

“ raised by Special Pleading, and so brought before the Court, in the first instance, by way of Demurrer, for determination.

“ But these considerations give an inadequate idea of the extent of the inconvenience now produced by the great and growing frequency of the motions in question. Indeed we know of no existing abuse of which the influence is so wide and the pressure so intolerable. They have in a considerable degree impaired the value of a verdict, which, according to the ancient and true principle of Law, was of a final and conclusive character, but is now in so many instances subjected to the revision of the Court in *banc*, and with so much facility set aside, that the party in whose favor the opinion of the Jury is declared, has comparatively little reason to rely on the permanency of the advantage he has obtained. He too often finds that it is but one successful struggle in an arduous and expensive contest, which is to end at last in defeat. But an effect still more serious is the enormous extent to which this branch of Practice has encroached upon the portions of the public time, properly destined to other employment. As an illustration of this, we may refer to returns received from the King’s Bench and Common Pleas, by which it appears, that in Michaelmas Term, 1829, ninety nine motions for new trials were made in the former Court, and forty nine in the latter; that in the King’s Bench, Rules *Nisi* were granted upon fifty three of those applications, and not more than four Rules for new trials ultimately disposed of in the course of the Term; and that in the Common Pleas there were thirty nine Rules *Nisi* granted, of which ten only were disposed of. To such accumulation, addition of course is made in each succeeding Term; and were it not for the assistance obtained from the sitting of the three Judges out of Term, (a jurisdiction which in other respects has appeared to us objectionable, and to require abolition,) the result, as far as regards the Court of King’s Bench, would be a total obstruction of the current of ordinary business, by the growing masses of arrears upon motions for new trials.

“ The tendency of the general issue to give occasion for such applications, we have already attempted to explain, and we have no hesitation therefore in attributing to the use of that plea the far greater part of the evils to which we have thought it our duty to advert, as connected with motions of that description. We think too, that its disuse would supply the only practicable and effective remedy

“ Other inconveniences, though certainly of less moment, result from that method of pleading. It often happens that points of Law arising at the trial, receive no decision from the Judge, but are reserved by him for the opinion of the Court in *banc*; or with a view to a more distinct and solemn argument before that Court, the facts proved, are thrown by consent of parties into the form of a special case. Neither of these methods is comparable in point of certainty, of despatch, or of cheapness, with that which is afforded by demurrer; and their substitution for the latter operates like the motion for a new trial, though in a less degree to the prejudice of both the parties, and to the delay of public business.

“ In comparison with these disadvantages resulting from the General Issue, the inconveniences of special pleading are insignificant. It is found difficult no doubt to set forth the matter of defence or reply in a form which shall be at once sufficient in point of Law, and accurate in point of fact; and the occasional consequence of this difficulty is the defeat of the party upon formal defects, not connected with the
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