

## LAW V. EQUITY—THE QUAKER AND THE JUDGE.

court held that as the moral fraud of the owner, and the legal fraud of the agent, did not concur in the same person, no case of fraud could be proved against either. The ruling in this, although it underwent some vicissitudes, is, we believe, still law.

His Honour indeed seems to think that intentional moral fraud on the part of the defendants is not necessary to establish a case of fraud in equity. "It is perfectly clear," he continues, "that a body corporate or the directors can know nothing more about such a fraud as this than any stranger, and, therefore, it would be impossible to prove the fraud committed by the company. The fraud taken cognizance of by a court of equity is made up of all the circumstances of the case, the position of the parties, that they have been imposed upon, have been *inopes consilii*, and, being in a state of bodily, were, consequently, in a state of mental, weakness." All these circumstances, however, are undoubtedly such as would go to establish a fraud at law. The distinction is not one inherent in the jurisdiction, but in the nature of the proof required. Vice-Chancellor Wood laid down, in *Benham v. Keane*, that to take advantage knowingly of the fraud of another was to be a *particeps criminis*, at least to the extent of being prevented from taking any advantage of that fraud; and this is the true equitable principle which the courts of law, not from defect of jurisdiction to determine it, but from their nature of this procedure, refuse to recognise.

The Vice-Chancellor was, under any circumstances, bound to overrule the demurrer, because the right of the plaintiff to choose his tribunal, where the jurisdiction is concurrent, has not been interfered with by the late Acts: *Evans v. Bremridge*, 2 K. & J. 174. We respectfully dissent, however, from his Honour's opinion, that the jurisdiction of a court of law would be inadequate to reach cases of fraud merely on account of their degree of complexity. The general impression, however, certainly is that a court of law can only take cognizance of a fraud if it be clear; just as it can grant relief on an "equity" under the Common Law Procedure Acts, only if it be indisputable. If we are right in this, it follows that it is unnecessary, and would be futile, by statute to confer upon courts of law an unlimited jurisdiction in cases of fraud, because, as we contend, they enjoy already such power, and are only prevented from exercising it by the fact that they have no procedure fitted for the purpose. To propose to alter their procedure is to re-establish courts of equity under common law judges, nothing more; and may be possibly productive of no greater harm than the loss of the advantage arising from division of labour.

The idea of allowing a plaintiff to *originate* a suit at law upon grounds now cognizable only by a Court of Equity, aimed at by Lord Campbell's Law and Equity Bill of 1860, arose simply from a misconception of the object of

conferring equitable jurisdiction on common law courts. On this point we beg to refer our readers to the remarks made upon that bill at the time.\* A thorough fusion of law and equity is, doubtless, the necessary result of present tendencies and past legislation, but it is mere confusion to suppose that this implies a simple transfer of all litigation to the common law courts at present in existence.

The consequences of this simplification of the law, if carried out fairly, as we think it ought to be, will in our opinion, be more beneficial than otherwise to the profession.

Let it be an understood thing that every plaintiff who commences his proceedings in the right court, be it Queen's Bench, Chancery, Probate, or what not, will be able, no matter what new matter may arise in the course of the proceedings, to have his claim finally adjudicated upon in and by that court, and all that can rationally be desired in the way of fusion will have been accomplished. A hundred years ago the Courts might have done this of their own mere motion, at the expense, at most, of a legal fiction or two; now a statute is essential for the purpose, but if it would only be general enough and avoid that pernicious meddling and muddling in details so characteristic of modern English legislation, a very short Act might set at rest this somewhat vexed question.—*Solicitors' Journal*.

## THE QUAKER AND THE JUDGE.

Upon the jury entering the box at the late Liverpool assizes one morning, one of the number, who gave his name as Josiah Carson, and was a member of the Society of Friends, kept on his hat. Mr. Baron Bramwell, observing it, requested him to uncover. The jurymen—"Conscience compels me to keep it on." The Judge—"Conscience no more compels you to keep your hat on than it does your shoes. You must have respect for others. I will fine you £10 if you don't take off your hat." The jurymen—"It is a reverence for the Almighty which compels me to keep it on." The Judge—"Don't be nonsensical. Your reason is discreditable to common sense." The jurymen still refusing to uncover, the Judge said,—"I warn you that I will fine you £10 if you do not take off your hat." The jurymen—"I cannot do so." The Judge—"Then I fine you £10, and leave the box. Any person with such nonsense in his head is not fit to sit upon a jury." The jurymen having left the court, the Judge said—"I shall call upon him again to-morrow, and if he still persist in his nonsense I shall fine him again."—*Express*.

The Yelverton marriage case is likely to come before the public again on the meeting of Parliament—an appeal to the House of Lords having been duly lodged on behalf of Miss L. against the judgment of the Court of Session.