the rule or summons to issue it, the Court or Judge ought to have power either to decide the matter summarily, or to direct direct an action, or issue, or a special case, and to impose such terms as to keeping an account or otherwise, and to make such order as to the costs of the proceedings, as may be just.

This power ought to be conferred in all cases of Common Law rights in which an injunction might be obtained in the Court of Chancery.

In an action involving the question of injunction, brought or continued under the direction of the Court or Judge, it should not be necessary to claim an injunction in the Declaration, unless directed by the Judge; and in such an action not so brought, the party injured ought to be at liberty, as at present, to claim an injunction, if he think proper. The provisions of the 82nd section of the Common Law Procedure Act of 1854 ought to be modified, so as to be applicable to the new writ.

The power of issuing injunctions by the Common Law Courts is at present confined to actions in which some breach of contract or duty is complained of, and cannot be exercised for the protection of property the right to which is in litigation. It cannot, for instance, be exercised in the action of ejectment, even to prevent irreparable waste; nor in case of detinue, to prevent the defendant from making away with the goods, which may be specifically recovered. This defect in the jurisdiction should be supplied by extending the power of issuing injunctions so as to prevent injury to or the making away with property, in actions in which the title thereto is in dispute.

Another measure of protection at present afforded by the Court of Chancery consists in ordering the delivering up of *documents, which, upon the face of them, appear sufficient* to give the holder a right of action at Common Law, but which by reason of circumstances which might be set up as a defence if an action were brought, ought not to be made available. In such a case, the danger that by lapse of time evidence of the defence may be lost, and so the instrument may be unjustly enforced, is considered as constituting a right in the party apparently charged by the instrument, unless disabled by some act of his own, to have it given up and cancelled, and so to have the claim set at rest. This power may well be given to the Courts of Common Law in respect of Common Law claims and defences, And in cases in which only a part of the amount appearing to be due on the instrument is in fact due, an offer to pay such part, and a payment of the amount into court to abide such order as the Court may make, ought to be considered equivalent to actual payment, before proceedings. This may be done either by action or by summary application to the Court, as may be thought most advisable.

Under the same head of protection against anticipated injury may be classed the proceedings in Interpleader, which we now proceed to consider.

The principle of interpleader is this: That a person having, without any fault on his part, the possession of property in which he claims no interest, and which is claimed by two or more adverse parties whose alleged titles have a common origin is entitled to be protected from the necessity of litigating the question of property in which he has no concern, upon giving up the subject matter in dispute to be dealt with under the direction of the Court, which then determines the question in a proceeding between the adverse claimants. Before the Statute 1 & 2 Wil. 4, c. 58, the remedy existed in the Common Law Courts in one form of proceeding only, namely, the action of detinue. One of the last instances, if not the last, in which it was resorted to was in the case of *Land* v. *Lord North*, 4 Douglass, 226. The statute referred to, however, gave jurisdiction to Common Law Courts, in cases of action brought by one of the claimants against the holder of the property. It also gave a new power to relieve sheriffs against the necessity of litigating adverse claims made to goods taken under execution. In this latter case the Court of Chancery before the statute declined to exercise jurisdiction, for the alleged reason, that if the sheriff had made a wrongful seizure he ought not to be relieved; while if he had made a rightful one, there was no occasion for interfering. And it may be doubted whether that Court will assume jurisdiction since the statute (see *Tufton* v. *Harding*, 21 Dec. 1859, before Vice-Chancellor Kindersley). The jurisdiction conferred upon the Common Law Courts in such cases has proved highly beneficial. In some particulars, however, it requires extension and amendment.

With respect to both kinds of interpleader proceedings, difficulties have arisen where the claim is at present capable of being enforced in the Court of Chancery only, and is called equitable. In respect to such claims, Courts of Common Law have at present no jurisdiction, and the consequence has been that great inconvenience has arisen in the execution of the Interpleader Act. To enable the Courts to do complete justice in such cases, their jurisdiction ought to be extended to all claims, whether legal or equitable, where an action has been *brought in respect of a Common Law claim* within the former branch of the statute, or there has been a seizure in execution within the latter. In case of Interpleader for relief of sheriffs, jurisdiction ought to be given to the Common Law Courts, even though the claim or claims be all equitable. The proceedings upon such claim may be in the same form as those in the case of a conditional defence upon equitable grounds, which will be mentioned in a subsequent part of this Report.

In interpleader after action brought by one of the claimants, an amendment is also advisable. The course of decision upon the construction of this branch of the statute has usually followed that of the decisions in Chancery, which amongst other exceptions to this jurisdiction, appear to have established that relief will not be given when the titles of the claimants have not a common origin, but are adverse to and independent of one another. This exception of which the alleged reason is not very obvious, has no place in interpleader proceedings for the relief of sheriffs; and we see no good reason for its existence in any case of interpleader in the Common Law Courts. To take the common case of a wharfinger or warehouseman seeking relief against adverse claimants, the applicant has, generally speaking, no information as to the nature of their alleged titles; and yet it is clearly just, that, whatever may be, he ought not to be at the expense and risk of determining who is in the right, in a contest in which he has no interest whatsoever, except it be to hand over the property in dispute to the rightful owner. We recommend that interpleader should be allowed to all persons not falling within the class at present estopped from interpleading, whether the adverse claims have a common origin or not.

Interpleader for the relief of sheriffs admits of further improvement. It often happens that where a sheriff has seized goods in execution, a claim is made to them under a bill of sale to secure an amount much less than the value of the goods, and the goods, if sold, would be sufficient to satisfy both the execution and the bill of sale creditor. In such cases great difficulty arises. The property of the goods is entirely out of the debtor and in the bill of sale creditor. The former has a right to the goods upon paying off the bill of sale, and that right ought to be available to the execution creditor. The bill of sale creditor has a right to the possession of the goods for the purpose only of satisfying his debt, and he ought not, provided his own debt is first satisfied, to be allowed to stand in the way of the execution creditor by objecting to a sale by the sheriff. There are other similar cases in which the claimant is entitled to the goods only to secure a debt. *The judge ought* to have power in all cases where the right of the claimant is only by way of security for a debt, to direct a sale, and the application of the proceeds, in case of a surplus, to satisfy the execution, upon such terms as to payment of the secured debt or not, and otherwise, as the judge may think fit.