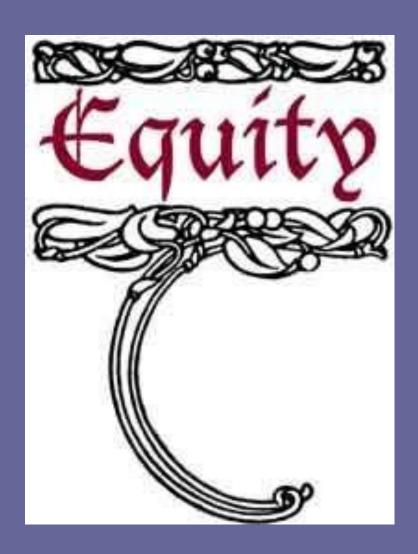
Course name- LL.B 4<sup>th</sup> sem Subject – Equity Teacher – Mrs. Aakanksha Concept – Historical Development of Equity

# HISTORICAL DEVELOPMENT OF EQUITY

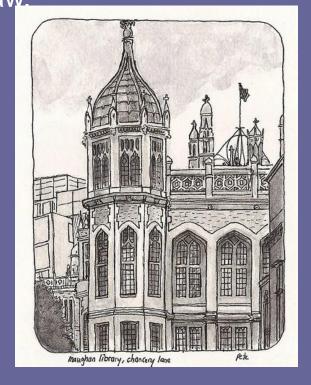




#### Chancellor

 The most important person next to the King.

 Chancery: Issue royal writs which began an action at law.



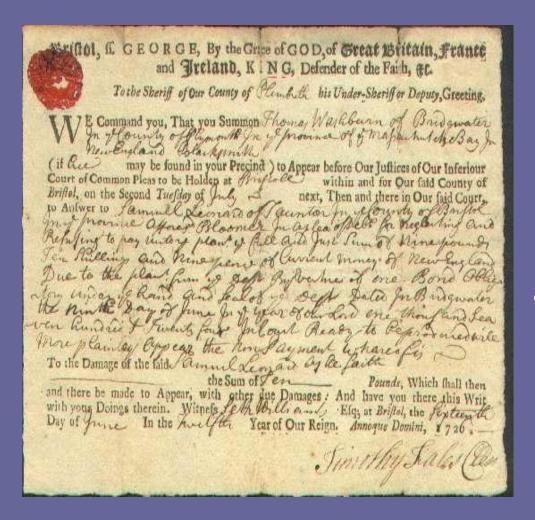


Aggrieved plaintiff who was with dissatisfied the Law sysCorrandits failure to uphold justice would petition to the King.



# 1. The writ system (13th Century)

- A writ is simply a document setting out the details of a claim.
- Over a period of time the writ system became extremely formal and beset with technicalities and claims would only be allowed if they could fit into an existing writ.
- The rule was 'no writ, no remedy'.
- Even if a writ was obtained, the judges would often spend more time examining the validity of the writ than the merits of the claim.



- •In 1258 the Provisions of Oxford forbade the issue of new writs without the consent of the King in Council.
- •Thus, a plaintiff with a cause of action which did wolts to we wisting remedy in the wexisting Law courts.
- •As a result the common law became rigid and the rules operated unjustly.

# 2. The jury system



• The juries were easily intimidated and corrupted.

## 3. Inadequate remedy

- Damages as the only common law relief always proved to be inadequate.
- More often than not, petitioner was unable to obtain it because of the disturbed state of the country, or the power and wealth of the defendant who might put improper pressure on the juries.

#### 4. Formalities

The common law paid too much attention to formalities.
 E.g. if a contract was made which required written evidence for its enforcement, then lack of such evidence meant that the common law courts would grant no remedy.

## Petitions to the King were sent to the Chancellor



- •Originally, the Chancellor did not have any clearly defined jurisdiction.
- •The Chancellor dispensed justice remedying the Common Law on grounds of fairness, conscience and natural justice.
- •In remedying the Common Law, the Chancellor refused to use juries, questioned the parties himself with questions of fact and issued subpoenas.
- •In the absence of fixed principles, decisions made depended upon the Chancellor's personal ideas of right and wrong. (Keeper of the King's Conscience)

- Thus, equity varied according to the conscience of the Chancellor, hence 'equity varied with the length of Chancellor's foot'.
- Petitions were heard in the Chancellor's office, which at the end of 14th Century evolved into Court of Chancery.

#### Conflict: Equity vs. Common Law

- For a long time, there was close consultation between the Chancellor and the Common Law judges as to the types of case in which relief should be granted.
- There were instances whereby the Chancellor sometimes sat at the Common Law court and vice versa.

# Conflict: Equity vs. Common Law

- Conflicts were also reduced as equity acts in personam, failure to comply with the Chancellor's order would be contempt of court.
  - Scott J " The jurisdiction of the court to administer trust is an in personam jurisdiction".
- The Court of Equity (or Chancery) became very popular because of its flexibility; its superior procedures; and its more appropriate remedies.
- Conflict arose in the Century as the Chancellor extended his jurisdiction.

- \* 'Common injunctions' issued by the Chancellor became the centre of dispute even though a judgment was technically good, he was entitled to set it aside where it had been obtained by oppression, wrong and bad conscience.
- Earl of Oxford's Case (1616) 1 Rep Ch 1
   The common law court gave a verdict in favour of one party and the Court of Equity then issued an injunction to prevent that party from enforcing that judgement. The dispute was referred to the King who asked the Attorney-General to make a ruling. It was decided that in cases of conflict between common law and equity, equity was to prevail.
- During the later part of 18<sup>th</sup> Century, the Court of Chancery experienced its own downfall.

# **Settled development of Equity**

- •Lawyers began to be appointed as Chancellors with the first appointment of Lord Nottingham (1673-1682) 'Father of Modern Equity' equity was systemized, classifications to trusts.
- •Lord Hardwicke (1736-1756) Laid down general principles of equity.
  - Lord Eldon (1801-1827)

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- Strengthened the idea that decisions must be based on precedents, he also consolidated principles developed by his predecessors.
- •By 19<sup>th</sup> Century, equity transformed into a system of law almost as fixed as the Common

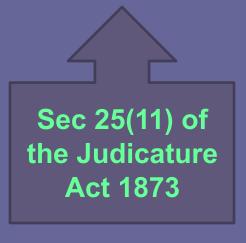


# Fusion of the Administration of Law and Equity

#### ☐ The introduction of Judicature Act 1873 and 1875.

- To solve the persistent problems causedby the overlap Common Law and Equity.
- The old separate courts of common law and equity were abolished.
- Out went the Courts of Common Pleas, King's Bench, Exchequer, and Court of Chancery.
- In came the Supreme Court of Judicature, with each division exercising both equitable and legal jurisdiction.
- Thus any issue can be adjudicated in any division; and any point of law or equity can be raised and determined in any Division; but, for the sake of administrative convenience, cases are allocated to the divisions according to their general subject-matter.

- Pugh v Heath (1882), per Lord Cairns; Thus the court "is now not a Court of Law or a Court of Equity, it is a Court of complete jurisdiction."
- It was forseen that a court which applied the rules both of common law and of equity would face a conflict where the common law rules would produce one result, and equity another.



"In all cases in which there was a variance conflict or between equity and the the rules of common law with the rules of the same matter, the former shall prevail".

#### **Fusion Debate**



- •Merely a fusion of administration, "the two streams of jurisdiction, though they run in the same channel, run side by side and do not mingle their waters". *Ashburner* 
  - United Scientific Holdings v Burnley

    "..to perpetuate a dichotomy between rules of equity and rules of common law is conducive to erroneous conclusions.." Diplock

•Mummery LJ – The Judicature Act were intended to achieve procedural improvements in the administration of law and equity in all courts.



- •The AG "The Bill (purpose of Judicature Act) was not one for the fusion of law and equity. Law and equity would remain if the Bill passed, but they would be administered concurrently, and no one would be sent to get in one Court the relief which another court had refused to give".
  - Reasserted in Salt v Cooper

#### Past Years'

- 1. According to Maitland "equity is but a gloss upon the law". Do you agree? State your reasons.
- 2. Explain how the Courts of Chancery in England developed the principles of equity.
- 3. The main thrust of the creation of equity was to address the problems at common law in the early days of its inception in England. Explain how equity overcame the rigidity of the doctrine of judicial precedent.
- 4. "The whole of the jurisdiction of the court of equity was acquired by the assumption of the principle of deciding according to conscience in the administration of justice, where the courts of law furnished no redress, or their judgments were hard and oppressive, and it is on this broad basis, that the court of equity now rests its authority" (Zephaniah Swift, 1796).