

Common law and equity prior to the judicature act 1873 on fusion fallacy essay sa...

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The early development of equity categorized it as a separate system from the then existing common law. However, Lord Chancellor's intervention gradually developed a distinct body of law called 'equity' which was well established by the fifteenth century. From then on, the Chancellor's jurisdiction was exercised via what later becomes 'court of Chancery.' The existence of these two systems at times conflicted because of the way the two courts operated. By virtue of section 79 of the Common Law Procedure Act of 1854, Common law courts possessed a limited power of issuing injunctions while the Chancery Amendment Act of 1858 gave the court of Chancery power to issue or award damages as opposed to specific performance and injunctions. The two systems had a lot of conflicts to the extent that by the 19th century a number of Parliamentary reports resulted in the Judicature Acts of 1873 and 1875. These two Acts were responsible for joining the existing superior courts into a single Supreme Court of Judicature.

This Supreme Court replaced the courts of Queen's Bench, Court of Exchequer chamber, Exchequer and Common Pleas as well as the court of Chancery, and the court of appeal in Chancery. The Supreme Court comprised of both the Court of Appeal and the High Court. It administered both equity and rules of common law thus bringing the question as to whether this was an amalgamation of administration or fusion of the rules? Various controversies has arise as to whether the Acts has fused the rules of equity and common law, or whether it is just an amalgamation of the two rules within the same court. Some academicians has agreed that the two courts had indeed been fused into one entity while other believes that the Judicature Acts are simply procedurals. In *Salt v Cooper* 1, Sir George Jessel

MR, stated to the effect that, the intent of the Judicature Act was not to fuse the two rules, but rather administering law and equity under a single tribunal, shows the separation of the two rules being administered by a single court.

These rules can be described as the same stream of jurisdiction running parallel in the same channel. In *MCC Proceeds Inc v Lehman Bros International*² Mummery LJ revealed the fact that, the Judicature Acts intended to gain procedural improvements when it comes to the administering of law and equity. Thus it was not to transform the existing equitable rights into legal titles or to fuse the equitable rules with common law. The Fusion Fallacy has been subjected to heavy scrutiny within the case of New South Wales Court of Appeal in *Harris v Digital Pulse Pty Ltd*³. In this case, the defendants breached their contractual as well as fiduciary obligations of loyalties by diverting projects away from their employer who was the plaintiff. In the trial court, the judge held the defendants liable to either make an equitable compensation or account for the profits at the election of the plaintiff. The trial judge also awarded exemplary damages against the defendants for having breached a fiduciary duty. On appeal, this decision was however reversed by the majority. The appeal decision found that there had been no power to award exemplary damages against defendants for breach of a fiduciary relationship.

The ratio decidendi in this decision was that, an equitable relief is not supposed to pursue penal objectives because this was inappropriate. On the other hand, some scholar believes that the Acts did not merely fuse the

administration of the two rules, but it fused the rules themselves amounting them to a single rule within the courts. According to Lord Denning in *Errington v Errington*⁴, the rules of equity and common law have been fused for almost eighty years.... In addition, Lord Browne-Wilkinson in *Tinsley v Milligan*⁵ held to the effect that, English law now has one single law that contains both legal and equitable interests. Therefore that a person in ownership of either type of estate possessed a right of property that amounted to a right in rem as opposed to merely a right in personam. It was thus held that the equitable principle that governs when property or a title was affected under illegality had now become one after merging the common law rule. Furthermore, in *Boyer v Warbey*⁶, Lord Denning made a clarification of what he meant by 'fuse'.

He held inter alia that, prior to the Judicature Act 1873 the doctrine of covenants relating to land only applied to those covenants that were under seal as opposed to agreements. However, the judge stated that since the 'fusion' of Equity and common law, this position is not different. It was noted by Lord Diplock in *United Scientific c Holdings Ltd v Burnley Borough Council*⁷ that the Judicature Act 1873 brought about the fusing of adjectival law system and the substantive law which were formerly administered under the courts of Chancery and court of law. he explains that now the 'two streams' have certainly joined. " My Lords, if by 'rules of equity' is meant that body of substantive and adjectival law that, prior to 1875, was administered by the Court of Chancery but not by courts of common law, to speak of the rules of equity as being part of the law of England in 1977 is

about as meaningful as to speak similarly of the statutes of Uses or of Quia Emptores.

Historically all three have in their time played an important part in the development of the corpus juris into what it is today; but to perpetuate a dichotomy between rules of equity and rules of common law which it was a major purpose of the Supreme Court of Judicature Act 1873 to do away with, is, in my view, conducive to erroneous conclusions as to the ways in which the law of England has developed in the last 100 years.” Within the Commonwealth Caribbean it is evident that the Judicature Acts has been noted to not just fuse the administration of the two rules, but rather it has fused both rules into one entity. However, English courts do not see it in this nature and their rulings have prevailed over the common law rules. This was evident in the case of *Aquaculture Corporation New Zealand v Green Mussel Co Ltd*⁸, where the court of Appeal in New Zealand dealt with the issue of whether damages that had traditionally been common law remedies ought to be awarded for breach of trust.

Similarly, the Canadian courts have also embraced the principle by Lord Diplock in *Re United Scientific Holdings* case. In *Canson Enterprises Ltd v Boughton & Co*⁹, where common law principle under remoteness of damage was deemed applicable under equitable claims over fiduciary breach of duty. The commonwealth jurisdiction position thus leans more on the fact that the Judicature Act actually fused the two rules of equity and common law. It is conclusive, that since the inception of the 1873 and 1875 Judicature Acts

there are conflicting views among academics as to whether the Acts have fuse both rules into one or has just fuse the administration of the rules.

However, despite all the controversial explanations and correct authorities for each varying view it can be duly noted that both the rules of equity and common law are administered in a single court and are both subject to “cross-remedies.” This shows that although the rules are not entirely the same, the rules at times are applied interchangeably. This shows that the Judicature Acts does not give right to a fusion of the rules as noted by Sir George, however it does not give any limitation or prohibition to the fusion of the rules.