

These defendants, by this form of defence, put it to the court to determine, admitting every fact and circumstance to be true, as stated, whether they ought to be compelled to answer the bill or not. The cause shewn for thus demurring, would seem to amount to a disclaimer; but a disclaimer is never made in this way, or received in this equivocal shape. It should be, in all respects, full and explicit, and accompanied by an answer denying such facts as it may be necessary to deny, in order to make it effectual; because, in all such cases, where the defendant is subject to no liability, which he cannot disclaim, (a) it at once puts an end to the case, without asking for the judgment of the court, as by a demurrer, upon the plaintiff's right to such an answer as he calls for by his bill. These demurrers, it is evident, cannot be treated as disclaimers, merely because of the cause thus loosely shewn for relying on them. The case, as stated by the bill, must, therefore, be carefully considered to ascertain whether or not these persons have been properly made defendants; because of their having an interest in the object of the suit; or because of their being in any way liable to be called here as defendants.

All persons having an interest in the object of the suit, ought to be made parties; but it is often difficult at once to determine, who do come within this general description. Much must always depend upon the peculiar nature of the case; and how it may terminate. If the court itself sees that a person whose interests must be involved in a decree, which it may be called on to pass, has not been made a party to the suit, it will, even at the hearing, suspend its proceedings until he has been brought in as a party. And it lies upon the plaintiff to shew, that in some way in which the suit may terminate, it is necessary for his advantage or protection, that the person who he has summoned as a defendant should be made a party. (b)

These persons may have been rightfully called here as defendants on one of three grounds; either, because of some beneficial interest to which they are entitled, arising out of the nature of their ancestor's contract, and the manner in which it has been partially enforced; or they may have been correctly brought here as defendants, because of their power to draw in question the title of the present claimant of this equity of redemption; and of its therefore

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(a) *Glaslington v. Thwaites*, 3 Cond. Cha. Rep. 197.—(b) *Calvert on Parties*, 10; *Lloyd v. Lander*, 5 Mad. 289.