

Admitting the extent of the evil in England, and the necessity of applying some remedy to it there, before we proceed to make such considerable innovations on the legal practice and proceedings of this Province, while as yet there has not been an opportunity fully to test their utility in the Mother Country, it is important to consider whether in fact any great injustice has proceeded from the existing practice, to examine its advantages and the danger to be apprehended from any great and sudden change.

From what we can learn of the sentiments of the Profession, or the Public, or from what has come under our own notice, we are not able to state that the present system of pleading has given rise to much evil or complaint, though some inconvenience may have been felt, for which we shall propose a remedy by recommending special pleas in certain cases. We are by no means certain that as the business of the Country increases, with the increase of population and extension of Commerce, or in the introduction of Manufactures, the evils that have been felt in England, may not be more sensibly experienced here, and give reason for progressive improvements, until our practice becomes quite assimilated to that of the Courts in England.

The greatest difficulty at present is we believe felt by the Judge and Jury at the trial of a cause in the variety of matter brought before them, in the extracting from the proofs and allegations the true point for decision, to sever the Law from the facts, and present the latter in a distinct shape; and in ascertaining upon what points the Jury have founded their verdict; but this we think is not easy to be remedied under existing circumstances.

It is one of the consequences necessarily incidental to trial by Jury, (whether an evil or a good is perhaps not settled), that much obscurity will exist as to the grounds of the decision of Jurors. They are not compelled to give their reasons, and are not often requested so to do, and perhaps though their verdict is unanimous, it would be frequently found that the reasons they would individually assign would differ materially from each other. For this, we can propose no remedy. The importance of the matter in dispute, the costs of suit, and consequent effects of success or defeat, on suitors on the one hand, and the proportionate number of causes on the other, in England and in this Province, admit of no comparison.

More causes will be tried in a County in this Province, with a population of less than 20,000, than in an English County containing nearly a million, while the costs of suit here will average between from about £30 to £50, when in England they often amount to several hundred pounds, sometimes thousands.

In England, Barristers and Attornies are quite distinct from each other, and perhaps special pleaders may be considered another distinct class in the Profession, while with us, these offices are united in the same person.

The differences in the circumstances of the people, in the facilities of communication, and in the Institutions of an old and densely populated and wealthy Country like England, and of a Province as yet in its infancy, must also be considered.

The consequences apprehended from introducing special pleading to any great extent, are principally an increase of expense in the early stages of a cause, from the necessity of employing Counsel to consider and prepare pleadings, the occasional exclusion of evidence material to the merits of the case, but not admissible under the special pleading, and the lengthened and often recurring discussions at *Nisi Prius*, or the tender and objection to evidence.

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