the primary rights being adjudicated were legal in character. Thus, the rule that emerged was that legal claims must be tried before equitable ones and before a jury if the litigant so wished.[47]

In *Ross v. Bernhard*,[48] the Court further held that the right to a jury trial depends on the nature of the issue to be tried rather than the procedural framework in which it is raised. The case involved a stockholder derivative action,[49] which has always been considered to be a suit in equity. The Court agreed that the action was equitable but asserted that it involved two separable claims. The first, the stockholder's standing to sue for a corporation, is an equitable issue; the second, the corporation's claim asserted by the stockholder, may be either equitable or legal. Because the 1938 merger of law and equity in the federal courts eliminated any procedural obstacles to transferring jurisdiction to the law side once the equitable issue of standing was decided, the Court continued, if the corporation's claim being asserted by the stockholder was legal in nature, it should be heard on the law side and before a jury.[50] Whether this analysis will be followed in other areas so that the right to a jury trial extends to all legal issues in actions formerly within equity's concurrent jurisdiction is a question now open.[51]

Procedures Limiting Jury's Role.—As noted above, the primary purpose of the Seventh Amendment was to preserve the his-

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[47] If legal and equitable claims are joined, and the court erroneously dismisses the legal claims and decides common issues in the equitable action, the plaintiff cannot be collaterally estopped from relitigating those common issues in a jury trial. Lytle v. Household Manufacturing, Inc., 494 U.S. 545 (1990).

[48] 396 U.S. 531 (1970).

[49] The stockholders' derivative action is a creation of equity made necessary by the traditional concept of "the corporate entity" or the "concept of separate personality." That is, the corporation is an entity distinct and separate from its shareholders. Thus, while shareholders were relieved from unlimited liability for corporate liabilities, the complementary result was that harm to the corporation did not confer any right of action upon a shareholder to sue to right that harm. But if the harm were caused by the abuse of those who managed and controlled the corporation, the corporation naturally would not proceed against them and the common law courts would not allow the shareholders to bring an action running to the "separate personality" of the corporation; equity thus permitted a derivative action in which the shareholder is permitted to set in motion the adjudication of a cause of action belonging to the corporation. Prunty, *The Shareholders' Derivative Suit: Notes on Its Derivation*, 32 N.Y.U. L. Rev. 980 (1957).

[50] Justices Stewart and Harlan and Chief Justice Burger dissented, arguing that the Seventh Amendment did not expand the right to a jury trial, that the Rules simply preserved the right as it had existed, and that it was error to think that the two could somehow "magically interact" to enlarge the right in a way that neither did alone. Ross v. Bernhard, 396 U.S. 531, 543 (1970).

[51] Among the possibilities in which a legal right was enforceable in equity in the absence of an adequate remedy at law are suits to compel specific performance of a contract, suits for cancellation of a contract, and suits to enjoin tortious action. On *Ross*' implications, *see* J. Moore, Federal Practice §§ 38.11[8.–8], 38.11[9] (2d ed. 1971).