ized as a private rather than a public right," at least when the defendant had not submitted a claim against the bankruptcy estate.[41]

The Continuing Law-Equity Distinction.—The use of the term "common law" in the Amendment to indicate those cases in which the right to jury trial was to be preserved reflected, of course, the division of the English and United States legal systems into separate law and equity jurisdictions, in which actions cognizable in courts of law generally were triable to a jury whereas in equity there was no right to a jury. In the federal court system there were unitary courts having jurisdiction in both law and equity, but distinct law and equity procedures, including the use or nonuse of the jury. Adoption of the Federal Rules of Civil Procedure in 1938 merged law and equity into a single civil jurisdiction and established uniform rules of procedure. Legal and equitable claims which previously had to be brought as separate causes of action on different "sides" of the court could now be joined in a single action, and in some instances, such as compulsory counterclaims, had to be joined in one action.[42] But the traditional distinction between law and equity for purposes of determining when there was a constitutional right to trial by jury remained and led to some difficulty.[43]

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[41] 492 U.S. at 55. On the other hand, a creditor who submits a claim against the bankruptcy estate subjects himself to the bankruptcy court's equitable power, and is not entitled to a jury trial when subsequently sued by the bankruptcy trustee to recover preferential monetary transfers. Langenkamp v. Culp, 498 U.S. 42 (1990).

[42] 5 J. Moore, Federal Practice §§ 38.01–38.05 (2d ed. 1971).

[43] Under the old equity rules, it had been held that the absolute right to a trial of the facts by a jury could not be impaired by any blending with a claim, properly cognizable at law, of a demand for equitable relief in aid of the legal action or during its pendency. Hipp v. Babin, 60 U.S. (19 How.) 271, 278 (1857). The Seventh Amendment was interpreted to mean that equitable and legal issues could not be tried in the same suit, so that such aid in the federal courts had to be sought in separate proceedings. Scott v. Neely, 140 U.S. 106, 109 (1891); Bennett v. Butterworth, 52 U.S. (11 How.) 669 (1850); Lewis v. Cocks, 90 U.S. (23 Wall.) 466, 470 (1874); Killian v. Ebbinghaus, 110 U.S. 568, 573 (1884); Buzard v. Houston, 119 U.S. 347, 351 (1886). If an action at law evoked an equitable counterclaim, the trial judge would order the legal issues to be separately tried after the disposition of the equity issues. In this procedure, however, *res judicata* and collateral estoppel could operate so as to curtail the litigant's right to a jury finding on factual issues common to both claims. But priority of scheduling was considered to be a matter of discretion. Federal statutes prohibiting courts of the United States from sustaining suits in equity if the remedy was complete at law served to guard the right of trial by jury and were liberally construed. Schoenthal v. Irving Trust Co., 287 U.S. 92, 94 (1932).

Nor was the distinction between law and equity to be obliterated by state legislation. Thompson v. Railroad Companies, 73 U.S. (6 Wall.) 134 (1868). So, if state law, in advance of judgment, treated the whole proceeding upon a simple contract, including determination of validity and of amount due, as an equitable proceeding, it brought the case within the federal equity jurisdiction upon removal. Ascertainment of plaintiff's demand being properly by action at law, however, the fact that the equity court had power to summon a jury on occasion did not afford an equiva-