sion when he had an interest therein. This practice was not founded upon any principle of discovery, as understood in equity, but upon the right or claim in the nature of ownership arising from the interest of the party in the documents.

III. The class of cases in which, at Common Law, inspection was allowed of documents of a public character, either by rule in the action itself, if they were in the possession of a party to litigation, or by mandamus, if they were in possession of a third party, depended upon a similar principle, and might not inaccurately be said to be an extension of the same principle.

Discovery, in the sense of obtaining disclosure from an opposite party of facts within his knowledge, apart from inspection of documents in the limited cases referred to above, was unknown to the Common Law. The basis of the right, as it at present exists is, as stated in the opening, to be found in the practice of the English Court of Chancery, which has descended to us.

It is far beyond the scope of this article to examine into the causes which gave rise to this exercise of jurisdiction by the Courts of Equity, a practice which, while not altogether without parallel in other systems of law, is in many respects unique in legal history.

Prior to the passing of the Judicature Act equity had arrived at what might be said to be a complete law and practice in regard to discovery. The right had been established in a party to proceedings before the civil Court, including (what was, indeed, the most common case of an action purely for discovery) of a party to an action at law to extort, on oath, from another party to the proceedings, his knowledge of facts concerning the matter in question, and the production of all documents, except certain special classes privileged from discovery in his possession, relating to such matter. The damaging nature of the disclosure to the case of the party required to make it was no answer, indeed, was considered rather a reason for the giving of discovery, and a party very frequently was compelled to give discovery which would prove the whole cause of action of his adversary.

Definite rules have been arrived at as to the circumstances under which and the character of the proceeding in aid of which discovery was given, some of which survive in our present practice. Indeed it was said by Lord Selborne in *Lyell* v. *Kennedy*, 8 A.C. at p. 223, that the right of discovery under existing practice at the date of that decision, since the Judicature Act, was not in principle