

FUSION OF LAW AND EQUITY.

of Admiralty; Sir George William Wilshere Bramwell, Knight, a Baron of the Court of Exchequer, and William Gandy Bateson, Esq.; and by a further warrant, dated 25th January, 1869, Sir Robert Porrett Collier, Knight, Attorney-General; and Sir John Duke Coleridge, Knight, Solicitor-General, were added to the Commission.

This Commission was appointed to make full enquiry into the operation and effect of the present constitution of the different Courts in England, and of the present separation and division of jurisdiction between the several Courts, as well as the arrangements for holding the Courts, and the distribution and transaction of business in them, with a view to ascertain whether any and what changes and improvements,—either by uniting and consolidating the said Courts or any of them, or by extending or altering the several jurisdictions, or assigning any matters or causes now within their respective cognizance to any other jurisdiction, or by altering the number of Judges in the said Courts, or any of them, or empowering one or more Judges in any of the said Courts to transact any kind of business now transacted by a greater number, or by altering the mode in which the business of the said Courts or any of them, or of the sittings and assizes, is now distributed or conducted, or otherwise,—may be advantageously made so as to provide for the more speedy, economical, and satisfactory dispatch of the judicial business now transacted by the same Courts, and at the sittings and assizes respectively, and further to make enquiry into the the laws relating to jurors and trial by jury in general.

Thomas Joseph Bradshaw, Esquire, was appointed Secretary of the Commission.

On the 25th March, 1869, the following Report was presented.*

After reciting the Commission under which they acted the Report proceeds as follows:—

INTRODUCTORY OBSERVATIONS.

In commencing the inquiry which we were directed by your Majesty to make, the first subject that naturally presented itself for consideration was the ancient division of the Courts, into the Courts of Common Law, and the Court of Chancery, founded on the well known distinction in our law between Common Law and Equity.

This distinction led to the establishment of two systems of Judicature, organized in different ways, and administering justice on different and sometimes opposite principles, using different methods of procedure, and applying different remedies. Large classes of rights, altogether ignored by the Courts of Common Law, were protected and enforced by the Court of Chancery, and recourse was had to the same Court for the purpose of obtaining a more adequate protection against the violation of Common Law rights than the Courts of Common Law were competent to afford. The Common Law Courts were confined by their system of procedure in most actions,—not brought for recovering the possession of land,—to giving judgment for debt or damages, a remedy which has been found to be totally insufficient for the adjustment of the complicated disputes of modern society. The procedure at Common Law was founded on the trial by jury, and was framed on the supposition that every issue of fact was capable of being tried in that way; but experience has shown that supposition to be erroneous. A large number of important cases frequently occur in the practice of the Common Law Courts which cannot be conveniently adapted to that mode of trial; and ultimately those cases either find their way into the Court of Chancery, or the suitors in the Courts of Common Law are obliged to have recourse to private arbitration in order to supply the defects of their inadequate procedure.

The evils of this double system of Judicature, and the confusion and conflict of jurisdiction to which it has led, have been long known and acknowledged.

The subject engaged the attention of the Commissioners appointed in 1851 to inquire into the constitution of the Court of Chancery. Those learned Commissioners, after pointing out some of the defects in the administration of justice arising out of the conflicting systems of procedure and modes of redress adopted by the Courts of Common Law and Equity respectively, state their opinion, that “a practical and effectual remedy for many of the evils in question may be found in such a transfer or blending of jurisdiction, coupled with such other practical amendments, as will render each Court competent to administer complete justice in the cases which fall under its cognizance.”

In like manner the Commissioners appointed in 1850 to inquire into the constitution of the Common Law Courts make, in their second report, a very similar recommendation. They report that “it appeared to them that the Courts of Common Law, to be able satisfactorily to administer justice, ought to possess in all matters within their jurisdiction the power to give all the redress necessary to protect and vindicate Common Law rights, and to prevent wrongs, whether existing or likely to happen unless prevented;” and further that “a consolidation of all the ele-

* We are indebted to Mr. Snelling for a copy of this report.