

THE REPORT OF THE JUDICATURE COMMISSION.

number of the Bench than that proposed by the Commissioners, is already† before our readers, we need say no more here than that we think that, in this respect at any rate, equity should "follow the law," not *vice versa*.

The Report then goes on to consider a scheme for uniformity of procedure. We were at first much startled at this proposition, because we are fully persuaded that diversity, and not uniformity of practice, is essential, not merely in legal but in all human affairs of importance, to meet the endless variety of circumstances, complications, and dispositions which are to be provided for in all human systems, legal, social, political, or ecclesiastical. Upon further examination, however, we found that this proposed uniformity was only to be superficial, and that underneath was to be preserved all the existing diversity of procedure, with this difference—that the question, to which kind of operation any cause is to be submitted, is to be determined henceforth by the nature of the question to be tried, not by the constitution of the tribunal before which it is brought. This is an undoubted improvement; a necessary consequence, indeed, of the power of transfer already mentioned, but not the less important to bear in mind as the *principle* to which all recommended systems of pleading and practice should be referred, which may be shortly stated thus;—differing methods of investigation are adapted for the determination of different questions, and it is the duty of the Court, as soon as it has discovered the nature of the question or questions at issue, to apply to the case that form of procedure best adapted to produce the desired result. We fully agree, however, with what we understand to be the view of the Commissioners, that this diversity should be confined within as narrow limits as is conveniently practicable, and we therefore hail with pleasure the recommendations—first, that all suits should be commenced by a document of a single nature, and secondly, that there should be a power of adapting this document by special endorsement to various circumstances and with various results.

The recommendations on this point may be shortly described as follows:—all suits are to be commenced by writ of summons, but whenever the claim is a liquidated money demand, or for an account, the writ is to be specially endorsed: and judgment to be recoverable at once in default of appearance, either for payment of the demand or for taking the account, as the case may be; and even after appearance, there is to be provided a summary method of arriving at the same result, unless upon cause shown a different order is made.

Next in order comes the question of pleading in cases not disposed of summarily under the preceding provisions. Here, again, the Commissioners appear to have been anxious to preserve as much uniformity as possible, and we are not quite sure that they have not for

this purpose gone somewhat further than convenience would altogether dictate. After some preliminary observations to the effect that common law pleading as now carried on is unintelligibly technical, and equity pleading intolerably prolix, (neither of which propositions are, we think, true to their full extent,) the Report proceeds:—

"The best system would be one which combined the 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 defendant'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."

Then, after a proposal (in which we heartily concur) for enabling any cross claims which might have the operation of a set-off to be made by answer, without a cross suit, and for enabling either party to add parties for the purpose of bringing before the Court all persons interested in the subject-matter, the Report proceeds:—

"We think that either party should be at liberty to apply at any time, either before or after pleading, for such order as he may upon the admitted facts in the case be entitled to, without waiting for the determination of any other questions between the parties.

The Commissioners, naturally following the progress of the cause, now come to the question of the mode of trial. And here, for the first time, their recommendations have the qualification (be it merit or otherwise) of absolute novelty. Up to this point nothing has been suggested which has not, in principle at any rate, been prominently urged before; but, so far as we know, the scheme now put forward with all the weight of the unqualified concurrence of all the commissioners is absolutely new to the public. After a succinct account of the different modes of trial at present in vogue, they say:—

"It seems to us that it is the duty of the country to provide tribunals adapted to the trial of all classes of cases, and capable of adjusting the rights of litigant parties in the manner most suitable to the nature of the questions to be tried.

† 12 Sol. Jour. 911.