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TRIALS BY REFEREES.

Since the discussion by the Council of the Bar of the proposed amendments to the Code of Procedure in civil actions, other suggestions have been made that are worthy of careful consideration. A very important one is, to provide in particular cases, for the trial of actions by referees. It is proposed that any Judge of the Superior Court shall have power to refer the whole action, or any of the issues, for trial to a sole referee who must be an advocate.

This system of procedure has been in operation in the State of New York for many years, and it has commended itself alike to the Judiciary and to the Bar of that State, and has resulted in the formation of a class of referees who have made a specialty of referee trials, and to whom a multitude of cases of great importance have been referred by consent of parties, as well as by the Court of its own motion, which have been adjudicated upon, and the issues fairly and fully tried to the satisfaction of the Bar and suitors.

It would seem to have been designed to introduce this system into England as one of the legal reforms to be enacted by the Judicature Act of 1873, (copied also into the Ontario Judicature Act of 1881), but it appears by the judicial construction given to that Act in *Longman* v. *East* (3 Common Pleas Div. 155) that it had very serious defects, one of which was, that it so restricted the powers of the referee, that a reference, even by consent of parties, to try all the issues, was not authorized by the Act. It is not proposed to disturb existing references to arbitrators, experts and others; but in addition to powers already exercised, to allow any Judge of the Superior Court to confer temporary judicial functions upon a referee, who when selected by the Judge, must have some definite years' experience as an advocate; but who, when selected by the parties, must in any event be a member of the Bar, in order that some guaranty may be afforded that the referee selected is familiar with the rules of evidence and principles of law applicable in the trial of cases.

This mode of procedure is adapted to secure in the first instance, a more thorough and accurate trial of an action, where a number of items of account, or of damage or of other issues, have to be passed upon, the trial of which one by one, would, owing to the multitude of issues, consume more time than the Court could reasonably be expected to give with the pressure of a large calendar of causes before it. It also affords suitors a more expeditious and informal trial of their cases by enabling them to proceed at once, (even during vacation) without having to wait till the cause is reached upon the calendar. And in cases where the opinion of the Appellate Court would alone satisfy all parties, this system of procedure aims to have the cases presented by the referee in a proper condition for revision by the appeal court direct. If the referee should disregard the specific directions given him, he can be compelled, before judgment is entered upon his report, to amend it by stating his decision upon the issues and questions referred to him with such particularity and precision, that the Appellate Court would readily be able to review his decision as to the facts, and ascertain if his rulings and conclusions of law were correct.

In a late case in the Supreme Court of Canada, the Chief Justice took occasion to remark "that the Judge who tried the cause had left the Appeal Court in ignorance as to what facts he had found, that in England where causes are tried by a Judge without a jury, the Judge states his findings upon the facts and the Appellate Court can tell whether his conclusions of law were right or not." Also, in another recent case of an appeal from a decision in the matter of a contested account, judges of both Appellate Courts remarked, and some of them in very strong terms, on the confused and defective condition in which the case was presented to them owing to a mistrial of the case in the first instance.

The proposed amendment is calculated to protect suitors against the danger of such mistrials and to enable advocates to arrive at a clear and accurate trial of an action in the first instance, and in case of an appeal, it is designed to secure the Appellate Court an opportunity of getting an explicit presentation of the facts and questions for review.

In another issue we will give the rules suggested. D.