

FUSION OF LAW AND EQUITY.

made more perplexing, by the want of a Common Court of Appeal, as the appeal from the Court of Admiralty is to the Privy Council, and from the Common Law Courts to the Exchequer Chamber and the House of Lords.

[The state of the English County Courts is then referred to, as exhibiting the strange working of a system of separate jurisdictions even when exercised by the same Court.]

CONSTITUTION OF THE SUPREME COURT.

We are of opinion that the defects above adverted to cannot be completely remedied by any mere transfer or blending of jurisdiction between the Courts as at present constituted; and that the first step towards meeting and surmounting the evils complained of will be the consolidation of all the Superior Courts of Law and Equity, together with the Courts of Probate, Divorce, and Admiralty, into one Court, to be called "Her Majesty's Supreme Court," in which Court shall be vested all the jurisdiction which is now exerciseable by each and all the Courts so consolidated.

This consolidation would at once put an end to all conflicts of jurisdiction. No suitor could be defeated because he commenced his suit in the wrong Court, and sending the suitor from equity to law or from law to equity, to begin his suit over again in order to obtain redress, will be no longer possible.

The Supreme Court thus constituted would of course be divided into as many Chambers or Divisions as the nature and extent or the convenient despatch of business might require.

All suits, however, should be instituted in the Supreme Court, and not in any particular Chamber or Division of it; and each Chamber or Division should possess all the jurisdiction of the Supreme Court with respect to the subject-matter of the suit, and with respect to every defence which may be made thereto, whether on legal or equitable grounds, and should be enabled to grant such relief or to apply such remedy or combination of remedies as may be appropriate or necessary in order to do complete justice between the parties in the case before the Court, or, in other words, such remedies as all the present Courts combined have now jurisdiction to administer.

We consider it expedient, with a view to facilitate the transition from the old to the new system, and to make the proposed change at first as little inconvenient as possible, that the Courts of Chancery, Queen's Bench, Common Pleas, and Exchequer should for the present retain their distinctive titles, and should constitute so many Chambers or Divisions of the Supreme Court; and as regards the Courts of Admiralty, Divorce and Probate, we think it would be convenient that those Courts should be consolidated, and form one Chamber or Division of the Supreme Court.

We further recommend that in order to prepare for any changes that may hereafter be

thought expedient in the constitution of these Chambers or Divisions of the Supreme Court, all future judicial and other appointments therein should be made subject to the possibility of such changes.

Between the several Chambers or Divisions of the Supreme Court so constituted, it would be necessary to make such a classification of business as might seem desirable with reference to the nature of the suits and the relief to be sought or administered therein, and the ordinary distribution of business among the different Chambers or Divisions should be regulated according to such classification. For the same reason which induces us to recommend the retention for the present of the distinctive titles of the different Courts in their new character, as so many Divisions of the Supreme Court, we think that such classification should in the first instance be made on the principle of assigning as nearly as practicable to those Chambers or Divisions such suits as would now be commenced in the respective Courts as at present constituted; with power, however, to the Supreme Court to vary or alter this classification in such manner as may from time to time be deemed expedient.

It should further be competent for any Chamber or Division of the Supreme Court to order a suit to be transferred at any stage of its progress to any other Chamber or Division of the Court, if it appears that justice can thereby be more conveniently done in the suit; but except for the purpose of obtaining such transfer, it should not be competent for any party to object to the prosecution of any suit in the particular Chamber or Division in which it is being prosecuted, on the ground that it ought to have been brought or prosecuted in some other Chamber or Division of the Court. When such transfer has been made, the Chamber or Division, to which the suit has been so transferred, will take up the suit at the stage to which it had advanced in the first Chamber, and proceed thenceforward to dispose of it in the same manner as if it had been originally commenced in the Chamber or Division to which it was transferred.

From the consolidation of all the present Superior Courts into one Supreme Court, it follows, that all the Judges of those Courts will become Judges of the Supreme Court; and thus every Judge (with the exception of those who are to sit exclusively in the Appellate Court hereinafter recommended), though belonging to a particular Division, will be competent to sit in any other Division of the Court, whenever it may be found convenient for the administration of justice.

Here arises an important and difficult question, as to the number of Judges who should ordinarily sit in each Chamber or Division of the Supreme Court. Hitherto the constitution of the Court of Chancery and of the Courts of Common Law, in this respect, has been entirely different. Each division of the Court