

“ justice of the case ; but this evil is not like those arising from the General Issue, “ either of ordinary occurrence or inevitable in its nature ; it may in general be averted “ by the diligence and skill of the pleader, and is materially alleviated by the practice “ of allowing amendments upon Demurrers. It is also true that special pleading tends “ to prolixity of statements on the Record, which is a source of expense to the suitor, “ but that expense bears no proportion to the vast increase of costs resulting from the “ adoption of the General Issue.

“ It seems to be commonly supposed, that it is in the length of the pleadings and “ the correspondent amount of office fees, or fees to pleaders or Counsel, payable upon “ them, that the expense of any action at Law chiefly consists ; but this is a great “ mistake, and one that it is very important to correct,—by far the heaviest items in the “ Bill of Costs are those which relate to the proofs, and more particularly to the con- “ veying of Witnesses to the Assizes and maintaining them there ; and next to these, “ the most costly charges arise from the transaction of any kind of business in open “ Court, upon motion ; the fees upon pleading being (comparatively speaking) upon “ a petty scale. In illustration of this, we may refer to the bills of costs contained in “ the Appendix to our First Report. It may easily be conceived therefore, that the “ General Issue, from its tendency to an unnecessary accumulation of Evidence, and to “ Motions for new trials, must often ultimately lead to a much greater expense than “ could have been produced by any probable prolixity in special pleading. The pre- “ ference due to the latter method will become still more evident when it shall be “ cleared by such regulations as we have suggested in other parts of this Report, and “ hope hereafter to suggest, from some of its principal inconveniences and abuses, “ more particularly from those which relate to the variety and prolixity of counts and “ pleas and the doctrine of variance. On the whole therefore we entertain no doubt “ of the expediency of making such alterations in the existing practice as will intro- “ duce special pleas in almost every case, and in some actions abolish altogether the “ use of the General Issue.”

By way of illustration, we add a sketch of the matters which may be given in evi- dence under the General Issue in one form of action most frequently occurring.

*In Assumpsit.* Under this plea may be given in evidence every thing which dis- affirms the Contract, not merely denying the existence of it in fact, but shewing its illegality and the inability of the party to contract, for instance, Coverture, Infancy, Gaming, Usury, also payment, accord with satisfaction, a discharge before breach, foreign attachment or a release *ex gra*. In actions on Bills of Exchange or Promis- sory Notes, it puts the Plaintiff to the proof of the Defendant's signature, and the presentment, dishonor, and notice of dishonor, when necessary, and enables the Defendant to disprove any such matters, or prove payment, satisfaction or discharge, &c.

From what we have already said, it will be perceived that the principal objections made to the use of the General Issue in England arise out of the enormous expense attending on trials, particularly in preparing Briefs for Counsel and the attendance of Witnesses ; the vagueness of the Issue and difficulty of ascertaining on what precise point the verdict has turned ; or of bringing the exact facts before the whole Court in *banc*, and lastly the immense accumulation of business arising out of motions for new trials, which in one of the Courts (the King's Bench) had almost caused a denial of Justice.

Admitting