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STATISTICS of LITIGATION in ENGLAND and WALES since 1859.
By JOHN MACDONELL, ESQ., LL.D., a Master of the Supreme Court.

[Read before the Royal Statistical Society, 22nd May, 1894.

Sir RAWSON W. RAWSON, K.C.M.G., C.B., Hon. Vice-President, in the Chair.]

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I.—*Objects of the Paper.*

THE statistics of crime have received far more attention, they have been studied with greater care, and reduced to much better order, than the statistics of civil litigation.¹ This holds good of the statistics of most countries; it is especially true of those of England; and this circumstance is the reason and explanation of this paper. I propose attempting four things which may a little help to improve the form of civil, as distinguished from criminal, judicial statistics—four things all very obvious, but, so far as I know, not yet attempted:—

(a.) To measure the contentious business of each of the courts of justice in England and Wales, and to mark the variations from year to year.

(b.) To measure the annual amount of litigation of the country.

(c.) To note the variations in appellate, as distinguished from what may be termed original, litigation.

(d.) To point out a few defects in existing statistics; to suggest a few alterations, and to show how the English returns might be prepared, so as, in point of completeness and orderly arrangement,

¹ See Oettingen's "Moralstatistik," 743; Yvernès, "L'Administration de la Justice Civile et Commerciale en Europe," xvii.

to facilitate comparison with those of France, Germany, and Italy, the three countries now possessing the best systems of legal statistics.

I desire to refer incidentally to the cost of litigation, and the number of counsel and solicitors who carry on the contentious legal work of the country ; but the chief purpose of the paper is to measure the volume of litigation from 1859 to 1892.

Continued from year to year, such information would be instructive not only to the law reformer, but to the student of moral statistics. It might correct hasty conclusions based upon statistics of crime. We should not see writers reasoning from official returns as to crime, without taking into account the figures as to contentious legal business ; reasoning, for example, about the decrease or increase of crimes of violence, without consulting the statistics of actions for assault and trespass, or ignoring the returns of the Divorce Court in speculating as to the variations in certain offences. This information would help to solve the problem, often touched upon by jurists, profoundly important to the whole community, and hitherto curiously neglected by statisticians, whether litigation is diminishing in modern times ; and I am persuaded that it would show that many moral phenomena, apparently independent and unconnected, obey the same laws.

II.—*Measure of Volume of Litigation.*

The simplest and best test of the amount of litigation is the number of writs or plaints. True, the issuing of a writ may be, and often is, followed by no other proceedings ; it may resemble a gun fired across the bows of a vessel ; the charge may be a blank cartridge, the writ a mere menace. In point of fact, in the Central Office there is an appearance only in about 60 per cent. of the writs issued, and in actions begun in district registries the percentage of appearances is lower than in London. In about 3 per cent. only do the cases come to adjudication by judge or jury. Thus in 1892, while the writs issued at the Central Office were 46,234, there were only 28,486 appearances ; though 75,458 writs were issued in that year at the Central Office and in the district registries, the actual trials in Middlesex and London and at the Assizes were only 2,401.

A further circumstance must be borne in mind : an originating summons is equivalent to a writ ; and in the Chancery Division is much business—partly litigious, partly administrative—of which the number of writs gives no certain indication. Another test is the number of judgments ; a third the number of executions. On the whole, however, the fairest test is the number of writs issued ; appearances, trials, judgments, executions, and all other steps in

an action will be found to vary roughly with the number of writs. Roughly, not exactly. Deviations from this rule, especially in regard to appearances, will be found in certain years; indeed, it seems to be a principle that in years in which an unusually large number of writs is issued, they are followed by a much smaller percentage of appearances, trials, judgments, and executions than in other years.

From the tables which follow, the returns as to bankruptcy proceedings have been excluded, and the propriety of this omission may be challenged. A bankruptcy notice or motion is often the beginning of litigious proceedings. It is often a mode of determining a dispute or group of disputes. Indeed it may be an accident whether a disputed claim is determined by an action or a motion in bankruptcy; and bankruptcy business occupies no small part of the time of the courts. On the whole, however, it seems expedient to exclude from the present paper the bankruptcy figures. They merit consideration by themselves. They relate largely to matters of administration. The many changes in the bankruptcy law render accurate comparisons difficult; and, what is a decisive consideration, they are annually subjected in the Comptroller General's reports to an elaborate analysis. The proceedings of the Judicial Committee of the Privy Council, for the most part relating to appeals from our colonies and dependencies, have been excluded. With some doubts I have included the business of the probate, divorce, and ecclesiastical courts, though they have jurisdiction over matters altogether different from those coming before other courts. The exact limits of the inquiry are not easily defined. Much of the business of courts of law is of an automatic or involuntary character, involving, only accidentally, the settlement of disputes; much of it is purely administrative; and I am by no means certain that I have separated accurately the litigious from the non-litigious business. It is probable, however, that the elements wrongly excluded or included would not appreciably affect the results.

For several reasons I begin with 1859. The period which has since elapsed has witnessed the carrying out of several great changes in procedure—notably the Common Law Procedure Acts, several Acts extending or modifying the County Court Jurisdiction (30 and 31 Vict., cap. 142, 1867; 31 and 32 Vict., cap. 71, 1868, and 51 and 52 Vict., cap. 43, 1888), and the Judicature Acts. Before 1859 returns are occasional and defective. Hereafter the inquiry may be carried still further back, certainly the history of English law will be incomplete until the volume of business in our courts from time to time is known.

III.—*Business of Queen's Bench Division.*

The first table shows the average number of writs, appearances, and judgments from 1859 to 1892. Appended is the amount of the population at each decade. It will be noted that the returns of the writs, appearances, judgments, and executions before 1876 are those of the three Common Law Courts. The figures for 1876 and subsequent years in the first table exclude the returns of the district registries, and include only the returns in London.

TABLE 1.—*Writs Issued, Appearances, Judgments, and Executions.*

	Writs.	Appearances.	Judgments.	Executions.	Population.
1891-92.....	45,508	28,456	22,735	10,798	(1891) 29,001,018
'87-90.....	44,439	27,598	22,456	13,310	
'83-86.....	49,225	29,914	24,461	15,737	
'79-82.....	56,126	29,500	24,389	16,483	(1881) 25,974,439
'75-78.....	57,739	24,845	22,916	14,274	
'71-74.....	66,301	22,756	24,292	15,471	
'67-70.....	91,134	29,517	32,485	23,449	(1871) 22,712,266
'63-66.....	116,364	32,321	38,266	26,716	
'59-62.....	100,426*	26,522	36,114	26,223	(1861) 20,066,224
Decrease or increase } between 1859-62 and 1891-92	Per cent. - 54·6	Per cent. + 7·3	Per cent. - 37·04	Per cent. - 50·9	Per cent. + 44·02

* Renewals appear to have been included for some years in the returns of writs of the Exchequer Court ("Judicial Statistics, 1873," p. iii). Several discrepancies, it may here be observed, are to be found in the returns. They do not, however, appear to affect to any appreciable extent the results.

The second table, supplying the omission in the first, shows the average number of writs, appearances, judgments, and executions (inclusive of the returns of the district registries).

TABLE 2.—*Writs Issued, Appearances, Judgments, and Executions (including District Registries).*

	Writs.	Appearances.	Judgments.	Executions.	Population.
1891-92.....	73,235	35,453	32,470	13,260	(1891) 29,001,018
'87-90.....	72,119	34,904	32,368	19,147	
'83-86.....	78,387	37,342	34,475	21,877	(1881) 25,974,439
'79-82.....	89,396	37,373	35,285	23,644	
'75-78.....	83,620	30,075	31,082	24,806	(1871) 22,712,266
Decrease or increase....	Per cent. - 12·4	Per cent. + 17·8	Per cent. - 4·4	Per cent. - 34·4	Per cent. + 27·7
Decrease or increase } between 1859-62 and 1891-92	- 27·07	+ 33·7	- 10·01	- 38	+ 44·02

These tables become more instructive if they are read in the light of another, which is in the main compiled from the reports of the Common Law Commissioners.

TABLE 3.—*Writs in Common Law Courts, 1823-56.*

	Writs in Queen's Bench, Common Pleas, and Exchequer.	Population.
1856.....	76,879	(1851) 17,927,609
'55.....	73,783	
'54.....	71,319	
'53.....	65,447	
'52.....	69,120	
'51.....	72,514	
'49.....	84,860	
'48.....	91,630	(1841) 15,914,148
'47.....	97,274	
'46.....	129,499	
'36.....	95,964	
'34.....	95,356	(1831) 13,896,797
'33.....	83,787	
'30.....	96,595	
'23-27 (average)*	79,693	
Decrease or increase between 1823-27 and 1892..... }	Per cent. - 8'07	Per cent. + 28'9

* "Appendix to First Report of Commissioners on Common Law," p. 156.

The above figures are chiefly taken from Parliamentary Paper, 1854 (364). The following figures are given in the "Report of Commission on Judicial Business, 1857:"—

1852	60,582	1848.....	81,292
'51	56,100	'47.....	85,327
'50	63,095	'46.....	116,941
'49	73,151		

In addition to the three Courts of Common Law at Westminster there were in 1823-27 several courts having jurisdiction unlimited as to amount. Two of them were the Courts of Common Pleas of the County Palatine of Lancaster, and the Court of Pleas of the County Palatine of Durham, in both of which sat Judges of the Courts of Westminster under Commissions from the Crown. In the Court of Great Sessions at Chester also sat two judges, one appointed under one commission to be his or her Majesty's Justice for the counties of Chester and Flint, and under another commission to be Justice for the counties of Montgomery and Denbigh. The second judge was appointed under a single com-

mission to be Justice for all these counties. ("First Report of "Commissioners of Common Law," p. 34.) There was also the Court of Great Sessions in Wales, dating from the time of Henry VIII (27th Henry VIII, cap. 26), and possessing an equitable as well as common law jurisdiction. The following table shows the business in the superior Courts of Common Law at Westminster and in the Courts of the Counties Palatine and in the Great Sessions in Wales in 1823-27:—²

TABLE 4.—*Actions Brought and Appearances, 1823-27.*

	Actions Brought.	Appearances.
1827.....	101,133	29,710
'26.....	108,548	27,626
'25.....	82,385	21,797
'24.....	71,132	19,919
'23.....	68,198	19,852
Average	86,279	23,781
Decrease or increase } between 1823-27 } and 1891-92	Per cent. — 16·3	Per cent. + 48·9

The accompanying sketch (see next page) will help one to understand the fluctuations in litigation since 1859.

Pausing to consider the purport and outcome of these returns, one is struck by some conclusions:—

(a.) A great decrease in process issued in the Common Law Superior Courts. The mean number of writs in 1891-92 was 73,235; in 1859-62, 100,426; in 1830, 96,595; in 1827, 101,133. In other words, there was in about sixty-five years a diminution of 27 per cent. The maximum number of writs in the period over which the returns extend was 133,160 issued in 1866, which was nearly 82 per cent. greater than in 1891-92. The minimum number was 60,062 in 1875, that is, less than half the number in 1866. Bearing in mind the rapid increase of population, the decrease is remarkable. Had the writs increased at the same rate as the population since 1866, there would have been in 1891 not 71,012, but more than double that number of writs. To put the matter shortly: in 1830 1 writ was issued in the Common Law superior courts for every 144 inhabitants; in 1851, 1 for every 247; in 1861, 1 for every 176; in 1871, 1 for every 348; in 1881, 1 for every 294; in 1891, 1 for every 408. What will be the number of writs in the Queen's Bench Division twenty-five years hence if this rate of diminution goes on?

² Welsh judicature abolished by 11 Geo. IV and 1 Will. IV, c. 170.

Business of Queen's Bench Division from 1859 to 1892.

The test of wealth is not so easy to apply. Taking as a rough criterion the assessment of profits of trade under Schedule D, we find that in England in 1858-59 the total sum was 73,444,000*l.*, and in 1891-92 it was 163,577,031*l.* (net profits 127,801,041*l.*); that is to say, wealth had, according to this very imperfect test, about doubled. According to Dr. Giffen, capital increased 35 per cent. between 1865 and 1875, and 15 per cent. between 1875 and 1885. Obviously litigation, measured by the number of writs, has not kept pace with this increase. A reduction of no less than 43 per cent. took place between 1863-66 and 1871-74. This is not entirely explained by any transferences to the County Courts.

(b.) Appearances have not diminished in the same degree as writs. In fact, the appearances in 1891-92 (35,453) were more than those in 1859-62 (26,522) and those for 1827 (29,710). The largest number was 38,410, in 1866, the smallest, 20,461, in 1875.

(c.) Judgments have diminished, but not in the same degree as writs; between 1859-62 and 1891-92 they have been reduced by more than 10 per cent.

(d.) Executions have diminished 38 per cent. between 1859-62 and 1891-92; there were in 1859-62 13 executions for every 18 judgments, and in 1891-92 only 1 in 2.

The maximum number of writs is issued in June, July, and November, the minimum in August and September. It is apt to be supposed that during the Long Vacation the courts are completely closed. The fact is that the Long Vacation does not make very much difference as to certain matters: the difference between the maximum and minimum of writs rarely much exceeding 1,500. The following is a statement for five years of writs and originating summonses issued at the Central Office from quarter to quarter:—

TABLE 5.—*Percentages of Writs and Originating Summonses, 1888-92.*

	1888.	1889.	1890.	1891.	1892.
	Per cent.	Per cent.	Per cent.	Per cent.	Per cent.
First quarter	26·2	25·4	25·35	24·07	25·4
Second „	26·2	25·6	25·52	25·7	25·09
Third „	22·5	23·2	23·48	24·02	23·3
Fourth „	25·0	25·8	25·6	26·2	26·1

In 1889, 1890, 1891, 1892, the judgments signed in the quarter in which falls the Long Vacation were respectively 22, 22·2, 22·7, and 22 per cent. of the entire number of judgments.

Many persons, including, it may be, some lawyers, are apt to assume that actions are, as a rule, actually decided in open court, and that the majority of judgments are the results of discussions, arguments, and judicial decision. Nothing could be further from the truth. Very many actions never come to the point of appearance; many are brought to an end by default in delivering defence; many others are terminated by orders to dismiss for want of prosecution. Only an insignificant minority reaches the stage of trial, as will be apparent from the next table, which shows the average number of cases entered and tried (defended and undefended), with the amount recovered in Middlesex and London.

TABLE 6.—*Cases Entered and Tried and Amounts Recovered.**

	Entered.	Tried.	Recovered.	Population.
1891-92.....	2,604	1,544	635,774	(1891) 29,001,018
'87-90.....	2,439	1,269	287,628	
'83-86.....	2,397	1,281	268,913	('81) 25,974,439
'79-82.....	2,285	1,126	200,380	
'75-78.....	2,183	1,053	169,896	('71) 22,712,266
'71-74.....	2,328	1,166	192,865	('61) 20,666,224
'67-70.....	2,814	1,398	229,713	
'63-66.....	2,770	1,286	196,212	('51) 17,927,609
'59-62.....	2,215	1,163	134,169	('41) 15,914,148
'45-56.....	2,679	1,249	....	( '31) 13,896,797
'23-27.....	3,198	....	....	( '21) 12,000,236
Decrease or increase per cent. }	-18.5	+23.62	+373.8	+141.6

* In the figures as to amounts recovered are several discrepancies. The figures in Mr. Fowler's returns do not agree with those in the Judicial Statistics.

Here the figures are much more favourable than those in Tables 1 to 4. Still, on the whole, they show no increase corresponding to that of the population and wealth of the country. In 1823-27 the population was 12,000,000 to 13,000,000, and the average cases entered for trial in the Superior Courts of Common Law were 3,198, or 1 to every 3,700 to 4,000 inhabitants; in 1891 they were 1 to every 11,266. In 1827 the causes actually entered at Westminster and in London were 4,375; given the same rate of increase as that of population, the causes entered would not be about 2,500, but more than twice as many.

But in interpreting these figures three facts are to be remembered: In the first place, the proportion of cases tried to cases entered was not so large as it now is. In Brougham's speech on Legal Reform in 1828, when the entries were about 3,000, he speaks of 700 or 800 cases to be tried.³ In the second place, many of the trials in early times were mere formalities: it was

³ "Speeches," 2, p. 336. He remarks that "in the time of Lord Mansfield, "in the late reign, 60 was reckoned a fair entry." But *quære*, in Burrow's Reports, preface, vol. i, p. iv, it is said, "some hundred causes end every year at "the sittings."

necessary to go to trial when there was nothing to be determined. In the third place, a verdict subject to reference was much commoner than it is. The Court merely decided that the question should be elsewhere and otherwise decided.⁴

No small proportion of the writs is in respect of bills of exchange. Now, until the 18th and 19th Vict., cap. 67, was passed, it might be necessary, no matter how flimsy might be the defence, to obtain a verdict. That statute—replaced by the procedure under Order XIV—brought to a speedy close actions which would in other days have swelled the list of cases entered if not tried. And now a very large and increasing number of actions on contracts and claims for liquidated amounts are disposed of without trial and by summary judgment under Order XIV; which has proved in many ways a most successful innovation in legal procedure, and the utility of which appears by the following statement:—

TABLE 7.—*Average Summary Judgments under Order XIV.*

1892	6,377
'88-91	5,809
'84-87	6,076
'80-83	5,654
'76-79	3,353

Increase + 90·18 per cent.

To these figures must be added the judgments signed in the district registries under Order XIV; in 1876 they were 809, in 1892, 1,270. For the information of those who are apt to think that most cases are decided by judge or jury in open court, it may be stated that, in round figures, of the whole number of judgments signed at the Central Office in 1892 (23,332), nearly one-third were obtained under Order XIV; and that for one judgment given for the plaintiff on verdict in open court, about four or five were given in chambers on affidavits.

In London and Middlesex the amount recovered by verdicts in 1892 was 318,979*l.*; that recovered in 1891 was 952,570*l.*, the largest sum recovered within the above years. I am inclined to think that this increase is indicative of a disposition on the part of juries to give larger verdicts. Thirty years ago verdicts for 1,000*l.* or 1,500*l.* were much rarer than they are now. At the same time the whole amount recovered is not equal to the sums

⁴ "A cause paper in the present day numerically the same as one of former times, in reality represents a mass of contentious business of far more intricacy and importance."—"Report of Common Law (Judicial Business) Commission, 1857," p. x. Here may be cited Brougham's speech on the state of the law, 7th February, 1828, "the judges do not sit for more than an hour some mornings, and there are hardly ever in the paper more than six or seven causes for trial after term."

which a single Parliamentary Committee has been known to deal with in one Bill. Excluding the exceptional figures for 1891, the average sum recovered in 1887-90 was 287,628*l*.

There remains the fact that, while population has increased 50 per cent., the number of cases entered remains much the same, and is in fact less than it was in 1867-70, when the population of England and Wales was about 8,000,000 less than it is. Three or four judges trying on an average three cases a day would dispose of the lists in a working year of about two hundred days.

Two or three circumstances connected with the returns, as to entries and trials, may be here noticed. The percentage of cases actually tried to cases entered is higher than it was, at all events in London.

The proportion of cases tried to cases entered (London, Middlesex and Assizes):—

TABLE 8.

		London, &c.	Circuit.
1891-92	=	59'2	65'8
'87-90	=	52'0	61'2
'83-86	=	54'3	65'2
'79-82	=	49'2	67'2
'75-78	=	48'2	64'4
'71-74	=	50'1	66'1
'67-70	=	49'7	68'4
'63-67	=	46'4	72'1
'59-62	=	52'5	75'3
Increase or decrease		+ 6'7	— 9'5

The contrast between the town and circuit business will not escape notice. It will be a surprise to many to find that, notwithstanding the well known temptations on circuit to settle cases before trial, the percentage of trials to entries is larger than in London.

The next table shows the proportion of cases tried to the total number of writs issued:—

TABLE 9.—*Percentage of Cases Tried to Total Writs.*

1892	3'2	1879	1'9	1866	1'1
'91	3'2	'78	2'3	'65	1'1
'90	2'8	'77	2'1	'64	1'9
'89	2'8	'76	2'8	'63	2'1
'88	3'0	'75	2'5	'62	2'1
'87	2'5	'74	2'6	'61	1'9
'86	2'8	'73	2'9	'60	2'1
'85	2'6	'72	2'6	'59	2'4
'84	2'7	'71	2'5		
'83	2'5	'70	2'5		
'82	2'3	'69	2'8		
'81	2'2	'68	2'9		
'80	2'1	'67	2'1		
				Decrease be- tween 1859 and 1892	+ 0'8

It will be noted that the years in which the largest number of writs were issued—1864, 1865, 1866—were those in which the percentage of trials was small; and this is in harmony with the fact that the proportion of defended actions is increasing. Much is said about the lists of actions being “hollow” or “melting away.” This is not true to the degree which it once was, for more cases entered for trial are actually defended; the percentage of such was 84·1 in 1859-62, but it rose in 1891-92 to 92·3.

TABLE 10.—*Undefended Cases.*

[Percentage of cases tried which are undefended.]

1891-92	6·7	1867-70	23·7
'87-90	9·5	'63-66	21·2
'83-86	10·05	'79-82	15·9
'79-82	9·8		
'75-78	10·9	Decrease	— 9·2
'71-74	17·1		

It may be observed that the years with highest average of defended actions were 1887-90 and 1891-92, those with lowest 1867-70. In 1836, out of 1,088 cases tried in London and Middlesex, 250, or about one-fifth, were undefended; in 1849, out of 482 tried in the Exchequer Court, 164, or about one-third, were undefended. In 1890, only 80 out of 1,194 cases tried, or about one-fifteenth; in 1891, only 113 out of 1,517, or about one-thirteenth; in 1892, 96 out of 1,571 were undefended.

I am inclined to think that the increase in the percentage of actions actually tried and of those defended as distinguished from undefended actions, shows that now-a-days litigation has to do more than it once had with substantial disputes, and that cases are sifted more carefully in the early stages than they once were. This statement is subject to one or two qualifications. Costs count for very much—I am afraid more and more—in litigation. Many actions are fought out to the bitter end by reason of the large amount of costs at stake, which often far transcend in importance the original subject of dispute; and to some extent the figures which I have quoted may be explained by the inability or reluctance of parties to come to a settlement after considerable costs in an action have been incurred. The increase in defended actions may be partly due also to the temptation offered by delay in trying actions.⁵ Some clients, it is to be remembered, are not so sanguine

⁵ In the “Irish Judicial Statistics” for 1878-79, p. 52, Dr. Hancock observes, “For a portion of the population equal to that of Ireland, the number of writs issued was 12,478; to these no less than 5,757 defences were entered. In Ireland the number of writs issued was 23,526, while the defences were only 3,562,” “On an average taken from 256,901 actions commenced by serviceable process, nearly one-half are settled on service without any appearance entered; and it is

as to expect victory in litigation; they look to their solicitors to obtain for them the maximum postponement of the evil day. But there is no mistaking the general purport of these tables. A writ means more than it did; it more often implies a real dispute. It will be found too, that, as a rule, the percentage of appearances is largest when the number of writs is smallest; and that, for reasons which I am unable to divine, the percentage of appearances has distinctly increased since 1876.

TABLE 11.—*Percentage of Appearances to Writs.*

Appearances.		Appearances.	
1892	47·5	1873	34·9
'91	49·3	'72	33·6
'90	49·9	'71	33·3
		'70	32·5
1889	48·8		
'88	47·5	1869	33·7
'87	47·5	'68	34·7
'86	50·8	'67	30·0
'85	47·3	'66	28·8
'84	46·9	'65	28·3
'83	45·7	'64	26·6
'82	43·9	'63	27·0
'81	44·7	'62	26·6
		'61	25·4
1880	41·3	'60	26·2
'79	36·2		
'78	36·3	1859	27·3
'77	37·4		
'76	29·5		
'75	34·1		
'74	35·4		
		Increase between } + 20·2	
		1859 and 1892.. }	

In litigation, as in warfare, the victory is to the attacking party. Under every system of procedure, and in every country, the plaintiff, as a rule, succeeds, and the defendant, as a rule, is beaten—a fact borne out by figures which I append. The verdicts for plaintiffs are about three times as many as verdicts for defendants; and I know no country in which the percentage is much less. But in recent years will be noted a distinct tendency in verdicts for defendants to increase, a tendency most noticeable since the Judicature Acts;⁶ a tendency perhaps all the more remarkable because in almost every country of Europe, not

“probable, though the number cannot be precisely ascertained, that the plaintiff obtains payment, or a settlement, or judgment by default, in at least two-thirds of the whole number of actions so commenced without resistance by the debtor to the extent of putting in an appearance.”—“Fourth Report of Commissioners on Courts of Common Law,” p. 12. See Appendix A.

⁶ Ferri, “La Sociologie Criminelle,” p. 192; “Judicial Statistics, 1892,” p. xxx.

excepting England, the percentage of convictions in criminal trials is, on the whole, apparently increasing. Is the explanation wholly or in part to be found in the diminution of trials by jury? Do juries accept a lower standard of evidence than judges? Does the fact imply the presence of a new element of uncertainty in law, the old ideas of what is just and right and fair being shaken? or is it due, as I am disposed to think, to the elimination at an early stage of cases which are practically undefended?

TABLE 12.—*Percentage of Verdicts for Defendants.*

	Per Cent.		Per Cent.
1891-92.....	26·7	1867-70.....	19·9
'87-90.....	25·8	'63-66.....	20·5
'83-86.....	24·9	'59-62.....	20·8
'79-82.....	25·4	'30-34.....	19·8 ⁷
'75-78.....	24·0		
'71-74.....	19·7	Increase	+ 6·9

Another point to be cleared up is the nature of the cases tried. To know what is the character of the actions brought; how they vary from time to time; what forms of actions are becoming obsolete, what more common, would be profoundly instructive. From such information we should learn as much respecting the disposition of people as from their songs, their literature, or their laws. Appended is a table of averages for some years of the chief classes of actions. It will be noticed that there is an increase in certain kinds of torts, and particularly in malicious prosecution, libels, and personal injuries. In actions for slander, on the other hand, there is not an equal increase, and actions for false imprisonment and assault have declined. Remarkable is the decrease in the number of actions on bills of exchange and promissory notes, and for goods sold and delivered, attributable in the main to a change in the mode of doing business and to the summary process for judgment now in use, though, also, it may be argued, one of the many signs that the quarrels of men of business are not settled in court to the extent to which they once were. Some of the changes are ascribable to the County Court Acts, especially the Act of 1888 (51 and 52 Vict., cap. 43); and it is probable that still greater changes in the class of actions tried in the High Court would take place if the original jurisdiction of the County Courts included all forms of torts.

⁷ The basis of calculation is the judgments entered up in the Queen's Bench Division.

TABLE 13.—*Nature of Cases Tried.*

	1859-62.	1863-66.	1867-70.	1871-74.	1875-78.	1879-82.	1883-86.	1887-90.	1891-92.
Libel	24	18	25	25	31	29	31	67	82 +
Slander	31	25	24	27	22	19	25	30	45 +
Malicious prosecution	7	4	7	5	9	14	11	17	16 +
False imprisonment	37	28	17	16	11	12	13	14	16—
Assault	25	32	30	17	11	11	9	10	12—
Seduction	5	3	3	4	2	2	1	1	2—
Breach of promise.....	8	10	9	23	14	12	13	15	16 +
Fraudulent representations	—	—	—	—	—	21	23	28	36 +
Personal injuries under Lord Campbell's Act.... }	35	106	116	106	87	116	109	119	166 +
Other personal injuries.....	66	40	37	22	38	37	32	28	22 +
Goods sold and delivered....	160	191	223	148	115	95	95	85	89—
Promissory notes, &c.	148	172	180	114	93	101	118	97	131—
Breach of contract.....	150	137	144	163	153	147	163	164	231 +
Recovery of land	45	52	85	76	40	58	71	69	65 +
" rent	18	19	32	22	19	25	26	35	23 +
Trespass relative to land	37	35	30	24	24	33	55	56	67 +
Life and marine insurance...	—	6	15	11	9	10	13	7	10 +
Work and labour	113	127	127	102	123	123	115	113	148 +

These figures, of course, represent only an insignificant fraction of the actions begun in the Queen's Bench Division, but probably they indicate the true proportions of the various kinds of actions in all stages. It will be noted that the great majority of them are connected with contracts—chiefly actions for goods sold and delivered, and breach of contracts. Most of the residue relate to actions for torts—running down cases and the like. To many persons it will be a surprise to find that the annual total number of actions tried out for breach of promise of marriage, which figure so largely in newspapers, has during more than thirty years varied from 8 to 16.

In country districts, where originate most assize actions, actions for slanders would appear to be much more numerous, and subject to greater fluctuation, than in London. The great increase in libel actions since 1886 will be noticed.

The next point of interest is the importance of the cases tried, and, in the first place, the amounts for which verdicts are given. As to this point, assistance is derived from returns moved for by Mr. Fowler.⁸ Analysing these returns and other data, we find:—

TABLE 14.—*Amounts Recovered.*

	Average Number of Actions where more than 100 <i>l.</i> were Recovered.	100 <i>l.</i> and more than 50 <i>l.</i>	50 <i>l.</i> and less.
Average, 1871-75	242	137	331
" '76-80	227	139	271
" '81-85	258	167	253
" '86-90	318	186	265
" '91-92	456	213	265

⁸ Some of the figures in these returns do not exactly agree with those in the "Judicial Statistics."

These figures indicate a growth in the importance of actions, due no doubt in part to the operation of the County Courts Acts. This will appear more clearly by comparing the above returns with those for 1837. In that year more than 50 per cent. of the verdicts were for sums of 50*l.* and under; in 1890, about 30 per cent.⁹ Of 950 verdicts in Westminster and London in 1869, 244 were cases over 100*l.*; the corresponding proportion for 1886-90 was upwards of 40 per cent. In 1891, out of 899 verdicts, 469 were for more than 100*l.*; in 1892, out of 978 verdicts, 668 were for 100*l.* and over.

One of the clearest results deducible from "the Judicial Statistics" is the decline in recent years of trial by jury, a decline not to be ascribed wholly to the operation of new rules, and apparently indicative of a growing distrust of the true Court of Equity, as the late Lord Bramwell defined trial by jury. Before the Judicature Acts it was almost the universal form of trial on the Common Law side of the Courts; the power given by the Common Law Procedure Act, 1854, s. 1, to a judge, with consent of the parties, to try issues of fact, was rarely used. Even now a jury is practically compulsory in certain classes of cases. But the institution is falling into disuse. Each sitting sees an increase in the non-jury lists. Trial by jury is found to be terribly expensive. A jury may, and often does, disagree; a single judge must be unanimous, and his decision is not followed by the waste which is the consequence of an abortive trial. A jury disagrees, and is discharged; and, to take an actual instance, the client finds himself in debt to his solicitor to the tune of nearly 300*l.*, with no absolute certainty that anything will be decided if he again goes to trial. The decisions of juries are difficult to foresee; and, strange circumstance, there does not appear to be in these democratic times the respect—I might also say reverence—for the decision of twelve fortuitous citizens which once existed. My own experience would lead me to think that this mode of trial is preferred chiefly by those who do not wish a decision on the merits.

The growth of trial by judge without a jury in London and Middlesex is clearly shown in the first of the two following tables. The second shows a tendency in the number of special juries to decline. Whether this be due to an impression that such a jury is not now so superior in intelligence and experience to a common jury as it once was, I do not know; but there is no reason to believe that a tribunal, once denounced as unconstitutional, will supersede the older form of trial.

⁹ Return to order of House of Commons, 22nd and 24th May, 1838.

TABLE 15.—*Percentage of Cases Tried by Jury.*

	Defended Cases with a Jury	Undeferred Cases with a Jury.
	Per cent.	Per cent.
1892.....	53·8	15·6
'88-91	51·44	22·90
'84-87	55·05	25·4
'80-83	83·85	81·5
76-79	93·50	88·1
Decrease	-40·42	-72·4

TABLE 16.—*Percentage of Cases Tried by Special Jury.*

1892	22·4
'88-91	21·8
'84-87	22·07
'80-83	26·1
'76-79	31·4
Decrease	-9·0

Less distinctly, but still, on the whole, clearly, the same increasing favour for trial by a judge is visible in the Probate Court. It is possible that in the County Courts a decrease of trial by juries would be detected but for the Employers' Liability cases, in which it is often for the interest of the plaintiff to seek to enlist the sympathy of a jury.¹⁰

One fact comes to light—the decline of proceedings in the district registries, which were established in 1876 in some seventy to eighty places—not indeed a decline from the figures for 1876, but a distinct decline from the highest point which was attained in 1879.

¹⁰ In 1847-50 the percentage of cases tried in County Courts by jury to total cases in which judgment was entered was 3·3 per cent. In 1866-69 it was 0·15 per cent. In 1888-91 it was 0·19 per cent., in 1892 0·22 per cent.

TABLE 17.—*Proceedings in District Registries.*

	Actions Trans- ferred to London.	Writs.	Appear- ances.	Judg- ments.	Execu- tions.	Sum- monses.	Bills of Costs Taxed.	Fees.
								£
1892.....	2,912	29,224	7,360	10,366	5,934	8,002	10,696	34,827
'91.....	2,588	26,229	6,634	9,035	4,990	7,254	9,667	29,501
'90.....	2,397	24,929	6,530	8,680	4,803	7,386	9,313	28,465
1889.....	781	26,207	6,959	9,108	5,357	7,600	9,929	30,327
'88.....	260	29,298	7,770	10,668	6,401	8,342	11,391	33,462
'87.....	332	30,323	7,955	11,240	6,787	7,834	11,741	33,812
'86.....	242	29,575	7,478	10,708	6,500	7,650	11,532	32,796
'85.....	273	29,111	7,630	9,955	6,190	7,941	10,942	32,665
'84.....	214	27,110	7,035	9,156	5,402	7,842	9,631	32,665
'83.....	241	30,851	7,567	10,250	6,470	10,826	11,183	27,805
'82.....	262	30,798	7,473	10,375	6,286	11,087	11,148	24,045
'81.....	242	32,378	7,710	11,292	6,830	12,649	12,008	25,488
'80.....	278	32,077	7,757	11,116	6,714	13,481	11,810	25,266
1879.....	335	39,835	8,552	13,390	8,814	13,884	14,696	29,764
'78.....	480	36,809	7,351	11,857	8,279	12,088	13,862	23,496
'77.....	360	32,957	6,655	10,787	6,983	10,357	11,470	24,859
'76.....	160	33,758	6,914	10,018	6,844	2,467	7,341	24,631
Decrease or increase per cent. since 1877	....	-11·32	+10·6	-3·8	-15·0	-22·76	-6·75	+40·09

A remarkable increase has taken place in the actions transferred to London. There is a decline in almost everything else (except the fees obtained by the Treasury). This decline is due to many causes; in some towns to a contraction of the business of the High Court, and the growth of the business of the County Courts; to some extent the change is ascribable to the facility for conducting proceedings in London.

A fact upon which the advocates of continuous sittings in Lancashire lay stress, is the preponderance of the business of the registries in that county—that is Manchester, Liverpool, and Preston. In Lancashire, in 1882-83, says Mr. W. H. S. Watts, were—

“Issued 27·96 per cent. of all the writs issued in the district registries, whilst “the amount of fees is 37·123 of the whole, and the number of applications in “Chambers actually amounts to 55·063 of those in all registries throughout “England and Wales. Again, the number of writs issued out of the district “registries amounts to 16·244 of the number” (52·973) issued out of the central office in London.

(See Mr. W. H. S. Watts's paper “On the Administration of “Justice in Lancashire.”—“Transactions of Manchester Statistical “Society,” 1884-85, p. 107.)

In Manchester and Liverpool district registries the writs issued in 1891 were 3,746, and 2,956; in 1892, 3,973 and 3,110, respectively, out of a total of 29,224.

It is impossible within the limits of this paper to deal exhaustively with the fluctuations in the business of each district registry. He who studies the figures may be able to deduce from them valuable results. They suggest curious speculations as to the explanation of the percentage of appearances to writs being greater in some towns than in others. Why in Manchester and Liverpool is it about one-third, while in Bristol it is about a fifth to a sixth? Why is the percentage of appearances in the registries less than in the Central Office in London? What explains the different percentage of executions to judgments in London from that in the country? These questions, and many others, I leave unanswered. Here I must be content to note the fact that only in six towns—Birmingham, Bristol, Cardiff, Leeds, Liverpool, and Manchester—were more than 1,000 writs issued in 1892, that in all the above towns, with the exception of Cardiff, there is a decrease in process issued, and that in others which once issued more than 1,000 writs, business has apparently fallen off.¹¹

In one respect there is a marked increase in the business of the Queen's Bench Division. In the course of almost every action applications are made from time to time at Chambers—applications which are often necessary, but which are sometimes needless and made mechanically—with the effect of inflating costs; applications which generate others, and may make each case the parent of fresh litigation. Many circumstances conspire to swell the numbers of such matters—chief among them being the long interval often intervening between the issue of the writ and the actual trial; a system of remuneration which would foster shortcomings even in a community of angels; and last, but not least, the practice of making costs “costs in cause.” To some extent in the Queen's Bench Division summonses are the substitutes for motions; but the latter also have increased. In 1859 the motions (exclusive of those for new trials) were 641; in 1889, 1890, and 1891 they were 952, 801 and 549. To some extent the increase in summonses is due to the procedure under Order XIV. But I cannot help thinking that the large number of summonses is one of the blemishes of our system. I do not adopt the homely language which I have sometimes heard, that, if there are fewer actions, more is made of them. But such applications occur to an extent unknown, so far as I can learn, under other systems.

¹¹ In Sheffield, in 1879, there were 1,629 writs and 357 appearances; in Nottingham 1,017 writs and 261 appearances. For 1892 the figures were: Sheffield, 744 and 164; Nottingham, 570 and 158.

They are eminently subject to the operation of rules; they notably increased after the Judicature Acts; they diminished with the introduction of the rules of 1883; and it is probable they might still further be reduced with advantage. I append a table showing the average number of summonses since 1859. A few of them were not in actions; they may have been incident to arbitrations and inter-pleaders, for example. But the great majority were episodes in actions:—

TABLE 18.—*Average Number of Summonses.*

1891-92	48,770	1867-70	58,600
'87-90	47,239	'63-66	45,836
'83-86	53,933	'59-62	43,589
'79-82	79,261		
'75-78	83,152	Increase	+ 11·8 per ct.
'71-74	59,225		

As to motions for new trials, something will be said under the head of Appellate Courts. With respect to motions in general, it may be noticed that they steadily rose after the Judicature Acts, attaining their maximum in 1889, when they were no fewer than 952, or about one hundred in excess of their number in 1886.

TABLE 19.—*Special Motions.*

	Motions.
1891-92	580
'87-90	802
'83-86	694
'79-82	707
'75-78	578
'71-74	609
'67-70	737
'63-66	788
'59-62	765
Decrease per cent.	- 24·2

If complete, the "Judicial Statistics" would clearly reveal another increase also open to criticism, and that is the increase in the fees. From a reduced number of actions, an increased revenue is sometimes obtained. To some extent, the increase may be more apparent than real. But undoubtedly the fees are higher than they were; when they have been revised it has been to the disadvantage of the suitor.¹² While the doctrine taught by early law reformers, but for a time forgotten, that justice should, as far as possible, be free, and that law taxes are the

¹² See returns moved for by Mr. Dodds, June, 1884.

worst of all possible taxes, is gradually winning converts, the weight of these taxes has been increased.

In the following table are set out the number of bills taxed in the Queen's Bench Division for some years :—

TABLE 20.—*Bills Taxed.*

1892	9,764	1882	14,817
'91	9,472	'81	13,683
'90	8,529	'80	12,355
1889	8,896	1879	12,254
'88	9,545	'78	12,072
'87	9,428	'77	11,388
'86	9,000	'76	7,185
'85	9,814		
'84	10,512	Increase per cent....	+ 35·8 ¹³
'83	14,436		

The maximum number of bills is taxed in November and July, the minimum in September. No statistics are accessible with respect to the exact amount of costs taxed in the Queen's Bench. With respect to the Chancery Division such information is published; but we may arrive at approximate figures as to the former, and from the amount of fees paid we may assume that the amount of costs taxed in 1891 and 1892 was about 303,600*l.* and 347,520*l.*—*i.e.*, about 32*l.* and 36*l.* each bill. It would seem that in 1889-90 in the Chancery Division the average amount of each bill was about 99*l.* There exists an impression, the truth of which cannot here be fully investigated, that litigation has become more costly. In Appendix M to the first report of the Commission of Inquiry into Common Law Courts (p. 687), are specimens of bills of costs taxed in the three Common Law Courts, and, if they are fair examples, they show that litigation was less expensive than it is. In an action in which Scarlett, then the foremost man at the Bar, and Alderson were retained, the "costs for plaintiff, after judgment on demurrer to declaration and inquiry executed, are 14*l.* 6*s.* 4*d.* money paid out of pocket; costs, 35*l.* 18*s.* 6*d.*" Plaintiff's costs on verdict, cause tried in London, witnesses residing in Lancaster, with Scarlett and Alderson as counsel, 65*l.* 4*s.* 4*d.* (of which 45*l.* 12*s.* were for witnesses); costs allowed 86*l.* 4*s.* 4*d.* Defendant's costs on a verdict (Serjeant Stephen and Parke, counsel): money paid, 10*l.* 15*s.* 4*d.*; costs allowed, 23*l.* —*s.* 6*d.* Defendant's costs on verdict in Exchequer: money paid, 10*l.* 11*s.* 3*d.*; costs, 23*l.* 11*s.* 9*d.* Probably these amounts are less than the average costs of proceedings since the Judicature Acts; and no wonder, for those were days when Sir

¹³ Up to 1881 the returns are "exclusive of bills taxed under the Statute;" after that date, "inclusive."

James Scarlett argued a motion for 3*l.* 3*s.*, when 13*s.* 4*d.* were allowed for instructions for brief, when solicitors got 3*s.* 4*d.* for attendance at Judges' Chambers, and when the term fee was 13*s.*

Long before the Judicature Acts there had been an increase of costs. In 3,760 verdicts for plaintiffs in 1830-34 the damages were 733,170*l.*, the costs 266,357*l.*, or about 36 per cent. of the amount recovered.¹⁴ In the "Second Report of the Judicature Commissioners" (Part II, p. 468) is an analysis of 141 actions in the Queen's Bench Division in the first six months of 1870. The total of the sum recovered was 22,522*l.*, the costs 13,791*l.*, the average taxed costs of plaintiffs only amounted to more than 60 per cent. of the verdicts.

Two points relative to the present costs of litigation may be here considered:—

(1.) The proportion of costs to the amount recovered.

(2.) The proportion of counsels' fees and Court fees to the total costs.

Taking at random 100 cases decided in the years 1892-93 in the Queen's Bench Division, I found that the total amount recovered was 27,912*l.*, the total taxed costs 9,687*l.*, or about 34 per cent. of the amount recovered. But this included several verdicts for unusually large amounts, it being notorious that the average amount recovered in a Common Law action is far less than 279*l.* Taking also at random 34 cases in which 100*l.* and under were recovered in the same years, the total amount recovered was 1,228*l.*, and the taxed costs of one side were 2,975*l.*; that is to say, the average sum recovered in these actions was about 36*l.*, and the average amount of costs 87*l.*—figures very similar to those in the analysis of the costs of actions in 1870, which showed that as to 97 actions in which 100*l.* and less were recovered the costs were 174 per cent. of the amount of the verdicts. These are the costs which the victor gets from the vanquished—if he can. We may not be far wrong in adding another 5 to 10 per cent. for costs which the victor ought perhaps to get, but which he does not—that is, costs as between solicitor and client not allowed on a party and party taxation.¹⁵ Selecting 26 cases in which the verdicts were for 100*l.*

¹⁴ 1834, XLVIII.

¹⁵ "A great, perhaps the greatest, evil of our system, as at present constituted, is the excess of the costs which a party succeeding is obliged to pay, over and above what he can recover from his antagonist. This is so certain and considerable, that a man shall in vain expect me to recommend him either to bring forward a rightful claim, or to resist an unjust demand for any such sum as 20*l.* or even 30*l.*—at least upon a calculation of his interest. I should presently declare to him he had much better say nothing in the one case, and pay the money in the other, even if he had a stamped receipt in his pocket, provided his adversary were a rich and oppressive man, resolved to take all the advantages the law gives him."—Brougham's "Speeches," 2, p. 475.

and upwards, it appeared that the total amount recovered was 6,560*l.*, the total amount of costs allowed on taxation was 2,468*l.*; that is to say, the average verdict was for 252*l.*, the average allocatur or certificate for costs 95*l.*—results not unlike those deducible from the analysis of 1870; according to which in the case of 44 actions for sums of 100*l.* and upwards the costs were 32 per cent. of the amount recovered. As to these figures there will be much difference of opinion. They may not confirm the common impression that the cost of litigation has increased; an increase, in part due, it is often said, to the large sums spent in payments to witnesses, who, if experts, cannot be obtained at the old rates of remuneration, and also to the fact that litigation is now largely conducted by public companies, to which costs are no object, and which appeal as a matter of course when they are beaten. The tendency of taxation on the Queen's Bench side is to make party and party costs more of an indemnity than they were,¹⁶ and the figures may merely indicate a transfer from solicitor and client to party and party costs. But the figures do confirm, as it seems to me, the impression that costs are too large. To be sure, many people think that a litigant who has cleared up a legal principle ought to be satisfied with the public service which he has performed, and to have no sordid thoughts of personal gain. And there may be force in the contention that there is no better way of making the law a terror to evil doers than by making it costly. The pity is that it should be no less dreaded by those who do well. What your impression may be I do not know; mine is that the present procedure in the Superior Courts is somewhat unsuitable for the trial of most actions in which 100*l.* and less are involved. It is too much like selling coals by grains and scruples, not by hundredweights and tons.

Often in discussions as to the costs of litigation are bandied to and fro recriminations as to the share of counsel and solicitor. To help to clear up this point I made a further analysis. Selecting 73 cases, it appeared that the party and party costs of one side delivered were 13,563*l.*, or an average of about 186*l.* an action; the costs allowed 7,469*l.*, or about 102*l.* an action; the counsels' fees 3,497*l.*, or about 48*l.*; the Court fees 617*l.*, or about 9*l.*¹⁷ I ought to add that the list examined included a considerable

¹⁶ Before the Judicature Acts, there was at Common Law a fixed scale of payments for witnesses. The practice now is to allow in respect of witnesses in party and party costs sums much larger than were once allowed. See Appendix B.

¹⁷ In first Appendix to fifth and final "Report of the Judicature Commissioners," p. 22, is a statement for the year 1870 of the cost of prosecutions—average at Assize Courts, 12*l.* 7*s.* 3*d.*; Criminal Court, 8*l.* 7*s.* 4*d.* The average for 1869-71 was, Assizes, 11*l.* 11*s.* 5*d.* In 1892 the average for Assize Courts was 16*l.* 15*s.* 6*d.*; in the Central Criminal Court 11*l.* 14*s.* 9*d.*

number of "heavy cases" in which counsels' fees were unusually large, and that the amount of Court fees gives no just idea of their incidence in actions in which judgment is obtained by summary process. Selecting at random a few bills of costs of judgments under Order XIV, I find that the official fees were nearly 30 per cent. of the total costs—a curious commentary on the principle of *Magna Charta*, justice is not to be sold.

On the question whether actions are tried as expeditiously as they were, light is thrown by the following table, giving the average number of remanets in London and Middlesex every four years for about a quarter of a century.

TABLE 21.—*Average Remanets.*

1891-92	1,236
'87-90	1,037
'83-86	1,245
'79-82	798
'75-78	744
'71-74	322
'67-70	368
Increase per cent.....	<u>+ 235·9</u>

This is an unsatisfactory record. The remanets in 1887-90 were, indeed, fewer than in 1883-86, but they were three times as many as in 1867-70, when the number of writs issued was in excess of the present number. In 1891 they were 1,310; in 1892, 1,160; and a marked increase is to be noticed after the Judicature Acts. Of late, however, remanets have diminished.

Even under the present system the life of an action may be very short, especially if it be put in the list of Short Causes. There is nothing to prevent an action being begun in January or February, and tried at the Spring Assizes; and in modifying or destroying the circuit system this must be borne in mind. If the venue be London or Middlesex, the interval between the issue of the writ and trial may be much longer. I took the trouble to examine 93 cases tried in 1892 and 1893, and it appeared that the average time between the issue of the writ and the actual trial was 209 days, or six to seven months—an unsatisfactory commentary on the doctrine of *Magna Charta*, that justice shall not be delayed. Two words of caution must be added. It must not by any means be supposed that the delay was in all cases owing to the operation of the rules of Court. In many cases the parties voluntarily stay their actions, and our procedure has no effective machinery for hurrying them on against their wishes. In the second place, there has been of late, partly owing to the creation of the Short Cause List, and partly owing to the diminution of business, a

remarkable acceleration of the time of trial. Never probably has the interval between issue of process and judgment been less than it is. The misfortune is that, if a defendant is ingenious and wealthy, he may be able to protract proceedings for a long time.

IV.—*The Business at Assizes.*

One of the oldest parts of our legal system, or indeed of English institutions, is the Circuit. For centuries, without a break, assizes have been held by justices in eire or of assize¹⁸ in certain towns: in Maidstone, York and Oxford, for example. Assizes may be traced clearly back to Henry II; but they existed even earlier.

“The examination of the Great Roll of the Pipe of 31 Henry I, shows that during his reign the practice was observed both for financial and judicial purposes. These journeys were the substitute under the Norman kings for the progresses of the earlier sovereigns who, whilst moving from one of their estates to another, heard the complaints of the defects of justice in the lower courts.”—Stubbs’s “Select Charters,” p. 141.

The circuits are one of the most picturesque and distinctive features of English national life. Nowhere else, except perhaps in the United States, is any institution corresponding to them. For judges and barristers they have social charms. There friendships are formed; the mess with its high jinks, Rabelaisian songs, and good fellowship, is something by itself—a club, and more than a club; and not for much would men barter their memories of circuit life when they were young. Powerful interests are arrayed in maintaining the assizes. A circuit practice is usually laboriously and slowly built up. The assizes turn into certain channels twice or thrice a year a stream of business. The reluctance to part with such an institution is strong—how strong every county member of Parliament well knows. All the same, they are not, and never again can be, what they were. One part of their functions—the administrative and executive—has almost disappeared. There was once a conception of the duties of judges of assizes far more extensive than that to which we are accustomed.

“Besides their usual work of the trial of prisoners and of causes,” says Mr. Hamilton, in an account of the work of Assizes, “they appear to have been employed as what we should call inspectors of the county justices. They were directed to inquire during their circuits into the manner in which the justices exercised their functions. They were to require the justices to furnish them with reports on various subjects, especially on ‘recusants,’ alehouses, rogues, paupers, and so forth. Matters of county business, such as those relating to rates and assessments, were referred to them, and orders upon these matters were frequently issued by them. They adverted in their charges to questions concerning the trade and manufacture of the district, and they gave interpretations of the law for the

¹⁸ See *ex parte* Fernandez, 10 C.B., N.S. 3.

guidance of the justices, without requiring individual cases to be argued before them."¹⁹

Mr. Hamilton's description, which applies to circuits between the times of Elizabeth and Anne, and to a certain extent to a later period, has long ceased to be true. It would be almost ridiculous to speak now of Assizes as Baron Alderson did, when he described them as the "safety valves" of society.

The following are the averages of the causes entered and tried in the following periods:—

TABLE 22.—*Causes Entered and Tried in Assizes.*

	Entered.	Tried.	Recovered.	Population.
			£	
1891-92.....	1,203	793	148,846	(1891) 29,001,018
'87-90.....	1,218	745	101,587	
'83-86.....	1,217	794	105,929	(1881) 25,974,839
'79-82.....	1,226	825	139,907	
'75-78.....	1,409	908	133,227	
'71-74.....	1,497	987	236,609	(1871) 22,712,266
'67-70.....	1,569	1,074	240,334	
'63-66.....	1,533	1,104	225,715	
'59-62.....	1,287	970	136,630	(1861) 20,066,224
'23-27.....	+ 2,051*	....	....	(1821) 12,000,236
Decrease or increase per cent.	- 41'34	- 18'2	+ 9'6	+ 141'6

* This includes the cases entered on Circuit, in the Counties Palatine, and in Wales. Appendix to "First Report of Commissioners on Courts of Common Law," p. 204.

This statement shows an almost uninterrupted decline, due in the main to the increase of County Court business, but significant also, it may be, of a tendency to centralise business in London. Since 1859-62 there has been a decline of 18'2 per cent. in the causes tried. This is to some extent due to "remanets;" but the great cause is hidden away in the judicial statistics under the heading "record withdrawn." I append by way of comparison the following returns taken from the "First Report of the Common Law Commissioners, 1829," and the "Report of the Common Law (Judicial Business) Commissioners, 1857."

Average for twelve years ending 1856	1,329 (entered)	1,094 (tried)
" ten " '44	1,682 (")	1,394 (")
(Entered) 1827	2,519	
" '26	2,084	
" '25	1,926	
" '24	1,839	
" '23	1,886	

¹⁹ "Quarter Sessions from Queen Elizabeth to Queen Anne," p. 66. For a description of the varied work of judges of assizes in last century, see "Journal of a Gloucester Justice," 1715-56, "Law Magazine," 1861.

The state of things may be thus roughly expressed : in 1823-27 1 cause entered on circuit to every 6,000 inhabitants, in 1891-92 1 to every 24,000.

Upon what circuits has an increase, upon what a decrease, taken place? To answer this question would necessitate a long inquiry. Many changes have been made in recent years in the boundaries of some of the circuits. In the past they were frequently recast. Henry II at first created six circuits; by-and-bye he divided England into four parts. In the reign of Edward II were seven circuits. At what time the old number six was restored is uncertain.²⁰ Nowhere exists, as far as I know, an adequate history of the changes in the circuit system; writers on English law speak vaguely on the subject; and a monograph on it is much needed. This, however, is not the time or place for attempting to supply the defect. The history of all the changes, even since 1859, would lead me far afield. The materials for an exhaustive account of the business on circuits, even in recent years, are almost inaccessible; and I have confined myself to giving information, necessarily imperfect, about the chief circuits.

TABLE 23.—*Oxford Circuit.*

	Actions Entered.	Actions Tried.
1891-92	56	35
'86-90	75	46
'81-85	99	73
'76-80	124	87
'71-75	138	94
Decrease per cent.	— 59'4	— 62'7
Annual average twelve years } ending 1856	168	142
Annual average ten years } ending 1844	245	....
Average 1823-27	362	212

Average Amount Recovered.

	£
1876-80	8,147
'71-75	11,729

²⁰ See first Report of Commissioners on Courts of Common Law :—"Whatever period the number of circuits may have been restored to six, or settled at that number, a comparison of the present circuits with those established by King Henry II in the twenty-second year of his reign, will show that great changes have taken place. Thus Essex and Hertford were at first part of the Norfolk circuit; Hampshire, now forming part of the Western circuit, and Berkshire and Oxfordshire, now forming part of the Oxford circuit, were included in the Home circuit; and Staffordshire, now part of the Oxford, was included in the Midland circuit," p. 55. In second Appendix to "Judicature Commission," Fifth and Final Report, p. 47, is an account of recent changes in circuits.

TABLE 23 *Contd.*—*Western Circuit (including City of Bristol).*

	Actions Entered.	Actions Tried.
1891-92	118	102
'86-90	110	67
'81-85	105	85
'76-80	106	82
'71-75	109	86
Decrease or increase per cent.	+ 8·2	— 18·6
Annual average twelve years } ending 1856	128	112
Annual average ten years } ending 1844		
Average 1823-27	378	....

Average Amount Recovered.

	£
1876-80	8,049
'71-75	9,933

Midland Circuit.

	Actions Entered.	Actions Tried.
1891-92	193	117
'86-90	188	104
'81-85	147	99
'76-80	138	106
'71-75	247	149
Decrease per cent.	— 21·8	— 21·4
Annual average twelve years } ending 1856	106	100
Annual average ten years } ending 1844		
1823-27	231	....

Average Amount Recovered.

	£
1876-80	10,085
'71-75	28,239

South-Eastern Circuit.

	Actions Entered.	Actions Tried.
1891-92	104	63
'86-90	115	69
'81-85	137	102
Decrease per cent.	— 24·0	— 40·0

TABLE 23 *Contd.*—(*Home Circuit.*)

Annual average twelve years } ending 1856	305	261	
Annual average ten years } ending 1844			
1823-27, average entries	272	....	

Northern Circuit.

1891-92	350	244	
'86-90	369	234	
'81-85	390	215	
'77-80	411	208	
Decrease or increase per cent.	- 14·8	+ 15·4	

Average Amount Recovered.

£

1877-80 29,850

Note.—Writing of the figures for 1883, Mr. W. H. S. Watts remarks: "the cases entered for trial on the Northern Circuit are 35·78 per cent. of the whole number of cases entered for trial on all the circuits together, and the causes actually tried are 28·778 per cent. of the whole."—"The Administration of Justice in Lancashire," p. 110.

North-Eastern Circuit.

	Actions Entered.	Actions Tried.	
1891-92	255	157	
'86-90	249	154	
'81-85	236	157	
'77-80	253	164	
Decrease per cent. ....	....	- 4·3	

Average Amount Recovered.

£

1877-80 19,885

Old Northern Circuit.

	Actions Entered.	Actions Tried.	
Ten years ending 1844 } (exclusive of Counties } Palatine).....	242	200	
Ten years ending 1844 } (inclusive of Counties } Palatine).....			
1823-27, average entries } (exclusive of Counties } Palatine).....	369	....	
1823-27, average entries } (inclusive of Counties } Palatine).....			
1823-27, average entries } (inclusive of Counties } Palatine).....	707	....	

TABLE 23 *Contd.*—*North Wales Circuit and Chester Circuit.*

1891-92	45	36
'86-90	36	27
'81-85	35	31
'76-80	36	33
'71-75	41	35
Increase per cent.	+ 9·7	...
1856.....	52	48
'44.....	29	15

Average Amount Recovered.

£

1876-80	2,497
'71-75	2,700

Note.—The returns for 1876 relate only to North Wales and Chester Circuit.

South Wales Circuit.

	Actions Entered.	Actions Tried.
1891-92	82	53
'86-90	83	51
'81-85	62	42
'77-80	42	31
'71-75	48	33
Increase per cent.	+ 70·8	+ 60·6
1856.....	51	42
'44.....	80	57

Average Amount Recovered.

£

1876-80	3,901
'71-75	6,928

Three things will strike anyone examining these figures: (1) a very large proportion of the cases were decided in Lancashire and Yorkshire. Of the actions tried in 1892, about 35 per cent. were decided on the Northern and North-Eastern Circuits; (2) on the majority of the circuits is a decrease, and only on one—South Wales—is a considerable increase; and (3) on the circuits on which the entries are large, the proportion of trials is small. On the Northern Circuit, for example, only 67 per cent. of the cases entered in 1892 were tried.

No complete returns exist as to the number of actions entered and tried at each Assize town. But in the "Report of the Council

“of Judges” in August, 1892, is the following statement of the average number of cases tried at each assize in 1888-91:—

TABLE 24.—*Average Number of Cases Tried at each Assize Town.*

Liverpool	58½	Mold	¼	Beaumaris	2
Manchester	53½	Presteign	¼	Northampton	2
Leeds	56	Appleby	½	Worcester	2
Birmingham	31	Aylesbury	½	Hereford	2
Glamorgan	21	Ruthin	½	Cambridge	2
Bristol	14	Dolgelly	½	Somerset	2
Newcastle	13	Cardigan	1	Oxford	2
Durham	11	Bedford	1	Suffolk	3
Chester	9	Huntingdon	1	Gloucester	3
Exeter	8	Hertford	1	Carmarthen	3
York	6	Montgomery	1	Derby	—
Carlisle	6	Brecon	1	Chelmsford	4
Nottingham	7	Warwick	1	Leicester	4
Norwich	6	Lancaster	1	Shrewsbury	4
Winchester	5	Reading	1	Surrey	4
Lincoln	3	Monmouth	1	Stafford	6
Carnarvon	3	Wilts	1	Lewes	6
Bodmin	3	Haverfordwest	1	Maidstone	7
Oakham	—	Dorchester	2		

Note.—In the second appendix to Fifth and Final Report of Judicature Commissioners, p. 45, is a table showing the business in the chief towns on the Northern Circuit. The following table of causes entered is not complete, but the returns are, it is said, “complete enough, we hope, to justify a general “argument based upon them.”

	1865.	1866.	1867.	1868.	1869.	1870.	1871.	1872.
Durham	24	—	31	19	15	16	24	36
Newcastle	14	—	19	—	20	25	27	15
Carlisle	11	—	16	10	6	—	12	6
Appleby	—	—	4	—	—	—	—	3
Lancaster	—	—	15	29	7	9	12	8
Manchester	195	155	174	143	142	149	146	173
Liverpool	315	319	304	278	240	309	234	290

In Appendix to Report of Circuit Regulation Commission, 1845, is information as to actions entered or tried on circuit from 1835 to 1844. The annual average of entries and trials at Liverpool was 279 and 194. In “Whitelock’s Memorials,” p. 293, are incidental references to the cases entered on the Oxford Circuit in 1648. The entries were:—Reading, 44; Oxford, 35; Gloucester, 99; Monmouth, 10; Hereford, 53; Shrewsbury, 99; Stafford, 70.

Obviously the holding of Assizes in some of the above towns is, so far as civil business is concerned, almost an archæological

form or historical survival. In some towns it may happen that no cases are entered; in others are always only a few cases to be tried.

What classes of cases are tried at Assizes? In order to throw light upon this question have been compiled two tables, similar to those prepared for business in Middlesex and London, showing the average number of cases tried in periods of four years since 1859.

TABLE 25.—*Nature of Cases Tried at Assizes.*

	1859-62.	1863-66.	1867-70.	1871-74.	1875-78.	1879-82.	1883-86.	1887-90.	1891-92.
Libel	23	30	33	37	30	28	36	57	69 +
Slander	40	30	48	52	55	46	60	54	85 +
Malicious prosecution	9	9	14	14	16	14	12	13	6 -
False imprisonment	26	29	14	15	14	15	13	9	8 -
Assault	34	34	26	19	14	13	17	14	19 -
Recovery of land	103	116	117	94	69	53	50	48	34 -
" rent	6	12	13	12	14	18	16	18	12 +
Trespass relative to land ...	121	129	109	93	94	76	72	63	70 -
Personal injuries under } Lord Campbell's Act.... }	26	81	121	140	103	79	69	73	85 +
Seduction	11	10	10	10	8	5	7	7	8 -
Other personal injuries.....	46	71	69	66	71	47	51	47	44 -
Fraudulent representations	—	—	—	—	—	13	8	15	15 +
Bills of exchange and } promissory notes, &c. }	91	104	113	89	74	72	71	59	59 -
Breaches of contract	88	142	204	266	209	166	134	105	115 +
Goods sold and delivered ...	119	170	169	146	142	113	112	104	122 -
Breach of promise of } marriage	21	25	29	56	32	28	33	40	36 +
Life and marine insurance...	—	5	9	16	10	15	14	12	17 +
Work and labour	56	97	108	85	83	80	66	77	68 +

In the following class of cases is a decline : malicious prosecution, false imprisonment, assault, actions on promissory notes and bills of exchange, recovery of land, trespass relative to land. There is an increase in actions for libel, slander, recovery of rent. On Circuit, as in London, there is a considerable increase in actions for libel—they are, in fact, three times as many as they were. Great activity prevails as to torts, *e.g.*, slander, over which the County Courts have no original jurisdiction. The table, on the whole, confirms the impression that commercial cases no longer are so common as they were. On the other hand, it does not confirm the impression that actions for breach of promise of marriage, of which we hear so much in newspapers, are increasing.

The next point to be considered is the nature of the cases as measured by the amount of the verdicts. Here is a table, similar to that prepared with respect to the trials in London and Middlesex, of the average amounts recovered.²¹

²¹ The figures in Mr. Fowler's returns do not agree entirely with those in the "Judicial Statistics."

TABLE 26.—*Amounts Recovered.*

	More than 100 <i>l.</i> Recovered.	More than 50 <i>l.</i> and Less than 100 <i>l.</i>	50 <i>l.</i> and Less.
Average 1871-75	278	123	264
" '76-80	199	113	217
" '81-85	193	110	191
" '86-90	181	118	186
" '91-92	212	119	186

Comparing the figures for the Assizes with the corresponding figures for London and Middlesex, it will be observed that the percentage of verdicts over 100*l.* in the former is less than in the latter, while the verdicts under 50*l.* are more numerous. In short, the business at Assizes, measured by a money test, is less important than that in London. At the same time it is but fair to add that the verdicts at Assizes are larger than they were.²² In 1837, for example, the verdicts above 50*l.* were under 40 per cent.; in 1859-60 they were 47 per cent.; in 1891-92 they were over 60 per cent.

Here may be stated the total number of actions tried, with the amount recovered, in Middlesex and London and on Circuit.

TABLE 27.—*Total Number of Causes Entered and Tried in Superior Courts of Common Law.*

	Entered.	Tried.	Recovered.	Population.
1891-92	3,808	2,337	784,620	(1891) 29,001,018
'87-90	3,657	2,015	389,216	
'83-86	3,614	2,096	374,842	
'79-82	3,511	1,951	340,288	(1881) 25,974,839
'75-78	3,592	1,961	303,148	
'71-74	4,076	2,156	429,474	
'67-70	4,383	2,472	470,047	(1871) 22,712,266
'63-66	4,303	2,390	421,927	
'59-62	3,502	2,133	270,798	(1861) 20,066,224
Increase per cent.	+ 8·7	+ 9·6	+ 189·7	+ 44·02
Average entries 1823-27	5,267	....	....	

²² Brougham ("Speeches," 2, p. 493), describing an analysis of the verdicts at one of the Lancaster Assizes, states: "The average amount of these verdicts I found to be for sums under fourteen pounds—thirteen pounds odd shillings each."

"We think it probable that nearly one-half of the causes tried at the assizes are for causes of action not exceeding 20*l.* each, and that the expenses of litigation are equal to at least four times the aggregate amount actually recovered."—"Fifth Report of Commissioners of Courts of Common Law, 1833," p. 16.

Entries and Trials of Actions in London and Middlesex and on Circuit.

Here is a record of a slight increase in entries and trials, and a very large increase in the amount recovered; the latter fact probably owing, in the main, to the tendency of juries to award larger sums than formerly. Comparing these figures with the population, the table indicates a decrease; in 1859-62, in round figures, one case was *entered* for every 5,700 inhabitants; in 1891-92, one for every 7,600; in the former period one case was *tried* for every 9,400; in the latter one for every 12,000 inhabitants; and comparing the returns with those for 1823-27, in the Courts at Westminster, the Counties Palatine, and in Wales, there is a decline in the entries of no less than 27 per cent. It will be noted that the years with the largest number of entries of cases were those with the smallest percentage of trials, and that there is surprisingly small variation in the number of the latter.

V.—*Chancery Division.*

The business of the Chancery Division consists of three kinds of causes and matters:

- (a) Those involving important questions of law and fact;
- (b) Those relating to small sums, requiring the exercise of judicial functions, but rarely presenting any difficulty;
- (c) Cases in which there is no litigation proper, and in which the Court protects or administers property.

There was a time when most of such cases were treated alike—when even if no facts were in dispute a simulated action was proceeded with—an action as unreal as a Common Recovery. This has been changed. For many years the tendency of reform of Chancery procedure has been to substitute summary procedure by petitions and summonses; and since 1883 the use of originating summonses has been greatly extended. Another marked change has been the removal from the Chancery Division of much administrative or quasi administrative work. By the Charitable Trusts Act, 1853, under which Commissioners were appointed to do what once was done at Chambers or in Court, and by the Act passed in 1890, and the rules made thereunder, transferring to the Official Receiver the settling of the lists of contributories, this work has been much reduced. The extension of the jurisdiction of the County Courts has considerably lessened the business of the Queen's Bench Division. No similar results have followed the conferring of equity Jurisdiction upon County Courts.²³ Only a few Equity suits or proceedings are begun in the County Courts—in 1892 they were only 714—and this kind of business shows no signs of increase. On the other hand there is a remarkable growth in the business of the County Palatine of Lancaster, due, it is sometimes alleged, to a particularly liberal scale of costs. Before Lord Esher's Committee of Inquiry into the practice of the Chancery Division in 1886, evidence was given that "the County Palatine work had increased about 40 per cent. in the last six years." But the decentralisation of equity business is apparently far off.

Several circumstances conspire to increase the business of the Chancery Division. This may in part be due to the preference of solicitors for a tribunal the sittings of which can be calculated with precision. Many of the cases cannot be disposed of out of

²³ For some reason the equitable jurisdiction of the County Courts in Ireland has thriven. "The equitable jurisdiction conferred on the Irish County Courts by the Act of 1877 has in four years far exceeded the amount of County Court equitable business. In an equal population in England and Wales where the jurisdiction has existed since 1865, the Irish cases were 659 as compared with 125 in the same population in England in 1879."—"Irish Judicial Statistics," 1882, p. 67.

Court. Obviously there is little room for arbitration and other extra-judicial modes of settling the suits which come before this tribunal. Though the same scales of costs are in force as in the Queen's Bench Division, costs on the higher scale are more frequently given in Chancery; and, what is particularly attractive, is the practice of allowing costs, charges and expenses out of funds. A Chancery suit is more remunerative than a Common Law Action to a solicitor, who complains that for a long attendance at Chambers by him, or more often, his clerk, he gets only 6s. 8d., that he receives nothing for drawing up most orders, and that payments for counsel which would be allowed on the Chancery side are taxed off in the Queen's Bench. There are still assigned to the Chancery Division all causes and matters for the administration of the estates of deceased persons, the dissolution of partnerships or the taking of partnership accounts, the redemption or foreclosure of mortgages, the raising of portions or other charges on lands, the sale and distribution of the proceeds of property subject to any lien or charge, the execution of trusts, charitable or private, the rectification or setting aside of deeds or other instruments, specific performance of contracts for the sale of real estate, the wardship or custody of infants, and the care of infant's estates—in other words, matters and causes affecting the disposal of large sums and funds. With the growth of the wealth of the country, we should expect a considerable increase of actions in the Chancery Division; and such is the result shown by the following statement of the average number of writs of summons and originating summonses (including bills) in the Chancery Division:—

TABLE 28.—*Writs and Originating Summonses.*

		Population.
1891-92	6,680	(1891) 29,001,018
'87-90	7,115	
'83-86	6,840	
'79-82	6,239	(1881) 25,974,439
'75-78	4,837	
'71-74	3,363	(1871) 22,712,266
'67-70	3,381	
'63-66	3,184	
'59-62	2,880	(1861) 20,066,224
Increase	+ 132 per cent.	+ 44·02 per cent.

There is a distinct tendency in originating summonses to increase—a tendency which becomes very manifest after 1883, and which is ascribable, no doubt, chiefly to the operation of the new rules. In 1889-90 they were 3,640, as against 3,249 writs;

2 L 2

1890-91, 3,517, as against 3,140 writs; and in 1891-92, 3,548 as against 3,031. The figures in the above table show an increase of 132 per cent., while the population has increased about 44 per cent.

The increase has not been continuous. There have been periods of stagnation, and in some years the volume of business has actually diminished. In the debates on the Bill appointing a Vice-Chancellor, in 1813, Sir Samuel Romilly expressed the opinion that the business of the Court of Chancery in Lord Hardwicke's time was equal to what it then was. Writing on the condition of the Equity Courts in 1840, the late Mr. Edwin Field said, "Notwithstanding the vast growth of this great nation in wealth and in population during the last hundred years, the same number, as nearly as possible, of bills were annually filed a hundred years ago as now." ("Appendix to Chancery Commissioners' Report," p. 1146);²⁴ and he referred in proof to the following figures:—

Bills Filed (including Bills of Revision and Supplement).

1745	2,064	1801	1,325
'46	2,041	'10	1,775
'47	2,138	'22	2,333
'50	1,744	'23	2,337
'60	1,481	'24	2,069
'70	1,318	'35	2,354
'80	1,328	'37	2,171
'90	1,152	'38	2,039
1800	1,394	'39	2,097 ²⁵

In the last half of last century and in the early part of this there was a decline in business, due partly to the want of sufficient judicial strength. Certainly the appointment of the Vice-Chancellor in 1813 was followed by an increase of proceedings. From 1810 to 1812 the average number of causes set down was 540.²⁶ In 1813 the Vice-Chancery Court was created, and during the three

²⁴ See Report of Committee on Delays of Suits in Chancery, 1810-11, p. 32. Return respecting Court of Chancery, 25th March, 1836; also Report xliii, 1836, and liii, 1854. In view of the decrease of business in recent years on the Common Law side, it is curious to note that Mr. Field observes: "I can find no corresponding return as to Common Law business, but have no doubt there has been an enormous increase. There were 30,000 more writs issued in 1830 than in 1820. The annual number is nearly 100,000."—"Common Law Report," p. 202), "Observations of a Solicitor on Defects of the Equity Courts," p. 67 n.

²⁵ To these figures in the earlier years must be added the bills in the Courts of Exchequer. In 1811 they were 655. Between 1750 and 1836 they were usually between 250 to 300.—"Return," 25th March, 1836, p. 20. In Cooper's "Chancery Miscellanies" (vii, p. 1), it is stated that Lord Bacon made 2,000 decrees or orders in a year.

²⁶ Lord Chancellor Cottenham's speech on Chancery Reform.—"Hansard," 1836, vol. xxxiii, p. 409.

years after the passing of the Act establishing it, the average was 717. From 1823 to 1825 it was 945, from 1833 to 1835, 1,301. Still to an intelligent observer such as Mr. Field, the outlook in 1840 for practitioners in Equity seemed gloomy. "Its suitors have diminished probably twenty fold, that is, they bear a " twenty fold decreased relation to the population of the country."

The following table records the average matters heard and the remanets :—

TABLE 29. (a.)—Average Matters Heard and Remanets.

	Average Matters Heard.	Remanets.	Population.
1891-92	1,164	668	(1891) 29,001,018
'87-90	1,212	702	
'83-86	1,892	846	
'79-82	2,400	775	(1881) 25,974,439
'75-78	2,153	598	
'71-74	2,140	599	(1871) 22,712,266
'67-70	2,167	544	
'63-66	1,927	530	
'59-62	1,986*	431	(1861) 20,066,224
Decrease or in- } crease per cent.. }	-41'3	+55	+44'02

* Apparently in the returns up to 1875 were included matters of a kind subsequently excluded. But it is not probable that the results were much affected by the change.

(b.)—Actions Set Down and Heard.

	Actions Set Down.	Actions Heard.	Causes for further Consideration Heard.
1891-92	1,133	510	181
'87-90	1,101	497	246
'83-86	1,147	576	566
'79-82	1,447	675	612
'76-78	1,055	683	419
Decrease or increase } per cent. }	+7'4	-25'3	-56'8

This shows a decrease since 1859-62, a large decrease since 1879-82, in matters heard, and a considerable decrease in actions heard. The year in which the maximum number of matters was heard was 1880, when they rose to 2,569; the largest number of writs and other originating proceedings in Chancery matters being in 1887 (7,195). It will be noted that there is a considerable increase in the remanets. The general course of the business will be tolerably plain from the graphic delineation of writs of summons,

originating summonses, orders (drawn up by Registrars and in Chambers), and matters heard.

Of the several modes of measuring the work of the Chancery Division, one is the amount of the Suitors' Fund or money standing to the credit of suitors. An extract from Twiss's "Life of Lord Eldon" is on this point instructive—

"The total amount of personal property belonging to the suitors of the Court of Chancery, which was lodged with the Accountant General of that Court in 1780, the period mentioned by Sir Samuel Romilly (in a discussion of the Vice-Chancellor's Appointment Bill) was 1,668,180*l*. By the end of the same

century that amounted to 17,000,000*l.*, and between 1800 and 1820 it reached 34,000,000*l.*" (3364). "In 1750, under Lord Hardwicke, the number of these accounts was 1,006; in 1810 under Lord Eldon it was 7,521." (3365.)

In 1892 the number of accounts open in the Chancery Division was 35,703; while the balance of stocks and securities on the several accounts was more than 65 million £.

Another test of the volume of business is the number of orders drawn up by the Registrars and in Chambers; all which appear in the following table:—

TABLE 30.—*Orders Drawn Up.*

	Drawn up by Registrars.	Drawn up in Chambers.
1891-92	10,294	8,926
'87-90	10,308	9,528
'83-86	15,363	5,956
'79-82	16,152	12,197
'75-78	12,799	12,275
'71-74	9,879	9,536
'67-70	8,513	9,695
'63-66	7,116	6,612
'59-62	6,487	5,184
Increase per cent.	+ 58·6	+ 72·2

The orders drawn up by the Registrars still preponderate. The maximum—17,096—was in 1884, since which time there has been a gradual diminution. In 1892 the number was 10,377. The largest number of orders of all kinds—30,483—was made in 1880.

A third mode of measuring the work of the Chancery Division is to note the average number of bills taxed and the amount of costs allowed.

TABLE 31.—*Bills Taxed and Amount of Costs.*

	Average Bills Taxed.*	Average Amount of Costs.
		£
1891-92	9,340	913,856
'87-90	10,674	1,082,839
'83-86	9,784	1,228,823
'79-82	9,692	1,265,926
'75-78	8,558	1,076,338
'71-74	8,294	1,021,353
'67-70	8,054	921,033
'63-66	6,966	746,328
'59-62	7,142	779,489
Increase per cent.	+ 30·7	+ 17·2

* The return for 1892 does not include taxations in lunacy, the bills in which in 1891 were 709.

There appears to be a tendency in the average amount of the bills to diminish, it was about 98*l.* in 1891-92, and about 130*l.* in 1879-82.

Examining the contentious business of the Chancery Division, one finds—

(a.) A considerable increase in writs and originating summonses, much in excess of the increase in population since 1859-62, and a remarkable increase since 1875-78.

(b.) A diminution in matters heard since 1879-82, when the highest point was reached.

(c.) A diminution in actions tried since 1876-78.

(d.) An increase in remanets from 1859-62 up to 1883-86, and from that period a diminution.

Examining the administrative work of the Chancery Division, we are struck with these facts:—

(a.) A great increase in the number of receivers' accounts and the amount of receipts and disbursements.

(b.) A diminution in accounts passed other than receivers' since 1880.

(c.) A decrease in recent years in the sales and purchase of estates under orders of Court. The maximum of the former was 1,026 in 1877, and the minimum 411 in 1861; of the latter, the maximum and the minimum, respectively, 145 in 1884, and 50 in 1892.

Many of these changes are the outcome of the Conveyancing Acts, the Settled Land Act, and of the changes in the rules as to administration actions: but they probably are ascribable in part to economical causes, which I am inclined to think affect litigation even more than statutes or rules of procedure.

Very old are the complaints as to the inadequate number of Judges in the Chancery Division. In 1813 the measure creating the office of Vice-Chancellor of England was passed. Two more Vice-Chancellors were created in 1841, and in 1876 there was a further addition. To the Chancery Division has been, from time to time, assigned a Judge of the Queen's Bench Division to hear and determine witness cases, and one sits to dispose of company cases. Against this increase in strength is a slight set-off: the Lord Chancellor sat formerly both as a Judge of first instance and as an appellate Judge. He now never sits in the first of these capacities; he rarely sits in the second, except in the House of Lords and in the Judicial Committee of the Privy Council. The Master of the Rolls, too, now sits only in the Appeal Court.

The Court of Chancery is not what it was in the days of Lord Eldon. Investigation would disclose no scandals similar to those laid bare by the "Edinburgh Review" in 1823, and by Mr. John

Williams in the House of Commons in 1825.²⁷ No cases drag along for years in the fashion of the famous "*Ware v. Horwood*." Still complaints are often made as to the slow rate of progress, and the words of Lord Langdale in 1835 may not have ceased to be true: "The want of sufficient judicial power is apparent from the constantly existing arrears. No application of the Judge has for many years past been sufficient to keep down the business."²⁸ No doubt there is a real difference in this respect between the Chancery and Queen's Bench Divisions; the investigation of accounts, the administration of large estates encumbered with debts, and the thousand and one questions incidental to the distribution of the surplus among claimants with diverse rights, must often be spread over many years. The Chancery Commissioners of 1826 remarked, in answer to the hostile criticisms of their day, "It may therefore happen, and often does happen, that in this sense a Chancery suit will usefully endure"—"usefully" for whom is not clearly explained—"for more than a century." But such "endurance" is fortunately rare, and is likely to become rarer; and, if I am not misinformed, never had suitors less reason to be dissatisfied with proceedings in the Chancery Division than at present.

VI.—*Palatine Court of Duchy of Lancaster.*

To complete this account of the equity business, must be added the equity cases of the County Courts, the inconsiderable equity business of the Stannaries Court, and the large equity business of the Palatine Court.

TABLE 32.—*Business of the Palatine Court.*

	Suits and Writs.
1891-92	770
'87-90	732
'83-86	748
'79-82	632
'75-78	437
'71-74	316
'67-70	241
'63-66	180
'59-62	153
Increase.....	+ 403'2 per cent.

The business of no other Court, except the City of London Court, has increased so rapidly as the Palatine Court. Its success is all the more remarkable in view of the failure of the County

²⁷ See "*Life of Lord Langdale*," i, pp. 350, 358, and 425.

²⁸ *Ibid.*, i, p. 424.

Courts to develop their equity business. What would be the result if a similar Court existed in Birmingham or Bristol?

VII.—*The Probate Court.*

The business of the Probate Court is for the most part automatic and administrative, and dependent on causes altogether different from those affecting that of other Courts. Of the administrative work I need only say that it has greatly increased since 1859. In the contentious work, on the other hand, is a distinct decline.

TABLE 33.—*Writs and Trials.*

	Writs and Claims.	Trials.
1891-92	220	99
'87-90	216	117
'83-86	204	107
'79-82	173	113
'75-78	265	94
'71-74	550	83
'67-70	534	67
'63-66	477	53
'59-62	403	48
Decrease or increase	-45·4 per cent.	+106·3 per cent.

Note.—The returns of writs in the Admiralty Division given at page x of the "Judicial Statistics," 1892, differ from those at page xxx; and a similar difference is to be found in the returns for many years back.

I have previously drawn attention to the fact that here trial by jury is on the decline. The percentage of trials by jury in 1892 was 22·1 per cent.; in 1891, 38·1; in 1890, 20·1 per cent.; while in 1876-79, 1880-83, and 1884-87 the percentages were 37·9, 32·5, and 24.

VIII.—*The Admiralty Court.*

It was to be expected that the business of the Admiralty Court would increase in a country which possesses the largest mercantile marine in the world. Every ship which enters or leaves an English port or nears our shores—every ship, in fact, which sails the high seas—may become the subject or occasion of a suit in that Court. The fact that entries and clearances at ports of the United Kingdom rose, within the period with which we are concerned, from about 59 million tons to more than 160 million tons, would prepare one for an augmentation of Admiralty litigation.²⁹ The actual figures, though large, do not come up to one's expectations.

²⁹ "Tonnage Statistics of the Decade," by Mr. Glover. *Journal of the Royal Statistical Society*, 1892, p. 205.

TABLE 34.—*Business of the Admiralty Court.*

	Writs and Actions.	Judgments and Decrees.	Number of Ships.	Tonnage.	Total Entries and Clearances (000's omitted).
1891-92	405	216	21,328 (1892)	8,644,754	(1890) 164,340,
'87-90	405	215	21,233 (1890)	7,945,871	....
'83-86	411	195	....	....	....
'79-82	354	181	25,185 (1880)	....	(1880) 133,250,
'75-78	355	178	....	....	....
'71-74	353	168	26,367 (1870)	5,690,789	(1870) 73,198,
'67-70	468	163	....	....	....
'63-66	534	178	27,663 (1860)	4,658,687	(1860) 58,707,
'59-62	520	179	....	....	....
Decrease or increase }	- 22.1	+ 20.6	- 22.9	+ 85.5	+ 179.9

The figures show a reduction in the number of writs and actions instituted, and an increase of judgments and decrees of about 20 per cent. The increase in the tonnage and clearances, it will be noted, is greater than the increase in the judgments and decrees.³⁰

To complete the statement of the Admiralty business, must be given the returns from the County Courts having Admiralty Jurisdiction, and the City of London Court:—

1891-92	552
'87-90	456
'83-86	465
'79-82	484
'75-78	553

IX.—*The Divorce Court.*

I have hesitated to include the returns of this Court. The cases which come before it differ so much from those in the other Courts, that there may be little good in grouping them together.

³⁰ As to increase of the business of the Court from 1851, see evidence of Mr. Rothery before Commission to inquire into expediency of bringing together all Superior Courts, 1860, p. 31. He states that in 1841 there were only two references and fifty-eight bills taxed by the Registrar. In an Appendix to Mr. Rothery's evidence, p. 32, is the following statement of actions entered from 1841 to 1858:—

1858	209	1849	256
'57	452	'48	259
'56	385	'47	243
'55	388	'46	227
'54	359	'45	256
'53	375	'44	175
'52	379	'43	257
'51	306	'42	230
'50	325	'41	237

This Court, too, would well merit a separate study. Here only a cursory glance at the subject is possible. And let me at the outset express regret that our statistics supply no information as to many points dealt with in the statistics of other countries. The French or German returns, for example, give details which render them profoundly instructive to the moralist and economist. Ours are almost useless by reason of omissions. They do not tell the status or profession or age of the parties to the suits, or the duration of their marriage; whether they are dwellers in towns or country, whether they are childless, or previously petitioners or respondents in the Court, or what were the grounds of the petitions. They are silent about most of the matters which make the French and Italian returns suggestive; and the omission is all the more to be regretted, because some of the details which we should prize could be obtained from a study of the petitions:—

TABLE 35.—*Business of the Divorce Court.**

	Divorce Petitions.	Petitions for Judicial Separation.	Nullity.	Restitution of Conjugal Rights.	Total Petitions.	Trials.
1891-92	531	98	9	14	699	953
'87-90	533	127	14	21	714	552
'83-86	492	122	14	21	662	452
'79-82	437	123	16	19	610	388
'75-78	425	117	12	20	592	356
'71-74	329	81	9	16	451	268
'67-70	247	77	7	14	361	227
'63-66	231	59	9	13	330	217
'59-62	202	60	3	11	300	234
Decrease or increase }	Per cent. + 162·8	Per cent. - 63·3	....	....	Per cent. + 133·0	Per cent. + 307·2

* See "Judicial Statistics, 1867," p. xxxiv, for return of decrees of judicial separation and dissolution of marriage. There are many discrepancies in the returns. It is pointed out by the Senior Registrar, in the return of suits instituted from 1888 to 1893, that in some few cases a petition for dissolution of marriage has been filed and a decree for judicial separation made, and that in some cases the respondents in their answers prayed for dissolution or judicial separation and obtained decrees.

To what extent is redress sought in this Court by men, to what extent by women? The saying is

Nach Freiheit strebt der Mann, das Weib nach Sitte.

How far is this principle verified by the records of this Court? In answering these questions some aid is given by a return made in 1888 at the instance of Mr. Gladstone, and a supplementary return of this year moved for by Mr. Henniker Heaton. Three

facts come clearly to light: greater proneness on the part of men than women to avail themselves of the remedy given by this Court; a tendency nevertheless for this difference to disappear; a marked preference by men for the remedy of dissolution of marriage as distinguished from judicial separation.³¹ These tendencies are all the more important because they agree with the experience of almost every country in which Divorce Courts exist.

TABLE 36.—*Husbands' Petitions.*

	Dissolution of Marriage.	Judicial Separation.
1891-92	306	3
'87-90	319	6
'83-86	311	6
'79-82	258	8
'75-78	259	11
'71-74	194	7
'67-70	139	8
'63-66	140	5
'59-62	123	2
Increase per cent.	+ 148·8	....

Wives' Petitions.

	Dissolution of Marriage.	Judicial Separation.
1891-92	222	150
'87-90	223	124
'83-86	212	119
'79-82	204	113
'75-78	188	110
'71-74	129	73
'67-70	107	69
'63-66	98	53
'59-62	69	52
Increase per cent.	+ 221·7	+ 190·0

The remarkable increase in the number of suits by women especially for dissolution of marriage, will be observed. In what degree are husbands' suits, in what degree wives' suits, successful? The answer is given in these tables:—

³¹ "A mesure qu'augmentait le nombre des demandes en divorce, celui des "demandes ayant pour but la séparation de corps diminuait."—"L'Administration de Justice Civile en France, 1890," p. xii.

TABLE 37.—*Suits for Dissolution of Marriage.*
(HUSBANDS' UNSUCCESSFUL SUITS.)

	Percentage of Suits Dismissed.
1891-93.....	13'1
'87-90.....	8'6
'83-86.....	14'6
'79-82.....	8'6
'75-78.....	8'6
'71-74.....	10'9
'67-70.....	13'7
'63-66.....	14'7
'59-62.....	9'7
Increase	+ 3'4

(WIVES' UNSUCCESSFUL SUITS.)

	Percentage.
1891-93.....	8'8
'87-90.....	5'4
'83-86.....	10'0
'79-82.....	4'5
'75-78.....	4'5
'71-74.....	5'2
'67-70.....	8'0
'63-66.....	11'8
'59-92.....	7'5
Increase	+ 1'3

Perhaps a difference in the results of the two classes of suits was to be expected. But the contrast revealed by these figures is remarkable. Do they signify that the petitions of wives are as a rule better founded, or more often undefended or collusive, than those of men? Do they indicate that women are reluctant to bring such suits unless they have a very good case and are tolerably certain of success?

The diagram of the progress of the business of the Divorce Court from year to year shows on the whole a steady advance. Petitions for judicial separations have for some periods been stationary, with a tendency in recent years to decline. Petitions for divorce have risen in certain years by leaps and bounds. Investigators into moral statistics have hitherto generally insisted upon their uniformity and constancy, and the late Mr. Buckle, writing under the influence of an original thinker and investigator, M. Quetelet, popularised the idea that statistics proved the existence of a sort of fatalism in moral and social phenomena. The individual counted for little: so many people annually died of hunger, so many suicides took place, so many letters were misdirected or misdelivered, according to a regular and constant sequence. Speaking with diffidence on a subject in which I am not versed, it seems to me there is more cause for marvel at the variations from time to time shown by moral statistics. Certainly the figures above cited—especially the sudden rises in the number of petitions in certain years—point to no slow and gradual transition; they rather suggest cracks and ruptures occurring from time to time in the moral structure of society. Subjected to heat or pressure, a material yields or expands up to a certain point, according to one regular rate. Beyond that point it obeys a new law; the elasticity becomes greater, the rate of expansion more rapid. Some such change is, it seems to me, revealed in these figures.

X.—*Total Business of Superior Courts.*

We can now sum up the entire business begun in the Superior Courts (Queen's Bench Division, Chancery, Admiralty, Probate and Divorce).

TABLE 38.—*Cases Begun in Superior Courts.*

	Cases Begun.	Rate of Decrease or Increase.	Population.
1891-92	81,315	+ 1'0	(1891) 29,010,018
'87-90	80,480	- 4'7	
'83-86	84,517	- 12'6	
'79-82	96,775	- 7'9	(1881) 25,974,439
'75-78	89,675	+ 26'3	(1871) 22,712,266
'71-74	70,977	- 25'9	
'67-70	95,895	- 20'7	
'63-66	120,839	+ 15'6	(1861) 20,066,224
'59-62	104,529	...	
Decrease or increase } per cent.	- 22'2	...	+ 44'02

The effect may be thus expressed: in 1859-62 one case was begun in the Superior Courts for every 190 inhabitants; in 1891-92, one case for every 350.

INFERIOR COURTS.

XI.—*The County Courts.*

Before the present County Courts were established, there existed, all over England, a large number of inferior courts. There were the old County Courts, the descendants of the Tribal Courts or Folk Motes, with jurisdiction up to 40s. There were the Hundred Courts, and the Courts Baron, the jurisdiction of which was very limited as to amount, unless where Parliament had extended it. Another group of local Courts existed by prescription or grant: one of the most important being the Palace Court of Westminster, possessed of jurisdiction unlimited as to amount within 12 miles of the Palace. Many cities—for example London, Bristol, Liverpool, Newark—had acquired, by charter or prescription, Courts of their own.

The centralisation of legal business in England just before the County Courts were created was not of ancient date. The intention of the Statute of Gloucester (6 Edward I, cap. 8) was that the local Courts should have jurisdiction in all but important matters. "None," it was enacted, "shall have writs of trespass before Justices, unless he swears that the goods taken were worth 40s. at the least," and as 40s. was in those days the equivalent of a large sum, the result would be to keep in the local Courts the bulk of disputes.³²

In many cities were established Courts of Request or Conscience. They were intended to do justice in a rough and ready way. Their Judges or Commissioners were laymen, who were free to disregard the rules of evidence. These Courts were the objects of much hostility on the part of lawyers. Blackstone speaks of their jurisdiction as "a petty tyranny" exercised by "a set of standing Commissioners." The law administered by them may have been not of a high quality. But, as a rule, they decided promptly and cheaply; and undoubtedly when a vigorous high-minded man guided them, they were useful.³³ The history of the Court of Requests at Birmingham, where Mr. William Hutton was a Judge, shows that some of the local Courts

³² See Brougham's "Speech on Local Courts," 2, 503.

³³ "I know these Judges in the Court of Requests do good—I say they do good by comparison—better something of justice than nothing; but so precious a thing is justice, that I should rather have such slovenly justice than absolute peremptory, and inflexible denial of all justice. It happens that tradesmen, who know nothing of law, and who may not have much occupation in their own business, preside in these Courts of Request, and administer justice as well as might be expected—I say it is better to have these than none."—Brougham's "Speech," 2, 511.

flourished and deserved to do so.³⁴ In the County Court of Doncaster, for example, about 9,000 suits were annually commenced. But some of these Courts were in a state of decay, and in their procedure were many defects, thus described by the Commissioners on Courts of Common Law:—

“That their jurisdiction is in general too limited in point of amount and local extent; that suits are frequently removable into the higher Courts without security; the want of competent judges and juries; the want of efficient inferior ministers to serve and execute process; the want of sufficient and simple process to compel an appearance; the use of complicated and expensive pleadings; the distance of the place of trial from the residences of the parties and witnesses; the want of sufficient means to compel the attendance of witnesses; delay; the facility of evading execution; the abuses occasioned by entrusting the execution of process to improper agents, for whose misconduct no superior is responsible; the want of appeal; the expense of the proceedings as compared with the amount of the demand.”—“Fifth Report of Commissioners on Courts of Common Law,” 1833, p. 5.

The first County Court Act (9 and 10 Vict., cap. 95) was passed in 1846. By successive Acts the jurisdiction of the County Courts, though still capriciously restricted,³⁵ has been enlarged; and they now possess an importance which was never expected by their authors. The following table shows the average number of plaints since 1859-62:—

TABLE 39.—*Average Plaints.*

	Plaints.	Population.
1891-92	1,050,150	(1891) 29,001,018
'87-90	1,025,411	
'83-86	954,528	
'79-82	1,049,205	(1881) 25,974,439
'75-78	971,543	
'71-74	887,404	(1871) 22,712,266
'67-70	942,548	
'63-66	798,316	
'59-62	812,063	(1861) 20,066,224
Increase per cent.	+ 28·9	+ 44·02

The maximum number of plaints—1,095,869—was entered in 1886. The maximum amount—1,681,865*l.*—was recovered in the same year. In 1892 the amount recovered was 1,643,825*l.*

Originally intended “for the more easy recovery of small debts and demands,” the County Courts, notwithstanding the increase in their jurisdiction, are still resorted to chiefly for very small

³⁴ See his “Courts of Requests, their Nature, Utility, and Powers Described.” Birmingham, 1787. Hutton states (p. 11), that in the fifteen years he sat the average business was one hundred and thirty causes a week.

³⁵ See article by Judge Chalmers in “Law Quarterly,” 1889, and letter in “Times,” 27th March, 1894.

cases; in fact, the average for each plaint entered is not so much as it once was, as is apparent from the following table:—

Average Sum for which Plaints are Issued.

	£	s.	d.		£	s.	d.
1892.....	2	19	1	1878.....	3	4	9
'91.....	2	17	7	'77.....	3	4	11
'90.....	2	17	9	'76.....	3	6	6
'89.....	2	16	10	'69.....	2	16	4
'88.....	2	17	11	'59.....	2	9	1
'87.....	2	18	8	'49.....	3	3	—
'79.....	3	4	8				

The percentage of cases over 20*l.*, which was about 1·2 in 1879-82 and 1883-86, had fallen, in 1887-90, to 1·1 per cent. The apprehension that these courts have ceased or are ceasing to be suitable for small disputes seems unfounded. On the other hand, it is fair to note that the cases above 50*l.* entered by consent have greatly risen—a fact speaking well for the confidence reposed in the courts. In 1870 the number of such actions was only 43; in 1890 it was 800; in 1891, 870; in 1892, 936.

TABLE 40.—*Plaints above 50*l.*, &c.*

	Plaints above 20 <i>l.</i> and not Exceeding 50 <i>l.</i>	By Agreement above 50 <i>l.</i>
1891-92	11,912	903
'87-90	11,113	748
'83-86	12,104	645
'79-82	13,434	294
'75-78	16,880	251
'71-74	14,506	29

Note.—With reference to the 936 County Court plaintiffs above 50*l.* in 1892, *as* correspondent of the “Times” (27th March, 1894) writes:—

“It is interesting to note the venue of the 936 County Court plaintiffs. On tracing them through the pages of the return, I find they may be grouped thus:—

*“County Court Actions entered for Amounts exceeding 50*l.**

In the Metropolitan County Courts.....	167
In those of eight large centres of population and industry, viz., Liverpool, Manchester, Leeds, New- castle, Birmingham, Bristol, Cardiff, Swansea	274
In the County Courts held at fifty-one ‘Assize towns’....	59
In local centres other than the foregoing	436
	<u>936</u>

“It will thus be seen that nearly one-half of the ‘unlimited’ and ‘original’ jurisdiction of the County Courts is administered, not in the Metropolitan County Courts (such as Westminster, Marylebone, Shoreditch, Whitechapel, &c.), not in the great industrial and commercial centres, and certainly not in the towns consecrated to the antique and moribund Assize system, but in localities where the inhabitants have become enlightened enough to recognise the fact that litigation, like charity, may just as well begin at home, and where local groups of highly-trained and competent solicitors are at hand and are ready to give practical effect to that view.”

One cannot lose sight of the fact that nearly as many actions are remitted from the High Court to be tried in the County Courts as are tried in the High Courts in London and Middlesex and at Assizes.

Actions Remitted.

1891-92	2,264	1871-74	613
'87-90	1,412	'67-70	492
'83-86	923	'63-66	152
'79-82	899	'59-62	80
'75-78	705		

Many complaints are made of the inordinate amount of the fees in the County Courts. They appear to be well founded. In 1890 the fees amounted to about 27·9 per cent., in 1892 to 27·5 per cent. of the amount obtained by judgment. It is but right to say that solicitors are much more blamed than they ought to be for the costliness of proceedings in the County Courts. The fees annually amount to nearly three times as much as the costs properly so called, which were in 1891 only 136,964*l.*, and in 1892 146,073*l.* Some of the fees have a fine unreformed look not often to be seen in these days. A sues in the "Poor Man's Court" for about 20*l.*; he may have to about pay 1*l.* on the plaint note before the Court will look at him. B sues in the Superior Courts for a quarter of a million; he pays at the outset only 10*s.* To escape what seems to A an unfair payment, he seeks to recover some small amount in the Superior Courts, where he may be punished for so doing by getting no costs even if he succeeds. It would be interesting to learn the exact profit which the State has made out of the County Courts. It has been estimated at 50,000*l.* to 60,000*l.*;³⁶ but this is not borne out by the published figures.

The County Courts have large equity jurisdiction; but, as already stated, this part of their business does not grow rapidly, and remains very much what it was twenty years ago.

TABLE 41.—*Equity Plaints.*

1891-92	747
'87-90	762
'83-86	699
'79-82	688
'75-78	671
'71-74	732
Increase	2·05 per cent.

³⁶ In 1893 the County Courts are debited with an expenditure of 438,529*l.*

Besides the County Courts, still survive a number of local Courts. Though the County Courts Act of 1846 provided for their gradual extinction, some continue to exercise a feeble and dwindling jurisdiction. Their decay began long ago. Harrison, in his description of England, says:—

“Albeit the princes heretofore reigning in this land have erected sundry Courts especially of the Chancery at York and Ludlow, for the case of poor men dwelling in those parts, yet will the poorest (of all men commonly most contentious) refuse to have his cause heard so near his home, but endeavoureth rather, to his utter undoing, to travel up to London, thinking there soonest to prevail against his adversary, though his case be never so doubtful. But in this toy our Welshmen do exceed of all that ever I heard; for you shall here and there have some one or other poor David of them given so much to contention and strife that, without all respect of charges, he will up to London, though he go barelegged by the way, and carry his hosen on his neck (to save their feet from wearing) because he hath no change. When he cometh there also, he will make such importunate begging of his countrymen, and hard shift otherwise, that he will sometimes carry down six or seven writs with him in his purse, wherewith to molest his neighbour, though the greatest quarrel be scarcely worth the fee he has paid for any one of them.” (Book 2, c. 9.)

In a few of the local Courts, and in particular the Lord Mayor's Court and the Salford Hundred Court, is transacted a large amount of business. Very remarkable has been the increase of plaints in the City of London Court. In twenty years they have more than doubled. They were 12,578 in 1870, and in 1892 32,382. Scarcely less striking is the development of the business of the Salford Hundred Court, which rose in the same period from 7,950 to 13,654.

Of the Stannaries Courts, which possess in Cornwall and Devon common law and equity jurisdiction, I need only say that there is a considerable decline since 1859: the average for many years has not been more than 12 or 14 writs and plaints.

XII.—*The Ecclesiastical Courts.*

The Ecclesiastical Courts are in a state of atrophy. They are a mere shadow of their former selves,³⁷ and many kinds of suits, though still possible, have become practically extinct. Still there has been of late, in these days of church building and church restoration, a considerable increase in applications for faculties.

³⁷ In Archdeacon Hale's *Precedents*, it is stated that from Christmas, 1496, to Christmas, 1500, 1,854 persons were cited before the Court of Commissary, whose jurisdiction was limited to the city of London and a small part of Essex and Hertfordshire. Quoted in Stephen's "*History of the Criminal Law of England*," vol. 2, p. 403.

TABLE 42.—*Ecclesiastical Suits.*

	Ecclesiastical Suits.	Suits for Faculties.
1891-92	92	430
'87-90	92	343
'83-86	18	283
'79-82	10	279
'75-78	17	298
'71-74	10	196
'67-70	21	172
'63-66	19	103
'59-62	35	85

XIII.—*Total of Cases in Superior and Inferior Courts.*

The next table gives a summary of the total number of cases begun in the Inferior Courts.³⁸ The second gives the total for all Courts, superior and inferior.

TABLE 43.

	Inferior Courts.	Decrease or Increase.	Population.
		Percentage.	
1891-92	1,115,374	+ 2'4	(1891) 29,001,018
'87-90	1,089,530	+ 4'9	
'83-86	1,038,592	— 6'6	(1881) 25,974,439
'79-82	1,111,994	+ 9'1	
'75-78	1,019,234	+ 9'09	(1871) 22,712,266
'71-74	934,305	— 4'9	
'67-70	983,242	+ 18'1	(1861) 20,066,224
'63-66	832,174	— 1'2	
'59-62	842,285	....	
Increase per cent.	+ 32'4	....	+ 44'02

	Cases in Superior and Inferior Courts.	Decrease or Increase.	Population.
		Percentage.	
1891-92	1,196,689	+ 2'3	(1891) 29,001,018
'87-90	1,170,010	+ 4'1	
'83-86	1,123,109	— 7'1	(1881) 25,974,439
'79-82	1,208,770	+ 9'0	
'75-78	1,108,907	+ 10'3	(1871) 22,712,266
'71-74	1,005,283	— 6'9	
'67-70	1,079,162	+ 13'2	(1861) 20,066,224
'63-66	953,014	+ 0'6	
'59-62	946,812	....	
Increase per cent.	+ 26'4	....	+ 44'02

³⁸ A few unimportant discrepancies in the figures in the official returns I have failed to clear up.

TABLE 43—*Contd.*
Rate of Decrease or Increase per Cent.

	Superior Courts.	Inferior Courts.
1887-90 and 1891-92.....	+ 1'0	+ 2'4
'83-86 " '87-90.....	— 4'7	+ 4'9
'79-82 " '83-86.....	— 12'6	— 6'6
'75-78 " '79-82.....	+ 7'9	+ 9'1
'71-74 " '75-78.....	+ 26'3	+ 9'09
'67-70 " '71-74.....	— 25'9	— 4'9
'63-66 " '67-70.....	— 20'6	+ 18'1
'59-62 " '63-66.....	+ 15'6	— 1'2

It thus appears that the total number of cases for every 1,000 people in England and Wales was in 1859-62 about 46, in 1891-92 about 41. It would be interesting to range all countries of Europe according to the degree in which litigation or "*processivité*" prevails among them. The necessary data, however, for such a classification are not readily procurable. Any comparison is apt to be vitiated by the fact that the boundaries between civil and criminal proceedings are not under all systems of law drawn alike. But it is safe to say that statistics show in this respect differences between countries and parts of the same country too great to be explained by differences in legal systems. In Scotland in 1891-92

the number per 1,000 inhabitants was about 23. In Germany it was in 1891 about 74;³⁹ in Italy, 67.⁴⁰

Several systems of judicial statistics record the local origin of suits, and they concur in showing that the poorer and more backward a district, the more litigation abounds in it. In the mountainous districts and among the more ignorant peasantry of France is the highest percentage of suits.⁴¹

In mentioning the differences in this respect between the various regions of Italy, the official report for 1891 observes: "While in northern Italy there are 37 *liti* for every 1,000 inhabitants, and in the centre about one-third more, in Naples and Sicily there are three times, and in Sardinia little less than four times as many." The law suit has taken the place of the *vendetta*, the plaint note is the substitute for the knife or the wild justice of revenge. Sir Henry Maine has pointed out that one of the first effects of the establishment of English rule in India is to swell the work of the Courts. "Even in our day, when a wild province is annexed to the British Indian Empire, there is a most curious and instructive rush of suitors to the Courts which are immediately established. The arm of the law summarily suppresses violence, and the men, who can no longer fight, go to law instead."⁴²

After the rebellion of 1745 no class brought more grist to the legal mill at Edinburgh than the Highland chiefs, who were compelled to abandon their old habits of petty warfare. They put aside their broadswords, and crossed the hills, not to carry off their foemen's cows, but to consult a Writer to the Signet or Advocate in Edinburgh about the construction of an ancient charter or the legal bearings of a modern quarrel. Had we statistics akin to those to be found in the French, German and Italian returns, it would doubtless appear that in districts where life is flat and monotonous and time hangs heavy on people's hands, litigation most abounds. A little more variety in occupations, wider interests, and harmless recreations—perhaps a parish council, perhaps a circus—might work a great change.

And this brings us to the further question: on what causes does the volume of litigation depend? The figures show no regular movement. They record sharp oscillations. They indicate, not the presence of steadily operating forces, but the occasional intervention of forces suddenly raising or depressing the average. What are these forces? To attempt to answer this question let us glance at the periods of expansion and contraction.

³⁹ "Deutsche-Justiz Statistik, 1893," p. 131.

⁴⁰ "Statistica Giudiziaria Civile, 1893," p. 111.

⁴¹ M. Tarde's "Criminalité Comparée," p. 101.

⁴² "Ancient Institutions," p. 289.

1859-62, 1863-66. Legal business, on the whole, increased, especially in the Inferior Courts. This was a period of upward movement in prices, with high marriage-rates, low price of wheat, and many signs of prosperity.

1867-70. In 1866-67 there was an extraordinary expansion of legal business; for the next two years a no less remarkable fall. In 1866 was issued the largest number of writs in the Queen's Bench (133,160); in 1870 they had fallen to 81,778. This period includes the depression following the crisis of 1866.⁴³

1871-74. There was a low level of legal business. The writs on the Common Law side reached, in 1873, one of the lowest points (63,926) they have ever reached; and there was a downward tendency in the business of the Inferior Courts. 1873 covers the Berlin, Vienna, and New York panics, and a time when money touched 9 per cent. in London. But on the whole 1870-74 was a period of prosperity.

1875-78. Legal business began to increase in 1873, and went on increasing. In the Queen's Bench, Chancery, and Inferior Courts there was a marked expansion.⁴⁴ And yet this was, on the whole, a period of commercial and industrial distress all over the world; a period of liquidation and contraction of credit, and diminished exports and imports; a period which witnessed the Collie failure, collapses and defaults in foreign debts, and the City of Glasgow Bank failure.⁴⁵

1879-82. Legal business slightly increased. In the Irish Courts there was in 1880 and 1881 an "extraordinary increase" of writs. This was, on the whole, at all events in England, a period of commercial revival and prosperity. 1880 was a year of large exports and imports and brisk profitable trade.

1883-86. In this period was a falling off both in the work of the High Court and the Inferior Courts. It was also, on the whole, a period of low profits, diminished exports and imports.

1887-90. This also was a period of stagnation in the work of the Courts, and, on the whole, of commercial depression.

A fair inference to be drawn from these figures is that litigation, as a rule, expands with the growth of trade. In 1846, when

⁴³ The largest number of bankruptcies, assignments, or liquidations and compositions—17,240—was in 1868. The average for 1865-69 was 15,061. Appendix to "First Report of Commission on Depression of Trade," p. 173.

⁴⁴ A similar increase took place in Scotland, "Judicial Returns for 1880," pp. 72 and 73.

⁴⁵ The depression above referred to dates from about the year 1875, and, with the exception of a short period of prosperity enjoyed by certain branches of trade in the years 1880 to 1883, it has proceeded with tolerable uniformity, and has affected the trade and industry of the country generally, but more especially those branches which are connected with agriculture.—"Final Report of Commission on "Depression of Trade," p. x.

new railways were being planned and carried out on a large scale, about 24,000 more writs were issued than in the year before. But, as the experience of 1875-78 shows, such expansion may come with a contraction of trade and credit, and diminution of security and confidence; and, indeed, an inflation of litigation would seem to be a regular sequel to commercial crises. The largest amount of writs ever issued within the period considered in this paper was in 1866 (133,160). This is, on the whole, the experience of other countries. The official editor of the German returns⁴⁶ remarks that "the great changes in litigation take place in regard to suits respecting contracts, which form the great majority of actions. This may be the result of an increase in the number of contracts and an extension of credit, but it may be the outcome of a change for the worse in the position of debtors generally. And so good as well as bad times may give rise to an increase of litigation." I may add that the course of litigation since 1859 in France, Germany, and Italy, has, in the main, resembled that followed in England.

Vicissitudes in trade are not, however, the whole explanation of these fluctuations. I am inclined to think that moral changes tending to diminish litigation are almost everywhere going on. In the comedies of the seventeenth and eighteenth centuries is no more popular figure than the haunter of courts, the man who is always dabbling in law. The characters in Racine's "Pleaders," "Widow Blackacre" in Wycherley's "Plain Dealer," and the inn-keeper in "The Antiquary," who felt a pride in "Hutchinson v. Mackitchinson," "a ganging plea that my father left me, and his father afore left to him," are examples of a class once large. The passion for litigation is the motive of an endless number of comedies, a favourite text of moralists and satirists. To-day such a theme would be somewhat pointless. The dramatist who adopted it would be deemed old fashioned. The passion is rare, the character satirised is becoming extinct. When we meet the perpetual litigant in these days he is generally found to be a half-witted dupe or a monster of egotism and vanity. Elsewhere and otherwise, are gratified passions which once revelled in law suits, which carried them from court to court and transmitted them from generation to generation. In every country is growing up a disbelief in the power of the best constituted courts of law to give to a litigant full money value for what he spends and risks and suffers. An Italian jurist⁴⁷ speaks of "the positivism of our time, which esteems compromises and arrangements preferable to the uncertainty of litigation"—that is, rarely thinks it good

⁴⁶ "Justiz-Statistik, 1893," p. 107.

⁴⁷ "Annali di Statistica," 1885, p. 163.

business to go to law. I know a firm the founders of which never hesitated about suing debtors, and the present members of which systematically refrain from doing so. The former issued a writ, where the latter merely close an account. This is only an example of a change everywhere taking place.⁴⁸

A second point which comes to light in the above figures is the tendency to prefer Inferior Courts with their simple procedure. This is in harmony with the experience of most countries. M. Garsonnet in his "Manual of Procedure" draws attention to the growing disuse of the ordinary procedure in France, and predicts that it will be superseded by summary procedure; and the figures above quoted as to the growth of the business of the Inferior Courts tell of the preference in this country for tribunals in which procedure is prompt and cheap. In 1859-62 the cases begun in the Superior Courts were about one-ninth of those begun in Inferior Courts; in 1891-92 they were about one-fourteenth to one-fifteenth.

Crime and litigation are, it has been suggested, so closely connected, that there must be similar fluctuations in both. Civil litigation, it has been said, is "*forma attenuata di attività criminosa*," or, as Sir Henry Maine expresses the idea, "the same natural impulse is gratified" by litigation as by savage warfare, and, "hasty appeals to a judge succeed hurried quarrels, and hereditary law suits take the place of ancestral blood feuds." It is impossible here to deal adequately with this question—the synchronism of crime and litigation—which well deserves to be studied. Only this much may be said in passing: the curves describing the fluctuations in certain forms of contentious business closely resemble the curves descriptive of certain crimes, and the curve traced by the figures of litigation in all our Courts from year to year, is not unlike the curve to be found in prison statistics descriptive of all forms of crime. Nor will this surprise anyone who knows how capricious are the divisions between many parts of Civil and Criminal Law, how often law suits have an origin similar to that of many crimes, and how much of an accident it may sometimes be whether a dispute will end in the Central Criminal Court or the Royal Courts of Justice.

XIV.—*Appellate Courts.*

One peculiarity of English law is the multiplicity of appeals which it allows. Under no other legal system, so far as I am aware, is it possible for a litigant to take his adversaries to three

⁴⁸ See Arnold's "Cultur und Rechtsleben," p. 279.

or four Courts in succession. In this respect since the Judicature Acts there is a change. At Common Law there were no appeals, properly speaking, in regard to interlocutory orders. Error could be brought only upon matters appearing upon the record. Between Equity and Common Law existed a difference in this respect. In the former every order was appealable: no matter of what importance, it could be carried to the House of Lords.

Unfortunately, as it seems to me, this rule of Equity was imported into the Judicature Acts without the qualification which the Judicature Commissioners suggested (First Report, p. 24). Unfortunately, too, has sprung up the practice of giving a successful appellant costs, not merely in the Court above, but in the Court below. The result appears in the following figures. And first as to appeals to the House of Lords:—

TABLE 44.—*Appeals to House of Lords.*

	Appeals, Error, Presented.	Judgments Delivered.	Affirmed (including Affirmation with Variations).	Reversed (including Reversal in part).
1891-92.....	34	37	29	7
'87-90.....	48	33	21	12
'83-86.....	35	25	18	7
'79-82.....	37	23	19	4
'75-78.....	31	27	17	8
'71-74.....	27	19	14	5
'67-70.....	26	16	12	3
'63-66.....	25	17	12	5
'59-62.....	30	19	13	6
Increase per cent.	+ 13·3	+ 95	....	....

Two reflections will probably occur to most persons. One will be as to the small number of appeals presented and heard; they do not much exceed the average number of appeals and writs of error (total 291) presented in 1813-23. They do not equal the number of appeals and writs of error presented in 1795, 1796, and 1797, the numbers in which were 41, 40, and 51.⁴⁹ Another reflection will be as to the variety in the percentages of reversals. The three periods in which a decision, the subject of appeal, was most in jeopardy were 1859-62, 1875-78, and 1887-90. What do the great differences from time to time signify either as to the composition of the House of Lords or the Courts whose decisions are reversed? To those conversant with the statistics of former years a third reflection will occur. The percentage of cases heard to cases presented is higher than it was, and is increasing; the

⁴⁹ "Bentham's Works," vol. v, Table VII.

evil denounced by Bentham of sham appeals fostered by the practice of staying execution in the case of writs of error, and intended chiefly as menaces and annoyances, is less than it was. In this part of litigation, as in some others, is more reality.

Dealing next with the business of the Court of Appeal, it is desirable to separate the appeals on the Chancery side from the Common Law appeals.

TABLE 45.—(a.) *Chancery Appeals.*

	Final Appeals.		Interlocutory Appeals.	
	Set Down.	Heard.	Set Down.	Heard.
1891-92	143	135	81	75
'88-90	163	149	84	71
'85-87	181	182	139	134
'82-84	211	119	151	136
'79-81	112	95	149	130
'76-78	143	105	114	101
Decrease or increase } per cent. ....	....	+ 28·5	- 28·8	- 25·7

(b.) *Queen's Bench Appeals.*

	Final Appeals.		Interlocutory Appeals.	
	Set Down.	Heard.	Set Down.	Heard.
1891-92	175	144	116	107
'88-90	151	129	144	134
'85-87	159	141	159	138
'82-84	160	118	149	139
'79-81	138	127	107	89
'76-78	177	126	55	48
Decrease or increase } per cent.	- 1·7	+ 14·2	+ 110	+ 123

(c.) *Total Appeals.*

	Final Appeals.		Interlocutory Appeals.	
	Set Down.	Heard.	Set Down.	Heard.
1891-92	336	298	220	200
'88-90	334	296	245	225
'85-87	362	344	312	292
'82-84	403	255	325	290
'79-81	266	235	263	224
'76-78	349	251	172	152
Decrease or increase } per cent.	- 3·7	+ 17·3	+ 28	+ 31·5

Looking at these figures⁵⁰ one sees—

(a.) The small increase in the number of final appeals.

⁵⁰ See also "Judicial Statistics," 1867, p. iii.

(b.) The great increase in the interlocutory appeals in the Queen's Bench, and their remarkable increase after the Judicature Acts. It is curious that, while in the Chancery Division there is a considerable decline in the interlocutory appeals, those in the other Division have considerably increased. It is also to be observed that they form a larger proportion of the whole number of appeals in the Queen's Bench than in the Chancery.

In recent years, for some reasons which I cannot tell, the results of the appeals to the Court of Appeal are no longer given; but I should be surprised if the reversals much exceeded or fell short of a fourth to a third. In regard to one class of cases—appeals from the Admiralty to the Court of Appeal, and appeals from inferior Courts to the Admiralty—the percentage is higher. This is explained no doubt by the large powers of the Court of Appeal as to drawing inferences, and the extent to which these cases turn on obscure facts seen in different lights by different minds.

Appeals from Admiralty Decrees.

	Affirmed.	Reversed.
1891-92	9	3
'88-90	12	4
'85-87	13	4
'82-84	10	6
'79-81	6	8
'76-78	12	5

Appeals from Inferior Courts to Admiralty.

	Affirmed.	Reversed.
1891-92	5	6
'88-90	3	4
'85-87	4	2
'82-84	4	4

I have already referred to the diminution of the motions for new trials since Mr. Finlay's Act (53 & 54 Vict., c. 44) was passed. No more important change in procedure has taken place in recent times than that recorded in these figures as to motions for new trials.

TABLE 46.—*Motions for New Trials.*

1891-92	144	1867-70	594
'87-90	102	'63-66	575
'83-86	429	'59-62	562
'79-82	437		
'75-78	418	Decrease	- 76 pr. cent.
'71-74	581		

The changes may be thus expressed: In 1859-62 there was approximately one motion for a new trial for about every four cases tried; in fact it is scarcely too much to say that every verdict of a jury was by some lawyers regarded as *prima facie* proper to be reviewed. In 1892 there was one such motion for about every twenty.

XV.—*The Strength of the Legal Profession.*

Having endeavoured to ascertain the amount of the litigious work of the different Courts, it may be of interest to mention a few facts as to the changes in the number of persons conducting the work of litigation. Time does not permit a statement as to the changes in the number of judges and judicial officials since 1859; but from the census returns have been taken a few figures as to the number of barristers and solicitors, and other members of the legal profession, in England and Wales:—

	Barristers and Solicitors.	Law Clerks, &c.	Total Legal Profession.	Population.
1891.....	19,978	27,540	47,518	....
'81.....	17,386	24,602	43,641	....
'71.....	15,894	18,886	37,327	....
'61.....	14,557	16,605	34,991	....
Increase per cent.	+ 37·2	+ 65·9	+ 35·8	+ 44·02

Making allowance for the fact that the returns for 1861, 1871, and 1881, include law students and others, not included in the returns for 1891, the real increase in the legal profession is about 50 per cent. I may add that in Scotland during the same period the ranks of the legal profession increased 44·6 per cent., while in Ireland the increase was only 2·2 per cent.

It is of course impossible to ascertain what proportion of the barristers whose names appear in the "Law List" actually practise. But the solicitors engaged in the practice of their profession may be assumed to be equal to the number taking out stamped certificates.

By the kindness of the authorities at Somerset House I am enabled to give these details:—

	London Certificates.	Country Certificates.	Total.
1893.....	5,408	9,681	15,089
'60.....	3,393	6,837	10,230
'59.....	3,419	6,848	10,267
Increase per cent.	+ 58·1	+ 41·3	+ 47

One must be on one's guard against drawing plausible but false deductions from these figures. It is not a necessary inference that there are more hands to perform less work; one must not lose sight of the fact, known to all lawyers, that contentious matters form only a small part of their business. Still it is remarkable that, while writs have diminished in the manner already described, the ranks of the whole legal profession should have increased in about thirty years by 50 per cent., and that in London in the same period the number of solicitors has increased by 58 per cent.⁵¹

XVI.—*Conclusion. Suggestions as to Legal Statistics.*

Upon one point, and that not the least important, I can only touch. One of the chief objects which I have had in view is to endeavour to help to bring about an improvement in the statistics of litigation. It must not be supposed that in saying so I criticise those who are responsible for the preparation of the present returns; their work is done from year to year with care and accuracy, as I, who have no doubt made many mistakes in this paper, freely own. The defects which I desire to remove are due to the perpetua-

⁵¹ "In 1827 the number of London attorneys and solicitors was 2,371; it is now (1850) upwards of 3,200. In the same year the number of country solicitors and attorneys was 4,796; it is now upwards of 6,900."—"Cooper's Chancery Miscellanies," No. 1, p. 1. "In the same period of time the bar has multiplied in a still larger ratio. In 1827 the number of barristers was 966; at present it is upwards of 3,250." The same writer gives the following further information as to the "number of barristers, London and country attorneys and solicitors, King's sergeants, King's counsel, sergeants-at-law, and counsel on the different circuits in the year 1783:"—

Number of barristers	301
" attorneys and solicitors in London, West- minster, Borough of Southwark, and their environs	1,262
Number of country solicitors and attorneys	2,695
	<hr/> 3,957

Number of counsel, London and country attorneys and solicitors, Queen's counsel, sergeants-at-law, and counsel on the different circuits in the year 1850:—

Number of counsel, special pleaders and conveyancers at the Bar	3,253
Number of certificated special pleaders and conveyancers not at the Bar	108
	<hr/> 3,361

Number of attorneys and solicitors residing in London, Westminster, and the Borough of Southwark, or their environs.....	3,209
Number of attorneys and solicitors, notaries, &c., residing in the cities, boroughs, market towns, and principal villages in England and Wales	6,906
	<hr/> 10,115

—"Chancery Miscellanies," 3, p. 44.

tion of a system settled in 1859, when the framers had not the examples of several other countries to guide them—a system then intended to be only provisional. The weakness of the present plan is that it is no plan at all; it is not the outcome of careful consideration of present essentials. Each Court has made returns too much in its own way. The consequence is that there are needless differences, needless repetitions; that we get what we do not want, and do not get what we do want. What is to be gained from the information every year recorded of the amount of claims submitted for assessment to the Admiralty Registrar assisted by merchants? The figures we know are somewhat arbitrary, filled in very much at random. Who wishes to learn the precise number of affidavits filed in the Central Office? This can be useful only as a check on the amount of fees. Why should accurate information be given as to affirmations and reversals of decisions in the House of Lords, and nothing be told as to the results in the Court of Appeal? Why should there be no statistics as to suits *in formâ pauperis*, and only meagre information as to the results of executions? Why should there be no returns as to the cases tried in each Assize town? Few things are more tantalizing in a statistical inquiry than returns for certain years based upon one principle, followed by others based upon another. Why have such changes been repeatedly made since 1859? I might multiply such questions. Here I will only suggest that there should be sketched, with the assistance of lawyers, and with the French, German, and Italian statistics as models, a plan to which, so far as possible, the returns of all courts should conform. Such returns would be silent about some things now recorded, but they would show us clearly the following points:—

- (a.) The judicial strength of each court, and the number of its officers;
- (b.) The revenue derived from fees and otherwise of each court;
- (c.) The population within the circuits or jurisdiction of each court with limited or local jurisdiction;
- (d.) The business of each court for the year and the fluctuations from year to year;
- (e.) The duration of suits;
- (f.) The amounts for which they are brought;
- (g.) A systematic analysis of the different kinds of actions.

In short, we should have a Legal Budget—a clear statement of the legal history of the year, so arranged that judicial statistics would be accurate records of the pulsations of national life, and documents of priceless value as to moral and material changes.⁵²

⁵² Since the paper was read, the Lord Chancellor has appointed a committee, on which the writer has been invited to serve, to consider the revision of the Judicial Statistics.

APPENDIX A.

By the kindness of Mr. Paget, of the Liverpool District Registry, I am enabled to give the following analysis of proceedings in the Liverpool District Registry, Queen's Bench Division :—

Analysis of First and Second Thousand Actions in 1891 from the Cause Book.

	First Thousand.	Second Thousand.
1. Dropped before appearance	350	335
2. „ after „	130	110
3. Final judgment on non-appearance.....	267	301
4. „ Order 14	59	86
5. Order for judgment (O. 14) drawn up, } without judgment	12	20
6. Final judgment on trial	18	9
7. „ reference.....	6	6
8. „ want of pleading	10	5
9. Other final judgments	5	1
10. Actions closed without judgment	29	28
11. Removed to London	101	81
12. „ County Courts	13	18
	1,000	1,000
<i>The above final judgments classified as regards amount (exclusive of costs).</i>		
Not exceeding 50 <i>l.</i>	180	241
Exceeding 50 <i>l.</i> and not exceeding 100 <i>l.</i>	83	79
„ 100 <i>l.</i> „ 200 <i>l.</i>	44	38
„ 200 <i>l.</i> „ 500 <i>l.</i>	30	28
„ 500 <i>l.</i> „ 1,000 <i>l.</i>	13	6
„ 1,000 <i>l.</i>	7	7
	357	399
Average amount of final judgment (exclusive } of costs)	121	119

APPENDIX B.

The following is an extract from a memorandum prepared by one who, as a Master of the Supreme Court, has had long and wide experience :—

“Under a rule of 1853, in force until the Judicature Act, there was a ‘Scale of payments to be allowed to witnesses,’ under which a professional man attending as a witness was allowed one guinea *per diem* if the action were tried in the town in which he

“resided, and two to three guineas *per diem* if resident at a distance from the place of trial. Shortly after the new Rules came into force it was decided on appeal from a Master that the scale was no longer in force, and that the Master should allow a reasonable amount to witnesses. One guinea or three guineas *per diem* for an ‘eminent’ physician, engineer, or surveyor, who may require fifty guineas *per diem* for his services, is obviously not a reasonable sum. Consequently the cost of a trial, as far as payment to witnesses is concerned, is very much greater than it was under the old system. But it is not only the allowance to witnesses for their attendance at the trial which is increased. Under the new Rules the taxing officers are required to allow the expense of *procuring* evidence. This is also new; and under this Rule the expense of surveys and witnesses ‘qualifying’ to give evidence is allowed as between party and party. To enable an engineer to give evidence as to an engine having been constructed according to a contract, or a physician to tell the extent of injury sustained by a passenger in a railway accident, or a surveyor to say how far property has been ‘injuriously affected’ by a nuisance, these skilled witnesses must see the engine, or passenger, or property, and report to the plaintiff’s or defendant’s solicitor on the subject. They must be men eminent in their profession, as they are expected to be rigorously cross-examined at the trial, and opposed to similar witnesses for the adverse party who are expected to be called in support of an opposite view of the matter. For all such services these eminent gentlemen expect to be liberally paid, and as far as such payments appear to the taxing officer to be reasonable, he has to allow them as between party and party. To some extent this may be only transferring the expense to the party who is ultimately found to be in the wrong, and who therefore ought to bear it. But we imagine that the fact of its being chargeable against the opposite party would render the solicitor getting up the case less careful in subjecting his client to such expenses. On the same principle of allowing a successful litigant a reasonable indemnity as to costs in cases where more than one trial is necessary from the first having proved abortive, he is now allowed the costs of all abortive trials; so that, if a verdict be set aside on account of misdirection of the judge, or as being against the weight of evidence, or if the jury are unable to agree to a verdict, the costs of the first trial as well as of all subsequent trials are allowed to the successful party. We are not prepared to say this is not right; but it of course greatly increases the costs as between party and party. We might state other instances in which party and party costs are increased; but the above, we

“ think, the most important, and it is clear from them that the
“ costs an unsuccessful litigant has to pay to his opponent are
“ considerable, and often ruinous. He may well hesitate to take
“ his case into court unless he has a very clear one. It follows
“ that a respectable solicitor will frequently advise his client to
“ compromise or resort to the arbitration of a layman, when the
“ matter may be decided in a rough and ready fashion, and
“ probably as justly, at a comparatively trifling cost. We are
“ inclined to believe that it is the fear of having to pay the
“ adversary’s heavy bill of costs that prevents cases being taken
“ into court for trial. The adversary can have his costs taxed
“ immediately after the verdict, and issue execution unless the
“ amount is paid forthwith. The solicitor’s bill of costs against
“ his client is not so pressing a matter. The solicitor, not wishing
“ to lose his client, may give him time to pay, or reduce his own
“ charges, when the result of the litigation has been adverse to
“ his client. It appears to us that, with the exception of actions
“ which can be disposed of under Order XIV, the effect of the
“ Judicature Acts and Rules is to cause a considerable increase in
“ the costs of litigation.”

DISCUSSION *on* Mr. MACDONELL’S PAPER.

SIR RAWSON W. RAWSON, in opening the discussion, regretted that the chair that evening was not filled by some gentleman with a greater knowledge of legal subjects than he himself possessed. But as a statistician, he could not fail to recognise the great service which Mr. Macdonell had rendered by opening up this new chapter of British history. He was quite sure that the litigation and legislation of a country (even more than the ballads, as was usually said) indicated the character of the people. The author had pointed out how defective our judicial statistics were, in details which would be most instructive in enabling statisticians to judge of the progress of litigation in this country; and he hoped that the authorities would follow the example of other countries in furnishing to the economist, the moralist, and the philanthropist, the means of guidance in their efforts.

Mr. H. CUNYNGHAME thought that anyone who had observed the bar for several years, could not fail to be struck with the greater certainty of litigation at the present time, a phenomenon which would account for some of the statistics in the paper. It was much more possible now to foresee, at the commencement of

a case, what the termination would be, and to advise a client accordingly. This greater certainty was due to several causes, one of which was the greater powers of *amendment* which the judge now possessed. Formerly a mere technical error might invalidate the whole proceedings, but the powers of amendment by judges were now very wide, and it had even been held by the Court of Appeal to be the duty of the judge not to allow an action to be defeated for want of joinder of parties or other technical flaw. These alterations had been introduced in order to secure a fair trial; and as a consequence, there was now much less tendency on the part of a man who knew he was in the wrong to embark in litigation, and trust to some chance to enable him to defeat his opponent, and that this was the case was shown partly by the statistics in the paper. The diminution in trials by jury was an indication of this. In some cases it was of course held to be very desirable to have a jury; for instance, at Manchester the juries were considered very good in trying patent cases, as the members of the jury were a great deal connected with machinery. But patent cases now were generally tried by a judge. There was always an element of uncertainty in going before a jury. The decrease in the number of motions for new trials also pointed to the greater certainty of litigation, at least in its initial stages, at the present time. Every legal adviser now felt better able to advise his client as to the result of a case, because he had more confidence that, on the whole, the real merits of the case would prevail in court; and this feeling was in harmony with the figures placed before them that evening.

Dr. R. GIFFEN said that he should like to bear testimony to the excellent work that Mr. Macdonell had performed, in picking out certain leading facts from the jumble of our judicial statistics. To give a mere record of the business of the courts seemed to be the principle on which the statistics had been framed, but that was not what they wished to know statistically. The conclusions at which the author had arrived, as to the diminution of litigation, and especially as to the diminution of the litigious spirit, in this country, were of very great interest, and he thought that this was an important result of an advancing civilisation. He could have wished to see some statistics as to the cost of litigation, viewed economically. Professor Hector of Glasgow had lately advocated the opinion that it would be extremely desirable for the State to prevent litigation altogether, by informing litigants that, if they wished to bring a case before the courts, they must first satisfy an "agent of the State" that there was a *prima facie* case for discussion. When this had been done, the defendant on the other side would be required to satisfy another agent; and if those officers declared, not in the interests of the litigants, but in the interest of the State, that there was a *prima facie* case for discussion, then the whole cost of this permitted litigation would fall on the community at large. In this way the parties would be able to get justice without expense to themselves. It seemed to him that this point of view was worth study, because the duty of the

Government was to provide a certain law for the community, and it was not fair to throw upon a particular individual the whole expense, not of litigating about the facts of a case, but, as often happened, of finding out for the benefit of other people what the actual law was. Another point of very great importance was a reform in the judicial statistics. There was very little comparison in the paper between the statistics of England, Scotland, and Ireland, and anyone who had studied the judicial statistics must be aware that the terminology of the law was so different in the three parts of the United Kingdom, that it was next to impossible to make any comparison. There were other defects; and the best suggestion which he (Dr. Giffen) had to give, was that the sooner Mr. Macdonell was entrusted with the writing of a report annually upon the judicial statistics, and bringing out some results from them, the better it would be for the utility of the volumes themselves.

Mr. JOHN GLOVER was afraid that Professor Hector's scheme, mentioned by the last speaker, would not answer. It might be advantageous for those who sued *in formâ pauperis* (in which suits it was actually in force), but he did not think that the whole litigation of a country could be carried out on that principle. Law without penalty would lack one of its essential features. Mr. Macdonell's figures confirmed the universal impression that commercial cases were not now so common as they were. A statement by an Italian jurist, quoted in the paper, showed "the reason why," which amounted simply to this: that it did not pay to go to law. Englishmen acted on that idea, and he agreed with the author that there was a considerable reduction in litigation. The reason was not because the amount of business was less, nor because there was a greater amount of goodwill among men, nor because there was more honesty. But he was inclined to think that one cause, at all events, was the greater accuracy in conducting business; people were more clever, and made contracts under which it was not so easy to sue them with success if they defrauded those with whom they dealt. But a stronger reason was that litigation did not pay. People saw the waste of time and money involved in going to law, and the utter uncertainty as to how long a case would last, and how much would have to be spent. Our courts were now a luxury in which only the rich could indulge: a sad reflection on our boasted civilisation. Those who were not rich had to put up with the wrongs they suffered; remedy by litigation being so often a greater evil than the original wrong. He (Mr. Glover) hoped to see the day when lawyers would come to the conclusion that it was a mistake to render the courts inaccessible by heavy costs; when they would abolish the ancient terms, and have the courts open like the Bank of England, on every day of the year, Sundays and holidays excepted. He hoped that the present arrangements would give place to cheaper law; not law for nothing, for that he thought would not be an advantage to the community. One result of the present system was that nearly all contracts now contained an "arbitration clause."

Litigants employed in business went to persons engaged in the same trade, because they felt that it was better to put up with the rough justice they could get in this way, than incur the uncertainties and expense of the law courts.

Mr. W. J. R. POCHIN asked whether the explanation of the increase in the number of verdicts, including judgments, for defendants (Table 12) was to be found in the diminution of trials by jury. But whether that were so or not, he could not see how that table justified the statement that it was now possible to give a more decided opinion than formerly as to the result of litigation. It was the plaintiff who launched the action; the defendant had no option as to whether his name should appear on a writ. Considering then that the percentage of decisions, whether by judge or jury, in favour of the defendant, had been constantly increasing, that fact rather seemed to show that the uncertainty of litigation had increased. It seemed to him therefore that there was some further explanation required. The author had stated that at present the successful appellant was often allowed the costs of both courts. He (Mr. Pochin) understood that before the Judicature Act was passed the suitor who obtained a reversal of the first decision was only allowed his costs in the superior court, on the ground that the fault lay with the judge; and thus the man, although perfectly right, had to pay the costs of the first part of the litigation. This had been amended by the Judicature Act, and yet the author deplored the alteration. He could not agree that recent litigation had increased the number of appeals to the High Court to any great extent, as only nine final appeals had been set down for hearing in the Chancery Division at the beginning of the present sittings. He would like to ask also whether the decrease in the number of writs issued in the superior courts of common law since 1863-66 (see Table 1) was due simply to the decrease of litigation *per se*, or to any increase in the jurisdiction of county or inferior courts.

Mr. F. HENDRIKS pointed out that although the barristers and solicitors complained, like other classes, of want of occupation, yet it seemed that they could afford to keep more servants in the form of law clerks, for the number of these latter had increased by 66 per cent. during the thirty years. Although therefore the profits of litigation were not so great as in former times, it seemed that the amount of occupation to be divided amongst the persons engaged in the profession must have been kept up to the level of past years, probably by the satisfactory increase in non-litigious business.

Mr. MACDONELL, in reply, said that he could not, in spite of what Mr. Pochin had subsequently said, but agree with Mr. Cunynghame as to the greater certainty of litigation. In saying that the results were more certain, he meant that it was easier to calculate that a decision would be given in accordance with the real merits of the case, and not upon any adventitious circumstances

connected with it. One of the points he had tried to bring out was that procedure in litigation was, on the whole, simpler and swifter than formerly, in that cases were now conducted with more regard to the substantial justice of the matter than at any other time. It seemed very remarkable and unsatisfactory that the judicial statistics of England, Scotland, and Ireland should be dealt with according to three absolutely different methods; and he endorsed Dr. Giffen's suggestion that an endeavour should be made to reduce them to order and uniformity. Mr. Glover appeared to think that litigation would shortly become an obsolete pastime; but, although the figures showed a diminution of litigation, yet they showed also that a large proportion of the present litigation was concerned with solid disputes, which could not easily be settled in any other way, unless a change for which people were not yet prepared was made. As to the practice which now existed of giving costs upon appeal in the Court of Appeal and in the court below, it seemed to him rather hard that the man who had succeeded in the first court, and failed in the second, should have to pay the costs in both. If the law had been wrongly interpreted or was obscure, why should he suffer? It was not easy to answer Mr. Pochin's question as to whether the decrease in the superior courts was due to an absolute reduction of the cases, or to a transfer of the cases to the county courts. There had been a transfer, but he surmised that, on the whole, the principal cause was an actual reduction in litigation.