

tion will be allowed at the hearing, though not raised upon the pleading, but certainly the general rule is, that it comes too late, if deferred to the hearing of the cause. *Waterton vs. Cowen*, 4 *Paige*, 510; 1 *Daniel's Ch., Prac.*, 350. Mr. Justice Story says, in cases of misjoinder of plaintiffs, the objection ought to be taken by demurrer; for if not so taken, and the court proceeds to a hearing upon the merits, it will be disregarded, at least if it does not materially affect the propriety of the decree. *Story's Equity Plead., secs.* 540, 544. In the case before the court, it is not seen how the misjoinder of the parties can affect the propriety of the decree.

There is no conflict between them, the beneficial interest being admitted by the bill to be in Barnes Compton, the minor, and the administrator of his mother having only become such and united in the suit, that a full indemnity might be given the defendants, upon the payment of the legacy.

The case of *Rhodes vs. Wharbuton*, 6 *Sim. resp.*, 617, is express to show, that such an association of parties as complainants, is not even faulty upon demurrer.

Courts of equity are not, in the dispensation of justice, subject to those strict technical rules, which in other courts are sometimes found in the way, and so difficult to surmount. The remedies here are moulded, so as to reach, if practicable, the real merits of the controversy, and justice will not be suffered to be entangled in a web of technicalities. If such a decree can be put upon the record as will meet the substantial justice of the case, it will be done. The Court of Appeals of this state, in the case of *McCormick vs. Gibbon*, 3 *Gill & Johnson*, 12, shows, conclusively, that a defence like the present, cannot at all events be brought forward for the first time at this stage of the proceedings, when if presented at an earlier period the objection could have been removed by an amendment of the bill. In the case referred to, the court say, a decree may give relief to both complainants, or separate and distinct relief to each. As to one, the bill may be dismissed, whilst full relief is granted to the other. And that the same principle applies to the defendants, is also stated in the same case, the relief being