

BUERK *v.* IMHAEUSER.

Circuit Court, S. D. New York.

July 1, 1881.

1. EQUITY PLEADING—DEMURRERS.

A bill is not demurrable when a foundation has been laid for some of the discovery and relief asked.

2. SAME—MULTIFARIOUSNESS.

No one can object to a bill on the ground of multifariousness unless injured thereby.

3. PRACTICE—APPEARING GENERALLY—WAIVER.

By appearing generally, one waives his right to object that he is not named as a defendant in the prayer for a subpoena.

J. Vansantvord, for plaintiff.

A. N. Briesen, for defendant Imhaeuser.

BLATCHFORD, C. J. As the demurrer is to the whole bill, and not to any particular discovery or relief asked, and as a foundation is laid in the bill for at least some of the discovery and relief asked, the first ground of demurrer must be overruled. The defendant Imhaeuser, being liable for each one of the amounts decreed in the one suit, is not in a position to raise the objection of multifariousness, as he is in no worse position by having only one suit against him than if there were three. Imhaeuser has no concern with the matters referred to in the third ground of demurrer. As Imhaeuser has appeared generally in the suit, he has waived his right to object that he is not named as a defendant in the prayer for subpoena, and he has no concern with the naming of others in such prayer.

The demurrer is overruled, with leave to the defendant Imhaeuser to answer in 30 days, on payment of the plaintiff's costs on the demurrer, to be taxed.

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