

6th.—*Trespass*. For injuries to the person; for taking away or injuring personal property; and for injury to real property in possession of the Plaintiff: and

7th.—*Trespass on the Case*, which includes Trover, (the most common form of action for trying the title to personal property); Actions against Sheriffs and other Officers, or Professional Men, for neglect or breach of duty; Slander; Nuisance; Criminal Conversation; Waste; Disturbance of Ways; for malicious Actions or Prosecutions; for consequential Damages; and for a variety of other injuries, which we need not here specify. The General Issue, both in *Trespass* and *Trespass on the Case* is, that the Defendant is not guilty of the premises laid to his charge.

The object of all Pleading is to ascertain the subject for decision; so the main object of that system of Pleading, established in the Common Law of England, is to ascertain it by the production of an Issue, and the Pleadings are so conducted as always to involve some question either of fact or law, disputed between the parties, and mutually proposed and accepted by them, as the subject for decision; and the question so produced is called *The Issue*. (Steph. on Pleading, 135.)

An Issue is defined to be a single, certain and material point, issuing out of the allegations or pleadings of the Plaintiff and Defendant.

The intent is, that each party may know, before going to trial, what is the particular point in dispute, upon whom the proof of that point lies, and what counterproof will be received; so that the parties may come prepared with such evidence, and such evidence only, as the nature of the action and proceedings will admit.

But this being the object, it is obvious to any one, at all conversant with the proceedings in Courts of Law, that the generality of the Pleadings in some of the forms of Action, particularly that of Common Assumpsit, very imperfectly effects the purpose intended.

The evil arising from the generality in the Declaration, has been in a great measure obviated by the use of "Bills of Particulars;" and by analogy thereto, it has often been suggested, that a Defendant when pleading the General Issue, should accompany it by a notice specifying the particular defence on which he intends to rely; but the objection to this is, that the special ground of defence, does not appear on the Record, as part of the pleadings; and therefore does not qualify the Issue on the Record; and it may also be added, that the improved forms of Pleas are nearly as concise, as would be a notice giving the necessary information to the Plaintiff; and the danger to be apprehended from too great a facility in setting forth the defence in this way is, that a common form of notice would soon get into use, as has arisen in the case of set-off, which would accompany the Plea of the General Issue, in most cases whether necessary or not.

In order that the grounds may be seen, on which Special Pleas have been so generally introduced into the Practice of the English Courts, in lieu of the General Issue, we cannot do better than lay before Your Excellency, the following extract from the Second Report of the Commissioners appointed to inquire into the Practice and Proceedings of the Superior Courts of Common Law in England.*

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* The Commissioners were the present Mr. Justice Bosanquet, Mr. Baron Alderson, and Mr. Justice Patteson, and Henry John Stephen, Esquire, Sergeant at Law.