

If the plaintiff, after filing his bill, discover that one of the defendants is not a non-resident as alleged therein, he may amend his bill so as to pray process of subpoena against him.

In a suit concerning lands, if the Statute of Frauds be not specially relied on, or the whole contract be not expressly denied in pleading, the defendant is held to have waived the statute and cannot be permitted to take advantage of it afterwards, or at the final hearing. (a)

Verbal proof may be received to corroborate and supply omissions in a written contract, or to contradict the usual receipt endorsed on a conveyance, which is considered as evidence of the lowest order. (b)

The plaintiff can only obtain relief upon the strength of his own title as it existed at the time of instituting his suit, and not on the weakness of the title of his adversary, or the imbecility of his defence.

In general, if the facts stated in the bill are not in substance sufficient to entitle the complainant to the relief prayed, he cannot resort to the answer of the defendant, the proof taken in the case, or any extraneous matter to supply the defect. (c)

After the plaintiff has set forth the facts showing his case to be properly within the cognizance of equity, he may proceed to specify the kind of relief to which he thinks himself entitled.

If he specifies the relief for which he asks, and prays for none other, either generally or specially, and the nature of his case is such that he cannot obtain relief of that kind, then he cannot be relieved at all, unless he amends the prayer of his bill.

But if the bill prays generally for such relief as is suited to the nature of the case, then, under such general prayer, the Court may, regardless of, or without any, special prayer, grant any relief which may be allowed by law in conformity with the nature of the case, (d)

The plaintiff may present his case in the alternative; provided the alternatives are both of them such as are cognizable by a Court of equity; and are not so framed as to allow the plaintiff to elude any rule of Court. (e)

If it appear upon the face of the bill that the case is not one properly within the cognizance of a Court of equity, the defendant should demur; yet

(a) See *Moale v. Buchanan*, 11 G. & J. 314, note; *Small v. Owings*, 1 Md. Ch. 363; *Artz v. Grove*, 21 Md. 456; *Odgen v. Ogden*, post, 284.

(b) Approved in *Taggart v. Stansbury*, 2 McLean, 546. See *O'Neale v. Lodge*, 3 H. & McH. 433, note; *Wolfe v. Hauver*, 1 Gill, 84, note.

(c) Approved in *Kunkel v. Markell*, 26 Md. 409. See also *Townshend v. Duncan*, 2 Bland, 45.

(d) The relief to be given under the general prayer in a bill, must be agreeable to the case made by the bill, and not different from, or inconsistent with it. *Chalmers v. Chambers*, 6 H. & J. 29. Equity Rule, 15, provides that the prayer for relief shall specify particularly the relief desired, and shall also contain the prayer for general relief. "Mr. Dobbins, a counsel formerly in this Court, used to say that praying general relief was the next best prayer to the Lord's prayer." Lord Hardwicke in *Dormer v. Fortescue*, 3 Atk. 132.

(e) Approved in *Hardin v. Boyd*, 113 U. S. 763, where it is said to be "a well-settled rule that the complainant, if not certain as to the specific relief to which he is entitled, may frame his prayer in the alternative, so that if one kind of relief is denied another may be granted; the relief, of each kind, being consistent with the case made by the bill."