

THE PRESIDENT AND DIRECTORS
OF THE UNION BANK OF MARYLAND
vs.
JOHN D. KERR AND JOHN GLENN.

DECEMBER TERM, 1849.

[BILLS OF INTERPLEADER—PRACTICE—ELECTION.]

A BILL of interpleader ought to be filed before or immediately after the commencement of proceedings at law, and should not be delayed until after a verdict or judgment has been obtained.

The complainants filed their bill, requiring the defendants, K. and G. 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.

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.

Where a bill prays *for relief*, by way of injunction, and does not pray *for the process* of injunction, the process cannot be granted.

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.

[The bill in this case was filed on the 4th of August, 1849, by the Union Bank, and states, that on the 25th of July, 1846, Edward M. Kerr, assigned to the bank, as collateral security for all his liabilities to it, certain promissory notes, a list of which, together with the assignment, is filed with the bill. That the bank proceeded to collect said notes and apply the proceeds to discharge said liability, which was effected in the month of December, 1846. That a portion of said notes remained in the possession of the bank uncollected. That on the 21st of August, 1846, said Edward M. Kerr assigned to the defendant, John D. Kerr, all the notes deposited by him with the bank for collection, subject to the right of the bank to appropriate so much of the proceeds, as might be required to pay a certain note of