Title

John Singleton Copley, Lord High Chancellor of Great Britain (b.1772-d.1863), a.k.a. 1st Baron Lyndhurst: Not to be confused with his father, the Anglo-American portrait painter

Text

The trust is an invention of English equity. On both sides of the Atlantic, an equitable duty is a duty enforceable in a court of chancery or in a court having the powers of a court of chancery. See Rest. (Second) of Trusts §2 cmt. e. In England, from medieval times until 1875, equity matters had been the exclusive jurisdiction of the Court of Chancery. During the reign of Edward III (r.1327-1377), the Court's home was fixed at Westminster Hall, London. Until 1813 there had been only two judges in the Court of Chancery, the Lord High Chancellor and the Master of the Rolls. In 1813 the office of Vice-Chancellor of England was created. In 1841 two more Vice-Chancellor positions were added, and in 1851 two Lord-Justice-of-Appeal-in-Chancery positions. All in all, England's only Court of Chancery had just seven judges serving on its bench in Westminster Hall when the Court was "dismantled" by Parliament in 1875.

Equity jurisprudence, however, has lived on and flourished in England's courts of law, the fusion of law and equity being for the most part jurisdictional only. The jurisdictional fusion was inevitable. "The enormous industrial, international and imperial expansion of Britain…[in the 19th century]… necessitated developments in equity to deal with a host of new problems. The accumulation of business fortunes required rules for the administration of companies and partnerships; and the change in emphasis from landed wealth to stocks and shares necessitated the development of new concepts of property settlements." See Hanbury & Maudsley, *Modern Equity* 13 (10th ed. 1976). Suffice to say, the seven-judge separate Court of Chancery became ill-equipped administratively to handle the explosion in equity litigation that had been touched off by the Industrial Revolution. During his tenures as Lord High Chancellor of Great Britain, John Singleton Copley [Baron Lyndhurst] juggled a load of equity cases, many of them trust matters, that was growing heavier by the day. Moreover, adjudicating equity cases was not the Lord High Chancellor of Great Britain's only governmental function.

The younger John Singleton Copley was born in Boston, Province of Massachusetts Bay, in 1772, likely on Beacon Hill in a house that was on or near

the current site of 41-42 Beacon Street. His father, John Singleton Copley [senior], was then practicing portrait painting in Boston. See, e.g., *A Boy with a Flying Squirrel (Henry Pelham)* (1765), Museum of Fine Arts, Boston; *Portrait of Paul Revere* (1768), Museum of Fine Arts, Boston. When young Copley was two the family relocated to England. In 1794 young Copley was awarded a B.A. degree from Trinity College, Cambridge. In 1797 an M.A. degree. He then entered himself as a member of Lincoln's Inn, where he became a pupil of "Mr. Tidd." In 1804, he was called to the bar (Midland Circuit).

In January of 1824, the younger Copley was appointed Attorney General (England), and on September 14, 1826, Master of the Rolls. The latter office he held only eight months. On George Canning becoming Prime Minister, the Great Seal was delivered to Copley (April 30, 1827), as Lord High Chancellor of Great Britain, he having been raised to the peerage as Baron Lyndhurst a few days before. He resigned the chancellorship upon the accession of the Whigs to power in November of 1830. He was to serve as Lord High Chancellor two more times, the third time being from 1841-1846.

As to the administration of equity jurisprudence on this side of the Atlantic, see Chapter 1 of *Loring and Rounds: A Trustee's Handbook* (2023), the relevant portions of which chapter are set forth in the appendix immediately below. The Handbook is available for purchase at Loring and Rounds: A Trustee's Handbook, 2023 Edition | Wolters Kluwer Legal & Regulatory.

Appendix

CHAPTER 1 **Introduction** [from *Loring and Rounds: A Trustee's Handbook* (2023), available for purchase at Loring and Rounds: A Trustee's Handbook, 2023 Edition | Wolters Kluwer Legal & Regulatory].

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Equity in America. Prior to the American Revolution, it was typical for the governors of the thirteen colonies, aided by their councils, to exercise the powers of a chancellor.[34] "In New York in 1701, by an ordinance of governor and council, the governor was appointed chancellor."[35]

After the American Revolution, the thirteen original states adopted substantially

[34]Bogert §6.

[35]Bogert §6 ("The legislature and people objected to this method of forming the new court and sought its abolition. This movement failed, but the court was thereafter unpopular and rarely patronized.").

the entire common law of England.[36] This included, with little change, its system of equity jurisprudence of which the institution of the trust was an integral part.[37] Massachusetts was the last hold-out, not fully recognizing equity as a complementary part of its judicial system until 1877.[38] Thus, for a while in some parts of the United States, trusts were being *enforced* in legal proceedings: "It is true that … [actions for breach of contract by beneficiaries against trustees]… were once maintainable in Massachusetts and Pennsylvania, but that was because there was originally no equity jurisdiction in those states."[39] In most states, with the notable exception of Delaware,[40] there are no longer separate courts of law and equity.[41] The consolidation, however, has left intact the substantive differences between legal interests and equitable interests.

The consolidation also has left intact the substantive differences between legal duties and equitable duties. "An equitable duty is a duty enforceable in a court of chancery or in a court having the powers of a court of chancery."[42] The duties of a trustee are equitable. In other words, "[a] trustee's obligation is based on equitable principles, whether enforced by a court having both legal or probate and equitable jurisdiction, or by a court having solely equitable functions."[43]

Equity and the common law are inseparable. It is said that equity is not separate and apart from the *common law* as that term is understood in its broadest sense, but a gloss or a collection of appendices to the common law. "Equity without common law would have been a castle in the air, an impossibility."[44] By way of example, "[e]quity accepts the common law ownership of the trustee, but regards it as against conscience for him to exercise that legal ownership otherwise than for the benefit of the *cestui que trust*, and therefore engrafts the equitable obligation upon him."[45] But it would also not be correct to suggest that the procedural blending of law and equity, the consequence of a law reform movement that began on this side

[36]Bogert §6.

[37]Bogert §6 (listing in footnote 8 the citations to a number of cases involving trusts that were decided in Connecticut, Maryland, New Jersey, New York, Pennsylvania, South Carolina, and Virginia after the Revolution but before 1800).

[38]Edwin H. Woodruff, *Chancery in Massachusetts,* XX The L.Q. Rev. 370, 383 (Oct. 1889). *See also* 1 Scott & Ascher §1.9; Bogert §6.

[39]4 Scott & Ascher §24.1.2. *See also* Bogert §6.

[40]Arkansas, Illinois, Tennessee, and Mississippi also have separate courts of chancery.

[41]Bogert §1.

[42]Restatement (Second) of Trusts §2 cmt. e.

[43]Bogert §1.

[44]Frederic William Maitland, Equity: Also the Forms of Action at Common Law 19 (Cambridge University Press, 1909) ("We ought not to think of common law and equity as of two rival systems. Equity was not a self-sufficient system; at every point it presupposed the existence of the common law.").

[45]G. W. Keeton, An Introduction to Equity (6th ed. 1965).

of the Atlantic in the middle of the nineteenth century,[46] has led to the elimination of the substantive distinctions between the two regimes. Had that happened, a wholesale abolition of the law of trusts would have resulted.[47] It did not.

Equity effects its gloss on the common law via doctrines and maxims. For the former, see §8.15-§8.15.98 of this handbook. For the latter, see §8.12 of this handbook. Chapter 7 of this handbook is devoted to equity's remedies, which tend to be more robust and exotic than those afforded by the law.

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[46]Michael Lobban, *Preparing for Fusion: Reforming the Nineteenth Century Court of Chancery*, 22 Law & Hist. Rev. 565, 584 (2004) (noting that "the key political impetus for fusion came from America").

[47]*See* Maitland, Equity: Also the Forms of Action at Common Law, 16–18 (Cambridge University Press, 1909).