

FUSION OF LAW AND EQUITY.

relief. Considerable delay is thus caused, and useless costs are incurred.

All suits, we think, should be commenced by a document to be called a Writ of Summons, and these writs of summons should be issued from one office. In all cases in which the plaintiff seeks to recover a money demand, whether founded upon a legal or equitable right, the practice established by the Common Law Procedure Act, 1852, should, we think, be adopted, and the writ should be specially endorsed with the amount sought to be recovered, and in default of appearance the plaintiff should be allowed to sign judgment for it. Further, in all cases in which a special endorsement has been made on a writ, and the defendant has appeared, the plaintiff should be entitled, on affidavit verifying the cause of action, and swearing that in his belief there is no defence, to take out a summons to show cause why he should not be at liberty to sign judgment; upon which summons such order may be made as the justice of the case may require.

In like manner, in cases of ordinary account, as in the case of a partnership or executorship, or ordinary trust account, where nothing more is required in the first instance than an account, the writ should be specially endorsed, and in default of appearance, or after appearance, unless the defendant shall satisfy a Judge that there is really some preliminary question to be tried, an order for the account, with all usual directions, should be forthwith made. The Judge should also be empowered at any time, on summary application in Chambers or elsewhere, to direct, if he think fit, any necessary inquiries or accounts, notwithstanding it may appear that there is some special or further relief sought, or some special matter to be tried, as to which it may be proper that the suit should proceed in the ordinary manner.

PLEADINGS.

When the Defendant enters an appearance, and the suit has to proceed farther, the issues between the parties must be ascertained by pleading, or otherwise. The systems of pleading now in use, both at Common Law and in Equity, appear to us to be open to serious objections. Common Law pleadings are apt to be mixed averments of law and fact, varied and multiplied in form, and leading to a great number of useless issues, while the facts which lie behind them are seldom clearly discoverable. Equity pleadings, on the other hand, commonly take the form of a prolix narrative of the facts relied upon by the party, with copies or extracts of deeds, correspondence, and other documents, and other particulars of evidence, set forth at needless length. The best system would be one, which combined with comparative brevity of the simpler forms of Common Law pleading with the principle of stating, intelligibly and not technically, the substance of the facts relied upon as constituting the plaintiff's or the de-

fendant's case, as distinguished from his evidence. It is upon this principle that most modern improvements of pleading have been founded, both in the United States and in our own colonies and Indian possessions, and in the practice recently settled for the Courts of Probate and Divorce.

We recommend that a short statement constructed on this principle, of the facts constituting the plaintiff's cause of complaint, not on oath, to be called the Declaration, should be delivered to the defendant. Thereupon the defendant should deliver to the plaintiff a short statement, not on oath, of the facts constituting the defence, to be called the Answer. When new facts are alleged in the Answer, the plaintiff should be at liberty to reply. The pleadings should not go beyond the Reply, save by special permission of a Judge; but the Judge should, at any stage of the proceedings, permit such amendment in or addition to the pleadings as he may think necessary for determining the real question or controversy between the parties, upon such terms, as to costs and otherwise, as he may think fit.

We think, that a defendant, having a right or claim against a plaintiff with reference to the subject matter of the suit, or arising out of the same transaction, which at present he cannot enforce without a separate or cross action or suit, should be at liberty to bring forward such right or claim by his Answer, which in that case should have the same effect as if it were a Declaration in a cross action or suit, so as to enable the Court or a Judge to pronounce a final judgment between the parties with respect both to the original and to the cross demand. The same principle might, we think, be extended to the recovery of other demands of the defendant, capable of being set off against the plaintiff's demand, when the balance is in favour of the defendant. But a Judge should be empowered, on application by the plaintiff before trial, to refuse permission to allow such cross right or claim to be brought forward, if he shall be of opinion that it cannot conveniently be adjudicated upon in the case to be tried.

We think also, that the Court should have power to direct that any person not originally a party to the suit, but who may have such an interest in the subject matter thereof as to make his presence necessary or expedient to enable the Court to do complete justice, should be summoned to attend the further proceedings, and be bound thereby; and that, with this view, the plaintiff should be at liberty to make any person, against whom he may conceive himself to be entitled to relief, a party defendant to the suit. And, on the other hand, that, where the defendant is or claims to be entitled to contribution or to indemnity or other relief over against any other person or persons, or where from any other cause it shall appear to the Court fit that a question in the suit should be determined, not only as between the plaintiff and defendant, but as