

FUSION OF LAW AND EQUITY.

ments of a complete remedy in the same Court was obviously desirable, not to say imperatively necessary, to the establishment of a consistent and rational system of procedure."

In consequence of these Reports several Acts of Parliament have been passed for the purpose of carrying out to a limited extent the recommendations of the Commissioners.

By virtue of these Acts the Court of Chancery is now, not only empowered, but bound to decide for itself all questions of Common Law without having recourse, as formerly, to the aid of a Common Law Court, whether such questions arise incidentally in the course of the suit, or constitute the foundation of a suit, in which a more effectual remedy is sought for the violation of a common law right, or a better protection against its violation than can be had at Common Law. The Court is further empowered to take evidence orally in open Court, and in certain cases to award damages for breaches of contract or wrongs as at Common Law; and Trial by Jury—the great distinctive feature of the Common Law,—has recently, for the first time, been introduced into the Court of Chancery.

On the other hand, the Courts of Common Law are now authorised to compel discovery in all cases, in which a Court of Equity would have enforced it in a suit instituted for the purpose. A limited power has been conferred on Courts of Common Law to grant injunctions, and to allow equitable defences to be pleaded, and in certain cases to grant relief from forfeitures. These changes, however, fall far short of the recommendations of the Common Law Commissioners, who in their final report expressed the opinion, that power should be conferred on the Common Law Courts "to give, in respect of rights there recognized, all the protection and redress which at present can be obtained in any jurisdiction."

The alterations, to which we have referred, have no doubt introduced considerable improvements into the procedure both of the Common Law and Equity Courts; but, after a careful consideration of the subject, and judging now with the advantage of many years experience of the practical working of the systems actually in force, we are of opinion that "the transfer or blending of jurisdiction" attempted to be carried out by recent Acts of Parliament, even if it had been adopted to the full extent recommended by the Commissioners, is not a sufficient or adequate remedy for the evils complained of, and would at best have mitigated, but not removed the most prominent of those evils.

The authority now possessed by the Court of Chancery to decide for itself all questions of Common Law has no doubt worked beneficially. But the mode of taking evidence orally before an examiner, instead of before the Judge who has to decide the case, has justly caused much dissatisfaction; and Trial by Jury—whether from the reluctance of the

Judge or of the Counsel to adopt such an innovation, or from the complexity of the issues generally involved in the suit, or because the proceedings in Chancery do not give rise to so many conflicts of evidence as proceedings in other Courts,—has been attempted in comparatively few cases.

In the Common Law Courts the power to compel discovery has been extensively used, and has proved most salutary; but the jurisdiction conferred on those Courts to grant injunctions and to allow equitable defences to be pleaded has been so limited and restricted,—the former extending only to cases where there has been an actual violation of the right, and the latter being confined to those equitable defences where the Court of Chancery would have granted a perpetual and unconditional injunction,—that these remedies have not been of much practical use at Common Law, and suitors have consequently been obliged to resort to the Court of Chancery, as before, for the purpose of obtaining a complete remedy.

Much therefore of the old mischief still remains, notwithstanding the changes which have been introduced; and the Court of Chancery necessarily continues to exercise the jurisdiction of restraining actions at law on equitable grounds, and even claims to exercise that jurisdiction in cases where an equitable defence might be properly pleaded at Common Law.

It may be further observed, in illustration of the evils of the double procedure, that whenever a new class of business arises, such as the litigation arising out of railway and other joint stock companies, proceedings, frequently of an experimental character, are commenced both at Law and in Equity by different suitors, leading to the inconvenience of protracted litigation, and the danger of conflicting judgments. We may refer to the litigation lately pending between the sellers of railway shares and the jobbers on the Stock Exchange, by which the sellers sought to obtain an indemnity from the jobbers against calls. The litigation began in a Court of Common Law. A suit in Equity soon followed, by a different plaintiff against the same defendants, both suits asking for a similar redress. The Court of Common Law decided in favour of the plaintiff. The Court of Equity shortly after delivered judgment to the same effect. The defendants appealed in both suits; in the one case to the Exchequer Chamber, in the other to the Court of Appeal in Chancery. Both appeals were pending at the same time, but there was no official machinery by which the Judges of Appeal in Chancery and the Court of Exchequer Chamber could enter into communication with the view of arriving at a common result. The Court of Exchequer Chamber reversed the judgment of the Court below; the Court of Appeal in Chancery, acting independently of the Court of Exchequer Chamber, arrived at