

missed. The defence made and sustained going to a part only of the subject claimed, it appeared, that the plaintiffs had a valid cause of suit, and were therefore relieved. *Sprigg v. Weems*, 2 H. & McH. 266. So, in general, if a man brings an action for two things, for the recovery of both of which the action will lie, but **257** on the trial fails to sustain his claim to one of them; \* yet he may have judgment for the other, his right to which he establishes. *Godfrey's Case*, 11 Co. 45; *Gregory v. Molesworth*, 3 Atk. 627. Or suppose, that as a cause of suit the plaintiff alleges, that he has a right to a hundred acres of land which has been withheld from him; there, as the subject in controversy is divisible in its nature, the defendant may take defence for only a part, or he may defend for the whole; but if the plaintiff establishes a title which covers a less number of acres, he may be relieved; because so far he shews, that he has a sufficient cause of action. Or suppose the suit to have been brought against two or more defendants, each of whom makes a separate defence, and the defence of one, applicable to himself alone, shews, that he ought not to be charged; and the others fail in their defence; the plaintiff may have his entire relief against them, although the bill must be dismissed as to the one who had successfully defended only so far as he himself was charged; 2 Will. Ex'rs, 1218; because no defence going to the whole, and showing, that the plaintiff had no cause of action having been established, he may be relieved as against all the other defendants who had either made no defence, or failed to establish either any such general defence as went to the whole, and to show that the plaintiff had no cause of suit whatever; or any such particular defence as went to show, that although there might be such a cause of action against others, yet he, that defendant, could not be charged by it.

In these and in all similar cases, where the cause of action is made up of several distinct items; or in so far as the subject of it is divisible in its nature; *Robinson v. Bland*, 2 Burr. 1082; or where it bears upon the several defendants in a disjunctive, separate, or limited manner, the relief granted may be accordingly for the whole or for a part only of that which is the subject of the cause of suit; or it may be granted against all the defendants, or against some or one of them only, or against each *pro rata*, or in different proportions. *Mason v. Peter*, 1 Mun. 437. But in all cases, in equity as well as at law, the relief is, and can only be granted, because of its having been admitted or established, that there is and was, when the suit was instituted, a valid and existing cause of action, of which the Court might take cognizance, and which by no defence, going to the whole, had been shewn by all, or any one of the defendants to have been entirely barred, satisfied or extinguished in any way whatever. These are gene-