LAW AND EQUITY IN NEW SOUTH WALES AFTER THE SUPREME COURT PROCEDURE ACT, 1957, SECTION 5.

There has been a long-standing reluctance on the part of the New South Wales legislature, probably supported by a majority of lawyers in each generation, to introduce into New South Wales the English Judicature System, even though that system has now endured with surprisingly little amendment for over eighty years, and has been widely adopted in other parts of the British Commonwealth. This reluctance has led that legislature on rare occasions to attempt some palliative for the injustices which can arise from a rigid separation of the jurisdictions of the New South Wales Supreme Court at common law and in equity.

The latest attempt is to be found in the Supreme Court Procedure Act, 1957 (N.S.W.),[1] s. 5, amending the Common Law Procedure Act No. 21, 1899, and the Equity Act No. 24, 1901. In order to examine the purpose and effect of this section it is necessary to review the previous enactments which have sought to achieve some *rapprochement* between these two jurisdictions of the Supreme Court.

Before doing so it is of some historical interest to note that New South Wales legal procedure, when established by the Charter of Justice in 1824 on a civil basis, commenced (no doubt unknowingly) with a system akin to the Judicature System, but by the later statutory separation of the equitable jurisdiction from the other jurisdictions of the Supreme Court of New South Wales, reverted to the rigid separation which then characterised civil procedures in England. This appears from the Privy Council decision in *Larios* v. *Bonany Y Gurety*[2] on appeal from the Supreme Court of Gibraltar. The latter Court was established by a Charter of Justice directing that the Court should have cognizance of all pleas and jurisdiction in all causes, whether civil, criminal, or mixed, arising within the garrison and territory. The rules of the Court, made by "Mr. *Baron* Field, the first Judge of the Court"[3] provided that the civil practice of the Court, whether in its legal or equitable jurisdiction, should be by "petition, answer, or demurrer . . . addressed to the Judge of the Court". Their Lordships advised as follows:[4]

> There is, therefore, nothing in the constitution of the Court, or in the rules which govern it, to compel it to relegate a party who had mistaken his remedy, and had sought equitable relief in a matter not properly within the cognizance of an English Court of Equity, to another tribunal, or to send him from one side of the Court to another. It seems rather to be a Court that already possesses the power which modern legislation is seeking to attribute to our own Superior Courts, of administering to the fullest extent both law and equity in any cause of which it is seised; though, in administering law, it may be bound to adopt and follow the principles which govern English Courts of Equity. From this it seems to follow that had the objections taken to the suit as a suit of specific performance, on the argument of this appeal, been taken by demurrer or otherwise in the Court below, that Court would not have been bound to hold its hand for want of jurisdiction, but might, amending the pleadings if necessary, have caused the subsequent proceedings in the suit to be had as if the suit

[1] Act No. 13, 1957.
[2] (1873) L.R. 5 P.C. 346.
[3] *Id.* at 355. This must surely be Judge Barron Field of our early legal history.
[4] *Id.* at 356.

had been originally an ordinary action for damages sustained by reason of a breach of contract.

Prior to the introduction of the Judicature System in England, the New South Wales legislature had in 1857, by s. 44 and ss. 48-51 (inclusive) of the Common Law Procedure Act, 1857 (N.S.W.),[5] introduced into New South Wales certain provisions of the English Common Law Procedure Act, 1854.[6] These provisions which became respectively s. 176 and ss. 95-98 (inclusive) of the Common Law Procedure Act, 1899, remained in force in their original form until the amendments thereto which came into force on 1st July, 1957, by virtue of s. 5 of the Supreme Court Procedure Act, 1957.

Section 176 provided that in all cases of breach of contract or other injury, where the party injured was entitled to maintain and had brought an action, he might claim a writ of injunction against the repetition or continuance of such breach of contract or other injury, or the committal of any breach of contract or injury of a like kind arising out of the same contract or relating to the same property or right, and he might also in the same action include a claim for damages or other redress. This section, which introduced into New South Wales for the first time the relief by way of injunction in a common law action, remains unaffected by the recent legislation.

Sections 95-98 (inclusive) of the Common Law Procedure Act, 1899, enabled equitable defences to be raised in the common law jurisdiction of the Court and enabled a plaintiff to reply on equitable grounds to any plea in an action in that jurisdiction. The sections are as follows:

S. 95. (1) The defendant or plaintiff is replevin, in any action in which if judgment were obtained he would be entitled to relief against such judgment on equitable grounds may plead the facts which entitle him to such relief by way of defence, and the Court may receive such defence by way of plea.

(2) Such plea shall begin with the words "for defence on equitable grounds", or words to the like effect.

S. 96. Any such matter which, if it arose before or during the time for pleading, would be an answer to the action by way of plea may, if it arise after the lapse of the period during which it could be pleaded, be set up by way of audita querela.

S. 97. (1) The plaintiff may, in answer to any plea, reply facts avoiding such plea upon equitable grounds.

(2) Such replication shall begin with the words "for reply on equitable grounds", or words to the like effect.

S. 98. If it appears to the Court or Judge that any such equitable plea or equitable replication cannot be dealt with by a Court of law so as to do justice between the parties, the Court or Judge may order the same to be struck out on such terms as to costs and otherwise as to the Court or Judge seems reasonable.

Section 98 has now been repealed by s. 5(1) of the Supreme Court Procedure Act, 1957, and in lieu thereof the following new s. 98 has been inserted:

S. 98. (1) Any such equitable plea or equitable replication may be pleaded notwithstanding that upon the facts pleaded the relief on equitable grounds would not be an absolute, perpetual and unconditional injunction, but if upon the facts pleaded that relief would not be such an injunction, the Court or Judge shall make an order that the action be transferred into the jurisdiction of the Court in equity.

The Court or the Judge when making the order may impose such terms as to costs and otherwise as to the Court or Judge seems reasonable.

[5] 20 Vic., No. 31.
[6] 17 & 18 Vic., c. 125, s. 79 and ss. 83-86 (inclusive).

(2) Where an order is made under subsection one of this section the whole record of the action shall be transferred into the jurisdiction of the Court in equity.

(3) After an action has been transferred into the jurisdiction of the Court in equity under this section—

(a) any Judge exercising that jurisidiction may, from time to time, make such orders as he considers necessary relating to amendments, the filing of fresh pleadings, the settling of issues for trial, or otherwise to enable the action to be disposed of in that jurisdiction;

(b) the action shall, subject to paragraph (a) of this subsection, be disposed of according to the practice and procedure of the Court in equity; and

(c) the Court in equity may make such decree, declaration or order as appears just and may in addition thereto or in substitution therefor direct judgment to be entered on its verdict or finding and for costs in the manner prescribed and such a judgment so entered shall have the like force and effect in all respects as the signing of judgment in a Court of law and execution may issue thereon in the manner prescribed.

In so far as the costs of the proceedings before transfer have not been dealt with under subsection one of this section, the Court in equity may deal with those costs.

By the Equity Act, 1880,[7] certain provisions which are now found in ss. 8, 9 and 10 of the Equity Act, 1901,[8] were introduced into New South Wales in order to permit the Equity Court to determine legal rights and to award damages. Of these sections, s. 8 is affected by the recent legislation. Prior to that legislation it remained in the form in which it was originally enacted in 1880. Now by s. 5(2) of the Supreme Court Procedure Act, 1957, a new section 8A has been introduced in the following terms:

S. 8A (1) If it appears to the Court at any stage of any suit or proceeding in the Court that the Court has no jurisdiction to deal with the subject matter of the suit or proceeding and that the appropriate remedy in respect thereof lies in the Common Law jurisdiction of the Supreme Court, the Court shall make an order that the suit or proceeding be transferred into that jurisdiction.

The Court when making the order may impose such terms as to costs and otherwise as to the Court seems reasonable.

(2) Where an order is made under sub-section one of this section the whole record of the suit or proceeding shall be transferred into the Common Law jurisdiction of the Supreme Court.

(3) After a suit or proceeding has been transferred into the Common Law jurisdiction of the Supreme Court under this section—

(a) any Judge exercising that jurisdiction may, from time to time, make such orders as he considers necessary relating to amendments, the filing of fresh pleadings, the settling of issues for trial, or otherwise to enable the suit or proceeding to be disposed of in that jurisdiction; and

(b) the suit or proceeding shall, subject to paragraph (a) of this subsection, be disposed of according to the practice and procedure of the Supreme Court at Common Law.

In so far as the costs of the proceedings before transfer have not been dealt with under subsection one of this section, the Judge presiding at the trial or the Supreme Court at Common Law may make such order as to those costs as may be just.

[7] 44 Vic. No. XVIII.
[8] No. 24, 1901.

Certain consequential amendments have been made to s. 8, which, with these amendments, now reads as follows:

> S. 8. In any suit or proceeding in equity wherein it may be necessary to establish any legal title or right as a foundation for relief the Court shall itself determine such title or right without requiring the parties to proceed at law to establish the same, and whenever any question now cognizable only at law arises in the course of any suit or proceeding before it or has to be decided in any action transferred into its jurisdiction under section ninety-eight of the Common Law Procedure Act, 1899-1957, the Court shall have cognizance thereof as completely as if the same had arisen in a court of law, and shall exercise in relation to such title, right, or question all the powers of the Supreme Court in its Common Law jurisdiction, and no suit or proceeding in equity and no action so transferred shall be open to objection on the ground that the remedy or appropriate remedy is in some other jurisdiction.

From these amendments may be inferred a general purpose of preventing actions at law or suits in equity from failing as a result of the inability of the courts in the respective jurisdictions to determine the questions which arise or to grant the relief claimed. In order to understand why it was necessary that such further amendments should be introduced it is necessary to consider the interpretation which was placed upon the earlier legislation which has been set out above. The respective amendments to the Common Law Procedure Act, 1899, and to the Equity Act, 1901, may then be examined in order to see how far they are likely to succeed in the general purpose which may be inferred.

I. *Common Law Procedure Act, 1899, s. 98*

Taking first ss. 95-98 of the Common Law Procedure Act, 1899, it was established as a principle of the application that the pleading on equitable grounds would only be good if the matter raised in it was such that a court of equity would in respect thereof grant an absolute unconditional and perpetual injunction to restrain the action at law or the pleading of the matter in the action at law as the case might be. This principle was based upon the terms of s. 98 of the Act, since it was held by the courts of common law that any pleading on equitable grounds which did not raise matters in respect of which a court of equity would grant an unconditional perpetual and absolute injunction could not be dealt with by a court of law so as to do justice between the parties.

In *Mines Royal Societies* v. *Magnay*[9] the plaintiff sued the defendant for non-payment of rent under an indenture of lease. The defendant sought to plead, in conjunction with legal pleas, a plea on equitable grounds that there had been an agreement for consideration for surrender of the lease which had taken effect; and he averred that he had always been ready and willing to do all other things on his part that ought to have been done for putting an end to the said lease. It was held that the court at common law could not do justice between the parties which a court of equity would be fully competent to do and would do by ordering a surrender to be executed as a condition precedent to granting an injunction.[10] Instances of the application of this principle are numerous and the cases thereon may be conveniently referred to in the Supreme Court Practice.[11]

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[9] (1854) 10 Exch. 489.

[10] The Court, however, held that the defendant could have the choice of either pleading the legal pleas alone or of pleading the equitable plea alone, though upon the reasoning in the case it is not clear why this choice was allowed.

[11] (3 ed.) 78-79; (4 ed.) 68-69.

On the facts pleaded in *Mines Royal Societies Case* and the many other cases which have followed it, the conclusion of the court at common law was that the relief, if any, which would be granted in equity against the judgment at law would be relief with terms or conditions imposed. It was never necessary for the court at common law to determine finally whether any relief would certainly be granted in equity, provided the court was satisfied that such relief (if any) would not be by way of absolute perpetual and unconditional injunction. If satisfied *per contra* that the relief would be such an injunction, the Court's duty would then be to permit the equitable pleading to stand at law and to be determined in the common law action upon the facts pleaded. Turning now to the new s. 98 of the Common Law Procedure Act, 1899, it is first to be noted that the Court or Judge can only have regard to the facts pleaded in determining whether or not the action should be transferred into the jurisdiction of the Court in Equity. The Court or Judge has regard to those facts pleaded in order to determine whether the relief on equitable grounds would or would not be an absolute, perpetual and unconditional injunction. The words "relief on equitable grounds" refer back to the use of those words in s. 95. The position therefore is that the necessary condition precedent to a defence on equitable grounds is that the party, on judgment against him at law, should be entitled to relief in equity against such judgment on equitable grounds. This condition precedent is now satisfied even though the relief in equity on equitable grounds would not be an absolute perpetual and unconditional injunction.

It follows, therefore, that where the relief in equity in accordance with s.95 would be an absolute perpetual and unconditional injunction, there is no occasion for the operation of s. 98 and the plea would be good and would be dealt with at law under s. 95. On the other hand, if the plea or replication does not show any entitlement to relief on equitable grounds upon judgment being obtained at law, then there is no occasion for the operation of either s. 95 or s.98. It is assumed in the legislation that the relief in equity would be by way of injunction, conditional or unconditional. There is therefore no need to express in s. 98 that the section applies when the relief on equitable grounds would be a conditional injunction. The difficulty in the application of the section appears to be that the Court or Judge must make the order upon the facts pleaded.

In a case where the rules provide for summary judgment if the defences raised are not shown to have some foundation in fact, e.g. the ejectment rules in Order XXI,[12] it would be open to the Court or a Judge to consider the facts and the substance of a defence upon equitable grounds and (within limits now defined by the cases) consider the facts proved as well as the facts pleaded. But in cases where no summary judgment procedure is available, it would appear that regard could only be had to the facts pleaded and, if those pleaded facts disclosed a situation where there would be an injunction in equity upon terms and conditions, the action would have to be transferred into the jurisdiction of the Court in Equity. The only course open to the other party, if the pleading were baseless in fact, would be to apply to strike out the pleading as vexatious and as an abuse of the process of the court. But there are usually considerable practical difficulties in such a course. The fact that a plea can be shown to be false is not of itself sufficient ground for striking it out.[13]

Before the action can be transferred it is the duty of the Court or Judge to determine that an injunction upon terms or conditions could be obtained in equity upon the facts pleaded. This involves a determination of the equitable principle involved. Therefore, when the action is transferred into equity, the only issue on the equitable defence is one of fact. It will already have been determined that upon those facts being proved a conditional injunction

[12] See *Boag* v. *Lee* (1958) 75 W.N. (N.S.W.) 77.

[13] *Bubb* v. *Little* (1893) 9 W.N. (N.S.W.) 193; *A.J.S. Bank* v. *Alexander* (1894) 10 W.N. (N.S.W.) 143.

will be granted. It would thus, it is submitted, be open to the Court in Equity to determine either that no injunction should be granted on the facts pleaded or that an absolute perpetual and unconditional injunction should be granted on such facts. For either holding would mean in effect that the order of the Court or Judge transferring the action into the jurisdiction of the Court in Equity was wrongly made.

There is no suggestion in the section that the Court or Judge in ordering the transfer of the action can act upon some *prima facie* view of the equitable principle involved in such a manner that the determination thereon is interlocutory only. The determination (upon the facts pleaded) of the right to a conditional injunction, must be a final determination binding upon the parties, because it is the whole basis of the order transferring the action from one jurisdiction of the court to another.

The inconvenience of this result is obvious and one would strive for a different result, yet the words of the section are peremptory and, further, make no provision for the return of the action to the common law jurisdiction if it is determined that no occasion in law for the application of the section actually arises. The spectacle then presents itself the Court or Judge in the common law jurisdiction determining the conditions which the court in the equity jurisdiction would impose as a term of granting an injunction in relief against the judgment which would otherwise have been obtained at law. The action is then transferred, the court in equity finds the facts and, if they are found as pleaded, that court may be bound to impose the conditions which have been determined by the court or judge in the common law jurisdiction. This, it will be said, could never have been intended, but where does one commence introducing the gloss upon the words of the statute which will avoid this result?

II. *Equity Act, 1901, s. 8A*

The limitation placed upon the interpretation of s. 8 of the important Equity Act, 1901, may be stated to be that it does no more than empower the Court in Equity to decide questions of legal title and right incidentally arising in a suit or proceeding which is properly brought in equity — that is to say, a suit or proceeding in which the plaintiff has some recognised equity. To take an extreme example, if a plaintiff sued in equity claiming damages for injuries suffered by him when run down by a motor vehicle negligently driven by the defendant, the statement of claim would be demurrable because it disclosed no recognised equitable ground for coming to the Court in Equity. A less extreme example is where the relief sought is equitable, e.g. an injunction, but the subject matter is not one in respect of which the Court in Equity would on any recognised principles interfere e.g., to restrain an isolated trespass where the defendant is in possession of the land alleged to be trespassed upon.[14]

Most of the decisions upon the limited effect of s. 8 have arisen in cases where decrees have been sought declaratory of legal rights. In these cases the plaintiff has argued that s. 10 enables the Court in Equity to make declaratory decrees, and s. 8 enables the Court to determine legal rights and titles. Therefore, it has been argued, that Court may make decrees declaring legal rights and titles even in cases where no consequential relief could be claimed in equity. These arguments have been consistently unsuccessful.[15]

[14] *Cf. Merrick* v. *Ridge* (1897) 18 N.S.W. Eq. 29.

[15] *Tooth & Co.* v. *Coombes* (1925) 42 W.N. (N.S.W.) 93; *David Jones Ltd.* v. *Leventhal* (1927) 40 C.L.R. 357; *Harvey* v. *Walker* (1946) 46 S.R. (N.S.W.) 73, 180. These are cases where a plaintiff sought a declaration whether or not forfeiture of a lease had been incurred.

There is another class of case which has led to a plaintiff in equity being refused relief even though he may have rights at law. Typical of this class of case is that where a plaintiff seeks specific performance of a contract and, further, seeks damages under s. 9 of the Equity Act, 1901, either in addition to or in substitution for the relief by way of specific performance. It has been clearly settled that, if the plaintiff does not succeed in establishing that upon the facts proved he was entitled to a decree for specific performance at the time of the institution of the suit, then he will not be entitled to a decree directing an inquiry as to damages under s. 9 of the Act. Thus in *King* v. *Poggioli*[16] a plaintiff, who could not prove his readiness and willingness to perform his part of the contract of which he sought specific performance, was not only refused a decree for specific performance, but was also refused an inquiry as to damages, even though such damages were recoverable at law.

To which, if any, of these various classes of case is the new s. 8A applicable so that the suit in equity is not dismissed but is transferred into the common law jurisdiction of the Court? There are two conditions precedent to the application of the section. First, it must be made to appear to the Court in Equity that that Court has no jurisdiction to deal with the subject-matter of the suit or proceeding. Secondly, it must appear that the appropriate remedy in respect thereof lies in the common law jurisdiction. On the first condition a number of questions arise. What is meant by "the subject-matter of the suit or proceeding"? When can the Equity Court fail to have jurisdiction? These questions are linked together, because the question can be asked — can the Supreme Court of New South Wales in Equity ever fail to have jurisdiction to deal with any subject-matter which is brought before it in proceedings instituted in the form prescribed by statute?

The strict answer to this question must, it is submitted, be in the negative. The Court in Equity is one branch of the Supreme Court and, except possibly in cases arising out of the federal system or possibly again in cases where a statute specifically denies jurisdiction to the Supreme Court, that Court, in all its branches, has unlimited jurisdiction. No prerogative writ will lie to any branch of the Supreme Court nor to any judge of the Court acting in his capacity as a judge. *Ex parte Groot; Re Myers & Ors.*[17] The point may be tested in this way. Assume that the Supreme Court in Equity or in Matrimonial Causes awarded damages in a running-down case. Such a decree or order could not be ignored as one made without jurisdiction. It would be a valid decree until it was reversed or set aside on appeal. Strictly, therefore, it can never appear to the Court that it has no jurisdiction to deal with the subject-matter of a suit. Whatever the subject-matter, the Court has jurisdiction to deal with that subject-matter by examining it, by deciding that no right to equitable relief is made out, and then by dismissing the suit accordingly.

It must probably be assumed that some meaning has been assigned by the legislature to the word "jurisdiction" which is not its strict meaning. The word is undoubtedly used in different senses. For instance, it is used in two senses in s. 8A(1) itself. The "Common Law jurisdiction" refers to the branch of the Supreme Court which deals primarily with common law rights and titles, under the procedures now laid down in the Common Law Procedure Act, 1899, and the rules made thereunder. This use of the word is quite different from that in the words "has no jurisdiction" as used earlier in the subsection. Perhaps, therefore, the legislature should be taken to have meant by the words — "the Court has no jurisdiction to deal with the subject-matter of the suit or proceeding", that it appears to the Court that the subject-matter of the suit or proceeding discloses no right in the plaintiff to relief in equity on any recognised principle of equity. If this is the meaning, then

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[16] (1923) 32 C.L.R. 222.
[17] (1958) 75 W.N. (N.S.W.) 496.

the words "subject-matter" involve the same difficulty as they do on the actual words of the section. Subject-matter may refer to the facts pleaded or the facts proved or the relief sought. On the actual words of the section the words could be construed to mean one or all of these things. Likewise, the words "subject-matter" (on the gloss which is suggested above) could mean one or all of these. If A claims specific performance of a contract to sell Blackacre to B, the subject-matter is either specific performance of a contract to sell Blackacre to B, or, alternatively, the contract to sell Blackacre to B.

Whichever meaning is given to the words, they do not appear to be wide enough to cover the case where the ground of refusal of relief in equity is not because of the subject-matter of the suit, but because of a defence raised in the proceedings which precludes the granting of the equitable relief sought. In other words, the section cannot be made to apply to the *King* v. *Poggioli* type of case. It has been so held by Hardie, J. in *Boyns* v. *Lackey*.[18] That was a suit for specific performance in which the defence of laches was successfully raised. It was held that there was no power in the Court to order an inquiry as to damages under s. 9, and, further, that the Court had exercised jurisdiction, had heard and determined the suit, and therefore s. 8A was not applicable.

Attention must then be turned to the second condition, namely, that the appropriate remedy lies in the common law jurisdiction. The words "in respect thereof" must mean "in respect of the subject matter of the suit or proceeding". This lends support to the view that "subject-matter" does not refer in any way to the relief sought but only to the facts pleaded or proved. Here the same problem arises as that which has already been discussed in reference to s. 98 of the Common Law Procedure Act, 1899. Must the Court in Equity satisfy itself that there is an appropriate remedy in the common law jurisdiction in respect of the subject-matter, that is to say, the facts pleaded and the facts proved? So to satisfy itself would involve a full hearing and a formal finding of fact which should be binding on the parties. Yet this would leave no issue except damages to be determined in the common law jurisdiction. Perhaps the words "if any" should be read in after the word "remedy" and the Court in Equity is only to be concerned with the facts pleaded and not the facts proved. Then, if the facts pleaded show that, if they were proved, a remedy would lie in the common law jurisdiction, the suit may be transferred for decision on the facts.[19]

The result therefore appears to be that if a suit in equity is commenced claiming damages for negligence, the suit may be regarded as one the subject-matter of which is outside the jurisdiction of the court in equity and to be therefore transferable to the common law jurisdiction under s. 8A. Depending upon the gloss which has been set out above, one could say that the subject-matter discloses no right in the plaintiff to relief in equity on any recognised principle of equity. Likewise if an injunction were sought to restrain an isolated trespass by a defendant in possession of the land, it may be said that the subject-matter discloses no right in the plaintiff to relief in equity and that, upon proof of the necessary facts, the appropriate remedy lies by way of ejectment in the common law jurisdiction.

Assuming that the new s. 8A can be given this degree of operation, it does not cure two of the main deficiencies in the New South Wales procedural system against which criticism can be, and often has been, justly levelled. First, it does not permit the making of a decree or order by any branch of the Supreme Court of New South Wales simply declaratory of legal rights and titles. If a lessee were now to seek a decree declaring that he had in-

[18] (1958) 75 W.N. (N.S.W.) 451.

[19] But not, on this reasoning, for decision on any question of law. The availability of the remedy would already have been determined.

curred no forfeiture of his lease he would still be as unsuccessful in equity as he would have been in the past. Nor could his suit or proceeding be transferred into the common law jurisdiction because, until the lessor had re-entered and dispossessed him, he would have no claim to damages at law. Likewise, if a purchaser of ascertained goods (not being rare chattels), the property in which had passed to him were now to seek an injunction restraining the vendor from selling and delivering them to a third person,[20] he could obtain no such relief in equity. Possibly the remedy by way of injunction under s. 176 of the Common Law Procedure Act, 1899, would be available at law, but certainly the remedy of damages would not be available unless the vendor had in fact sold the goods to the third person.

Secondly, the new s. 8A does not remedy the situation which arises in the *King* v. *Poggioli* type of case for the reasons dealt with earlier. Thus the section appears to be left with such a limited field within which to operate that it can in no way be regarded as effecting that rapprochement between the equity and common law jurisdictions of the Supreme Court which was presumably the purpose of the legislature.

III. *Conclusion*

It is no purpose of this comment to traverse the respective merits and demerits of the Judicature System and the present New South Wales system. However, past attempts which have been made in New South Wales to bridge by other means the gap between the equity and common law jurisdictions have met with so little success, and the anomalies and inconveniences existing are of so serious a nature, that perhaps the day is near when we will again come to have but one Supreme Court of New South Wales applying the law of the State whether it be common law or equity.

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[20] *Cf.* in England, *In re Wait* (1927) 1 Ch. 606.

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