present question does not arise, the cases which come before courts of law are seldom of sufficient magnitude to make the multiplying of parties desirable; as the so doing, however necessary in order to settle the rights of all concerned has a natural tendency, except where great interests are involved, to bring about the result that, by the time the rights of all parties concerned are adjusted, there remains but little to be divided amongst those who are found to be entitled. Be this as it may, the objection of the equity judges, founded on the inability of the common law courts to bring other parties before them, has, as regards the present measure, no application. It is not proposed to admit equitable defences in cases to which the objection relates. By the operation of the 86th section of the Common Law Procedure Act of 1854 and the 12th clause of the present Bill, courts of law will not be called upon to entertain questions of equity where the equitable rights of parties other than the immediate parties to the action at law are involved. It is suggested indeed, that a court of law might fall in error in deciding whether, in any particular case, the equitable rights of other parties do or do not come into question. But it may be answered, first, that in the more simple cases of equity which present themselves in actions at law, no serious difficulty on this score is likely to arise; secondly that the supposition that the judges would have any difficulty in deciding such a matter is an assumption of incapacity in them which ought not lightly to be made; thirdly, that the objections, if good for anything, would apply equally to the equitable pleas already permitted to be pleaded; lastly, that in the exercise of the existing jurisdiction no such difficulty has in point of fact been experienced.

MACHINERY.

The question as to the adequacy of the "machinery" of the common law courts being thus reduced to its proper limits, we have no hesitation in affirming that the procedure of these courts, enlarged and amended as it has been in modern times, is abundantly sufficient to enable them to exercise the powers proposed in a perfectly satisfactory manner.

With reference to matters of equity brought forward in pleading, no question as to the adequacy of the proceedure can arise. The facts on which the equity arises being set forth in the pleading, the effect of them, if admitted, is at once for the court. If not admitted, the facts will be tried by a jury in the ordinary way. And it may be here incidentally observed, that if in the same action there should also be issues of facts relating to matter of common law to be tried, it is more convenient that both sets of issues should be tried and disposed of in the same inquiry, than that one set of facts should be tried in a court of law, the other in a court of equity. No one, we apprehend, will question the superiority of the common law procedure over that of equity for the trial of issues of fact; and it may be observed in passing, that as, in the discussion of questions of equity, wheresoever they may be raised, questions of disputed fact will frequently arise, this superiority of the common law proceedure for the decision of questions of fact is so far in favour of the transfer of jurisdiction.

As regards equitable matters arising on application to the court, as for relief on conditional equity, or for protection of property, either on apprehended injury or during the pendency of an action, the efficiency of the machinery cannot seriously be questioned. The application would be by motion founded on an affidavit setting forth the facts. If any difficulty should arise in the ulterior stages of the discussion, the court would have ample means of completing the inquiry by an issue or reference to a master. The only difference, we apprehend, between such a proceeding and that of a court of equity would be, that the latter would require a written or printed statement of the case, which would be echoed by an affidavit. The common law process, while it is equally efficacious, is the simpler and less expensive of the two.

The question of the competency of the common law judges to administer equity is one on which, for obvious reasons, we are reluctant to touch. We may, however, be permitted to observe that in the simpler questions of equity which are likely to come before courts of common law, we cannot anticipate any serious difficulty. While, on the one hand, it may be admitted that, where more complicated rights are involved, such as arise upon intricate questions of real property, of trusts, the administration of estates, and the like, the principles and rules of equity constitute an elaborate and special system of jurisprudence, a perfect knowledge of which it may require special study and practice to acquire, yet it must not be forgotten that one of the principal merits of this system is that its leading rules—at least, where unembarrassed in their application by the intricacies and subtleties of real property law—rest on the plain and simple principles of rational justice, as distinguished from the more technical and arbitrary rules of positive law.

More especially is this the case with reference to the grounds on which equity relieves against legal rights sought to be enforced in actions at law. To suppose that common law judges or practitioners either are unacquainted with or will be unable to master a system so simple, would seem to be a gratuitous and unwarranted assumption. No such difficulty has hitherto arisen in administering the powers either of auxiliary or substantive equity heretofore conferred. So far as we are aware, one instance only has occurred of an appeal from the decision of any court of law on an equitable plea, and in that instance the appeal was unsuccessful.

We believe the apprehension of incompetency in this respect to be wholly unfounded. The large knowledge of the law essential to the administration of equity has never been questioned in equity judges; and we are at a loss to understand why credit should not be given to common law judges for capacity to possess a corresponding knowledge of equity in the limitation of legal rights. When we reflect how many of the great equity judges who have presided in the court of chancery and in the House of Lords have been taken from the common law courts, we are surprised that capacity should be denied to the collective ability of the common law judges, assisted by a bar inferior to none in learning and attainments, to deal with the simple questions of equity which are likely to arise incidentally in proceedings at law.

Before we quit this subject, we must advert to an argument prominently put forward, namely, that the effect of thus conferring equitable jurisdiction on common law courts will be to restore in substance the ancient equity jurisdiction of the Court of Exchequer, abolished in recent times by the Legislature. That this view of the matter is altogether erroneous may readily be shown. It assumes that the jurisdiction of the Court of Exchequer as a court of equity was exercised by it incidentally to proceedings pending before it as a court of law. Nothing can be more incorrect. The Court of Exchequer in equity was as distinct from the Court of Exchequer as a court of common law, as the Court of Exchequer now is from the Court of Chancery. The jurisdiction was distinct; all suits were distinct; the proceedure was distinct; the officers of the court were not the same; the practitioners were a separate and distinct class. A party seeking protection or relief from an action pending on the common law side of the court was obliged to file a bill in equity, and was in all respects in the same position as if he had gone into chancery. All the evils of the double jurisdiction arose, without any of those benefits which may be anticipated from enabling full justice to be administered in a single court. Other causes therefore, making it desirable that the Court of Exchequer as a court of equity should be done away with, its abolition took place, but without the slightest reference to any inconvenience arising from a blending of jurisdiction such as is now proposed. To represent the two cases as analogous is to confound things essentially distinct and having nothing in common but a name.