LECTURE VIII.

PURE PLEAS.

A pure plea is one which avers some fact not appearing upon the face of the bill, as a bar to the plaintiff's claim.

2 Daniels Ch. Pr. (1 Ed.) 97.

The theory upon which the pleader proceeds with the affirmative plea is, assuming that the allegations of the bill are true, that there is a fact or circumstance not mentioned in the bill, which is a good and sufficient reason why the complainant should not be permitted to proceed with his suit. The court in order to save expense to the parties decides upon the validity of the objection, taking the bill so far as it is not contradicted by the plea as true.

NEGATIVE PLEAS.

But there are cases in which some allegation made in the bill and which is absolutely essential to the complainant's right to be heard is denied by the defendant. For instance A may file a bill against B, claiming to do so as the heir of C, and A may deny that he is in fact the heir of C. This is called a negative plea, and always by its averments denies the truth of some allegation in the bill which is vital to the complainant's case. It was at first held that such a plea could not be filed. Lord Thurlow so decided in

1787 in a cause where the complainant claimed to be the heir of a certain person and the defendant sought by plea to deny that allegation in the bill.

Newman v. Wallace, 2 Bro. C. C. 143, 146; Gunn v. Prior, 2 Dick. 657.

The Chancellor himself, however, afterwards admitted that he had arrived at a wrong conclusion, and since then negative pleas have been allowed.

Hall v. Noyes, 3 Bro. C. C. 483, 489; Jones v. Davis, 16 Ves. 262.

ANOMALOUS PLEAS.

An anomalous plea is resorted to in those cases where the bill admits the existence of a certain fact, and then by distinct allegations seeks to avoid the legal effect of such fact, by setting up fraud or mistake. The anomalous plea avers the existence of the fact admitted by the bill and then denies the allegations of mistake or fraud contained in the bill. For example, suppose A and B had been copartners and upon the dissolution of the copartnership had submitted the differences between them, growing out of the partnership business, to arbitrators who had duly made an award. A afterwards files a bill against B praying for an accounting of the partnership business. Now, if he said nothing about the arbitration and award in his bill, B could by an affirmative plea set that up. But in such a case the bill probably would not be silent on the subject of the arbitration, and would allege that there had been an arbitration and a pretended award, but that said award was null and void because, for

instance, there had been collusion between the arbitrators and B, and it would then set forth several alleged facts and circumstances which if true would tend to establish the collusion and fraud. In such a case B must resort to an anomalous plea, averring the arbitration and award, denying collusion and fraud and specifically denying each allegation of fact in the bill tending to establish such collusion and fraud, and this plea must be supported by an answer making a full disclosure in regard to all the allegations in the bill tending to show collusion and fraud. The complainant is entitled to have the allegations of fraud denied, because his right of actions, as appears from his bill, depends upon his showing collusion and fraud. Otherwise, when he filed his replication to the plea, he would put in issue, not the existence of the facts showing fraud, upon which he depends solely for relief, but upon the facts appearing in the plea, that is the existence of the award about which there is no dispute. But if the plea traverses the allegations of fraud, then a replication to the plea puts those allegations in issue. The defendant must traverse all the allegations tending to negative the plea, in the plea itself, but, as we have said, the plea must be accompanied by an answer in its support in which such allegations shall be fully and explicitly answered. The plea traverses the allegations in the bill tending to negative the plea, in order that the truth of those allegations may be put in issue. The plea must be supported by an answer as to those same allegations for a

very different but equally satisfactory reason. The complainant is entitled to a full discovery from the defendant of all the facts within his knowledge or belief which tend to establish the complainant's right to relief or to discovery even. Therefore, when relief is based upon the ground of fraud and the defendant is asked to discover certain facts within his knowledge tending to establish such fraud, he must answer and make the discovery asked, to the end that the complainant may have the advantage of the answer as evidence upon the hearing of the plea to establish his case by disproving the case made by the plea.

We have already called your attention to the rule that if an answer covers any material part of the bill demurred or pleaded to, the demurrer or plea will be overruled. In the case we have supposed where the bill is filed to set aside an award which, if good, would be a complete bar to the complainant's cause of action, and the defendant pleads the award, it would seem at first glance that if the defendant answered the averments in the bill showing that such award was void, that the answer covered the same part of the bill as the plea. It is not the case, however. The bill in such case is filed for the purpose of obtaining discovery *and* relief. The plea is to relief and not to discovery. The defendant relies upon the award as a complete bar to all relief. That it is a complete bar if valid the bill in substance admits, for the complainant asks to be relieved from its effects by having it set aside. The defendant, therefore, by pleading the

award and denying the allegations of fraud puts in issue the validity of the award. But the fact that there is a valid award and that therefore the complainant is not entitled to relief, is not a denial that the complainant is entitled to a full discovery from the defendant of all the facts within his knowledge or belief, tending to disprove the plea. The answer therefore which supports the plea does not cover any portion of the bill covered by the plea.

Sanders v. King, 6 Mad. 61; Thring v. Edgar, 2 S. & S. 274–277; Thring v. Edgar, 2 S. & S. 274–281; Hardman v. Ellames, 5 Sim. 640; Denys v. Lowck, 3 Myl. and C. 205.

The answer is said to support the plea, for the reason that the court will intend all matters alleged in the bill, to which the complainant is entitled to require an answer, to be against the pleader unless they are fully and clearly denied, and therefore, if in the case we have supposed, the defendant should plead the award and not fully and clearly answer as to the allegations of fraud, the court would assume that such allegations are susceptible of proof, and on that ground would overrule the plea. If there is a proper answer in support of the plea, such answer is no part of the defence, but only what the complainant is entitled to have to enable him to avoid the defence made by the plea and establish the case made by the bill, and the complainant is entitled to read the answer on the hearing of the plea.

Hildyard v. Cressy, 3 Atk. 303; Hony v. Hony, 1 S. S. 568, 580; Gordon v. Shaw, 14 Sim. 393; Roch v. Morgell, 2 Sch. and Lef. 721.

Whenever notice or fraud is alleged in the bill the plea must by positive averments negative the notice or fraud averred, and such notice or fraud must also be negatived by the answer which supports the plea.

Meadows v. The Duchess of Kingston, Amb. 756; Devie v. Chester, 1 Cox 224; Hoare v. Parker, 1 Bro. C. C. 578; Bicknell v. Gough, 3 Atk. 558.

DIFFERENT GROUNDS OF PLEA.

Pleas to relief are:

1. To the jurisdiction.
2. To the person of the complainant or defendant.
3. In bar of the suit.

1.

Pleas to the jurisdiction, do not deny the right of of the complainant in the subject of the suit or assert that there is any disability on the part of either the complainant or defendant, but asserts that a court of chancery is not the proper court to take cognizance of the cause.

Story Eq. Pl. §706.

2.

Pleas to the person, do not dispute the jurisdiction of the court, or the interest of the complainant, but assert that the complainant is incapacitated to sue, or that the defendant is not the person who ought to be sued.

Story Eq. Pl. §706.

3.

A plea in bar alleges some matter which displaces the equity of the bill.

FORM OF PLEA.

A plea is entitled in the cause, and like a demurrer is introduced by a protestation against the confession of the truth of any matter contained in the bill.

The extent of the plea, that is whether it is intended to cover the whole bill, and if not the whole, what portion, should be distinctly shown.

6 Leacroft v. Durprey, 4 Paige 124; Summers v. Murray, 2 Edw. Ch. 205.

Then follows a clear and positive statement of the matter relied upon as an objection to the suit accompanied, when necessary, by such averments as are necessary to its support. When the objection is to the frame of the suit, it must point out the particular defect and how it may be remedied.

Merrewether v. Mellish, 13 Ves. 435, 438.

The general requisites of a plea have already been given. They are:

1. It must be founded on matter not apparent on the face of the bill.

2. It must reduce the case to a simple point.

3. It must be supported by proper averments.

After the plea has been drawn, it is to be signed by counsel and sworn to by the defendant, that it is true in point of fact.

By the rules of the United States courts it is provided that no plea shall be filed unless it is accompanied by a certificate of counsel that it is, in his opinion, well founded in point of law, and by the affidavit of the defendant that it is not interposed

merely for the purpose of causing delay in the progress of the suit.

U. S. Rule 31.

When the plea is filed the complainant must either set the cause down for hearing on the plea, or file a replication to the plea. If the plea is set down for hearing the truth of all the averments in the plea well pleaded is admitted, and the only question for the court to pass upon is the sufficiency of the plea.

If a replication is filed to the plea, the complainant thereby admits the sufficiency of the plea in law, and the only question in issue is the truth of the matter pleaded.

It becomes very important therefore, for the complainant to determine in the first instance, whether the plea is good in form, because, if it should be bad in form, but the matters pleaded true in fact, and he should take issue upon the plea, by filing a replication the plea would be sustained, notwithstanding it was bad in form and the matters pleaded were no bar to complainant's bill, because, by filing the replication, the complainant admits that the matter as pleaded is a bar if true, and he denies merely the truth of the matters pleaded.

Bogardus v. Trinity Church, 4 Paige 178; Harris v. Ingledew, 3 P. Wms 94, 95.

If the plea is set down for hearing and the court holds that it is good in form, the complainant may then take issue upon it by filing a replication. After a replication is filed proofs are taken as to the truth of

the plea and then a hearing is had upon that issue. The sufficiency of the plea is no longer in issue, the court is simply called upon to determine whether or not the defendant has by his proofs maintained the truth of his plea.

McEwen v. Broadhead, 3 Stockt. (N. J.) 129-131.

If the plea is allowed, it is thereby determined to be a full bar to so much of the bill as it covers. If the defect in the bill can be cured by an amendment, it is usual for the court to permit the complainant to amend his bill. If the defect cannot be cured, then, of course, the controversy is at an end as to that much of the matter covered by the plea.

Story Eq. Pl. § 697.

If the court should consider that although the plea may be good and the facts pleaded true from the proofs then before the court but that there may be matter disclosed in evidence which would avoid it, in order that the complainant may not be deprived of his rights, it will direct that the benefit of the plea shall be reserved to the defendant at the hearing.

Lord Redesdale, 245.