In the 20,804 cases which, as appeared from the statistics of 1879, were either settled or abandoned without being taken into Court, it may reasonably be supposed that pleadings were of little use. Of the cases which go to trial it appears to the committee that in a very large number the only questions are—Was the defendant guilty of the tortious act charged, and what ought he to pay for it; or did the defendant enter into the alleged contract, and was it broken by him? And in a great many others the pleadings present classes of claims and defences which follow common forms. We may take, for instance, the disputes arising out of mercantile contracts of sale, of affreightment, of insurance, of agency, of guarantee. The cases of litigants are usually put forward in the same shape, the plaintiff relying on the contract and complaining of breaches; the defendant, on the other hand, denying the contract or the breaches, or contending that his liability on the contract has terminated. The questions in dispute are, as a general rule, well known to the plaintiff and the defendant. It is only when their controversies have to be reproduced in technical forms that difficulties begin.

On this they base the following recommendations :—

"1. The plaintiff shall on his writ indorse the nature of his claim, in a manner similar to that in use on indorsed writs at present. The defendant, shall, within, say, 10 days after appearance, give notice of any special defences—such as fraud, the statute of limitations, payment, &c., after which the plaintiff shall give notice of any special matter by way of reply on which he intends to rely.

"2. Every action shall be assigned to a particular Master's list. At any time after the writ, appearance, and time for notice of defence, a summons (hereinafter called a summons for directions) may be taken out by either party before the Master to whom the cause is assigned for directions as to any one or more of the following matters :—Further particulars of writ, further particulars of defence or reply, statement of special case, venue, discovery (including interrogatories), commissions, and examinations of witnesses, mode of trial, (including trial on motion for judgment and reference of cause), and any other matter or proceeding in the action previous to trial.

"3. No pleadings shall be allowed unless by order of a Judge.

"The existing practice of requiring a separate summons for each separate matter shall be discontinued; and upon any summons by either party, it shall be competent for the Judge or Master to make any order which may seem just at the instance of the other party.

"5. Any application which might have been made upon the summons for directions shall, if granted upon any subsequent application, be granted at the costs of the party so subsequently applying, unless the Master or Judge otherwise direct."

An important feature of the report is the method suggested for the purpose of avoiding the adduction of useless evidence. "Great expense," say the committee, "is now frequently caused by the proof of facts, about which there ought to be no dispute, and if provisions are made for enabling a litigant to give notice to his opponent to admit particular facts and rendering the party improperly refusing liable to costs, we think unnecessary expense might often be prevented." To deal with this matter the following resolution was passed :—

"7. The recommendation of the first report of the Judicature Commission (p.14), with reference to parties being required to admit specific facts, ought to be carried into effect—viz., if it be made to appear to the Judge, at or after the trial of any case, that one of the parties was, a reasonable time before the trial, required in writing to admit any specific fact, and without reasonable cause refused to do so, the Judge should either disallow to such party or order him to pay (as the case may be) the costs incurred in consequence of such refusal."

Another interesting feature of the report is the suggested doing away with juries in a great many cases in which they have always hitherto been had in England. This, if carried out, would approximate the English system more nearly to our own.

"To the existing modes of trial—viz., by Judge, by Judge and jury, by referee—we propose to add a power to the Master to direct a motion for judgment, where the rights of the parties are found to depend wholly or in part upon matters of law, and when there is no serious controversy as to the facts. This method of proceeding is used in the Chancery Division and in the Bankruptcy Court, and we believe that in many cases in the Queen's Bench Division it would be found to be convenient and expeditious.

"With a view to uniformity of procedure in the different divisions of the High Court, we recommend that, in the absence of directions to the contrary, the mode of trial shall be by a Judge without a jury. Experience shows that a large proportion of the cases that go to trial are unfit for the consideration of a jury, and in consequence great expense, delay, and inconvenience are occasioned. By the provision in No. 12, limiting the right of a party to demand a trial by jury, we desire to prevent what is now often felt to be a scandal—viz., that the parties go down to trial with all their witnesses and deliver their briefs, and then are coerced into a reference; the Judge, the Jury, and counsel all feeling that a jury is wholly incompetent to deal satisfactorily with the matter.