

Chancery Courts

Medieval Genealogy

Chancery and equity

In their medieval origins, the Chancellor was the king's chaplain, and the Chancery was the secretariat responsible for recording a variety of business on its [rolls](#). From the 14th century, the Chancellor also became responsible for hearing petitions to the King in Council. The Chancery thus acquired an *equity jurisdiction* - that is, the power to decide upon an 'equitable' solution in cases for which the common law could provide no remedy. While much of the Chancery's earlier business passed to other branches of government, the equity jurisdiction expanded, and remained important until the 19th century.

Although Chancery was the earliest, and is the best known, court of equity, there were others - the **Exchequer** heard equity suits from Elizabethan times, and there were various local courts of equity, including those of the counties palatine of Chester, Lancaster and Durham. **The Court of Requests** and the **Court of Star Chamber**, from the late 15th century - although not strictly courts of equity - used similar procedures and left similar records. The following description relates to Chancery suits, but the others should not be neglected; they are included in the bibliography below.

The records

Several features of equity suits make them particularly fertile ground for genealogists. Most of the suits concern disputes over landed property, often between people who were related to each other. As a result, much of the evidence concerns **family relationships**. For equity suits - unlike common law suits - most of the relevant records are written in English rather than Latin. Generally the most informative are the *pleadings*, or statements made by the plaintiffs and defendants; these survive from the late 14th century for Chancery suits (P.R.O. classes C1-4). The suit would be initiated by a *bill* of complaint from the plaintiff, which would be followed by an *answer* from the defendant. The process could continue with a *replication* from the plaintiff, a *rejoinder* from the defendant (and possibly even further pleadings). Of course, many cases didn't get this far, and there may be only a bill (or even only an answer).

Another distinctive feature of equity proceedings is that the main evidence was in the form of written *depositions* rather than oral testimony. The depositions were based on lists of prepared questions, called *interrogatories*, which can be necessary in interpreting the depositions, as the answers are sometimes of the 'yes/no' or 'he knoweth nothing' variety. Depositions taken in London (called *town depositions*) survive from the 1530s, and *country depositions* from the reign of Elizabeth (C21, 23-25). Their contents can shed light not only on the facts of the case, but also on the deponents themselves. Most were ordinary - sometimes elderly - people who lived in the neighbourhood where the

disputed property lay. Normally their ages and the places where they lived are given, and there are often other incidental pieces of biographical information about themselves, such as how long they had lived there, whose service they were in, and so on. Many early depositions are indexed by the deponents' surnames in the **Bernau Index**.

The pleadings and the depositions are generally the most informative and accessible Chancery records. There are also the *Entry Books* (C33, from 1544), which contain procedural notes about the course of each suit, and also final decrees for cases that reached a conclusion. For a minority of cases, the decrees, together with summaries of the pleadings, were also entered on the *Decree Rolls* (C78, 79, from 1534). There also the *Exhibits* (C103-116, 171), documents deposited as evidence in suits and never returned to their owners; these can include all sorts of miscellaneous material, often of a much earlier date than the suit itself.¹

The **High Court of Chancery** was the court that developed from the Chancellor's jurisdiction. Unlike the courts of law, which were rigidly based on formal causes of action, the **Lord Chancellor** had jurisdiction to determine cases, on behalf of the King, according to equity or fairness rather than according to the strict letter of the law. Gradually the rules of equity became formalized, but they preserved important innovations, such as [injunctions](#) and [trusts](#). See [equity \(law\)](#). Records of the court are kept by [The National Archives](#). Due to this fact the Court of Chancery lost favor with many people as the court gained a reputation for being inconsistent, an old proverb illustrates this "equity varies with the length of the chancellor's foot".²

Most other [common law jurisdictions](#) either (1) abolished chancery courts and merged the powers of the courts of equity with the courts of law, thus making it possible for one to seek equitable relief at the same time as legal relief or (2) made the equitable jurisdiction the responsibility of a separate chancery division of the court of general jurisdiction.³

Delaware, Mississippi, Tennessee, and New Jersey still retain the Courts of Chancery.

In New York State, the Court of Chancery was abolished by the Constitution of 1846, which took effect in 1848. The last Chancellor was Reuben Hyde Walworth, who served as New York's highest judge from 1828 to 1848.⁴

Generally a jury trial is not possible in equitable actions (whether in a merged court or a court of equity) as only a judge can dispense equity.

¹ <http://www.medievalgenealogy.org.uk/guide/cha.shtml>

² http://en.wikipedia.org/wiki/Court_of_Chancery

³ Ibid.

⁴ Ibid.

The [Delaware Court of Chancery](#) has been particularly important in developing [corporate law](#) in the United States, as it is the primary court for disputes between [Delaware corporations](#).⁵

Virginia Certified Genealogist Barbara Vines Little put it quite simply in her “Tracking the Land: Virginia’s Chancery Records Class in 2008 held at the Samford University”: “Justice in a chancery or equity court is based upon fairness; justice in a court of law is based upon the strictly formulated rules of common law.”

Problems over land, division of estates and guardianship of children are settled in chancery courts. Theft, murder, and assault are tried in a court of law. Both courts provide useful information; however, it the chancery court which most gives proof of relationships wanted by genealogists, Little noted.⁶

Tennessee

Chancery Court: The Chancery Court has similar jurisdiction as the Circuit Court and has exclusive original jurisdiction of all civil cases and cases of an equitable nature, where the debt or demand exceeds fifty dollars (\$50.00).⁷

New Jersey

Chancery Court of New Jersey

The Chancery Court had pre-1948 jurisdiction over equity cases (chiefly), including property disputes. This court also held statutory jurisdiction over divorce cases and delegated jurisdiction over lunacy proceedings.

Under the 1947 State Constitution, the Chancery Court was replaced by the Chancery Division of the Superior Court of New Jersey.

For Chancery and Superior Court records post-dating the collections listed on this page, contact the Superior Court Records Management Center at 171 Jersey Street, PO Box 967, Trenton, NJ 08625-0967, tel. 609-777-0092.

*Consult the [Organizational Chart for Pre-1948 Court System](#) for further information on court jurisdictions.*⁸

Mississippi

Website:

<http://www.mssc.state.ms.us/trialcourts/chancerycourt/chancerycourt.html>

⁵ http://en.wikipedia.org/wiki/Court_of_Chancery

⁶ Henry Campbell Black, *Black’s Law Dictionary, Sixth Edition* (St. Paul, Minn.: West Publishing Co., 1990 from “Tracking the Land: Virginia’s Chancery Records”, Samford University Institute of Genealogical and Historical Research, 8-13 June 2008, Barbara Vines Little, CG

⁷ <http://www.lawdog.com/states/tn/court.htm>

⁸ <http://nj.gov/state/darm/links/webcat/queries/sjchance.html>

Delaware**Website:****<http://www.delawoffice.com/chancery.html>****Definitions**

Chancery or court of equity-The name of the court exercising jurisdiction at law, but mainly in equity.⁹

Court of law-A court that hears cases and makes decisions based on statutes or the common law.¹⁰

Minute Book-An abbreviated record of the court proceedings

Order Book-A book containing orders issued by the court.

Deposition-An important tool used in pretrial [discovery](#) where one [party](#) questions the other party or a [witness](#) in the [case](#). Often conducted in an attorney's office, a deposition requires that all questions be answered under oath and be recorded by a court reporter, who creates a deposition transcript. Increasingly, depositions are being videotaped.¹¹

⁹ <http://www.lectlaw.com/def/c225.htm>

¹⁰ <http://www.thefreedictionary.com/court+of+law>

¹¹ <http://www.nolo.com/definition.cfm/term/35E907AC-0E41-4D87-BC978D96673AE3D2>

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