brought before the society, now that it has entered upon a new phase, and that a practical issue has been raised regarding it.

I believe the greatest difficulty connected with the subject and that which offers the most obstinate resistance to the efforts of those who desire to see the law and equity administered by one tribunal, lies in the use of the word "equity." The primary meaning of this word differs widely from the technical sense. Indeed, I apprehend that neither in the initiation of the jurisdiction of the Chancellor, nor in the principles pursued after the jurisdiction was established will there be found much trace of that most vicious of all judicial modes of action, namely, the adjudicating according to the mere moral sense of the judge respecting which it has been sarcastically observed that under such a system the equity of each different Chancellor would vary like to the measure of his foot. If such a state of things ever existed in this country it has long ceased to exist. On the contrary, the equity administered by our tribunals seems in exact accordance with the definition given by Grotius. "De Æquitate," § 3:—"Æquitas est virtus voluntatis, corrrctrix ejus in quo lex propter universalitatem deficit." Further, Courts of equity admit that the foundation of both jurisdictions is the same by their maxim *æquitas sequitur legem.*

It was not, in fact, from any defect of the common law, nor from any incapacity in the Legislature to deal with all the rights arising out of the complex relations and dealings of mankind, that the equitable jurisdiction among us was established. The chief reason, I suspect, is rather to be found in the inflexible determination of the common law tribunals to adhere to established writs, forms, processes; and that the equity tribunal, when it possessed itself of the litigated matter, dealt and deals with it very much in the same way that the common law tribunals would have done, if it had arrogated or been invested with, an appropriate process. As said by the Attorney General in the address to which I have already referred, "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 be no distinction between courts of law and courts of equity, and the whole of the present jurisdiction of the Court of Chancery would have been part of the ordinary jurisdiction of courts of law. But, unfortunately, the spirit of the statute of Westminster the second was not carried out by the judges of the courts of common law; and in the time of Edward III. they declined to act upon writs to which the existing formulæ of pleading, or counting as it was then called, were inapplicable."

Let us test this by examining a few of the most familiar *heads of equitable jurisdiction. Inquiring as to each, whether* there is anything in principle antagonistic to the rules of law, or anything with which a court of common law could not deal on the ground that it is to be judged of only by applying natural reason, or, if you please, equitable considerations—for if there is not, it may fairly be assumed that it was only the defect of *process* which brought it within the jurisdiction of the Court of Chancery.

Take, for example, a very common head of equitable jurisdiction—specific performance. Is there anything about that which is not quite as much legal as equitable? The obligation to deliver goods or an estate which the defendant has sold is an obligation quite as perfect as the obligation to pay money for which he has given his bond. It is obviously only by reason of the want of adequate process that the common law tribunals did not grant this relief. If they had chosen to create a new writ, although, as in the old action of ejectment, a fictitious one, they might have compelled specific performance by delivery of an estate sold, and the making of a title to it, just as by ejectment they put the owner in possession of his land; and they might have compelled the delivery of goods sold, by a similar ratification of process, just as they compelled the delivery up of goods to the owner, by the action of detinue, where his chattels were wrongfully detained.

Specific performance suggests injunction; for as the one compels the performance of a private obligation, the other restrains the party bound to perform such obligation from committing a breach. Surely this is strictly as much a legal right, as the title to damages after the breach is committed.

So far as an argument in favour of investing common law courts with powers to grant relief at present afforded exclusively by the courts of equity, may be derived from the fact that such relief has been granted by these courts, such examples are not wanting. Not many years have elapsed, since the common law courts had jurisdiction, in at least two instances, to protect a person against a threatened injury, and to enforce specific performance of a private obligation. In both these instances this protection and relief were afforded before any damage had been sustained, and before any cause of action had arisen. So that it would be difficult to cite any instance, in which, according to the prevalent technical distinction, the case would be one more distinctively equitable. One of these instances is afforded by the writ *curia claudenda*, by which the owner of land was protected against an apprehended damage likely to result from the neglect of an adjoining owner to fence his land. As said by Fitzherbert in his "Natura Brevium," p. 127, "A man shall have this writ *quia timet.*" This writ was abolished by the statute 3 & 4 Will. IV. c 27. The other instance in which the common law courts granted specific relief against a threatened invasion of a right, is afforded by the writ called *warrantia charlæ* abolished by the same statute. by this writ the feoffee of lands by deed with warranty, could compel his feoffor or his heir to warrant the lands to him. Although this relief was granted for the purpose of protecting the feoffee in cases where he was impleaded in assize or other action in which he could not vouch or call to warranty; yet it is laid down by Fitzherbert in his same work on Writs, p. 134, that "A man may sue forth this writ of *warrantia chartæ* before he be impleaded in any action." Therefore, by these two writs not only was specific relief given by courts of law; but that relief was extended before any invasion of the right thus protected and enforced.

It is, perhaps, not unworthy of notice that in the practice thus established of granting the writ *warrantia chartæ* before the feoffee was sued, there may be discovered a trace of that kind of relief which consists in the declaration of a right not attacked, at present a matter of purely equitable jurisdiction. How it was that this principle never germinated into that wide field of relief which obtains, I believe, in all systems founded on the civil law, of declaring the *status* of individuals, *and the right to property, and thus guarding against the in*firmity and casualties of human testimony, is perhaps one of many examples of the manner in which our system came to be built up. Some exigencies were met and others neglected.

I entertain no doubt that a deeper investigation into the modes and principles of action of the common law courts would bring out other instances in which they acted not merely in analogy with, but exactly in the same way in which the courts of equity act, and according to the principles by which they are governed. I will mention only one other case, in which, as it appears to me, the common law courts act according to a rule as "equitable" as any laid down or applied by the Court of Chancery. A plea showing that in case the plaintiff recovered the defendant would have a cause of action to recover back the same sum, is admitted as a good defence to avoid what is called "circuity of action." In other words, the court of common law modifies the strict legal rights of the parties, in order to avert the inconvenience of a multiplicity of suits; or of two actions being brought, the judgments in which would neutralize each other. In this rule we find