= Court of Chancery =

The Court of Chancery was a court of equity in England and Wales that followed a set of loose rules to avoid the slow pace of change and possible harshness (or " inequity ") of the common law . The Chancery had jurisdiction over all matters of equity , including trusts , land law , the administration of the estates of lunatics and the guardianship of infants . Its initial role was somewhat different , however ; as an extension of the Lord Chancellor 's role as Keeper of the King 's Conscience , the Court was an administrative body primarily concerned with conscientious law . Thus the Court of Chancery had a far greater remit than the common law courts , whose decisions it had the jurisdiction to overrule for much of its existence , and was far more flexible . Until the 19th century , the Court of Chancery could apply a far wider range of remedies than the common law courts , such as specific performance and injunctions , and also had some power to grant damages in special circumstances . With the shift of the Exchequer of Pleas towards a common law court and loss of its equitable jurisdiction by the Administration of Justice Act 1841 , the Chancery became the only national equitable body in the English legal system .

Academics estimate that the Court of Chancery formally split from and became independent of the curia regis in the mid @-@ 14th century , at which time it consisted of the Lord Chancellor and his personal staff , the Chancery . Initially an administrative body with some judicial duties , the Chancery experienced an explosive growth in its work during the 15th century , particularly under the House of York , which academics attribute to its becoming an almost entirely judicial body . From the time of Elizabeth I onwards the Court was severely criticized for its slow pace , large backlogs , and high costs . Those problems persisted until its dissolution , despite being mitigated somewhat by reforms , particularly during the 19th century . Attempts at fusing the Chancery with the common law courts began in the 1850s , and finally succeeded with the 1873 and 1875 Supreme Court of Judicature Acts , which dissolved the Chancery and created a new unified High Court of Justice , with the Chancery Division ? one of three divisions of the High Court ? succeeding the Court of Chancery as an equitable body .

For much of its existence the Court was formally led by the Lord Chancellor , assisted by the judges of the common law courts . The staff of the court included a large number of clerks , led by the Master of the Rolls , who regularly heard cases on his own . In 1813 a Vice @-@ Chancellor was appointed to deal with the Chancery 's increasing backlogs , and two more were appointed in 1841 . Offices of the Chancery were sold by the Lord Chancellor for much of its history , raising large amounts of money . Many of the clerks and other officials were sinecures who , in lieu of wages , charged increasingly exorbitant fees to process cases , one of the main reasons why the cost of bringing a case to the Chancery was so high . The 19th century saw the abolition of many sinecure offices and the institution of a wage and pension for the Lord Chancellor to curb the sale of offices , and later the right to appoint officials was transferred from the Chancellor to the Crown .

= = History = =

= = = Origins = = =

The Court of Chancery originated , as did the other High Courts before 1875 , in the Norman curia regis or King 's Council , maintained by most early rulers of England after 1066 . Under the feudal system , the Council was made up of the Monarch , the Great Officers of the Crown and anyone else the Monarch allowed to attend . Its jurisdiction was virtually unlimited , with executive , judicial and legislative functions . This large body contained lawyers , peers , and members of the Church , many of whom lived far from London . It soon became apparent that it was too unwieldy to deal with the nation 's day @-@ to @-@ day business . As a result , a smaller curia was formed to deal with the regular business of the country , and this soon split into various courts : first the exchequer of pleas , to deal with finance , and then the Court of Common Pleas , to deal with " common " cases .

The Chancery started as the personal staff of the Lord Chancellor , described as " a great

secretarial bureau , a home office , a foreign office , and a ministry of justice " . The earliest reference to legal issues being sent to him is from 1280 , when Edward I of England , annoyed with the number of cases coming to him which could have been dealt with by other elements of his administration , passed a statute saying that :

all petitions that touch the Seal shall go first to the Chancellor , and those that touch the Exchequer to the Exchequer , and those that touch the justices or the law of the land to the justices , and those that touch the Jurie to the justices of the Jurie . And if the matters are so great , or so much of grace , that the Chancellor and the others cannot do what is asked without the King , then they shall take them to the King to know his will , and that no petition come before the King and his Council except by the hands of the said Chancellor and the other chief ministers ; so that the King and his Council may be able , without the embarrassment of other business , to attend to the important business of his kingdom and his foreign lands .

Records show dozens of early cases being sent to the Lord Chancellor and Master of the Rolls , but at the time the Chancellor had no specific jurisdiction to deal with them ; the cases were referred to him only as a matter of convenience . Under Edward II the Chancellor dedicated set days to hearing pleas , as documented in the records of the Parliament of Lincoln in 1315 , which also show that some cases were heard by his personal staff , the Chancery , and not by the Chancellor . By 1320 requests were regularly sent there , and heard by the judges of the common law courts , with the rules used to settle cases being those of " law or reason " , sometimes simply " reason " , a far more liberal and adjustable approach than the common law .

= = = Rise and early years = = =

The Chancery came to prominence after the decline of the Exchequer , dealing with the law of equity , something more fluid and adaptable than the common law . The early Court of Chancery dealt with verbal contracts , matters of land law and matters of trusts , and had a very liberal view when setting aside complaints ; poverty , for example , was an acceptable reason to cancel a contract or obligation . Complaints were normally brought via a bill or petition , which had to show that the common law did not provide a remedy for the problem . The Chancery writs were in French , and later English , rather than the Latin used for common law bills . In the reign of Edward III , the Court found a fixed home at Westminster Hall , where it sat almost continually until its dissolution . Prior to this , the disposing of justice had been made difficult by the fact that the Lord Chancellor was required to travel with the King wherever he went .

By 1345 the Lord Chancellor began to be seen as the leader of the Court of Chancery , rather than as a representative of the King , and writs and bills were addressed directly to him . Under Richard II it became practice to consider the Chancery separate from the curia ; academic William Carne considers this a key moment in confirming the independence of the Court of Chancery . The Chancellor and his clerks often heard the cases directly , rather than having them referred to the council itself ; occasionally a committee of lay and church members disposed of them , assisted by the judges of the common law courts . John Baker argues that it was the late 14th century that saw Chancery procedure become fixed , citing the work done by John Waltham as Master of the Rolls between 1381 and 1386 , and notes that this period also saw the first complaints about the Chancery .

The Chancery and its growing powers soon came to be resented by Parliament and the nobility ; Carne says that it is possible to trace a general " trend of opposition " during the Plantagenet period , particularly from members of the clergy , who were more used to Roman law than equity . From the reign of Richard II , the House of Commons regularly complained about the work of the Court , and in 1390 it petitioned the King to pronounce that the Court could not act contrary to the common law , nor annul a judgement without due process . At the same time , it asked that no writ could be issued that would compel a man to appear before the Court ; if it was , the clerk who issued it would lose his job and the Lord Chancellor would be fined £ 100 . The King gave evasive answers to the requests , and made no decision . The Commons did succeed in making some changes to the Court 's procedure , however ; in 1394 the King assented to their request that victorious defendants in the

Court have their costs recompensed from the other side , and in 1341 the King , on their application , allowed the Lord Chancellor to send cases directly to the common law courts , to avoid the common law judges having to waste time travelling . Kerly suggests that many complaints from the Commons came from lawyers of the common law , aggrieved at the Chancery 's extended jurisdiction that overlapped with that of the common law . These complaints from the Commons did not prevent the Court from successfully functioning ; in 1393 , for example , it was considered prominent enough that the House of Lords sent two cases there to be dealt with .

According to many academics , the Court of Chancery really began to expand its caseload during the 15th century ; Margaret Avery reports a massive increase in cases during the 1440s , while Nicholas Pronay suggests that the real expansion came during Yorkist rule (1461 ? 85) , when the number of cases submitted each year quadrupled . He gives complaints about the perversion of justice in the common law courts , along with growing mercantile and commercial interests , as the main reason for the growth , arguing that this was the period when the Chancery changed from being an administrative body with some judicial functions to " one of the four central courts of the realm ... the growth in the number of [cases] is a primary indicator of the changing position of Chancery " . This increasing role was assisted by the changing function of the court : until the late 14th century , private parties could not bring cases to the Chancery as they could to the other courts , while by the 15th century the number of private cases had increased to the point where there were many complaints in Parliament . Marsh writes that another reason for the Chancery 's growing influence was the remedies available ; through orders of specific performance and injunctions , the Court could not only rectify previous wrongs but prevent future wrongs from occurring , while the common law courts were limited to awarding damages .

= = = = Chancery 's role in development of Standard English = = = =

Chancery English , used in official documents , can be seen as the beginnings of Standard English ? a national standard of spelling and grammar . By the 15th century , the City of Westminster had been the seat of government administration for about three centuries . After about 1430 , the use of English in administrative documents replaced French which had been used since the Norman conquest . Consequently , the written English that developed at the Court of Chancery eventually became a standard , both in its style of handwriting (' Chancery hand ') and in its grammar and vocabulary . By the 1440s and 1450s comparative regularisation of spelling had begun to emerge .

= = = Competition with the common law = = =

The early Elizabethan period featured a dispute between the Court of Chancery and common @-@ law courts over who held pre @-@ eminence . It had been the practice under Henry VI that plaintiffs in the common @-@ law courts could not execute judgments given by the common @-@ law judges if the Lord Chancellor felt their claim was " against conscience " . This had been vehemently opposed by the common @-@ law judges , who felt that if the Lord Chancellor had the power to override their decisions , parties to a case would flock to the Court of Chancery . The dispute over the pre @-@ eminence of the Lord Chancellor continued into Elizabeth I 's reign , with the judges increasing in strength ; the Lord Chancellor was no longer a clergyman whom it was risky to offend , while the judges had grown in stature . Sir Edward Coke cites in his Reports a case at the end of Elizabeth 's reign which seems to indicate that the Chancellor 's prerogative had been overturned , when the judges (without opposition from the Monarch) allowed a claim to proceed despite the Lord Chancellor 's implied jurisdiction . At the same time , the common @-@ law judges ruled that the Chancery had no jurisdiction over matters of freehold .

The Lord Chancellor of the time , Lord Ellesmere , was not dissuaded , and maintained that he had the jurisdiction to oversee decisions of the common @-@ law courts and matters of freehold . In 1614 , he heard the case of Courtney v. Glanvil , dictating that Glanvil should be imprisoned for deceit ; this was overruled by Sir Edward Coke in the Court of King 's Bench , who demanded that Glanvil be released and issued a writ of habeas corpus . Two years later , the Earl of Oxford 's Case

came before Ellesmere , who issued a judgment that directly contradicted English law based on the " Law of God " . Coke and the other judges overruled this judgment while Ellesmere was ill , taking the case as an opportunity to completely overthrow the Lord Chancellor 's jurisdiction . Ellesmere appealed to the Monarch , who referred the matter to the Attorney General for the Prince of Wales and Francis Bacon , the Attorney General for England and Wales . Both recommended a judgment in Ellesmere 's favour , which the Monarch made , saying :

as mercy and justice be the true supports of our Royal Throne ; and it properly belongeth to our princely office to take care and provide that our subjects have equal and indifferent justice ministered to them ; and that when their case deserveth to be relieved in course of equity by suit in our Court of Chancery , they should not be abandoned and exposed to perish under the rigor and extremity of our laws , we ... do approve , ratifie and confirm , as well the practice of our Court of Chancery .

Coke 's challenge to the Chancery is seen by academic Duncan Kerly as helping him lose his position as a judge , and until its dissolution the Court of Chancery could overrule judgments issued in the common @-@ law courts . This was not the end of the dispute , however ; in his Institutes of the Lawes of England , Coke suggested that the Monarch 's decree was unlawful , and his contemporary David Jenkins wrote in Eight Centuries of Reports that " the excess of Jurisdiction in Chancery , in examining Judgments at Common Law " was one of the largest abuses of the law . In the 17th century Robert Atkyns attempted to renew this controversy in his book An Enquiry into the Jurisdiction of the Chancery in Causes of Equity , but without any tangible result . Even so , future Lord Chancellors were more cautious ; when Francis Bacon succeeded Ellesmere , he made sure to prevent the misuse of injunctions . Horwitz writes that this was not just limited to Bacon , and that " after the dramatic confrontations between Lord Chief Justice Coke and Lord Chancellor Ellesmere , chancellors took care to circumscribe the Court 's corrective jurisdiction and to focus more narrowly on territories they had staked out as peculiarly their own " .

= = = Attempted reform under the Commonwealth of England = = =

By the time of the English Civil War , the Court of Chancery was being criticised extensively for its procedure and practice . During the 16th century the Court was vastly overworked ; Francis Bacon wrote of 2 @,@ 000 orders being made a year , while Sir Edward Coke estimated the backlog to be around 16 @,@ 000 cases . This was partly due to the incompetence of the judges , and partially due to the procedure used ; evidence was re @-@ heard up to three times and orders were issued and then overruled , only to be issued again : " what was ordered one day was contradicted the next , so as in some cases there had been five hundred orders and faire more as some affirmed " . The Court spent a long time on each case , which , combined with the backlog , made the pursuit of a case extremely expensive . This was exacerbated by the appointment to the Court of useless , highly paid officials by the Lord Chancellor or Master of the Rolls , many of whom were their friends . The Chancellor and Master both openly sold these roles , whose exorbitant pay is more surprising considering that their duties were normally such that could be easily performed by solicitor 's clerks , and that they were usually performed by underclerks , not by the officials .

In 1649 , during the English Civil War , Parliament published a series of orders to reform the Court . Most were from the doctrines set out by Francis Bacon as Lord Chancellor , but there were some more modern reforms : counsels to the defendants could deliver pleas , rather than defendants in person , thus saving the cost of a Commissioner of Oaths , and cases were to be heard in the order they were accepted by the court . Parliament also fixed the fees that officers could charge , in an attempt to reduce the expense of a case . The following year , Parliament appointed a commission to look at court reform ; this made many recommendations , but none that directly affected the Chancery . In August 1653 another debate took place in Parliament , lasting two days , in which a paper titled " Observations concerning the Court of Chancery " was circulated ; this concerned the costs , workings , and officers of the Court . A second paper was given out , " for the regulation or taking away of the Court of Chancery , and settling the business of Equity according to the original and primitive constitution of it ; and for taking away all unnecessary fees , offices and officers and

formalities now used , and for the speedy dispatch of business " .

Parliament eventually proposed dissolving the court as it then stood and replacing it with " some of the most able and honest men " , who would be tasked with hearing equity cases . Rather than the mass of clerks on the staff , a sufficient number of godly , able , honest and experienced clerks , which be working attorneys and clerks and not overseeing officers " would be appointed , and the Bar would elect two supervising Chief Clerks to advise on points of practice . A far @-@ reaching and heavily criticised draft , this was eventually replaced by an even more thorough @-@ going bill . The judges would be six Masters , who would sit in groups of three and be appointed by Parliament , assisted by a Chief Clerk . All Justices of the Peace would be allowed to submit cases to the court , with cases to be heard within 60 days . The party that lost the case was to pay full fees to the other side ; the fees would be set ludicrously low . This bill was never put into effect , as Parliament was dissolved . Oliver Cromwell did appoint a Commission to institute similar provisions in 1654 , but the Commission refused to perform its duties .

= = = Restoration = = =

After the English Restoration , those judges and officials sacked under Cromwell were reinstated , with little modern progression ; as Kerly puts it , " unjust judges presided again , and rank maladministration invaded the offices " . The situation was much improved , nonetheless , because many of the faults were down to the machinery of the court rather than the spirit , which Lord Clarendon soon rectified . Upon appointment as Lord Chancellor he immediately published a new issue of the Orders for the Regulation of the Practice of the Court of Chancery . This was based on the code set by the Cromwellian Commissioners , and limited the fees charged by the court and the amount of time they could take on a case .

An effect of the Civil War and resulting Commonwealth of England , particularly the " liberal " values and feelings it stirred up , was the continuous modernisation and improvement of the common law courts , something that reduced the interference of the Lord Chancellor in common law matters , except in areas where they had wildly divergent principles and law . Under Charles II , for the first time , there was a type of common law appeal where the nature of the evidence in the initial trial was taken into account , which reduced the need to go to the Court of Chancery . As a result , the nature of the Court of Chancery changed ; rather than being a major corrective system for the common law , it became primarily concerned with the administration and protection of rights , as opposed to the common law courts , which were mainly concerned with the remedy and retribution of problems . This was further enforced by the Statute of Frauds , which confirmed Chancery principles across the board , allowing people to receive the same treatment in the common law courts as they did in the Chancery .

A major reform to the Court happened soon after the restoration , with the introduction of a right of appeal to the House of Lords from the Chancery . Prior to this there had been no records of appeals to the Lords , and a committee had concluded that there was no precedent to give the Lords jurisdiction over equity matters , except when problems and cases were sent directly to Parliament (as occasionally had been the case) . In 1660 the Convention Parliament claimed for itself the right of appellate jurisdiction over equity matters , and also the right of original jurisdiction to hear equity cases at first instance . After disputes which lasted into the next Parliament , this second measure was dropped , but the right to hear equity appeals was confirmed . Horowitz writes that despite these changes , one of the academic certainties is that the problems which had dogged the court for the last two centuries persisted ; Observations on the Dilatory and Expensive Proceedings in the Court of Chancery , written in 1701 , listed 25 different procedures , areas and situations which contributed to the problems of high fees and slow processes .

= = = Further reform = = =

Lord Somers , following his dismissal as Lord Chancellor , introduced an Act in 1706 which " became the most important act of law reform which the 18th century produced " . The Act

significantly amended the existing law and court procedure , and while most of it was aimed at the common @-@ law courts , it did affect the Chancery . For equity , the Act provided that a party trying to have his case dismissed could not do so until he had paid the full costs , rather than the nominal costs that were previously required ; at the same time , the reforms the Act made to common @-@ law procedure (such as allowing claims to be brought against executors of wills) reduced the need for parties to go to equity for a remedy . Legal historian Wilfrid Prest writes that despite these legislative enactments , the tally of which " begins to look quite impressive " , the old problems continued , albeit less frequently ; one barrister of the time claimed that going to the Court with a case worth anything less than £ 500 was a waste of time .

Under Lord Hardwicke , Chancery procedure was further reformed with a pair of orders published in 1741 and 1747 , which mandated that a claimant who brought his case to court and had it dismissed immediately should pay full costs to the other side , rather than the 40 shillings previously paid , and that parties filing bills of review should pay £ 50 for the privilege . At the same time , a review of the Court 's costs and fees was undertaken by a Parliamentary Committee . The Committee reported that fees and costs had increased significantly since the last review under Charles I , a number of expensive honorary positions had been created , and on many occasions court officers had not known what the correct fees were . At the same time , proceedings had grown to several thousand pages in length , necessitating additional expense . The Committee concluded " that the interest which a great number of officers and clerks have in the proceedings of the Court of Chancery , has been a principal cause of extending bills , answers , pleadings , examinations and other forms and copies of them , to an unnecessary length , to the great delay of justice and the oppression of the subject " . They recommended that a list of permissible fees be published and circulated to the court officials .

The recommendations were not immediately acted on , but in 1743 a list of permissible fees was published , and to cut down on paperwork , no party was required to obtain office copies of proceedings . The permissible fees list contained over 1 @,@ 000 items , which Kerly describes as " an appalling example of the abuses which the unrestrained farming of the Offices of the Court , and the payment of all officials by fees had developed " .

= = = Victorian era = = =

Despite these small reforms , the 18th century ended with continuous and unrestrained attacks on the Court . Although complaints had been common since the time of Elizabeth I , the problems had become more unrestrained , at the same time as politically neutral law reformers first arose in any great number . Many critics were barristers of the common law , ignorant of the court 's workings , but some , such as Sir Samuel Romilly , had trained as a Chancery advocate and were well aware of the Chancery 's procedure . The success of the Code Napoleon and the writings of Jeremy Bentham are seen by academic Duncan Kerly to have had much to do with the criticism , and the growing wealth of the country and increasing international trade meant it was crucial that there be a functioning court system for matters of equity . While the upper classes had been struggling with the Court for centuries , and regarded it as a necessary evil , the growing middle and merchant classes were more demanding . With increasing court backlogs , it was clear to many law reformers and politicians that serious reform was needed .

The first major reforms were the appointment of a Vice @-@ Chancellor in 1813 to hear cases , and the extension of the Master of the Rolls ' jurisdiction in 1833 to hear any and all cases . In 1824 a Chancery Commission was appointed to oversee the Court , which the political opposition maintained was simply to protect it ; the membership included the Lord Chancellor , the Master of the Rolls and all senior Chancery judges . Some significant reforms were proposed ; in 1829 , for example , Lord Lyndhurst proposed unsuccessfully that the equity jurisdiction of the Court of Exchequer be merged with the Chancery , and that a fourth judge be appointed to hear the additional cases . A year later , when the common law courts were each gaining a judge , he repeated his proposal , but the bill was strongly opposed by judges who maintained that the court backlog did not justify the additional expense of a fourth judge . Eventually , two more Vice @-@

Chancellors were appointed in 1841 , and a decade later two Lord Justices were tasked with hearing appeals from the Court through the Court of Appeal in Chancery . These are described by Lobban as " hasty reactions to mounting arrears " rather than the result of long @-@ term planning .

As a result of the new appointments , the court backlog was significantly reduced ? the court processed 1 @,@ 700 cases in 1846 ? 49 compared to 959 in 1819 ? 24 ? but it rose again after the death of Shadwell VC and retirement of Wigram VC . Shadwell , appointed under the 1831 Act of Parliament , could be replaced , but a principal in the 1841 Act (under which Wigram had been appointed) meant that it provided for two life appointments to the court , not two open positions ; after the retirement or death of the judges , no more could be appointed . Again , the backlog became a problem , particularly since the Lord Chancellor was distracted with the appellate cases through the Court of Appeal in Chancery and the House of Lords , leaving a maximum of three Chancery judges who were available to hear cases . Further structural reforms were proposed ; Richard Bethell suggested three more Vice @-@ Chancellors and " an Appellate Tribunal in Chancery formed of two of the Vice Chancellors taken in rotation " , but this came to nothing .

The 1830s saw a reduction in the " old corruption " that had long plagued the court , first through the Chancery Sinecures Act 1832 (which abolished a number of sinecure offices within the court and provided a pension and pay rise for the Lord Chancellor , in the hope that it would reduce the need for the Chancellor to make money by selling court offices) and then through the Chancery Regulation Act 1833 . (which changed the appointments system so that Masters in Chancery would henceforth be appointed by The Crown , not by the Lord Chancellor , and that they would be paid wages .) Through the abolition of sinecures , taking into account the wages and pension , this saved the Court £ 21 @,@ 670 a year . The government had initially intended the 1832 bill to go further and abolish the Six Clerks , but the Clerks successfully lobbied to prevent this . This did not save them , however ; in 1842 the " nettle " of the Six Clerks Office was grasped by Thomas Pemberton , who attacked them in the House of Commons for doing effectively sinecure work for high fees that massively increased the expense involved in cases . As a result , the Court of Chancery Act 1842 was passed in the same year that abolished the office of the Six Clerks completely .

Some further procedural reforms were undertaken in the 1850s . In 1850 , a new set of Chancery orders were produced by the Lord Chancellor , allowing Masters to speed up cases in whatever way they chose and allowing plaintiffs to file a claim , rather than the more expensive and long @-@ winded bill of complaint . The Suitors in Chancery Relief Act 1852 gave all court officials salaries , abolished the need to pay them fees and made it illegal for them to receive gratuities ; it also removed more sinecure positions . The Master in Chancery Abolition Act 1852 abolished the Masters in Chancery , allowing all cases to be heard directly by judges instead of bounced back @-@ and @-@ forth between judges and Masters . As a result of these reforms the court became far more efficient , and the backlog decreased ; in the 1860s an average of 3 @,@ 207 cases were submitted each year , while the Court heard and dismissed 3 @,@ 833 , many of them from the previous backlog . Much of this work was carried out by the growing number of clerks , however , and members of the legal profession became concerned about the " famine " of equity judges .. Despite these reforms , it was still possible for Charles Dickens , writing in 1852 in the preface to his novel Bleak House , to bemoan the inefficiencies of the Court of Chancery . His novel revolves around a fictional long @-@ running Chancery case , Jarndyce and Jarndyce . He observed that at the time he was writing there was a case before the Chancery court " which was commenced nearly twenty years ago ... and which is (I am assured) no nearer to its termination now than when it was begun " . He concluded that " If I wanted other authorities for Jarndyce and Jarndyce , I could rain them on these pages , to the shame of a parsimonious public " .

= = = Dissolution = = =

The idea of fusing the common @-@ law and equity courts first came to prominence in the 1850s ; although the Law Times dismissed it as " suicide " in 1852 , the idea gained mainstream credibility ,

and by the end of the year the Times was writing that there was " almost unanimity " of opinion that the existence of two separate systems was " the parent of most of the defects in the administration of our law " . Much of the impetus for fusion came from pressure groups and lawyers ' associations . They partially succeeded with the Common Law Procedure Act 1854 and Chancery Amendment Act 1858 , which gave both courts access to the full range of remedies . Until then , the common @-@ law courts were limited to granting damages , and the Chancery was limited to granting specific performance or injunctions . The County Courts (Equity Jurisdiction) Act 1865 gave the county courts the authority to use equitable remedies , although it was rarely used . The Lord Chancellors during this period were more cautious , and despite a request by the lawyers ' associations to establish a Royal Commission to look at fusion , they refused to do so .

After the Chancery Regulation Act 1862 had gone some way toward procedural reform , in February 1867 , Roundell Palmer again brought the problem of having two separate court systems to Parliament 's attention , and in March 1870 Lord Hatherley introduced a bill to create a single , unified High Court of Justice . The bill was a weak one , not containing any provision addressing which court would deal with the common law and which with equity , and was also silent on the structure of the court , as Hatherley believed the difference between the common law and equity was one of procedure , not substance . As a result , the bill was heavily opposed from two sides : those who opposed fusion , and those who supported fusion but felt the provisions were too weak and vague to be of any use . As a result , the bill was eventually withdrawn .

In 1873 the idea was resurrected ? again by Palmer , who was now Lord Selborne and the new Lord Chancellor ? as the Supreme Court of Judicature bill . While still cautious , Selborne 's bill was far more structured than Hatherley 's , and contained more detail on what was to be done . Rather than fusing the common law and equity , which he saw as impracticable since it would destroy the idea of trusts , he decided to fuse the courts and the procedure . The final draft provided that all of the existing superior courts would be fused into one court consisting of two levels ; one of first instance , one appellate . The court of first instance , to be known as the High Court of Justice , would be subdivided into several divisions based on the old superior courts , one of which , the Chancery Division , would deal with equity cases . All jurisdiction of the Court of Chancery was to be transferred to the Chancery Division ; Section 25 of the Act provided that , where there was conflict between the common law and equity , the latter would prevail . An appeal from each division went to the appellate level , the Court of Appeal of England and Wales . These provisions were brought into effect after amendment with the Supreme Court of Judicature Act 1875 , and the Court of Chancery ceased to exist . The Master of the Rolls was transferred to the new Court of Appeal , the Lord Chancellor retained his other judicial and political roles , and the position of Vice @-@ Chancellor ceased to exist , replaced by ordinary judges . The Chancery Division remains to this day part of the High Court of Justice of England and Wales .

= = Jurisdiction = =

= = = Trusts and the administration of estates = = =

The idea of a trust originated during the Crusades of the 12th century , when noblemen travelled abroad to fight in the Holy Land . As they would be away for years at a time it was vital that somebody could look after their land with the authority of the original owner . As a result , the idea of joint ownership of land arose . The common law courts did not recognise such trusts , and so it fell to equity and to the Court of Chancery to deal with them , as befitting the common principle that the Chancery 's jurisdiction was for matters where the common law courts could neither enforce a right nor administer it . The use of trusts and uses became common during the 16th century , although the Statute of Uses " [dealt] a severe blow to these forms of conveyancing " and made the law in this area far more complex . The court 's sole jurisdiction over trusts lasted until its dissolution .

From its foundation , the Court of Chancery could administer estates , due to its jurisdiction over trusts . While the main burden in the 16th century fell on the ecclesiastical courts , their powers over

administrators and executors was limited , regularly necessitating the Court of Chancery 's involvement . Prior to the Statute of Wills , many people used feoffees to dispose of their land , something that fell under the jurisdiction of the Lord Chancellor anyway . In addition , in relation to the discovery and accounting of assets , the process used by the Court of Chancery was far superior to the ecclesiastical one ; as a result , the Court of Chancery was regularly used by beneficiaries . The common law courts also had jurisdiction over some estates matters , but their remedies for problems were far more limited .

Initially , the Court of Chancery would not entertain a request to administer an estate as soon as a flaw in the will was discovered , rather leaving it to the ecclesiastical courts , but from 1588 onwards the Court did deal with such requests , in four situations : where it was alleged that there were insufficient assets ; where it was appropriate to force a legatee to give a bond to creditors (which could not be done in the ecclesiastical courts) ; to secure femme covert assets from a husband ; and where the deceased 's debts had to be paid before the legacies were valid .

= = = Insanity and guardianship = = =

The Chancery 's jurisdiction over " lunatics " came from two sources : first , the King 's prerogative to look after them , which was exercised regularly by the Lord Chancellor , and second , the Lands of Lunatics Act , which gave the King (and therefore the Chancellor) custodianship of lunatics and their land ; the Lord Chancellor exercised the first right directly and the second in his role as head of the Court of Chancery . This jurisdiction applied to any " idiots " or " lunatics " , regardless of whether or not they were British , or whether their land was within England and Wales . They were divided into two categories ? idiots , " who have no glimmering of reason from their birth and are , therefore , by law , presumed never likely to attain any " , and lunatics , " who have had understanding but have lost the use of it " . Lunatics and idiots were administered separately by the Lord Chancellor under his two prerogatives ; the appeal under the King 's prerogative went directly to the King , and under the Lands of Lunatics Act to the House of Lords .

Idiots and lunatics had their land looked after by a court @-@ appointed administrator , and any profits went into a trust fund to support the insane person . Due to the vested interest of the King (who would hold the lands) the actual lunacy or idiocy was determined by a jury , not by an individual judge . Under the Lunacy Act 1845 the Lord Chancellor had a right to appoint a commission to investigate the insanity of an individual ; as part of his role as Keeper of the King 's conscience , however , he would only do this when it was beneficial to the lunatic , not simply because somebody had been found insane .

The law courts ' jurisdiction over the guardianship of children is said to have come from the King 's prerogative of parens patriae . The Chancery had administered this area of law from an early period , since it primarily concerned the holding of land ? a form of trust . Since these were mainly dealt with orally there are few early records ; the first reference comes from 1582 , when a curator was appointed to deal with the property of an infant . While the common law courts regularly appointed guardians , the Chancery had the right to remove them , replace them or create them in the first place . Similarly , while there were actions against guardians which the child could undertake in the common law courts , these were regularly undertaken in the Court of Chancery . This jurisdiction was first regularly recognised from 1696 onwards , and its main focus was the welfare of the child . As such , wards of the court had certain principles : their estates had to be administered under the supervision of the Court , they had to be educated under the same supervision , and any marriage had to be sanctioned by the Court .

= = = Charities = = =

The Lord Chancellor had , since the 15th century , been tasked with administering estates where the estate was to be used for charitable purposes . In Bailiff of Burford v Lenthall , Lord Hardwicke suggested that the jurisdiction of the Court over charity matters came from its jurisdiction over trusts , as well as from the Charitable Uses Act 1601 . Carne suggests that , as the Court had long been

able to deal with such situations , the 1601 act was actually just the declaration of pre @-@ existing custom . This is illustrated by the Chancellor 's original jurisdiction over feoffments to uses , which came from his original status as a clergyman , as charity had been originally enforced by the Church and the ecclesiastical courts . Essentially , an owner of land could dispose of it by granting the right to use it and collect fees to another , not just by selling it . This was not valid at the common law courts but was in the Court of Chancery ; the Lord Chancellor is reported as having said , in 1492 , " where there is no remedy at common law there may be good remedy in conscience , as , for example , by a feoffment upon confidence , the feoffor has no remedy by common law , and yet by conscience he has ; and so , if the feoffee transfers to another who knows of this confidence , the feoffor , by means of a subpoena , will have his rights in this Court " . After the reign of Edward IV , if the charitable land were to be sold (or land were to be sold to create the charity) the Court of Chancery was the only place this could be done , as ecclesiastical and probate courts did not have a valid jurisdiction .

= = Remedies = =

The Court of Chancery could grant three possible remedies ? specific performance , injunctions and damages . The remedy of specific performance is , in contractual matters , an order by the court which requires the party in breach of contract to perform his obligations . The validity of the contract as a whole was not normally considered , only whether there was adequate consideration and if expecting the party that breached the contract to carry out his obligations was viable . Injunctions , on the other hand , are remedies which prevent a party from doing something (unlike specific performance , which requires them to do something) . Until the Common Law Procedure Act 1854 , the Court of Chancery was the only body qualified to grant injunctions and specific performance .

Damages is money claimed in compensation for some failure by the other party to a case . It is commonly believed that the Court of Chancery could not grant damages until the Chancery Amendment Act 1858 , which gave it that right , but in some special cases it had been able to provide damages for over 600 years . The idea of damages was first conceived in English law during the 13th century , when the Statutes of Merton and Gloucester provided for damages in certain circumstances . Despite what is normally assumed by academics , it was not just the common law courts that could grant damages under these statutes ; the Exchequer of Pleas and Court of Chancery both had the right to do so . In Cardinal Beaufort 's case in 1453 , for example , it is stated that " I shall have a subpoena against my feoffee and recover damages for the value of the land " . A statute passed during the reign of Richard II specifically gave the Chancery the right to award damages , stating :

For as much as People be compelled to come before the King 's Council , or in the Chancery by Writs grounded upon untrue Suggestions ; that the Chancellor for the Time being , presently after that such Suggestions be duly found and proved untrue , shall have Power to ordain and award Damages according to his Discretion , to him which is so troubled unduly , as afore is said .

This did not extend to every case , but merely to those which had been dismissed because one party 's " suggestions [are] proved untrue " , and was normally awarded to pay for the innocent party 's costs in responding to the party that had lied . Lord Hardwicke , however , claimed that the Chancery 's jurisdiction to award damages was not derived " from any authority , but from conscience " , and rather than being statutory was instead due to the Lord Chancellor 's inherent authority . As a result , General Orders were regularly issued awarding the innocent party additional costs , such as the cost of a solicitor on top of the costs of responding to the other party 's false statements .

The Court became more cautious about awarding damages during the 16th and 17th centuries ; Lord Chancellors and legal writers considered it a common law remedy , and judges would normally only award damages where no other remedy was appropriate . Damages were sometimes given as an ancillary remedy , such as in Browne v Dom Bridges in 1588 , where the defendant had disposed of waste inside the plaintiffs woods . As well as an injunction to prevent the defendant dumping waste in the woods , damages were also awarded to pay for the harm to the woods . " This

convention (that damages could only be awarded as an ancillary remedy , or where no others were available) remained the cause until the 18th and early 19th centuries , when the attitude of the Court towards awarding damages became more liberal ; in Lannoy v Werry , for example , it was held that where there was sufficient evidence of harm , the Court could award damages in addition to specific performance and other remedies . This changed with Todd v Gee in 1810 , where Lord Eldon held that " except in very special cases , it was not the course of proceeding in Equity to file a Bill for specific performance of an agreement ; praying in the alternative , if it cannot be performed , an issue , or an inquiry before the Master , with a view to damages . The plaintiff must take that remedy , if he chooses it , at Law . " This was followed by Hatch v Cobb , in which Chancellor Kent held that " though equity , in very special cases , may possibly sustain a bill for damages , on a breach of contract , it is clearly not the ordinary jurisdiction of the court " .

The Court 's right to give damages was reiterated in Phelps v Prothero in 1855 , where the Court of Appeal in Chancery held that if a plaintiff starts an action in a court of equity for specific performance and damages are also appropriate , the court of equity may choose to award damages . This authorisation was limited to certain circumstances , and was again not regularly used . Eventually , the Chancery Amendment Act 1858 gave the Court full jurisdiction to award damages ; the situation before that was so limited that lawyers at the time commented as if the Court had not previously been able to do so .

= = Officers of the Court = =

= = = Lord Chancellor = = =

The Lord Chancellor was the official head of the Court of Chancery . For much of its early existence he was closely linked with the curia regis ; even after the Court became independent around 1345 , petitions were addressed to " the King and others " . By the time of Edward IV , however , petitions were issued in the name of the Lord Chancellor and the Court of Chancery . In the early years , the Lord Chancellor made most of the decisions himself ; he summoned the parties , set a date for hearings , addressed questions from the parties to the case and announced the verdict . He regularly called for assistance from the common law judges , who complained that this prevented them from doing the work of the common law courts , and early records frequently say that the decision was made " with the advice and consent of the justices and servants of our Lord the King in the Chancery " .

In one period , particularly under Edward III , the Lord Chancellor also possessed some common law jurisdiction , able to hear cases for petitions of right and the repeal of letters patent , as well as other cases in which the King was a party . He heard cases on recognizances , the execution of Acts of Parliament and any case in which an officer of the Court of Chancery was involved . Records show that he enrolled recognizances and contracts , and also issued writs commanding a sheriff to enforce them . Carne considers that this common law jurisdiction was likely down to a failure to separate the common law jurisdiction and the equity jurisdiction possessed by the Lord Chancellor , a failure that continued into the 16th century ; Sir Edward Coke wrote that in the Chancery there was both an ordinary court and an " extraordinary " one .

Most of the early Lord Chancellors were members of the clergy ; the first legally trained Lord Chancellor was Robert Parning SL , who was appointed in 1341 and held the office for two years . His successors were again clerics until the appointment of Robert Thorpe in 1371 , probably due to pressure from Parliament . The precedent of appointing legally trained Lord Chancellors was not followed strongly , although others such as Nicholas Bacon did hold the office ; one Lord Chancellor is said to have been appointed because the Queen was impressed with his skill at dancing . According to William Carne , Thomas Egerton was the first " proper " Lord Chancellor from the Court of Chancery 's point of view , having recorded his decisions and followed the legal doctrine of precedent . Marsh writes that the use of clergymen as Lord Chancellors had a tremendous influence on the Court 's actions , tracing the idea of following natural law in the Court back to the Chancellors

' Christian roots . Following the dissolution of the Court of Chancery in 1873 , the Lord Chancellor failed to have any role in equity , although his membership of other judicial bodies allowed him some indirect control .

= = = Other officers of the Court = = =

When the Court was a part of the curia regis , the Officers were fluid ; they could include Doctors of Civil Law , members of the curia and " those who ought to be summoned " . As the members of the curia ceased to sit as Officers , however , the composition of the court became more solid . From an early period , the Lord Chancellor was assisted by twelve Clerks in Chancery , known as the Masters in Chancery . It was said that these positions had existed since before the Norman Conquest , sitting as part of the Witenagemot . After the conquest they gradually lost their authority , and became advisers and assistants to the Lord Chancellor . It was the Masters who started court cases , issuing the initial writs without which parties could not begin cases in the common law courts . In addition , they took depositions and acted as secretaries to the Lord Chancellor , maintaining the plea rolls . In the early years they were almost always members of the clergy , called the " clericos de prima forma " ; it was not until the reign of Edward III that they were referred to as Masters in Chancery .

The twelve Masters in Chancery were led by one of their number , known as the Master of the Rolls . He was almost as powerful as the Lord Chancellor , and had wielded judicial power since the time of Edward I. He was sometimes known as the " Vice @-@ Chancellor " , and was given the title " The Right Worshipful " . The Master of the Rolls assisted the Court 's judges in forming judgments , and regularly sat in place of the Lord Chancellor . The first reference to the Master of the Rolls comes from 1286 , although it is believed that the position probably existed before that ; the first reference to his having independent judicial authority is from 1520 . The Master of the Rolls had six clerks , simply known as the Six Clerks , who helped keep the records ; they were independently accountable for any mistakes . These were initially solicitors for the people suing in the Court , and no other counsel was allowed , but by the time of Francis Bacon claimants were allowed their own counsel . The Master of the Rolls and his clerks were housed in the Rolls Office , along with the Six Clerks ' clerks , who numbered sixty . The Six Clerks were abolished in 1843 , the Masters in Chancery in 1852 , and when the Court of Chancery was abolished , the Master of the Rolls moved to the newly established Court of Appeal of England and Wales .

From an early period , the Court was also assisted by two Registrars , who enrolled decrees of the court and orders ; their books documented the legal precedent set by the court . At the same time , two Examiners were appointed to assist the Master of the Rolls in examining witnesses . The positions were regularly and openly sold by the Master of the Rolls and Lord Chancellor ? Masters in Chancery went for £ 6 @,@ 000 in 1625 . To avoid the sale of offices , and due to the corruption of many court officials , an Act was passed that year requiring that fees be paid directly into the Bank of England , and creating an Accountant @-@ General to oversee the financial aspects of the court . In 1813 the first Vice @-@ Chancellor was appointed to deal with the increasing number of cases submitted to the Court . With the backlog growing larger , two more were appointed in 1841 under a second Act of Parliament , although this provided for two life appointments , not two new positions ; when the new Vice @-@ Chancellors died , there could be no replacements . With the dissolution of the Court in 1873 , the position of Vice @-@ Chancellor ceased to exist .