

ANNO VICESIMO QUINTO & VICESIMO SEXTO

VICTORIÆ REGINÆ.

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CAP. XLII.

An Act to regulate the Procedure in the High Court of Chancery and the Court of Chancery of the County Palatine of *Lancaster*.

[17th *July* 1862.]

WHEREAS the High Court of Chancery has Power in certain Cases to refuse or postpone the Application of Remedies within its Jurisdiction, until Questions of Law and Fact on which the Title to such Remedies depends have been determined or ascertained in One of Her Majesty's Courts of Common Law: And whereas it is expedient that the said Power should no longer exist, and that in all such Cases every Question of Law and of Fact, cognizable in a Court of Common Law, arising in the said Court of Chancery, on which the Right of any Party to any equitable Relief or Remedy depends, and whether the Title to such Relief or Remedy be or be not incident to or dependent upon a legal Right, should be determined by or before the said Court itself: And whereas the Procedure of the Court of Chancery of the County Palatine of *Lancaster* has been assimilated to the Procedure of the said High Court in the Matters aforesaid; and it is expedient that the future Procedure of the said Courts should also be alike: Be it enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal,

poral, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows:

Court shall determine every Question of Law and Fact incident to the Relief sought.

1. In all Cases in which any Relief or Remedy within the Jurisdiction of the said Courts of Chancery respectively is or shall be sought in any Cause or Matter instituted or pending in either of the said Courts, and whether the Title to such Relief or Remedy be or be not incident to or dependent upon a legal Right, every Question of Law or Fact, cognizable in a Court of Common Law, on the Determination of which the Title to such Relief or Remedy depends, shall be determined by or before the same Court.

Where Questions of Fact may be more conveniently tried at Assizes, Issues may be directed.

2. Provided always, That whenever it shall appear to either of such Courts that any Question of Fact may be more conveniently tried by a Jury at the Assizes, or at any Sitting in *London* or *Middlesex* for the Trial of Issues in the Superior Courts of Common Law, it shall be lawful for such Court, notwithstanding anything in this Act contained, to direct an Issue to try any Question of Fact at the Assizes to be held in and for any County where the same may be conveniently tried, or at any such Sitting for the Trial of Issues in *London* or *Middlesex* as aforesaid; and (subject to such General Orders, if any, as may hereafter be made in relation thereto,) the Practice hitherto existing in such Court in reference to the Trial of Issues shall prevail in reference to the Trial of any Issues directed under this Proviso.

Provisions of 21 and 22 Vict. c. 27, to apply to this Act.

3. All the Provisions with reference to the Trial of Questions of Fact by or before the High Court of Chancery, and by or before the Court of Chancery of the said County Palatine, which are contained in "The Chancery Amendment Act, 1858," shall apply to the Determination of Questions of Fact by or before the said Courts respectively under this Act.

Proviso in Cases where Object of Suit to recover or defend Possession of Land under a legal Title.

4. Provided also, That in all Cases in which the Object of any Suit in Equity shall be to recover or to defend the Possession of Land under a legal Title, or under a Title which would have been legal but for the Existence of some outstanding Term, Lease, or Mortgage (and whether mesne Profits or Damages shall or shall not also be sought in such Suit), such Relief only shall be given in Equity as would have been proper according to the Rules and Practice of the Court if this Act had not passed; and nothing in this Act shall make it necessary for a Court of Equity to grant Relief in any Suit concerning any Matter as to which a Court of Common Law has concurrent Jurisdiction, if it shall appear to the Court that such Matter has been improperly brought into Equity, and that the same ought to have been left to the sole Determination of a Court of Common Law.

5. Nothing

Chancery Regulation.

Court of Chancery may sit with Assistance of a Common Law Judge.

5. Nothing in this Act contained shall alter or affect the Power of the Judges of the High Court of Chancery to sit with the Assistance of a Judge of any of Her Majesty's Courts of Common Law.

Commencement of Act. Short Title.

6. This Act shall commence and take effect from and after the First Day of *November* One thousand eight hundred and sixty-two, and may be cited or referred to as "The Chancery Regulation Act, 1862."

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