

EQUITY

AN ANALYSIS AND DISCUSSION OF MODERN EQUITY PROBLEMS

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CHAPTER X.

BILLS OF PEACE.

§ 437. Purpose and scope.

The purpose of a bill of interpleader is to prevent double vexation to one who admits liability to someone and also to prevent unnecessary litigation by settling in one suit the question as to who is the rightful claimant.¹ The purpose of a bill of peace is to prevent useless litigation by settling in one equity suit a question which would be common to many actions at law or in equity—either repeated actions between one plaintiff and one defendant or numerous actions between several plaintiffs and one defendant or between one plaintiff and several defendants. One who seeks interpleader is substantially in the position of a defendant at law asking relief against two or more plaintiffs;² a bill of peace may be sought either by plaintiff or defendant.³ One who seeks interpleader must be a stakeholder;⁴ and is ordinarily not interested in the litigation except to get his discharge from the court;⁵ one who seeks a bill of peace is not a stakeholder and is always interested in the final outcome of the litigation either to fix liability on the other party or to escape it himself.

1. See *ante* Chap. IX.

2. See *ante* § 423.

3. Where it is sought by one who is substantially in the position of a defendant, the jurisdiction may properly be classified broadly as *quia timet*; see *ante* § 405. In case of a bill of peace to prevent repeated actions, the bill apparently may be brought only by the law defendant.

4. See *ante* § 427.

5. This is not always true; if the amounts claimed are different, he is, in a broad sense interested in having the claimant of the les-

Since it is highly desirable to eliminate useless litigation, bills of peace have deserved a liberal treatment at the hand of the courts; but unfortunately they have been hedged about by artificial and mechanical restrictions in much the same way as have bills of interpleader.⁶

For the sake of convenience, the cases of numerous actions between one and many will be discussed separately from the cases of repeated actions between one and one.

A. TO AVOID OR PREVENT NUMEROUS ACTIONS BETWEEN ONE AND MANY.

§ 438. Joinder distinguished.

At the outset it is important to note that if two or more cases may be brought separately in equity, the question of their joinder may not involve any question of bill of peace, but merely a question of equity pleading. Thus, if each of several plaintiffs might separately maintain a suit to enjoin the continuance of a nuisance, all may join therein,¹ having a common interest in the subject matter of the bill. A multiplicity of

ser amount win; see *ante* § 431. And under the English practice, where interpleader is allowed in spite of the possibility of there being an independent liability, he is interested in having that claimant win who is also relying on the independent liability; see *ante* § 430.

6. See *ante* § 423.

1. *Cadigan v. Brown* (1876) 120 Mass. 493: "The bill shows that each of the plaintiffs owns a lot abutting on the passageway, by a separate and independent title. They derive their titles from different grantors. Undoubtedly in a suit at law for the nuisance, they could not properly join. But the rule in equity as to the joinder of parties is more elastic. Generally, when several persons have a common interest in the subject matter of the bill, and a right to ask for the same remedy against the defendant, they may properly be joined as plaintiffs." And see cases collected, 2 Ames Eq. Cas. 66, note.

suits is in this way avoided without involving any question relative to a bill of peace. A similar joinder may be made where each of several plaintiffs might sue for a breach of trust and accounting;² or for cancellation.³

On the other hand, where rules of equity pleading do not allow the joinder of equity suits—as in cases of suits for injunctions against several and independent tort feasers—it is necessary to invoke bill of peace jurisdiction in order to have the cases consolidated into one.⁴

§ 439. Claim of an exclusive property right.

Probably one reason for the conservatism of the courts toward bills of peace is that the facts of the early cases made strong claims for relief and the courts since then have been reluctant to go much beyond these early decisions, regarding them as determining not only the principles but also the limits of the remedy.

In *How v. Tenants of Bromsgrove*¹ there was a bill by the lord of the manor against his tenants,

2. In *Smith v. Bank of New England* (1897) 69 N. H. 254, 45 Atl. 1082, 2 Ames Eq. Cas. 79, some seventy-eight *cestuis que trust* sued the trustee for mismanagement of the trust and for an accounting. Since each plaintiff might have sued separately for a breach of trust, there was merely a question of joinder. The court suggested that each plaintiff might have sued the trustee at law for negligence; if that is true and the seventy-eight plaintiffs had brought separate actions at law, and the defendant had asked the equity court to settle all in one suit, that would have raised a question of a bill of peace. In speaking of the suit as a "bill in the nature of a bill of peace" perhaps the court meant that it had the same effect as a bill of peace would have in cutting down useless litigation.

3. N. Y., N. H. & H. R. R. v. Schuyler (1858) 17 N. Y. 592.

4. Thus, in *Dilly v. Doig* (1794) 2 Ves. Jr. 486, 2 Ames Eq. Cas. 58, and in *Foxwell v. Webster* (1863) 2 Drewry & Smale 250, 2 Ames Eq. Cas. 58, the rules of equity pleading did not permit joinder but conceivably the principles of bills of peace might have allowed consolidation.

1. (1681) 1 Vern. 22, 2 Ames Eq. Cas. 55.

claiming that he had a grant of free warren. Besides the question whether he had a free warren there was also the question whether, if there was a free warren, there was sufficient common left to the tenants. Both these questions were triable at law, but the bill was sustained as a bill of peace. It is to be observed that the plaintiff claimed an exclusive property right of a very definite character against all the defendants; and also that the defendants all claimed the same property right and the interests of all were dependent upon proof of the same facts. No stronger case for a bill of peace could be put than this.²

Some fifty years later the jurisdiction was extended to cases where the defendants' claim was not in common but in severalty. In *Mayor of York v. Pilkington*³ the plaintiff city claimed for a large tract of land the sole fishery in the river Ouse; the defendants claimed either as lords of manors or as occupiers of the adjacent land. The demurrer to the bill was overruled, tho the defendants did not claim in common but in severalty and hence might have several defenses.⁴ But since the plaintiff's claim is of an exclusive property right against all the defendants, there is one question common to all the separate actions which would otherwise be necessary to bring at law against each of the defendants, namely, whether the city had such a right of fishery as it claimed. The determina-

2. The bill in the principal case being probably by the law plaintiff, the object was to avoid bringing multiplicity of actions against the tenants. It is also settled that the tenants—the law defendants—might have brought a bill of peace in order to prevent the bringing of a multiplicity of actions against them; *Powell v. Earl of Powis* (1826) 1 Y. & J. 158. The appropriate common law action would be trespass.

3. (1737) 1 Atkyns 282, 2 Ames Eq. Cas. 55.

4. At the first hearing Lord Chancellor Hardwicke gave his opinion against the bill: "There is no privity at all in the case, but so many distinct trespassers in this separate fishery; besides, the defendants may claim a right of a different nature, some by prescription, others by particular grants, etc."

tion of this common question would almost certainly result in a distinct saving of litigation tho each of the defenses must later be separately litigated if the plaintiff succeeds in establishing his rights; and it would certainly do so if the plaintiff failed because that would settle all the cases at once.

Where the determination of the claim of an exclusive property right is relatively unimportant and would therefore go only a slight way toward solving the whole litigation a bill of peace would accomplish nothing substantial and should be denied. This would justify the decision of *Dilly v. Doig*,⁵ tho the case was not put on that ground. In that case the owner of the copyright of a book brought a bill to enjoin a bookseller from selling copies of a spurious edition; later he moved to amend the bill by making another bookseller a party. The rules of equity pleading did not allow joinder because the booksellers were charged with wholly separate and independent torts; but if there had been a great many booksellers, all disputing the plaintiff's copyright, it would be difficult to distinguish the case from *York v. Pilkington*, *supra*. It seems quite likely, however, that the defendants were not disputing the plaintiff's right,⁶ and therefore the determination of this point would be of almost negligible value, especially since only two defendants were involved.

The above argument does not, however, justify the decision in *Foxwell v. Webster*.⁷ There the plaintiff had filed 134 bills against 134 defendants to restrain the infringement of a patent; 77 defendants ask that the suits be consolidated in order to determine the validity of the patent, each to reserve to himself the

5. (1794) 2 Ves. Jr. 486, 2 Ames Eq. Cas. 58.

6. *Keyes v. Little York etc. Co.* (1875) 53 Cal. 724, 732, in discussing *Dilly v. Doig*: "In that case there was no allegation in the bill of a claim of right on the part of the defendants to sell copies of the spurious edition of the book, and, from the nature of the circumstances detailed, there could have been no such allegation."

7. (1863) 2 Drewry & Smale 250, 2 Ames Eq. Cas. 58.

question of infringement. Relief was denied on the ground that since the plaintiff must sue each individual infringer in a separate suit, the defendants cannot insist upon being joined. The court was right, of course, on the point of equity pleading as to joinder, but since a large number of the defendants are here disputing the plaintiff's right to the patent, it would seem that either the plaintiff or defendants should have been allowed to invoke bill of peace jurisdiction, to settle this one important question common to them all.

§ 440. No claim of exclusive property right.

The only significance of the claim of an exclusive property right would seem to be that there is in such cases a common question the settlement of which may be so important as to justify a bill of peace. There has been a strong tendency, however, not to give relief unless there is either a common property interest in the many¹—as in *How v. Tenants*, *supra*—or at least an exclusive property right in the one, such as in *How v. Tenants* and *Mayor of York v. Pilkington*. A case on this point which has attracted much attention is that of *Tribette v. Illinois Central R. R. Co.*² In that case a number of different owners of property in the town of Terry, destroyed by fire from sparks emitted by an engine of the railroad company, severally sued at law for damages. While these actions were pending the railroad company brought its bill in equity averring that the loss was not due to its fault but to the fault of others; that the plaintiffs in the several actions were wrongfully seeking to recover damages, and that the several actions all depend for their solution upon the same state of facts; wherefore the rail-

1. To require strictly a common property right among the many would restrict the scope of bills of peace almost to a vanishing point, especially in the U. S. where there is very little of rights of common.

2. (1892) 70 Miss. 192, 12 So. 32, 2 Ames Eq. Cas. 74.

road company asked that the actions at law be enjoined and the controversies settled in the one equity suit. It was held error to overrule the demurrer to the bill because "there must be some recognized ground of equitable interference, or some community of interest in the subject matter of the controversy, or a common right or title involved, to warrant the joinder of all in one suit; or there must be some common purpose in pursuit of a common adversary, where each may resort to equity, in order to be joined in one suit; and it is not enough that there is a *community of interest merely in the question of law or of fact involved*, etc., as stated by Pomeroy."³

Practically all of the opinion is devoted to combatting Pomeroy's suggested rule, by showing that the cases⁴ cited as authority therefor involved merely the equity pleading question of the joinder of suits which had other bases for equity jurisdiction, and by showing what he considered to be a horrible result of the rule.⁵ Unfortunately Pomeroy's rule was stated

3. Pomeroy's Equity Jurisprudence, 1st Ed., § 269; the full text is as follows: "Under the greatest diversity of circumstances, and the greatest variety of claims arising from unauthorized, public acts, private tortious acts, invasion of property rights, violation of contract obligations, and notwithstanding the positive denials by some American courts the weight of authority is simply overwhelming that the jurisdiction may and should be exercised either on behalf of a numerous body of separate claimants against a single party. or on behalf of a single party against such a numerous body, although there is no "common title" or "community of right" or "interest in the subject matter" among these individuals, but where there is and because there is merely a community of interest among them in the questions of law and fact involved in the general controversy, or in the kind and form of relief demanded and obtained by or against each individual member of the numerous body."

4. With the exception of *Carlton v. Newman* (1885) 77 Me. 408, 1 Atl. 194, a case where the collection of an illegal tax was enjoined which the court said appeared "to be exceptional, and to rest on peculiar grounds, not applicable to the case before us."

5. "It is true as stated by Pomeroy . . . that mere community of interest in matters of law and fact makes it admissible to

as if it were to be mechanically applied,⁶ and this presented a vulnerable point of attack; but instead of urging this criticism and then dealing with the merits of the case before them, the court assumed that any rule must be mechanical⁷ and contented itself with showing that the mechanical application of the rule would lead to undesirable results. Whether the supposed "absurd" case put by the court⁸ really was a horrible result would depend—just as in the principal case—upon the circumstances of the particular case. If the main question in each action was whether the defendant was negligent or whether its negligence was the proximate cause of the damage, a bill of peace might well be justified.⁹ But if these two questions should be relatively unimportant, then a bill of peace would accomplish nothing and should be refused; it should likewise be denied if the consolidation would so confuse the issue and bring so many questions or

bring all into one suit in chancery, in order to avoid multiplicity of suits, all sorts of cases must be subject to the principle. Any limitation would be purely arbitrary. It must be of universal application and strange results might flow from its adoption. The wrecking of a railroad train might give rise to a hundred actions for damages, instituted in a dozen different counties, under our law as to the venue of suits against railroad companies, in some of which executors or administrators, or parents and children might sue for the death of a passenger, and, in others, claims would be for divers injuries. If Pomeroy's test be maintained, all of these numerous plaintiffs, *having a community of interest in the questions of fact and law*, claiming because of the same occurrence, depending on the very same evidence, and seeking the same kind of relief (damages) could be brought before a chancery court in one suit to avoid multiplicity of suits! But we forbear, surely the learned author would shrink from the contemplation of such a spectacle; but his doctrine leads to it and makes it possible."

6. This has been taken care of by adding § 251½ and § 251¾ to the third edition.

7. See note 5 *supra*: "Any limitation would be purely arbitrary."

8. See note 5 *supra*.

9. For a criticism of the Tribette case see 14 Harv. Law Rev. 611. See also 12 Col. Law Rev. 370; 22 Yale Law J. 53; 24 Yale Law J. 642-648; 25 Harv. Law Rev. 559.

varied interests into a case as to work a practical denial of trial by jury.¹⁰

§ 441. Same—tort cases giving relief.

Tho it may be difficult to agree with Pomeroy's statement as to the weight of authority,¹ there are a great many cases in which a bill of peace has been granted, but which do not comply with the narrow conditions set forth by the court in *Tribette v. Illinois Central R. R. Co.*² In *Sheffield Water Works v. Yeomans*,³ the bill alleged that the plaintiff's reservoir had burst and caused loss of life and property, that under an act of Parliament commissioners were appointed to inquire into the damages and to issue certificates to claimants; that costs were to be payable by the plaintiff at the expiration of six months after the issue of such certificates, and if not paid within a further period of twenty-eight days the certificates were to have the effect of a judgment for such costs; that there was a difference of opinion as to whether the powers of the commission had expired and 1500 certificates which the plaintiffs claimed to be invalid were delivered by some of the commissioners to the defendant Yeomans, the town clerk. The bill further alleged "that unless the court interfered, the defendant John Yeomans, and other persons by his permission, would produce these invalid certificates and have them taxed, whereupon judgment would be issued, and such proceedings would seriously prejudice the plaintiff, by compelling them to defend themselves on very numerous improper taxations, occasioning them very large costs and expenses. That the question whether these certificates were valid or invalid was the

10. 62 U. of Pa. Law Rev. 453, 455: "Every man has a right to try his case with its issue clear and well defined, but if a consolidation can be had without interfering with his right, it should be granted in a proper case: if it cannot be so had, it should be denied."

1. See *ante* § 440, note 3.

2. See *ante* § 440.

3. (1866) 2 Ch. App. 8, 2 Ames Eq. Cas. 67.

same as to all of them, and that the parties named therein were too numerous to be made defendants,⁴ but were properly represented by five of them who were named as defendants." It was held that the demurrer to the bill was properly overruled because the case was within the principle of a bill of peace.⁵

In *National Park Bank v. Goddard*⁶ the plaintiff levied an attachment on L. & Co.'s stock of clothing and other property for a debt due the plaintiff. Other vendors who had sold to L. & Co. claimed to rescind for fraud and sued in replevin, those who had sold only buttons or linings or trimmings claiming whole garments. The plaintiff sued them all to protect his lien and to have adjudicated in one suit all the adverse and conflicting claims. It was held that "it was a wise

4. In England there are no constitutional restrictions and hence if the number of defendants is inconveniently large, it is enough to sue a few as representing and binding the whole, unless they have specific interests in or liens upon some specific property or fund; *American Steel etc. Co. v. Wire Drawers' Union* (1898) 90 Fed. 598, 605; *Ayres v. Carver* (1854) 17 How. 591. The rule of the Federal courts provides that "the court in its discretion may dispense with making them all parties, and may proceed in the suit, having sufficient parties before it to represent all the adverse interests of the plaintiffs and defendants in the suit properly before it. But, in such cases the decree shall be without prejudice to the right and claims of the absent parties." The result is that parties can be enjoined by general description and must obey if they have notice, but they may come in and litigate the question at any time; Federal Eq. Rules 48, *Street's Fed. Eq. Practice*, p. 1679; *Cape May etc. R. R. Co. v. Johnson* (1882) 35 N. J. Eq. 422. Where the equity court is exercising jurisdiction *in rem*, their decree binds every one interested in the *res* regardless of notice, provided the proceedings have had the requisite amount of publicity; *Appleton Water Works Co. v. Central Trust Co.* (1889) 93 Fed. 286, 288.

5. In *Washington Co. v. Williams* (1901) 111 Fed. 801, the converse question was presented whether holders of county bonds could maintain a bill of peace to establish the validity of the bonds and relief was denied; see 2 Col. Law Rev. 181. Wherever the law defendant may prevent a multiplicity of suits against him by numerous plaintiffs, the latter should be able to avoid the necessity of the bringing of such actions.

6. (1891) 62 Hun 31, 2 Ames Eq. Cas. 82.

exercise of discretion of the court to prevent the dissipation of this property and to take possession of the same itself until the determination of these rival claims and the ascertainment of the rights and interests of each." There was no claim of an exclusive property right by the plaintiff and the claims of the defendants were independent of each other, but there was one important common question, namely, whether L. & Co. had intended to defraud their vendors.⁷

§ 442. Same—tort cases denying relief.

In *Jones v. Hardy*¹ the bill alleged that the plaintiff's agent Hardy had, without authority, made sales of the plaintiff's crops and used the proceeds; the bill was brought against Hardy, his vendees and a subvendee. Relief was denied on the ground that "the causes of suit are entirely separate and distinct from each other and depend for their adjustment on no common or connected right, relation or necessity." This reasoning has already been criticised;² but the decision may have been justified on the ground that the common question of the fact of agency was probably much less important than the questions which were not common, namely, the authority as to each item sold, whether there was a sale in each case, whether there was estoppel or payment, or satisfaction, etc.

In *Lehigh Valley R. R. Co. v. McFarlan*³ the plaintiffs, operating a canal which crossed a river, main-

7. In *Ballou v. Hopkinton* (1855) 4 Gray 324, the bill alleged that the various defendants, being upper proprietors were threatening to draw off water from the reservoir and that this would damage the plaintiff's mills. The demurrer to the bill was overruled on the ground of preventing multiplicity of suits, but it is not clear whether it was a bill of peace or merely was a joinder of equity suits as a matter of pleading; see *ante* § 438.

1. (1899) 127 Ala. 221, 28 So. 564, 2 Ames Eq. Cas. 91.

2. See *ante* § 440.

3. (1878) 30 N. J. Eq. 135, 2 Ames Eq. Cas. 85.

tained a dam on the river. One of the defendants had brought an action at law against the plaintiff for unlawful flowage of the land and the other three defendants had brought actions for diversion of the water. The plaintiff then brought his bill against all of them to determine whether the dam was lawful. Relief was denied properly because there was really no common question; if there was plenty of water the use of the water by the plaintiff would not be wrongful whereas any flooding by the plaintiff of the land of the first mentioned defendant would be wrongful. If the plaintiff had sued only the three defendants there would have been raised practically the same question as was raised in *Tribette v. Illinois Central R. R. Co. supra*; the common question of wrongful diversion would probably have been relatively important and the only sound justification for refusing relief would have been that there were only three defendants and therefore there would not be much saving of litigation.⁴

§ 443. Collection of void taxes.

If any one taxpayer is allowed to enjoin the collection of an illegal tax¹ several taxpayers may join in the suit as a matter of equity pleading.² If a single tax payer is not thus allowed to sue, equity may—and perhaps by the weight of authority does—take

4. Even if there are only two parties against one there may well be a bill of peace; but if the number is small courts may properly, as a matter of discretion, refuse relief unless the litigation which would thus be saved would be relatively complicated and expensive; see 20 *Harv. Law Rev.* 325.

1. As, for example, to prevent or remove a cloud on title to land; *Lockwood v. St. Louis Bk.* (1856) 24 Mo. 20. In New England states—perhaps because of the early limited equity jurisdiction—apparently no equitable relief is given in such cases to one tax payer; *Brewer v. Springfield* (1867) 97 Mass. 152. On the other hand, in some jurisdictions equity will relieve the single taxpayer tho no cloud on title is involved; *Vieley v. Thompson* (1867) 44 Ill. 9.

2. See *ante* § 438.

jurisdiction on bill of peace grounds at the suit of several tax payers.

In *McTwiggan v. Hunter*³ the bill alleged that the tax was invalid because the assessors had intentionally omitted the property of the G. Company from the assessment list. The demurrer to the bill was overruled: "While it is true that equity will not enjoin the collection of a tax at the suit of an individual taxpayer on the ground of illegality when the illegality affects him alone, . . . yet, when the illegality extends to the whole tax so that the question involved is the validity of the whole tax and its assessment on every person taxed, equity may properly take jurisdiction at the suit of one or more of the taxpayers suing in behalf of all the taxpayers as well as in his or their own behalf, since the rights of all persons interested may be more conveniently and speedily determined by its decree in one suit than by leaving them to work out their rights by individual suits, and a multiplicity of suits will thereby be avoided."⁴

3. (1895) 18 R. I. 776, 30 Atl. 962, 2 Ames Eq. Cas. 71. For an extended discussion of the point see 10 Col. Law Rev. 564-566. In *German Alliance Insurance Co. v. Van Cleave* (1901) 191 Ill. 410, 61 N. E. 94, numerous insurance companies were allowed to unite in a bill to refund the amount of a tax on premiums paid under protest.

4. In *City of Chicago v. Collins* (1898) 175 Ill. 445, 51 N. E. 907, 2 Ames Eq. Cas. 92, three hundred and seventy-three residents and taxpayers of Chicago, suing in behalf of themselves and all others similarly situated filed a bill to enjoin the city from enforcing a wheel tax ordinance affecting three hundred thousand owners of vehicles, on the ground that the city had no power to pass such an ordinance. It was held that the plaintiffs' bill was maintainable because "their grievance is precisely the same and arises from the same cause. The various parties aggrieved, altho not jointly interested, are allowed to sue together for the express purpose of avoiding a multiplicity of suits and to have the controversy settled in one hearing." The further ground upon which the court rested their decision—namely, the breach of a public trust by the municipality—is of course untenable, because a municipality is not a trustee in the narrow sense. See *ante* Chap. V.

In the somewhat similar case of *Dodd v. City of Hartford*⁵ relief was refused partly on the ground of the public interest in the speedy collection of taxes and partly because "no property, right or franchise held by the petitioners in common⁶ is claimed to be affected by the proceedings of the city." The court further contends that the remedy at law of each petitioner is adequate because "the multiplicity of suits which the petition seeks to avoid does not affect injuriously any one of the petitioners. No one of them has occasion to expect any such multiplicity affecting himself. One suit is all that any one of them has to fear." There are two answers to this last argument: (1) If the amount of the assessment to each person is so small as barely to cover the attorney's fees, the remedy at law can hardly be considered adequate; (2) the avoidance of bringing several actions by many petitioners has usually been regarded as much the object of a bill of peace as the prevention of several actions *against* one petitioner.⁷

§ 444. Contractual and statutory pecuniary obligations.

There seem to be only a few instances in the books where a creditor has sought to maintain a bill of peace against several debtors,¹ a few where a debtor has tried

5. (1856) 25 Conn. 232, 2 Ames Eq. Cas. 69. In that case over three hundred petitioners sought to join in a suit to restrain the collection of a sewer assessment claimed to be illegal.

6. See *ante* § 440 for a criticism of this requirement.

7. See *ante* § 437.

1. See *Best v. Drake* (1853) 11 Hare 371, note, telling of the following bill of peace in the time of Lord Nottingham: "A bill in the Chancery was this term preferred by a widow against 500 persons, to answer what moneys they owed her husband; the bill was above 3000 sheets of paper, to the wonder of most people; but the Lord Chancellor looking on it as vexatious, for it would cost each defendant a £100 the copying out, he dismissed the bill and ordered Mr. *Newman* the counsellor, whose hand was to it, to pay the Defendant the charges they have been at." For a modern in-

to maintain such a bill against several creditors (or *vice versa*²) and very few where several debtors have succeeded against one creditor;³ but the enforcement or non-enforcement of pecuniary obligations imposed by statute has frequently been sought in equity on bill of peace grounds. Although a few cases have given relief, the tendency has been to refuse it; in many of the cases, however, relief has been properly refused because of the comparative unimportance of the common question. In *Tompkins v. Craig*⁴ the plaintiff, receiver of an insolvent bank, brought a bill against all the stockholders to collect an assessment of 50% levied under an Iowa statute. Relief was denied "because the statute does not impose a joint but a several liability upon the defendants and they have no common interest in the decree asked for by the bill. . . . Each defendant may desire to put up a different defense. One stockholder may have paid his assessment in whole or in part; another may seek to raise the question whether the Iowa court had jurisdiction to make the levy; a third may wish to attack the amount of the

stance where the bill was allowed to the assignee of an insolvent corporation against stockholders to recover unpaid balances of stock subscriptions, see *Cook v. Carpenter* (1905) 212 Pa. 165, 61 Atl. 799; 19 Harv. Law Rev. 213.

2. In *Smith v. Bank of New England* (1897) 69 N. H. 254, 45 Atl. 1082, 2 Ames Eq. Cas. 79 the obligation might, perhaps, be classed as contractual, but only a question of equity pleading was involved in the joinder because equity had jurisdiction in each case on the grounds of trust; see *ante* § 438. In *Washington Co. v. Williams* (1901) 111 Fed. 801, several holders of county bonds tried unsuccessfully to join in trying the validity of their bonds; see 2 Col. Law Rev. 181.

3. In *Home Co. v. Va. Co.* (1902) 113 Fed. 1, several insurance companies had insured the same property with stipulations as to apportionment of loss; each claimed to have been deceived by the same false statement as to the value of the property insured; their bill of peace was held good on demurrer because the "insurance companies have a common interest in defeating the claims of the insured." See 10 Col. Law Rev. 265; 23 Harv. Law Rev. 480, 640.

4. (1899) 93 Fed. 885, 2 Ames Eq. Cas. 87.

assessment; another may aver that his subscription was void from the beginning; and still other defenses, which need not be specified, are readily conceivable." The decision was quite sound because the only common question had already been passed upon by an Iowa court,⁵ namely, whether all the stockholders were liable to assessment and the percentage of assessment. As the court pointed out, a proceeding to determine merely how large the assessment should be is properly sustainable as a bill of peace;⁶ in such a case the only question to be passed upon is a common question.⁷

B. TO AVOID OR PREVENT NUMEROUS SUITS OF ONE AGAINST ONE.

§ 445. Bill to quiet title¹—ejectment.

An action of ejectment was unlike other common law actions in that the person named as plaintiff there-

5. In *State v. Union etc. Bank* (1897) 103 Iowa 549, 70 N. W. 752.

6. *Bailey v. Tillinghast* (1900) 99 Fed. 801.

7. In *Marsh v. Kaye* (1901) 118 N. Y. 196, 2 Ames Eq. Cas. 89, a statute had made directors of certain corporations personally liable for the debts contracted on behalf of the corporation, payable within one year; a creditor filed a bill on behalf of himself and others similarly situated, against the receiver, seventeen directors and fifty creditors of the Ladies' Deborah Nursery & Child's Protectory, to enforce the directors' liability and to distribute the amount recovered among those entitled. If the liability of the directors had been limited, equity would have taken jurisdiction on the ground that the fund to accrue from such liability was a trust fund to be distributed ratably if not enough to satisfy all their claims; *Weeks v. Love* (1872) 50 N. Y. 568, 571. The bill was not maintainable as a bill of peace because the only common question—whether the corporation was within the terms of the statute—was probably greatly outweighed in importance by the many questions not common, namely, whether each creditor's claim was a debt of the corporation, whether the particular debt was payable within a year, etc. It is to be noted that there were numerous parties on each side—a fact likely to be productive of a great many questions.

1. Bills to remove cloud on title are frequently spoken of as Eq.—38

in was fictitious; hence if the defendant succeeded in getting the verdict and judgment, the matter did not become *res judicata* because the real plaintiff need only to name another fictitious lessor as plaintiff and begin again, *ad infinitum*. The sole relief of the law defendant was a bill in equity to enjoin the bringing of further ejectment actions. In *Lord Bath v. Sherwin*² the law plaintiff had thus sued in ejectment five times, the law defendant gaining a verdict each time. The law defendant thereupon brought a bill in equity asking for a perpetual injunction to stay the law plaintiff from bringing any more ejectments. In giving relief: "As to the objection that the common law having fixed no bounds to the number of trials in ejectment persons were at liberty to prosecute in that way as often as they pleased, and therefore a court of equity ought not to restrain their right, it was answered that the method of trying the title to inheritances by ejectment was of no very long standing, for the ancient way of trying such rights was in real actions; and there the wisdom of the common law had fixed proper limits to such prosecutions for preventing vexations and endless contests; and, as so great an inconvenience, and even abuse of the law was practiced in this case, it was highly reasonable that a court of equity should interpose."

In many jurisdictions a plaintiff sues in ejectment in his own name and therefore a judgment in favor of the law defendant in one action would logically be conclusive; but the notion that a plaintiff was not thus barred had apparently become so firmly fixed³ that a plaintiff is not limited unless by statute⁴ or equity.

bills to quiet title; this sometimes produces confusion, because the bases for jurisdiction are different. See *ante* §§ 413-419 for bills to remove cloud on title.

2. (1706) *Precedents in Chancery* 261; (1709) 4 *Brown's Cases in Parliament* (Tomlin's Ed.) 373, 2 *Ames Eq. Cas.* 95.

3. And the reason for its existence in the first place was forgotten.

4. In Pennsylvania, for example, there is a statutory limitation to two actions; see *Dishong v. Finkbinder* (1891) 46 *Fed.* 12.

Where there is no statute equity should give an injunction if there has been a fair adjudication of the controversy.⁵

§ 446. Same—repeated actions of trespass.

Tho a judgment on the merits for the defendant in an action of trespass *quare clausum* is final and conclusive as to the particular act of trespass alleged by the plaintiff, it does not prevent the latter from bringing another action for another alleged act of trespass on the same land, raising the identical property questions as the first action; and there is no limit to the number of actions which may thus be brought if the law plaintiff remains unconvinced. In these circumstances, if there has been a fair adjudication of the merits of the case at law, equity should interfere just as in ejectment cases,¹ in order to prevent vexation and endless litigation. Equity will not interfere until there has been such adjudication.²

Where the equity plaintiff complains not of repeated actions of trespass but of repeated acts of trespass, relief has sometimes been granted on the ground of avoiding the necessity of bringing a multiplicity of actions at law.³ But since the plaintiff is not under the necessity of bringing a separate action for each act

5. Even one successful verdict in favor of the law defendant may be enough; *Peterson Co. v. Jersey City* (1853) 9 N. J. Eq. 434; or an adjudication of the title in a previous equity proceeding; *Pratt v. Kendig* (1889) 128 Ill. 293, 298, 21 N. E. 495. In *Thompson's Appeal* (1884) 107 Pa. 559 the vexatious institution and abandonment of repeated actions was held to warrant an injunction, the court suggesting that this tended to create a cloud on title; see 22 Harv. Law Rev. 371.

1. See *ante* § 445.

2. *Lord Tenham v. Herbert* (1742) 2 Atkyns 483, 2 Ames Eq. Cas. 97; "But where a question about a right of fishery is only between two lords of manors, neither of them can come into this court till the right is first tried at law."

3. See *ante* § 195.

of trespass⁴ it is obvious that the multiplicity of actions thus avoided is of a much milder type than that where the equity plaintiff has been subjected to repeated actions of ejectment or trespass. Such actions seem hardly to deserve the name of bill of peace; but if they are so called, the distinction between the two types of cases should not be overlooked.⁵

§ 447. Numerous criminal prosecutions.

Where the equity plaintiff is being subjected to numerous prosecutions for alleged infractions of a statute or ordinance and the equity plaintiff insists either that he has not committed the acts alleged or that the statute or ordinance is invalid, equity will usually interfere to prevent such vexation and oppression. In *Third Ave. R. R. Co. v. The Mayor, etc., of N. Y.*¹ the city of New York had brought seventy-seven penal actions in a justice's court against the plaintiff for running a passenger car within certain specified limits of the city without a license. If the actions had been brought in a court of record the court would have had power to consolidate them,² but a justice court had

4. He may reduce the number of actions at law by waiting till just before the close of the statutory period of limitation. If the statutory period is short and there is no satisfactory way of compensating the plaintiff for attorney's fees etc., equity should give relief; see *ante* § 195. Where the trespasser is insolvent, an injunction is usually given; see *ante* § 201. But see *Mechanics' Foundry v. Ryall* (1888) 75 Cal. 601, 17 Pac. 703.

5. The distinction between repeated acts and repeated actions was apparently lost sight of in 22 Harv. Law Rev. 371.

1. (1873) 54 N. Y. 159, 2 Ames Eq. Cas. 102.

2. This preserves the right of trial by jury which is of paramount importance in criminal and penal cases involving questions of fact. Where the question involved is one of law, a perpetual injunction against all the prosecutions may be given. In *City of Hutchinson v. Beckham* (1902) 118 Fed. 399 the city of Hutchinson had passed an ordinance imposing a license tax of \$1200 a year on jobbers who did business in the city but did not maintain their principal place of business therein. The plaintiffs, jobbers of Kan-

no such power.³ The plaintiff did not ask "to restrain the defendants from *obtaining a decision*⁴ by the justice's court on the question involved in the actions pending therein; but the continuance of the prosecution of one of them is suffered and permitted and an injunction to restrain and forbid the proceedings in the others of them is only asked until that which shall be proceeded in can be finally heard and determined." Since the question to be decided in all the suits was the same and a single one, depending on the same facts, the relief asked for was given, the court pointing out that it was substantially what would have been obtained if the actions had been brought in a court of record, by a consolidation of them.

sas City, Mo., insisting that the ordinance was invalid, refused to pay the license whereupon the city caused the arrest of their agents and were threatening to make further like arrests. The plaintiffs thereupon asked that the court declare the ordinance void and perpetually enjoin the defendants from enforcing it. The bill was held good on demurrer because of the probable delay in determining the validity of the ordinance and the annoyance of defending a multiplicity of actions causing daily interruptions to their business. See *ante* § 245.

3. In *Galveston etc. Ry. v. Dowe* (1888) 70 Tex. 5, 7 S. W. 368, the law plaintiff brought separate actions in a justice court on a number of time checks issued by the law defendant and to which the latter insisted that it had a good defense. The justice court had power to consolidate the actions but refused to do so because if consolidated the amount involved would be over \$20 and he would lose jurisdiction. It was held error to dismiss the bill of the law defendant asking that further actions be enjoined.

4. A decision against the law defendant in an inferior court is not necessarily a bar to a bill of peace. In *Skinkle v. City of Covington* (1885) 83 Ky. 420 there was a city ordinance imposing a penalty for each 24 hours any person should hold possession of any of the streets, commons etc. of the city. The plaintiff used and claimed as his own property a certain river bank which the city also claimed; numerous warrants had been issued against him and he had been tried and fined in the mayor's court from which there was no appeal. It was held error for the court below to refuse relief.