

Section 10. "But nevertheless in all actions at law in the Supreme Court, on the trial or argument of which matters of equitable jurisdiction arise, that Court has power to investigate and determine both the matters of law and of equity, or either, as may be necessary for the complete adjudication and decision of the whole matter; and also, all actions at law, to which equitable defences shall be set up in virtue of the sections of this chapter, under the head "Equitable Defences," from section 43 to section 50, both inclusive, are, and shall continue to be tried, considered, and adjudicated by the Supreme Court and its Judges in the same manner as regards the said several cases respectively, as the Supreme Court or the Judges thereof had power to do when the Act for appointing a Judge in Equity was passed.

"But it shall be lawful for the Supreme Court, or any Judge of that Court, before whom the consideration, trial, or hearing of any question of equitable jurisdiction, or any such mixed questions of law or equity may come, if they or he shall deem it expedient and conducive to the ends of justice to do so, to order the case, or any subject matter arising thereon, to be transferred to the jurisdiction of the Equity Judge, to be dealt with according to the principles of equitable jurisprudence, and the exigencies of the case."

By an Act passed, chap. 2, 1870, "To improve the Administration of Justice." It is enacted that the Supreme Court should hereafter be composed of a Chief Justice, a Judge in Equity, and five other puisne Judges, and that the Judge in Equity should not be required to attend the Circuits, or sit in Banc. to hear arguments, except on appeals from the Equity Court, when he shall sit with the others; and further, that in case of his continued absence from the Supreme Court sitting in Banc., from illness or other cause, appeals from his decisions may be heard, and judgment pronounced as if he were present.

In Ontario the court and judges of common law and chancery, with their principles and practice remain as separate and distinct as they ever were, save that, as in Nova Scotia, there is a provision that a defendant or plaintiff in replevin, in any case may plead or reply the facts, that on equitable grounds would afford relief in equity against the judgment at law if obtained, subject to the opinion and action of the judge, whether the same can or cannot be dealt with by a court of law so as to do justice between the parties.

Thus, in the absence of any knowledge as to what construction may have been put or may yet be put upon the first part of section 10, 29 Vic., chap. 11, Nova Scotia Act of 1866, it would seem that Nova Scotia in this respect has come back to where Upper Canada had remained, except as to the sale of lands under the foreclosure of mortgages, chap. 114, Revised Statutes 403, and it is thought, that in New Brunswick some material modification of the present system will at an early day have to be adopted, either by a more complete separation or by a more complete fusion of the courts of common law and equity.

The latter, if judiciously accomplished, would probably be the most desirable, as those who are compelled to seek redress in litigation, expect to obtain, and ought to obtain justice full and complete, when it is admitted they are entitled to it, without being sent at great expense from law to equity, and from equity to law, to find it.

Fourteenthly.—In the Courts of limited jurisdiction the distinction is more nominal than real. Those in Ontario are the County Courts and the Division Courts, the former having jurisdiction, subject to certain exceptions, over personal actions not exceeding \$200 unliquidated damages, and \$400 when the damages are liquidated, and by 23 Vic., chap. 43, in actions of ejectment where the annual value of the premises does not exceed \$200. The latter being subdivisions of the county with certain exceptions to personal actions of \$40, and money demands of \$100.

In New Brunswick they are the County Courts and the Magistrates' Courts; the former having jurisdiction, subject to certain exceptions similar to those in Ontario, in actions *ex contractu* to \$200, in *torts* to \$100, but no right to try ejectment; the latter, or Magistrates' Courts, in actions *ex contractu* to \$20, *torts* to \$8. The City Court of St. John has an exceptional jurisdiction of its own.

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