WHAT TO DO IN THE COUNTY COURT.

BY A BARRISTER.

ONE of Her Majesty's judges, it is said, was once asked by a friend whether, if he had a clear case, supported by good evidence, he would not think it wise to seek to enforce his right in a court of law.

"My dear sir," answered the judge, "I would send the defendant a five-pound note to cover any expenses *he* might have been put to, and try to forget the whole thing as soon as possible."

And we may be pretty sure that Mr. Justice —— would not have excepted county courts from his sweeping opinion. The fact is that for people who are not of a combative disposition, the trouble, the annoyance, the uncomfortable sense of uncertainty and fear of publicity, not to speak of the haunting dread of a miscarriage of justice, and of being forced to pay costs to the other side, are quite enough to make it very seldom worth while to appear in a county court; either as plaintiff or defendant. Nevertheless, there are times when a feeling that is something less, perhaps, than pure love of justice, and something more than pique, compels one to have recourse to a small law-suit; and there are, no doubt, times when it is plainly one's duty to resist an unjust claim.

Assuming that an action is necessary, the first thing to do (unless the matter is very trifling) is to go to a good solicitor. Too great care can hardly be exercised on this point. A solicitor and his client are always more or less identified.

When your case is once entrusted to a solicitor, of course you are entirely in his hands, and the only thing you can do is to tell him your whole case, and follow his advice. For those, however, who prefer to fight their own battles, or whose battles may not be sufficiently important to warrant the employment of legal assistance, a few hints as to the practice of the county court may not be out of place.

In the first place, I shall suppose that my reader is the plaintiff. In that case it is always well to write to the defendant, in civil but clear language, beforehand, referring shortly to your claim, and adding that if it is not satisfied legal proceedings will be taken. This may elicit a reply containing a useful admission; if your letter is not answered, it will be a point in your favour.

The first step in the action is, of course, to take out a summons. This is a matter of no difficulty. If both you and the defendant live in London, within the districts of the Metropolitan County Courts, you may sue in any Metropolitan County Court; but if either you or he live in the country, you must go to the office of the county court of the district in which the defendant lives, or in which he carries on business. The clerk at the county court office will show you how to fill up the "particulars" of your demand, which are simply: "The plaintiff demands of the defendant payment of the following account" (giving a copy of it), or, "damages for injury caused to his carriage in —— Street by the negligent driving of yourself, or your servant," as the case may be. The officials of the court will see to the serving of the summons, for which you must pay 1s., and 1s. more for every pound you sue for. Thus, a summons for £10 will cost 11s. Besides this, if the action goes on to trial, you must pay 2s. for every pound you sue for, for hearing-fee. These costs you will recover from the defendant if you succeed in the action.

If your claim is for a debt above £5, and if you think it unlikely that your claim will be disputed, you may, upon swearing an affidavit of your debt, obtain a *default summons*, instead of an ordinary one. The advantage of this method of proceeding is that, unless the defendant gives notice that he means to defend the action (of which the registrar will give you proper warning by post), you may have judgment entered up against him any time after sixteen days, and within two months after he was served with the default summons.

Very few of the cases entered on the books of a county court come to trial at all: that is to say, the court is chiefly used to compel the payment of small debts which are not disputed. This being the case, the roll is generally called twice before the arrival of the judge. The names of the litigants are called over in a stentorian voice by the registrar or his deputy; those who answer are marked as present, and thus the list is cleared of those against whom judgment is given in their absence. Should you be unfortunate enough to be absent when your case is called for the first time, mention the matter as soon as possible to the registrar. If your opponent is still about the building, the matter will be set right at once. If he has gone home, you may have to pay his costs for the day before your case is reinstated in the list. As soon as the judge arrives, and has disposed of any cases which may have been adjourned from last court-day and the "judgment summonses" (a term which I will explain presently), he begins at the top of the revised list, which, meantime, has been further winnowed by the registrar calling it a second time, and dealing on the spot with those numerous cases in which there is no defence, and the defendant merely wants time to pay. If the list of cases which require to be heard is a long one, you may have to hang about the room with your witnesses all day, waiting for your case to come on. For this reason it is well to inquire, when you take out your summons, whether your case will be near the top of the list; and if it is a long way down, and there are no special reasons for immediate action, it is better to take out your summons

for the court-day after the next, and thus you will have your case heard early in the day.

When your case is finally called for hearing, you will take your place, if you are plaintiff, in a small raised box at one end of the registrar's desk, while your adversary, the defendant, occupies a similar position on the other side. After taking the oath—and it is well to pull off your glove beforehand, to save time—you, being plaintiff, begin by stating your case as shortly and clearly as you can, saying nothing, however true it may be, which you cannot prove, either from your own knowledge, or by witnesses, or by the admissions of your adversary.

The great point is to keep cool. If the judge speaks roughly to you (and he has much to try his temper), answer mildly and sensibly, and you will disarm him at once. It is often well to mention indisputable facts which tell against yourself, giving your own explanation or answer to them at the same time, thus taking the wind out of your enemy's sails, and preparing the judge against the effect of them. When you are cross-examined, never allow yourself to say a word against the defendant or his character generally, or to refer to transactions which have nothing to do with the matter in hand, unless you wish to show that he was in the habit of allowing a claim, or something of that kind.

As for the nervousness and embarrassment which you may naturally feel, every judge knows very well how to make allowance for that. Do not try to make too many points, but take care that the chief facts on which you rely are brought forward clearly. After you have been cross-examined, you call your witnesses, and then the defendant has his turn.

I will now suppose that you occupy the position of defendant in a county court action. If you make up your mind to defend the case, and to do without a lawyer's help, you must first of all read your summons carefully, and follow the directions which are contained in it as to giving notice of certain special defences, such as set-off, payment, bankruptcy, infancy, tender, and the Statute of Limitations. If you give notice that your defence is a set-off, you must give the particulars of it; if your defence is to be infancy or bankruptcy, you must state in your notice the date and place of your birth or bankruptcy.

When the case in which you are defendant comes on for hearing, you must, of course, preserve perfect silence while the plaintiff is stating his case, no matter how false or misleading his statements may be. When the judge invites you to cross-examine him, begin by asking whether such and such persons were present on the occasions he has spoken of. If he says that they were, and you have secured them as witnesses, you have immensely strengthened your case, for the evidence of an independent witness is clutched at by a county court judge as a drowning man clutches at a straw. If those who were present are not in court, you may afterwards comment on the fact. If your adversary untruthfully denies the presence of witnesses who are not present, and who could contradict him on a material point, ask to have the case adjourned, even if you have to pay the costs of the day, and have them subpœnaed.

Of course, the object of your cross-examination is to get admissions from your opponent; and these will be most readily gained from an unscrupulous man by assuming that the point you wish to establish is true, and asking a question which involves it. Another point is, that in cross-examination of the plaintiff you must put to him all the facts on which you yourself intend to rely, asking him simply whether they are true or not: otherwise, you will be subject, when the time comes for you to prove your case, to the grave inconvenience of having the plaintiff recalled to give his version of your story.

After the judgment has been given there is no harm in your mentioning any circumstances which may induce the judge to deprive the adversary of his costs, if you have been defeated. As for appeals, it would be so foolish for a layman to conduct a case of such importance that an appeal could be contemplated, that that subject may be left out of consideration. It is always safe, however, if an appeal is possible, to ask the judge in the course of the trial, when any important and disputable fact is proved, that he would take a note of it.

If you are a successful plaintiff, and the defendant makes default in payment, you may proceed either by levying execution or by "judgment summons." This is a summons calling upon the defendant to show cause why he should not be sent to prison for not paying the amount for which judgment has been given. It is taken out at the office of the county court, and it is generally effectual in compelling payment, unless the defendant absconds. The point you have to prove on the hearing of a judgment summons is that the defendant has the means to satisfy the judgment, or, at any rate, has been able to pay since the judgment was given. Any evidence as to the defendant's employment, mode of living, &c., will suffice for this purpose. Unless the judge is satisfied that the defendant can pay the whole amount at once, he will make an order that the defendant make payment by certain instalments, or go to prison for some period, usually forty days. All payments by the defendant are made through the county court office.

The high rate of costs in the English county court amounts almost to a scandal. In Scotland, the summons for any sum not exceeding £12 costs only 2s. 1d.; and there is really no reason why county court fees should not be largely reduced, except the plea that it would be unfair to the registrars, who were appointed on the understanding that the fees were to be what they are now. As a matter of fact, however, the fees have generally produced much larger sums than was anticipated, and the registrars are in many cases greatly overpaid—in some towns they actually receive more than the county court judges themselves. Attempts have been made in Parliament to remedy this state of matters; but of all reforms, legal reform moves most slowly, and is most difficult.