This difficulty has been resolved by stressing the fundamental nature of the jury trial right and protecting it against diminution through resort to equitable principles. In *Beacon Theatres v. Westover*,[44] the Court held that a district court erred in trying all issues itself in an action in which the plaintiff sought a declaratory judgment and an injunction barring the defendant from instituting an antitrust action against it, and the defendant had filed a counterclaim alleging violation of the antitrust laws and asking for treble damages. It did not matter, the Court ruled, that the equitable claims had been filed first and the law counterclaims involved allegations common to the equitable claims. Subsequent jury trial of these issues would probably be precluded by collateral estoppel, hence "only under the most imperative circumstances which in view of the flexible procedures of the Federal Rules we cannot now anticipate, can the right to a jury trial of legal issues be lost through prior determination of equitable claims."[45] Then, in *Dairy Queen v. Wood*,[46] in which the plaintiff sought several types of relief, including an injunction and an accounting for money damages, the Court held that, even though the claim for legal relief was incidental to the equitable relief sought, the Seventh Amendment required that the issues pertaining to that legal relief be tried before a jury, because

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lent of the right of trial by jury secured by the Seventh Amendment. Whitehead v. Shattuck, 138 U.S. 146 (1891); Buzard v. Houston, 119 U.S. 347 (1886); Greeley v. Lowe, 155 U.S. 58, 75 (1894). But where state law gave an equitable remedy, such as to quiet title to land, the federal courts enforced it, if it did not obstruct the rights of the parties as to trial by jury. Clark v. Smith, 38 U.S. (13 Pet.) 195 (1839); Holland v. Challen, 110 U.S. 15 (1884); Reynolds v. Crawfordsville *Bank*, 112 U.S. 405 (1884); Chapman v. Brewer, 114 U.S. 158 (1885); Cummings v. National Bank, 101 U.S. 153, 157 (1879); United States v. Landram, 118 U.S. 81 (1886); More v. Steinbach, 127 U.S. 70 (1888). *Cf. Ex parte* Simons, 247 U.S. 321 (1918).

By the inclusion in the Law and Equity Act of 1915 of § 274(b) of the Judicial Code, 38 Stat. 956, the transfer of cases to the other side of the court was made possible. The new procedure permitted legal questions arising in an equity action to be determined therein without sending the case to the law side. This section also permitted equitable defenses to be interposed in an action at law. The same order was preserved as under the system of separate courts. The equitable issues were disposed of first, and if a legal issue remained, it was triable by a jury. Enelow v. New York Life Ins. Co., 293 U.S. 379 (1935). *See also* Liberty Oil Co. v. Condon Bank, 260 U.S. 235 (1922). There was no provision for legal counterclaims in an equitable action, for the reason that Equity Rule 30, requiring the answer to a bill in equity to state any counterclaim arising out of the same transaction, was not intended to change the line between law and equity and was construed as referring to equitable counterclaims only. American Mills Co. v. American Surety Co., 260 U.S. 360, 364 (1922); Stamey v. United States, 37 F.2d 188 (W.D. Wash. 1929). Equitable jurisdiction existing at the time of the filing of the bill was not disturbed by the subsequent availability of legal remedies, and the scheduling was discretionary. American Life Ins. Co. v. Stewart, 300 U.S. 203 (1937).

[44] 359 U.S. 500 (1959).

[45] 359 U.S. at 510–11.

[46] 369 U.S. 469 (1962).