

are of a merely clerical character. But, though the committee may not itself be able to amend the present Rules, any suggestions which it may think fit to make would, no doubt, be very carefully considered, and possibly adopted by those in whom the power of making Rules is vested.

Mr. McClive's remarks on the abuses which have resulted from the general application of the old Chancery practice relating to discovery are but an echo of what has frequently fallen from the Bench. Theoretically, it is an excellent practice; practically, when kept within due bounds, it is highly beneficial to litigants; but, applied indiscriminately to all classes of cases, it has become a gross and flagrant abuse.

The judges have lately dealt with one branch of this practice, namely, that relating to the oral examination of parties for discovery, and Mr. McClive suggests that the other branch, namely, that relating to the production of documents, should be similarly dealt with, and in this suggestion we are inclined to agree; both branches appear to stand on the same footing, and should be subject to similar Rules.

We think there would be technical difficulties in the way of dispensing with orders to produce as he suggests. The disobedience of a notice to produce could hardly be punished in the same way as the disobedience of an order of the court; and before a party could be put in contempt an order would have to be obtained at some stage of the proceedings, and would, if not taken as at present, in many cases involve delay, which might be highly prejudicial.

With regard to Mr. McClive's proposal for the revision of the taxation of costs in all contested cases, we doubt whether that is practicable or desirable, although we admit there is much force in what he says on the point.

The fact of the matter is that no Rules can be devised which it will not be possible to abuse and pervert. For the proper working of any Rules of practice it must be assumed that some ordinary judgment and common sense will be exercised by practitioners, and that for their own interest, as well as that of their clients, they will refrain from running up costs out of all proportion to the matter in controversy.

Two or three cases have recently been before the courts where a deplorable lack of these qualities seems to have been