A TREATISE

ON

EQUITY JURISPRUDENCE,

AS ADMINISTERED IN

THE UNITED STATES OF AMERICA;

ADAPTED FOR ALL THE STATES,

AND

TO THE UNION OF LEGAL AND EQUITABLE REMEDIES

UNDER THE REFORMED PROCEDURE.

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IN THREE VOLUMES.

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SECTION IV.

THE DOCTRINE THAT JURISDICTION EXISTS IN ORDER TO PREVENT A MULTIPLICITY OF SUITS.

ANALYSIS.

§ 243. **Applies to Both Kinds of Jurisdiction.**—The doctrine that a court of equity may take cognizance of a controversy, determine the rights of all the parties, and grant the relief requisite to meet the ends of justice, in order *to prevent a multiplicity of suits*, has already been briefly mentioned in a preceding section upon the "concurrent jurisdiction." The same remarks which were made at the commencement of the last section concerning the general principle that when a court of equity has acquired jurisdiction over part of a matter, or over a

matter for some particular purpose, it may go on and determine the whole controversy and confer complete relief, apply with equal truth and force to the doctrine now under consideration, and need not, therefore, be repeated.[1] Like that general principle, the "prevention of a multiplicity of suits" produces a material effect upon both the concurrent and the exclusive jurisdictions. It is sometimes one of the very foundations of the concurrent jurisdiction, an efficient cause of its existence. In fact, the "multiplicity of suits," which is to be prevented, *constitutes the very inadequacy of legal methods and remedies* which calls the concurrent jurisdiction into being under such circumstances, and authorizes it to adjudicate upon purely legal rights, and confer purely legal reliefs. On the other hand, the prevention of a multiplicity of suits is the *occasion* for the exercise of the exclusive jurisdiction. The multiplicity of suits to be avoided, which are generally actions at law, shows that the legal remedies are inadequate, and can not meet the ends of justice; and therefore a court of equity interferes, and although the primary rights and interests of the parties are legal in their nature, it takes cognizance of them, and awards some specific equitable remedy, which gives, perhaps, in one proceeding more substantial relief than could be obtained in numerous actions at law. This is the true theory of the doctrine in its application to the two jurisdictions.

§ 244. **Questions Stated.**—The general and vague statement that equity will interfere and take cognizance of a matter in order to prevent a multiplicity of suits, is made in innumerable judicial *dicta*, and the general doctrine is asserted in many decisions. But when we inquire, what is the exact extent of this doctrine, in what kinds and classes of cases is a court of equity empowered to exercise its jurisdiction and administer reliefs, in order to prevent a multiplicity of suits, we shall find not only a remarkable uncertainty and incompleteness in the judicial utterances, but even a direct conflict of decisions. Indeed, the difficulty is still more fundamental. The courts are not only at variance with respect to the particular classes of cases in which the doctrine should be applied, and their jurisdiction thereby asserted, but they seem also to be unsettled even with respect to the meaning, theory, or *rationale* of the doctrine itself as a foundation of their jurisdiction or an occasion for its exercise. That this language does not misrepresent the attitude of the courts will most clearly appear from decisions cited

[1] See *ante*, § 181.

in subsequent paragraphs. It is a matter of great practical importance to end, if possible, this condition of doubt and uncertainty. I purpose, therefore, so far as I may be able, to ascertain and explain the true meaning and *rationale* of the doctrine concerning the prevention of a multiplicity of suits as a source or an occasion of the equity jurisdiction; to determine upon principle, and from the weight of judicial authority, the extent of its operation, and the limits which have been placed upon it; and finally, to describe the various kinds and classes of cases in which the equity jurisdiction may or may not be exercised in pursuance of this doctrine.

§ 245. **Possible Conditions in which the Doctrine may Apply.**—It will aid us in reaching the true theory as well as in determining the extent and limitations of the doctrine, if we can fix at the outset all the *possible* conditions in which a multiplicity of suits can arise, and can thus furnish a source of or occasion for the equity jurisdiction in their prevention by settling *all* the controversy and *all* the rights in one single judicial proceeding. All these *possible* conditions may be reduced to the four following classes. *First.* Where, from the nature of the wrong, and from the settled rules of the legal procedure, the same injured party, in order to obtain all the relief to which he is justly entitled, is obliged to bring a number of actions against the same wrong-doer, all growing out of the one wrongful act and involving similar questions of fact and of law. To this class would belong cases of nuisance, waste, continued trespass, and the like. *Second.* Where the dispute is between two individuals, A. and B., and B. institutes or is about to institute a number of actions either successively or simultaneously against A., all depending upon the same legal questions and similar issues of fact, and A. by a single equitable suit seeks to bring them all within the scope and effect of one judicial determination. A familiar example of one branch of this class is the case where B. has brought repeated actions of ejectment to recover the same tract of land in A.'s possession, and A. finally resorts to a suit in equity by which his own title is finally established and quieted, and all further actions of ejectment by B. are enjoined. *Third.* Where a number of persons have separate and individual claims and rights of action against the same party A., but all arise from some common cause, are governed by the same legal rule, and involve similar facts, and the whole matter might be settled in a single suit brought by all these persons uniting as co-plaintiffs, or one of the persons

suing on behalf of the others, or even by one person suing for himself alone. The case of several owners of distinct parcels of land upon which the same illegal assessment or tax has been laid, is an example of this class. *Fourth.* Where the same party, A., has or claims to have some common right against a number of persons, the establishment of which would regularly require a separate action brought by him against each of these persons, or brought by each of them against him, and instead thereof he might procure the whole to be determined in one suit brought by himself against all the adverse claimants as co-defendants. It should be observed in this connection, that the prevention of a multiplicity of suits as a ground for the equity jurisdiction does not mean the complete and absolute interdiction or prevention of any litigation concerning the matters in dispute, but the substitution of one equitable suit in place of the other kinds of judicial proceeding, by means of which the entire controversy may be finally decided. The further discussion will involve the inquiry, whether the doctrine in question is applied to all of the foregoing classes of cases? and if so, what are the extent and limitations of its operation in each class? In pursuing this discussion I shall examine, first in order, the *rationale*, extent, and general operations of the doctrine; then, the limitations upon it; and finally the particular instances of its application arranged according to the foregoing classes.

§ 246. **Bills of Peace.**—The earliest instances in which the court of chancery exercised its jurisdiction, avowedly upon the ground of preventing a multiplicity of suits, appear to have been called "bills of peace," of which there were two distinct kinds. One of these was brought to establish a general right between a single party on the one side, and numerous persons claiming distinct and individual interests on the other, plainly corresponding, in part at least, with the third and fourth classes mentioned in the preceding paragraph. The other kind was permitted to quiet the complainant's title to and possession of land, and to restrain any further actions of ejectment to recover the premises by a single adverse claimant, after several successive actions had already been prosecuted without success, on the ground that the title could never be *finally* established by an indefinite repetition of such legal actions, and justice demanded that complainant should be protected against vexatious litigation. This form of the original bill of peace cor-

responds to the first branch of the second class described in the preceding paragraph.[1]

§ 247. One of the most frequent purposes of such suits to establish a general right, in early periods, seems to have been the ascertaining and settling the customs of a manor where they were in dispute between the lord of a manor and his tenants or copy-holders, or between the tenants of two different manors. A bill might be filed on behalf of the whole body of tenants or copy-holders of a particular manor against their lord, or perhaps against the lord or tenants of another manor; or it might be filed by the lord himself against his tenants; and by the decree in such suit questions concerning various rights of common, or concerning fines or other services due to the lord, or other like matters affecting all the parties could be finally established, which would otherwise require perhaps a multitude of individual actions. From this early purpose the jurisdiction was easily extended so as to embrace a great number of different but analogous objects.[2]

[1] 1 Spence, Eq. Jurisd. 657, 658; Jeremy's Eq. Jurisd. 344-347; Adam's Eq. 199-202 [m. p.]; 406-410 [6th Am. ed.]

[2] 1 Spence, Eq. Jur. 657. In Lord Tenham v. Herbert, 2 Atk. 483, Lord Hardwicke thus described these bills: "It is certain that where a man sets up a general and exclusive right, and where the persons who controvert it are very numerous, and he can not by one or two actions at law quiet that right, he may come into this court first, which is called a bill of peace; and the court will direct an issue to determine the right, as in disputes between lords of manors and their tenants, and between tenants of one manor and another; for in these cases there would be no end of bringing actions of trespass, since each action would determine only the particular right in question between the plaintiff and the defendant." See also the same proposition by Lord Eldon, in Hanson v. Gardiner, 7 Ves. 309, 310. It not my purpose, in this place, to enter into any full discusssion of "bills of peace." I shall therefore merely add some cases as examples of the extension of the doctrine, and of its application to establish general rights of various kinds. Suits have been sustained by a lord against tenants of the manor, and by tenants against their lord, to establish common and similar rights, or to establish the amount of fines payable by copyhold tenants; by a party in possession against adverse claimants to establish a toll, or right to the profits of a fair; by a parson against his parishioners for tithes, and by parishioners against their parson to establish a modus, etc.: Cowper v. Clerk, 3 P. Wms. 157; Midleton v. Jackson, 1 Ch. 18; Powell v. Powis, 1 Lon. & Jer. 159; Brown v. Vermuden, 1 Chan. Cas. 272; Rudge v. Hopkins, 2 Eq. Cas. Abr., p. 170, pl. 27; How v. Tenants of Bromsgrove, 1 Vern. 22; Pawlet v. Ingres, 1 Id. 308; Ewelme Hospital v. Andover, 1 Id. 266; Weekes v. Slake, 2 Id. 301; Arthington v. Fawkes, 2 Id. 356; Conyers v. Abergavenny, 1 Atk. 284, 285; Poor v. Clarke, 2 Id. 515; Hanson v. Gardiner, 7 Ves. 305, 309, 310; Corporation of Carlisle v. Wilson, 13 Id. 279, 280; Ware v. Horwood, 14 Id. 32, 33; Dilley v. Doig, 2 Ves. 486; Duke of Norfolk v. Myers, 4 Madd. 83, 117; Sheffield Water Works v. Yeomans, L. R. 2 Ch. 8; Phillips v. Hudson, L. R. 2 Ch. 243. Also suits by proprietor in possession claiming exclusive right of fishery in certain waters, against numerous other persons asserting rights to fish in the same waters by separate and independent claims: Mayor of York v. Pilkington, 1 Atk. 282; Lord Tenham v. Herbert, 2 Id. 483; New River Co. v. Graves,

§ 248. **Bills to Quiet Title.**—The grounds and purposes of the second form of the "bill of peace," as it was originally adopted, are very clearly stated by Lord Redesdale in his well-known and authoritative treatise upon equity pleadings: "In many cases, the courts of ordinary jurisdiction admit, at least for a certain time, of repeated attempts to litigate the same question. To put an end to the oppression occasioned by the abuse of this privilege, the courts of equity have assumed a jurisdiction. Thus, actions of ejectment which, as now used, are not part of the old law, have become the usual mode of trying titles at the common law, and judgments in those actions not being conclusive, the court of chancery has interfered, and after repeated trials and satisfactory determinations of the question, has granted perpetual injunctions to restrain further litigation, and thus has, in some degree, put that restraint upon litigation which was the policy of the ancient law in real actions."[1]

§ 249. **Rationale of the Doctrine on Principle.**—Having thus seen the historical inception of the doctrine in its earliest application to suits for the establishment of certain kinds of "general rights," and for the quieting of a party's legal title by restraining further actions of ejectment, I shall endeavor, before following out its subsequent development and further applications, to examine more closely into its real meaning, and to ascertain its true *rationale* and theory. What multiplicity of

2 Vern. 431, 432. Also a suit by a municipal corporation to establish a common duty in the nature of a license fee against a large number of persons, among whom there was no privity of interest, but their relations with each other were wholly separate and distinct: City of London v. Perkins, 3 Bro. P. C. 602 (Toml. ed.), 4 Bro. P. C. 157. But see Bouverie v. Prentice, 1 Bro. Ch. 200; Ward v. Duke of Northumberland, 2 Anstr. 469.

[1] Mitford (Lord Redesdale) on Eq. Pl., pp. 143, 144; 1 Spence Eq. Jurisd., p. 658. This particular exercise of its jurisdiction was not finally established by the court of chancery without a considerable struggle. In one case, after five ejectment trials, in all of which a verdict was rendered in favor of the complainant, Lord Chan. Cowper refused to interfere and restrain further actions at law; but his decree was reversed and set aside on appeal by the House of Lords: Earl of Bath v. Sherwin, Prec. Ch. 261; 10 Mod. 1; 1 Bro. P. C. 266, 270; 2 Id. 217 (ed. by Toml.) The title of the complainant in equity must, of course, have been satisfactorily determined in his favor at law before a court of equity will aid him. But if his right and title have been thus determined, as the rule is now well settled, a court of equity will interfere, without regard to and without requiring any particular *number* of trials at law, whether two or more, even after one trial at law: Leighton v. Leighton, 1 P. Wms. 671, 672; Devonsher v. Newenham, 2 Sch. & Lef. 208, 209; Earl of Darlington v. Bowes, 1 Eden, 270, 271, 272; Weller v. Smeaton, 1 Cox, 102; 1 Bro. Ch. 573; Alexander v. Pendleton, 8 Cranch, 462, 468; Trustees of Huntington v. Nicholl; 3 Johns. 566, 589, 590, 591, 595, 601, 602; Eldridge v. Hill, 2 Johns. Ch. 281, 282; Patterson v. McCamant, 28 Mo. 210; Knowles v. Inches, 12 Cal. 212, 216; Paterson etc. R. R. v. Jersey City, 1 Stockt. Ch. 434; Bond v. Little, 10 Ga. 395, 400; Harmer v. Gwynne, 5 McLean, 313, 315.

suits is it which a court of equity will prevent? What party must be harassed, or incommoded, or threatened with numerous litigations, and from whom must such litigation actually and necessarily proceed, in order that a court of equity may take jurisdiction, and prevent it by deciding all the matter in one decree? Finally, how far is the prevention of a multiplicity of suits an *independent* source of the equitable jurisdiction? Can a court of equity ever interfere on behalf of the plaintiff, upon the ground of preventing a multiplicity of suits, where such plaintiff would not otherwise have had any recognized claim for equitable relief, or any legal cause of action? Or is it essential that a plaintiff should have some existing cause of action, equitable or legal, some existing right to either equitable or legal relief, in order that a court of equity may interfere and exercise on his behalf its jurisdiction founded upon the prevention of a multiplicity of suits? The proper answer to these questions is plainly involved in any consistent theory of the doctrine; and yet it will be found that they have, either expressly or impliedly, been answered in a contradictory manner by different courts, and hence has arisen the conflict of decision in certain important applications of the doctrine.

§ 250. I will briefly examine these questions upon principle. In the first place, and as a fundamental proposition, it is plain that prevention of a multiplicity of suits is not, considered by itself alone, an independent source or occasion of jurisdiction, in such a sense that it can create a cause of action where none at all otherwise existed. In other words, a court of equity can not exercise its jurisdiction for the purpose of preventing a multiplicity of suits in cases where the plaintiff invoking such jurisdiction has not any prior existing cause of action, either equitable or legal; has not any prior existing right to *some* relief, either equitable or legal. The very object of preventing a multiplicity of suits, assumes that there are relations between the parties out of which other litigations of *some* form might arise. But this prior existing cause of action, this existing right to some relief, of the plaintiff, need not be equitable in its nature. Indeed, in the great majority of cases in which the jurisdiction has been exercised, the plaintiff's existing cause of action and remedial right were purely legal; and it is because the only legal remedy which he could obtain was clearly inadequate to meet the demands of justice, partly from its own inherent imperfect nature, and partly from its requiring a number of simultaneous or successive actions at law, that a court of equity is competent

to assume or exercise its jurisdiction. It follows as a necessary consequence—and this point is one of great importance to an accurate conception of the whole doctrine—that the existing legal relief to which the plaintiff who invokes the aid of equity is already entitled, *need not be of the same kind as that which he demands and obtains from a court of equity;* on the contrary, it may be, and often is, an entirely different species of remedy. One example will sufficiently illustrate this most important conclusion. The facts constituting the relations of the parties might be such that the only existing right to legal relief of the single plaintiff against the wrong-doer, is that of recovering amounts of damages by successive actions at law; or the only existing right to legal relief of each one of numerous plaintiffs having some common bond of union, is that of recovering damages in a separate action at law against the same wrong-doer; while the equitable relief which might be obtained by the single plaintiff in the one case, or by all the plaintiffs united in the other, might include a perpetual injunction, and the rescission, setting aside, and abatement of the entire matter or transaction which caused the injury, or the declaration and establishment of some common right or duty affecting all the parties. The decisions are full of examples illustrating this most important feature of the doctrine.

§ 251. The remaining questions to be considered are: What multiplicity of suits is it which a court of equity will prevent? What party must be harassed, or incommoded, or threatened with numerous litigations, and by whom must such litigation be instituted, in order that a court of equity may take jurisdiction and prevent the inconvenience and wrong by deciding all the matters in one decree? These questions must chiefly belong to cases of the third and fourth classes, as described in a preceding paragraph, where the "multiplicity" to be prevented arises from the fact that many persons claim or are subject to some general right, although their individual interests are separate and distinct. In cases belonging to the first and second classes, where the litigations are necessarily between a single plaintiff and a single defendant, by or against whom all the actions *must* be brought, there could not generally be any room or opportunity for the questions above stated. It is in the virtual and implicit, though not often express and avowed, answer to these questions, that most of the conflict of judicial opinion occurs. It has been laid down as a general proposition, that a court of equity, in a suit by one party against a class of

persons almost always necessarily indefinite in number, claimed to rest upon the jurisdiction to prevent a multiplicity of actions, will not by injunction declare and establish on behalf of the plaintiff a right which is in its nature opposed to and destructive of a *public* right claimed and enjoyed by the defendants in common with all other members of the community similarly situated; as for example, an exclusive right of the plaintiff to a public highway, or to a common navigable river, or to a ferry across a river. A reason given for this conclusion is, that such a decree would virtually require the court to enjoin all the inhabitants of the state or country.[1] The true reasons, however, why a court of equity refuses to grant such relief, are wholly unconnected with the doctrine of preventing a multiplicity of suits; they rest entirely upon considerations of public policy, which would hinder a court of equity from interfering with the enjoyment of rights purely public. Again, in speaking of cases which would fall either in the third or fourth class, where the total controversy is between a single determinate party on the one side, and a number of persons, more or less, on the other, the proposition has been stated in the most general terms, that in order to originate this jurisdiction—namely, a bill of peace by one plaintiff against numerous defendants—it is essential that there be a single claim of right *in all* [*i. e.*, of the defendants] arising out of some *privity* or relationship with the plaintiff. If this be true, it must clearly be requisite also in the class of suits brought by or on behalf of numerous plaintiffs against one defendant.[2] The proposition thus quoted from a text-writer has been maintained by some judges; but it seems to be quite irreconcilable, at all events in its broad generality, with numerous well-considered and even leading decisions, both English and American, made by courts of the highest ability, if

[1] 2 Story Eq. Jur. sec. 858, citing Hilton v. Lord Scarborough, 2 Eq. Cas. Abr. 171, pl. 2; Mitford's Eq. Pl. (ed. by Jeremy) p. 148. It has also been decided that a court will not interfere on behalf of one or more individuals when their injury is *public* in its nature, and is only suffered by each one of them in common with all other citizens or members of the community or municipality, because such individuals have *no* cause of action whatever which any court of equity can recognize; their remedy is wholly legislative and governmental. The observations in the text apply with equal force to this class of cases. See Doolittle v. Supervisors, 18 N. Y. 155; Roosevelt v. Draper, 23 Id. 318; Sargent v. Ohio & Miss. R. R., 1 Handy, 25, 60 (Ohio); Carpenter v. Mann, 17 Wis. 160; Kittle v. Fremont, 1 Neb. 329, 337; Craft v. Comm'rs etc., 5 Kan. 518.

[2] Adams on Eq., p. 200 [m. p.], p. 408 [6th Am. ed.] After laying down the above general proposition, the author adds, by way of illustration: "A bill of peace, therefore, will not lie against independent trespassers having no common claim, and no appearance of a common claim to distinguish them from the rest of the community; as, for example, against several booksellers who have infringed a copy-

any ordinary and effective meaning is given to the word privity. Suits have often been sustained by a single plaintiff against a numerous class of defendants, and by or on behalf of a numerous class of plaintiffs against a single defendant, avowedly on the ground of "preventing a multiplicity of suits," where there was no relation existing between the individual members of the class and their common adversary to which the term "privity" was at all applicable. Of course there must be *some* common relation, some common interest, or some common question, or else the decree of a court of equity, and the relief given by it in the one judicial proceeding, *could not by any possibility avail to prevent the multiplicity of suits* which is the very object of its interference. Finally, it has been stated in a very positive manner in some American decisions, as an essential requisite to the existence or exercise of the jurisdiction to prevent a multiplicity of suits, that the plaintiff who invokes the jurisdiction of equity must himself be the party who would be compelled to resort to numerous actions in order to obtain complete redress, or who would be subjected to numerous actions by his adversary party, unless the court of equity interferes and decides the whole matter, and gives final relief by one decree. As I have already remarked, this proposition may be accepted as actually true in cases belonging to the first and to the second classes, where the controversy is always between two single and determinate parties, and the sole ground for a court of equity to interfere on behalf of either is, that numerous actions at law are or must be brought by one against the other. But if the same rule were extended as an essential requisite, to cases belonging to the third and fourth classes—and it is in such cases that it has sometimes been applied—it would at one blow overturn a long line of decisions, both English and American, which have always been regarded as authoritative and leading. On principle, therefore, the rule last above stated can not be regarded as a universal one, controlling the exercise of the equitable jurisdiction "to prevent a multiplicity of suits."

right, or against several persons who, at different times, have obstructed a ferry. For if a bill of peace could be sustained in such a case, the injunction would be against all the people of the kingdom;" citing Dilly v. Doig, 2 Ves. 486; Mitford's Eq. Pl., pp. 147, 148. These particular cases are undoubtedly correct applications of the doctrine; but they clearly do not sustain the broad proposition of this writer, that the claim of right between the single party on the one side, and the class of persons on the other, must arise out of some *privity* existing between all the members of that class as individuals, and the single party on the other side, by or against whom the right is asserted.

§ 252. **Examination of the Doctrine upon Authority. First Class.**—I shall now examine the nature, extent, and limitations of the general doctrine upon authority. The cases belonging to the first class of the arrangement made in a preceding paragraph,[1] where a court of equity interferes because the plaintiff would be obliged to bring a succession, perhaps an indefinite number, of actions at law in order to obtain relief appearing even to be sufficient, have generally been cases of nuisance, waste, trespass to land, disputed boundaries involving acts of trespass by the defendant, and the like, the wrong complained of being in its very nature continuous. If the plaintiff's title to the subject-matter affected by the wrong is admitted, a court of equity will exercise its jurisdiction at once, and will grant full relief to the plaintiff, without compelling him to resort to a prior action at law. Whenever the plaintiff's title is disputed, the rule is settled that he must, in general, procure his title to be satisfactorily determined by at least one verdict in his own favor, by at least one successful trial at law, before a court of equity will interfere; but the rule no longer requires any particular number of actions or trials. The reason for this requisite is, that courts of equity will not, in general, try disputed legal titles to land. But the rule is one of expediency and policy, rather than an essential condition and basis of the equitable jurisdiction.[2] In addition to these ordinary cases of nuisance and similar *continuous* wrongs to property, there are some other special instances in which a court of equity has interfered and determined the entire controversy by

[1] See *ante*, § 245.

[2] Hanson v. Gardiner, 7 Ves. 305, 309, 310; Livingston v. Livingston, 6 Johns. Ch. 497, 500; Parker v. Winnipiseogee, etc. Co., 2 Black (U. S.) 545, 551; Hacker v. Barton, 84 Ill. 313; Carlisle v. Cooper, 21 N. J. Eq. (6 C. E. Green) 576, 579; Corning v. Troy Iron Factory, 39 Barb. 311, 327; S. C., 34 Id. 485, 492, 493; Webb v. Portland Man. Co., 3 Sumner, 189; Lyon v. McLaughlin, 32 Vt. 423, 425, 426; Sheetz's appeal, 35 Pa. St. 88, 95; Holsman v. Boiling Spring Co., 1 McCarter, 335; Sheldon v. Rockwell, 9 Wis. 166, 179 (interfering with easements of water); McRoberts v. Washburne, 10 Minn. 23, 30; Letton v. Goodden, L. R. 2 Eq. 123, 130 (interfering with an exclusive ferry franchise); Eastman v. Amoskeag etc. Co., 47 N. H. 71, 79, 80; for the limitations on this application of the doctrine, see Hughlett v. Harris, 1 Del. Ch. 349, 352. In Parker v. Winnipiseogee, etc. Co., 2 Black, 545, 551, the rule was thus stated by Swayne, J.: Equity will restrain a private nuisance by injunction, in order "to prevent oppressive and interminable litigation or a multiplicity of suits, or when the injury is of such a nature that it can not be adequately compensated by damages at law, or is such, from its continuance or permanent mischief, as must occasion a constantly occurring grievance, which can not be prevented otherwise than by an injunction." In Eastman v. Amoskeag etc. Co., 47 N. H. 71, 79, the court refused to interfere and restrain an alleged private nuisance, because the plaintiff's title was disputed, and had not been established by even one action at law.

one decree, in order to prevent a multiplicity of suits, where otherwise the plaintiff would be compelled to bring several actions at law against the same adversary, and with respect to the same subject-matter.[1]

§ 253. **Second Class.**—The second class, according to my previous arrangement, consists of two branches. In the first of these, the defendant has brought, or threatens to bring, successive actions at law to recover the same subject-matter from the plaintiff, where from the rules of the legal procedure the title is not determined by a judgment in any such action or number of actions. This branch has, therefore, been ordinarily confined to cases of successive actions of ejectment to recover the same tract of land from the plaintiff. It follows as a matter of course that equity will not interfere on behalf of the plaintiff, and restrain the defendant's proceedings, until the plaintiff's title has been sufficiently established by the decision of at least one action at law in his favor. Indeed, the interference of equity assumes that the plaintiff's legal right and title have been clearly determined, and its sole object is to quiet that title by preventing the continuance of a litigation at law

[1] Biddle v. Ramsey, 52 Mo. 153, 159, is an example. Plaintiff alleged that he had leased premises to the defendant, and by the lease it was stipulated that near the end of the term each should name an appraiser, and they a third; and that these three appraisers should *unanimously* assess the value of the improvements made by the defendant, and the yearly rental; and that the plaintiff should have an option to buy such improvements at the sum thus fixed, or to grant a new lease to the defendant at the rent thus fixed, etc.; that defendant had by his fraud prevented any unanimous action of the appraisers, and had kept possession of the premises for more than three years after the end of the term without paying any rent: *Held*, that the suit in equity was proper in order to give the plaintiff full relief, and to prevent a multiplicity of actions at law, viz., plaintiff would be obliged to bring an action of ejectment to recover possession of the premises, and then other actions to settle questions as to the payment for the buildings and other improvements. I think the correctness of this decision may be doubted. The plaintiff's interests and causes of action were wholly legal, and the relief which he obtained was also purely legal. It is plain, at all events, that the special cases mentioned in the text must be few in number. For a clear statement of the restrictions upon this mode of exercising the equitable jurisdiction to prevent a multiplicity of suits, see Richmond v. Dubuque etc. R. R., 33 Iowa, 422, 487, 488. Black v. Shreeve, 3 Halst. Ch. 440, 456, 457, is a much more appropriate and instructive example. A very long, peculiar, and complicated agreement had been executed by the plaintiffs and a large number of other persons, by which each agreed to pay a certain contributory share, the amount depending upon many contingencies, towards making up an expected deficiency. The plaintiffs paid the whole, and would necessarily be obliged to maintain numerous and successive actions at law in order to establish their own rights, and to ascertain and recover the amounts payable by the other parties. It was held that, to avoid this multiplicity of actions, the plaintiffs could sue in equity, and have the whole matter settled by one decree. It should be observed that the rights, liabilities, and remedies of all the parties were purely legal, since they were in no sense sureties.

which has become vexatious and oppressive, because it is unnecessary and unavailing. A court of equity will not, therefore, interfere to restrain the defendant's litigation as long as the plaintiff's title is uncertain.[1] And in analogous cases, not of ejectment, the court will interfere and restrain the defendant's further prosecution of successive actions at law, and will thus establish and quiet the plaintiff's right, when all the questions of law and fact involved in these actions have already been fully determined in the plaintiff's favor by some former judicial proceeding between the same parties.[2]

§ 254. In the second branch of the same class the single defendant has brought a number of simultaneous actions at law against the plaintiff, all depending upon similar facts and circumstances, and involving the same legal questions, so that the decision of one would virtually be a decision of all the others. A court of equity *may* then interfere and restrain the prosecution of these actions, so that the determination of all the matters at issue between the two parties may be brought within the scope of one judicial proceeding and one decree, and a multiplicity of suits may thereby be prevented. It must be admitted that this exercise of the equitable jurisdiction is somewhat extraordinary, since the rights and interests involved are wholly legal, and the substantial relief given by the court is also purely legal. It may be assumed, therefore, that a court of equity will not exercise jurisdiction on this particular ground, unless its interference is clearly necessary to promote the ends of justice,

[1] Leighton v. Leighton, 1 P. Wms. 671; Earl of Bath v. Sherwin, Prec. Ch. 261; 10 Mod. 1; 1 Bro. P. C. 266, 270; 2 Id. 217 (Toml. ed.); Devonsher v. Newenham, 2 Sch. & Lef. 208, 209; Weller v. Smeaton, 1 Cox, 102; 1 Bro. Ch. 573; Earl of Darlington v. Bowes, 1 Eden, 270, 271, 272; Alexander v. Pendleton, 8 Cranch, 462, 468; Trustees of Huntington v. Nicoll, 3 Johns, 566, 589, 590, 591, 595, 601, 602; Eldridge v. Hill, 2 Johns. Ch. 281; Woods v. Monroe, 17 Mich. 238; Knowles v. Inches, 12 Cal. 212; Patterson v. McCamant, 28 Mo. 210; Bond v. Little, 10 Ga. 395, 400; Harmer v. Gwynne, 5 McLean, 313, 315.

[2] As in Paterson etc. R. R. v. Jersey City, 1 Stockt. Ch. 434, the city officials had assessed the property of the railroad for taxes, state, county, and city. The railroad brought a writ of *certiorari* to the supreme court, which held that all these taxes were invalid because the corporation was by its charter exempted from all general taxation, and this decision was affirmed by the court of errors. Notwithstanding these decisions, the city afterwards assessed the same kind of taxes again upon the same property of the railroad in two successive years, and was taking the steps provided by law for the collection of these latter taxes by a compulsory sale of the company's property. The railroad thereupon brought this suit in equity for an injunction against the city and its officials: *Held*, a proper occasion for equity to restrain a multiplicity of suits. If the plaintiff's right has been established by a decision at law, there is no requirement of any particular number of actions at law before a suit in equity can be maintained; one judgment at law may be sufficient.

and to shield the plaintiff from a litigation which is evidently vexatious. It should be carefully observed that a court of equity does not interfere, in this class of cases, to restrain absolutely and completely any and all trial and decision of the questions presented by the pending actions at law; it only intervenes to prevent the repeated or numerous trials, and to bring the whole within the scope and effect of one judicial investigation and decision. It should also be observed that if the pending actions at law are of such a nature, or for such a purpose, that, according to the settled rules of the legal procedure, they may all be consolidated into one and all tried together, by an order of the court in which they, or some of them, are pending, then a court of equity will not interfere; since the legal remedy of the plaintiff is complete, certain, and adequate, there is no necessity for his invoking the aid of the equitable jurisdiction.[1]

§ 255. **Third and Fourth Classes.**—In pursuing this inquiry into the extent and limitations of the doctrine, the third and fourth of my classes may, with advantage, be considered together. In the third, a number of persons have separate and distinct interests, but still united by *some* common tie, against one determined party, and these interests may perhaps be enforced by one equitable suit brought by all the persons joining as co-plaintiffs, or by one suing on behalf of himself and all the others, or even by one suing for himself alone. The fourth is the

[1] Kensington v. White, 3 Price, 164, 167; Third Av. R. R. v. Mayor etc. of N. Y., 54 N. Y. 159, 162, 163; West v. Mayor of N. Y., 10 Paige, 539. In Kensington v. White, *supra*, defendant had brought five separate actions at law on five different policies of insurance effected on different ships but between the same parties and at the same time; the defense was substantially the same in all, fraud of the assured. The complainants (defendants in the five actions), the insurers, then brought this suit in equity, to have all the matters tried in one suit, praying for a discovery, and an injunction against the actions at law. The bill was held proper, in order to avoid a multiplicity of suits, as the whole was really one transaction. In Third Av. R. R. v. Mayor of N. Y., 54 N. Y. 159, 162, 163, the city had brought seventy-seven actions in a justice's court to recover penalties for violating a city ordinance concerning the running of cars without a license, each action for a separate penalty. All the actions depended upon similar facts and upon the same question of law, viz., whether the railroad was liable under the ordinance; and a decision of one would virtually decide all. The company brought this suit in equity to restrain the prosecution of all these actions except one, offering to abide the final decision in that one. The suit was sustained and the relief granted, *because a justice court had no power to consolidate these actions*. The decision was placed expressly upon the power of equity to prevent a multiplicity of suits, and the impossibility of the plaintiff's being relieved in any other manner from a vexatious litigation. The case was held to be distinguishable from West v. Mayor etc., *supra*, in which an apparently contrary decision was made, because, in the latter case, the plaintiff, West, sought to restrain absolutely all the actions which were pending against him. I would add, that some of the language in the chancellor's opinion in West v. The Mayor goes much further than the distinction thus made, and can hardly be reconciled

exact converse of the third. One determined party has a general right against a number of persons, common to all in some of its features, but still affecting each individually and only with respect to his separate, distinct interests; so that each of these persons has a separate and distinct claim in opposition to the asserted right. It is plain that the same fundamental questions must arise in both of these classes. The first and most important question which meets us is, what must be the character, the essential elements, and the external form of the common right, claim, or interest held by the number of persons against the single party in the third class, and by the single party against the number of persons in the fourth class, in order that a court of equity may acquire or exercise jurisdiction for the purpose of preventing a multiplicity of suits, and may determine the rights of all, and give complete relief by one decree? Is it necessary that the common bond, element, or feature should inhere in the very rights, interests, or claims themselves which subsist between the body of persons on the one side, and the single party on the other, and should affect the nature and form of those rights, interests, or claims to such an extent that they create some positive and recognized existing legal relation or privity between the individual members of the group of persons, as well as between each of them and the single determined party to whom they all stand in an adversary position? Or, is it enough that the common bond or element consists solely in the fact that all the rights, interests, or claims subsisting between the body of persons and the single party have arisen from the same source, from the same event, or the same transaction, and in the fact that they all involve and depend upon similar questions of fact, and the same questions of law;

with the decision of the court of appeals; but the *decision* in West v. Mayor is clearly distinguishable. In West v. The Mayor etc., *supra*, the city had brought a considerable number of actions against the plaintiff to recover penalties for alleged violations, all similar in their nature, of a city ordinance. None of these actions had yet been tried. Plaintiff then sued in equity to have *all* these actions enjoined, and to try the whole matter in the single equity suit. Chancellor Walworth held that a court of equity could not interfere, because (1) that equity would never assume jurisdiction in a case analogous to the present until the plaintiff had established his right by a successful defense in at least one of the actions; and (2) that equity would never interfere when the whole question was one of law, and if the law was with the plaintiff he would have a perfect defense in each action. Such suits in equity have been sustained where the questions were of fact, or of mixed law and fact; but no bill can be sustained to restrain a defendant from suing at law, where only a question of law is involved, and when the defendant at law (the plaintiff in equity) must finally succeed in his defense if the law is in his favor. It is plain that both of these general grounds adopted by the chancellor are irreconcilable with the subsequent decision by the court of appeals last quoted.

so that while the same positive legal relation exists between the single determined party on the one side, *and each individual* of the body of persons on the other, no such legal relation exists between the individual members themselves of that body; as among themselves their respective rights, interests, and claims against the common adversary party, otherwise than above stated, are wholly separate and distinct? This question lies at the foundation of the whole discussion. Others have been suggested, and have been considered by the courts, but they are all finally resolved into this, and all depend upon its final solution for their answer. It is in the solution of this most important question and in its application to particular circumstances that most of the conflict of opinion among the American courts especially has arisen. I shall endeavor to present all these conflicting views briefly but fairly, and to suggest my own opinion concerning their correctness and the weight of authority; to reconcile them all would be simply impossible.

§ 256. **Community of Interest.**—The two leading cases are generally known as "The Case of the Fisheries,"[1] and "The Case of the Duties."[2] The former was a bill to restrain a large number of trespassers, and to establish the plaintiff's right as against them. The corporation had exercised and claimed an exclusive right of fishery over an extent of nine miles in the river Ouse. The defendants were numerous lords of manors and owners of separate tracts of land adjacent to the river, and each claimed, in opposition to the city, an individual right of fishery within the specified limits by virtue of his separate and distinct riparian proprietorship. Lord Hardwicke sustained the bill, although the plaintiff had not established his exclusive title by any action at law, and although the claims of the various defendants were thus wholly distinct, and expressly placed his decision upon the equitable jurisdiction to prevent a multiplicity of suits, since otherwise the corporation would be obliged to bring endless actions at law against the individual trespassers. The second case was brought to establish the right of the city of London to a duty payable by all merchants importing a certain article of merchandise. It has ordinarily been quoted and treated as though it was a bill filed by the city against a number of individual importers separately engaged in the trade, for the purpose of establishing and enforcing the city's common right to the duty or tax in question. An

[1] Mayor of York v. Pilkington, 1 Atk. 282.

[2] City of London v. Perkins, 3 Bro. P. C. 602 (ed. by Toml.)

examination of the record shows that this is not an accurate account of the proceeding; but still the case has generally been regarded as an important authority in support of the equity jurisdiction under the circumstances described, and such seems to have been the view taken of it by Lord Hardwicke in deciding the Fisheries case. There are other English decisions to the same effect, depending upon strictly analogous facts, and involving the same doctrine, which are referred to in the foot-note.[1] There is an opinion of Lord Redesdale in the case of

[1] Lord Tenham v. Herbert, 2 Atk. 483, *per* Lord Hardwicke. See the passage from his opinion quoted *ante* in note to sec. 247. How v. Tenants of Bromsgrove, 1 Vern. 22, a suit by the lord of a manor to establish a right of free warren against the tenants of his manor; Ewelme Hospital v. Corp'n of Andover, 1 Vern. 266, a suit to establish the right to hold a fair at a particular place, and to have certain profits and dues from persons trading at such fair; Cowper v. Clerk, 3 P. Wms. 155, 157, a bill filed by a single copy holder against the lord of the manor, to be relieved from an excessive fine. Lord Chan. King held that a bill by a single copy holder could not be sustained, because the defense of an excessive fine would be admitted in an action at law brought against him by the lord. But the chancellor added that a bill would lie *by several copy holders to be relieved from a general fine* on the ground of its being excessive, in order to prevent a multiplicity of suits. This case, in my opinion, is extremely important in the extent to which it carries the operation of the doctrine. In Weale v. West Middlesex Water Co., 1 J. & W. 358, 369, there is a very important opinion of Lord Chan. Eldon, concerning the operation of the doctrine in these classes of cases. The defendant was required by its charter to furnish water to the inhabitants of a specified district at reasonable rates. The defendant had raised its rates, and the plaintiff, who had been a customer, filed a bill to compel the company to keep on furnishing water at the old rates, and to restrain it from cutting off the water supply, etc. Lord Eldon said (p. 369): In Mayor of York v. Pilkington, the plaintiff had an exclusive right of fishery in a certain river; many persons claimed that *they* had a right; and the corporation sued to establish its own exclusive right; and it was held that the bill was proper because if the corporation showed itself to have an exclusive right, the rights of no other individual persons could stand. "If any person has a common right against a great many of the king's subjects, inasmuch as he can not contend with all the king's subjects, a court of equity will permit him to file a bill against some of them, taking care to bring so many persons before the court that their interests shall be such as lead to a fair and honest support of the public interests; and when a decree has been obtained then the court will carry the benefit of it into execution against other individuals, who were not parties. * * * * This would be more like that case if it were the direct converse of what it is; because it is impossible in the nature of the thing that Weale (the plaintiff) can maintain a suit on behalf of himself and other inhabitants of the district; he can only come into court on the footing of his own independent right." See also Bouverie v. Prentice, 1 Bro. Ch. 200; and Ward v. Duke of Northumberland, 2 Anstr. 469; Arthington v. Fawkes, 2 Vern. 356. The doctrine was applied under analogous circumstances in the very recent cases of Sheffield Water Works v. Yeomans, L. R. 2 Ch. 8, 11, and Phillips v. Hudson, L. R. 2 Ch. 243, 246. The first of these cases is a very strong one. A reservoir of the water company had burst, and damaged a large number of persons. Under a special statute commissioners were appointed to examine the claims of all these persons, and to give a certificate to each one whose claim was satisfactorily proved. Each certificate would be *prima facie* a legal demand against the company for the amount of damage certified in it; but to enforce such certificate each holder must bring an

Whaley v. Dawson, which has sometimes been quoted as though it were intended to furnish the true rule concerning the nature of the common interests and common relations which must subsist among the individual members of the numerous body of persons in the two classes of cases now under consideration.[1] It is very evident, however, that Lord Redesdale is not alluding to, nor even contemplating, in this decision, any

action at law. The commissioners issued a large number of certificates, and among them a certain class, one thousand five hundred in number, which the company claimed to be illegal. To avoid the multiplicity of actions against itself on these certificates, the company brought this suit in equity against certain of the holders sued on behalf of all the others, praying to have the certificates adjudged invalid, and canceled. Here was no community of right or of interest in the subject-matter among these one thousand five hundred certificate holders. In the form in which their demands existed, they did not all arise from the one wrongful act of the water company. Each holder's demand and separate right arose solely from the dealings of the commissioners with him individually. The only community of interest among them was in the question of law at issue upon which all their rights depended, and in the same remedy to which each might be entitled. The suit was sustained on demurrer first by V. C. Kindersly, and on appeal by Lord Chan. Chelmsford. The latter said: "Strictly speaking this is not a bill of peace, as the rights of the claimants under the alleged certificates are not identical; but it appears to me to be within the principle of bills of this description. The rights of the numerous claimants (certificate holders) *all depend upon the same question.* * * * * It seems to me to be a very fit case, by analogy at least to a bill of peace, for a court of equity to interpose and prevent unnecessary litigation," etc. This case has a strong resemblance in its circumstances, object, and principle to the celebrated suit growing out of the Schuyler fraud described under a subsequent paragraph. It certainly can not be reconciled with the theory, maintained by some of the American courts, that there must be a common interest in the subject-matter, or a common title among the numerous body of claimants, in order that a court of equity may interfere by such a suit. In Phillips v. Hudson, L. R. 2 Ch. 243, 246, Lord Chan. Chelmsford decided that a suit will lie by one copy holder suing on behalf of himself and the others, against the lord of a manor, to establish their rights of common in the manor; but such a suit can not be maintained by a single copy holder suing alone. See the very recent and instructive case of Board of Supervisors v. Deyoe, 77 N. Y. 219, 225.

[1] Whaley v. Dawson, 2 Sch. & Lef. 367, 370. This was a suit praying partition of certain lands against the defendant D., and also alleging that by fraud the defendant C. had obtained from the plaintiff a lease of a certain part of said land, and praying as against the defendant C., that such lease might be set aside. This bill was demurred to on the ground of multifariousness, and the demurrer was sustained. Lord Redesdale said (p. 370): "In the cases where demurrers on the ground that plaintiff demanded by his bill matters of distinct natures against several defendants not connected in interest, have been overruled, there has been a general right in the plaintiff covering the whole case, although the rights of the defendant may have been distinct. But I take it that where the subjects of the suit are in themselves perfectly distinct, there is a common ground of demurrer." Even if this opinion can be regarded as having any reference to the cases under consideration, in which a court of equity may exercise jurisdiction in order to prevent a multiplicity of suits, it very plainly does not place any practical limit to the operation of the doctrine; it does not in the least ascertain and fix the common nature of the interests or relations which must subsist among the body of persons, or between them individually and their single adversary: See, also, Bouverie v. Prentice, 1 Bro. Ch. 200; Ward v. Duke of Northumberland, 2 Anstr. 469.

kind of case in which equity assumes jurisdiction to prevent a multiplicity of suits; he is merely discussing the familiar objection of multifariousness, where the plaintiff has united two entirely separate subject-matters and defendants in a suit over which equity had an undoubted and exclusive jurisdiction. The other English decisions very clearly do not require any *privity* between the members of the numerous body, nor any common element or feature inhering in the very nature of their individual interests as between themselves.[1]

§ 257. **Distinct Proprietors Injured by One Wrong.**— There is another important group of cases, presenting on their face a very different condition of facts, which illustrate the question as to the community of interests which must subsist among the individuals of a numerous body of persons in opposition to a single party, in order that a court of equity may take jurisdiction, and grant them relief upon the ground of preventing a multiplicity of suits. These are the cases in which a number of individual proprietors of separate and distinct parcels of land have all been interfered with and injured in the same general manner, with respect to their particular lands, by a private nuisance; so that they all have a similar claim for legal redress against the author of the nuisances. As, for example, where a number of different owners have separate mills and water powers along the banks of a stream, and some party wrongfully erects a dam or diverts the water, and by this unlawful act the property rights of each owner are injuriously affected in the same general manner, although in unequal amounts. The instances are numerous in which courts of equity have interfered, under these and analogous circumstances, avowedly on the ground of preventing a multiplicity of suits, and have given complete relief to all the injured proprietors by a single decree.[2]

[1] There is a marked distinction between the case of Weale v. West Middlesex Water Co., 1 J. & W. 358, 369, and the Fisheries case and others quoted in the preceding notes. There was no common right of any kind among the water consumers of the district and the company. It is true the company was bound by charter to supply all who wished the water and paid the rates; but the immediate basis of the supply in each individual case, and the only legal relation between each consumer and the company, was a distinct, separate, voluntary contract made between such consumer and the company. Each consumer stood upon his own distinct contract as the single source of his right. There was no sort of community of interest among the consumers of the district; their rights were not only separate, but did not arise from the same legal cause, or event, or transaction; nor did they depend upon the same questions of law or of fact. Very plainly, therefore, they were not in such a position that they could all join as co-plaintiffs in a suit against the company; nor could Weale sue on behalf of the others.

[2] Cadigan v. Brown, 120 Mass. 493, 495; Ballou v. Inhabitants of Hopkinton, 4 Gray, 324, 328; Murray v. Hay, 1 Barb. Ch. 59; Reid v. Gifford, Hopk. 416, 419, 420; but see

The cases of this group are exceedingly important in their bearing upon the question under examination as to the true meaning and extent of the doctrine concerning the prevention of a multiplicity of suits. At law, the only remedy was an action for damages by each owner against the author of the nuisance or trespass. It can not be pretended that there existed among the various owners with respect to each other, or as between their entire body and the defendant, any common bond or interest to which the term *privity* can be applied, or which bore the slightest resemblance to any species of privity. In fact, there did not exist among them as individual owners, or between them as a body and the defendant, any distinct legal relation whatever which the law recognizes. The only common bond among them as individuals, or between them as a body and the

Marselis v. Morris Canal Co., Saxton, 31. In Cadigan v. Brown, *supra*, the plaintiffs were individual owners of separate lots abutting on a passage-way, each holding under a distinct title from a different grantor. Defendant began an erection which would permanently block up the passage and interfere with each plaintiff's right of way, and was therefore a nuisance. The plaintiffs brought this suit to restrain the further erection, and to remove the obstruction. Held, that the suit should be sustained, and that all the plaintiffs could join in one suit in equity on the ground of preventing a multiplicity of suits, since at law each owner must bring a separate action. "The plaintiffs, although they hold their rights under separate titles, *have a common interest in the subject of the bill*. They are affected in the same way by the acts of the defendant, and seek the same remedy against him. The rights of all parties can be adjusted in one decree, and a multiplicity of suits is prevented (citing Ballou v. Hopkinton, and Murray v. Hay)." In Ballou v. Inhabitants of Hopkinton, *supra*, the plaintiffs were individual owners of separate mills on the banks of a stream, and each drew a supply of water for his own mill from a dam higher up on the stream, which had been built by all of these proprietors. The defendants had begun to draw water from this dam, not removing or in any way interfering with the structure itself, but simply diverting the water, so that the supply for each mill was lessened, and might be rendered insufficient. It was held that the plaintiffs could join in one equity suit, and restrain the defendants by injunction, in order to prevent a multiplicity of suits. In Murray v. Hay, *supra*, the plaintiffs were in like manner owners of separate dwellings, which were all injured by a single nuisance, of which the defendant was the author. It was held that they could all unite and obtain full relief of injunction and removal by one decree, citing Kensington v. White, 3 Price, 164; Mills v. Campbell, 2 Y. & C. Exch. 389; Reid v. Gifford, Hopk. 416; Trustees of Watertown v. Cowen, 4 Paige, 510. In Reid v. Gifford, *supra*, the plaintiffs were in the same manner owners of separate parcels of land on a mill stream, and of separate water rights in such stream. Defendant owned another mill-site on the same stream. He had cut a ditch or canal, by which he diverted water from the stream, and thereby injured all the plaintiffs in the same manner, but in varying amounts. Plaintiffs united in this suit to obtain an injunction, and to abate the nuisance. Their suit was sustained. It was expressly held that they all had *such a community of interest in the subject-matter of the suit*, that they could join in the bill. It was further held, that since they had long been seised in fee of their respective premises, and in undisturbed possession thereof, no verdict or judgment at law was necessary to establish their rights, and as a prerequisite to their invoking the aid of equity.

defendant, consisted in the fact that they each and all suffered the same kind of wrong to their separate properties, arising at the same time and from the same tortious act of the defendant, and in the fact that the legal causes of action and remedial rights of each and all were the same, depending upon similar matters of fact and the same rules of law. They were in exactly the same position as that of any body of men who have all separately and individually suffered the same kind of injury to their persons or their properties, by one trespass or other wrongful act; only in their cases the subject-matter which directly received the injury—the parcels of land—and the wrong itself—the nuisance or continued trespass—were of such a nature as brought them within the *possible* jurisdiction of equity; since a court of equity could never take jurisdiction in a case of mere wrong to the persons or the reputation of the injured parties. And yet in each decision it was expressly held that there was a sufficient community of interest in the subject-matter of the suit to enable a court of equity to exercise its jurisdiction on behalf of the united plaintiffs. The conclusion, therefore, seems to me irresistible, that this group of decisions can not be reconciled with that theory of the jurisdiction which requires, in cases of the third and fourth classes, a privity of interest or common legal relation existing among all the individuals of the body of persons who assert their separate claims against a single adversary party, in order that a court of equity may interfere on their united behalf against him, or on his behalf against them.[1]

[1] It may, perhaps, be said, in explanation of the judicial action in this group of cases, that on account of the continuous nature of the wrong—the nuisance or trespass—each separate owner, in addition to his actions at law for damages, would be entitled to maintain a separate suit in equity on his own behalf, and thereby restrain the further wrong. It would be enough to answer that in no instance was the decision put upon any such ground. In every instance the court rested its decree upon the broad ground that the legal remedies of the individual plaintiffs were imperfect, and that, as there was a sufficient community of interest in the subject-matter among them, they could properly unite in the single equitable proceeding, in order to prevent a multiplicity of suits. But even admitting the facts above stated to their fullest extent, they do not in the slightest degree alter or affect the conclusions reached in the text, nor furnish any different explanation of the action of the courts in exercising their jurisdiction. Even if each individual plaintiff would have had a right to equitable relief as well as to the legal relief of damages, the equitable jurisdiction to prevent a multiplicity of suits is never made to rest upon the *particular kind or extent* of relief which an individual party might otherwise have obtained in a separate suit. It always assumes that some relief, either legal or equitable, could have been thus obtained; and the only question, in cases of the third and fourth classes, is, whether there is a sufficient common bond among the body of similarly situated persons on the one side of the controversy, to authorize the court to interfere and give *complete* relief to them or against them all in one proceeding, and thus avoid a multiplicity of suits.

§ 258. **Distinct Proprietors Relieved from Local Assessments.**—I pass now to consider another and even more interesting group of cases, which chiefly belong, with one or two exceptions, to the judicial history of this country, and in which more than in any other has arisen the direct conflict of judicial opinion already mentioned. I refer to cases brought by or on behalf of a body of individual taxpayers or owners of distinct tracts of land to be relieved from illegal assessments upon their separate properties, made by municipal corporations to defray the expense of local improvements; or from general taxes, either personal or made liens on property, unlawfully assessed and levied by counties, towns, or cities; or to set aside, annul, and be relieved from some unlawful public, official, and corporate act of a county, town, or city, by means of which a public debt would be created, and the burden of individual taxation would be ultimately increased. Those instances in which the jurisdiction has been exercised and the relief granted will alone be considered at present; those in which it has been denied to exist will be postponed to subsequent paragraphs, in which the general limitations upon the doctrine are examined. I shall take up first in order the cases of local assessments, and, secondly, those of general taxes and of official acts creating public indebtedness and final taxation.

§ 259. **Relief from Illegal Taxes and other Public Burdens in General.**—There are numerous decisions to be found in the reports of several States, of equity suits brought by land owners to set aside illegal assessments or taxes laid upon their property, in which one court after another has repeated the formula that the suit would be sustained and the relief granted whenever it was necessary to remove a cloud from title, *or to prevent a multiplicity of suits.* In none of these cases is any attempt made to determine when the relief would be necessary or appropriate for the purpose of preventing a multiplicity of suits; and in most if not all of them the relief was refused and the suit dismissed expressly on the ground that it did not come within the equitable jurisdiction to prevent a multiplicity of suits. It is plain, therefore, that these decisions, notwithstanding the general formula which they all announce, do not *affirmatively* define the extent of the jurisdiction; but their authority, so far as it goes, is opposed to the exercise of the jurisdiction, under all ordinary circumstances, in the class of cases described.[1]

[1] Guest v. Brooklyn, 69 N. Y. 506, 512, 513; Heywood v. Buffalo, 14 Id. 534, 541; Mayor of Brooklyn v. Meserole, 26 Wend. 132, 140; Ewing v. St. Louis, 5 Wall. 413, 418, 419; Dows v. Chicago, 11 Id. 108, 110, 111;

§ 260. I pass to a line of cases much more definite and direct in their bearing upon the questions under discussion. Assessments for local improvements by municipal corporations are generally made a lien upon the lands declared to be benefited thereby; and where such is the case, the instances are numerous in which suits in equity brought by a number of individual owners of separate lots, or by one owner suing on behalf of himself and all the others similarly situated, to procure the enforcement and collection of the assessment to be enjoined, and the assessment itself to be set aside and annulled on account of its illegality, have been sustained upon the avowed ground that such relief granted in a single proceeding was both proper and necessary in order to prevent a multiplicity of suits. In all these cases each separate land owner had, of course, some kind of legal remedy, either by action for damages against the officer enforcing the unlawful collection, or by writ of certiorari to review the assessment itself. But such remedy was inadequate when compared with the comprehensive and complete relief furnished by the single decree in equity.[1]

Scribner v. Allen, 12 Minn. 148; Minnesota Oil Co. v. Palmer, 20 Id. 468; White Sulphur Springs Co. v. Holley, 4 W. Va. 597; Bouton v. City of Brooklyn, 15 Barb. 375, 387, 392; Harkness v. Bd. of Public Works, 1 McArthur, 121, 131–133. In each of these cases the general proposition was laid down as stated in the text; but in each the court refused to exercise jurisdiction and to give any equitable relief on the ground that such a case does not come within the operation of the doctrine concerning a multiplicity of suits. In Guest v. Brooklyn, 69 N. Y. 506, 512, 513, it was further held, that the assessment being divided into a number of installments payable annually did not bring the case within the doctrine, because each lot owner had a sufficient remedy at law, and a decision on one installment would settle his liability as to all.

[1] Ireland v. City of Rochester, 51 Barb. 415, 435; Scofield v. City of Lansing, 17 Mich. 437; City of Lafayette v. Fowler, 34 Ind. 140; Kennedy v. City of Troy, 14 Hun, 308, 312; Clark v. Village of Dunkirk, 12 Id, 181, 187. In Ireland v. City of Rochester, *supra*, about ninety owners of distinct lots on a certain avenue united in the suit to restrain the collection of an illegal and void assessment made in different amounts on their lots by the city authorities in a proceeding to improve the avenue. The assessment was held void and the suit was sustained on the express ground that a multitude of suits was thereby prevented. Henry R. Selden, Esq., who was counsel for the plaintiffs, said (p. 420): "If the collection had been proceeded with, more than eighty suits would have been necessary to accomplish what can better be done by this suit alone. Avoiding a multiplicity of suits is good ground for equity jurisdiction." The argument of counsel is not often cited as authority. But all who know Mr. Selden will agree with me that no member of the bar of the State of New York had a more extensive knowledge of or a greater familiarity with the principles of equity jurisprudence and jurisdiction than he; and his intellect had that peculiar integrity which would not permit him to maintain as counsel any legal position which he did not thoroughly believe as a lawyer. I esteem his opinion as a very strong evidence in support of the equitable jurisdiction in cases of this kind. Scofield v. City of Lansing, 17 Mich. 437, was a bill filed by a large number of owners of separate lots fronting on a street to enjoin collection of an

The jurisdiction has been carried much further. In a large number of the States the rule has been settled in well-considered and often repeated adjudications by courts of the highest character for ability and learning, that a suit in equity will be sustained when brought by any number of taxpayers joined as co-plaintiffs, or by one taxpayer suing on behalf of himself and all others similarly situated, or sometimes even by a single taxpayer suing on his own account, to enjoin the enforcement and collection, and to set aside and annul any and every kind of tax or assessment laid by county, town, or city authorities, either for general or special purposes, whether it be entirely personal in its nature and liability or whether it be made a lien on the property of each taxpayer, whenever such tax is illegal; and in like manner to set aside and annul any and every illegal public official action or proceeding of county, town, or city authorities whereby a debt against such county, town, or city would be unlawfully created, the public burden upon the community would be unlawfully enhanced, and the amount of future taxation would be unlawfully increased, as for example, unlawful proceedings of the municipal authorities to advance money, or to loan the public credit to a railroad, or to bond the municipality in aid of a railroad, or to offer and pay bounties to soldiers, or to erect public buildings, and numerous other analogous proceedings which would necessarily result in a public debt and in taxation for its payment. In the face of every sort of objection urged against a judicial interference with the

illegal assessment, which was declared by statute to be a lien on all the lands assessed. Pronouncing the assessment void, the court held that the suit could be sustained on the ground *that the questions to be decided were common to all the plaintiffs*, and it prevented a multiplicity of suits. City of Lafayette v. Fowler, 34 Ind. 140, in which the facts were similar, was decided in conformity with a general doctrine which, as we shall see, is settled in that State with reference to all kinds of illegal taxes, assessments, and public burdens. In the recent cases of Kennedy v. City of Troy, 14 Hun, 308, 312, and Clark v. Village of Dunkirk, 12 Id. 181, 187, upon facts similar to those in the Ireland case, the supreme court of New York held that a suit by one lot owner suing on behalf of himself and all others in the same situation, to set aside an *illegal* assessment which was made a lien on their lands, would be sustained on the express ground that it came within the familiar jurisdiction of equity to grant relief for the purpose of preventing a multiplicity of suits. These decisions are the more emphatic because the courts of New York had previously held in many cases that the jurisdiction did not extend to suits brought by one or by many taxpayers to be relieved from ordinary, general, and personal taxes on the ground of their illegality. It is very evident that the proposition stated in the text and the decisions cited in this note would be followed, and owners of lots would be relieved from illegal municipal local assessments in all those States where the courts have exercised a like jurisdiction to relieve taxpayers from all kinds of taxes and public burdens which are found to be illegal.

governmental and executive function of taxation, these courts have uniformly held that the legal remedy of the individual taxpayer against an illegal tax, either by action for damages, or perhaps by certiorari, was wholly inadequate; and that to restrict him to such imperfect remedy would, in most instances, be a substantial denial of justice, which conclusion is, in my opinion, unquestionably true. The courts have, therefore, sustained these equitable suits, and have granted the relief, and have uniformly placed their decision upon the inherent jurisdiction of equity to interfere for the prevention of a multiplicity of suits. The result has demonstrated the fact that complete and final relief may be given to an entire community by means of one judicial decree, which would otherwise require an indefinite amount of separate litigation by individuals, even if it were attainable by any means.[1] In several of the States there is a

[1] *Cases where the suit was by a number of taxpayers as co-plaintiffs, or by one suing on behalf of all others:* Attorney-General v. Heelis, 2 S. & S. 67, 76; Newmeyer v. Mo. and Miss. R. R., 52 Mo. 81, 84–89; Rice v. Smith, 9 Ia. 570, 576; Stokes v. Scott Co., 10 Id. 166; McMillan v. Boyles, 14 Id. 107; Rock v. Wallace, 14 Id. 593; Ten Eyck v. Keokuk, 15 Id. 486; Chamberlain v. Burlington, 19 Id. 395; Williams v. Peinny, 25 Id. 436; Hanson v. Vernon, 27 Id. 28; Zorger v. Township of Rapids, 36 Id. 175, 180; Board of Commissioners v. Brown, 28 Ind. 161; Lafayette v. Fowler, 34 Id. 140; Noble v. Vincennes, 42 Id. 125; Board of Commissioners v. Markle, 46 Id. 96, 103–105; Galloway v. Chatham R. R., 63 N. C. 147, 149, 150; Brodnax v. Groom, 64 Id. 244, 246, 247; Worth v. Board of Commissioners, 1 Wins. No. 2, Eq. 70 (N. C.); Vanover v. Davis, 27 Ga. 354, 358; Mott v. Penn. R. R., 30 Penn. St. 9; Sharpless v. Philadelphia, 21 Id. 148; Moers v. Reading, 21 Id. 188; Bull v. Read, 13 Gratt. 78, 86, 87; Mayor of Baltimore v. Gill, 31 Md. 375, 392–395; Barr v. Deniston, 19 N. H. 170, 180; Merrill v. Plainfield, 45 Id. 126, 134; New London v. Brainard, 22 Conn. 552, 556, 557; Webster v. Town of Harwinton, 32 Id. 131, 140; Terrett v. Town of Sharon, 34 Id. 105; Scofield v. Eighth School District, 27 Id. 499, 504; Colton v. Hanchett, 13 Ill. 615, 618; Robertson v. City of Rockford, 21 Id. 451; Perkins v. Lewis, 24 Id. 208; Butler v. Dunham, 27 Id. 474; Drake v. Phillips, 40 Id. 388, 393; Vieley v. Thompson, 44 Id. 9, 13; Allison v. Louisville etc. R. R., 9 Bush. 247, 252; Lane v. Schomp, 5 C. E. Green (20 N. J. Eq.), 82, 89; Noesen v. Port Washington, 37 Wis. 168.

Cases where the suit was by only one taxpayer, purporting to sue for himself alone: Board of Commissioners v. Templeton, 51 Ind. 266; Board of Commissioners v. McClintock, 51 Id. 325, 328; Board of Commissioners v. Markle, 46 Id. 96, 103–105; Lafayette v. Cox, 5 Id. 38; Nill v. Jenkinson, 15 Id. 425; Coffman v. Keightley, 24 Id. 509; Oliver v. Keightley, 24 Id. 514; Nave v. King, 27 Id. 356; Board of Commissioners v. McCarty, 27 Id. 475; Harney v. Indianapolis etc. R. R., 32 Id. 244, 247, 248; English v. Smook, 34 Id. 115; Williams v. Peinny, 25 Ia. 436; Hanson v. Vernon, 27 Id. 28; Zorger v. Township of Rapids, 36 Id. 175, 180; Merrill v. Plainfield, 45 N. H. 126, 134; Webster v. Town of Harwinton, 32 Conn. 131, 140; Terrett v. Town of Sharon, 34 Id. 105; Prettyman v. Supervisors, 19 Ill. 406; Clarke v. Supervisors, 27 Id. 305, 311; Taylor v. Thompson, 42 Id. 9; Cleghorn v. Postlewaite, 43 Id. 428, 431; Veiley v. Thompson, 44 Id. 9, 13; Allison v. Louisville etc. R. R., 9 Bush, 247, 252.

It should be observed that all of this latter group of cases arose in States where the courts had already decided that a suit by many taxpayers joined as plaintiffs, or by one suing on behalf of the others, would be sustained on the ground of preventing a

long series of these cases, extending through a considerable period of time, and it may well happen that in the earliest decisions of such a series the court has stated the reasons for its judgment at large, and has expressly announced the principle of preventing a multiplicity of suits as the ground of its jurisdiction, while in the succeeding ones the judges have not thought it necessary to repeat the reasons and ground which had already been fully explained. It is plain that the latter cases, no less than the former ones, are an authority for the doctrine under examination. In all these suits by lot owners to be relieved from a local assessment, and by taxpayers to be relieved from a tax or burden of public debt, there is no pretense of any privity, or existing legal relation, or common property or other right among the plaintiffs individually, or between them as a body and the defendant. There is no common right of the single adversary party against them all, as is found in the case of a parson against his parishioners for tithes, or of the lord of a manor against his tenants for a general fine, or for certain rights of common; nor is there any common *right* or interest among them against their single adversary. The only commu-

multiplicity of suits, and they regarded a suit by one taxpayer alone as substantially the same in its effect, and treated it in the same manner, citing the same precedents indiscriminately in support of one or the other form. Indeed, in many of these latter cases, the court expressly said that the suit might be brought in either form, by many taxpayers joining as plaintiffs, by one suing on behalf of the others, or by one suing alone. No distinction in principle was made between the three.

The case of Attorney-General v. Heelis, 2 S. & S. 67, 76, is important, since it shows that the doctrine was applied in exactly the same manner under exactly analogous circumstances by an English court of equity. A rate had been laid on a parish which was claimed to be illegal. The court held that as the inhabitants of the parish have a common interest to avoid the rate [i. e. a local tax], any one or more of them may sue on behalf of himself and the other inhabitants to enjoin the enforcement of the rate. Newmeyer v. Mo. and Miss. R. R., 52 Mo. 81, 84–89, is an instructive case. Being recent the court had before it a large number of decisions, all the leading ones in which the jurisdiction had been denied, as well as those in which it had been sustained. Its examination of these authorities was very full. The plaintiffs sued for themselves and all other taxpayers in the county of Macon, as owners of separate property, real and personal, to set aside a resolution or order of the county officials subscribing one hundred and seventy-five thousand dollars to the stock of the railroad, and to have the bonds issued by the county for the said amount canceled, on the ground that the whole proceeding was illegal, and would unlawfully increase taxation. The suit was sustained and the relief granted. In Lane v. Schomp, 5 C. E. Green (20 N. J. Eq.), 82, 89, which was also a suit on behalf of the taxpayers of a town to prevent an unlawful bonding of the town, the chancellor of New Jersey expressly held that the case was not controlled by the principle asserted in some decisions, and particularly described hereafter, that where an individual has suffered some injury from a public act, in common with all members of the same community or local district, he has no cause of action or remedial right enforceable in any court of justice.

nity among them is in the questions at issue to be decided by the court; in the mere external fact that all their remedial rights arose at the same time, from the same wrongful act, are of the same kind, involve similar questions of fact, and depend upon the same questions of law. This sort of community is sufficient, in the opinion of so many and so able courts, to authorize and require the exercise, under such circumstances, of the equitable jurisdiction, in order to prevent a multiplicity of suits.

§ 261. **Other Special Cases of the Third and Fourth Classes.**—There are some other cases, belonging to the third or fourth of my general classes, which present a special condition of facts, and do not admit of being arranged in either of the foregoing groups. I have placed them in the foot-note.[1]

[1] Brinkerhoff v. Brown, 6 Johns. Ch. 139, 151, 156; New York & N. H. R. R. v. Schuyler, 17 N. Y. 592, 599, 600, 605-608; S. C., 34 N. Y. 30, 44-46; but see Co. of Lapeer v. Hart, Harring. Ch. 157.

In Brinkerhoff v. Brown, *supra*, which was a bill by a number of individual judgment creditors, having wholly distinct and separate judgments and demands, to reach the property of their common debtor, Chan. Kent said (p. 151): "The plaintiffs are judgment creditors at law, seeking the aid of this court to render their judgments and executions effectual against certain fraudulent acts of their debtor equally affecting all of them. The question is whether judgment creditors, whose rights are established and their liens fixed at law, may not unite in a bill to remove impediments to the remedy created by the fraud of the opposite party. It is an ordinary case in this court for creditors to unite, or for one or more on behalf of themselves and the rest, to sue the representative of the debtor in possession of the assets, and to seek an account of the estate. *This is done to prevent a multiplicity of suits*, a very favorite object with this court." And at p. 156: "A bill may be filed *against* several persons relative to matters of the same nature, forming a connected series of acts, and all intended to defraud and injure the plaintiff, and in which all the defendants were more or less concerned, though not jointly, in each act." This opinion of Chan. Kent shows that the uniting of numerous distinct judgment creditors in one creditor's suit against the same defendant, or the suing by one such creditor for himself and all others, which has now become so familiar a mode of obtaining relief, was originally permitted and adopted on the ground of preventing a multiplicity of suits. This fact is of great importance in illustrating the meaning and extent of that doctrine; since the only bond of union among the separate creditors is their community of interest in the relief demanded, in the questions at issue and decided by the court. New York & N. H. R. R. v. Schuyler, *supra*, was certainly one of the most remarkable actions recorded in the annals of litigation. Schuyler, the treasurer of a railroad company, had during a period of two or three years fraudulently issued spurious certificates of stock of the company, until at last such certificates were scattered among about one hundred *bona fide* holders. Each fraudulent issue was accomplished by a similar contrivance and similar acts of deception; but each was, of course, an entirely distinct and separate transaction from all the others. The railroad, claiming that these certificates were null and void, brought this suit against all the holders for the purpose of having them surrendered up and canceled. The suit was sustained by analogy to a bill of peace, in an elaborate opinion of the court which is too long for quotation. See 17 N. Y. 592, 599, 600, 605-608; 34 Id. 30, 44-46. Here the only pretense of common interest among the certificate holders was in the similar questions of fact and the same question of law at issue

§ 262. **Opposing Decisions Examined.**—Thus far the discussion has been chiefly confined to the various instances in which the jurisdiction has been established, upheld, and confirmed; I now proceed to consider the opposite side of the question, and to examine those groups of cases in which the jurisdiction has either been positively denied under the same circumstances in which it had been asserted and exercised by the authorities previously quoted, or has been carefully explained, restricted, and limited within strict and narrow bounds. I shall follow the same order as before, arranging all the cases in the four classes described in a preceding paragraph.

§ 263. **In the First and Second Classes.**—As the doctrine of preventing a multiplicity of suits has been firmly established from an early day, with respect to the facts and circumstances which constitute the first and second classes, there are no decisions which positively deny the jurisdiction or the propriety of its exercise in cases belonging to either of them. The instances are few in which even any special or additional limitation has been placed upon the operation of the doctrine, other than what is contained in the general rule itself defining its operation, which was stated in a former paragraph;[1] namely, that if the plaintiff's right, interest, or estate in the subject-matter is contested, he is generally required to establish it by an action at law, before he can invoke the aid of equity. As most of these cases have already been cited in connection with the foregoing affirmative discussion, I shall simply collect them here in the foot-note.[2]

upon which all their claims depended; there was no common title from which these questions sprung, nor any community of interest in the subject-matter. See also the recent and strongly analogous case of Sheffield Water Works v. Yeomans, L. R. 2 Ch. 8, 11 (*ante*, note to § 256); and Black v. Shreeve, 3 Halst. Ch. 440, 456, 457 (*ante*, note to § 252); and Board of Supervisors v. Deyoe, 77 N. Y. 219, 225.

[1] See *ante*, § 252.

[2] Hughlett v. Harris, 1 Del. Ch. 349, 352; Richmond v. Dubuque etc. R. R., 33 Ia. 422, 487, 488; Eastman v. Amoskeag etc. Co., 47 N. H. 71, 79, 80; Eldridge v. Hill, 2 Johns. Ch. 281; West v. Mayor etc. of N. Y., 10 Paige, 539. For the facts and particular points decided in these cases, see *ante* in notes under §§ 252, 253, and 254. Richmond v. Dubuque etc. R. R., 33 Ia. 422, 487, 488, contains the following *dictum* by Beck, C. J.: "It is said that equity will take jurisdiction of this case in order to avoid a multiplicity of suits between the parties. This is sometimes a ground for the exercise of chancery powers, but it is not of such controlling nature as to require the jurisdiction to be assumed even though other equitable principles are disregarded. The rule relied on is usually applied in cases where chancery has jurisdiction, for a proper purpose, of a subject-matter out of which grow other questions requiring adjudication. In such cases the parties will not be turned over to the law court which has cognizance of the matter, but it will be retained that all rights relating thereto may be settled (1 Story Eq. secs. 64–67). We do not understand the mere fact that there exist divers causes of action, which may be the foundation of as

§ 264. **In the Third and Fourth Classes.**—I pass then to the denial, or the restrictions and limitations of the doctrine, in its application to cases of the third and fourth classes. There are instances of such absolute denial, or of stringent limitations, in suits brought by a number of persons to establish some individual but common right existing on behalf of each and all, against a single wrong-doer or trespasser; or brought by a single plaintiff to restrain a number of simultaneous actions commenced against him by different persons, upon the allegation that they all involved similar facts, and depended upon the same questions of law, and therefore had a common nature. In these cases the jurisdiction was denied, on the ground that there was no privity or legal relation or community of interest and right among the individuals of the numerous body, which, it was held, must exist in order that a court of equity may interfere, under such circumstances, for the purpose of preventing a multiplicity of suits.[1] My critical examination of these

many different suits between the parties thereto, is a ground upon which equity may be called upon to assume jurisdiction, and settle all such matters in one suit. The case would not be different if some of the causes of action were not matured. We have never heard it claimed that equity will entertain an action upon a contract requiring the payment of money daily, monthly, or yearly. Yet in such a case an action would accrue at each of such periods, and there would thus be prospectively a great multiplicity of actions. In the case before us, admitting the contract to be divisible, and that an action may be maintained upon every breach, this is no ground for interference by a court of chancery. If the contract be divisible, and the plaintiff has a right of action thereon to recover money accruing every day, equity cannot take the right from him, and substitute a remedy which will award him damages in gross for the whole amount which he may ultimately recover." This case was an equitable action to compel the specific performance of a long and complicated agreement, extending in its operation over several years, and containing numerous provisions, but relating wholly to personal services and personal property. The plaintiff claimed, among other arguments, that equity had jurisdiction to prevent a multiplicity of suits, since from the continuous nature of the agreement, and the number and variety of its provisions, there would be many breaches, and consequently many actions at law to recover damages. The decision that such a case does not come within the doctrine as to preventing a multiplicity of suits, since the plaintiff's remedy at law is adequate, simple, and certain, is plainly correct. The correctness of the learned judge's remarks concerning the origin and nature of the jurisdiction in general to prevent a multiplicity of suits, is much more doubtful.

[1] County of Lapeer v. Hart, Harring. Ch. 157; Marselis v. Morris Canal Co., Saxton 31, 35–39. In County of Lapeer v. Hart, *supra*, sixty-seven actions at law had been begun against the county supervisors on certain drafts or orders for the payment of money in various sums issued by them, and owned by the respective plaintiffs in said actions, individually. These orders had all been issued by the supervisors in pursuance of the same supposed authority, and in the same proceeding. An action was brought by each holder to recover the amount of his order. Whatever defense the county had in each action was wholly legal. The county thereupon filed this bill in equity against all the holders of said orders, seeking to restrain their actions at law, and to have the orders declared void, etc. It was held that no such suit could be maintained by the county, since there

cases is placed in the foot-note, where it is shown that with respect to their material facts, they are clearly distinguishable from all those adjudications, quoted under the foregoing paragraphs, by which the jurisdiction has been asserted and exercised, so that there is no conflict between the *decisions* as actually made. With the judicial opinion, however, it is otherwise. Laying out of view the groups of cases concerning assessments, and taxes, and public burdens, with respect to which there has been so much antagonism on the part of the courts, there is much in these opinions, in the course and tendency of their rea-

was no common interest among the order holders; it was not a case which came within the principle of a "bill of peace," or of preventing a multiplicity of suits. The opinion in Marselis v. Morris Canal Co., *supra*, is one of the most carefully considered and elaborate presentations of this restricted and negative view of the doctrine to be found in the reports, and I shall therefore quote from it at some length. Many separate owners of distinct tracts of land along the line of the defendant's canal, united as plaintiffs suing on behalf of themselves and all others, etc., charging that the defendant entered on their several parcels of land and dug a canal, without permission or agreement, and without making any compensation; that defendant was insolvent; they prayed an account of damages for the injuries done, compensation for the lands taken, and an injunction to restrain the defendant from occupying or using their lands without compensation. Defendant demurred to the whole bill, and plaintiffs moved for a preliminary injunction, and the argument of both came on together. The chancellor said (pp. 35-39): "The complainants are several owners having distinct rights in the several tracts of land through which the canal passes. The injuries sustained by one of them have no necessary nor natural connection with those sustained by another. Admitting the jurisdiction of the court, each of these complainants might sue separately, either in a court of law or of equity, without consulting with any other one, and without in the least degree affecting his rights. On the other hand, the suit is brought by all of them against one common defendant. They all complain of injuries similar in their character, and seek a similar relief, and therefore have a common object in view. Complainants allege that the suit is brought for the benefit of all land-owners who will come in and contribute. Such is the complainants' case. Let us examine some of the leading authorities for the principle that should govern it. In Bouverie v. Prentice, 1 Bro. Ch. 200, Lord Thurlow held that where a number of persons claim one right in one subject, one bill may be sustained to put an end to suits and litigation. That was the case of a bill filed by the lady of a manor against several tenants for quitrents due, and this method was adopted to prevent multiplicity of suits. But it was not considered as coming within the principle laid down by the courts. The lord chancellor remarked that no one issue could try the cause between any two of the parties [defendant]; and he could not conceive upon what principle two different tenants of distinct estates should be brought before him together to hear each other's rights discussed. In Ward v. Duke of Northumberland, 2 Anstr. 469, the court says that the cases where unconnected parties may join in a suit are, where there is one common interest among them all, centering in the point in issue in the cause. Lord Redesdale, in Whaley v. Dawson, 2 Sch. & Lef. 367, held this principle, that where there was a general right claimed by the bill covering the whole case, the bill would be good, though the defendants had separate and distinct rights; but if the subjects of the suit were in themselves perfectly distinct, a demurrer would be sustained. The same rule is recognized in Saxton v. Davis, 18 Ves. 72; in Hester v. Weston, 1 Vern. 463; and in Mayor of York v. Pilkington, 1 Atk. 282. In Cooper's Eq. Pl., p. 182, this rule is

soning, and in the rules which they lay down as tests of the jurisdiction, which conflicts directly and unmistakably with the doctrines and rules necessarily contained in numerous well-settled and well-known authorities, both English and American. All attempt to reconcile or to pronounce upon this contradiction, is postponed to a subsequent paragraph.

§ 265. **In Cases of Illegal Taxes and Public Burdens.**— I pass to cases concerning local assessments, general taxes, and public debts or burdens. The line of decisions has already been mentioned, where, upon an equity suit brought in most instances by one proprietor, to restrain or to set aside some illegal assessment or tax which imposed a lien or liability upon the plaintiff and others in the same position, the court has held

given: 'The court will not permit several plaintiffs to demand by one bill several matters perfectly distinct and unconnected against one defendant; nor one plaintiff to demand several matters of distinct natures against several defendants.' And to exemplify the rule the following case is given from 2 Dick. 677: If an estate was sold in lots to different persons, the purchasers could not join in one bill against the vendor for a specific performance; for each party's case would be distinct, and would depend upon its own peculiar circumstances, and there must be a distinct bill upon each contract. Nor could such vendor, on the other hand, file one bill for a specific performance against all the purchasers. Lord Kenyon, in Birkley v. Presgrave, 1 East, 227, gives the same illustration; and adds that, in general, a court of equity will not take cognizance of distinct and separate claims of different persons in one suit, though standing in the same relative situation. In the case of Brinkerhoff v. Brown, 6 Johns. Ch. 139, Ch. Kent reviews the leading authorities, and comes to this conclusion, that a bill filed against several persons must relate to matters of the same nature, and having a connection with each other, and in which all the defendants are more or less concerned, though their rights in respect to the general subject of the case may be distinct." The chancellor then remarks that suits by creditors, legatees, etc., depend upon the principle that there is such a *privity* between them that a complete decree may be made determining the rights of all. Also cases of lord and tenants concerning common rights, of parson and parishioners concerning a modus, and some others, are, as he asserts, governed by the same notion. He proceeds: "These last may, with more propriety, be classed under that branch of equity which relates to bills of peace. These bills have no affinity with the one now before the court. It is true the legitimate object of them is to avoid a multiplicity of suits; and the ancient practice of the court was not to interfere until the legal right had first been tried at law in an individual case; after which the court of equity would interfere to quiet that right by injunction. This is not a bill of peace, and I believe it has not been contended that a land-owner in the county of Warren or Morris, not coming in and making himself a party to this suit, would be in any wise affected by it. I think the principle laid down in Cooper is the correct one, that it is fairly deducible from the cases, and must govern this. According to that principle, I feel constrained to say that the bill can not be sustained. There is no kind of privity between these complainants; there is no general right to be established as against the defendant, except the general right that a wrong-doer is liable to answer for his misdeeds to the injured party, which surely does not require to be established by such a proceeding as this. The utmost that can be said is, that the defendant stands in the same relative position to all these complainants. There is no common interest in them centering in the point in issue in the cause, which is the rule in 2

that it would exercise its jurisdiction and grant the relief only where such judicial action was necessary to prevent a multiplicity of suits, or to remove a cloud from title, or to avoid irreparable mischief. These decisions, therefore, assert affirmatively that a court of equity *may* relieve from illegal assessments and taxes on the ground of preventing a multiplicity of suits; but they make no attempt to determine when or under what circumstances such ground for its interference would exist; and they all hold that the mere facts of the assessment or tax being illegal, and of its creating an illegal personal liability or unlawful lien, and of its affecting numerous taxpayers and owners in the same manner, do not furnish the ground for

Anstruther. Nor is there any general right claimed by the bill covering the whole case, which is the principle adopted by Lord Redesdale. Ch. Kent's rule is quite as broad as any authority will warrant, but it is not broad enough for the case now before the court. It requires that a bill against several persons must relate to matters of the same nature, and having a connection with each other, and in which all the defendants are more or less concerned." In whatever manner we may regard the general course and tendency of the chancellor's reasoning in this opinion, it is very evident that the *actual decision* made upon the facts does not in the slightest degree conflict with any of the cases heretofore quoted, in which the jurisdiction has been exercised. The facts of this case clearly distinguish it from each and all of them. Although on the first superficial view there may *appear* to be the same community, since the single defendant was all the time prosecuting one enterprise, viz., constructing its canal; yet in the case of each plaintiff there was a *separate, distinct trespass upon his land;* the claim of each land-owner resulted from a separate injury to his own property, unconnected with the injuries done to the others. This is the vital distinction in the facts which removes this case from the operation of the doctrine. In the group of decisions where many land-owners have united in a suit to restrain a trespass or a nuisance, such as a diversion of water from their mills, or an erection blocking up a passage to all their buildings, *the one wrongful act* of the defendant, *uno flatu,* did the injury complained of to the land of each plaintiff; in that group where many lot-owners united to obtain relief from an illegal assessment, the one official act of the municipality placed an unlawful burden on the lot of each plaintiff, and by this single wrong all of the lot-owners sustained their individual but common injuries. The same is true in the suits by taxpayers to be relieved from an illegal tax or public debt. In the present case, the transaction was otherwise both in form and in its nature. There was no single wrongful act of the canal company, which by its comprehensive nature produced the same injury upon the land of each proprietor. On the contrary, the company committed a separate and wholly independent trespass upon the land of each by itself, and these trespasses were not simply distinct in contemplation of law, but they were different in their form, nature, and extent. It necessarily follows, therefore, that there was not among the plaintiffs even any *community of interest in the relief sought, nor in the questions* at issue, which, it is conceded, must exist in order that the court may interfere, and which did exist in all the groups of cases heretofore cited. The decision of the chancellor was, therefore, unquestionably correct; but I can not accept the whole course and tenor of his reasoning as equally correct. It is the case, not uncommon, of a judge who seeks to sustain a foregone conclusion, by giving an imperfect construction or improper bias to the authorities which he cites. The very recent case of Board etc. v. Deyoe, 77 N. Y. 219, is directly contrary to Co. of Lapeer v. Hart.

equitable interference, nor bring the case within the jurisdiction based upon the prevention of a multiplicity of suits.[1]

§ 266. The cases, however, to which I now refer, go much further than these. There are well-considered adjudications of several courts, certainly among the ablest courts of this country, which hold that, as a general rule, or except under very special circumstances, a court of equity will not exercise its jurisdiction and grant relief upon the doctrine of preventing a multiplicity of suits, in a suit brought by a single taxpayer and property owner, or by one or more suing on behalf of himself and others, or by many individuals united as co-plaintiffs, to restrain the enforcement of, or to set aside and annul, or to be otherwise relieved from any local municipal assessment, or any tax, purely personal or made a lien on property, laid by a county, town, city, or other district, or any official act, proceeding, or transaction of a county, town, city, or district, whereby a public indebtedness is or would be created, and the burden of taxation is or would be enhanced, upon the ground that such assessment, tax, official proceeding, or public debt was illegal and either voidable or void. These cases, therefore, present a direct conflict of judicial opinion with those quoted in the preceding paragraphs. The most important reasons given by the courts in support of the general conclusion which they all reach, are placed in the accompanying foot-note.[2]

[1] See *ante*, § 259; Mayor etc. of Brooklyn v. Meserole, 26 Wend. 132, 140; Heywood v. Buffalo, 14 N. Y. 534, 541; Guest v. Brooklyn, 69 Id. 506, 512, 513; Bouton v. Brooklyn, 15 Barb. 375, 387, 392; Ewing v. St. Louis, 5 Wall. 413, 418; Dows v. Chicago, 11 Id. 108, 110, 111; Scribner v. Allen, 12 Minn. 148; Minnesota Oil Co. v. Palmer, 20 Id. 468; White Sulphur Springs Co. v. Holley, 4 W. Va. 597; Harkness v. Bd. of Pub. Works, 1 McArthur, 121, 131–133. It should be observed that almost all of these cases, I believe with hardly an exception, are avowedly decided upon the authority of the opinion given in Mayor v. Meserole, 26 Wend. 132, and the other New York cases following and adopting it.

[2] I have arranged these cases into classes according to their subject-matter; and those in each class, wherever possible, according to their forms, viz., those brought by or on behalf of numerous plaintiffs, and those by a single plaintiff suing alone.

Cases concerning some public official action not directly involving taxation: Doolittle v. Supervisors, 18 N. Y. 155; Roosevelt v. Draper, 23 Id. 318.

Cases concerning local assessments by numerous lot-owners: Dodd v. Hartford, 25 Conn. 232, 238; Howell v. City of Buffalo, 2 Abb. App. Dec. 412, 416; Bouton v. Brooklyn, 15 Barb. 375, 387, 392–394.

Cases concerning taxes or proceedings which would create a public debt, and thus increase taxation. (1) *By numerous taxpayers:* Youngblood v. Sexton, 32 Mich. 406; Sheldon v. School District, 25 Conn. 224, 228; Harkness v. Bd. of Pub. Works, 1 McArthur, 121, 127–133; Kilbourne v. St. John, 59 N. Y. 21, 27; Ayres v. Lawrence, 63 Barb. 454; Tift v. Buffalo, 1 T. & C. 150; Comins v. Supervisors, 3 Id. 296; Barnes v. Beloit, 19 Wis. 93; Newcomb v. Horton, 18 Wis. 566, 568, 569; Cutting v. Gilbert, 5 Blatch. 259, 261–263.

(2) *By a single taxpayer:* Phelps v. Watertown, 61 Barb. 121, 123; Ayres

§ 267. **Summary of Conclusions.**—The theories concerning the doctrine advocated by different judges, and the conclusions reached by different decisions, have been so fully explained, compared, and examined in the accompanying foot-notes, that I only need state here in the text the propositions as to the extent and operation of the doctrine, which, in my opinion, appear to be supported by principle and by authority. With respect to cases of the first and the second classes, where the whole judicial controversy is always between one distinct party

v. Lawrence, 63 Id. 454; White Sulphur Springs Co. v. Holley, 4 W. Va. 597. The cases of Doolittle v. Supervisors, and Roosevelt v. Draper, *supra*, are in some respects leading. They have exerted a marked influence, and have even been controlling upon many of the subsequent decisions, but, in my opinion, through a misapprehension of their true significance and effect, since they really have no legitimate connection whatever with the equitable jurisdiction based upon the prevention of a multiplicity of suits. The *rationale* of the decision—the *ratio decidendi*—in each consisted solely in motives of public policy and governmental expediency. They hold that when local officers, as of a county or a city, having *quasi* legislative and administrative functions, do some official act which is illegal, or in excess of their powers, an individual citizen who suffers thereby only the injuries which are sustained in common by all other members of the community—that is, who suffers no special injury, and nothing which is not also suffered alike by all other citizens of the district, has no cause of action whatever, either legal or equitable, no right to any remedy from a court of justice. His only relief is an appeal to the legislature to obtain, if possible, a correction of the wrong, or an exercise of the elective franchise by which, perhaps, other and better officers may be chosen. Certain passages of the opinions may, when isolated from their context, seem to go some further; but this is the true force and effect of these celebrated cases. No question could arise whether, under such circumstances, many citizens could unite as co-plaintiffs, or one could sue on behalf of others, since no one had any right which a court of justice could recognize. I have thus explained the true value of these decisions, because they obviously lie at the foundation of many of the cases cited in this note, in which courts have pronounced against the claims of taxpayers. That they really differ most essentially, in their most vital principle, from these latter cases, is evident from the fact universally conceded that a taxpayer upon whom an illegal tax has been imposed, has *some* cause of action, some remedial right; he has, at least, the right to maintain an action at law to recover damages when an illegal tax has been enforced. There is, therefore, a fundamental difference between him and the citizen mentioned in Doolittle v. Supervisors, and Roosevelt v. Draper; and the principle established by those cases has no legitimate application to the questions concerning the equitable jurisdiction to grant relief to a body of taxpayers.

In Howell v. Buffalo, 2 Abb. App. Dec. 412, 416, it was held that a suit by numerous owners of separate lots to set aside an illegal assessment does not come within the equity jurisdiction to prevent a multiplicity of suits; the plaintiffs can not unite in an equitable action merely to avoid the necessity of separate actions. The court gave the following theory of the doctrine as the reason for their conclusion: "It is not a case for the application of the rule for the prevention of a multiplicity of suits. *No one of the plaintiffs is threatened with many suits or much litigation.*" I need only remark that if this test of the doctrine be correct, then many English and American judges have often fallen into grievous error. In Dodd v. Hartford, 25 Conn. 232, 238, a similar suit upon similar circumstances, the same ruling was made on the ground that each plaintiff had an adequate remedy at law.

Youngblood v. Sexton, 32 Mich. 406, 410, was a suit by numerous tax-

complaining and one party defendant, there is no substantial disagreement; the rule has been settled with unanimity. The only apparent exception consists in the fact that formerly the courts of equity required the complainant to establish his disputed legal estate, interest, or primary right by *repeated* recoveries at law, whereas *one* successful trial at law is now generally regarded as sufficient. It is also possible that there might still be some difference among individual equity judges in regard to the extent to which they would compel a complainant

payers to enjoin the collection of a personal tax claimed to be illegal. Held to be settled in Michigan that in case of such a personal tax equity has no jurisdiction to restrain its collection, even if illegal, the ordinary remedy by action at law being adequate. Cooley, J., said (p. 410): "The jurisdiction can not be rested on the doctrine of preventing a multiplicity of suits, because the principles that govern that jurisdiction have no application to this case. It is sometimes admissible when many parties are alike affected or threatened by one illegal act, that they shall unite in a suit to restrain it; and this has been done in this State in the case of an illegal assessment of lands (Scofield v. Lansing, 17 Mich. 437). But the cases are very few and very peculiar, unless each of the complainants *has an equitable action* on his own behalf. Now, the nature of this case is such that each of these complainants, if the tax is invalid, has a remedy at law; which is as complete and ample as the law gives in any other cases. He may resist the sheriff's process as he might any other trespass; or he may pay the money under protest, and at once sue for and recover it back. But no other complainant has any *joint interest with him* in resisting this tax. The sum demanded of each is distinct and separate, and it does not concern one of the complainants whether another pays or not. All the joint interest the parties have is a joint interest in a question of law; just such an interest as might exist in any case where separate demands are made of several persons. * * * [Gives one or two examples.] We venture to say that it would not be seriously suggested that a common interest in any such question of law, when the legal interests of the parties were wholly distinct, could constitute any ground of equitable jurisdiction, where the several controversies affected by the question were purely legal controversies. Suits do not become of equitable cognizance because of their number merely. This was affirmed in Lapeer Co. v. Hart, Harring. Ch. 157, and in the two cases of Sheldon v. School Dist., 25 Conn. 224, and Dodd v. Hartford, 25 Id. 232. In these cases the single assessment of a school tax was involved, and the parties concerned, if permitted to unite, might have had the whole controversy determined in one suit. In this case, the controversy is either separate, as the tax is several against each individual; or it is general, as it affects all the persons taxed under the law (citing also, Jones v. Garcia, 1 T. & Russ. 297, and Yeaton v. Lenox, 8 Pet. 123, and Adams on Eq., pp. 198–202)." I have thus quoted at some length from Judge Cooley's opinion, because it is one of the clearest statements of the theory which it supports to be found in the reports. It should be observed that he nowhere adopts the test laid down by some judges that *each of the numerous persons must himself be exposed to many actions*, in order that a court of equity may interfere. With respect to the reasoning of the opinion, it would, if correct, overturn at one blow many well-settled cases not relating to taxation, in which the jurisdiction has been asserted both by English and American courts. For example, it has been held that one copy-holder can not maintain a suit in equity against his lord of the manor, to enjoin or to set aside an excessive fine, because the question is legal, and the defense would be perfectly available to him in an action at law brought to recover the fine. But numerous copy-holders or all copy-holders of the manor may unite in a bill in equity to

to establish his legal title, and to prosecute or suffer repeated actions at law, before they would interfere on his behalf; but this difference, if it exists, only affects the application of a well-settled rule, and not the rule itself. In cases belonging to the third and fourth classes, when a body of persons assert some claim against a single distinct party, or, conversely, a single distinct party asserts some claim against a body of persons, the fundamental question, upon which the exercise of the jurisdiction confessedly rests, and over which there has been a

set aside excessive fines imposed on each, for the purpose of avoiding a multiplicity of suits. I can not perceive any material distinction, or why every position of Judge Cooley's opinion would not apply to and contradict this case. Many more examples might be given from cases quoted in preceding paragraphs. The objection that the primary remedy of each taxpayer is *legal*, is certainly too broad; for it would deny the jurisdiction in the vast majority of cases where it is confessedly proper and universally admitted. The chief object of the jurisdiction, the fundamental ground and reason for its existence is, that it furnishes a complete and final remedy by one equitable decree to parties whose primary rights, causes of action, and remedies, are wholly legal, either to a single party who must otherwise maintain or be subjected to numerous actions at law, or to a body of persons where each of them must otherwise maintain or be subjected to a similar action at law. Sheldon v. School District, 25 Conn. 224, 228, was a suit by thirty-nine taxpayers, to enjoin the enforcement against them of an illegal school tax. *Held*, that each plaintiff had an adequate remedy at law, and the case did not come within the doctrine as to the prevention of a multiplicity of suits. The court said: "The mere saving the expense of separate suits is no ground for the plaintiffs uniting in a bill in equity to obtain an injunction against the doing of an act which would give each of them a right of action at law." The Connecticut court seems to have subsequently abandoned this position, for it has since, in several instances, sustained such actions on behalf of taxpayers. (See cases cited, *ante*, under §260.) In Harkness v. Bd. of Pub. Works, 1 McArthur, 121, 131–133, it was held that equity will set aside an illegal tax assessed on the property of a taxpayer, when necessary (1) to remove a cloud from his title; or (2), to avoid irreparable mischief; or (3), to prevent a multiplicity of suits. But that when individual taxpayers have been assessed under an illegal tax on property owned by them separately, and they unite in an action, this is not a case coming within the doctrine as to the prevention of a multiplicity of suits, and equity has no jurisdiction. The opinion gives different reasons, and does not show very clearly on what ground the court places its conclusion. While it seems to use arguments similar to those employed by Judge Cooley (*supra*), the adequacy of the legal remedy, the absence of any joint interest, etc., it also seems to rely chiefly on the theory that each taxpayer is only injured in common with all others, and that he, therefore, has *no* cause of action or remedial right which any court of justice can recognize and protect. (See *supra*.)

The New York cases, Kilbourne v. St. John, 59 N. Y. 21, 27; Ayres v. Lawrence, 63 Barb. 458; Tift v. Buffalo, 1 T. & C. 150; and Comins v. Supervisors, 3 Id. 296, were suits brought to set aside or to restrain town or city bonding proceedings, unauthorized by law, by which a municipal debt would be created, and the burden of individual taxation would be increased. The courts held that no such suit could be maintained either by taxpayers uniting, or by one or some suing on behalf of others, or by a single taxpayer suing by himself alone. But the reasons for this conclusion have no real connection with nor bearing upon the doctrine concerning the prevention of a multiplicity of suits. The ground upon which the judgment of the court was rested is the same that had been before

direct antagonism of judicial opinion, relates to the nature, extent, and object of the common interest which must exist among the individual members of the numerous body or between them and their single adversary, in order that a court of equity may interfere. Incidental to this main element, the further question has been raised: What party is entitled to relief for the purpose of preventing a multiplicity of suits? Whether the plaintiff who invokes the aid of a court upon that ground must himself be the person who would otherwise, and against his

announced in Doolittle v. Supervisors, and Roosevelt v. Draper, *supra*, viz., that the individual taxpayer, under these circumstances, has *no* cause of action, legal or equitable, has no remedial right acknowledged by a court of justice. If he has no right or remedy individually, he does not obtain any by joining himself with other taxpayers in the same situation, as co-plaintiffs. This theory does not and can not affect the doctrine as to multiplicity of suits. The jurisdiction to prevent a multiplicity of suits never confers upon a party a remedial right where none of any kind existed before; its exercise necessarily and always assumes that the parties had *some* prior existing cause of action or remedial right, either equitable or more commonly legal. In Barnes v. Beloit, 19 Wis. 93, and Newcomb v. Horton, 18 Id. 566, 568, it was held that a number of separate lot owners or taxpayers can not unite, and one can not sue on behalf of himself and others, to restrain the enforcement of an invalid tax or assessment, since there is no sufficient common interest among them; but one lot owner or taxpayer is permitted in Wisconsin to bring such an action for himself alone. In the case of Cutting v. Gilbert, 5 Blatch. 259, 261–263, six firms of bankers united in the bill on behalf of themselves and others, etc., to restrain United States revenue officers from assessing and collecting a certain United States tax. Nelson, J., was of the opinion that the plaintiffs were not liable for the tax, but held that the bill could not be sustained since the remedy by action at law was adequate. He stated his view of the doctrine in the following clear and unmistakable language: "The interest that will allow parties to join in a bill, or that will allow the court to dispense with the presence of all the parties, when numerous, except a determinate number, is not only an interest *in the question*, but one *in common in the subject-matter of the suit;* such as the case of disputes between the lord of a manor and his tenants, or between the tenants of one manor and those of another; or where several tenants of a manor claim the profits of a fair; or in a suit to settle a general fine to be paid by all the copyhold tenants of a manor, or in order to prevent a multiplicity of suits. In all these and the like instances given in the books, there is a community of interest growing out of the nature and condition of the right in dispute; for although there may not be any privity between the numerous parties, there is a common title out of which the question arises, and which lies at the foundation of the proceedings. * * * * In the case before me the only matter in common among the plaintiffs, or between them and the defendant, is an interest in the question (of law) involved, which alone can not lay a foundation for the joinder of parties." He goes on to show that an injunction at the suit of a single taxpayer would not, as a matter of fact, prevent a multiplicity of actions. There is no room here for misunderstanding. Is the learned judge correct, upon the authorities, in the test which he lays down? Undoubtedly, in many of the decided cases, there is something more than a community of interest in the *question* at issue, or in the remedy demanded; there is a community of interest in the subject-matter, in the right, or, to use the expressive language of Mr. Justice Nelson, "a common title out of which the question arises." As for example, where all the tenants of a manor assert a right of common of some kind arising from the customs of the manor; or where the lord asserts some claim of rent against

own choice, be exposed to a repeated and vexatious litigation? We have also seen in a certain class of cases growing out of some unauthorized public official act, the principle has been announced that, under the circumstances, the injured persons, citizens or inhabitants of a local district, had no cause of action of any kind, no claim to any relief from a court of justice. This principle, which may be correct, is avowedly based alone upon considerations of governmental policy and public expediency, and has therefore no legitimate connection with the doctrine concerning the prevention of a multiplicity of suits. The principle has, however, in some subsequent decisions, been regarded and acted upon, very improperly in my opinion, as

all the tenants arising in the same manner; or where all the parishioners assert a modus against the parson; and other like instances. But there certainly are many cases, relating to various kinds of subject-matter, in which there is no common title, no community of interest in the subject-matter or in the right, but only a community of interest in the question at issue or in the remedy demanded. In most of them this community among the numerous body of interest in the question and in the remedy arises from the fact that one wrongful act or one legal injury was done to all alike; but still the legal right of each is wholly separate and distinct. The group of cases where separate owners have united to obtain relief against a single nuisance, or trespass, or invasion of water privileges, etc., are examples. The many cases in which separate lot owners have been relieved from an illegal assessment imposing a lien upon their individual lands are also examples. But even this bond of union has not always been present, nor always been required. The mere community of interest in the question at issue and in the relief to be obtained has been held sufficient, although the wrongful act done, the injury inflicted, was separate and distinct to each individual of the numerous body of claimants. The celebrated case growing out of Schuyler's fraud in making unlawful over-issues of stock to different persons at different times, as described under a former paragraph (see *ante*, § 261), is a striking illustration of the power of courts to disregard mere formal restrictions for the purpose of doing substantial justice. I would remark, in passing, that the court which sustained this Schuyler case as a proper exercise of the equitable jurisdiction to prevent a multiplicity of suits can not with much consistency refuse to relieve a body of taxpayers or separate lot owners from an illegal tax or assessment, on the ground that there is not a sufficient community of interest among them. The conclusion from the foregoing examination seems to be irresistible, that the test suggested by Mr. Justice Nelson in the well-known case of Cutting v. Gilbert, *supra*, is not supported by authority or by principle. In Phelps v. City of Watertown, 61 Barb. 121, 123, a suit by a single citizen and taxpayer to restrain the city officials from making unauthorized and unlawful contracts which would create a public debt and result in additional taxes and assessments, was held not to be within the equitable jurisdiction of preventing a multiplicity of suits. Johnson, J., said (p. 123): "Nor is there any ground to apprehend that the plaintiff will become involved in a multiplicity of actions by the acts complained of, *unless he seeks them voluntarily*." So far as this passage has any meaning as an argument, it implies that the jurisdiction to prevent a multiplicity of suits will never be exercised on behalf of a plaintiff, when he himself would otherwise be obliged voluntarily, that is, of his own option or choice, to bring numerous actions in order to obtain justice; a position which is directly opposed to the universally admitted and familiar rules, since the most important branch of the jurisdiction applies to parties in exactly that situation.

though it directly applied to, interfered with, abridged, or regulated the equitable jurisdiction to prevent a multiplicity of suits. The error involved in the mingling of two entirely distinct matters, has, I think, been shown with sufficient clearness in a previous note.

§ 268. **Conclusions as to the Third and Fourth Classes.** From a careful comparison of the actual decisions embraced in the third and fourth classes, and which are quoted under the foregoing paragraphs, the following propositions are submitted as established by principle and by authority, and as constituting settled rules concerning this branch of the equitable jurisdiction. In that particular family of suits, whether brought on behalf of a numerous body against a single party, or by a single party against a numerous body, which are strictly and technically "bills of peace," in order that a court of equity may grant the relief and thus exercise its jurisdiction on the ground of preventing a multiplicity of suits, there does and must exist among the individuals composing the numerous body, or between each of them and their single adversary, a common *right*, a community of interest in the *subject-matter of the controversy*, or a common *title* from which all their separate claims and all the questions at issue arise; it is not enough that the *claims* of each individual being separate and distinct, there is a community of interest merely in the *question of law or of fact* involved, or in the *kind and form of remedy* demanded and obtained by or against each individual. The instances of controversies between the lord of a manor and his tenants concerning some general right claimed by or against them all arising from the custom of the manor, or between a parson and his parishioners concerning tithes or a modus affecting all, and the like, are examples. It must be admitted, as a clear historical fact, that at an early period the court of chancery confined this branch of its jurisdiction to these technical "bills of peace." The above rule, as laid down in them, was for a considerable time the limit beyond which the court would not exercise its jurisdiction in cases belonging to the third and fourth classes. For this reason many passages and *dicta* found in the judicial opinions of that day must be regarded as merely expressing the restrictive theory which then prevailed in the court of chancery, and as necessarily modified by the great enlargement and extension of the jurisdiction which has since taken place; and at all events these *dicta* and incidental utterances should, on any correct principle of interpretation, be treated as confined

and as intended to be confined to the technical "bills of peace" in which they occurred, or concerning which they were spoken. Notwithstanding this general theory of the jurisdiction which prevailed at an early period, it is certain that even then the court sometimes transcended the arbitrary limit, and exercised the jurisdiction where there was no pretense of any community of right, or title, or interest in the subject-matter.

§ 269. This early theory has, however, long been abandoned. The jurisdiction, based upon the prevention of a multiplicity of suits, has long been extended to other cases of the third and fourth classes, which are not technically "bills of peace," but "are analogous to," or "within the principle of" such bills. 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," nor "community of right," or of "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. In a majority of the decided cases, this community of interest in the questions at issue and in the kind of relief sought has originated from the fact that the separate claims of all the individuals composing the body arose by means of the same unauthorized, unlawful, or illegal act or proceeding. Even this external feature of unity, however, has not always existed, and is not deemed essential. Courts of the highest standing and ability have repeatedly interfered and exercised this jurisdiction, where the individual claims were not only legally separate, but were separate in time, and each arose from an entirely separate and distinct transaction, simply because there was a community of interest among all the claimants in the question at issue and in the remedy. The same overwhelming weight of authority effectually disposes of the rule laid down by some judges as a test, that equity will never exercise its jurisdiction to prevent a multiplicity of suits, unless the plaintiff, or each of the plaintiffs, is himself the person who

would necessarily and contrary to his own will be exposed to numerous actions or vexatious litigation. This position is opposed to the whole course of decision in suits of the third and fourth classes from the earliest period down to the present time. While the foregoing conclusions are supported by the great weight of judicial authority, they are, in my opinion, no less clearly sustained by principle. The objection which has been urged against the propriety or even possibility of exercising the jurisdiction, either on behalf of or against a numerous body of separate claimants, where there is no "common title," or community "of right," or "of interest in the subject-matter" among them, is that a single decree of the court can not settle the rights of all; the legal position and claim of each being entirely distinct from that of all the others, a decision as to one or some could not in any manner bind and dispose of the rights and demands of the other persons, and thus the proceeding must necessarily fail to accomplish its only purpose—the prevention of further litigation. This objection has been repeated as though it were conclusive; but like so much of the so-called "legal reasoning" traditional in the courts, it is a mere empty formula of words without any real meaning, because it has no foundation of fact, it is simply untrue; one arbitrary rule is contrived and then insisted upon as the reason for another equally arbitrary rule. The sole and sufficient answer to the objection is found in the actual facts. The jurisdiction *has* been exercised in a great variety of cases where the individual claimants were completely separate and distinct, and the only community of interest among them was in the question at issue and perhaps in the kind of relief, and the single decree *has* without any difficulty settled the entire controversy and determined the separate rights and obligations of each individual claimant.[1] The same *principle* therefore embraces both the technical "bills of peace," in which there is confessedly a common right or title or community of interest in the subject-matter, and also those analogous cases over which the jurisdiction has been extended,

[1] While this result has been accomplished in the Schuyler fraud case, 17 N. Y., in the Water Company Case, L. R. 2 Ch., in the case of the complicated contract, 3 Halst. Ch., and in other like instances where the separate demands of the claimants had no common origin, but each arose from a distinct transaction, and in the various taxpayers' cases, it is plain that the objection under consideration is merely illusory, that it is truly what I have called it, an empty formula of words without any real meaning. Much of this *a priori* reasoning explaining why a particular thing could not be done, repeated by judge after judge, has in like manner been exploded simply by doing the thing which had, through verbal logic, been shown to be impossible. This one fact is the essence of a great deal of the modern legal reform.

in which there is no such common right or title or community of interest in the subject-matter, but only a community of interest in the question involved and in the kind of relief obtained.

§ 270. A few additional words may be proper with respect to the exercise of the jurisdiction on behalf of taxpayers and other members of a local district or community affected by an unlawful common or public burden. Wherever the principle has been finally settled that individual citizens or members of a municipality sustaining an injury, from some unauthorized or illegal official act, in common with all the other citizens or members of the same district—that is, only suffering the same wrong or loss which is inflicted upon all other like persons—have no cause of action whatever, no remedial right recognized by any court of justice, there can, of course, be no exercise on their behalf of the equitable jurisdiction to prevent a multiplicity of suits. And if the principle is held to embrace taxpayers, they are also without any equitable relief. But it is a grave error to suppose that this doctrine has any special connection with the equitable jurisdiction to prevent a multiplicity of suits, or in any special manner restricts that jurisdiction. Being based upon high considerations of governmental policy, it avowedly overrides and displaces all judicial authority, every form of judicial action. Wherever, on the other hand, the taxpayers of a district subject to an unlawful burden are regarded as having some cause of action, as entitled to some judicial remedy—as, for example, where the individual taxpayer may maintain an action at law to recover back the illegal tax which he has paid, or to recover damages—there, in my opinion, all the reasons for exercising the jurisdiction to prevent a multiplicity of suits in any case of the third or fourth classes apply with great and convincing force in support of the same jurisdiction in behalf of such taxpayers. Notwithstanding the adverse decisions, the weight of judicial authority in favor of this conclusion, and of exercising the jurisdiction under every form of local assessment, general tax, municipal debt, or other public burden by which taxation would be increased, is very decided.[1]

[1] This weight of authority becomes even more imposing from the fact that in New York and in several other States whose courts have followed the lead of New York tribunals, the denial of relief to the taxpayers has been based, in part at least, upon the principle of public policy, mentioned above in the text, by virtue of which individual taxpayers were held to be without any remedial right. The adoption of this principle at once ended all possibility of judicial interference; and these decisions have, therefore, no legitimate authority upon the question as to the equitable jurisdiction to prevent a multiplicity of suits being exercised on behalf of taxpayers.

On principle no distinction can be discovered between the case of such taxpayers, and the instances in which the jurisdiction has been repeatedly exercised and fully established on behalf of a common body of separate claimants. Each taxpayer has a remedy by action at law; but it is to the last degree inadequate and imperfect, and often nominal, since he must wait until the wrong has been accomplished against himself before he can obtain redress; and at best the rights of all can only be secured even in this incomplete manner by an indefinite number of litigations. By means of the equitable jurisdiction, the whole controversy and the rights of every individual taxpayer can be finally determined in one judicial proceeding by one judicial decree. This is not a plausible theory; it is a fact demonstrated in the constant judicial experience of numerous States.[1]

§ 271. **Cases in which the Jurisdiction is Exercised. First Class.**—Having thus examined the meaning, extent, and operation of the doctrine, I shall enumerate without any further description, the various kinds of cases in which the jurisdiction to prevent a multiplicity of suits has been exercised, and over which it has been settled by a preponderance of judicial authority. *Class first.*—The jurisdiction is constantly exercised, under a proper condition of facts, in the following instances belonging to the first class; suits by a proprietor to restrain continuous trespasses;[2] to restrain and remove private nuisances, especially when they are infringements upon some easement, as a water right,[3] to restrain

[1] Can it appear to the thoughtful observer otherwise than as a farce or travesty upon the administration of *justice*, to see a court deny all relief to a body of taxpayers suing in the form of an equitable *action* to restrain an illegal tax, or to set aside an illegal official act, such as a town bonding, for the alleged reasons that their interests were separate, and could not be determined by one decree, and then to see the self-same judges, on behalf of the same taxpayers in the same case, and upon exactly the same facts set forth in a petition, grant the very identical relief and set aside the tax or official act, by their adjudication made upon a writ of certiorari? We may still hope that the time will come, in the progress of an enlightened legal reform, when the administration of justice will be *based* entirely upon considerations of substance, and not of mere form. The reformed system of procedure, as it is administered by some courts, has left much room for further improvement in the modes of obtaining *justice*.

[2] Hanson v. Gardiner, 7 Ves. 305, 309, 310; Livingston v. Livingston, 6 Johns. Ch. 497, 500; Hacker v. Barton, 84 Ill. 313.

[3] Parker v. Winnipiseogee etc. Co., 2 Black (U. S.) 545, 551; Carlisle v. Cooper, 21 N. J. Eq. (6 C. E. Green), 576, 579; Corning v. Troy Iron Factory, 39 Barb. 311, 327; S. C., 34 Barb. 485, 492; Webb v. Portland Man. Co., 3 Sumner, 189; Lyon v. McLaughlin, 32 Vt. 423, 425, 426; Sheetz's Appeal, 35 Pa. St. 88, 95; Holsman v. Boiling Spring Co., 1 McCarter, 335; Sheldon v. Rockwell, 9 Wis. 166, 179; Eastman v. Amoskeag etc. Co., 47 N. H. 71, 79, 80; and restraining an interference with plaintiff's exclusive ferry franchise, McRoberts v. Wash-

waste;[1] and to settle disputed boundaries.[2] The jurisdiction has also been admitted, under special circumstances, to settle the entire controversy between two parties growing out of some complicated contract involving numerous questions and many actions at law.[3]

§ 272. **Second Class.**—In cases belonging to the first branch of this class, the rule is familiar that the court will interfere to restrain actions of ejectment to recover the same tract of land when the plaintiff's title has already been sufficiently established at law;[4] and to restrain further or successive actions not of ejectment brought for the same matter, when the plaintiff's rights have already been fully established in some prior judicial proceeding between the same parties.[5] In cases constituting the second branch of this class the court *may* restrain numerous simultaneous actions against the plaintiff brought by the same defendant, all involving the same questions, for the purpose of having the whole decided by one trial and decree. The court will not interfere, however, when by the rules of legal procedure all the actions can be consolidated by order of the court of law.[6]

§ 273. **Third Class.**—The cases constituting this class must be separated into several different groups, all depending, however, upon the same principle. The jurisdiction is exercised in suits brought by numerous persons to establish their separate claims against a single party, where these claims, although separate, all arise from a common title, and there is a common right or common interest in the subject-matter;[7] in suits by

burne, 10 Minn. 23, 30; Letton v. Goodden, L. R. 2 Eq. 123, 130. Also such nuisance is restrained at the suit of numerous separate proprietors where each is injured by it in his own land. Cardigan v. Brown, 120 Mass. 493, 495; Ballou v. Inhabitants of Hopkinton, 4 Gray, 324, 328; Murray v. Hay, 1 Barb. Ch. 59; Reid v. Gifford, Hopk. 416, 419, 420.

[1] Hughlett v. Harris, 1 Del. Ch. 349, 352.

[2] Hill v. Proctor, 10 W. Va. 59, 77.

[3] Biddle v. Ramsey, 52 Mo. 153, 159; Black v. Shreeve, 3 Halst. Ch. 440, 456, 457; for limitations upon the jurisdiction in such cases, see Richmond v. Dubuque etc. R. R., 33 Iowa, 422, 487, 488, *per* Beck, C. J.

[4] Earl of Bath v. Sherwin, Prec. Ch. 261; 10 Mod. 1; 1 Bro. P. C. 266, 270; 2 Bro. P. C. 217 (Toml. ed.); Leighton v. Leighton, 1 P. Wms. 671; Devonsher v. Newenham, 2 Sch. & Lef. 208, 209; Weller v. Smeaton, 1 Cox, 102; 1 Bro. Ch. 573; Earl of Darlington v. Bowes, 1 Eden, 270, 271; Alexander v. Pendleton, 8 Cranch, 462, 468; Trustees of Huntington v. Nicoll, 3 Johns. 566, 589, 590, 591, 595, 601, 602; Eldridge v. Hill, 2 Johns. Ch. 281; Woods v. Monroe, 17 Mich. 238; Bond v. Little, 10 Ga. 395, 400; Harmer v. Gwynne, 5 McLean, 313, 315; Patterson v. McCamant, 28 Mo. 210; Knowles v. Inches, 12 Cal. 212.

[5] Paterson etc. R. R. v. Jersey City, 1 Stockt. Ch. 434.

[6] Kensington v. White, 3 Price, 164, 167; Third Av. R. R. v. Mayor etc. of N. Y. 54 N. Y. 159, 162, 163; but see *per contra* West v. Mayor etc. of N. Y. 10 Paige, 539.

[7] Technically called "bills of peace;" e. g., suits by tenants against the lord of the manor; by parishioners against the parson, etc. Cowper v. Clerk, 3 P. Wms. 155, 157; Weale v. West Middlesex Water Co. 1 J. & W. 358,

numerous individual proprietors of separate tracts of land to restrain and abate a private nuisance or continuous trespass which injuriously affects each proprietor;[1] in suits by numerous separate judgment creditors to reach the property of and enforce their judgments against the same fraudulent debtor;[2] in suits by numerous owners of separate and distinct lots of land to set aside or restrain the collection of an illegal assessment for local improvements laid by a city, town, or other municipal corporation, and made a lien on their respective lots;[3] and in suits by numerous taxpayers of a town, city, county, or other district to restrain or set aside an illegal general tax whether personal or made a lien upon their respective property, or an illegal proceeding of the local officials whereby a public debt would be created and taxation would be increased.[4]

§ 274. **Fourth Class.**—The jurisdiction has been exercised in the following cases belonging to this class, and in most, if not all of them, it may be regarded as fully settled; in suits by a single plaintiff to establish a common right against a numerous body of persons, where the opposing claims of these individuals have some community of interest, or arise from some common title;[5] in suits by a single plaintiff to establish a common right against a numerous body, where there is only a community of interest in the questions at issue among these opposing claimants, but none in the subject-matter or title;[6] in

369, *per* Lord Eldon; Phillips v. Hudson, L. R. 2 Ch. 243, 246; Powell v. Powis, 1 You. & Jer. 159; Rudge v. Hopkins, 2 Eq. Cas. Abr. 120, pl. 27; Conyers v. Abergavenny, 1 Atk. 284.

[1] Cardigan v. Brown, 120 Mass. 493, 495; Ballou v. Inhabitants of Hopkinton, 4 Gray, 324, 328; Murray v. Hay, 1 Barb. Ch. 59; Reid v. Gifford, Hopk. 416, 419, 420; but see *per contra*, Marselis v. Morris Canal Co., Saxton's Ch. 31.

[2] Brinkerhoff v. Brown, 6 Johns. Ch. 139, 151, 156.

[3] Ireland v. City of Rochester, 51 Barb. 415, 435; Scofield v. City of Lansing, 17 Mich. 437; City of Lafayette v. Fowler, 34 Ind. 140; Kennedy v. City of Troy, 14 Hun, 308, 312; Clark v. Village of Dunkirk, 12 Id. 181, 187; but see *per contra* Dodd v. Hartford, 25 Conn. 232, 238; Howell v. City of Buffalo, 2 Abb. App. Dec. 412, 416; Bouton v. City of Brooklyn, 15 Barb. 375, 387, 392–394.

[4] Atty-Gen. v. Heelis, 2 S. & S. 67, 76; for a collection of American cases, see *ante*, note under § 260. For cases holding the contrary, see *ante*, note under § 266.

[5] Technical "bills of peace:" Lord Tenham v. Herbert, 2 Atk. 483; How v. Tenants of Bromsgrove, 1 Vern. 22; Ewelme Hospital v. Andover, 1 Id. 266 (profits of a fair); Corp'n of Carlisle v. Wilson, 13 Ves. 276, 279 (tolls); New River Co. v. Graves, 2 Vern. 431; Brown v. Vermuden, 1 Chan. Cas. 272 (tithes); Rudge v. Hopkins, 2 Eq. Cas. Abr. 170, pl. 27 (tithes); Pawlet v. Ingres, 1 Vern. 308 (lord and tenants); Weeks v. Staker, 2 Id. 301 (ditto); Arthington v. Fawkes, 2 Id. 356 (ditto); Conyers v. Abergavenny, 1 Atk. 284 (ditto); Poor v. Clarke, 2 Id. 515 (ditto); Duke of Norfolk v. Myers, 4 Madd. 83 (lord of manor—tolls of a mill); Bouverie v. Prentice, 1 Bro. Ch. 200.

[6] Mayor of York v. Pilkington, 1 Atk. 282; City of London v. Perkins, 3 Bro. P. C. 602 (Toml. ed.); 4 Id. 157; *per contra* Dilley v. Doig, 2 Ves. 486 (no jurisdiction in suit by owner of a patent right or copyright against separate infringers).

suits by a single plaintiff against a numerous body of persons to establish his own right and defeat all their opposing claims, where the claims of these persons are legally separate, arose at different times and from separate sources, and are common only with respect to their interest in the question involved and in the kind of relief to be obtained by or against each;[1] in suits by a single plaintiff against numerous defendants, parties to a complicated contract, where his rights against each are similar and legal, but would require, for their determination, a number of simultaneous or successive actions at law;[2] in suits by a single party against a number of persons to restrain the prosecution of simultaneous actions at law brought against him by each defendant, and to procure a decision of the whole in one proceeding, where all these actions depend upon the same questions of law and fact.[3]

§ 275. **Statutory Jurisdiction.**—In addition to the foregoing discussion of the doctrine as forming a part of the general equitable jurisdiction, there remains to be very briefly considered a statutory basis of the jurisdiction which is found in some of the American States. In the legislation of the various States which have adopted the reformed system of procedure, there is considerable diversity with respect to matters of detail; the attempt to put the rules concerning remedies and remedial rights, whether legal or equitable, into a statutory form, is carried much further in some of the States than in others. This partial codification in several of the States has resulted in statutory provisions concerning certain equitable remedies which deal with and to some extent regulate the jurisdiction based upon the prevention of a multiplicity of suits. These provisions are partly declaratory of well-settled doctrines, and partly operate, perhaps, to extend the jurisdiction beyond its original limits; they do not, however, purport to define, regulate, and fix the jurisdiction as a whole. The legislation of California may be taken as the type. The following provisions on the subject are found in its Codes: "Except where otherwise provided by this title, a final injunction may be granted to prevent the breach of an obligation existing in favor of the applicant. * * * 3. Where the restraint is necessary to prevent

[1] New York & N. H. R. R. v. Schuyler, 17 N. Y. 592, 599, 600, 605–608; S. C., 34 N. Y. 30, 44–46; Sheffield Water Works v. Yeomans, L. R., 2 Ch. 8, 11; Ware v. Horwood, 14 Ves. 28, 32, 33; Board etc. v. Deyoe, 77 N. Y. 219.

[2] Black v. Shreeve, 3 Halst. Ch. 440, 456, 457.

[3] McHenry v. Hazard, 45 N. Y. 580, 587, 588; Board etc. v. Deyoe, 77 N. Y. 219; see *per contra*, County of Lapeer v. Hart, Harring. Ch. 157.