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EQUITY JURISDICTION IN THE FEDERAL COURTS

Three lectures, delivered by the writer of this article, in November, 1925, before the Law School of the University of Pennsylvania,¹ treat of the place of common law in our federal jurisprudence; here, the purpose is to examine the equity side of the same field, to show that, in the national courts, there is a chancery jurisdiction which stands quite free of other juridical powers, and that this is accompanied by a body of uniform rules and remedies, not only separate and distinct from those of the various states but entirely independent of, and uncontrolled by, the equity systems there prevailing. In order, however, to understand the genesis, nature and development of federal equity jurisdiction, it is necessary to consider the subject in its relation to the corresponding, though dissimilar, growth of equity jurisdiction in the states. From this standpoint, the development of equity powers in the federal courts is highly important,—even more important, perhaps, than the development which has taken place on the common law side of those tribunals; for, as Professor Beale has expressed it, “In a system which has, separately, law and equity, the doctrines of equity represent the real law.”²

In some of the leading colonies, equity, as a remedial system, either had no existence at all or, where it did exist, suffered from

¹ Published in 74 U. OF PA. L. REV. 109, 270, 367 (1926).

² J. H. Beale, *Equity in America*, 1 CAMBRIDGE L. J. 21, 25 (1921).

very imperfect and irregular administration. Then, again in early times, and even after the adoption of the federal constitution, equity jurisdiction encountered considerable hostility from the people; as a consequence, it developed more slowly than the jurisdiction appertaining to courts of common law.³

Various reasons have been assigned for the existence of this early American antipathy to equity jurisdiction. It may, to some extent, have been a later reflection of the spirit of antagonism to the Chancellor's power, which existed in England prior to the Commonwealth, and which we find expressed by Selden,⁴ and other writers of his period; Selden characterized equity as a "roguish thing." This explanation is appreciable when we recall that the administration of equity was not then based on settled principles, but depended upon the exceedingly flexible conscience of the Chancellor, whose ruling were contained in reports which Judge Story subsequently described as "shadowy, obscure and flickering."⁵ As Professor Maitland points out,⁶ under the Commonwealth,

"vigorous attempts were made to reform [equity] procedure; some were for abolishing it altogether, since it was not easily forgotten that the Court of Chancery was the twin sister of the Court of Star Chamber."

Probably this feeling of hostility in England colored the minds of the colonists, but there were other and stronger causes which tended to foster the continuing antagonism to chancery jurisdiction.

The supplicatory form of a bill in equity was opposed to the religious principles of the Puritan,⁷ and, among the people generally, no doubt the popular distrust of the legal profession⁸ had some adverse effect; these factors may have operated to a certain

³ I STORY, EQUITY (14th ed., 1918), par. 56.

⁴ SELDEN, TABLE TALK, chapter on Equity.

⁵ Vidal v. Girard's Exrs., 2 How. 127, 193 (U. S. 1844).

⁶ MAITLAND, EQUITY (1909) 10.

⁷ Harrington Putnam, *Early Administration of Equity in this Country*, 90 CENT. L. J. 423, 426 (1920).

⁸ WARREN, HISTORY OF THE AMERICAN BAR-LAW WITHOUT LAWYERS (1911) 3-18.

extent in making difficult the progress of equity, but they cannot be considered the determining causes. The fundamental explanation is probably to be found in the fact that the colonists regarded equity as an appanage of the Crown's prerogative, and, therefore, inimical to their individual liberties.⁹ Chancellors were accordingly regarded as "royalist persons administering the law of an effete monarchy,"-law "which had never taken foothold in the democratic part of America";¹⁰ this was particularly true of New England.

In Pennsylvania, various efforts were made to erect a separate court of chancery, one of which succeeded, and for a brief period, 1720 to 1736, such a tribunal functioned, but its influence was limited; later, Pennsylvania, in the absence of the court of chancery, which had been abolished, administered equitable rights and remedies through common-law forms. Separate courts of chancery had been erected in other parts of the country, particularly in New Jersey and in the South, but, generally, no uniform or substantial equity jurisprudence could be said to have developed throughout the colonies.

At the time of the ratification of the Constitution, Hamilton, writing in the *Federalist*¹¹ on the proper scope of trial by jury, remarked the material diversity which prevailed in the several states, owing to differences in the nature and structure of their various courts, both as to the extent of trial by jury and the modification of that institution as used in civil cases; and in this connection he took occasion to indicate where and how courts of equity were functioning at that time.

"In New Jersey," he wrote, "there is a court of chancery which proceeds like ours [New York]. . . . In Pennsylvania . . . there is no court of chancery and its common law courts have equity jurisdiction. Delaware has in these respects imitated Pennsylvania. Maryland approaches more nearly to New York, as does also Virginia, except that the latter has a plurality of chancellors. North

⁹ See 3 BL. COMM. *49, for brief history of equity courts, connecting them with the king and his privy council.

¹⁰ J. H. Beale, *op. cit. supra* note 2 at 23.

¹¹ No. 83.

Carolina bears most affinity to Pennsylvania; South Carolina to Virginia. . . . In Georgia there are none but common-law courts. . . . In Connecticut they have no distinct courts . . . of chancery [but] their common-law courts have . . . to a certain extent, equity jurisdiction. In cases of importance their general assembly is the only court of chancery. Rhode Island is, I believe, . . . pretty much in the situation of Connecticut. Massachusetts and New Hampshire, in regard to the blending of law and equity, . . . are in a similar predicament."

The diversity in equity jurisdiction pointed out by Hamilton, must have been considered an important fact by the first Congress when it undertook to make effective the jurisdiction conferred on the national courts by the judiciary article of the federal Constitution. This provides that the judicial power of the federal government shall "extend to all cases at law or in equity arising under the Constitution and laws of the United States," etc.; and in giving effect to this grant of power, it was important to determine by what principles of law and equity the federal courts should be bound in carrying out their authorized jurisdiction. On the common law side there was less difficulty than in the field of equity, because the common law of each state was more substantially developed and more accessible as a system, since, in substance, it was usually the unwritten law of the mother country moulded to suit the new condition of colonial life; but, as already pointed out, this was not so on the equity side, for such a condition of affairs was prevented by the early hostility to that jurisdiction, which still persisted when the first Congress met to draft the Judiciary Act, in 1789. At that time there was a strong anti-chancery party, whose persistent objectors made its influence felt during the course of debate on the various sections of the act, particularly on those dealing with equity; and it succeeded in affecting many ultimate provisions of the statute. This was particularly true, as Mr. Warren has shown,¹² in regard to Section 16. When introduced, Section 16 provided that "suits in equity shall not be sustained in either of the courts of the United States where

¹² Charles Warren, *New Light on the History of the Federal Judiciary Act*, 37 HARV. L. REV. 49, 96 (1924).

a remedy may be had at law"; as soon as discussion began on this part of the act, "the batteries of those who opposed all equity jurisdiction were at once opened,"¹³ and the subsequent consideration of the Section "gave rise to one of the hottest contests" of the session.¹⁴

It was decided to retain the section, "and the phraseology," says Mr. Warren, "was apparently strengthened in favor of equity jurisdiction by adding the word 'complete' before the word 'remedy.'" Later, it was moved to insert the words "plain, adequate and" before the word "complete";¹⁵ and this was adopted, making the section read "suits in equity shall not be sustained . . . where a plain, adequate and complete remedy may be had at law." This, as we may see, required not only the existence of a remedy at law, but a "plain, adequate and complete" one, to oust equity jurisdiction in the federal courts.

Some indication of the state of feeling during the debate may be obtained from Maclay, who was bitterly opposed to the section. He states:

"The lawyers were in a rage for speaking; many things were said in favor of chancery that I knew to be wrong . . . ; the gentlemen of the bar in the house seemed to have made common cause of it to push the power of chancery as far as possible."¹⁶

But, apparently, those on the other side were not dormant, for a further example of an attempt by the anti-chancery party to revolutionize equity jurisdiction is noted by Mr. Warren. The Senate, it appears,

"had amended . . . the original draft which required that trials of facts in the district and circuit courts (except in admiralty and maritime causes) should be by jury, by inserting a further provision that there should be a similar jury trial of facts 'on any hearing of a cause in equity in a circuit court.' This provision, which would have revolutionized

¹³ *Ibid.*, 96.

¹⁴ *Ibid.*, 96.

¹⁵ *Ibid.*, 97.

¹⁶ MACLAY, SKETCHES OF DEBATE IN FIRST SENATE OF THE UNITED STATES (Harris ed.) July 1; quoted in Warren, *ibid.*

equity procedure, the Senate now voted to expunge, not being willing to yield any further to the anti-equity faction. An attempt later by Maclay and Ellsworth, supported by R. H. Lee, to reverse this vote, failed."¹⁷

Maclay, in speaking of Ellsworth's position, said that he did not know whether it was the "effect of judgment, whim or caprice," but that he was, "generally, for limiting the chancery powers."¹⁸ Maclay himself, it seems, "fought against equity chiefly on the ground that it deprived parties of jury trials and resulted in costs, delays and innumerable reviews. He believed the general opinion over the Union, excepting amongst lawyers, was opposed to chancery courts."¹⁹

Despite the numerous endeavors of the anti-chancery party to restrict the equity jurisdiction of the federal courts, the statute as finally adopted afforded considerable opportunity for development in that field. It was ordained by the Process Act of 1789²⁰ that

"the forms of proceedings in causes of equity . . . shall be according to the course of the civil law."

This Act, by its own terms, was to be in force only until the close of the next session of Congress. It was therefore replaced by the Act of 1792, which provides that

"the forms and modes of proceeding in suits . . . of equity [shall be] according to the principles, rules, and usages which belong to courts of equity . . . as contradistinguished from courts of common law; except so far as may have been provided for by the act to establish the judicial courts of the United States, subject, however, to such alterations and additions as the said courts respectively shall in their discretion deem expedient, or to such regulations as the Supreme Court of the United States shall think proper from time to time by rule to prescribe."²¹

¹⁷ Warren, *ibid.*, 99.

¹⁸ MACLAY, July 9, quoted in Warren, *ibid.*, 99n.

¹⁹ Warren, *ibid.*, 99.

²⁰ 1 STAT. 93.

²¹ 1 STAT. 276.

This clause reached its final form in the Revised Statutes, where it is worded as follows:

“The forms and modes of proceeding in suits of equity . . . shall be according to the principles, rules and usages which belong to courts of equity . . ., except when it is otherwise provided by statute or by rules of court made in pursuance thereof.”²²

By Section 11 of the Judiciary Act of 1789,²³ it was ordained that

“Circuit courts shall have original cognizance [Revised statute uses ‘jurisdiction’ instead of ‘cognizance’] of all suits of a civil nature at common law or in equity where the matter in dispute exceeds the sum of five hundred dollars, and an alien is a party, or the suit is between a citizen of the state where it is brought and a citizen of another state”;

and by Section 16, that

“Suits in equity shall not be sustained in either of the courts of the United States in any case where a plain, adequate and complete remedy may be had at law,”²⁴

which means, of course, that jurisdiction in equity can be invoked in all appropriate cases where no such common law remedy is available.

In the same act, by Chapter 20, Section 34,²⁵ “inserted at the very end of the statute, between two sections dealing exclusively with criminal matters,”²⁶ Congress directed that

“the laws of the several states, except where the Constitution, treaties or statutes . . . otherwise require or provide, [should] be regarded as rules of decision in trials at common law in the courts of the United States in cases where they apply.”

²² REV. STAT. § 913.

²³ 1 STAT. 78, REV. STAT. § 629.

²⁴ 1 STAT. 82, REV. STAT. § 723.

²⁵ 1 STAT. 92, REV. STAT. § 721.

²⁶ Warren, *op. cit. supra* note 12 at 81.

Probably no section of the Judiciary Act proved of greater importance in the subsequent history of the federal judicial system than the one just quoted. Though many believe it was intended that the national courts should follow the common as well as the statutory law of the state in which the trial tribunal happened to be sitting, yet nothing is said in the above-quoted section as to following state laws in equity suits; and it is largely due to this omission that, on the chancery side, the federal courts have been able to develop consistently a body of uniform rules and principles, uncontrolled by and independent of the legislation of the various states of the Union.

By the Act of 1792, commonly known as the "Process Act," Congress confirmed the modes of common law proceeding then used in the federal courts and further declared that, so far as the courts of the United States are concerned, the modes of proceeding in equity should be "according to the principles, rules and usages which belong to courts of equity . . . as contradistinguished from courts of common law," except where such proceeding is especially provided for by rules of court or federal statute.²⁷

"It is material to consider," said Mr. Justice Todd in an early case,²⁸ "whether it was the intention of Congress, by these provisions, to confine the courts of the United States, in their mode of administering relief, to the same remedies, and those only, with all their incidents, which existed in the courts of the respective states. In other words, whether it was their intention to give the party relief at law where the practice of the state courts would give it, and relief in equity only when, according to such practice, a plain, adequate and complete remedy could not be had at law."

After stating this question, the learned justice went on to say:

"In some states of the Union, no court of chancery exists to administer equitable relief. In some of those states, courts of law recognize and enforce in suits at law, all the

²⁷ 1 STAT. 275, REV. STAT. § 913.

²⁸ *Robinson v. Campbell*, 3 Wheat. 212, 222 (U. S. 1818).

equitable claims and rights which a court of equity would recognize and enforce; in others, all relief is denied, and such equitable claims and rights are to be considered as mere nullities at law. A construction, therefore, that would adopt the state practice, in all its extent, would at once extinguish, in such states, the exercise of equitable jurisdiction."

Early in the history of federal jurisprudence (1818), it was held²⁹ that to effectuate the purposes of Congress, equity suits were to be instituted and conducted in the courts of the United States, not according to the practice of state courts in this particular, but according to the practice prevailing in the courts of England, whence we derived our knowledge of equity principles; and, later, Mr. Justice Story said:³⁰

"The chancery jurisdiction given by the Constitution and laws of the United States is the same in all the states of the Union and the rule of decision is the same in all," adding that, "In the exercise of that jurisdiction, the courts of the United States are not governed by the state practice; . . . the remedies in equity are to be administered, not according to the state practice, but according to the practice of the courts of equity in the parent country [at the time of the adoption of the Constitution] . . ., subject, of course, to the provisions of acts of Congress and to such alterations and rules as in the exercise of the powers delegated by these acts, the courts of the United States may, from time to time, prescribe."

Still later, the federal Supreme Court, speaking by Mr. Justice Davis,³¹ repeated the earlier doctrine that

"the jurisdiction of the courts of the United States over controversies between citizens of different states cannot be impaired by the laws of the states, which prescribe the modes of redress in their courts, or which regulate the distribution of their judicial power."

²⁹ *Ibid.*

³⁰ *Boyle v. Zacharie*, 6 Pet. 647, 658 (U. S. 1832).

³¹ *Payne v. Hook*, 74 U. S. 425, 430 (1868).

He said, further :

“If legal remedies [in the federal courts] are sometimes modified to suit the changes in the laws of the states, and the practice of their courts, it is not so with the equitable; the equity jurisdiction conferred on the federal courts is the same that the High Court of Chancery in England possesses, is subject to neither limitation nor restraint by state legislation, and is uniform throughout the different states of the Union.”

Numerous authorities in unbroken sequence have firmly established the doctrine which the earlier federal cases laid down; so that, not only are both the principles and practice of the High Court of Chancery recognized in the administration of equity in the national courts, but, so far as these tribunals are concerned, the administration is uniform throughout the Union, and it is settled law that courts of the United States do not lose any of their chancery jurisdiction in states where no equity courts exist or in states where the rights and remedies may be different from those administered by the English Court of Chancery. The effect, therefore, of the interpretation which the federal courts have given to the grant of equitable jurisdiction contained in the federal Constitution, and statutes passed in conformity with it, has been to create a distinct body of rules and practice in equity administration, uncontrolled by state legislation, so that, says Pomeroy,

“it is the same in Louisiana with its civil law code;³² in California, with its code combining legal and equitable doctrines; and in New Jersey, which has preserved the ancient English system of common-law equity almost unaffected by modern legal reform. Whatever may be the municipal law of any particular state, either in its substance or its form, the United States courts in that state preserve their equitable jurisdiction, and administer their equitable jurisprudence unchanged by such local legislation, [and] it follows as a necessary consequence from this principle, that the formed system of procedure now prevailing in many states and territories, whereby all distinction between suits in equity and at

³² *Bein v. Heath*, 12 How. 168 (U. S. 1851).

law is abolished, . . . has not in the least affected either the doctrines of equity jurisprudence administered, nor the extent and modes of equity jurisdiction exercised, by the national courts situated and acting within the same commonwealth." ³³

Thus state laws subtracting from or limiting the scope of equity do not affect the chancery jurisdiction held by the national courts. This principle is vital to the proper administration of federal equity jurisprudence; for, otherwise, owing to the varying development equity has undergone in the several states of the Union, not only would the remedies and procedure in one United States court be different from, and perhaps in conflict with those in another such court, but the express direction of Section 16 of the Judiciary Act, that "suits in equity shall not be sustained . . . in any case where a plain, adequate and complete remedy may be had at law," as well as the right to trial by jury guaranteed in the seventh amendment of the United States Constitution, might be impaired in federal courts sitting in those states which have abolished the distinction between legal and equitable actions or in other ways have varied their equity practice.

While state legislation "cannot influence federal jurisdiction negatively so as to narrow it, [yet in certain situations] it may operate affirmatively so as, at least indirectly, to enlarge it." ³⁴ In order to understand this rule and the types of situations state legislation may affect, it is important to note the distinctions which exist between various popular uses of the word "jurisdiction." Treating of this point, the Illinois Supreme Court said in a recent case:

"While jurisdiction in its proper sense means authority to hear and decide a cause, it is common to speak of jurisdiction in equity . . . as not relating to the power of a court to hear and determine a cause but as to whether it ought to assume the jurisdiction and hear and decide the cause, [so that] we often find . . . jurisdiction denied where [what really is meant is that] the power exists but ought not to be exercised, and in this sense, [when applied

³³ I POMEROY, EQUITY JURISPRUDENCE § 292.

³⁴ *Ibid.* § 293.

by a court of equity] jurisdiction . . . means a want of equity and not a want of power;"³⁵

whereas when it is said in judicial opinions that

"a state law cannot give jurisdiction to a federal court but may give a substantial right which will be enforced in a federal court, jurisdiction in the strict sense is [usually] meant."³⁶

The rule as to state legislation affecting federal equity jurisdiction may be put tersely thus: The power of the national courts to hear and decide equity causes cannot be impaired by state legislation, but the primary rights and privileges of litigant parties may be governed by or created by the laws of a state, and if the elements of federal jurisdiction are present, such enlarged or new rights or privileges will be protected, maintained and enforced by the United States courts in appropriate equity proceedings.³⁷

It is no barrier to federal equity jurisdiction that rights or privileges of state creation may exist in no other state of the Union; if the rights or privileges in question fall within the scope of the general . . . chancery powers which the federal government has bestowed upon its courts, they will be enforced for the jurisdiction to that end comes only from national law.³⁸ The federal courts, when enforcing substantive rights of state creation, are of course bound by the Constitution of the United States and all relevant federal statutes, hence the state law

"cannot control proceedings in the federal courts so as to do away with the force of [Section 16 of the Act of 1789,] declaring that 'suits in equity shall not be sustained in either of the courts of the United States in any case where a plain, adequate and complete remedy may be had at law,' or the constitutional right of parties in actions at law to a trial by jury."³⁹

³⁵ *Miller v. Rowan*, 251 Ill. 344, 348, 96 N. E. 285, 287 (1911).

³⁶ 33 YALE L. J. 193 Note (1924), citing *Ex parte McNeil*, 13 Wall. 236 (U. S. 1871).

³⁷ *Lorman v. Clarke*, 2 McLean 568 (C. C. 1841).

³⁸ C. A. HUSTON, *THE ENFORCEMENT OF DECREES IN EQUITY*, I HARVARD STUDIES IN JURISPRUDENCE 28 (1915).

³⁹ *Whitehead v. Shattuck*, 138 U. S. 146, 152 (1890).

Where there is, under the laws of certain states, a blending of legal and equitable actions, this will not be permitted in the federal courts if such a course might result in depriving a party of his constitutional right to a jury trial. As Mr. Justice Baldwin said in *Baker v. Biddle*:⁴⁰

“Whenever a court of law is competent to take cognizance of a right, and has power to proceed to a final judgment, which affords a remedy, plain, adequate and complete, without the aid of a court of equity, the plaintiff must proceed at law, because the defendant has a constitutional right of trial by jury. If the right is only an equitable one, or, if legal, the remedy is only equitable, or both legal and equitable, partaking of the character of both, and a court of law is unable to afford a remedy according to its old and settled proceedings commensurate with the right, the suit for its assertion may be in equity.”

Similarly, in *Boyce's Executors v. Grundy*,⁴¹ Mr. Justice Johnson said:

“This court has often been called upon to consider Section 16 of the Judiciary Act of 1789, and as often, either expressly or by the course of its decisions, has held that it is merely declaratory, making no alteration whatever in the rules of equity on the subject of legal remedy. It is not enough that there is a remedy at law; it must be plain and adequate, or, in other words, as practical and efficient to the ends of justice and its prompt administration as the remedy in equity.”

In *Scott v. Neely*,⁴² Mr. Justice Field observed that

“All actions which seek to recover specific property, real or personal, with or without damages for its detention, or a money judgment for breach of a simple contract, or as damages for injury to person or property, are legal actions, and can be brought in the federal courts only on their law side. Demands of this kind do not lose their character as claims cognizable in the courts of the United States only on

⁴⁰ 1 Bald. 394, 405 (C. C. 1831).

⁴¹ 3 Pet. 210, 215 (U. S. 1830).

⁴² 140 U. S. 106, 110 (1890).

their law side, because in some state courts, by virtue of state legislation, equitable relief in aid of the demand at law may be brought in the same action. Such blending of remedies is not permissible in the courts of the United States."

The authorities thus far reviewed show that, while the several state legislatures may not affect equitable procedure or remedies administered in federal courts, yet they may, within the limitations already discussed, create new substantive rights and privileges enforceable on the chancery side of those tribunals; therefore it becomes an important question to determine whether a particular state enactment deals with substantive rights or privileges or with only remedial adjective rights. The former will be recognized by the federal courts, while the latter will not;⁴³ and in order to ascertain in any particular case what effect will be given by the federal courts to these respective classes of rights or privileges, this distinction must be kept in mind. Consequently, state statutes

"which allow a court in equity to accomplish a result which could be attained by an action at law give a remedial adjective [privilege], and its enforcement would deprive the litigant of his constitutional right to trial by jury."⁴⁴

This result is not permitted in the United States courts, and federal equity jurisdiction, though very broad, is limited accordingly; it is limited also by the rule that it is to be given effect only when no plain, complete and adequate remedy exists at law.

The United States courts, then, by interpreting the language of the original statutes creating their equity jurisdiction as conferring those powers which were exercised by the High Court of Chancery in England at the time of the adoption of the Constitution, have been enabled to administer, within the above-noted restrictions, a system of equity which is not only uniform throughout the Union but is independent of and uncontrolled by the local legislation of the various states in which the courts may

⁴³ See 33 *YALE L. J.* 193 (1924) for an analysis of the distinction.

⁴⁴ *Ibid.*, 195.

be sitting. Fortunately for the ultimate growth of national equity jurisdiction, the early colonial and state hostility to chancery powers did not operate materially to restrict the federal judiciary in that field; on the contrary, it is more likely that the fact of the absence of any uniform or substantial chancery jurisdiction prevailing in the states at the time of the ratification of the Constitution really proved a boon which made possible the development in the federal courts of an equity system wholly national in character.

The strength and flexibility of the system is assured, and with the increasing complexity of modern transactions, it no doubt will expand to meet the demands of changing conditions which require equitable treatment. This expansive power was well indicated by Mr. Justice Brewer, of the United States Supreme Court, when he said:

“It is a mistake to suppose that for the determination of equities and equitable rights we must look only to the statutes of Congress; the principles of equity exist independently of and anterior to all congressional legislation, and the statutes are either annunciations of those principles or limitations upon their application in particular cases . . . ; we must bear in mind the general principles of equity and determine rights upon those principles except as they are limited by special statutory provisions.”⁴⁵

Whatever place in our federal jurisprudence the writers on the subject may assign to the common law, there undoubtedly has developed an equity system which may truly be called national.

Robert von Moschzisker.

⁴⁵U. S. v. Detroit Lumber Co., 200 U. S. 321, 339 (1905). See also Lorman v. Clarke, *supra* note 37, which contains a good discussion.