DOCUMENTS.

The only other instance in which authority is proposed to be given to a court of law, independently of a pending action, is the power to order the delivering up of documents which on the face of them appear to give a right of action at common law, but which, by reason of circumstances which, if an action were brought, would constitute a defence, ought not to be available, and, on the contrary, ought to be given up or cancelled.

The ground on which a party liable to be prejudicially affected by such a document has a claim to have it given up or cancelled, is that the document, remaining in the hands of the opposite party, after all just claim to enforce it is gone, may one day be brought forward, after the evidence by which it would have been defeated has ceased to exist.

It is plain that power to afford relief from such a possibility, and to protect a person so circumstanced from having such a danger from hanging over his head for years, ought to exist somewhere. It has hitherto been confined to courts of equity alone. The reasons for proposing to extend it to the courts of law, are, first, that the documents in question would be enforceable in a court of law alone; secondly, that the matter of defence, on which the claim to have the document annulled arises, would be capable of being pleaded and tried at law if an action were brought upon it; thirdly, that the common law procedure for trying the facts, if contested, is indisputably superior to that of a court of equity.

NEW EQUITABLE JURISDICTION AT LAW.

We have now past in review the several cases of equitable jurisdiction proposed to be conferred by the Bill. It remains for us to deal with a few general objections put forward against the measure as a whole.

The principal of these is founded on a misapprehension which it is important to clear up. It seems to be supposed that equitable title to property is sought to be brought within the jurisdiction of the legal tribunals. This is evidently pointed at in the two cases, prominently put forward in the objections of the equity judges, in which fraudulent plaintiffs with legal titles are supposed to bring ejectment in a court of law for the purpose of avoiding the discussion of adverse equitable rights before an equity court.

This is a very serious misapprehension. It overlooks the fact that, with reference to equitable defences, the action of ejectment—the only action in whsch the right to real estate can be enforced—was not included in the Act of 1854;* and that, with the exception of the comparatively small matter of relief from forfeiture for non-payment of rent and for omitting to insure, this action is not proposed to be touched by the present Bill. So large a proportion of property in this country being held in trust, and trusts being the peculiar province of courts of equity, however serious the inconvenience arising from the occasional conflict of jurisdiction may be, it is not proposed that powers should be given to courts of law to entertain equitable considerations on a trial of title. If our last report be referred to, it will be seen that our recommendation as to the power to grant conditional relief is confined to cases in which equitable defences are already admissable, but in which the presence of a condition prevents the Court from entertaining a plea. This, of course, does not apply to ejectment in which no equitable plea is admissible. The present Bill does not include ejectment, so for as title to property is concerned. The imaginary cases put farward by the equity judges as illustrative of the mischievous operation of the enlarged equitable jurisdiction could not therefore arise.†

We cannot but think that much of the opposition offered to this measure has been founded on the notion that it was sought to withdraw by it questions upon equitable title to property from the jurisdiction of a court of equity. It is desirable that this misapprehension should be dispelled as speedily as possible. No such thing has been suggested, or is contemplated by the present measure. Of course, if it should be thought that the language of the Bill leaves room for the possibility of a different construction, nothing would be more easy than so to frame the enactment as to limit its operation to the extent designed.

Another objection insisted on by the equity judges is that a plaintiff having a mere legal as opposed to an equitable right will now have a choice of courts, and will naturally take his cause to the court in which equity is the least likely to be well administered. Assuming for a moment the inferiority of the legal courts in dealing with equitable questions (on which a word presently), we must be forgiven for observing that this argument rests on a fallacy. A plaintiff having only a legal right to insist on has no choice of courts; he can bring his action in a court of law alone. If he went to a court of equity, he would be told that, having a remedy at law, he had no business there. The position of such a plaintiff will nowise be altered. But let us look to the other side of the case. Take the case of an honest plaintiff bringing an action on a legal claim, which he believes to be well founded. Having brought his action in the only court to which he can resort, why, because his adversary sets up an equitable defence, is he to be forced to become defendant in a new suit before a different tribunal? Or, take the perhaps still more striking, case of a defendant, in an action at law, having a defence on equitable grounds alone, which he is desirous of setting up in the court where the action is pending. Why is he to be driven to the necessity of going to a second court, and there instituting a second and more expensive suit? Why, if his equity depends on the performance of some condition, is he to be driven to another court to obtain the relief which performance of the condition might just as well secure to him in the first?

The equity judges assert that "no solid reason can be given for the proposed transfer of jurisdiction." We, on the other hand, submit that abundant reason is to be found in all the evils attending on a double jurisdiction and a twofold litigation—two suits relating to the same subject matter of dispute, in two separate courts, separate pleadings, separate sets of counsel, fresh fees of court, all harassment, expense and delay of a suit in chancery needlessly superadded to the simpler proceedings of an action at law. Surely, it cannot seriously be disputed that if the necessity for resorting to a second court can be dispensed with—wherever justice can be done in one court and one suit—there is every reason for relieving the suitors from the inconvenience, the expenses, and the delay of a double litigation.

We guard ourselves by saying "where justice can be done." We readily admit that where what the objectors not inaptly term the "machinery" of the courts of common law is inadequate to deal with questions of equity, a sufficient reason exists for maintaining the divided jurisdiction. We admit that to a certain extent, the objection to conferring equitable jurisdiction on the courts of law on this ground is well founded. But to this extent care has been taken that the jurisdiction shall not be exercised. The objection becomes unfounded and unjust when it overlooks a distinction which the framers of the Bill have not been unmindful to observe. It is true, as is urged by the equity judges, that there are cases in which equitable rights cannot properly be determined without more parties being brought before the court than the parties immediately in presence in an action at law. It is true that a court of law has no procedure for bringing such further parties before it. Possibly it may not be desirable that it should have. Actions to recover real property excepted, as to which the

* See *Neave* v. *Arye*, 24 L. J., C. B. 207; 16 C. B. 328, S. C

† We may also here observe, in passing, that the third case but by the equity judges by way of objection namely, that of an equitable mortgagor bringing deed tinue for deeds deposited by way of equitable mortgage, with a view to avoid a court of equity, is equally ill-founded. The plaintiff would be defeated at law. The action could not be maintained under such circumstances.