

FUSION OF LAW AND EQUITY.

Majesty in Council, or, practically, to the Judicial Committee of the Privy Council.

Upon the constitution of the House of Lords, considered as a Court of Appeal, we do not consider it to be within the scope of our Commission to offer any other remarks than that it unavoidably impairs the efficiency of the Court of Chancery during the session of Parliament, by withdrawing the Lord Chancellor for the whole of four days in every week from his own Court. Upon the constitution of the Judicial Committee of the Privy Council we also abstain from saying more, than that it has been, for many years, found impossible to discharge the appellate duties of that body without withdrawing one or more Judges (often the Lord Justices or the Master of the Rolls, sometimes the Judge of Admiralty or Probate, or one of the Chiefs of the Courts of Common Law) from their respective Courts, to the great inconvenience of suitors, and delay of business in those Courts, during the considerable, and continually increasing, periods of time occupied in every year by the transaction of Privy Council business. Any arrangements, therefore, which may tend to relieve the House of Lords, or the Judicial Committee, from any appeals which now go there will so far add to the strength of the Supreme Court.

The Court of Appeal in Chancery, consisting of the Lord Chancellor and the Lords Justices, is in practice generally divided into two Courts, in one of which the Lord Chancellor presides alone, in the other the Lords Justices; and, during the Session of Parliament, the Lord Chancellor's Court is closed, as has been already stated, except for two days in the week. When the Lord Chancellor happens to be less conversant with equity business than the Lords Justices, his decision, sitting alone in appeal from a Court of Equity, cannot be so satisfactory to the suitors, as if he had the benefit of their assistance; and when the Lords Justices, as has sometimes happened, differ in opinion, the appeal to them necessarily fails, the judgment of the Court below is affirmed, and a further appeal to the House of Lords frequently results. Cases of more than usual importance are, indeed, sometimes reserved for hearing, or are directed to be reargued, before the full court of Appeal; but the pressure of business, and the engagements of the Lord Chancellor for so great a portion of the year in the House of Lords, confine within very narrow limits the time which can be allotted to sittings of the full court.

The Court of Exchequer Chamber is formed by a combination of all the Judges of the Courts of Queen's Bench, Common Pleas, and Exchequer, under such arrangements, that errors and appeals for each of those Courts are determined by Judges taken from the other two. The inconveniences of this system are, in practice, very serious. All these Judges having, during nearly the whole year,

pressing demands upon their time for other purposes, are only able to devote a very limited number of days after each term to the hearing of appeals and errors; and each of these periods requires to be broken up into three parts, and the constitution of the Court to be three times changed, in order to dispose of a portion of the appeals and errors from each of the Courts of first instance. The effect generally is so far to reduce the number of Judges, who are able to attend in the Court of Exchequer Chamber, as, in case of any difference of opinion, to render it possible that the majority of opinions, in the Court of Appeal and the Court of first instance taken together, may be overruled by the minority,—a result which, as the Judges of Appeal are not appointed or selected specially to act as such Judges, and the Judges who have been overruled to-day may to-morrow themselves sit in appeal from some decision of the Judges who have taken part in overruling them, is eminently unsatisfactory. The same causes also lead, in many cases, to great and unavoidable delays in the disposal of Common Law errors and appeals.

The constitution of the full court of Divorce, by the addition of two Judges of the Common Law Courts, withdrawn *pro hac vice* from their own duties, and associated with the Judge the Ordinary, is liable to some of the same objections.

The conditions on which appeals or errors can be brought from the different Courts are also widely different.

To the Court of Appeal in Chancery and to the House of Lords from the Court of Chancery, an appeal lies from all orders and decrees, whether interlocutory or final, of the Courts below, and upon all questions, whether of fact or of law; except that the verdict of a jury, or of a Judge exercising the functions of a jury, can only be impugned by a motion for new trial. The jurisdiction of the Court of Appeal in Chancery, or of the Master of the Rolls or a Vice-Chancellor to rehear his own decree, a practice which is also allowed, may be excluded by a formal procedure called enrolment, which takes place at the instance of any party, practically at any time within five years from the date of the decree or order enrolled, if nothing has been done in the meantime by the suitor with a view to bring the matter before the Court of Appeal. After this no error in the decree or order enrolled, except mere clerical mistakes, can be corrected by the Court of first jurisdiction, or by the Court of Appeal in Chancery, without a new suit for that purpose, called a Bill of Review. The same formality, which shuts the door of the Court of Appeal in Chancery, opens to the dissatisfied suitor that of the House of Lords, which does not receive appeals from decrees or orders of the Court until after they have been enrolled. Both the Court of Appeal in Chancery, and the House of Lords, proceed upon the same record and evidence,