FIRST IMPRESSIONS OF A LAW REFORMER

Published @ 2017 Trieste Publishing Pty Ltd

ISBN 9780649233953

First impressions of a law reformer by J. B. Sheridan

Edited by Trieste Publishing Pty Ltd.
Cover @ 2017

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BY

J. B. SHERIDAN.

BEING

A Series of Articles

REPRINTED FROM "THE SOUTH AUSTRALIAN ADVERTISER" OF SEPTEMBER AND OCTOBER, 1878.

ADELAIDE:

PRINTED AT THE "ADVERTISER" GENERAL STEAM PRINTING OFFICES.

1880.

PREFACE.

In September, 1873, my friend Mr. J. L. Bonython, of the *S. A. Advertiser*, suggested that I should write two or three articles on Law Reform. I consented, and the result was that I wrote the Articles now reprinted. More mature consideration has convinced me that they are, in some respects, jejune and unphilosophical. Such as they are, however, they scandalised the profession, and the general public viewed them as the dreams of an enthusiast. At the present time the majority of the profession and the public seem to accord in the view that in the main the opinions expressed are correct.

Since the above date, the English Judicature Acts have come into force, which ignored the cardinal points of the reform indicated by the report of the English Judicature Commission referred to in Article VII., retaining a system of pleading and the injurious centralization of administration. South Australia and Queensland have adopted measures based upon those Acts. In England, South Australia and Queensland, the results are the same. The costs of litigation have rather increased than diminished. The perplexity of the old procedure seems to be equalled by the perplexity of the new procedure. Greater speed in obtaining a judicial decision is undoubtedly attained, but this is as much due to the more frequent sittings of the Courts as to any peculiar excellencies of the new practice.

Further reflection and study have convinced me that the scheme of Reform effected by the Judicature Acts is illusionary; that the Report of the Judicature Commissioners is not founded on true principles, being designed to give enlarged powers to the legal mind in the administration of the law instead of preserving and strengthening the very small existing influence of the lay mind. I am ventilating these later views in a series of Articles in the *S. A. Advertiser*. I. and II. appeared in that paper of dates 2nd and 28th September, 1880.

A middle stage of thought is expressed in the Appendix, containing a copy of a Petition presented to the House of Assembly by Mr. Lavington Glyde about two years ago at my request.

J. B. SHERIDAN.

Adelaide, October, 1880.

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LAW REFORMER.

Being a Series of Articles reprinted from the "South Australian Advertiser" of September and October, 1873.

No. I.

Law reform is a popular subject so far as appreciation of its advantages are concerned, but it is a decidedly unpopular subject for discussion as to how and by what means improvement is to be attained. Most South Australians can appreciate the Real Property Act, but there are few who, like Sir Richard Torrens, have the ability and inclination to attack a cumbrous system of legal procedure. His Act may be defective, but its defects are not so much matter of surprise as that so large an instalment of reform should have been effected by a single measure, prepared by a layman, and carried despite the most strenuous professional opposition. Why should not Supreme Court procedure be susceptible of similar amendment? The mysteries of Common Law practice are not more hidden than those of conveyancing according to the old school of English lawyers. The field is open; all that is wanted is the master hand which will unlock the gates of justice and render them easy and accessible to all alike, whether rich or poor, conserving the absolute right of the public to the simplest, cheapest, and most expeditious remedies that can be devised. It is to be feared, however, that to attack the Supreme Court itself by some large and comprehensive scheme, fusing its different jurisdictions and assimilating to one common form all its varieties of procedure, is too gigantic an undertaking to be looked for at present. No doubt such a scheme must eventually be devised, but to fix its date would be as difficult a task as to

predict to a would-be suitor his day of final judgment in our Supreme Court. But if the forms of its procedure cannot yet be attacked they may be sapped.

Any one who will take the trouble to compare the course of proceeding followed in our Supreme Court in an action at law, with that of our Local Courts, cannot fail to be struck by the immense superiority of the latter over the former. In the Supreme Court it may safely be asserted that no layman has yet ventured to draw his own pleadings and conduct his own case till ripe for trial without professional assistance. Few, indeed, are the instances in which a suitor has had the hardihood or the confidence to conduct the trial of his own case. In the Local Courts there is nothing in the practice to prevent every man from being his own lawyer. Persons frequently issue their own summonses and conduct their own cases without any help whatever from legal men. In the Supreme Court the costs on both sides attendant upon the trial of a cause can hardly be estimated at less than £100. Frequently they amount to between £300 and £400, and the sad experience of suitors will confirm the statement that even this latter sum cannot be taken as an extreme limit. In the Local Courts the cost of a similar action may be estimated at a sum varying according to the amount in dispute—between a few shillings and £20. But the most striking feature of the suggested comparison has yet to be noticed—the difference between the two tribunals in the all-important matter of the time elapsing between the commencement and final determination of the proceedings. In the Local Court a plaintiff may reasonably expect to reap the fruits of a successful action within a month—that is, provided there is no appeal to the Supreme Court. Should a Local Court suitor be drawn by an appeal to the higher Court, its cumbrous and wearisome proceedings may extend the time by some two or three months—a delay vexatious enough, it must be confessed, but far preferable to the ordinary course of a Supreme Court action, which we will now consider. A suitor in the Supreme Court may deem himself most fortunate if, in spite of the delays in pleading, he brings his cause to trial in six weeks from the issue of his writ. More often than not this interval may be reckoned by months instead of weeks. After the trial the much-abused practice of obtaining a rule *nisi* upon every conceivable point that technical ingenuity can suggest comes into play. After the granting of the rule *nisi* a considerable time elapses before the argument—a time which cannot be estimated even approximately. Anything is seized hold of and admitted as an excuse for delay here; a marriage and death in the family of either counsel or of one of the Judges seems to be quite a legitimate ground for putting off the cause. Then when at length the argument is concluded, the judgment is commonly reserved, and ano-

ther interval occurs, which may be calculated at from one to *eighteen* months, before the final judgment is given, unless indeed the cause itself dies out, as has sometimes happened, in which case the judgment is never given at all. If the rule *nisi* is made absolute the delays are again repeated, till many a disappointed and purse-exhausted suitor is driven into the Insolvent Court—a step which invokes ideas of wretchedness, not only to the suitor, but to his wife and children, too distressing to be here dilated upon.

It need perhaps hardly be said that this comparison is designed solely to bring into a popular view the defects of procedure attendant upon remedies sought in the Supreme Court, and is in nowise intended as disrespectful to the Judges, who administer an imperfect system.

In view of all these advantages possessed by the Local Courts, it is evident that an extension of their present limited jurisdiction would be a most desirable instalment of law reform. It would relieve the Supreme Court of a large number of the smaller cases now necessarily subject to that tribunal. It would tend towards that bringing of justice to every man's door, so desiderated by earnest law reformers. Rich men having heavy interests at stake might still indulge in the luxury of a Supreme Court action, but these are just the persons and these are just the interests which can best afford the prolixity and expense of that form of proceeding. Poorer individuals, to whom that prolixity and expense are simply ruinous, would find cheap and expeditious justice in the inferior tribunals, instead of being, as now, compelled into buying justice too dearly in the higher Court. In short, every reason which can be found in support of the creation and existence of Local Courts at all, may fairly be urged in aid of the extension of their jurisdiction. The lawyers might suffer, and no doubt will find objections; but the interest of the general body of the public being involved, there remains scarcely a doubt that when the community awake to a sense of the advantages they will obtain by the proposed amendment, a Bill to enlarge the jurisdiction of the Local Courts will meet with unqualified approval.

No. II.

In a previous article a comparison was drawn between the Supreme Court and the Local Court in the matter of the three essentials of all legal procedure, viz., simplicity, economy, and expedition. The unprejudiced mind will come to a conclusion not flattering to the higher Court as the result of the comparison.