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The Equity Jurisdiction of the Exchequer

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THE equity jurisdiction of the Exchequer has been so overshadowed by the equity jurisdiction of the Chancery and that of other courts that there is today only a foggy awareness that it ever existed. Therefore it is the purpose of this communication to locate this court within the course of English legal history and to say a word or two about its development.

In the fifteenth century and earlier, the royal Exchequer was coextensive with the royal Treasury; it was the primary financial institution of the kingdom of England. It was divided into two divisions: the upper Exchequer or "Exchequer of account" and the lower Exchequer or "Exchequer of receipt," which physically handled the cash. The upper Exchequer was divided into several departments or offices. By 1500, three of these offices had generated so many legal disputes that the Exchequer had become in part a permanent court of law.

The Office of Pleas handled the common law litigation between private parties and determined which of them should pay the money due to the king. The Lord Treasurer's Remembrancer's Office and the King's Remembrancer's Office settled revenue lawsuits between the crown and a private party; these two offices administered the so-called revenue jurisdiction of the Exchequer. In the latter part of the reign of Henry VIII, certainly by the accession of Edward VI in 1547, the equity jurisdiction of the Exchequer had arisen within the King's Remembrancer's Office. This happened, no doubt, in order to supplement the common law remedies of the other Exchequer courts.

Remnants from the pleadings of at least three equity Exchequer cases have been found from the reign of Henry VIII, and there may have been a dozen other cases before 1547. There were at least five cases from the time of Edward VI. The shorter reign of Queen Mary I produced thirteen. The proper archives of the court have been preserved from the accession of Elizabeth I in 1558. They show a continuous increase in the number of bills filed until the 1580's when there was a huge rise. From 1587 to the end of the reign there was an annual average of 334 bills filed. This figure grew steadily (with the exception of the reign of Charles I, which reflects the

disruption of the civil wars) until the peak of 739, which was reached in the period of William III and Mary II.

It is most interesting to note how the Exchequer equity jurisdiction arose. No part of the Exchequer in the sixteenth century was a court of general jurisdiction. The many cases that were heard there were allowed only as exceptions to the general prohibitions to the Exchequer to determine suits. The so-called Statute of Rhuddlan of 1284[1] denied the power of the Exchequer to settle litigation except where the crown or one of the officers of the Exchequer was involved. The *Articuli super Cartas*[2] repeated the prohibition in 1300 but allowed no exceptions. However, in 1311 it was confirmed by Parliament[3] that the Exchequer could hear the suits of its officers and of their servants. The purpose of these exceptions was to increase the efficiency of revenue collection by protecting the Exchequer officials from the duty of attending on the other courts.

In the period in which the equity side of the Exchequer evolved, there were three classes of persons who were privileged to sue in the court of the Exchequer: officials of the Exchequer, royal accountants, and debtors to the crown.[4] The officers were specifically allowed to sue in their own court by the above-mentioned ordinances. This same privilege had become customary in the other high courts for their own officers.

The accountants were the officers of the crown who received money on behalf of the crown for which they had the duty to account in the Exchequer. Since the account was to be made in Westminster in person, at least in theory, the accountant must be free from the process of the other courts. Once the account had been settled, it became a simple debt, and the accountant lost his status as such and became a mere debtor to the crown.

Debtors to the king had only a general privilege; they were privileged to sue in the Exchequer, but they could not have a case against them removed into the Exchequer from another high court. This privilege was quite broad, and anyone who owed any money to the king for any reason could avail himself of it. This was the same as the common law privilege based on the *quo minus* allegation on the plea side of the court. In the sixteenth century this privilege was partially fictitious: the allegation that the reason the plaintiff could not pay his debt to the crown was that the defendant was withholding money due to him was not traversable; however, there must have been a genuine debtor-creditor relationship between the plaintiff and the crown.

Until 1649 the Exchequer court rigorously insisted that each case must have some genuine royal interest as a basis of jurisdiction; if it was found wanting, the case was dismissed. However, from the beginning of the Commonwealth, the court opened its doors to all comers. All that was

required of plaintiffs was that they insert in their bills of complaint at the beginning after their names the following set phrase: ". . . . debtor and accountant to the Commonwealth (later "His Majesty") as by the records of this honourable court and otherwise it doth and may appear . . ." The court disallowed all traverses of this allegation, and thus the Exchequer became a court of general jurisdiction.

There does not appear to have been any opposition to this move. The most likely source of resistance would have been the court and the clerks of Chancery, the primary court of equity. At this time, however, the Chancery in general and its clerks in particular were themselves undergoing a bitter onslaught and were in no position to be aggressive towards the Exchequer. Moreover, there was an increased need for another general court of equity because several courts of equity had been suppressed or had fallen into desuetude during the preceding decade; these were the courts of Star Chamber, Requests, Wards and Liveries, and the councils of the North and of the Marches of Wales. The radical reformers of the civil war and interregnum periods seem to have ignored the court of Exchequer.

By the time of the Restoration in 1660, the Exchequer was firmly established in its general equity jurisdiction. It had been accepted by the legal profession, and there do not appear to have been any moves to take it away. Since it had not been established by any legislative or executive act, there was no problem with the invalidity of the ordinances of Oliver Cromwell and his parliaments.

In the last quarter of the seventeenth century, the Treasury developed financial departments independent of the Exchequer, and these new offices took over most of the revenue administration of the realm. This left the Exchequer free to continue its tendency to develop into a general court of law. By the eighteenth century the equity side of the Exchequer and the Chancery had grown in similar directions because each court cited as precedents the cases of the other indiscriminately with its own. The result was that in the eighteenth century the Exchequer and the Chancery were following the same procedures and granting the same remedies.

This situation continued until 1841. In that year the equity jurisdiction of the Exchequer was suppressed; the pending cases were transferred to the court of Chancery.[5] This occurred at the beginning of the period of the rationalization of the English legal jurisdictions in the nineteenth century. However, the reasons for it appear to have been not intellectual and theoretical but more practical. It was a great nuisance to the legal profession to have two separate courts of equity. The jurisdiction was abolished because of the physical conveniences of being able to confine one's legal practice to a single court. Since the Chancery was and always had been the most

important court of equity, the equity side of the Exchequer was discarded. There was little comment and no regret.

NOTES

1 SR i.70. This statute must be distinguished from the Statute of Wales of the same year, often called the Statute of Rhuddlan.
2 SR i.138
3 SR i.163
4 *Clapham* v. *Lenthall* (1664), Hardres 365.
5 The Court of Chancery Act, 1841 (5 Vic. c.5).