LECTURE XVI.

BILLS OF INTERPLEADER.

When a person is in possession of a specific chattel, or a definite sum of money, which two or more persons claim adversely to each other, but in the same right, or privity of estate, he may exhibit a bill of interpleader against such adverse claimants and thus relieve himself from the liability incident to delivering the article, or the money to the wrong claimant, by compelling them to litigate their adverse claims between each other.

Child v. Mann, L. R. 3 Eq. 805-806, 808; Bedell v. Hoffman, 2 Paige 199; Green v. Mumford, 4 R. I. 313; Farley v. Blood, 30 N. H. 354; Horton v. Baptist Church &c., 34 Vt. 309.

To entitle a party to file a bill of interpleader he must be a mere stakeholder, having, himself, no interest in the property in controversy, so that when the court decrees an interpleader, he may step out of the case altogether.

Lincoln v. R. & B. R. R. Co., 24 Vt. 639; Angell v. Hadden, 15 Ves. 244; Bowditch v. Soltyk, 99 Mass. 136.

Strictly speaking the complainant does not ask any relief against either of the defendants, but simply the aid of the court in determining to whom the property of right belongs, that he may deliver it to such rightful person and be relieved against the claims of the other.

Bedell v. Hoffman, 2 Paige 199; Badeau v. Rogers, 2 Paige 209; Lazin v. Van Saun, 2 Green Ch. 325.

There must be privity of some sort between the parties, such as privity of estate, title, or contract, and the claims must be all of the same nature. If the adverse claimants assert rights under adverse titles, and have claims differing in their nature, the bill cannot be maintained. Thus when two assessing districts have assessed the same person for the same property in each district, claiming to act under the statute, the owner of the property may file a bill of interpleader against the two corporations, or when a tenant owes rent to his landlord, and two persons claim through the same title to be such landlord, the tenant may file a bill against both, but if in the latter case the claim of one was based upon a title paramount to the other, as when one claims under the original title, and the other under a tax title, the bill may not be maintained.

M. & H. R. R. Co. v. Clute, 4 Paige 384; Thompson v. Ebbitts, Hopk. 272; Stanley v. Sidney, 14 M. & W. 800; Story Eq. Pl. § 239.

The claims of the several defendants must not only be substantially the same in their nature, but this must appear in the bill. The bill must also show that the defendants claim an interest in the whole subject-matter of the suit and be so framed that the decree may embrace the whole of it.

Hoggart v. Cutts, 1 Cr. & P. 197, 205; Crawford v. Fisher, 1 Hare 436, 440.

If the matter in dispute is money in the hands of

the complainant he should offer in his bill to bring it into court, to enable the court to direct that to be done upon the application of either of the other parties.

Shaw v. Coster, 8 Paige 339.

As a general rule a sheriff, who has seized property under an execution which is claimed by a party other than the defendant named in the writ, cannot file a bill of interpleader making such adverse claimants parties. If, however, there are conflicting equitable claims, or claims due to some event happening after the levy, for instance the bankruptcy of the execution defendant, he may file a bill.

Tufton v. Hardinge, 6 Jur. N. S. 116; Child v. Mann, L. R. 3 Eq. 805, 807.

There are conflicting claims sometimes to funds in the sheriff's hands arising from the sale of property on several executions running against the same person and in favor of divers persons. In such a case it is held in Arkansas that the sheriff may file a bill of interpleader.

Lawson v. Jordan, 19 Ark. 297.

But as a general rule this cannot be done.

Shaw v. Coster, 8 Paige 339; Parker v. Barker, 42 N. H. 78; Nash v. Smith, 6 Conn. 421.

In theory the bill is filed solely for the benefit of the complainant to relieve him from vexatious litigation and liability to pay the same amount twice, and the court will not permit the bill to be filed if there is collusion between the complainant and one of the

parties. The complainant must therefore file with the bill an affidavit that there is no collusion between him and either of the parties; and if there are several complainants they must all join in the affidavit.

Atkinson v. Monks, 1 Cow. 691; Farley v. Blood, 30 N. H. 354, 361; Story Eq. Pl. §§ 291, 297; Shaw v. Coster, 8 Paige 339.

In the bill of interpleader the complainant sets forth fully the subject-matter of the controversy; that the property is in his hands; that he has no interest in it; that the defendants named claim the property and the nature of their claim, but not their title. This part of the bill must be drawn so as to show that the complainant has a right to compel the defendants to interplead. The complainant must also aver, that he is ignorant, or in doubt, as to which of the parties are entitled to the property. The bill prays that the defendants may interplead, so that the court may determine to whom the property belongs. It usually prays also, if the matter of controversy is a money demand, that the complainant may pay the money into court. If a suit at law has been commenced by either, or both the defendants, or threatened by either or both, the bill also prays, that the defendants may be enjoined from further proceedings against the complainant at law.

Union Bank v. Kerr, 2 Md. Ch. 460; French v. Robechard, 50 Vt. 43.

BILLS TO PERPETUATE TESTIMONY.

Any person, who would, under the allegations contained in his bill, become entitled, upon the happening of some future event, to an estate, or interest in any property, real or personal, the right to which cannot by him be legally investigated, by being brought to trial before the happening of such event, may maintain a bill to perpetuate the testimony material for establishing such estate, or interest.

Lord Dursley v. Fitzhardinge, 6 Ves. 251–259; Allen v. Allen, 15 Ves. 129–135.

The interest which the complainant has, must be a present interest and not a mere contingent interest. But if it is a present interest it is wholly immaterial how minute it may be, or how remote the possibility may be, of the happening of the event upon which it is to be enjoyed.

Lord Dursley v. Fitzhardinge, 6 Ves. 251–259; Allen v. Allen, 15 Ves. 129–135.

The bill must set forth the matter touching which the complainant desires to take testimony. It must show that he has an actual and not a contingent interest, and that the facts to which the proposed testimony relates cannot be investigated immediately in a court of law or equity, or that before the facts can be adjudicated upon, the evidence of such witness, is in danger of being lost by his death or departure from the state. In the latter case the bill must be accompanied with

affidavit setting forth the danger of the loss of such testimony.

Phillip v. Carew, 1 P. Wms. 116, 117.

When a suit at law can be commenced immediately, a suit must be actually commenced before a bill to perpetuate testimony will be entertained.

Angell v. Angell, 1 Sim. & Stu. 83, 93.

It would seem that the bill is demurrable unless it shows that the complainant's interest is actual, and not capable of being barred by the defendant; that the interest cannot be investigated immediately, and that the defendant has an interest to contest the complainant's claim.

Allen v. Allen, 15 Ves. 129, 135; Larkins v. Ayleworth, 1 Vern, 105; Dursley v. Fitzhardinge, 6 Ves. 262; Ellice v. Roupelle, 32 Beav. 308.

The defence to a bill to perpetuate testimony is by demurrer, plea or answer, as in other cases. The cause, however, is never brought to a hearing. After the cause is at issue a commission issues for the examination of witnesses.

Vaughan v. Fitzgerald, 1 Sch. & Lef. 316.

At common law the court would not permit the testimony to be published except in support of a suit or action, and not then, unless the witness, whose testimony had been taken, was dead, or sick, or so aged, or infirm, that he could not be examined in the cause.

Morrison v. Arnold, 19 Ves. 669; Jackson v. Rice, 3 Wend. 180; Jackson v. Perkins, 2 Wend. 308.

To obtain the order of publication, a notice of the motion must be served, which must be supported by an affidavit, that the testimony is necessary to be made use of in the complainant's behalf, that the witnesses are dead or so sick, aged or infirm, that they cannot travel to give evidence in the cause, or that they are out of the state. Upon such a showing the order of publication will be made. If a portion only of the testimony taken is to be used the order will designate what testimony is to be published.

Bills to perpetuate testimony are seldom resorted to at the present time, the statute in many of the states having provided a cheaper and more expeditious method of accomplishing the same purpose.