

FUSION OF LAW AND EQUITY.

orders. In all other cases a fixed period, not exceeding six months from the time when any judgment, decree, rule, or order is made or entered upon the record, should, we think, be allowed for appealing against it. These rules, as to the time for appealing, should apply both to appeals to the Court of Appeal, and to appeals to the House of Lords; and the office of the Clerk of the Parliaments ought to be open for the reception of appeals at all times of the year, whether Parliament be or be not sitting.

All proceedings in error and bills of exceptions should be abolished; and every appeal to the Court of Appeal should be brought by notice of motion by way of appeal, in a summary way, without any petition or formal procedure. No enrolment of any judgment, decree, rule, or order should be necessary in order to enable any party to appeal therefrom to the House of Lords; and every appeal to the House of Lords should be brought by a petition in a short form, stating the title of the cause or matter, with the names of the parties thereto, and the date of the order appealed from, and when the same was made or entered on the record; and also, who are the respondents to the appeal, and whether a general reversal, or a variation in any and what particulars, of the order appealed from is sought, but without setting out at length any of the proceedings.

The right of appeal should, we think, as a general rule, be conditional on substantial security being given by the appellant for the costs of the appeal. Inasmuch, however, as there may be cases to which this rule could not be applied without inconvenience or injustice, we think, that both the nature and the amount of such security, and the regulations according to which it may be required or dispensed with, are subjects which may properly be dealt with by general orders of the Court.

No appeal should operate as a stay of execution, or of proceedings under the order appealed from, unless the Court, or a Judge of the Court, from which the appeal is brought, or the Court of Appeal, shall so order. But such stay of execution should be granted, as of course, when the order under appeal is for a money payment, on the terms of payment of the money into Court, or of security being given to the satisfaction of the Court.

With respect to the hearing of appeals, we would propose that the following rules should be established and made applicable both to the Court of Appeal and to the House of Lords.

Every appeal should be deemed to be in the nature of a rehearing, and the Court of Appeal should have power, if the justice of the case shall appear so to require, to allow any pleading or any special case to be amended, or any supplemental pleading or statement to be added to the record; or, upon any ques-

tion of fact, to admit further evidence. Upon appeals and motions for new trial, proof of a Judge's ruling by a shorthand writer's notes ought, in our opinion, to be received. Upon the hearing of the appeal the Court should have jurisdiction over the whole record, and no interlocutory order, from which there has been no appeal, should operate so as to bar or prejudice a decision upon the merits.

The Court should also have power, upon the hearing of any appeal, to vary or alter the order under appeal in favour of the respondent, in any manner which may appear proper to do complete justice between the parties, as if the respondent had presented a cross appeal, complaining of any part of the order by which he may deem himself to have been aggrieved.

If these recommendations are adopted, we think that there should be no rehearing of any cause or matter before the Court by which it was originally heard, except by leave of the Court, nor, unless by consent of all parties, after the expiration of the time limited for appealing; and that bills of review for error apparent on the record should be abolished. Nothing, however, in these rules should take away or abridge the power of the Court to rectify any error which may have occurred in drawing up any judgment, decree, rule, or order.

We shall proceed, with due diligence, to consider the other matters embraced in Your Majesty's Commission; and we humbly submit to Your Majesty's gracious consideration this our First Report.

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THOS. BRADSHAW, Secretary,
25th March, 1869.

* Agreeing with the general spirit and with most of the recommendations of the Report, I have subscribed it.

There are two subjects on which I desire to guard the expression of my opinion:

(1.) I think it is not expedient to destroy the special jurisdiction of the High Court