

PRACTICE IN CHANCERY—*Continued.*

til after a verdict or judgment has been obtained. *Union Bank vs. Kerr & Glenn*, 460.

63. The complainants filed their bill, requiring the defendants to interplead and settle their respective rights, as well to a sum of money for which K. had recovered judgment at law in an action of assumpsit, as also to certain promissory notes and bills of exchange, for which K. had commenced an action of trover, which was still depending in the County Court. *HELD—*

That the complainants should not be precluded from the right to compel the defendants to interplead, so far as concerns the subjects of the action of trover, because they have, in the same bill, asked the same relief with reference to the subject of the action of assumpsit, in regard to which they come too late. *Ib.*

64. Relief will not be refused to a party, with reference to another and a distinct subject, because he has associated it in the same bill, with matter in regard to which he is not entitled to relief, on account of having delayed his application too long. *Ib.*
65. Where a bill prays for relief, by way of injunction, and does not pray for the process of injunction, the process cannot be granted. *Ib.*
66. If a party elects to proceed at law, his bill will be dismissed, and if he elects to proceed in equity, he will be restrained from further prosecuting his suit at law, without leave of this court first had and obtained. *Ib.*
67. Parties having conflicting interests, each claiming the title to the property in dispute to be in himself, cannot unite as plaintiffs, and a bill containing an averment that one of the plaintiffs is entitled, and that if he is not, his co-plaintiff is, cannot be supported. *Ellicott vs. Ellicott*, 468.
68. The proper mode by which such an objection to a bill can be taken advantage of, is by a demurrer. *Ib.*
69. Joining issue upon an answer must be regarded as a waiver of any mere technical objection to the form in which the defences in such answer are presented. *McKim vs. The White Hall Co.*, 510.
70. Pleadings in chancery should consist of averments or allegations of facts and not of inference and argument. *Ib.*
71. The defence of using may either be set up by plea or relied upon in the answer. *Ib.*
72. The statute against usury must be pleaded or relied on in the answer, and it will not do to state circumstances which may lead the opposite party to infer that he is to meet that defence; this view is supported by the 1st section of the act of 1845, ch. 352. *Ib.*
73. The consideration of the mortgage, which the complainant sought to enforce, was a forfeit which the mortgagor agreed to pay, in the event of his failing or neglecting to appoint the complainants his agents, as provided in a certain agreement. *HELD—*

That this mortgage could not be enforced by this court; the rule being a universal one, that Courts of Equity will not lend their aid