A Historical Sketch of the Development of Equity in Pennsylvania

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The Development of Equity in Pennsylvania.

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<table>
<thead>
<tr>
<th>TABLE OF CONTENTS.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>The English Court of Chancery</td>
<td>1</td>
</tr>
<tr>
<td>The Legislative and Judicial Powers given by Charter</td>
<td>3</td>
</tr>
<tr>
<td>William Penn opposed to Chancery Courts</td>
<td>4</td>
</tr>
<tr>
<td>Governor and Council, an Equitable Tribunal</td>
<td>6</td>
</tr>
<tr>
<td>Foundation of Mixed System of Law and Equity</td>
<td>8</td>
</tr>
<tr>
<td>Attempts to Establish a Court of Equity</td>
<td>10</td>
</tr>
<tr>
<td>Gov. Keith sets up a Court of Chancery</td>
<td>13</td>
</tr>
<tr>
<td>Court of Chancery Abolished</td>
<td>16</td>
</tr>
<tr>
<td>Equity and the Constitution of '76</td>
<td>18</td>
</tr>
<tr>
<td>Equity and the Constitution of '90</td>
<td>19</td>
</tr>
<tr>
<td>The State</td>
<td>21</td>
</tr>
<tr>
<td>Equity through Common Law Forms</td>
<td>22</td>
</tr>
<tr>
<td>Equity and the Jury</td>
<td>27</td>
</tr>
<tr>
<td>The Act of 1836</td>
<td>29</td>
</tr>
<tr>
<td>The Act of 1857</td>
<td>30</td>
</tr>
<tr>
<td>Subsequent Acts</td>
<td>31</td>
</tr>
</tbody>
</table>
This short essay on the subject of equity in Pennsylvania, touches upon a topic which has been widely discussed, in its different phases, by men eminent in the legal profession, but whether or not the common law forms and a mixed system of law and equity such as exists in that state, fully meets the requirements of justice is not the object of this treatise. The writer has chosen to look upon the historical side of this mixed system and to answer the question,—How did it come?, rather than,—Should it remain?

To do this has required considerable more research and investigation than was contemplated when the work was begun. This was due largely to two causes,—first,—To the difficulty experienced on account of the insufficient indexing of the Colonial Records,(which have been largely used) and second,—To the methods pursued by the writer of relying only upon the original sources whenever they were accessible.
The result of these labors is presented in this essay, with the hope that it may stimulate some student, whether from Pennsylvania or elsewhere, to investigate the other phase of a subject which, to the writer at least, has proved so interesting.

[Signature]

J.A.P.
The English Court of Chancery had passed through its formative stages and was practically in full operation during the reign of Edward IV. (1461-81), yet the opposition of the common law judges continued from time to time as late even as the reign of James I. (1603-25), after which all trace of opposition is lost and the Court of Chancery becomes a part of the English judicial system. The history of these struggles is too well known to require repetition here even if it were within the domain of this treatise, however it may be properly mentioned herein since we shall see that the same spirit of jealousy, though perhaps from a different source, which opposed the English Court of Chancery was the most prominent feature in the opposition to the establishment of such a court in Pennsylvania.

When, in 1681, Charles II. granted to William Penn the territory which has since developed into the state
of Pennsylvania, the Court of Chancery had been firmly established as a part of the system of English jurisprudence for over two hundred years and as such, the colony might be said to have inherited this court had not the colonial charter given to the proprietary the sole power to erect such courts as he deemed necessary for the administration of justice and good government in the colony.

The royal grant affords an excellent illustration of the confidence reposed by the King in the wisdom, prudence and foresight of Penn, and the spirit of freedom which runs through the document is quite contrary to the character of the grantor and the policy pursued by him towards the colony of Massachusetts. This is especially true of the legislative and judicial powers, as an examination of the 5th and 6th sections of the charter will show. The sixth section provides that the laws of England as to the use, enjoyment, descent and succession of real and personal property and the law in regard
to felonies shall be the laws of the province subject, however, to such changes or alterations as William Penn, his heirs etc., and the freemen of the colony shall make. The fifth section gives to the proprietary, "full power and authority to appoint judges, justices, magistrates and other officers whatsoever, for what causes soever and in such forms as to the said William Penn, or his heirs should seem most convenient, also to remit, release, reprieve, pardon and abolish all crimes and offences whatsoever committed within the said province against said laws and to do all and every other thing or things which unto the complete establishment of justice unto courts and tribunals, forms of judicature and manner of proceedings do belong, although in these presents express mention be not made thereof, and by judges by him delegated to award process, hold pleas and determine in all the said courts and tribunals all actions, suits and causes whatsoever, as well criminal as civil, personal, real or mixed.- - - - -Provided
nevertheless "that such laws be consonant to reason and not repugnant or contrary but agreeable to the laws, statutes and rights of England." (1)

It is apparent from these articles that a Court of Chancery might have been established by the proprietary at any time had he so desired, but it seems that Penn was not an admirer of the Court of Chancery with its complicated forms and proceedings, nor were the formalities of this court consistent with his Quakerish ideas of simplicity in government and administration of justice. Moreover the colonists for the main part belonged to the Society of Friends and preferred to have their differences settled, according to principles and precedents based upon some scriptural text rather than to resort to litigation and delay in the courts. To carry this plan into effect and "prevent law suits", provision was made whereby each County Court appointed "three peace-makers in the nature of common arbitrators whose duty it should be to hear and end all differences

(1) Charter of Pa., sections 5 & 6.
between man and man." (1)

By his second frame of government, issued in 1683, the proprietary conferred upon the governor and Provincial Council the exclusive power to erect from time to time courts of justice, in such places and numbers as they should judge convenient for the good government of the province, reserving for himself the right to appoint the judicial officers of the court. (2)

As yet no effort had been made to establish a court of equity or to give to the existing courts any distinctively equitable jurisdiction. However, it cannot be inferred from these facts that the principles of equity were not recognized in the province; they were always recognized and pervaded the system of colonial jurisprudence as thoroughly perhaps, though not in the same manner, as they did the English system and it was only in the method of administering them that Pennsylvania differed from those states in which a separate chancery tribunal exists. (3) From the beginning

(1) Penn's Letter to the Society of Free Traders, 1683; Proud Vol. I. p. 162
(2) Proud Vol. II. appdx p. 12.
(3) Torr's Estate, 2 Rawle, 252.
we notice the governor and Council sitting as a court, exercising equitable power. Proceedings before this tribunal were had by petition in which the plaintiff set forth his grievance, to which the defendant was required to answer within a certain time, whereupon the Council considered the whole matter and gave relief accordingly. A decree not a judgment, was entered and this was framed so as to give relief according as the circumstances of each particular case required.

The earliest case in which any mention of equity seems to have been made was that of Bellamy v. Watron, had before the Provincial Council in 1683. This body declared that, "Upon the hearing and debating of the whole matter---- this board unanimously agree, that it does not appear that the defendant has any claim, in law or equity, for any land upon Prime Hook and it is hereby ordered that the defendant pay the plaintiff for improvements made," in two installments, "and that the defendant have four months time to take away his crop,
stock and other concerns." (1)

During the next year, 1689, two bills, having for their object the conferring of distinct equity powers on the courts of law, were passed by the assembly. The first provided that, every court of justice should be a court of equity as well as of law. Just what equity jurisdiction this gave it is difficult to determine, but an eminent authority inclines to the belief that it consisted of that, "universal justice which mitigates and supplies according to the popular rather than to the technical notion of equity and that the suggestions of right reason prevailed more than the fixed principles of an established code." (2)

The second bill approached a step nearer the separate equity tribunal and provided for a Provincial Court consisting of five judges, "to try all criminals and titles to land and to be a court of equity to decide all differences upon an appeal from the county court." (3) This latter bill laid the foundation for the estab-

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lishment of the mixed system of law and equity which has since prevailed in Pennsylvania and which, in many respects, is peculiar to that state. It was intended thereby to secure the benefits of an equity court and at the same time to avoid many of its inconveniences. Pursuant to this act the Provincial Court was formed and the proprietary appointed five judges for a term of two years or during their good behavior. From the beginning there seems to have been great difficulty in determining the extent of the equity jurisprudence of these courts. Instances are extant where a County Court sitting as a court of equity, reversed its own judgment previously rendered while sitting as a court of law. To remedy this injustice a conference of the Assembly and Provincial Council was called in 1687, to see how far the County Courts might be judges of equity as well as of law and if after a judgment at law whether the same court had power to resolve itself into a court of equity and either mitigate, alter or reverse the said
judgment. The answer of the Provincial Council that, "the law of the Provincial Courts did supply and answer all occasions of appeal and was a plainer rule to proceed by," though somewhat equivocal seems to have been effectual in transferring all appeals thereafter to the Provincial Court (1). However, this latter court was ill organized and was not suited to administer justice to the growing colony; as the number of colonists rapidly increased the spirit of litigiousness grew to an alarming extent, owing largely to the material variation in the religious views of the immigrants. Nor did this court meet with the approval of the English Government and the act establishing it was repealed, in 1693, when presented to the Queen in council.

From this time on various attempts were made by the colonial government to establish a court which should have well defined equity powers.

In 1690 an act was passed giving to the county courts equitable jurisdiction of matters where the

(1) Col. Rec., 1, p. 203.
amount involved did not exceed ten pounds sterling, but this act was repealed by the British Government in 1693.

Again in 1701, a similar act passed the Assembly only to meet the same fate as its predecessor, in the hands of the British Government.

Immediately upon receiving the order of the Queen, repealing this last attempt, Governor Evans assembled the Council and laid before it a bill drawn at his request by some of the practitioners in the courts, which contained an elaborate scheme of courts for the province. Among its many provisions was the following: "The Governor or his deputy with the Council shall have power to hold a Court of Equity which shall have general jurisdiction over this province to hear and decree all such matters of equity as shall come before said court where the proceedings shall be by bill and answers with such other pleadings as are used and allowed in Chancery. Said court shall have power to make rules and orders conducing to a regular proceeding and dispatch of all
causes of equity so far as such rules and proceedings be proper and consonant to the laws and constitutions of this province;—Provided that the court meddle not with matters wherein sufficient remedy may be had in any other court, either by the rules of the common law or according to the direction of any law of this province, but in such cases to remit the parties to the common law." (1)

It is scarcely necessary to add that the Council readily assented to a proposal so favorable to its own interests. It was next submitted to the House by the Governor who urged that it be passed immediately, as the province was wholly without any legally organized courts. The House, however, looked upon the whole matter as an attempt to "rail road through" the measure and therefore rejected it without hesitation, presenting instead a new plan, which greatly curtailed the power given to the Governor and Council in the original bill, but to this the Governor absolutely refused to assent. Thus while both parties agreed as to the necessity of an

(1) Col. Rec., p. 255.
equity court they differed radically as to its constitution, the Governor insisting that its powers should be vested in the Governor and Council or in commissioners occasionally appointed by them, while the House refused to recognize in the Council any legislative or judicial powers but regarded it rather as an advisory body called at the will of the Governor for his own assistance. (1)

This contest ranged over a period of four years resulting finally in the recall of Governor Evans, and with his retirement vanished the last unsuccessful attempt to establish a separate court of equity. For many months judicial matters were in a tangle, all except the city courts were closed; the judiciary was gradually approaching a crisis which could be adverted only by the prompt exercise by the Governor of those powers conferred by the provincial charter.

Such was the condition of affairs, in 1717, when Sir William Keith was appointed to the Governorship, but he was well fitted for the task and in the course of a few

months succeeded in reestablishing the courts of law and
started justice on its way again.\(^{(1)}\) By this and simi-
lar achievements he soon won the unbounded confidence
of his people so cheerfully granted to him the authority
to do that which they had continually refused to his
predecessors. Having formulated his plans for the
formation of a separate court he made them known to the
Assembly in a message saying that; "he was advised by
Congress and others that neither the Assembly nor the
representatives of other Colonies had power to erect
such court; that the office of chancellor could be
legally executed by him only, who by virtue of the great
seal was the representative of the king, yet he submit-
ted this opinion with great deference to the House, by
whose judgment he was desirous to be governed." \(^{(2)}\)

Completely captured by this humility, which formed
a striking contrast to the haughty and imperious methods
of Evans, the assembly unanimously consented to the

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\(^{(1)}\) Laussats Essay on Equity, p. 22.
\(^{(2)}\) Proud Vol II. p. 126-7.
governor's proposition advised him to proceed at once to open a court of chancery, appoint the proper officers and adopt the proper forms. (1) In accordance with these proceedings Keith, on the 10th of May 1720, issued a proclamation for the establishment of the first and only distinctively separate court of equity which has ever existed in Pennsylvania. Its composition was peculiar, the governor sat as chancellor assisted by all those members of the Provincial Council living in or near Philadelphia. No decree was to be issued by the chancellor except with the assent and concurrence of any two or more of the Council, moreover these were to be employed by the governor as masters in chancery as often as the occasion should require. (2) It is a noticeable fact that while the former attempts had been simply to give to the law courts an equity side, this proclamation founded a new and entirely separate court.

After so much contention it might naturally be sup-

posed that the introduction of this court would make considerable change in the judicial affairs of the province but such is not the case, and on the whole the court seems to have been a disappointment. From the scant information obtainable concerning the proceedings of this court it appears that it did very little business, only two decrees having been rendered in the last nine years of its existence. Unlike the previous courts this one was not interfered with by the English Government and seems to have existed nominally at least for sixteen years or until 1736. During that year it was suddenly discovered by the opponents of the court that it was unconstitutional and numerous petitions praying for its abolition were presented to the Assembly. When the House, inquired of the Governor upon what authority the court rested he promptly referred them to the proceedings of the House for the year of 1720; to the proclamation of Keith and further justified the court by the implied approbation of the House from the year
1720; the opinions of lawyers and the practice of the other colonies. But the Assembly resolved that notwithstanding these facts the court was contrary to that section of the colonial charter which provided that, "no person should be obliged to answer any complaint, matter or thing whatsoever relating to property before the Governor and Council, unless upon appeal, allowed by law, from the ordinary courts of justice" and moreover that they were not bound by the mistakes of former Assemblies nor the erroneous opinions of lawyers, nor the practice in other colonies. This discussion was brought to a sudden determination the same year by the death of Governor Gordon and the adjournment of the Assembly but the office of Chancellor was not assumed by any subsequent governor and so ended the first and last separate court of equity Pa. has ever had (1).

Although the courts and purely equity proceedings were thus abolished the principles of equity jurisprudence still remained and from that time to this there

has been a gradual adaptation to the administration of these principles through the common law. (1)

The courts of law were busily engaged in this moulding and shaping of remedies when the era of the Revolution came upon us, which gave a new turn to the affairs of government and seem to promise many changes in the judicial department.

On the Fourth day of July 1776, the act of Congress declared that the colonies should thereafter be independent states, and suggested that a convention be called for the purpose of reestablishing their governments upon a new and republican footing. (2) Pennsylvania acted immediately upon this suggestion and her first constitutional convention was called to meet at Philadelphia ten days later. Unfortunately the proceedings of this convention were never published but it is evident from the result of its deliberation that the advantages of a court of chancery were considered. The constitution gave to the courts of common pleas and the Supreme Court

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(1) Torr's Estate, 2, Rawle, 253; Swift v. Hawkins 1 Dallas, 17.
(2) Gordon's History of Pa. p. 537
the powers of a Court of Chancery so far as related to the perpetuation of testimony; the obtaining of evidence from places not within the state; the care of persons and estates of those who were non compos mentis, and such other powers as may be found necessary by future general assemblies and not inconsistent with the constitution.(1) This last change would seem to have left it open for the Assembly to establish a chancery court at any time it deemed such a court necessary but the very next section of the constitution precludes this possibility by providing that the trial by jury shall be preserved as heretofore.(2) The only additional powers granted by the legislature under this section was a method for supplying writings and deeds lost during the revolution and a bill in the nature of a bill of discovery against garnishees in foreign attachments.(3) This constitution of '76 was adopted at a period when the whole country was involved in a struggle upon the successful termination of which depended the stability of

(1) Const of 1776, Chapt II. sec. 24.
(2) Ibid. Chap. II. Sec.25.
(3) 1 Sm. L. 140, Account of Sept. 1789. Sm.L..503.
our institutions. It is therefore quite natural, after the revolution was over and our freedom from British rule fully affirmed, that the states should again endeavor to remedy those faults in its government which the severe trials of fourteen years had shown.

Among the members of the second constitutional convention of Pennsylvania, in 1790, were numbered some of the ablest lawyers of the times and the claims of equity were well represented. The committee on amendments proposed an elaborate plan for the introduction of chancery courts with all their powers and prerogatives as a branch of the judicial system. It provided for a High Court of Chancery whose jurisdiction was to extend over the state, the chancellor of which was also to preside in the Senate during the trial of impeachments. Each circuit was also to have a Court of Chancery over which the judge of the Common Pleas should preside as chancellor and from whose decrees an appeal
to the chancellor of the commonwealth might be had. But this radical change in judicial affairs savored to much of the English method to be acceptable to men who were still filled with hatred for the British Government and was therefore rejected when placed before the convention.

The supporters of the court made still further efforts by way of modification and change in the amendment but fix it up as they would, the convention absolutely refused to recognise in any manner the existance of a separate equity court. The only change made, in this respect, from the constitution of '76, was to give the legislature additional power to enlarge or diminish the equitable jurisdiction of the court, or to vest such jurisdiction in other courts as they should judge proper for the due administration of justice. This difference appears to have been made to allow the establishment of a separate court of equity should it become necessary.
THE STATE.

We have followed the varied fortunes of equity in Pennsylvania from the foundation of the colony, through a crude form of proprietary government and out of this into the domains of an oppressive foreign power the exactions of which were, with some difficulty, stopped. From this time forth we have to deal with a comparatively free and independent government. During the whole course of our investigation we have seen the separate equity system rejected by the proprietary, the King, and now by the people themselves. Notwithstanding this determined opposition to its recognition, equity gradually extended its reach and has continued to do so until the present time. Says one writer, "We have this predicament— that in an enlightened community where trade and commerce were growing every day, the courts
were obliged to administer justice without the aid of a Court of Equity. It is not surprising that they struck out into a new path and did something unheard of in the annals of Anglo Saxon jurisprudence. If their action is a piece of judicial audacity, it was authorized and justified by the circumstances."(1)

That equity is a part of the law of Pennsylvania has been well established(2), but for the want of the appropriate equitable remedies, the courts have been obliged to administer relief through the medium of the common law remedies most available for such purposes and these have been found to be the actions of assumpsit, debt, covenant, replevin, ejectment and partition. This method of working equity through the common law is noticed as early as 1768, in the case of Swift v. Hawkins,(3) in which the defendant was allowed to set up an equitable defence to an action of debt. This together with the custom of charging equity to the jury were both adopted to supply the want of chancery powers. This

(2) Pollard v. Shaaffer, 1 Dallas, 210; Funk v. Voneida, 11 S. & R. 109; Church v. Ruland, 64 Pa.St. 161
(3) Swift v. Hawkins, 1 Dallas 17.
An extension of this right was soon allowed to the plaintiff and he was permitted to counteract an equitable defense by setting up equities in his rebuttal (1).

A good illustration of the mode of administering equitable relief through the ordinary common law proceedings is given by Justice Tod in an early case (2). The learned Judge said, "To the argument that this demand is founded on mere equity and cannot be enforced by any form of action of the common law, I would say, that ever since the time of Kennedy v. Fury in which a cestui que trust maintained an action of ejectment in his own name, and I believe long before, mere equitable rights have been every day recovered in our courts. It seems to me that the rules of equity by immemorial usage, have become rules of property in our state and cannot, I apprehend, be departed from without authority. Cases need not be cited to show how rights purely equitable have been sued for with success in forms of action known only to the common law, and how relief has been invari-

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(1) McCutchen v. Nigh 10 St. R. 344.
bly granted, whenever it could be granted in any way consistent with these forms; generally by the courts with the aid of a jury,—often, without. Not only have these conditional judgments been repeatedly given, but, in the Lessee of Mathers v. Akenright(1), the court on a general verdict for the plaintiff and a judgment thereon, ordered a stay of execution, until the defendant should be secured in his title to another piece of land according to an article of agreement. In the case of, Morris's Executors v. McConoughy's Executors,(2) the court on motion, directed a contribution among the several holders of land bound by the same mortgage."

The next noticeable feature of this gradual process of change was that by which the plaintiff was allowed to bring an action based upon a purely equitable right(3). These privileges given at different times first to the defendant than to the plaintiff, followed in each case by a gradual enlargement of the powers conferred, and coupled with rules which in effect have made the

(1) Lessee of Mathers v. Akenright, 2 Benney 93.
(2) McConoughy's Executors v. Morriss's Executors 2 Dall. 189.
(3) commonwealth v. Coates, 1 Yates 2.
above mentioned well known common law remedies the vehicles of equitable rights, have been the means used to secure the advantage of a Court of Chancery in Pennsylvania. Of these last mentioned remedies probably ejectment and replevin are the most commonly used to enforce the equity of a plaintiff in regard to realty and personalty respectively.

The action of ejectment in certain cases is made the substitute for a bill in equity and the "plaintiff prove is required to allege and no more than would induce a chancellor to decree a specific performance of the agreement or a reconveyance of the land, as the case may be thoughtless will not avoid him"(1). Thus where a vendee of lands has performed his part of the contract, as by tender or payment of the purchase price, he may by this action, obtain possession if a court of chancery would sustain a bill against the vendor for that purpose(2). On payment or tender of the purchase price the vendee is invested with an equitable title, of which he cannot

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be divested and which the law furnishes him means to complete by having the legal title added to it(1). A mortgager may avail himself of this action in order to recover back from the mortgagee, certain land after it has been held by the mortgagee sufficiently long to have enabled him to have satisfied the mortgage debt out of the rents and profits of the land; or the vendor may use it against his vendee in order to be relieved from a sale of land and deed of conveyance thereof; made by the former to the latter through mistake or by means of fraud; and in effect by recovering again the possession, and to set aside the sale and deed of conveyance(2).

The action of replevin has also become an effective means of enforcing an equitable right, and it may be used in any case where personal property in the possession of one is claimed by another and it makes no difference whether there has been a wrongful dispossesssion, or whether the dispute is simply over the title or ownership (3).

The plaintiff may recover his goods wherever

(1) Stover v. Rice, 3 Wharton 24.
(2) Heckart v. Zerbe 6 Watts 261.
he can find them and so may follow them through the hands of any number of transferees and get possession providing he does not meet with the equal equity of a bona fide purchaser for value (1).

All these remedies are likewise open to the defendant but if from any reason they prove insufficient or inapplicable, he has still the further advantage of being able to set out his equity in a special plea. Thus the defendant is afforded an ample opportunity to set forth all the circumstances of the case and avail himself practically, of all the advantages of a court of chancery.

Besides those before mentioned, many other methods have been ingeniously worked out whereby to supply the want of an equity court, among which the custom of charging equity to the jury is quite common. In all actions real, personal or mixed where the plaintiff sets out the whole ground of his equitable right (2), the jury may render a conditional verdict by finding large damages which will be released only upon

the performance, by the other party, of the conditions which the jury prescribe. In the case of Coolbaugh v. Pierce (1) Justice Gibson said: "In this state the action of ejectment approaches very near to a bill in equity; the verdict of a jury, imposing conditions on the party in whose favor it is rendered performs the office (though imperfectly) of a decree," and again says Duncan. J., "In Pennsylvania equity is law. Courts give the equitable principles to the jury, as they lay down the legal principles (2).

These are a few of the most important means adopted by the Pennsylvania courts for the purpose of obviating the necessity of the court of chancery and they will tend somewhat to show how a purely equitable right is administered through the common law forms.

It has been previously stated that, in the face of all obstacles, in regard to its administration, the equity jurisdiction of the courts is gradually on the increase. We shall notice a few of the steps by which

(1) Coolbaugh v. Pierce, 8 S. & R. 418.
(2) Hawthorn v. Bronson 16 S. & R. 278
the advances has been made.

Up to 1830 various acts of the legislature added somewhat to the equitable powers already given by the constitution. In that year a commision of statuary revision was appointed and pursuant to the recommendation of this board, an act was passed in, 1836, which not only affirmed all the jurisdiction previously given but greatly increased it by the addition of new powers. The act gives to the courts of common pleas the jurisdiction and powers of a court of chancery so far as relates to:-

I. The perpetuation of testimony.

II. The obtaining of testimony from places outside of the state.

III. The care of the persons and property of the insane.

IV. The appointment, control, removal and discharge of trustees and the settlement of their accounts.

V. The supervision and control of certain corpor-
VI. The care of trust monies and property and other money, made liable to the control of such courts.

VII. This section prescribes that the equity practice of the United States courts shall be adopted by the Pennsylvania courts except as changed by the Supreme Court or by act of assembly. To these were added, in 1857, the powers and jurisdiction of a court of chancery so far as relates to:

VIII. The discovery of facts material to a just determination of issues and other questions arising or depending in the said charts.

IX. The determination of rights to property or money claimed by two or more persons in the hands or possession of a person claiming no rights therein.

X. The prevention or restraint of the commission or continuance of acts contrary to law, and prejudiced to the rights of individuals.

XI. The affording of specific relief when recovery
in damages would be inadequate(1). To these have been added by subsequent acts the jurisdiction of chancery:-

XII. In the cases over which the courts of chancery entertain jurisdiction, on the grounds of fraud, accident mistake or account; and whether such fraud be actual or constructive.

XIII. The same jurisdiction and power, in all suits to be brought for the discovery of facts, that is possessed by courts of chancery.

XIV. The perpetuation of testimony in case of loss or destroyed records of any of the courts of record of the state.

XV. The settlement of disputed claims of parties claiming to be tenants in common of mines.

XVI. In all cases of dower or partition.

XVII. In suits for the foreclosure of mortgages of railroad, canal and navigation companies (2).

Thus it will be noticed to what a great extent equity has succeeded in working itself into the judicial

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(1) Brightley's Pardons Digest, 1700-1883, p. 690-1
(2) Brightley's Pardons Digest 691-701.
system of a state which has continually refused to tolerate a separate tribunal for the administration of principles which in some of her sister states are administered through a Chancery Court.

The establishment of this court was, in the first instance, thwarted by the customs of a class of people whose simple habits and manners were opposed to its formalities; then by objections of paramount authority and when these were removed, then by people who still smarted from the oppressions of British rule and refused to recognize among their institutions a court which, to them, savored too strongly of unusual power. But the requirements of justice necessitated the use of equitable doctrines and the common law courts were compelled to accommodate themselves, to the circumstances as they arose one after another, until now Pennsylvania possesses a mixed system of law and equity which in most respects is peculiarly her own.