

It is condemned by them as imposing an unfair burden of duty on the sheriffs and grand jurors of the central county in a group in which the Assizes are practically sure to be held. It is alleged to be cruel to the petty jurymen, dragged scores of miles from their homes, and detained throughout a lengthened Assize till the whole list is gone through. It is unjust to prisoners themselves, who might afford to bring witnesses from a dozen miles away, but not from seventy or eighty, and who, if acquitted, find themselves "turned loose on the world far from their own home and from any one who knows them."

On the subject of Assizes and Quarter Sessions, the judges recommend a system somewhat like that which was introduced in this Province some years ago—that is, disposing of trifling charges at intermediate Sessions, while graver offences are reserved for the Queen's Bench. The Committee are unanimous against any radical enlargement of the jurisdiction, but, as a concession, are not absolutely opposed to its extension to the trial of simple burglaries in which no personal violence has been used. Five of the members recommend that the Judges of Assize should at every Circuit, as now on the Winter Commission, be exempted from the obligation to deliver the gaols of any but prisoners committed for trial at the Assizes. Lord Justice Brett differs from the rest on this point. All would probably agree with him in desiring that "the Assizes and the Sessions should be treated as one judicial machine for trying prisoners." The Committee generally, however, hold that this can be best effected by dividing the gaol inmates individually between the Assizes and the Quarter Sessions. Lord Justice Brett's view is that, without special injustice or inconvenience, prisoners charged with serious offences may be left in gaol for some three months, but that other prisoners should be convicted or acquitted within eight weeks at furthest. By the plan he proposes Sessions would be held in the intervals between the several Assizes, and persons accused of Quarter Sessions crimes would be triable either at Sessions or at Assizes, which ever might be held first. Besides the speedier clearance of the gaols, an incidental benefit, the Lord Justice believes, would result from the greater uniformity of punishment likely to be attained

by submitting occasionally offences commonly tried by the permanent and unpaid local magistracy to the trained and various minds of the Judges of the Superior Courts.

We referred not long ago to Mr. Justice Hawkins' fondness for seeing a sheriff in uniform. His brethren, apparently, are not less careful to abate no jot of official pomp. It had been suggested by Sir James Stephen that what are known as "commission days" might well be added to the ordinary time at the disposal of the judges holding circuits; but the committee warmly protest against the abolition of the pomp and ceremony usual on these occasions.

#### CONTRIBUTORY NEGLIGENCE.

The doctrine of contributory negligence has of late years assumed great importance in our courts. We have thought it might be useful to collect and review the principal cases on this subject in our Court of Appeals, and occasionally accompany them with some remarks.

*Button v. Hudson River Railroad Co.*, 18 N. Y. 248.—In this case the intestate was found lying dead on the defendants' track, having been run over by their cars. How he came there was not shown. It was held, that although the burden is on the plaintiff to show affirmatively that he was guiltless of any negligence proximately contributing to the injury, yet direct evidence to disprove such negligence is not required in the first instance; but where there is conflicting evidence, the preponderance must be with the plaintiff to enable him to recover. In this case, as the death was the combined result of the presence of the deceased on the track, and the passing of the cars over his body, it was held that the jury should have been instructed that "the only question for them to decide was, whether by the exercise of reasonable care and prudence, after the deceased was discovered, the driver might have saved his life." The judgment was reversed, for the reason that the judge charged the jury that, in order to exempt the defendant, the negligence of the defendant must *directly* have contributed to the injury.

*Remarks.*—In the syllabus, and in the note at the close of the report of this case, of the discussion among the judges as to what ground