of *cy pres* process, or else the meaning of the Legislature has to be discovered in one of those cases where the only thing that is clear, is, that the point was never foreseen, and that the Legislature had no meaning at all with reference to it. Until the judges are relieved by better workmanship in law-making, from this distressing and useless kind of employment, it would perhaps be better for the public, though rather hard upon the judge, to confide it to one than to several. On the whole therefore, looking at the character of the work done by the common law courts *in banco*, we think there are good grounds for continuing to have a bench of judges and not a single judge. In addition to the reasons arising out of the character of the work, it must be remembered, that judges are in practice, though not of course in