

At the time of writing these remarks, the propriety of inserting several special counts, for one cause of action, was much more obvious than it is at present; there was no power then vested in the Judge to make any amendment in the Declaration, or other pleadings, at the trial, and the effect of a trifling variance, in the evidence of a Contract, and in the statement of it or the Declaration, was fatal to the Plaintiff's cause; since then, two important Legislative provisions have been made for remedying this defect, viz: Acts 9 and 10 Geo. 4, c. 1,—7th Wm. 4, c. 14, s. 7 and 8: which have been taken from the English Statutes, 9 Geo. 4, c. 15, and 3 and 4 Wm. 4, c. 42, s. 23: the first of which applied to variances between matters in writing given in evidence, and the setting out of such on record; the latter enlarges the power of amendment in these, and extends it to several other cases. By these Acts, the Judge at the trial, is authorized to allow amendments, where the variance is not material to the merits of the case, subject to costs in certain cases, with power also to the Judge to reserve any question as to the propriety of allowing such amendments, for the consideration of the Court.

Notwithstanding these Legislative provisions, many cases must unavoidably occur, where it will be advisable for the Attorney to introduce several special counts for the same cause of action; he may not be able to examine the witnesses, or place full dependence on the correctness of their extra judicial statement, or they may be persons in the employment or interest of his adversary. But although the Attorney may be often justified in resorting to several counts, it by no means follows, that what he has so done out of regard to the interest of his client, should impose additional expense on the opposite party.

After fully considering the matter, we have great doubts whether it is expedient to make any express regulation on the subject. In the case of setting out the same cause of action in various ways, the Defendant's Counsel has it always in his power to require at the trial that the Verdict should be confined to the count or counts of the Declaration which have been proved, and to that extent lessening the costs which the Plaintiff recovers from the Defendant. This observation applies more particularly to several special counts; but in *Assumpsit*, which is the most general form of action, it has been usual, as a prudent precaution, to add some of the common counts, most frequently the money counts, and account stated, and this is a practice likely to continue, but will not tend much to enhance the costs, when the new forms are introduced.

When cases occur where the Plaintiff fails in making out any cause of action on the common counts, the Judge at the trial will, as a matter of course, on the application of the Defendant's Counsel, direct that the Verdict be not entered on those counts.

Third Head.

Specification of Defence to be given in Evidence under the General Issue; Substitution of Special Pleas for the General Issue, in many Cases; improved Forms, &c. Pleas, &c.

As an Introduction to the remarks on this, which may be considered the most important head of inquiry, we beg to state briefly the forms of Personal Action in general use; and of the general issue in such actions.

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