The English Courts - Recent Proposals for Better Despatch of Business

W. Calvin Chesnut

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The charge is often made that reforms in legal procedure are not initiated by lawyers or judges but are grudgingly acceded to by them as a class only upon the insistent demand of the lay public. Doubtless this was true in England before the Judicature Act of 1873, which came only after half a century of public agitation initiated by Jeremy Bentham in the early part of the 19th Century. But this attitude of professional antipathy to procedural change is no longer characteristic of the legal profession. In the past few years we have seen a really great activity within the Bar itself for reform in the law to avoid delay and expense in litigation, both in England and in this country.

In the field of federal judicial procedure, the recently published rules of the Supreme Court, in effect in 1934, governing appeals in criminal cases have both lessened the number and expedited disposition of criminal appeals. And the rules for civil procedure are in the process of being comprehensively revised by the Supreme Court for both law and equity cases. During the last few years there has been similar activity in England. Two important Royal Commissions have very recently submitted their reports and recommendations for procedural changes designed to remove congestion and render more certain an appointed day for trial of cases in the London courts. One of these Commissions was known as The Business of Courts Committee, headed by the Master of the Rolls, Baron Hanworth, and including Lord Wright who spoke at the recent Boston...
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meeting of the American Bar Association. Its main report was filed in 1933, and some of the changes advised by it have already been put into force, notably the abolition of the general use of Grand Juries. The other Commission was known as the Royal Commission on the Despatch of Business at Common Law. Its report was filed in January of last year. It is the chief purpose of this paper to review the recommendations made in the reports of these two Commissions. As the problem across the sea is similar to, though not precisely the same, as ours, it may be of interest and value to us to know what is now proposed there in this respect.

There is no startling accumulation of long pending cases in the London Courts; but nevertheless the characteristic of British justice is celerity as well as certainty, and even a moderate delay in the trial of ready cases causes some unrest there. Few cases are delayed in actual trial for more than six months after they are ready, but even this is generally regarded as too long a period, and to shorten the time some reorganization of the trial lists is being proposed. But their even more pressing problem with regard to the despatch of business is greater certainty for a particular trial day. Judges and trial lawyers know that the most vexing experience in litigation to the laymen consists in the delay which frequently occurs in the actual trial after a case has been assigned for trial on a particular day, in consequence of which parties and witnesses are required to be in attendance on court awaiting the imminent trial of a case which, however, may not actually be reached for trial for a number of days thereafter. This situation is said to exist in a marked degree in the King's Bench Division of the Supreme Court of Judicature with respect to jury and long non-jury trials in the Royal Courts of Justice on the Strand.

In order to understand the particular problem now confronting the London courts, something preliminarily should be said to outline briefly the distribution of judicial power as it now exists in England and Wales, which, of course, have a judicial system quite separate and apart from that of Scotland.
I make a start with the definition of "court". The concept is so familiar to all of us that it may not be generally realized that the word "court" in its primary significance is merely that of an enclosed space whether in a building or out of doors. In very early times in England when the King and his Councillors assembled in the open, with the people in attendance, in order to separate the former from the latter, an enclosure of some sort was made around the King and his Councillors sitting around a table, with the people on the outside of the enclosure. In this way the King and his Councillors came to be referred to as a "court" because they were sitting in an enclosed space.¹

It will be recalled that one of the provisions of Magna Carta required the King's Courts to be held at some certain place, in consequence of which the Superior Courts, the Court of King's Bench, the Common Pleas and the Exchequer, and later the Court of Chancery, all sat in Westminster Hall until the opening of the Royal Courts of Justice on the Strand in 1882. It will also be recalled that in addition to the ordinary civil courts there were from ancient times in England the High Court of Admiralty and the Ecclesiastical Court, the latter until comparatively recent times having jurisdiction in matters of probate and matrimonial separation, but not divorce, which was granted only by Act of Parliament. In addition there were quite a number of minor courts with very limited geographical jurisdiction in various parts of England, the most prominent and persistent of which were the Chancery Courts of Durham and Lancaster. With the exception of the latter practically all the Superior Courts of England and Wales were consolidated into a Supreme Court of Judicature by the Judicature Act of 1873, which has been amended by what is known as the Judicature-Consolidation Act of 1925.

¹ Later when the courts sat in buildings the same general arrangement for the public and those immediately attendant upon the Court was preserved by the dividing rail which is I believe today almost a universal feature of all American court rooms, although this architectural arrangement has apparently not been perpetuated in the Royal Courts of Justice on the Strand. I do not recall many American court rooms where the typical arrangement does not obtain. We still speak of the inner part of the court room as "within the bar" of the court.
and finally by the further Judicature Act of 1935. In order to afford flexibility to the new court in its jurisdiction and procedure, authority was given for changes therein from time to time by Orders in Council, to avoid the delay incident to new Acts of Parliament. The Supreme Court of Judicature now consists of two branches, a Court of Appeal, which may sit in two or more divisions contemporaneously, and the High Court of Justice which is composed of three divisions known as the King's Bench Division, the Chancery Division and the Division of Probate, Divorce and Admiralty. At present the judicial staff of the King's Bench Division consists of the Chief Justice and nineteen still so-called puisne judges, with six Judges constituting the Chancery Division, and the President and two puisne judges sitting in Probate, Divorce and Admiralty. For the Court of Appeal there are provided the Master of the Rolls, who was formerly a Deputy Chancellor, and some six or seven Lords Justices of Appeal. They also sit in the Royal Courts of Justice on the Strand. Generally speaking any case tried in the High Court of Justice can be appealed to the Court of Appeal, and the exceptional case may also be appealed to the House of Lords, the judicial strength of which consists of some seven, I think, Lords of Appeal in Ordinary together with such other peers as may have held high judicial office. The same staff of Judges in general constitutes the Judicial Committee of the Privy Council to which, however, have been added quite recently one or two judges from the Colonies.

To complete the outline, something should be said as to the inferior courts, and the distribution of their jurisdiction. First, with respect to criminal jurisdiction. In England, as here, ordinarily a person arrested for a crime is taken before a Justice of the Peace who may hold him for trial in the appropriate court. In the counties for all except the most serious crimes, the trial court is known as the Court of Quarter Sessions which is presided over theoretically by all the Justices of the Peace named from the particular county, but in actual practice by only some four or five who have specially qualified by taking the Oath of
Allegiance to the Crown and the judicial oath, and who currently attend Quarter Sessions. The court takes its name from the fact that its sessions are ordinarily held four times a year. In some counties Quarter Sessions are presided over by a compensated barrister appointed by the Crown. Probably in all counties there is an experienced clerk to advise the justices. Until very recently prosecution in the Quarter Sessions was by indictment by grand jury and trial by petit jury but the grand jury has recently been abolished for ordinary cases. In some of the cities Quarter Sessions courts as such are not held, the criminal work being done by Stipendiary Magistrates appointed by the Crown on special request of the particular town or city, and called the Recorder of the Town. In London there are a number of Stipendiary Magistrates for criminal work, but the more serious crimes are tried in what used to be called the Old Bailey and is now known as the Central Criminal Court. For the more important cases there a Judge from the King's Bench Division is supplied each month and he is occupied probably a week or ten days in actual trials. But the common run of cases is tried by officials of the City of London having judicial office, either expressly conferred or incident to some other office such as the Lord Mayor of the City or the Common Sergeant.

As to the civil work of the inferior courts, it may be noted that the Justices of the Peace have a very small and limited jurisdiction in minor cases, but most of the civil work is done by officers called County Judges, whose jurisdiction, however, is not necessarily co-terminous with the county but covers particular designated districts which at times may overlap county lines. They are barristers and receive the substantial compensation of £1,500 a year. Certain classes of cases, such as libel and slander, they may not try at all. The amount of their monetary jurisdiction in law suits is limited to £100. Their ordinary jurisdiction is concurrent with the High Court of Justice and cases may be transferred from one to the other under certain conditions. I mention the County Judges, because in England, as with us with Justices of the Peace, there is discussion as
to the desirability of increasing the monetary limit of their jurisdiction to relieve measurably some of the pressure on the High Court of Justice.

The most important factor in the problem affecting the despatch of business in the London courts comes from the necessity for the Judges of the King's Bench Division to perform circuit work, that is to say, to hold Assize Courts in some 60 separate Assize towns, at least twice a year and in some few of the cities three or four times a year. This circuit work is of very ancient origin. In very early times justice in the person of the King was ambulatory. Later it developed that, instead of the King in person traveling from place to place to administer justice, he commissioned named judges to represent him. In natural consequence places visited either by the King or his deputies under commissions came to be known as Assize towns, and once customarily established these towns can be persuaded with very great reluctance if at all, to surrender their ancient privilege. It means much to an Assize town to have the "Red" Judge present at least twice a year.

The word "Assize" has various meanings. Sometimes it indicates a particular town; sometimes the word has been used to mean a jury called to attend at an Assize; at other times it refers to the period of time when the court is held. But more technically and strictly speaking with regard to the commission, it denotes the power of the Judge to try civil cases; and there is a separate commission for the judge to hold sessions of Oyer and Terminer and gaol delivery in criminal cases. Others than judges are sometimes named in the commissions, frequently one or more barristers who are King's counsel on that particular circuit, and it is not infrequent, when a judge cannot dispose of all the business in the allotted time, for him to designate one of the barristers named in the commission to dispose of the remaining cases. But this practice is seemingly unsatisfactory both to the barristers and to the public.

It is this heavy duty of circuit work that makes large inroads upon the time of the Judges of the King's Bench which otherwise could be devoted to the ordinary London
trial work. The Royal Commissions considering the subject have struggled to lessen the difficulty. Efficiency would clearly seem to indicate the desirability of reducing the number of Assize towns, in order to shorten the time for circuit work. But it appears just as difficult to abolish an Assize town in England as it it to merge two or more counties in Maryland. Some of the Assize towns have very little judicial work, and it clearly entails a waste of time to have the Judges visit them. During the last 50 years Commissions investigating the subject from time to time have made various suggestions for the grouping of several Assize towns for judicial sittings; but none of these suggestions has been adopted up to the present time. The great resistance is due to the fact that the county is the administrative unit for police work, and it would be quite inconvenient as well as directly opposed to the sentiment in the county to change the Act of Parliament which specifies that Assizes shall be held in each county at least twice a year. Up to the present time the tendency of legislation has been rather to increase the circuit work of the judges than to diminish it.

A suggestion for the relief of the London courts is one that would readily occur to an American lawyer, and it has been made in England. It is to create district courts throughout England with the same jurisdiction as the High Court of Justice, but with locally resident judges. But this suggestion has met with no favor.²

² Objections to it have been summarized by Lord Wright, formerly Master of the Rolls, as follows:

"Now that system—which I know has been mentioned for many years (I think there is some hint of it in the Commission of 1869)—would to my mind be entirely contrary to the whole system on which English justice has been conducted from the earliest times, and would be most disastrous to the quality of English justice. Because the whole idea of the circuit system has been to have one body of judges in touch with each other and inspired by a common tradition, all taking their turns of London work, because in London you must have the biggest and most important work, such judges going down and bringing the tradition of the London Bench to the places in the country. On the other hand, if you had merely district judges, they will be cut off from association with the main body of the Bench. They would tend to become localized and parochialized and it would not be possible to keep up the same judicial standard that you may expect to get with the more limited number of the London Bench—"
The particular effect of the circuit system for Assize Judges is that the work on circuit has really a *preferential* status over the despatch of business in the London Courts, because commissions are regularly issued for the holding of circuits and the judges from London assigned to ride the circuit finish up the work there currently before returning to London. The result as it affects the London Courts is two-fold. Not only does circuit work occupy a large part of the time of a large number of the King's Bench Judges, but there is resultant uncertainty as to the time when the Judges will be available for the London sittings, by reason of the fact that it is not always possible to determine when the judge's circuit work will be completed, although it has a definite beginning under each commission. Then again, as the system works out, there is an irregularity as to the number of London judges who from time to time are away on circuit work. The ultimate result is that it is difficult many times in the year to have sufficient judges in London to man continuously the numerous special lists or classes of litigation in the King's Bench Division.

To understand how circuit court work interferes very seriously with the London court work, we must now turn to the present organization of the King's Bench Division in London for the despatch of judicial business. The ordi-
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nary litigation is divided into several different “Lists”. At present these are (1) the special jury list; (2) the common jury list; (3) the non-jury list; (4) the new procedure list; (5) the commercial list; (6) the revenue list; (7) chambers business (including appeals from masters and district registrars); (8) the Crown paper; (9) the civil paper; and (10) the special paper. In addition the King’s Bench Division supplies judges for (a) the court of Criminal Appeal; (b) the Central Criminal Court and (c) the Court of the Railway and Canal Commission. Cases are ordinarily assigned to the respective lists by masters in conference with solicitors under procedure called “summons for directions”, but after being so assigned, special application may be made to have a particular case transferred to another list.

A word should be said in explanation of the several Lists. The “special jury” list indicates trials with a special jury who are paid a guinea a day, and the “common jury” list is for trial by jurors who are paid only a shilling a day. The non-jury list is, of course, self explanatory. The New Procedure List is a specialized non-jury list with fixed dates of trial. It has two novel features. For it the judges “sit in court as chambers” each morning for about half an hour to deal with interlocutory matters which in special jury, common jury, and non-jury actions are still dealt with by the masters. Its other distinguishing feature is the fixing of a definite and particular date for trial. That is what has given the list its popularity. Only comparatively short and simple cases are assigned to this List. It requires the time of two judges continuously, and sometimes more. It is in effect a preferred trial list.

The Commercial List has some features in common with the New Procedure list. It is also a preferred list for trial. It has to do with commercial cases which are taken continuously by one judge and are given fixed dates for trial. Generally one judge is sufficient for the list, and it does not always occupy the whole time of even one judge; but occasionally a second judge has to be called upon in order to try cases on the dates definitely fixed.
The "short cause" list includes principally applications for summary judgment where the master has given leave to the defendant to defend. The list is not taken continuously by any one judge but is used often to fill in the odd time of some judge who by reason of having to go on circuit cannot take a long case but can take a short one.

The "revenue" list, as might be supposed, deals with income tax, stamp duty and death duty cases, of which the income cases are very greatly in the majority. Its work occupies about one-fifth of the time of one judge.\(^3\) The Crown paper consists of cases were prerogative writs are asked for and also includes appeals on questions of law from inferior tribunals. It is handled by what is called a Divisional Court of three judges, usually the Lord Chief Justice presiding, the other judges being the senior judge and one other. It occupies ordinarily a few weeks at the beginning and end of each term. The Civil paper also comes before a Divisional Court of two or more judges. It deals with miscellaneous appellate work such as appeals from special referees, from a Judge in Chambers (except in matters of practice and procedure) and from arbitrators.

The Central Criminal Court already referred to sits almost continuously and requires the attendance of a judge of the High Court about ten days in each month to try the more serious cases. The Railway and Canal Commission is not a court in the ordinary understanding but requires the presence of one judge of the King's Bench Division to assist the two railway and canal commissioners. It occupies about a third of the time of one judge.

Prior to 1907 in England appeals in criminal cases were allowed only in a very restricted class of cases, limited to questions of law, under the Act of Parliament of 1848 establishing the court for Crown Cases Reserved. But this has been superseded by the Court of Criminal Appeal which was established by the Act of 1907. It sits on almost

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\(^{3}\) Compare this with our American judicial work in federal tax matters, which occupies the whole time of 16 members of the Board of Tax Appeals and possibly ten per cent. of the time of Circuit Courts of Appeal and a substantial part of the time of district judges, and comprises about 20 per cent. of the cases argued in the Supreme Court. Possibly the explanation lies in the simplicity of the British income tax law as compared with ours.
every Monday and sometimes continues into Tuesday. It requires three judges and is usually presided over by the Lord Chief Justice. It also holds a session during the long vacation. An appeal may be taken to the Court of Criminal Appeal against the conviction, in which event if it is sustained, the conviction is quashed and a new trial is not ordered; or an appeal may be taken only against the sentence, in which event the court can increase or diminish the sentence imposed by the trial court. The case comes up for review not on a printed record but on the notes of the trial judge and the stenographic transcript of the testimony. As a rule the cases are decided orally on the same day that they are argued and it is only in the exceptional case that judgment is reserved and written opinions delivered. It is said that appeals are taken in about 7% of the cases where the right of appeal exists.

Procedure under the Criminal Appeals Act is prompt and expeditious and simple in character. An appeal ordinarily must be taken in ten days from the judgment although the time may be extended by leave of the Court of Appeal. The decision of the Court of Criminal Appeal is final save only that an appeal may be taken to the House of Lords on important law points if the Attorney General gives a certificate to that effect. It is said to be a defect of the English criminal appeal act that the Court is not given power to order a new trial and this has, in effect, been provided for by the new Criminal Appeals Act in Scotland.

It may be of interest to compare this percentage of appeals in England with the percentage in the Federal Courts in Maryland. Theoretically an appeal is possible with us in every criminal case but as a matter of fact appeals in criminal cases are quite rare and probably do not average as much as 1 per cent. of all criminal cases disposed of.

Here it is interesting to compare the recent new rules of the Supreme Court of the United States with regard to procedure in criminal cases after verdict. These now provide that appeal must be taken within five days but of course a longer period, usually thirty or forty days, is allowed for completing the record. There have been only one or two appeals from the United States District Court of Maryland in criminal cases since these new rules were proclaimed two or three years ago. A particular feature of them is that bail is not to be allowed pending appeal unless the trial judge is satisfied that the appeal presents a substantial question of law or procedure. In our practice the appellant is not often present in the Court of Appeals when the case is argued but in England he frequently is, probably because the Court of Criminal Appeal has the power to take additional evidence.
where criminal jurisprudence varies in important respects from that prevailing in England.

As there are only twenty trial judges in the King’s Bench Division and as many as twelve at times may be away on circuit work, it is obvious that the numerous lists cannot be held continuously in London by reason of a shortage of judges. And as the New Procedure List and the Commercial List are substantially preferred, as indeed in substance is the work of the Court of Criminal Appeal and the Central Criminal Court, it results that the general litigation which falls into the Special Jury, the Common Jury and the Non-Jury lists of long cases has to suffer in the despatch of business. Not only is there what is regarded as too great delay in reaching for actual trial cases which have been ready for trial for some months, but, what is more unsatisfactory, it is practically impossible to fix even approximately definite dates for trial of cases on these general lists as there are not available sufficient judges continuously to preside over them. That is to say, such judges as are available in London and are not on circuit are preferentially assigned to the preferred lists, thus leaving the ordinary litigation to suffer. It is this situation which causes the principal concern and has led the several Commissions to propose changes to remedy it. The question is also being asked whether it was really wise to have made the New Procedure List and the Commercial List preferred lists for trial.  

6 The disadvantages were expressed by Mr. Justice Goddard as follows:  
“...The disadvantage of the New Procedure is that its success is, I think, obtained at the expense of the non-jury list. Not only are two judges working at it every day, but to enable cases to be tried on their allotted days recourse is often had to other judges... I have known as many as four courts on one day occupied with New Procedure cases. It seems to me to be an important question whether the success to which I have referred is not bought at too high a price. The languishing state of the ordinary non-juries is apparent, and is, I think, a source of resentment, both to the Bar and to the litigants. More particularly is this true of long cases. Over and over again you find long cases at the head of the Week’s List reappearing week after week because there is no one to try them. The New Procedure judges can’t, or it would throw out their lists; it is very inconvenient for them to come before the chambers judge, who only sits in court on Mondays, Wednesdays and Thursdays; so that when the circuits are in full swing, what with New Procedure, ordinary jury cases, chambers and perhaps the Old Bailey, it is frequently impossible for weeks together to get a case of substance in the non-jury list tried.”
The Royal Commission has stated the principles which should apply in the arrangements of the lists to be as follows: (a) progress in the various lists should be regular and approximately uniform; (b) the ordinary lists should be taken continuously; (c) a judge should be given a list to deal with for a reasonable period; he should not be changed frequently from one list to another; (d) the system of appointing fixed dates for trial should be extended; (e) no case should appear in the Daily List for trial unless there is a strong probability of its being reached that day.

Now cases are assigned for trial in the following way. After interlocutory matters have been settled by the master, the plaintiff, after giving due notice to the defendant, is entitled to set down the case for trial; and this right inures to the defendant if the plaintiff takes no action. In London, the case is set down in the Crown office and Associate’s Department of the Central Office, and is assigned by the Chief Associate (Clerk of the Court) to the appropriate list, according to the master’s directions. Each writ is given a number on being issued, but it is not until this point that the case appears on any list. The lists are published as a whole at the beginning of each term, and a section of each list is published every Saturday covering the cases estimated to be sufficient for a period of about three weeks. This is called the Weekly List. The first part of the Weekly List contains the cases expected to be taken during the ensuing week. Cases remain in the order of their setting down, but special leave to postpone is frequently granted. From the Weekly List cases are transferred day by day into the Daily List, and distributed among the various courts sitting. This work is performed, under the general supervision of the Master of the Crown Office, by the Chief Associate, who makes up his lists according to the information he receives as to the number of judges who will be sitting on any particular day, and the lists they will be taking.

The chief difficulty which the Royal Commission found in the present arrangement as to the organization of the courts for the despatch of business is the lack of coordina-
tion in the preparation of the lists of cases for trial. Theoretically the management of this is in one or more separate officials under the general authority of the Lord Chief Justice, but the Royal Commission found that the judicial and other important duties of the Lord Chief Justice preclude him from giving the necessary time for the orderly arrangement of business, including the rearrangements made necessary from time to time by the changes in the situation owing to the non-availability of judges, by unexpected extensions of time on circuit, by sickness, by unexpected settlement of cases or unexpectedly prolonged cases or any other of the numerous reasons familiar to trial lawyers.

To collect foreknowledge as to the probable duration of cases in the several Lists, and thus to avoid loss of judicial time and to promote efficiency in the handling of business, the Royal Commission found that there was crying need for a new coordinating clerical official who could act as a clearing house of information as to all business of the King’s Bench Division both on circuit and in London; who should be given authority to require advance information from solicitors regarding the cases listed for trial, and to supervise and arrange the trial lists generally. Such an official they proposed should be appointed by the Lord Chancellor after consultation with the Lord Chief Justice; to be called the “Manager of the Lists”; and to be a responsible Crown appointee, whose duty it would be periodically to report to executive authority the progress of litigation in the courts and to make suggestions for changes in procedure in the work of the King’s Bench Division as a whole. It is said, however, that the present Lord Chief Justice strongly opposes the proposed change because it tends to take away “home rule for the law courts”.

As it is the tyranny of circuit work that plays the greatest havoc with the London Lists, both Commissions have given major consideration to the possibilities of decreasing the time now required for holding the numerous Assizes. Doing this would increase the number of King’s Bench Judges who will be available from time to time in London,
so that the Lists there may be prepared with more certainty that there will be Judges available to try the cases at the approximate times noted in the Lists. Thus it has been proposed to discontinue Assizes at a few of the towns where the amount of judicial work is almost negligible; to space the times for the several circuits more conveniently than at present; to limit trials on circuit to cases instituted at least fourteen days prior to the beginning day; and to authorize the judges on circuit to cancel the particular Assize for any town where the cases listed are very few, and to consolidate them with the Assize for another nearby town, a power which the Lord Chief Justice now has, but cannot well exercise at a distance in London.

Another change in the organization of the Supreme Court of Judicature which was recommended by the Business of the Courts Committee, but not by the majority of the Royal Commission, was the abolition of the maintenance of Probate, Divorce and Admiralty as a separate division, with the provision that the probate work should be transferred to the Chancery Division and the Admiralty and Divorce work assigned to the King’s Bench Division, with the consequent transfer of at least two judges to the latter. It is very reasonably said that admiralty work has much more in common with ordinary litigation, and especially commercial litigation, than with probate and divorce. The main objection to so transferring admiralty work to the King’s Bench Division has apparently come from the special admiralty bar who fear loss of prestige by merging admiralty work into the much larger general litigation handled by the King’s Bench Division. But this objection has been very reasonably met, it would seem, by the proposal that the court handling the admiralty work should be specially called the “Admiralty Court” and that a judge specially versed in admiralty matters should be provided therefor who could continuously take both admiralty work and the quite kindred commercial list and probably would not find all his time occupied by both combined. The proposal to confer some admiralty jurisdiction on the county courts was not favored by the Royal Commission, on the
ground that the admiralty court must deal often with matters of quasi-international importance, and its prestige both at home and abroad can not well be maintained unless the work is centralized in London. It continues to be a feature of the admiralty work that in cases of collision and salvage the admiralty judge may call to his assistance nautical experts as Assessors, who are selected from the "Elder Brethren of the Trinity House".

Even sharper debate has been stirred by the proposal to transfer divorce work to the King's Bench Division. It is supposed in some quarters that common law judges are not sufficiently expert in divorce litigation, and it may be gathered that they themselves are by no means avid for it. At the present time, however, the common law judges of the King's Bench Division do have to try divorce cases on circuit. Until ten or fifteen years ago all such cases were tried in London, but this came to be regarded as an unnecessary hardship upon the residents of the counties remote from London so that now in twenty-six of the Assize towns divorce work is taken by the circuit judge, but only in uncontested cases or those which are permittedly brought *in forma pauperis*. Those who favor transferring divorce work from the King's Bench Division say that there is no inherent difficulty in a qualified common law judge understanding the not very complicated issues which currently arise in divorce cases, and they say that such matters should be tried, as other civil litigation, whether contested or uncontested, on circuit; and that the transfer of two or more judges from the present Probate, Divorce and Admiralty Division to the King's Bench Division would add that number of additional judges who could perform their share of the circuit work, thus again aiding the continuous maintenance of the London lists.

The Royal Commission has also made a number of valuable suggestions for the better despatch of business in the way of reforms in procedure with special reference to shortening the length of trials. These may be classified as (1) a restriction of the issues to those certainly contested; (2) some relaxation in the rules of evidence; and (3)
a restriction on the amount of documentary material to be produced as evidence. The first has to do with the too great generality and vagueness of pleadings, in consequence of which the parties have to come to trial prepared to prove many things which, as a matter of fact, are really not disputed at the actual trial. The remedy of course is in some way to require sharper definition of the issues in the pleadings.\(^7\)

Of more interest is the suggestion for relaxation in the rules of evidence. It is pointed out that in the trial of many cases there are minor facts which must be established by one or the other of the parties which, however, do not really go to the core of the dispute. There is no suggestion that on the controlling issues of fact arising in the case there should be any departure from the general principle that the facts must be proven by witnesses present in court subject to cross-examination. But with regard to minor issues, required to be established but hardly in real dispute, it would be reasonable to accept affidavits of witnesses instead of requiring their personal presence in court. And again it is thought unnecessary to require formal and elaborate proof of letters and documents which arose _ante litem motam_. On this subject it was said by the Royal Commission, “similarly we consider that the court should have power to admit affidavit evidence or even unsworn declarations, without limitation. The opposite party should not have an absolute right to require the production of the affiant for cross-examination, but where the subject matter of the affidavit as made is seriously disputed and it is desirable to compel a witness to submit himself to cross-examination, leave would no doubt in practice be granted in proper cases. . . . These remarks do not apply to trials with a jury nor do they apply to any criminal cases.”

To accomplish these objects it is proposed that the powers of the master in dealing with interlocutory matters on a summons for directions should be enlarged so that in conference with solicitors he could take a summary view of

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\(^7\)To some extent we meet that in Maryland by the bill of particulars which now can be required from the defendant under the general issue plea as well as from the plaintiff.
the case as a whole and require a free "give and take" between solicitors whereby there would be developed, more definitely than by pleadings alone, the real issue in controversy; with reciprocal concessions respecting documentary evidence, the elimination of unnecessarily complex and redundant documentary material, and also a stipulation as to facts which, after an oral interchange of views, are found to be not really in controversy. There is no doubt that such an informal discussion in advance often results in greatly abbreviating the length of the trial. Where counsel are unreasonable in such matters, judges should be authorized to extend needed reprisals in the award of costs which could be imposed or disallowed with respect to particular matters dependent upon subsequent developments at the trial and with respect to the importance of the several matters. The Royal Commission points out that if these recommendations be carried out through expansion of the function of the master, it would be possible to eliminate the "new procedure" list for the London courts, much of which occupies the time of the judge in attention to matters which could readily be handled by a master.

An interesting practical suggestion is also made with regard to what the British call "running down" cases and what we know generally as "automobile cases". It is pointed out that the pleadings in such cases have become stereotyped and it is impossible to learn from them the real facts of the particular case, with the result that both parties come to the trial practically uncommitted to any definite statement of time, place or circumstances. What is proposed to remedy this situation is to require each of the parties "to file, early in the proceedings and before pleading, in a sealed envelope, a statement of the main facts of the accident, its time, place, and relative speed of the vehicles, etc. These envelopes will be opened after the close of the pleadings and copies of them would be exchanged." It is not proposed that the statements would be absolutely binding, to constitute an estoppel, but departure in testimony therefrom would of course invite powerful adverse comment. Patent lawyers will, of course, recognize the
similarity to the procedure in the Patent Office in interference cases; and somewhat similar procedure is customary in England in admiralty cases in what is known as the "preliminary act".8

Both Commissions have also given consideration to a subject that has recently been acted on here in Maryland—that is the retiring age for judges. At the present time there are no requirements in this respect for English High Court Judges although there is an age limitation with respect to the county judges. The discussion proceeds along lines that are very familiar to us in connection with the recent Maryland Constitutional Amendment which requires the retirement of judges at the age of 70. There seems to be a fairly general view in England that there ought to be some age limit for judicial service although there is no apparent unanimity as to what that age should be. The view of the Royal Commission tends to support the retiring age of 72 for judges of the King's Bench Division and 75 for the judges of the Court of Appeal. There is, however, agreement on one aspect of the matter. Whatever age limit is adopted, it is thought that it should apply automatically and invariably irrespective of individuals, because it is feared that if discretion is given to, say the Lord Chancellor, to make exceptions, it will tend to impair the absolute independence of action of the judges.

Both Commissions gave extended consideration to an increase in the number of judges. In the interval of the reports of the two Commissions, two additional judges of

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8 Another suggestion for shortening trials has to do with the provision for court stenographers. At the present time in England these are provided in criminal and divorce cases but not in the general run of litigation, where the substance of the evidence is preserved by the judges' own written notes of the testimony. As judges are not able to write as fast as stenographers, this necessarily tends to slow up the testimony. It is now proposed that stenographers be furnished for all litigation; and the Lord Chief Justice estimated that the saving in time in a year would be equal to having one additional judge.

Still other changes which have been suggested by the Royal Commission for the relief of the work of the King's Bench Division include proposals to extend the amount of the monetary jurisdiction of the county courts in civil cases, and likewise to extend the classes of criminal cases which may be tried at Quarter Sessions; but recommendations as to the extension of jurisdiction of the Quarter Sessions are generally conditioned on the appointment for the particular county at its expense of a paid qualified permanent chairman of legal experience.
the King's Bench Division had been appointed bringing the total number to twenty; and the Royal Commission concluded that a trial should be made of the suggestions it submitted for the better despatch of business before determining whether still additional judges should be appointed. There is great reluctance to increase the number of High Court Judges as it is feared the prestige of the office will be thereby impaired.

Still other changes in organization and procedure were recommended by the Business of the Courts Committee. As already noted, that Commission definitely proposed the termination of Probate, Divorce and Admiralty, as a separate Division, and a merger of its work with the Chancery and King's Bench Division. But of even greater interest perhaps was its proposal for the interchange of trial and appellate judges. Specifically it was proposed that the puisne judges of the King's Bench Division be authorized to sit in the Court of Appeal and no more Lords Justices of Appeal be created; and that Divisional Courts of the King's Bench Division should be abolished and all appeals previously heard by them should go directly to the Court of Appeal; and that the Court of Criminal Appeal should be a division of the Court of Appeal.

The Business of the Courts Committee submitted a third and final report in January, 1936, in which they made further recommendations as to three other special matters. (1) Crown Office rules; (2) procedure in patent actions, and (3) affidavit of ships' papers. These several matters are, however, too highly specialized to warrant detailed discussion; other than to mention the suggested change in patent procedure which would, I am sure, be warmly welcomed by the Federal judges in this country who have to try patent cases. The suggestion is that counsel in litigated patent cases shall be required to exchange before trial affidavits of their respective patent experts, so that counsel for each party can come to the actual trial of the case with more certain knowledge as to his adversaries' contentions, and thus facilitate concentration on the real and dominant issues in the case to a greater extent than is
now possible. The proposed change in procedure as to ships’ papers has to deal particularly with trials on marine insurance policies and is of general interest only to admiralty and insurance lawyers.

Finally, it is of interest to know to what extent the changes in organization and procedure of the courts recommended by these two Commissions have been adopted and put into effect. As already pointed out, some of the changes may be made by orders in Council, and some could probably be made by rules of court; while others require acts of Parliament. From the Second Interim Report of the Business of the Courts Committee, I note that certain recommendations in its First Report, submitted in February, 1933, have been accomplished. Some have to do with the procedure as to prerogative writs and certain Crown proceedings and with regard to management and administration in lunacy matters; and by Order in Council the long judicial vacation customarily for many years extending from Bank Holiday, the first Monday in August, to early in October, was shortened by two weeks. The recommendation for the abolition of grand juries in ordinary cases has been carried out by an Act of Parliament.

Turning now to recent changes by legislation, the most important probably is the last change mentioned. It is the Administration of Justice (miscellaneous provisions) Act of 1933.¹ By it grand juries for Courts of Quarter Sessions and Assize Courts are abolished except in the case of grand juries for the County of London and County of Middlesex, where a grand jury may be summoned when the master of the Crown Office has received notice it is intended to present an indictment by virtue of the Middlesex Grand Jury Act (1872) and other enactments supplementary thereto. The more prominent of the crimes to be proceeded against under that Act are treason, committed out of His Majesty’s Dominions, and offenses by Governors of Plantations for the Kingdom, that is the Colonial Governors. Criminal procedure must generally still be by indictment, but in lieu of grand jury action the indictment may be pre-

presented if either (1) the person charged has been committed for trial for the offense or (2) the bill is preferred by the direction or with the consent of a judge of the High Court.

The same Act of Parliament makes definite provision as to trials by petit juries in civil cases. The effect of the Act is that ordinarily trial is to be by petit jury if the case involves a charge of fraud or is an action for libel, slander, malicious prosecution, false imprisonment, seduction or breach of promise of marriage; but even in these cases the judge may dispense with a jury if he is of the opinion that the trial requires any prolonged examination of documents or accounts or any scientific or local investigation which cannot conveniently be made by a jury. Power is given to the judge to determine in his discretion that different questions of fact arising in any action may be tried by different modes of trial.

Another recent Act of Parliament\(^\text{10}\) provides that appeals to the House of Lords from the Court of Appeal shall not be permitted except with leave of the Court of Appeal or of the House of Lords. The Act further authorizes the House of Lords to provide for a committee to hear petitions for leave to appeal from the Court of Appeals. This would seem largely to analogize appeals to the House of Lords to the Federal appeal by certiorari to the Supreme Court of the United States. It is also now provided that appeals from County Courts shall go to the Court of Appeal where the action is under certain specified statutes, thus measurably relieving the King's Bench Division from that class of appellate work.

Reference has already been made to the County Courts with respect to the extent of their jurisdiction. It is obvious, of course, that the High Court with its limited number of judges would be utterly unable to dispose of all the litigation in England except with the aid of the County Courts which have been in existence for nearly a hundred years. Further to relieve the congestion in the London Courts, various suggestions were considered by the two Commissions looking to the increase in the jurisdiction of the

\(^{10}\text{24 and 25 Geo. V, C. 40 (1934) Law Reports Statutes, Vol. 72, p. 381.}\)
County Courts. In the ordinary run of litigation the jurisdiction heretofore has been limited in amount to cases where the sum in dispute does not exceed £100 in suits at law, and £500 in equity. It is to be noted that while this particular subject was under consideration by the Committee on the Business of the Courts, Parliament has comprehensively re-enacted in statutory form the law which defines the jurisdiction and procedure in the County Courts.\(^\text{11}\)

The last Act of Parliament which I have noted in this whole connection is the Supreme Court of Judicature (amendment) Act of 1935.\(^\text{12}\) It is this Act which increased the number of puisne judges in the King’s Bench Division to 19, but with a provision that vacancies occurring to the number of two should not be filled except after presentation of an address from both Houses of Parliament. The Act also provides for the appointment of one of the Lords Justices of Appeal as vice president of the Court of Appeal to preside therein “if no ex officio judge of that court is sitting in that Division.”
