LOCAL COURTS NOT THE REMEDY FOR THE DEFECTS OF THE LAW

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LOCAL COURTS

NOT THE REMEDY

FOR THE DEFECTS OF THE LAW:

WITH

SUGGESTIONS OF A PLAN

FOR ADAPTING THE

SUPERIOR COURTS OF COMMON LAW
AT WESTMINSTER,

THE CIRCUIT COURTS OF ASSIZE,

AND THE

SESSIONS OF THE PEACE,

TO THE

INCREASED DEMANDS OF THE COUNTRY, ARISING FROM ITS EXTENDED POPULATION AND COMMERCE.

BY

B. BOOTHBY, ESQ.

BARRISTER-AT-LAW.

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LOCAL COURTS,

ETC. ETC.

THE proceedings of Parliament during the last sixteen years, and the number of bills introduced by each successive government, afford ample evidence both of the general conviction of the necessity of some great change in the administration of the Law between parties to civil actions, and of the mistrust with which the proposed alterations have been regarded. The latter feeling has hitherto operated to prevent the passing of any general law; but while a wise jealousy has hindered too sweeping a change, what may be regarded as experiments have been permitted.

DELAY and EXPENSE are the opprobrium charged upon the Law. To wipe out this reproach has been the object alike of all that has been adopted, and all that has been proposed. Whether the object sought has been obtained, or whether obtainable, by the means proposed, is the subject to be discussed in the following pages; and if the result be to pronounce the course hitherto pursued or proposed erroneous, then with great deference to suggest alterations to which the causes of present failure do not apply.

The prominent objection to all that has been either done or proposed, in relation to the trial of civil actions, is, that the proposed remedies have been made applicable only to actions for debts or damages under a given amount, as if the evils sought to be remedied were limited to such actions. That the legislature of a country should be called upon to amend and expedite the law's procedure where *twenty* pounds are at issue, but not where twenty thousand pounds is the amount in contest, is certainly a paradox requiring explanation. It cannot be that the great interests of the country lie within such limits

as are denoted by an action for twenty pounds. Is it that our merchants, shipowners, insurers, manufacturers, patentees—all parties involved in engagements above the extent of ten, twenty, or fifty pounds*—that none of these classes demand any reform of the law's delay and expense. The real reason for the limitation is apparent, and presents a most grave and serious objection to such distinctions in the law's procedure as are founded only on the amount in dispute between litigants. The tribunal and mode of procedure to which an action for an amount under twenty pounds is remitted for decision, by a writ of trial, is of a nature to which it is felt that it would not be safe to entrust the trial of higher amounts. What have we here, then, but the measuring of a system of jurisprudence, not by the adequacy of the tribunal to administer justice, but only by the amount in dispute? If a tribunal be unfit to try a cause in which a large sum is in issue, it is equally unfit, however small such sum may be: the amount in dispute is surely not a standard by which to estimate the efficiency of the tribunal to deal out justice. This was felt, and is indeed admitted, by the introducers of the innovation of the writ of trial, by the provision that this shall issue "upon the Court or Judge being satisfied that the trial will not involve any difficult question of fact or law."† How entirely inoperative is such provision is daily evidenced by the numerous motions for new trials in the Courts at Westminster, founded on the illegal decisions and misdirections of those deemed to have been qualified to try such causes. Such a result might safely have been predicted of a system that measures the chances of difficult law arising by the amount of money in dispute. As to satisfying a Court or Judge that "a difficult question of fact or law" is not likely to arise, this is to demand information which no one can give; for until the trial is entered on, who shall predict the difficulties that may arise?

The amount in dispute is not a test of the importance of the decision to the parties. The all of a Plaintiff or Defendant

* The various bills brought into the legislature have always had one or other of these amounts as their limit.

† By 3 & 4 Wm. iv. c. 42, s. 17.

may be involved in an action for a sum under twenty pounds, while no greater stake can be involved in a question of a hundred times that amount. In either case, a Defendant unjustly sued may be advised to resist the demand: the *poor* man is referred to a Judge of inadequate competency, the *rich* man has his rights adjudicated under the presidency of one of the Judges of the land; the former fails, the latter succeeds; and it may be that the different results are only attributable to the nature of the tribunal; for experience has often attested that errors by a Judge at the trial can never be afterwards atoned for by any decision of a Court of Appeal. The pretended compensation to the poor suitor is, that he is offered a *cheaper* tribunal;—small comfort to a ruined party is it, that he has been permitted to arrive at his misery cheaply! But this advantage of cheapness is by no means proved; nay, it is confidently said, that in consequence of the number of appeals, from the unsatisfactory decisions of local Judges, the average amount of costs, in actions below twenty pounds, is greater than before the introduction of the writ of trial. For these reasons, it is urged that the innovation of the writ of trial is a failure, and that it is to be regarded as a beacon to warn against proceeding further in such a course.

Besides the experiment of the writ of trial, a system of patchwork legislation, as to the law between debtor and creditor, has been introduced, resulting in the most extraordinary diversity in this branch of law. Were it required to delineate on a map of England and Wales, by the use of different colours as denoting different states of the law, the parts of the kingdom subject to each of such different laws, the result would present a map of England and Wales ornamented with all the colours of the rainbow—to be compared with nothing so appropriately as Joseph's coat. The establishment of Courts of Requests, or Courts of Conscience, as they are sometimes called, commenced with the early part of the reign of George III., and up to the thirty-third year of that reign were limited to the recovery of debts of *two pounds* and under. From that period to the close of his reign many such Acts were passed, giving in general a jurisdiction up to *five pounds;* in one only case to

ten pounds. In the reign of George IV. and William IV. very few of these Acts were passed; and in no case for the recovery of a higher sum than *ten pounds.* It was reserved for the reign of Victoria to carry the mischief to its acme, and by a perfect deluge of statutes* to extend their operation over an immense surface of the kingdom, and to the amount of *fifteen* and *twenty pounds.*

The objection to this part of the experiments in legislation to which attention is called, is not confined to the creation of a new and separate tribunal for the trial of actions to the amount in each case provided for—which objection has been already urged as applying to the writ of trial, and is equally applicable here; for in this experiment of the Court of Requests, there is not only a different tribunal created, but different law and procedure altogether; as different indeed as are the laws of England and of France, or of any other foreign state. Witnesses and their evidence, that would be rejected in a trial before a Judge of the land, or on a writ of trial before a sheriff, are in these courts received, and in the majority of instances decide the whole case. If it be well to receive such evidence in the one case, surely it cannot be well to reject it in the other. The incongruity of two such opposite systems is the evil introduced; both cannot be good. If the old law be bad, remove it altogether; let not the improved law be limited to these Courts of Requests. But if the old law be good, and therefore to be retained where the rights of richer litigants are in dispute, can there be wisdom in superseding it where poorer men are the parties? Besides all this, along with these Courts there has been introduced, as their special distinction, the monstrous innovation of an abolition of trial by jury in many cases;† and

* See the enumerations in schedule B. and C. of the bill of last session, called a "Bill for regulating the County Courts of England," brought in by Sir James Graham, but dropped. Not fewer than *thirty-eight* statutes for establishing local Courts of Requests, passed from the 1st to the 5th of Vic.

† It may not be without effect in some quarters, to remind of the sentiments of Mr. Justice Blackstone on this subject. Speaking of trial by jury, and proposals to wave it in trifling cases on the ground of *convenience*, he says:

"The liberties of England cannot but subsist, so long as this *palladium* "remains sacred and inviolate; not only from all open attacks, which none