It may be safely affirmed that in nearly half of the cases at least the debts that have been recovered would have remained unpaid, whilst in the cases in which the law would have been put in force, the poor debtor would, under the old system, have been mulcted, in heavy and ruinous costs; whilst it is to be observed that hitherto at least the ready remedy of these cheap courts has had no effect in increasing the litigious disposition of the people.

On the whole, it may be safely affirmed that within a period of about eleven years the county courts have taken such root as to form one of the institutions of the country, which no man would have the hardihood to attempt to destroy, while the enlargement, rather than the curtailment, of their jurisdiction may be contemplated.

Are then the subjects for judicial investigation in equity and at common law so dissimilar, that a system which has been eminently successful in facilitating the administration of justice in one class of cases is unsuitable for the other set of questions?

We shall best appreciate this question by considering the peculiar objects of jurisdiction in equity, as distinguished from the ordinary remedies at common law.

It is the special object of the common law to protect personal liberty, and to give remedies or redress for injuries to property, and to defend it against ouster, trespass, nuisance, waste, destruction, or disturbance. The common law, by its practice, ordinarily compels the parties in litigation to reduce their disputes to simple questions of fact, or law, as between a single plaintiff or class constituting plaintiffs, all in the same interest, and a single person or class constituting defendants, all in the same interest, leaving the questions, or series of questions, of fact to a jury, and the question, or series of questions, of law to the judge; and it must be admitted that the simplicity of the common law has proved its ability readily to adapt its questions to tribunals less artificial than those of the high courts of common law in Westminster Hall.

The powers and duties of a court in equity are, however, more complex, and the questions raised are also between more than two parties—sometimes very many parties—each seeking a remedy or right different from that of the other parties in the same suit.

Sir James Mackintosh has said of equity, that "it is a jurisdiction so irregularly formed, and often so little dependent on general principles, that it can hardly be defined, or made intelligible, otherwise than by a minute enumeration of the matters cognisable by it."* Not admitting the premises, the conclusion of this eminent author, judge, and jurist, must be accepted, I shrink from adding to the numerous definitions of equity jurisprudence, and I must refer to Lord Redesdale's admirable work on equity pleading, first published in the year 1780, annonymously, and which is still the only work of authority, by an English author, on the subject of which it treats. Time does not allow me to quote at length the language of Lord Redesdale,† or of the great ornament of the American bench, Mr. Justice Story,‡ but I assume that no person will venture to form an opinion on equity jurisdiction who is not familiar with the out-line of equity jurisprudence, as expounded by one one these eminent judges.

Limited as is this paper, it is important shortly to enumerate the principal subjects in which an equity court gives relief. It remedies the results of accident and mistake—it relieves from actual and positive fraud, or from such inequitable bargains as are classed under the term constructive frauds—it settles and adjusts the rights of persons beneficially entitled under trusts, and it exercises a salutary control over trustees of all kinds—it protects clients from their legal advisers, and children and wards from undue influence—it determines the rights of mortgagors and mortgagees, and the priorities between several incumbrancers—it determines the rights as between sureties and principal debtors and their creditors—it ascertains and enforces a just contribution between debtors—it protects against waste—it settles questions relating to confusion of boundaries, rights to dower, patition, and rents—and it administers the estates of deceased persons, doing justice between their creditors, legatees, devisees, and real and personal representative—and in all these matters it takes and adjusts, and works out all the accounts between all parties, and distributes the funds or liabilities in litigation, as the case may be, between or among two to two hundred and more claimants, each having or being subject to the most varied rights or liabilities.

In aid of all these rights, and to protect property during litigation in the common law, or other courts, it extends its extraordinary jurisdiction by injunction, and by another extraordinary exercise of power it decrees and enforces the specific performance of contracts, as between vendors and purchasers of estates and other property.

Indeed, it may be said generally, that there is not a wrong relating to property, from which a court of equity, either in exercise of its own inherent jurisdiction, or in aid of the jurisdiction of other courts, has not a remedy.

Now, whoever compares the questions which arise in county courts with those above enumerated must admit that high as should be the mental qualification for the due discharge of the duties of a county court judge, a very large amount of acquired learning, both in principle and practice, as distinguished from general talent and scholarly attainment, is necessary in a judge in equity in the first instance, so as to enable him to decide rightly either without any bar or with the aid of an incompetent advocacy. This consideration leads to the conclusion that, so long as the practice in law and equity remains distinct, and until the whole bar shall be educated to practise in both departments, the propriety of which is a moot question, on which it would be irrelevant here to enter, it will be unwise to entrust any important equitable jurisdiction to the judges, who have by study and practice specially fitted themselves to preside with advantage to the country and honour to themselves in the county courts.

We know that custom has so long prevailed in separating the spheres of study of common law and equity lawyers, that even where incidentally a question of equity comes before a gentleman of the common law bar he usually gives his opinion on the legal points, and declines to give any opinion on the equitable question, referring it to an equity barrister, and that the latter in the same way hands over questions of common law to the practitioners on that side of Westminster Hall. Now, if in London, with all its appliances, the most learned members of the bar thus shrink from giving opinions on matters to which they have not devoted their special attention, will the responsibilities of office, will the necessity to decide in remote districts questions as nice as can arise before the Lord Chancellor, will the absence of all learned aid, enable a common law barrister, when elevated to a judgeship, to pronounce such decisions as will satisfy the public mind?

But the eminent persons who, from practising in one department all their lives, have, on the instant, crossed to the other side of Westminster Hall, will be cited as practically and entirely proving the contrary of the propositions just advanced. I admit that a Gifford, a Lyndhurst, a Brougham, a Cranworth, a Truro, and a Chelmsford, may possibly with advantage step over the barriers which separate the courts of law and equity. These are the powerful intellects from whose eccentric movements, the ordinary courses of ordinary men are not to be estimated. On the other hand, could not each one of us, if it were not invidious to do so, on the instant enumerate a list of eminent lawyers, who, great in their own department, would have been "in endless mazes lost," if they had had to wander out of the beaten track, the via trita of their lives?

It must be remembered that, although among the judges of

* Life of Sir T. Moore, 1. p. 457.
† Mitford's "Equity Pleading," p. 111, Jeremy's edition.
‡ Story's "Equity Jurisprudence," secs. 30, 31.