COURT OF APPEAL.

Lastly, as to the objection taken to the measure with reference to the proposed Court of Appeal. It is said, "the appeal is to be a court of error—a very competent tribunal for determining the points of law which remain when a jury has solved the questions of fact, but rigid in the extreme in its rules of procedure, and utterly incompetent to dispose of the mixed questions of fact and law that continually arise on appeals from courts of equity." We have here again a serious misapprehension. It is assumed that the Court of Exchequer Chamber, the proposed Court of Appeal, will be simply a Court of Error in the strict sense of the term; that is to say, a court confined to error appearing on the face of the record, and bound by some rules of procedure differing from those of the court in which the proceedings originated. This is an entire mistake. The Court of Exchequer Chamber, when exercising the appellate functions conferred upon it by the recent Procedure Acts, is no longer a mere Court of Cessation. It is a Court of Appeal in the fullest sense of the term; that is to say, it is invested with all the powers, both as to substantive law and procedure, which are possessed by the court from which the appeal comes, and can even draw inferences of fact where the court below could do so.

While upon this subject, we cannot but express our surprise that the objectors should have overlooked the fact that from the decisions of the Court of Exchequer Chamber on appeal there is an ulterior appeal to the House of Lords, where the presence of so many equity authorities will secure the correction, if necessary, of the decisions of the common law tribunals and ensure the administration of equity according to its established and undoubted rules.

We conceive that we have thus made good the propositions which we undertook to establish; that starting from the incontestable position that every court should have power to carry on a suit properly commenced in it to final adjudication and completion, as also to protect rights which are clearly within the compass of its jurisdiction, we have shown that the powers which it is proposed to confer on the common law courts are essentially necessary to this end; that they have been already partially given, and so far beneficially exercised; and lastly that, so far as it is now proposed to go, the procedure will be fully equal to the purpose.

CONCLUSION.

The equity judges declare that "no attempt should be made to alter our tribunals until a careful revision has been made of our whole law." But is not this to put off the work to the Greek Kalends? We readily agree that the bringing the conflict of law and equity into unison would be better dealt with as a part of the substantive than of the ancillary law; and would be best affected by abrogating from the body of our law rights which ought not to be, and which equity does not allow to be enforced, instead of by seeking to attain the end by a fusion of jurisdiction and procedure. But who is there among us so sanguine as to expect that this great work of the revision of the whole body of our law will be undertaken, much less accomplished in our days? In the meantime the suitor bandied to and fro from law to equity, and from equity to law, suffers what he feels and knows to be—with whatever complacency legal practitioners may from habit be brought to look on the matter—a practical and substantive grievance. To whatever extent, though it may be but a partial one, that grievance can be abated—to whatever extent the great desideratum of uniformity in the law as administered by the judicial tribunals of this country can be effected,—to that extent, at least, the practical good should be secured, although the means resorted to may not be such as a scientific jurist might deem the most eligible. At all events, if any immediate, though but partial remedy can be applied, it would surely be unwise to refuse to accept it because it is not presented as a part of a general revision of the whole body of our laws, of which no reasonable hope presents itself even in the indefinite future.

We have the honour to remain, my Lord,

Your obedient and faithful servants,

A. E. COCKBURN.
SAMUEL MARTIN.
G. BRAMWELL.

The Right Honourable the Lord Chancellor.

## THE LAW OF EVIDENCE.

A Bill was some time since introduced into the Upper House of Parliament, by Lord Brougham, to enable the accused parties in criminal cases to offer themselves as witnesses, and, in that event, render them subject to cross examination like other witnesses. This bill having been received unfavourably, his Lordship has just introduced a fresh one, by way of substitute for it, which proposes to accord this faculty to accused persons in cases of misdemeanour only. The principle involved in both bills is a most important one, being at variance with the theory and practice of English law from the earliest times; and the question is a branch of a more general one, which has recently been discussed at the Juridical Society, viz. whether the rule of law which prohibits the examination and cross-examination of accused persons in criminal cases is a sound one. It is a question of great difficulty and importance, and much may be urged on both sides.

The advocates on the one side argue as follows:—The rule of law which excluded from bearing testimony not only the parties to suits, but so many witnesses, on the several grounds of infamy, interest in the event of the suit, &c., has been condemned in modern times as wrong in principle. That rule was energetically attacked by Bentham, who laid down as a sacred principle of judicature, that it is the duty of courts of justice to use all available means of getting at the truth of the matters in question, and consequently reject no medium which could tend to help them to that truth; and the Legislature has adopted this view by abolishing, first, the incompetency of witnesses, and afterwards that of of the parties in civil causes, leaving the case of the accused parties on criminal trials almost the sole remaining fragment of the ancient rule, which ought to follow the fate of the others. One reason given for the rule—namely, that the allowing the examination of accused persons would induce a vast amount of perjury—is a weak and insufficient one, and leads to this injustice, that the witnesses for the prosecution depose on oath against the accused, while his mouth is stopped from contradicting them. The accused, being the person best acquainted with the fact of his own guilt or innocence, is naturally the best source to apply to for information on the subject. If he is guilty, a well-conducted cross-examination will wring the fact from him, to the furtherance of public justice; while, if he is innocent, he has nothing to fear from any cross-examination, however severe. And lastly, in accordance with these views, we find that a rigid interrogation of the accused forms an important part of every criminal trial in France and other continental countries.

On the other side it is urged that the rule laid down by Bentham, however sound as a general principle, is not of universal application, and must be understood with these limitations—first, that by the means of getting at the truth of the matters in dispute must be understood such means as are likely to extract it in causes in general, and not merely in some particular ones; and, secondly, that those means be not such as would give birth to collateral evils outweighing the benefit of any truth they extract. Instances might easily be quoted from Bentham's works in which he has admitted, though perhaps unintentionally, the existence of these exceptions; and numerous ones are to be found in the judicial practice of all countries where evidence, valuable in itself, is rejected on the ground of the great mischiefs that would result from