

in section 43, it is declared lawful for the "plaintiff in Replevin, or a defendant in any cause in the Supreme Court, in which, if judgment were obtained, he would be entitled to relief against such judgment on equitable grounds, to plead the facts which would entitle him to such relief." And the plaintiff may reply an avoidance of these facts on equitable grounds; and in ejectment, an equitable defence may be set up.

Immediately following this Act (by chapter 125), provision was notwithstanding made for a distinct Equity Judge, who was to make rules to govern the practice in equity before him; and to hear and determine all matters of equity jurisdiction; and to preside in the Court when business required; and, in the absence of the Judges of the Supreme Court from Halifax, to perform all the duties there that might be required of a Judge of the Supreme Court.

There was to be an appeal from his decisions to the Supreme Court, in which he was to sit as one of the Judges of Appeal. He was also to sit in the Supreme Court *in banco*, and at chambers; but not to preside at trials, or on circuit, except in case of illness of a judge or other sufficient cause.

In full bench, in cases civil or criminal, legal or equitable, the Chief Justice was to preside, the Judge in Equity next to him; and in case of the Chief Justice's absence, the Judge in Equity to preside.

Two years afterwards in 1866 (by 29 Victoria, chapter 11, amending chapters 124 and 125) the above four sections, 1, 2, 3, 17, of chapter 124 were repealed, and the Equity Court and jurisdiction again re-established. Section 7 enacts "that the Supreme Court, and the 'Court,' and the 'Judges' or 'Judge,' in such chapter,

Section 7. "except when herein otherwise expressed, or when inconsistent with the enactments hereof, are confined in all cases of exclusive Chancery jurisdiction to the Court of the Equity Judge, or the Court or Judge occasionally exercising the equity jurisdiction; and in all cases of concurrent jurisdiction, those terms apply alike to such Court and Judge, and to the Supreme Court and its Judges; and in all cases purely at Common Law, contradistinguished from chancery jurisdiction, those terms mean the Supreme Court and its Judges alone, and all suits or other proceedings for the redemption or the foreclosure of mortgages under the twenty-fourth section, and for specific performance, under the twenty-fifth section, and in relation to real estates of infants, under the sections from the fifty-first to the fifty-fifth, both inclusive, of said chapter (124), and all proceedings, matters, and things relating to the custody, care, and disposal of persons of unsound mind, and their estate and effects under the sections from two to nine, both inclusive, of Chapter 152 of the Revised Statutes, and also all proceedings under chapter 131 of the Revised Statutes, third series, of 'Trusts and Trustees,' are under the equity jurisdiction only, and shall be prosecuted and conducted accordingly, and the terms 'the Supreme Court,' and 'the Court,' and the 'Judges' or 'Judge' used in the said sections and chapter, mean the Equity Judge, or the Equity Court, or the Judge or Court occasionally exercising the Equity jurisdiction; but nothing in either of the said chapters 124 or 125 applies to or affects chapter 114 of the Revised Statutes, third series, of the sale of lands under foreclosure of mortgages, the proceedings under which may continue to be in the Supreme Court, and before the Judges thereof.

"In case of the illness of the Equity Judge, or in case of his absence from Halifax, either within the Province on judicial duty or for other cause or abroad, and also in

Section 8. "cases requiring attention in the country on circuit, and when the Equity Judge does not preside, the duties imposed on him may be exercised by the other Judges, or any of them, as the cases may require.

"The Equity Judge has jurisdiction in all cases formerly cognizable by the Court of Chancery, and exercises the like powers, and applies the same principles of Equity as

Section 9. "Justice may require, which were formerly administered in that Court."

Section 6 of Chapter 124, which provided that in the absence of the Judges of the Supreme Court from Halifax, the Equity Judge should perform all the duties of a Judge

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