

that the fusion or amalgamation of law and equity is complete. The amalgamation will be complete when it becomes immaterial to inquire whether a particular rule enforced by a court is a rule of common law or a rule of equity. Notwithstanding that this condition of things has not yet been reached, or is not even yet in sight, it is yet possible that a tendency in the direction of such a complete amalgamation may be visible. It is the purpose of this article to indicate how and where this tendency is visible, by referring to a few decisions of the courts which shew that the effect of the system of administering common law and equity together—the system introduced and rendered possible by the Judicature Acts—is to weld together the two bodies of jurisprudence in one undistinguishable whole.

There are some decided cases that shew what may be called the negative side of the tendency towards amalgamation, or the struggle of the two elements of law and equity to keep apart. The decisions and dicta in these cases, though actually retarding the movement of the two elements towards complete union, are nevertheless excellent illustrations of its existence. These cases will be referred to first, and in order of date.

*Foster v. Reeves* (67 L.T. Rep. 537; (1892) 2 Q.B. 255). This was a decision of the Court of Appeal, affirming the Divisional Court, which had reversed the judgment given in the County Court. The action was brought to recover rent under an agreement for a tenancy. The agreement was in writing, but not under seal, and by it the defendant had agreed to take a house for three years from a future date. Defendant took possession, but left before the expiration of the three years. The agreement, not being under seal, was ineffective as a lease at common law, but it was contended that, since in equity the agreement could have been ordered to be specifically performed, the defendant was to be treated as though he were party to an actual lease. This was the doctrine of *Walsh v. Lonsdale* (to be referred to presently). The Court of Appeal, however, held that this doctrine did not apply in the present case, since the County Court had no jurisdiction to order specific performance.