

FUSION OF LAW AND EQUITY.

of appeal must be given within four days after the decision appealed from, unless the time is enlarged. When such notice is given, as for want of the opportunity of full consideration it generally is, no time is limited within which the party must proceed to prosecute his appeal.

In the Probate Court application for leave to appeal from an interlocutory decree or order must be made within a month after the delivery of the decree or order, or within such enlarged time as the Court may direct; and it may be doubtful whether any time is limited for appealing from final decrees or orders.

In the Divorce Court, the appeal from the Judge Ordinary to the full court must be filed within three months from the date of the decree appealed from; and that to the House of Lords, whether from the full court or from the Judge Ordinary, within one month.

Appeals from the Court of Admiralty must be founded either on notice given to the registrar immediately after the delivery of the judgment, or upon a declaration, called a protocol of appeal, made before a notary and witnesses within fifteen days, and must be prosecuted by presenting a petition of appeal to your Majesty in Council within one year from the date of the sentence or decree appealed from.

As to security for the costs of appeal:—

In the Court of Chancery none is required beyond a deposit of 20*l.* with the registrar, when the petition is for rehearing of a decree or decretal order. Upon interlocutory appeals no deposit is made. In the Courts of Common Law, every appellant (in an appeal technically so called) and every defendant in an action who brings error is required to give substantial bail to pay costs; but a plaintiff who is also plaintiff in error gives no security. In the Courts of Probate and Divorce no security for costs is taken, but the general orders of the House of Lords require all appellants to that tribunal to enter into their own recognizances, without sureties, for 400*l.* Appellants from the Court of Admiralty, if resident out of the jurisdiction of the Court, may be required to give bail in 300*l.*; if within the jurisdiction, they give no security.

In the Court of Chancery and the Probate Court an appeal does not operate as a stay of execution unless the Court, upon a special application, so directs. In the Divorce Court it does, practically, so operate. In the Courts of Common Law appeal or error operates always as a stay of execution as soon as security is given. In the Court of Admiralty an appeal is followed, as of course, by an inhibition, which has the same effect.

COURT OF APPEAL.

For these various and discordant systems of appeal we recommend the substitution of the scheme embodied in the following suggestions:

CONSTITUTION OF COURT.

First, we propose that in the place of the Court of Exchequer Chamber, and of the Court of Appeal in Chancery, both which Courts, as now constituted, would cease to exist, there should be established, as a part of the Supreme Court, a Court of Appeal, consisting of—

The Lord Chancellor,
The Lords Justices,
The Master of the Rolls, and
Three other permanent Judges, with
Three of the Judges of the Supreme Court to be nominated annually by the Crown;

an additional Vice-Chancellor being substituted, as a Judge of First Instance, for the Master of the Rolls. The Court of Appeal thus constituted should be empowered to sit either as a full court, or in divisions, but the number of Judges sitting together in any division ought never to be less than three. The Judges of the Court, other than the nominated Judges, should always form a majority of the Court.

We propose further, that to this Court an appeal should lie from all judgments, decrees, rules, and orders, in suits or proceedings not strictly criminal, of any division or Judge of the Supreme Court, with certain exceptions which we shall afterwards specify. It may hereafter deserve consideration, after experience of the working of the Court thus constituted, whether its decisions may not be made final, unless leave to appeal from them be given, either by the Court itself, or by the House of Lords. In the meantime, we recommend that there should be a right of appeal to the House of Lords.

A direct appeal to the House of Lords, without going through the Court of Appeal, might, we think, be allowed in all cases in which an appeal on matter of law would lie to the Court of Appeal, if the respondent consents to that course being taken, but not otherwise.

The limitations or exceptions to which we think the right of appeal ought to be subject are the following: judgments, decrees, or orders founded upon and applying the verdict of a jury, or the verdict of a Judge discharging the functions of a jury ought not to be appealable, except upon matter of law. Interlocutory orders, if made by any division of the Supreme Court, consisting of three or more Judges, should not be appealable, except in case of difference of opinion among the Judges, or by special leave of the Court; and, if made by any division or judge with respect to any question of procedure or practice, as to which the Court or Judge had power to make the order, should be appealable only under such regulations as may be made by General Orders. As a general rule, no appeal should be allowed as to costs only.

The time of appealing from interlocutory orders made in the progress of a suit, before the final decision upon the merits between the parties, ought to be regulated by general