stand the order of administration of justice in both these kingdoms. He did fix most of our forms by erecting of the chancery, and the brieves thereof, which were the fixed tenors of all the summonses before the ordinary courts, as they yet are in England, and without them no suit can be commenced in the Court of Common Pleas, which is the most proper judicature of the Common Law of England, which brieves they enlarge by declarations extending the same to the several special matters; and it behoved also to be so with us, till the erection of the College of Justice, wherein the clerks or writers to the signet were entrusted with the forms of summonses and diligencies." This curia parliamenti was followed by the Session, commonly known as the old Court of Session, which again in its turn was succeeded by the Daily Council. These three tribunals formed, of their respective periods, the Supreme Court of Scotland, and however much they may have been, as it is reasonable to suppose they were, improvements on each other, their procedure appears to have been substantially that described by Lord Stair, and which was in its leading features the same as prevailed in England, and which still regulates the procedure of the English Common Law Courts. But let it not therefore be supposed that such old Scottish practice recognised, as the English system now does, a distinction between the procedure at law and in equity. It did no such thing, nor was their anciently such distinction in England. That it was so there is shown in a very interesting and able manner by a paper which I had the pleasure of hearing read before the Juridical Society of London, by the present Lord Chancellor in 1855, when Solicitor-General. In this paper his Lordship expresses himself strongly against the separate system, and he observes: "The rules and maxims of the Common Law were so broad and comprehensive, that they admitted of being made the basis of an enlarged system of jurisprudence. A portion of the Statute of Westminster the Second (13 Edw. I.) was passed with a view of effecting this object, and of expanding the maxims of the Common Law, so as to render it applicable to the maxims of an advancing state of society. For this purpose, new writs were directed to be framed, as new occasions for remedial justice presented themselves. And if this had been fully acted on, the Law of England might have been matured into a uniform and comprehensive system. For it was justly observed by one of the judges in the reign of Henry VI., that if actions on the case had been allowed by courts of law as often as occasion required, the writ of subpœna would have been unnecessary, or, in other words, there would have been no distinction between courts of law and courts of equity, and the whole of the present jurisdiction of the Courts of Chancery would have been part of the ordinary jurisdiction of the courts of law." The Statute of Edward here referred to by the Lord Chancellor was passed in the year 1285; and it concludes in these terms:—"Moreover, concerning the statutes provided *where the law faileth, and for remedies*, lest suitors coming to the King's Court *should depart from thence without remedy*, they shall have *writs provided in their cases*." In fact, the Statute contemplated the very procedure described by Lord Stair. But unfortunately, as we all know, things took a different course, and equity was compelled to interfere where the ordinary tribunals of the country refused redress—the injury to the legal scholarship of the profession being not less than the wrong done to the people. Happily, it was otherwise in Scotland, and we have every reason to believe that the old Scottish procedure which I have described in the words of Lord Stair would have still regulated the practice of the law here, had it not been for the circumstances which led to the establishment of the present Court of Session on the model of the Parliament of Paris in 1532; and whose course of administration, distinguished as it is by much that is learned and philosophic, has been retarded—I had almost said disfigured—by a system of pleading and method of trial, the effect of which it has long been the unceasing effort of legislation to counteract. To have further persevered in such patchwork reform would, I venture to think, have been unwise; and that the Lord Advocate has done better by bringing in his bill, which instead of being liable to the reproach (as some might say) of being a mere assimilation or copy of the English practice, may be more correctly and justly described as an attempt to restore the old Scottish procedure of the fifteenth century, while substantially retaining in the practice of the Court of Session all that is valuable in the system which was originally obtained from, as I have already shown, not an English or Scottish, but a French source.

This will appear from a brief examination of the bill itself. It sets out with repealing no less than seventeen Acts of Parliament, from the 48 Geo. III., chap. 51, to the 22 & 23 Vict., c. 7, by which, more or less, the existing practice of the Court of session is regulated; and it makes, as its leading feature, two grand divisions of actions, namely, first those which may be tried by jury or otherwise, very much according to the plan that prevails at law in England, and which, I repeat, there is every reason for believing was the practice of Scotland anciently; and those which require a procedure corresponding to that which prevails in the English and Irish Courts of Equity. The bill, even in stating such a distinction, makes use of the English technical terms, and I was really, on first perusal of it, inclined to think that it might be read so as to favour the severance of Law from Equity, and at a time when it is the policy and tendency of all Law reform in England to put an end to the distinction—a policy and tendency remarkably illustrated by the speech of the Lord Chancellor to which I have referred. On a closer examination of the bill, however, such an impression has been removed from my mind, and, indeed, the fact that the same judges, and the same Courts, are to administer both forms of procedure, is a sufficient answer to the objection, if made. It may take some time before the judges may easily accommodate themselves to such a new state of things; and they may be troubled with the same difficulty which, I understand, has been experienced in America, in several States of which the distinction between Law and Equity has been abolished. This defect, as it may be called, has been candidly pointed out by an American lawyer, Mr. Theodore Sedgwick, known to the profession as the author of "The Measure of Damages." Alluding to the New York code of procedure Mr. Sedgwick, in a letter he addressed to an English friend, in 1859, and which has since been made public, observes: "I have little doubt that you will before a great while come to it" (he is speaking of the fusion of Law and Equity), "as we have. When you do, I think you will find, as we have, that the greatest practical difficulty in effecting the change is to draw the line between those cases which are triable by jury, and those which are not. This line was, for all, practical purposes, drawn with us, as it is with you, by the distinct organisation and procedure of Law and Equity tribunals; but when we created only one set of tribunals, abolished all distinction between Common Law and Equity pleadings, and melted down bills and declarations into a *complaint*, we found that we had some difficulty how to classify the cases which should go to a jury and those which should properly be tried by a judge; and this has greatly perplexed us." Perhaps it would not be easy to define more clearly than the bill does the two classes of actions; and it is only to be hoped that the Court would not be long embarrassed by the difficulty described by Mr. Sedgwick, and that it will gradually accommodate itself to the procedure. For a time, too, it may be anticipated that the working of the bill may be somewhat impeded by a preliminary discussion as to whether the facts of a case fall under one class of action or the other.

As to the first class of actions, the procedure is to be comparatively simple and summary. They are to be commenced by what is called a summons, which resembles, as nearly as may be, the English writ, but which also bears some correspondence to the ancient Scottish brieve, commanding the defendant or defendants within a certain number of days after