LECTURE VI.

III. TO THE MATTER OF THE BILL.

Demurrers arising from objections to the matter of the bill are either to the substance of the bill or to the form in which it is stated.

Demurrers ~~of~~ to the substances are :

1. That the plaintiff has no interest in the subject.

2. That the defendant is not answerable to the plaintiff.

3. That the defendant has no interest.

4. That the plaintiff is not entitled to the relief he has prayed.

5. That the value of the subject-matter is insufficient to give the court jurisdiction.

6. That the bill does not embrace the whole of the subject-matter.

7. That there is a want of proper parties.

8. That the bill is multifarious.

9. That the plaintiff's remedy is barred by lapse of time.

10. The Statute of Frauds.

11. That there is another suit pending for the same matter between the same parties.

1. If there are several plaintiffs some of them having an interest and others none in the subject-matter, a general demurrer to the whole bill is a good defence.

King of Spain v. Machado, 4 Russ. 224; Clarkson v. DePeyster, 3 Paige 336-339; Dias v. Bouchaud, 10 Paige 445; Haskell v. Hilton, 30 Me. 419; Atwell v. Ferrett, 2 Blatch C. C. 39.

2 and 3. If the plaintiff has an interest the bill must show the defendant answerable to him.

Ld. Uxbridge v. Stoveland, 1 Ves. Sen. 55; Crossing v. Honor, 1 Vern. 180; White v. Smale, 22 Beav. 72.

4. When the plaintiff prays merely for some special relief to which he is not entitled, or to any relief of the same nature.

Rollins v. Forbes, 10 Cal. 299; Bleeker v. Bingham, 3 Paige 246; Dike v. Grant, 4 R. I. 285; Sayles v. Tibbitts, 5 R. I. 79.

5. If it does not appear on the face of the bill that the matter in controversy is sufficient to give the court jurisdiction, the defendant may move to strike the bill off from the file or demur.

Carr v. Inglehart, 3 Ohio St. 458; McElwain v. Willis, 3 Paige 505; S. C. 9 Wend. 548.

6. The court will not permit a bill to be brought for a part of the matter only, but requires that every bill shall be so framed as to afford ground for decision upon the whole matter at one and the same time.

Panfoy v. Panfoy, 1 Vern. 29; Margrov v. Le Hooke, 2 Vern, 207; Jones v. Smith, 2 Ves. 372.

7. When a defendant demurs to the bill for the arrest of parties, the demurrer must point out who are necessary parties, not necessarily by name, but in a manner clearly to indicate who they are.

Att'y-Genl. v. Poole, 4 M. & C. 17; Robinson v. Smith, 3 Paige 222; Story Eq. Pl. § 543.

8. A demurrer for multifariousness goes to the whole bill and it is not necessary to specify the particular parts of the bill which are multifarious.

Dimmock v. Bixby, 20 Pick. 368; Gibbs v. Claggett, 2 Gill & J. 14; Boyd v. Hoyt, 5 Paige 65.

9. The Statute of Limitations of 21 Jac. 1, c. 16, did not in terms include equitable actions, but courts of equity have been disposed to treat a claim as stale that was barred at law, and in short to be governed by the statute.

Miller v. McIntyre, 6 Peters 61; Denny v. Gilman, 26 Me. 149, 154; Robinson v. Hook, 4 Mason 139, 150; Brown v. Buena Vista, 95 U. S. 157.

10. If it closely appears on the face of the bill that the contract upon which the complainant rests his claims is within the statute of frauds, the objection can be taken advantage of by demurrer.

Field v. Hutchinson, 1 Beav. 599, 600; Crenston v. Smith, 6 R. I. 231; Dudley v. Bachelder, 58 Me. 403, 406.

11. If it appears, also, that there is another suit pending in another court, in which the complainant could obtain the same relief, the defendant may demur for that reason.

Low v. Rigby, 4 Bro. C. C. 60, 63; Peareth v. Peareth, 9 Jur. N. S. 1149.

The grounds of demurrer to a bill by reason of deficiency in matters of form are:

1. Omission to state complainant's residence.

2. Neglect to state positively, allegations within the complainant's knowledge.

3. Lack of certainty in the bill.

4. Failure of the complainant to offer to do equity.

5. Want of counsel's signature to the bill.

6. Neglect to verify in those cases where the statute or rules require the bill to be sworn to.

The above grounds of demurrer are simply an enumeration of the essentials of a bill in equity which we have already pointed out.

The defendant may not only demur to the relief, but he may demur to the discovery sought when the complainant is entitled by his bill to relief. The several grounds of demurrer to discovery are:

1. That the discovery may subject the defendant to some penalty or forfeiture. The defendant will not be required to either criminate himself or place himself in a position in which he may be prosecuted.

Harrison v. Southcote, 1 Atk. 539; Duke v. Harper, 66 Mo. 51; Allyn v. Hanna, 47 Iowa 264; McPherson v. Cox, 96 U. S. 404; Livingston v. Tompkins, 3 Johns. Ch. 452; U. S. v. Twenty-eight Packages, Gilpin C. C. 306.

2. Because in equity and good conscience the defendant's right is equal to the complainant's. If for example the defendant has in conscience as good a title, but not as perfect a legal title as the complainant, he will not be compelled to make a discovery which will endanger his own title.

Howell v. Ashman, 1 Stockt. (N. J.) 82; Glegg v. Legh, 4 Mad. 104; Story Eq. P. §§ 603, 604; Boone v. Chiles, 10 Peters 177; McNeil v. Magee, 5 Mason 269.

3. Because the discovery sought is immaterial to the relief prayed. The complainant is not entitled in

equity any more than at law to introduce immaterial evidence. Therefore, if he calls upon the defendant to answer interrogatories in reference to some matter which is immaterial, the defendant may demur to that much of the discovery for immateriality.

Lord Montague v. Dudman, 3 Ves. Sen. 396, 398; Baker v. Pritchard, 2 Atk. 388; Hincks v. Melthrope, 1 Vern. 204.

4. Because the discovery would be a breach of professional confidence. All confidential communications between attorney and client, husband and wife, physician and patient, priest and penitent, may not be disclosed in any proceeding, either at law or in equity. And if the plaintiff seeks to have the defendant make any such disclosure, he may demur to that part of the discovery, if it appears on the face of the bill that the information is in fact confidential.

State v. White, 19 Kan. 445; Insurance Co. v. Schaffer, 94 U. S. 457; Bigler v. Reyher, 43 Ind. 112; Barnham v. Roberts, 70 Ill. 19.

5. That the discovery relates only to the defendant's case. The complainant is not entitled to obtain from the defendant a disclosure of facts material only to the defence. For example, where the plaintiff and defendant claim through adverse sources of title, the one is not entitled to the other's evidences of title.

Ingilby v. Shafto, 33 Beav. 31; Joy v. Kekewick, 2 Ves Jr. 679; Baden v. Dore, 2 Ves. Sen. 445; Moore v. Caron, L. R. 7 Ch. App. 94, note.

6. That the discovery might be injurious to the public interest. This ground of objection is confined

to information which the defendant has obtained while occupying a public or semi-public position.

Smith v. East India Co., 1 Phil. 50, 55, 6 Jur. 1; Bellows v. Stone, 18 N. H. 465, 485; 1 Greenl. Ev. §§ 250, 251.

Any irregularities in the frame of the bill may be taken advantage of by demurrer, which will be deemed to have been waived if the defendant consents to answer.

Reedy v. Scott, 23 Wall. 352, 365; Hubbard v. Turner, 2 McLean, 519, 539; Campbell v. Foster, 2 Tenn. Ch. 402.

A demurrer cannot be good in part and bad in part, but the defendant may put in separate and distinct demurrers to separate and distinct parts of the bill for separate and distinct causes, and in that case one demurrer may be sustained and another overruled.

Mayor of London v. Levy, 8 Ves. 398, 403; Baker v. Mellish, 11 Ves. 68, 70; North v. Stafford, 3 P. Wms. 149; Roberdeau v. Rous, 1 Atk. 543; Barstow v. Smith, Walk. Ch. 394; Railroad v. Schuyler, 17 N. Y. 592.

FORM OF DEMURRER.

The demurrer must be entitled in the cause. Indeed, all the papers filed in a cause, or served after the bill, are to be entitled. Following the title is the heading, indicating whether it is a joint or several demurrer, whether it is to the whole or a part of the bill, and if to a part, whether it is accompanied by a plea, or answer, or both. Then comes the protestation of the defendant as to the truth of the matters contained in the bill. The object of this protestation is

to avoid a tacit admission, either in this or some other, suit of the truth of the averments in the bill.

Story Eq. Pl. §§ 452, 457.

The demurrer then proceeds, if it is to a part and not to the whole bill, to point out distinctly those parts of the bill to which it applies. The rule as to this, given by Lord Redesdale, is: "That where a defendant demurs to part, and answers to part of a bill, the court is not to be put to the trouble of looking into the bill or answer to see what is covered by the demurrer; but it ought to be expressed in clear and precise terms what it is that the party refuses to answer, and I cannot agree that it is the proper way of demurring to say that the defendant answers to such a particular fact and demurs to all the rest of a bill; the defendant ought to demur to a particular part of the bill, specifying it precisely."

Deomsher v. Newenham, 2 Sch. Lef. 199, 205; Atwell v. Ferrett, 2 Blatch. C. C. 39; Story Eq. Pl. §§ 457, 458.

Since a demurrer cannot be good in part and bad in part, and the defendant is permitted to put in separate demurrers to separate parts of the bill, this should be done when the pleader is in doubt whether a given ground of demurrer covers more than one part of the bill. But where there are two or more separate demurrers to different parts of the bill, each must point out distinctly what part of the bill each is intended to cover.

Mynd v. Francis, 1 Anst. 5; Burch v. Coney, 14 Jur. 1009.

A demurrer is said to be general when it is to the

jurisdiction, or the substance of the bill, and special when it is to a defect in the form; but whether general or special it must assign some cause of demurrer, and it will not be good if the defendant says generally that he demurs to the bill.

Duffield v. Graves, Casey 87; Offely v. Morgan, Casey 107; Peache v. Twyecrosse, Casey 113; Nash v. Smith, 6 Conn. 421; Howland v. Kenosha, 19 Wis. 264; Wellborn v. Tiller, 10 Ala. 305.

A defendant may demur generally to the whole bill, and assign as cause want of equity, without being more specific:

1. When the facts stated are insufficient to entitle the plaintiff to relief.

2. When he has omitted to verify the bill, when that is necessary.

3. When he has neglected to offer to do equity in cases where such an offer ought to be made.

4. When the allegations of fact within the personal knowledge of the complainant are not made with sufficient positiveness.

The reason for the rule in all these cases is that the plaintiff, by his bill, does not bring his case within the description of cases over which the court exercises jurisdiction.

Caren v. Johnson, 2 Sch. Lef. 280; 2 Danl. Ch. Pr. 1 ed. 73.

But in all cases of general demurrer, the pleader may point out the specific objections, and in some cases he is required to do so. When there is a want

of parties, he must point out who the proper parties are, and for multifariousness, that specific objection.

Royner v. Julien, 2 Dick. 677.

Objections for want of jurisdiction and want of equity should be taken by separate demurrers.

Barber v. Barber, 5 Jur. N. S., Part I., 1197.