

FUSION OF LAW AND EQUITY.

of Chancery is presided over by a single Judge, who adjudicates on all matters as a Court of first instance, except in the few cases when he sits as a Court of Appeal from the County Courts. In like manner, a single Judge administers justice in the Courts of Probate, Divorce and Admiralty, respectively. On the other hand, in the sittings of the Courts of Common Law in banc, the Court is ordinarily constituted of four Judges. The matters adjudicated upon by the single Judge in the Court of Chancery are in many instances as important as the business transacted before the four Judges in the Courts of Common Law; so that there would seem to be either a want of power in the Court of Chancery, or an excess of power in the Courts of Common Law; but it must be borne in mind that a considerable proportion of the business of the Courts of Common Law is transacted by one of the Judges sitting at Chambers; much of the business of these Courts also consists of the review of trials which have taken place before a Judge and jury; they also review the decisions of the Judge sitting at Chambers; they are also empowered to decide various important matters, some of which involve questions of general public interest, on which their determination is in some cases final.

With a Court of Appeal such as we propose to recommend, common to all the divisions of the Supreme Court, constantly sitting, and easy of access, we think that matters of great importance may properly, as now in the Court of Chancery, be intrusted to the jurisdiction in the first instance of a single Judge; but, having regard to the principles which have guided us in our previous recommendations, and to the importance of avoiding any too violent transition from the modes of conducting judicial business to which the public have been accustomed, and in which they may be presumed to place confidence, we think it will be advisable to authorise a single Judge to exercise the jurisdiction of the Supreme Court in the despatch of all such business appropriated to the divisions of the Queen's Bench, Common Pleas and Exchequer, respectively, as by general orders, or by the special order of the Court, or the consent of the parties, may be remitted to him; and that all matters now disposed of in banc in those Courts shall be heard and determined by not more than three Judges. We also think that the Judges of each Division or Chamber in which there are several Judges should have power to sit in banc in two sub-divisions at the same time, with the assistance, whenever necessary, of a Judge or Judges from any other Division of the Court.

PROCEDURE IN THE SUPREME COURT.

The next question that arises for consideration is that of the procedure to be adopted in the Supreme Court as above constituted. We can only give a sketch in this report of the

leading principles of the system which we recommend, leaving for general orders, or for a code of procedure, as may appear most advisable, the fuller development and completion of the scheme proposed.

The present modes of procedure in the Court of Chancery, the Courts of Common Law, the Court of Admiralty, and the Courts of Probate and Divorce, are in many respects different; the forms of pleading are different, the modes of trial and of taking evidence are different, the nomenclature is different, the same instrument being called by a different name in different Courts; almost every step in the cause is different. Each Court is confined to its own forms of procedure. Nor is this difference due entirely to the different nature of the cases which the Courts are called upon to try; for often the same question has to be tried, and the same remedy sought, by a totally different method, according as the proceeding is in the Court of Chancery, the Courts of Common Law, or the Court of Admiralty. This variety in procedure was originally due to causes connected with the origin and history of the different jurisdictions, and it has been influenced in more recent times by the almost complete isolation of the several Courts, and by the circumstance that in the Courts of Common Law the ordinary rule and practice is to refer the decision of disputed questions of fact to a jury, without any appeal except by way of reference to a new jury; whilst in the Court of Chancery the Judge ordinarily, in the Courts of Divorce and Probate frequently, and in the Court of Admiralty invariably decides all questions of fact and law, subject to appeal.

We recommend, that as much uniformity should be introduced into the procedure of all the Divisions of the Supreme Court as is consistent with the procedure in each Division appropriate to the nature of the cases, or classes of cases, which will be assigned to each; such uniformity would in our opinion be attended with the greatest advantages, and after a careful consideration of the subject, we see no insuperable difficulty in the way of its accomplishment.

Much may be done at the very commencement of a suit to prevent unnecessary litigation, delay and expense. In a considerable number of suits there is no substantial question as to the right of the plaintiff to at least some relief. Frequently the object of the defendant is to gain time; sometimes he only disputes part of the claim, or of the amount sought to be recovered. In other cases, such as administration suits, suits to take partnership accounts, suits for specific performance, and suits for foreclosure or redemption, it is often from the first known what order must be made upon the hearing of the cause. In many such suits, notwithstanding improvements recently introduced, the proceedings are still conducted as they are in suits involving a real question as to the plaintiff's right to