

TRIBUNALS OF COMMERCE.

there appears to be the greatest diversity of opinion.

We find moreover that, even in the countries in which Tribunals of Commerce are established, great diversity exists with regard to the constitution of these Courts. Thus, in France, in Belgium, and in some other countries, all the members of the Court are merchants, except the greffier or registrar, and he has technically no voice in the decision. On the other hand, in many of the German States, the Court is presided over by a lawyer. In Dantzic the Tribunal consists of a legal President, four other legal Judges, and four merchants, but the merchant Judges do not attend unless required. In Königsberg the commercial members have no vote, only a deliberative voice, the decision resting entirely with the legal members of the Court. In Prussia, generally, it is in contemplation to substitute a paid lawyer for an unpaid merchant as President. There is in fact no uniformity in the constitution of these Tribunals; in some countries the mercantile, in others the legal element prevails, sometimes in the latter case to the exclusion of the commercial altogether.

We also find that, where the Tribunal is composed entirely of mercantile Judges, assisted by a greffier who is a lawyer, the latter, although he has no vote, becomes of necessity the most important member of the Court; and thence arises this anomaly, that the person who virtually decides the case is not clothed with the responsibilities of a Judge.

Now, we think that it is of the utmost importance to the commercial community that the decisions of the Courts of Law should on all questions of principle be, as far as possible, uniform, thus affording precedents for the conduct of those engaged in the ordinary transactions of trade. With this view it is essential that the Judges by whom commercial cases are determined, should be guided by the recognized rules of law, and by the decisions of the Superior Courts in analogous cases; and only Judges who have been trained in the principles and practice of law can be expected to be so guided. We fear that merchants would be too apt to decide questions that might come before them (as some of the witnesses we examined have suggested that they should do) according to their own views of what was just and proper in the particular case, a course which, from the uncertainty attending their decisions, would inevitably multiply litigation, and with the vast and intricate commercial business of this country, would sooner or later lead to great

confusion. Commercial questions, we think, ought not to be determined without law, or by men without special legal training. For these reasons, we are of opinion that it is not expedient to establish in this country Tribunals of Commerce, in which commercial men are to be the Judges.

But while we are quite agreed that a Court presided over by mercantile men, or in which mercantile men have a deciding vote, would lead to confusion and uncertainty in the administration of the law, we are fully alive to the inconveniences that do undoubtedly arise from the want of adequate technical knowledge in the Court which has to adjudicate upon cases of a commercial character. We think there is ground for the complaint that cases are sometimes tried at Nisi Prius before a Judge and jury who have not the practical knowledge of the trade or business which is necessary for their proper determination. We are of opinion that many cases involving for their comprehension a technical or special knowledge, cannot be satisfactorily disposed of by the ordinary tribunal of a Judge and jury, and that the proper tribunal for such cases would be a Court presided over by a legal Judge, assisted by two skilled assessors, who could advise the Judge as to any technical or practical matters arising in the course of the inquiry, and who by their mere presence would frequently deter skilled witnesses from giving such professional evidence as is often a scandal to the administration of justice. This is the kind of assistance which we, in our first report to Your Majesty, contemplated should be given to the superior Judges on the trial of cases of a scientific or technical character; and which has been provided for by the Supreme Court of Judicature Act. If the recommendation for the enlargement of the jurisdiction of the County Courts, contained in our second Report, should be adopted by the Legislature, we think it would be expedient that similar assistance should be afforded in mercantile cases to the Judges of those Courts; and in this manner the principal advantages anticipated by the advocates of Tribunals of Commerce might, we think, be attained.

We are of opinion that there would be no practical difficulty in carrying such an arrangement into effect. We think that there might be for every place of sufficient importance a *rota* or a panel, to be formed from time to time, composed of merchants, shipowners, or others conversant with the trade and business of the district, or other competent persons, from which *rota* the Judge might, at the request of the