

---

We are bound however to state, that the validity of these objections is much questioned, and that our own opinions do not altogether coincide as to the weight which should be given to them.

Originally, a Defendant was only allowed to plead one plea, to one matter of complaint; the inconvenience of this was found so great that Parliament stepped in, and by the Act 4 and 5 Ann, c. 16, s. 4, it was made lawful for a Defendant, with leave of the Court, to plead as many several matters as he should deem necessary to his defence.

This leave of the Court has been considered so much a matter of course, that it is never in fact applied for, but cases have occurred, (though very rarely) where, upon the application of the Plaintiff, the Court has restricted the privilege.

If the General Issue were abolished, and the Defendant suffered to plead several pleas with no greater restriction than exists in our present practice, it is to be feared that in many cases several pleas will be pleaded, and not merely to let in any real defence which the Defendant may have, but in order to obstruct the Plaintiff in the proof of his case, or to enable the Defendant to avail himself of any fortuitous circumstances which may arise in his favor in the progress of the cause; one check for this, however, will be found in subjecting the party to the costs of any issue on which he may fail, though he may be entitled to the general costs of the cause.

If leave is to be actually obtained for pleading double, it is evident such motions cannot generally be made in Term, but will be brought before the Judges at Chambers, where the business is now very considerable; but in addition to this, we apprehend that such motions will often lead to discussions, and the production of affidavits and counter-affidavits, in which the merits of the cause will be involved, and as each Judge sits apart and not in any open Court, it will be difficult to preserve uniformity of practice, and secure a satisfactory administration of Justice. It is a further objection, that all these interlocutory proceedings unavoidably enhance the costs of a cause.

By the new English Rules a sort of middle course has been adopted. Some general principles are laid down as to the use of one or more counts, pleas, avowries, or recognizances; particular examples are then given by way of illustration, and it is expressly provided that the examples are given, as some instances only of application of the Rules to which they relate; but the principles contained in the Rules are not to be considered as restricted by the examples specified.

Where more than one count, plea, &c. shall have been used in apparent violation of the Rule, the opposite party may apply to a Judge, who is to order all or any of the counts, pleas, &c. that have been objected to, to be struck out, unless he shall be satisfied on cause shewn, that some distinct matter of complaint or cause of action is *bona fide* intended to be established in respect of each of such counts, or some distinct ground of defence in respect to each of such pleas, &c. when he shall allow such, with respect to which, he is so satisfied to remain.

If upon the trial where there is more than count, plea, avowry or recognizance, and the party pleading fails to establish a distinct subject matter of complaint or ground of action in respect of each count, or some distinct ground of answer or defence in respect of each plea, &c. a Verdict or Judgment shall pass against him upon such count, plea, &c. and he shall be liable to the costs occasioned thereby, and even when