3 Com. L. R. 606), raised their voices in dissent, and in favour of a more liberal construction of the statute. In this Province, Mr. Justice Gwynne may be ranked among the number of able dissentients who have been outnumbered by their judicial brethren. Yet professional opinion is in favour of the minority. We cite what is perhaps the most remarkable expression of this opinion from an able article published in the *Law Magazine*, vol. vi. N. S. 252, part of which is as follows:

"The admission of equitable pleas and replications was the result of a laudable desire to save expense to both parties in cases wherein a suit at law would certainly be stopped in equity—in a word, to make the principles of one tribunal co-operative with, and no longer antagonistic to, the other. The words of the Act on this subject are large enough to let in any defence which shows matter for injunction; but the alleged necessity, or rather supposed convenience of the case, has induced the Judges to limit equitable defences to those cases in which the plea shows that an injunction absolute and unqualified would be granted in equity against the prosecution of the suit; but wherever something more would have to be done in equity than staying the action—as for instance a reforming of the contract, or taking an account—the courts of law have refused to allow an equitable plea, because they say that they have no machinery for working complete justice. If there be no machinery, however, it could be supplied readily and naturally by a proper development of the Master's office. At present, by repudiating the powers which were given to them, that they may do complete justice in any cause, the courts have either stultified the meaning of those who designed the provision for equitable jurisdiction, or have evaded a duty."

Shier v. *Shier* was an action for breaches of covenant in a farming lease. The covenant, as drawn, provided that the defendant should, during the term of five years, use in a proper manner upon the demised premises all the straw which should be raised thereon, and that he should not cut any standing timber, except for rails, buildings or firewood; and that he should not allow any timber to be removed from the demised premises. The defendant's pleas, on equitable grounds, were in substance that before the execution of the lease, the agreement of both parties was that the defendant should be allowed to remove straw from the demised premises to his own lot adjoining, provided he should use on the demised premises every second year, all the manure made on his own farm and the demised premises; which term, as to the manure, was expressed in the covenant: that through error of the conveyancer who acted as agent for both parties, and by mutual mistake, it was omitted to limit the covenant as to the straw; and that one of the alleged breaches was the defendant's removing the straw to his farm adjoining: that as to the timber, it was the agreement, &c., that the defendant should be allowed to cut down standing timber on the demised premises to burn at his own house on the farm adjoining, and that by mistake of the said conveyancer, he omitted to qualify the covenant accordingly, and the alleged breach was occasioned by the defendant cutting and removing wood from the demised premises for his own house on the farm adjoining. The majority of the court held, upon demurrer, that as the term was still current and the contract executory, complete justice could not be done between the parties in a court of equity without a reformation of the covenant, which, as a court of law, they had no power to enforce. Gwynne, J., dissenting, held that complete justice could be done between the parties to that action without any reformation of the covenant.

Admitting that the weight of authority is with the majority of the court, as they state the case, yet in one point of view they seek to be more equitable than the Court of Chancery itself. The effect of a reformation of the covenant would be to limit it, to curtail the plaintiff's legal rights in such a way that it is not supposable he would ask as a condition of relief, upon bill filed to restrain his action, that the covenant should be reformed. The covenant as it stands covers every stipulation intended to be made between lessor and lessee, and something more: the suit is in respect of that something more, which it is admitted is an unjust claim. The covenant as it stands protects the lessor against every possible breach by the lessee both in respect to what was agreed between them, and as to other matters not so agreed. It would not benefit the plaintiff to have the covenant reformed as to these other matters; it would not in any way enable him more effectually to assert his proper rights in any subsequent suit.

Under these circumstances, it is manifest that a court of equity would restrain the suit