seize the opportunity of clearing himself upon oath. Much might be said both for and against this enlargement of the law of evidence, but it is not necessary now to dwell upon the subject.

Lawyers are often blamed by their clients for giving wrong opinions on points of law, or rather for expressing views which are not sustained when the cases come before the courts, and this, in the minds of the suitor, means the same thing. We should recommend complaining litigants to read the judgment of the Court of Appeal in *Forsyth* v. *Galt et al.*, where a question arose on the construction of a will as to the estate taken under it by a devisee, one C. It was held by Draper, C. J., and Gwynne, J. that the gift to C. was an estate in fee simple, subject to an executory devise over in the event of his dying without issue; by Wilson, J., and Morrison, J., that C. took a fee simple absolute; and by Strong, V. C., that C. took an estate tail, with remainder over in the event of his dying without issue.

There would be, however, the advantage in this case, that it would be scarcely possible to have given an opinion that would not have received the support of at least *some* of the Judges on the Bench.

EQUITY IN COMMON LAW COURTS.

When Sir John Richard Quain was lately called to the dignity of Serjeant-at-law, preparatory to his elevation to the Queen's Bench, he gave rings with the motto, "*Dare, facere, præstare.*" Inasmuch as Mr. Quain was one of the most active and efficient members of the Judicature Commission, the English *Law Journal* predicts that his adoption of the motto of the Roman *prætor* indicates that he expects to administer equity as well as law. A marvellous prospect this, as compared with a characteristic scene of former days, when Erskine's joke pretty fairly represented the value of equity in the eyes of common law men. On one occasion, when Lord Kenyon, after deciding against the plaintiff's action, observed that he might resort to a court of equity for relief, Erskine was heard to ejaculate, in a tone of inimitable simplicity, "My Lord, would you send a fellow-creature there?" The spirit of Erskine is still alive, though without such justification as he had, among the common law Bench and Bar. Division of jurisdiction, leaving the two systems of law and equity to run in distinct channels, will, at least until a perfect system of fusion is discovered, secure more satisfactory results than the turbid admixture which even now is manifest as a result of the equitable clauses of the Common Law Procedure Acts. Judging by the experience of the past, the administration of law and equity by one and the same court, and by one and the same set of judges, is not very encouraging. When the English Court of Exchequer possessed equity jurisdiction, it was of all courts the most unsatisfactory, so far as the causes on the equity side were concerned. The ability of even an Alderson was taxed to the uttermost to fulfil the diverse duties devolving upon him; and it is not to be expected that by Darwinian or other selection, there will be a succession of such Judges in new courts of multifarious jurisdiction. The constitution of our own Court of Error and Appeal, where a preponderance of common law Judges entertain appeals from the Court of Chancery, is another and nearer example of the unfairness of submitting pure questions of equity to a common law tribunal.

Our attention has been called to this subject by the case of *Shier* v. *Shier*, 22 C. P. 147, where, upon the validity of an equitable plea, Mr. Justice Gwynne dissented from the other two members of the court. Ever since the right to plead equitably at law has been given, the majority of common law Judges have sought to restrict the right within the narrowest bounds and by the sheer weight of numbers, not of reason, they have prevailed. It is now, it seems, a cast-iron rule in England that a plea on equitable grounds can only be supported at law in cases where a court of equity would, under similar circumstances, decree an absolute, unconditional and perpetual injunction. Yet at the first, such Judges as Jervis, C. J., and Crowder, J. (in *Chilton* v. *Carrington*, 16 C. B. 206; and see S. C. 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: