

jurisdiction of a court of equity; and next, that the parties to whom the claim is alleged to belong, and against whom the relief is, if any, to be granted are all called by it before the court. If the bill be substantially deficient in either of these particulars, it may be shewn at any time; either as a ground for dissolving the injunction, or at the final hearing; when the bill may be dismissed at once, or be permitted to stand over with leave to amend, and make proper parties, if it may be inferred, from what then appears, that there are merits which may be brought before the court. (j)

This bill states that the plaintiff, *Amos Binney*, 'is seized in his own right, and as trustee for others, of certain land,' to which the irreparable injury complained of is about to be done; that is, *Binney and others* complain of an injury threatened, or about to be done to their property. But who are those *others*, or *cestui que trusts*? They are no where named, or in any manner made parties to this suit; nor does it appear, whether *Binney* holds with them as joint tenants, tenants in common, or, if they hold in severalty, how their respective parts are situated with respect to each other, and with respect to the river. Yet, from the nature of the right claimed, and the injury complained of, as we shall presently see, it is important, that all this should substantially appear, to enable the defendant to meet the case with such a defence as the law may entitle him to make, as well as, that the court should be enabled to give relief in a manner commensurate to the rights, and suited to the claims of the plaintiffs respectively, or collectively. The bill distinctly informs the court, that there are others who have an interest in the land as well as *Binney*; and yet it no where names them. They, therefore, cannot have their interests precluded, or bound by any decree, as parties to this suit. There are cases in which a trustee may sue alone; but it is very clear, that this is not one of them; and that, in this instance, it is indispensably necessary, that the *cestui que trusts* should be named and made parties. If they refuse to join *Binney* as plaintiffs, he may, to obtain the separate relief to which he is entitled, make them defendants. This objection might have been waived; and *Binney's* separate claim to relief, so far as it could have been shown, or, to a certain extent, might have been admitted. But upon this occasion, the defendants have specially relied on this as one of their objections.

By an act of assembly authority was given to create, or call into