

tried by a jury, they or any of them may, under the laws of the colony, be entitled to, notwithstanding any variance between the facts alleged in any statement of claim or of defence, or in any counter-claim, and the facts proved at the trial, and notwithstanding that the relief to which any such party or person may be found entitled may not be the relief claimed by him in the action."

7. As to the third point, the Sub-Committee, following the terms of the resolution passed by the Commission, have substituted statements of claim and of defence for the pleadings heretofore used. The Sub-Committee trust that the change may, in the first place, by doing away with the periods required to intervene between the successive steps in pleading, tend to accelerate the trial of actions, and, in the second place, prevent, or at any rate greatly circumscribe, the power of using the pleadings as means of defeating or of delaying the progress of the action.

The Sub-Committee, after a careful reconsideration of the matter, believe that the original resolutions of the Commission on the subject embody the only practical method of reform.

The Sub-Committee are glad to be able to state, in support of this conclusion, that the same opinion seems to be rapidly gaining ground in England, and to be likely to receive legislative sanction at an early date. As evidence of this, the Sub-Committee may refer to—(a.) the existing English rules, which afford large scope for the trial of actions without pleadings, (b.) the gradual extension of the County Court jurisdiction; (c.) the attempts made to create local Courts of unlimited jurisdiction without pleadings [members of the Commission may recollect that a Bill brought before the Imperial Parliament for this purpose was laid before the Commission at its first sitting], (d.) the fact that by the Indian code of civil procedure, which your Sub-Committee believe represents the views of distinguished English jurists, proceedings are conducted without pleadings.

The legislation, or attempted legislation, referred to, points to a great change in the opinion of English lawyers on this subject; and the tone of even strictly legal publications seems to be tending strongly in the same direction. For instance, an article in the *Law Journal* of the 20th November, 1880, headed "A New Judicature Bill," concludes as follows. "The proposal that pleadings be abolished will be received by lawyers with a pang. But there is no doubt that they have become an abuse, and are the main source of the great cost of law, of which suitors complain with so much justice. If the superior Court does not part with its pleadings, its business will be sent to Courts where there are no pleadings, namely, the County Courts. Those who desire to see the jurisdiction of the superior Court maintained should therefore be prepared to sacrifice this institution, however cherished. When the superior Court has Judges enough to try its cases, and when the cost of putting it in motion is more moderate, it will easily compete with the County Court for the law business of the country."

8. As to the fourth point, the Sub-Committee consider that as a very considerable portion of the procedure in all Courts must be the same, there should be no real difficulty in making one code apply to all Courts, adding a special clause enumerating the particular sections which may be deemed inapplicable to any particular Court. Again, the Sub-Committee are of opinion that the proceedings in an ordinary action might be made to suit all or nearly all applications for the assistance of the Court, subject to slight variations in some special proceedings. The Sub-Committee have, therefore, after dealing with the proceedings in an ordinary action, proceeded on the principle that those proceedings shall apply to all cases, and have added special rules in particular cases where variation appears necessary.

The cases referred to will be found in Part VI. of the code, headed "Special Procedure."

With a view to carrying out this design completely, the Sub-Committee have ventured to include procedure in matrimonial causes in this part of the code.

9. As to the fifth point, all the amendments already mentioned are designed to bear directly on bringing about this result, but, in addition, the Sub-Committee have, in order to shorten proceedings and lessen costs, framed the code so as to dispense with rules as to the following steps in the present course of an action: