the peculiar nature of his cause of action, or because of the nature of the several defences made to it, may obtain relief against some one or more of the defendants, although he may totally fail in his suit against all the others. In equity this more frequently happens than at law; but in all cases, it arises not from the mere manner or form of proceeding, but from the substantial nature of the case itself, or of the defence which may have been made. *Royal* v. *Johnson*, 1 *Rand.* 421.

In all cases where there are a plurality of defendants, they are each of them charged as such; because of their having an interest in or being jointly or otherwise liable to the alleged cause of suit. Hence it is in general true, that the answer of one defendant cannot be read in evidence against another; because in such case there is no opportunity for cross-examination; and also because each defendant, considered as a necessary party, must have some interest in the event of the suit; and is, therefore, an incompetent witness. 2 *Mad. Cha.* 441; *Fereday* v. *Wightwick*, 4 *Russ.* 114. But there are exceptions to this general rule; as where the defendant against whom the answer is proposed to be read claims under him who made it; for a defendant cannot deny the title as thus set forth by him under whom he claims. *Field* v. *Holland*, 6 *Cran.* 24; *Osbon* v. *U. S. Bank*, 9 *Wheat.* 832; *Jones* v. *Magill*, *ante* 177. Or where the defendants are partners in trade, and as such are then competent to bind each other by such a contract as that of which they speak. *Clark* v. *Vanriemsdyk*, 9 *Cran.* 156. So too in the peculiar case of corporations, one or more of its officers may be made co-defendants, whose answers may be received against the body politic; and so likewise as to arbitrators and attorneys, whose answers may be read against the other parties; and this from necessity, or because such co-defendants may be converted into witnesses. *Rybott* v. *Barrell*, 2 *Eden*, 133; *Dummer* v. *Corpo. of Chippenham*, 14 *Ves.* 252; *Le Texier* v. *Anspach*, 15 *Ves.* 164. And so it would seem at common law there is a case where, from necessity, one of the defendants may be called on as a witness to testify for the plaintiff against the co-defendants, "inasmuch as some books have said, that though the witness named in the deed be named a disseisor in the writ, yet he shall be sworn as a witness to the deed." *Co. Litt.* 6.

* But although it is a settled rule in equity as well as at law, that no one can be a witness who is interested in the event of the suit; yet, as it is often proper in equity to make persons parties to the suit who have no substantial interest in the whole subject of it; or in that distinct and separate part of it as to which they may be called upon to testify,—as where a bare trustee is made a co-plaintiff or co-defendant; or where it appears, that the plaintiff has no claim to any relief whatever against one or more of the defendants; or that he has cause of suit against **268**