

LINGAN v. HENDERSON.

The plaintiff by petition, stating on oath the circumstances, may, before the coming in of the answer, obtain a commission to take the testimony *de bene esse* of an aged and infirm witness.

An order of publication, warning an absent defendant to appear, as the substitute for a *subpœna*, is granted as of course; because a plaintiff so proceeds at his peril: and it must go against a wife as well as her husband, or she will not be bound.

If the statute of frauds be not specially relied upon, and the whole contract be not expressly denied in pleading, the party can have no advantage of the statute, by objecting to the proofs, or in any other way.

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.

The plaintiff's case must be fully shown by his bill; its defects cannot be supplied from the other proceedings; because it is upon the case so stated alone, that the court can grant relief.

The special prayer must be for such relief as can be given; but under the general prayer, that relief will be given which is best suited to the case, though not orally asked for.

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.

There is a variety of cases at common law as well as in equity, in which a plaintiff may obtain relief against some one or more of the defendants, although he may totally fail against all the others; but where one of two or more defendants makes a defence which so effectually goes to the whole as to show, that the plaintiff had no cause of suit, nor any foundation for a legal complaint, he can have no relief even against the defendant as to whom the bill had been taken *pro confesso*.

In general, the answer of one defendant cannot be evidence against another; the exceptions to this rule.

In what cases a complainant or co-defendant may be examined as a witness in the case.

The answer of the wife obligatory upon her.

The policy of the statute of limitations, its nature, in what way, and how far applied in equity.

Where the statute of limitations is relied upon by one in bar of a contract by which he, with others, is charged to have been bound, it cannot be taken out of the statute by any acknowledgment which would not be equivalent to a renewal of such contract by all.

More precision is required in a plea than in a bill.

A plea of the act of limitations of *three* years is not applicable to an equitable lien, which can only be barred by a lapse of *twenty* years.

This bill was filed on the 29th of November, 1821, by *Janet Lingan, William B. Randolph* and *Sarah* his wife, *George Lingan*, and *Elias B. Caldwell* and *Anne* his wife, against *Richard Henderson, Sarah Henderson, Janet L. Henderson*, and *David English* and *Lydia* his wife.

The bill states, that *James M. Lingan*, in May, 1807, by deed, duly recorded, conveyed to *John Henderson*, his brother-in-law, a