

is one to be tried at a sitting with a jury, or by a jury in a sitting in which both jury and non-jury cases are to be disposed of, should be decided before the case is entered upon the list, instead of, as is now the prevailing practice, after the case has been entered and the parties have come down prepared for trial.

Bearing this principle in mind, Convocation desires to call the attention of the judge to the fact that at present there are three divisions of actions so far as the question now under consideration is concerned.

(1) The actions enumerated in section 76 of the Judicature Act, which can only be tried by a jury, unless both parties consent to a jury being dispensed with.

(2) The actions referred to in section 77 of the Judicature Act which are to be tried without a jury, unless otherwise ordered, and which, speaking generally, are all tried without a jury.

(3) The remaining actions which may be tried with a jury, if so desired by any party, subject, however, to the order of the court or a judge.

In the opinion of Convocation the *prima facie* right of the parties litigant to have these actions lastly referred to tried by a jury should remain as it now is, but such right should be claimed by the parties desiring it by serving a notice to the effect that he requires the action to be tried by a jury, which may be served with any pleading, and that the action should be so tried unless otherwise ordered. And with reference to jury actions in the third class, as well as to non-jury actions, those in the second class, the suggestion of Convocation is that any party to the litigation desiring that an action of which such notice has been given in class three, or in which the party desires that the action should be tried by a jury in class two, should be at liberty to move that the action be tried with or without a jury, as the case may be, within days after the cause is at issue. That such motion is to be made before a Judge in Chambers, whose decision thereon is to be final and without appeal. If no such motion is made, then the action is to be tried, if under class three, as a jury case, and if under class two as a non-jury case. But in the opinion of Convocation it is at this stage of the proceedings that the question should be investigated and conclusively determined, and that the power now vested in the trial judge should be withdrawn, unless with the consent of all the parties to the action.

Convocation would further suggest that the discretionary power now exercised by the judge at the trial should be expressly given to a Judge in Chambers by the passage of an order or rule to the effect that the Judge in Chambers, on application of any of the parties, may in his discretion order that the action or issues shall be tried or the damages assessed without a jury. This would in effect supersede the last part of section 8 of the Judicature Act, which, it has been held, vests this power in the trial judge.

The Report was received and read, and ordered to be taken into consideration forthwith, and it was ordered that the consideration thereof be deferred to until Friday next, and that the Treasurer inform the President of the High Court of Justice that Convocation has still under consideration the Rule proposed to be promulgated for the purpose of fixing the mode of trial and having the question of right to trial determined.

The consideration of the Report of the Finance Committee presented on 6th February was resumed, and the Report was adopted.

The letter dated February 3rd, 1894, of the County of York Law Association was read, and it was ordered that so much of the same as relates to changes in the Rules of Practice be referred to a committee consisting of Messrs. Osler, Martin, Moss, Macdougall, Hoskin, Lash, Watson, Barwick, Ritchie, Strathy, Aylesworth, Shepley, and Riddell. As to the residue of the letter, to wit, in relation to judicial salaries and the distribution of the Provincial Statutes, that it be referred to a committee composed of Mr. Hoskin and Mr. Osler.

Mr. Shepley moved: That a memorial be presented to the Dominion Government requesting that the duty imposed upon law books imported into this country for the exclusive use of law libraries be abolished.

Carried, and ordered that Mr. Shepley draft such memorial and place it in the hands of Messrs. Osler, Moss, and the mover for presentation.