

by this change was the avoidance of a multiplicity of suits and vexatious and cumbersome procedure, and the securing to litigants of full and complete relief in a single action, where, under the old practice, several suits were often necessary to accomplish that result.²⁰ It is to be observed, though, that the modern action does not abolish the distinctions between law and equity.¹ Although the distinction between actions at law and suits in equity is abolished generally, the distinguishing features of the two classes of remedies, legal and equitable, are clearly marked and widely recognized; such recognition is essential to the administration of justice in an orderly manner and the preservation of the substantial rights of litigants, not from any necessary difference in the forms of pleadings and of actions, but the substantial difference between legal and equitable rights.² Over the years, however, some distinctions between law and equity have become less vivid. While in general the trial in an action in equity is by the court without a jury, and an action at law is tried before a jury, there are statutes in many jurisdictions which provide for the trial of issues of fact by the jury in certain actions in equity.³ Also, the principle that permits an equity court to give relief as of the date of trial, taking account of facts pertaining to the matter in controversy occurring after the commencement of the action so as to put an end to the litigation,⁴ which is historically distinctive to equity,⁵ has become less important with the enactment of statutes providing for supplemental pleadings in actions at law.⁶

While the jurisprudence of the equity system seems to have been introduced into this country as a part of the unwritten law,⁷ the judicial machinery by which it is administered has been for a long time largely statutory.⁸

Theis, 133 Ohio St 387, 11 Ohio Ops 51, 14 NE2d 1; Upjohn v Moore, 45 Wyo 96, 16 P2d 40, 85 ALR 1063.

5 Ohio St LJ 222.

Generally, see 1 Am Jur 2d, ACTIONS § 5.

20. Coleman v Jagers, 12 Idaho 125, 85 P 894.

1. Evans v Mason, 82 Ariz 40, 308 P2d 245, 65 ALR2d 936; Wolfe v Wallingford Bank & T. Co. 122 Conn 507, 191 A 88; Spoon-Shacket Co. v Oakland County, 356 Mich 151, 97 NW2d 25.

Generally, see 1 Am Jur 2d, ACTIONS §§ 7, 30.

The inherent and fundamental difference between actions at law and suits in equity cannot be ignored. Jackson v Strong, 222 NY 149, 118 NE 512.

The provision of the Kentucky statutes that there shall be but "one form of action," equitable or ordinary, did not abrogate the established distinction between courts of law and courts of equity, but merely provided for a transfer of a case to the right court if brought in the wrong one, or tried and decided as if brought in the proper one. Louisville Cooperage Co. v Rudd, 276 Ky 721, 124 SW2d 1063, 144 ALR 763.

2. Cox v New York, 265 NY 411. 193 NE

251, 105 ALR 1378, cert den 294 US 729, 79 L ed 1259, 55 S Ct 638.

The distinction between legal and equitable actions is as fundamental as that between actions ex contractu and ex delicto, and no legislative fiat can wipe it out. Gould v Cayuga County Nat. Bank, 86 NY 75.

Although the same court administers both systems of law and equity, where a party brings an equitable action he must maintain it upon equitable grounds or fail, even though he may prove a good cause of action at law on the trial. Massman Constr. Co. v Nebraska Workmen's Compensation Court, 141 Neb 270, 3 NW2d 639. 27 Minn L Rev 319.

3. §§ 238 et seq., infra.

4. § 249, infra.

5. Kilbourne v Sullivan County, 137 NY 170, 33 NE 159.

6. See PLEADING (1st ed §§ 261 et seq.).

7. State ex rel. Rhodes v Saunders, 66 NH 39, 25 A 588, 18 LRA 646.

8. Montandon v Deas, 14 Ala 33; Soutter v Atwood, 34 Me 153; Somerby v Buntin, 118 Mass 279; Dwight v Pomeroy, 17 Mass 303; Hagner v Heyberger, 7 Watts & S (Pa) 104; Greene v Keene, 14 RI 388.

Equity suits in federal courts and the appellate procedure therein have always been regulated exclusively by federal statutes, rules of court, and decisions, unaffected by statutes of the states. The equity procedure in federal courts is now governed by various provisions of the Judicial Code and by the Federal Rules of Civil Procedure.⁹

Under the Federal Rules of Civil Procedure there is one form of action known as a "civil action."¹⁰ These rules, as is true of the codes in many states, apply merely to procedure, and do not destroy the differences between the substantive law and equity.¹¹

II. JURISDICTION, IN GENERAL

§ 5. Generally.

Speaking strictly, jurisdiction does not relate to the right of the parties, as between each other, but to the power of the court. The question of its existence is an abstract inquiry, not involving the existence of an equity to be enforced nor the right of the plaintiff to avail himself of it, if it exists. It precedes those questions, and a decision upholding the jurisdiction of the court is entirely consistent with the denial of any equity in the plaintiffs, or in anyone else.¹² Generally speaking, however, courts of equity exercise a broad and flexible jurisdiction to grant remedial relief where justice or good conscience requires it.¹³ But a court of equity cannot create rights; it is limited to determining what rights the parties have and whether or in what manner it is just and proper to enforce them.¹⁴ These courts, of course, equally with courts of law, are bound by the positive provisions of statutes and they cannot, any more than courts of law, disregard constitutional and statutory requirements.¹⁵ If a plain defect of jurisdiction becomes apparent at the hearing or on appeal, a court of equity will not proceed to a decree.¹⁶

As shown in the subsequent discussion, the jurisdiction of equity is dependent upon a number of factors, including the following: (1) the matter in dispute, as being equitable in its nature; (2) the want of an adequate remedy at law; and (3) the relief involved or requested, as being equitable in character and available in equity. Most of equity's jurisdiction, however, falls generally into two categories. The one, generally exclusive, depends upon the substantive character of the right sought to be enforced; the other, generally

9. See FEDERAL PRACTICE AND PROCEDURE (1st ed, UNITED STATES COURTS §§ 25, 26).

10. Rule 2, Fed Rules of Civ Proc. See 1 Am Jur 2d, ACTIONS §§ 28, 30.

11. See FEDERAL PRACTICE AND PROCEDURE (1st ed, UNITED STATES COURTS § 25).

12. People ex rel. Davis v Sturtevant, 9 NY 263; People ex rel. Gaynor v McKane, 78 Hun 154, 28 NYS 981.

20 Fordham L Rev 23.

As to jurisdiction of courts in general, see 20 Am Jur 2d, COURTS §§ 87 et seq.

13. Dorman v Crooks State Bank, 55 SD 209, 225 NW 661, 64 ALR 614.

14. Callahan v Auburn Production Credit Asso. 240 Ala 104, 197 So 347, 129 ALR 893; Fleming-Gilchrist Constr. Co. v McGonigle, 338 Mo 56, 89 SW2d 15, 107 ALR 1003; Swartz v Atkins, 204 Tenn 23, 315 SW2d 393.

A court of equity can intervene only where legal rights are invaded or the law violated. Chapman v Sheridan-Wyoming Coal Co. 338 US 621, 94 L ed 393, 70 S Ct 392.

15. § 124, infra.

16. Tyler v Savage, 143 US 79, 36 L ed 82, 12 S Ct 340.

concurrent, depends as a rule upon the inadequacy of the legal remedy. The former is predicated upon such fiduciary relationships as trusts, and other matters historically in the province of a Chancery Court. In the other class falls the case where a substantive right is merely legal, arising out of no true traditional chancery relationship, and the resort to equity is permitted only because some extraneous circumstance makes it impossible to secure adequate relief at law. Although the employment of equity's powers must be exercised within the confines of equity's jurisdiction, the power of the court of equity is generally coextensive with the rights of persons to the relief which it provides. In the final analysis, however, whether a proper case is made for the exercise of a court's equitable powers necessarily depends upon the circumstances.¹⁷

The equity jurisdiction of the federal courts is derived from the Constitution and laws of the United States,¹⁸ and throughout the different states of the Union, the jurisdiction of these courts in equity is uniform and unaffected by state legislation.¹⁹ The equity jurisdiction which was conferred on inferior courts of the United States by the Judiciary Act of 1789, and continued by the Judicial Code, is that of the English Court of Chancery at the time of the separation of the two countries.²⁰

Unless expressly authorized to do so by statute, probate courts cannot exercise general equity powers, although they may apply equitable principles concerning a matter over which they have jurisdiction.¹ It has been held that the Chancery Court may take jurisdiction of a case without regard to the exclusiveness of the authority of the Probate Court over decedents' estates and matters of administration. For example, while the equity court will not take cognizance of a suit which is brought for the purpose of securing construction of a will,² except where statutory authority has been invoked,³ yet, if the existence of a trust affords ground for assuming jurisdiction,⁴ the court will determine a dispute as to construction or interpretation of the provisions of the testamentary instrument.⁵

§ 6. Legislative control, enlargement, or restriction; constitutional limitations.

Equity courts generally have the jurisdiction which was vested in the English High Court of Chancery⁶ and such additional power or authority as may have

17. *St. Stephen's Protestant Episcopal Church v Church of Transfiguration*, 201 NY 1, 94 NE 191; *Cohen v New York Mut. L. Ins. Co.* 50 NY 610.

41 Cornell LQ 351.

18. *Noonan v Lee (Noonan v Braley)* 2 Black (US) 499, 17 L ed 278.

19. *Mississippi Mills v Cohn*, 150 US 202, 37 L ed 1052, 14 S Ct 75; *Payne v Hook*, 7 Wall (US) 425, 19 L ed 260; *Tower Hill-Connellsville Coke Co. v Piedmont Coal Co.* (CA4 W Va) 64 F2d 817, 91 ALR 648, cert den 290 US 675, 78 L ed 582, 54 S Ct 93.

20. *Sprague v Ticonic Nat. Bank*, 307 US 161, 83 L ed 1184, 59 S Ct 777; *Matthews v Rodgers*, 284 US 521, 76 L ed 447, 52 S Ct 217; *Pankey v Ortiz*, 26 NM 575, 195 P 906, 30 ALR 92.

Generally, see FEDERAL PRACTICE AND PROCEDURE (1st ed, UNITED STATES COURTS §§ 22, 25-27).

1. *State ex rel. Baker v Bird*, 253 Mo 569, 162 SW 119.

2. *Hough v Martin*, 22 NC (2 Dev & B Eq) 379; *Bussy v M'Kie*, 7 SC Eq (2 M'Cord) 23.

Generally, see WILLS (1st ed §§ 1024 et seq.).

3. *Burroughs v Cutter*, 98 Me 178, 56 A 649.

4. As to jurisdiction over trusts, see TRUSTS.

5. *Toland v Earl*, 129 Cal 148, 61 P 914; *Wakefield v Wakefield*, 256 Ill 296, 100 NE 275; *Simmons v Hendricks*, 43 NC (8 Ired Eq) 84.

6. §§ 3, 4, supra.

been conferred by statutory enactment.⁷ So, the legislative body ordinarily has power to enlarge the jurisdiction of courts of equity to embrace cases wherein the remedy is otherwise inadequate.⁸ In a number of jurisdictions, powers have been conferred by the legislature in addition to those generally exercisable.⁹ Moreover, in many states in which the courts formerly exercised a very limited power, legislation has conferred full equity jurisdiction, according to the usage and practice of courts of chancery, in all cases where there is not a full, adequate, and complete remedy at law.¹⁰ However, to be properly consigned to the jurisdiction of a court of equity, the legal situation must be one which is equitable in its nature.¹¹ Thus, under a constitutional provision authorizing the legislature to establish courts of equity, a court, on being created, may be given jurisdiction only over matters in equity.¹²

Where the court has not been granted general equity powers, being authorized to act as a court of equity only in certain cases and classes of cases, the rule of a strict construction applies, insofar as the ascertainment of the range of jurisdiction is concerned.¹³ Consequently, it is necessary for a plaintiff to make it appear affirmatively on the face of his pleading that his case is within the jurisdiction of the court.¹⁴ In some states, statutes have restricted the courts' equity jurisdiction.¹⁵ However, statutes abrogating or abridging equitable jurisdiction are to be strictly construed,¹⁶ and unless a statute in so many words, or by a necessary and inescapable inference, restricts a court's jurisdiction in equity, the full scope of that jurisdiction is to be recognized and applied.¹⁷

7. *Williamson v Berry*, 8 How (US) 495, 12 L ed 1170; *Bodley v Taylor*, 5 Cranch (US) 191, 3 L ed 75.

8. *People ex rel. Lemon v Elmore*, 256 NY 489, 177 NE 14, 75 ALR 1292.

The legislature may, for example, extend the power to issue the writ of injunction to a new class of cases to which the remedy is appropriate. *Hedden v Hand*, 90 NJ Eq 583, 107 A 285, 5 ALR 1463.

9. *Central Stock & Grain Exch. v Bendinger* (CA7 Ill) 109 F 926, cert den 183 US 699, 46 L ed 396, 22 S Ct 935; *Littleton v Fritz*, 65 Iowa 488, 22 NW 641; *Adams v Williams*, 97 Miss 113, 52 So 865; *Jones v Williams*, 139 Mo 1, 39 SW 486, 40 SW 353; *Greene v Keene*, 14 RI 388.

10. *Somerby v Buntin*, 118 Mass 279.

11. *Cates v Allen*, 149 US 451, 37 L ed 804, 13 S Ct 883, 977; *Hedden v Hand*, 90 NJ Eq 583, 107 A 285, 5 ALR 1463.

12. *Walls v Brundidge*, 109 Ark 250, 160 SW 230.

13. *Jones v Newhall*, 115 Mass 244; *Dwight v Pomeroy*, 17 Mass 303; *King v Brigham*, 23 Or 262, 31 P 601.

14. *May v Parker*, 12 Pick (Mass) 34.

15. *Soutter v Atwood*, 34 Me 153; *Jones v*

Newhall, 115 Mass 244; *Hagner v Heyberger*, 7 Watts & S (Pa) 104.

16. *Jay-Bee Realty Corp. v Agricultural Ins. Co.* 320 Ill App 310, 50 NE2d 973, 42 Mich L Rev 945.

17. *Porter v Warner Holding Co.* 328 US 395, 90 L ed 1332, 66 S Ct 1086.

The full equity jurisdiction of the Supreme Judicial Court of Maine is not limited by legislative acts conferring equity powers over certain special subjects incorporated in statutes enacted before and after the grant of full equity jurisdiction to the court, or by the recital of the phrase "in all other cases" in the statutory grant of full equity jurisdiction "in all other cases where there is not a plain, adequate, and complete remedy at law." *Usen v Usen*, 136 Me 480, 13 A2d 738, 128 ALR 1449, further holding that the jurisdiction of a court vested by statute with "full equity jurisdiction according to the usage and practice of courts of equity," to enjoin, at the suit of a wife, the prosecution by her husband of a divorce suit in another state in which he pretends residence, is not affected by the fact that at the time the equity jurisdiction was conferred, no suit could have been maintained in equity by a wife against her husband, where at such time the court was exercising limited equity powers and also had jurisdiction of actions at law, so that the phrase "according to the usage and practice of courts of equity" may be taken

Jurisdiction which the Constitution has conferred upon a court may not of course be curtailed by legislative enactment.¹⁸ The legislature may not add to equity jurisdiction by taking away from law courts, also created by the Constitution, powers which they possess and by transferring the authority to equity courts.¹⁹ Nor may the legislature, as a general rule, extend the court's power so as to deprive a litigant of the right of trial by jury.²⁰ Moreover, the right to have equity controversies dealt with by equitable methods is as sacred as the right of trial by jury. Consequently, a statute which provides for a final decision of questions of fact in equity proceedings by the verdict of a jury and for the rejection of testimony by the judge, as in suits at law, has been held to be unconstitutional.¹

§ 7. Jurisdiction as determined by pleadings or by relief asked.

As a general rule, the nature and character of an action is determined by the pleadings; therefore, where the petition or complaint sounds in equity, it ordinarily stamps the action as one in equity.² To confer equitable jurisdiction, the relief requested in the complaint or petition must generally be equitable in character; thus, the prayer is of considerable importance in determining equitable jurisdiction, although it is not necessarily controlling, particularly where it is erroneous.³ Of course, even though the complaint or

as intended as a direction that the then newly granted "full equity jurisdiction" should be according to the usage and practice in equity rather than according to the procedure followed in the same court in actions of law.

18. *Marvel v State*, 127 Ark 595, 193 SW 259, 5 ALR 1458; *Hedden v Hand*, 90 NJ Eq 583, 107 A 285, 5 ALR 1463.

Annotation: 5 ALR 1476, s. 22 ALR 542, 75 ALR 1298.

A court having general equity jurisdiction is not limited in the exercise of such jurisdiction by statute. *Bodie v Bates*, 95 Neb 757, 146 NW 1002.

Compare *Young v Young*, 207 Ark 36, 178 SW2d 994, 152 ALR 327, holding that the rule in Arkansas that the jurisdiction of the equity court as it existed at the time of the adoption of the Constitution of 1874 can neither be enlarged nor diminished by the legislature is not violated by a statute abolishing the defense of recrimination in divorce actions where the ground of divorce is separation without cohabitation for 3 consecutive years, since this is a matter going, not to the jurisdiction itself, but merely to the grounds for its exercise.

19. *Hedden v Hand*, 90 NJ Eq 583, 107 A 285, 5 ALR 1463.

20. *Wiggins v Williams*, 36 Fla 637, 18 So 859, 30 LRA 754; *Brady v Carteret Realty Co.* 70 NJ Eq 748, 64 A 1078, 8 LRA NS 866; *North Pennsylvania Coal Co. v Snowden*, 42 Pa 488; *Bank of State v Cooper*, 2 Yerg (Tenn) 599; *Kwass v Kersey*, 139 W Va 497, 81 SE2d 237, 47 ALR2d 695.

The legislature may not arbitrarily extend judicial power so as to deprive a litigant of the right to a jury trial. *Hightower v Bigoney* (Fla App) 145 So 2d 505, *revd on other grounds* (Fla) 156 So 2d 501.

But it has been held that jurisdiction of equity may be extended by the legislature, eliminating constitutional questions involved by denying a jury trial. *State ex rel. Wilcox v Ryder*, 126 Minn 95, 147 NW 953, 5 ALR 1449.

1. *Brown v Buck*, 75 Mich 274, 42 NW 827.

2. *Van Allen v New York Elev. R. Co.* 144 NY 174, 38 NE 997.

Unless the complainant has shown a right to relief in equity, he can have no redress, however clear his rights at law. *Wright v Ellison*, 1 Wall (US) 16, 17 L ed 555.

Where the bill is in the nature of a bill of interpleader, the relief sought must be equitable relief. *Killian v Ebbinghaus*, 110 US 568, 28 L ed 246, 4 S Ct 232.

3. *Deckert v Independence Shares Corp.* 311 US 282, 85 L ed 189, 61 S Ct 229; *Fussell v Gregg*, 113 US 550, 28 L ed 993, 5 S Ct 631.

Even where a suit is based on an equitable title, the nature of the relief asked must be equitable to give a court of equity jurisdiction. *Smith v Bourbon County*, 127 US 105, 32 L ed 73, 8 S Ct 1043.

The test of equity jurisdiction is not necessarily the prayer or that a money demand is made, but is in the facts and what is to be accomplished. *Finzer v Peter*, 120 Neb 389, 232 NW 762, 73 ALR 1170.