

of her husband's estate being given by her to defendant Chipman; that it was always represented to plaintiff that the stock in question was valueless, and that otherwise he was refused any information; that Chipman has now in his own name and control stock of the company to the value of \$200,000, to which he has no right or title; and that his co-defendant has stock to the amount of \$500,000 or thereabouts.

Plaintiff accordingly asks: (1) a declaration that the deceased held the stock in question as trustee for himself and plaintiff equally; (2) for an inquiry as to the dealings of defendants with the stock and for an order for delivery to plaintiff of his share or interest therein; and (3) payment of the sums of \$85,000 and \$55,000 out of the share of the deceased in the trust estate, with interest.

The motion was supported on the ground that these defendants could not be joined in one action, because the claims against them were separate and distinct, as Chipman was not interested in the claim for the \$140,000, so that under the former practice the bill would have been demurred to successfully as being multifarious.

Unless this objection is valid, the motion must fail according to the principle in *Andrews v. Forsythe*, 7 O. L. R. 188, 3 O. W. R. 307, and cases cited, especially *Evans v. Jaffray*, 1 O. L. R. 614. . . .

[Reference to Daniell's Chancery Pleading and Practice, 1st Am. ed., p. 384; *Salvidge v. Hyde*, 5 Madd. 138, *Jacob* 151.]

Although in some sense the claim to be repaid the \$140,000 is separate, and one in which Chipman is not concerned, yet the main relief is to have the trust as to the stock declared and carried out. These matters are certainly not in their nature separate and distinct, but are such as are properly and necessarily united as against the executrix, and the fact that Chipman is "a necessary party to some portion only of the case stated" does not allow him to maintain an objection of multifariousness: per Lord Cottenham in *Attorney-General v. Poole*, 4 My. & Cr. 17, at p. 31.

For these reasons it seems that plaintiff cannot be required to elect. There would appear in this case even more than in *Evans v. Jaffray*, *supra*, to be "such unity in the