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THE COURTS OF NEW JERSEY -- PART III
(A) CHANCERY IN A UNIFIED COURT SYSTEM

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CHANCERY IN A UNIFIED JUDICIAL SYSTEM

New Jersey, Delaware, and Tennessee are the only states with separate Courts of Chancery. The wave of court reform which started in the 19th Century and resulted in the adoption of the English Judicature Act of 1873 also brought about the abolition of most separate chancery systems in our country. Illinois, the last great stronghold, fell in 1942.

Why is it that England and most of our states have abandoned chancery as a separate system in favor of a unified court? To understand the problem, a brief history of our Court of Chancery and its jurisdiction is essential.

Jurisdiction of Chancery

Our Court of Chancery administers a branch of jurisprudence known as "Equity," and grants certain relief known as "equitable remedies." Its jurisdiction is sometimes classified into three categories: (1) the exclusive; (2) the concurrent; and (3) the auxiliary. The first category includes the administration of trusts, and the remedies of injunction, specific performance of certain types of contracts, removal of clouds on titles, reformation of contracts, cancellation of documents, etc. The second class includes foreclosure of mortgages, accounting, and relief in cases of fraud. In the latter two instances, Chancery usually remains passive unless special circumstances are present and the remedy at law is inadequate. The third category includes a group of miscellaneous remedies designed to assist and render more effective the processes and judgments of the law courts, such as bills for discovery in aid of actions or unsatisfied judgments at law, injunctions to restrain transfers of stock in aid of attachments and execution, and the like. In

addition, the court possesses sundry statutory jurisdictions, such as the winding up of insolvent corporations, dissolution of partnerships, contruction of wills, etc.

The above sketchy outline of the jurisdiction of Chancery is not intended to be either complete or exact, but is stated merely by way of illustration to distinguish Chancery's jurisdiction from the jurisdictions of the law courts which give damages for tort or breach of contract, or award possession of real or personal property, or administer decedents' estates, or enforce the criminal laws of the State.

The origin of our Court of Chancery, and the development of its jurisdiction is rooted in English history. For present purposes, however, it is sufficient to say that we have had a Court of Chancery in New Jersey since 1705 when New Jersey was a British Colony; and, as may be expected, its inherent jurisdiction and much of its procedure is derived from the old English High Court of Chancery.[1]

By our first State Constitution, (July 2, 1776), the Governor, or in his absence, the Vice-President of the Council, was the Chancellor of the Colony, and he so continued until the Constitution of 1844.[2] The Constitution of 1844 provided that the Court of Chancery shall consist of the Chancellor,[3] who shall be appointed by the Governor by and with the consent of the Senate, for a term of seven years.[4]

In the early days of our State the business of the Court of Chancery was not great. It could, therefore, be handled by the Chancellor alone. by 1870, the business of the court had outgrown the ability of the Chancellor

1. West v. Paige, 9 N. J. Eq. 203 (1852); Southern Nat'l Bank v. Darling, 49 N. J. Eq. 398 (1892); Fraser v. Fraser, 77 N. J. Eq. 205 (1910)
2. First Constitution of New Jersey (1776), Sec. VIII
3. N. J. Constitution (1844), Art. VI, Sec. IV, Par. 1
4. N. J. Constitution (1844), Art. VII, Sec. II, Par. I

alone to conduct it, and it became necessary to devise some means whereby relief could be afforded. There was no power given by the Constitution to create additional judges in Chancery who could be independent, like the Associate Justices of the Supreme Court. The Chancellor in office at the time consulted with leading judges and lawyers and evolved the idea of appointing a Vice-Chancellor, and following that plan the Legislature made provision for creating the first Vice-Chancellor.[5] The number of Vice-Chancellors has been increased from time to time; there are ten Vice-Chancellors sitting in different parts of the State. The business of the Court is divided up among the Vice-Chancellors by general or special order of reference signed by the Chancellor.

For many years contested matrimonial cases were heard by the Vice-Chancellors, and the uncontested cases were referred to Special Masters of the court. But in 1933 the Chancellor appointed a group of 12 standing Advisory Masters who now handle all matrimonial litigation.[6] These Advisory Masters are paid out of the fees received by the court. They hold office at the pleasure of the Chancellor.

No matter what officer of the Court of Chancery handles a given matter, everything he does is done in the name of the Chancellor, and no decree has any validity unless the Chancellor's signature is endorsed thereon. Since the Chancellor appoints his officers, they are answerable to him only.

Criticisms Of The Court Of Chancery As Now Continued

The criticisms of the Court of Chancery as now constituted have been of two kinds: (1) objections to the Chancellor's sole appointing

5. In re Vice-Chancellors, 105 N. J. Eq. 759 (1930).
6. And see P. L. 1941, c. 307; R. S. 2:2-14

power of Vice-Chancellors, and to the fact that the Vice-Chancellors are not independent judges, as are the Justices of our Supreme Court; and (2) objections to the court as a separate judicial system.

The objections first noted are of a political nature and the pros and cons are obvious. The objections secondly noted require some discussion. During the last 100 years, there has been a strong movement in the United States and in England to bring about a fusion of procedure in law and equity. In 1848, New York adopted a Code of Civil Procedure which resulted in the abolition of the separate procedures of law and equity, and their fusion into a single action.

By the Judicature Act of 1873, the historically independent English common law courts and Court of Chancery were merged into one Supreme Court. All the old English courts were abolished. At the head of the new tribunal was placed the Lord Chancellor, the next in rank to him being the Chief Justice. Provision was made for the establishment of a uniform system of pleading and procedure for the various branches into which the new tribunal should be divided. It was also provided that wherever the rules of common law and of Chancery should conflict, the rules of the latter - equity - should prevail.

The new tribunal was authorized to subdivide itself into several divisions for the transaction of the various classes of business. It now consists of the Chancery Division, the King's Bench (common law) Division, and the Probate, Divorce, and Admiralty Division - the old familiar names being used to designate the various branches of the tribunal.

Similar mergers have taken place in most other states of the Union. Such a consolidation exists in the federal courts.

The 1942 Commission on Revision of the New Jersey Constitution

recommended a unified court system. The revised Constitution proposed by the Commission provided for a Superior Court, immediately below the Supreme Court (the court of last resort), possessing original jurisdiction throughout the State in all cases. The Superior Court was to be divided into: (a) a law section, to exercise civil, criminal and matrimonial jurisdiction, and (b) an equity and probate section, to exercise all other jurisdiction of the court.[7] In all matters presenting a conflict or variance between equity and law, equity was to prevail, and subject to rules of the Supreme Court, every controversy was to be fully determined by the justice hearing it.[8] Commenting upon these provisions, the Commission noted that a merger of law and equity had long since taken place in practically every state and in the federal system, and expressed its considered judgment that a like merger in New Jersey "would tend to bring our practice in line with that of the Federal Courts and other American jurisdictions."[9]

The revised Constitution agreed upon by the 168th Legislature of New Jersey in 1944 for submission to the electorate, also provided for a unified court system and contained provisions like those cited from the 1942 draft. The 1944 draft also provided that either section of the Superior Court was to exercise the jurisdiction of the other when the ends of justice so required.[10]

Briefly, the principal argument of the opponents of a unified court is that the separate court system results in the evolution of better law and equity, in the training of better judges, and in specialization. All this

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7. Report of the Commission on Revision of the New Jersey Constitution, 1942, p. 47. Art V, Sec. III, Par. 2
8. Ibid, p. 46. Art. V, Sec. I, Par. 2
9. Ibid, p. 23
10. Art. V, Sec. III, Pars. 2 and 3, and Sec. I, Par. 2.

brings about a better administration of justice.

The proponents of unification argue that our equity jurisprudence and the specialization of the judges need not be sacrificed by a fusion, particularly if we adopt a plan like the English system, of having Chancery as a special division in a unified court, with a permanent personnel administering equity. They further contend that the present system results in delay, piecemeal litigation, jurisdictional disputes, duplication of effort and expense, and the shunting of cases from court to court until the parties are exhausted; and that sometimes the rights of the parties are lost in the shuffle. They also declare that even experienced lawyers have difficulty, at times, in determining the proper forum; and that the maintenance of separate courts of law and equity has stunted the development of miscellaneous remedies such as proceedings under the Declaratory Judgment Act and the Uniform Fraudulent Conveyance Act, and has also handicapped the law courts in the effective enforcement of their own processes.[11]

The Role of Equity in a Unified Court

The proponents of unification argue that if we have a unified court modeled on the modern English system, many of the deficiencies of our present Chancery set-up will be eliminated, and yet the prestige of our equity law will be preserved.

Under a consolidated system, the traditional equitable remedies involved in the administration of trusts, abatement of nuisances, actions for injunctions, foreclosure of mortgages, specific performance, receiverships, etc.,

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11. See generally, Clapp, Alfred C., "Chancery as a Section of a Unified Court," 64 N. J. L. J. 336, 355. For proponents who appeared before the 1942 Joint Legislative Committee which considered the Report of the Commission on Revision of the New Jersey Constitution, see Record of Proceedings before the Joint Committee, 1942, pp. 283-5, 289, 296, 559-60, 592; for other views, see pp. 591, 593, 599, 603, 604-5, 607-8.

will be handled by the Chancery Division. But ordinary equitable defenses arising incidentally in common law actions will be adjudicated by the trial judge sitting as Chancellor.

Examples are cited to illustrate the merits and efficiency of such system:

1. A is in possession of a factory under an agreement to obtain a lease. The landlord brings an action in ejectment against A because of an alleged breach of the agreement. Under the present system A is compelled to file suit in Chancery for specific performance of the contract to give him a lease. He cannot defend at law on the ground that he is in possession under an agreement to give a lease. Under a unified system, the trial Judge, would view the situation in the light of equitable principles and treat A as the tenant under the lease.

2. A has a claim against a decedent's estate. The executor carries on settlement negotiations with A until the statute of limitations runs, and then disallows the claim. In an action on the claim, the executor pleads the statute of limitations. Under the present system, A is compelled to bring suit in Chancery to restrain this defense. But under a unified court, the trial judge could relieve the plaintiff of this defense on the ground of equitable estoppel.

3. In an action at law, A obtains a judgment against B and wants to levy on stock in a New Jersey corporation which B owns and has concealed. To make the levy effective, A must presently obtain an injunction from Chancery restraining B's transfer of his stock. Under a unified court, the trial judge could issue such a restraint in aid of the execution.

4. A brings an action against C to recover on a bond signed by B and C. C. wishes to defend on the ground that he was not a principal, that he signed as a surety for B, to A's knowledge, and that B was discharged by A; hence C was likewise discharged. Under the present system, the law court has no jurisdiction to entertain such a defense. C must therefore sue in Chancery where he can prove that he was a surety and not a principal. Under a unified court, that defense could be entertained by the trial judge.

5. A brings an action to abate a nuisance against B. Under the present system Chancery can only grant an injunction. It cannot award damages. That remedy must be sought at law. Under a unified system, the court could award the damages as part of complainant's relief.

Those who have studied the operations of the present legal system declare that these illustrations can be multiplied many times over. The unified court proposed under both the 1942 and 1944 revised drafts of the Constitution, would eliminate the patent deficiencies of our present procedure and at the same time preserve our equity jurisprudence free of its present handicaps.