nect with the incident in this way, that two witnesses swore, as already stated, that she had herself seen the dress put in the basket, and that being taxed with this she denied it; but that was all that could be proved about it, and the one fact, beyond a doubt, which was fatal to Constance Kent, remained unexplained; viz., that it was *missing*.

(*To be continued.*)

LAW v. EQUITY.

(*Continued from page* 234.)

A digest of our law is, at the present day, earnestly longed for, so that we need not discuss the degree of its utility. A digest, in the modern sense, implies a consolidation of the whole law into a single mass, and, consequently, an abolition of the technical distinction between law and equity. An amalgamation of these systems, however, neither follows necessarily upon, nor requires a digest or consolidation of the law. All the powers and jurisdiction of the equity judges could be, by a single clause in a statute, transferred to the courts of common law, and be there administered either by means of a distinct procedure of their own, or by the introduction of totally new forms of procedure, which should endeavour to embrace both systems, without the necessity of any previous codification or arrangement.

The infusion of equitable principles into our common law system, attempted by the Common Law Procedure Act, 1854, is very incomplete, and has, besides, worked very unsatisfactorily. Be it remarked that the existing common law procedure is totally unfitted for the purposes of what may be distinguished as administrative equity, and that, in the matter of remedial or auxiliary equity, which, under the Act of 1864 might have been exercised in the shape of injunctions and discovery, the courts at Westminster have refused to grant relief, unless where the right sought to be enforced is established in a manner which would satisfy a Court of Equity *at the Hearing*. There is not, we think, a single case decided under the Common Law Procedure Acts where a party has succeeded in enforcing a right, unless the circumstances proved would in equity, have been a sufficient foundation for a perpetual injunction. The *judicial* discretion of a court of equity has consequently been wholly left out of the Common Law Procedure Acts.

Even prior to the passing of these Acts, however, courts of law enjoyed a certain degree of equitable power, not, indeed, for enforcing rights, so much as for preventing the commission of wrongs. The common law *jurisdiction* in cases of fraud, for instance, appears to us to be entirely co-extensive and co-equal with the like power of the Court of Chancery, though from an early slavery to the trammels of pleading, the actual course of the courts was more restricted and technical. Some writers on equity jurisprudence, indeed have asserted the contrary, and considered that the jurisdiction as well as the remedy to be had in courts of law in cases of fraud is less extensive than in the analogous domain of chancery. These writers have indeed apparently on their side the powerful authority of Vice-Chancellor Kindersley, who, in *Stewart* v. *The Great Western Railway Company*, 13 W. R. 886, expressed himself in favour of the view that the equitable jurisdiction is the more extensive. But this case, though at first sight well adapted to raise that question, did not really decide anything on this point. A tradesman and his wife were passengers by an excursion train, which, owing to alleged negligence by the company's servants, met with an accident, whereby the plaintiffs received serious injury, and were obliged to call in a Mr. Woodward, a surgeon, and medical officers of the company. The plaintiff, when asked by Mr. Woodward what compensation he would require from the company, demanded only £50. Mr. Woodward, who, it appears, was in the company's interest, recommended him to accept £15, and the medical officers of the company earnestly urged him to do so, adding that he would be well immediately, while Mr. Woodward affirmed (contrary to the fact), that the plaintiff's wife's leg was not broken. The plaintiff said that he was in no hurry to settle with the defendants, but finally accepted £15, and gave a receipt for that sum as compensation in full for all damages. He subsequently, however, brought an action against the company for £1,700, to which they pleaded "not guilty" and set up the receipt. The plaintiff then filed a bill alleging fraud, and seeking a declaration that the payment was not under the circumstances a full compensation. An injunction was also sought to restrain the defendants from setting up the receipt. The Vice-Chancellor overruled a general demurrer to the bill for want of equity, being of opinion that the fraud alleged by the bill was such that a court of a law could not take cognizance thereof.

"It would be very difficult," his Honour observed, "to give a definition of what constitutes legal or equitable fraud, but I am of opinion that the facts which are alleged, if proved, are not such as to constitute that sort of fraud which a court of law would take cognizance of." That a definition of fraud in general is very hard to be given we admit, but there appears to be no greater difficulty in defining legal than there is in defining equitable fraud. The difficulty, such as it is, is common to both law and equity, and results from the fact that *moral* fraud must be proved to establish a case in either court. In *Cornfoot* v. *Fowke*, 6 M. & W. 358, for instance, the owner of a house, who knew of a defect in it, employed an agent for sale, who was ignorant of the defect. The purchaser sued as for a fraudulent *scienter* and concealment, but the