For example, in the enforcement of the United States revenue acts, it may happen that hardship and injustice will at times be occasioned to those who inadvertently violate such statutory provisions and incur the penalties and forfeitures for which they provide. A court of equity has, nevertheless, no right to interfere and virtually to repeal the express provisions thereof by defeating the operation of such acts in a particular case.[19] However, the rule that equity will not relieve against a statutory forfeiture does not apply, it seems, to a municipal ordinance which partakes of the nature of a contract.[20]

V. LEGAL REMEDY AS AFFECTING EQUITABLE JURISDICTION OR RELIEF

A. In General; Existence of Adequate Legal Remedy as Determining Factor

§ 86. Generally; absence or inadequacy of legal remedy as basis of jurisdiction.

There has been much discussion and some statements that are too broad[1] regarding the effect upon the jurisdiction of a court of equity and the relief to be granted by it, of the existence or absence of a legal remedy, or remedy at law. It is said, for instance, to be a province of equity to accord a remedy in any case involving a right which the common law cannot enforce.[2] If the law, by reason of its universality, does not afford a remedy, a resort to equity is said to be authorized.[3] A rule frequently stated concerning equity jurisdiction is that the equity court affords relief where the law does not furnish a remedy,[4] or that inadequacy of legal remedy is a ground of equity jurisdiction.[5] Historically, it is stated, the test of equity's jurisdiction in any given case was that the suitor could either get no relief, or could not get adequate relief, in a court of common law.[6] It is accordingly said that the absence of

Where a statutory method of forfeiture has been provided and that method has been strictly followed, equity can afford no relief from it. Castello v Central Eureka Mining Co. 85 Cal App 2d 772, 193 P2d 968.

19. Powell v Redfield (CC NY) 4 Blatchf 45, F Cas No 11359.

20. Wheeling & E. G. R. Co. v Triadelphia, 58 W Va 487, 52 SE 499.

1. As to the qualifications which should be stated in this connection, see the discussion infra, this section, and in the following sections.

2. Morgan v Beloit, 7 Wall (US) 613, 19 L ed 203; Addy v Addy, 240 Iowa 255, 36 NW2d 352; Bullard v Zimmerman, 82 Mont 434, 268 P 512.

3. Sovereign v Sovereign, 354 Mich 65, 92 NW2d 585; Stone v Jefferson, 317 Mo 1, 293 SW 780, 52 ALR 879.

Whenever and wherever the law, by reason of its universality, is impotent to succor one who has a right, equity supplies the needful remedy. Forrester v Forrester, 155 Ga 722, 118 SE 373, 29 ALR 1363.

An equity court will grant relief where it appears that an action at law is not maintainable for some reason. Morgan v Beloit, 7 Wall (US) 613, 19 L ed 203.

4. Grand Chute v Winegar, 15 Wall (US) 355, 21 L ed 170; Phoenix Mut. L. Ins. Co. v Bailey, 13 Wall (US) 616, 20 L ed 501; Payne v Hook, 7 Wall (US) 425, 19 L ed 260; Hudler v Miller (Mo) 55 SW2d 419.

5. Thompson v Smith, 155 Va 367, 154 SE 579, 71 ALR 604.

Equity will afford relief in the absence of an adequate and certain remedy at law. Davis v Wallace, 257 US 478, 66 L ed 325, 42 S Ct 164.

If a legal right is shown which otherwise might appeal to equity's concurrent jurisdiction, and the legal remedy is established as inadequate, this is by itself a sufficient invocation of such jurisdiction. Schrot v Garnett, 370 Mich 161, 121 NW2d 722.

6. Penfield v Murray Hill Holding Corp. 281 App Div 675, 117 NYS2d 589, affd 306 NY 602, 115 NE2d 830.

The origin of the chancery court's assumption of power seems to have been the lack of a legal remedy. Brooks v Brooke, 12 Gill & J (Md) 306.

a plain and adequate remedy at law is a basic jurisdictional fact[7] and is the only test of equity jurisdiction.[8]

Such sweeping statements, however, although seemingly but corollaries of the principles of the supplemental character of equity jurisdiction and of the function of equity in dealing with new fact situations, are not universally true, for notwithstanding the inadequacy of the remedy at law, equity may be prevented by its own principles, or even by legal rules beyond its control, from exercising jurisdiction.[9] The office of equity is to supplement, and not to supplant, the law.[10] The fact that there is no remedy at law has been said not necessarily and of itself to give a court of equity jurisdiction to afford relief.[11] Certainly, the complainant must have a cause of action which will support the suit; equity does not have jurisdiction to grant relief on the ground that the law affords no remedy for recovery on an obligation which is invalid.[12] And if the right of a plaintiff is at best doubtful, equity will, in general, withhold its aid.[13] A suit may not be brought in equity simply because an action at law is not maintainable for the reason that the controversy does not involve the jurisdictional amount.[14]

Subject to, and in recognition of, the above qualifications, it may be stated generally as a principle of equity jurisprudence that if a right judicially cognizable exists and no other adequate remedy is available, equity has jurisdiction and will grant appropriate relief,[15] unless prevented by some super-

7. Tull v Turek (Sup) 38 **Del** Ch 182, 147 A2d 658.

8. Payne v Hook, 7 Wall (US) 425, 19 L ed 260; Thompson v Central Ohio R. Co. 6 Wall (US) 134, 18 L ed 765.

The test of equity jurisdiction is the inadequacy of the legal remedy. Mantell v International Plastic Harmonica Corp. 141 **NJ** Eq 379, 55 A2d 250, 173 ALR 1185. To like effect, see Adams v Adams, 156 **Neb** 778, 58 NW2d 172.

Equity jurisdiction can be justified where the remedy at law is found to be inadequate, as for example, in a case of a continuing trespass or nuisance. Heroux v Katt, 76 **RI** 122, 68 A2d 25, 12 ALR2d 1186.

9. State ex rel. Lien v House, 144 **Ohio** St 238, 29 Ohio Ops 399, 58 NE2d 675; Salem Iron Co. v Hyland, 74 **Ohio** St 160, 77 NE 751.

10. Anderson v Smith, 8 **Alaska** 470; Hall v Lommasson, 113 **Mont** 272, 124 P2d 694.

11. Harper v Clayton, 84 **Md** 346, 35 A 1083; Marx & H. Jeans Clothing Co. v Watson, 168 **Mo** 133, 67 SW 391; Delaware L. & W. R. Co. v Central Stock-Yard & Transit Co. 46 **NJ** Eq 280, 19 A 185.

12. Where the transaction or contract is declared void because not in compliance with express statutory or constitutional provision, a court of equity cannot interpose to give validity to such transaction or contract or any part thereof. Hedges v Dixon County, 150 **US** 182, 37 L ed 1044, 14 S Ct 71.

13. McVey v Brendel, 144 **Pa** 235, 22 A 912.

14. Di Giovanni v Camden F. Ins. Asso. 296 **US** 64, 80 L ed 47, 56 S Ct 1.

15. Sauder v Mid-Continent Petroleum Corp. 292 **US** 272, 78 L ed 1255, 54 S Ct 671, 93 ALR 454, reh den 292 **US** 613, 78 L ed 1472, 54 S Ct 856; Lehigh Valley R. Co. v Public Utility Comrs. 278 **US** 24, 73 L ed 161, 49 S Ct 69, 62 ALR 805; Shaffer v Carter, 252 **US** 37, 64 L ed 445, 40 S Ct 221; Tillman v Thomas, 87 **Ala** 321, 6 So 151; Livingston v Superior Ct. 117 **Cal** 633, 49 P 836; Tyler v Hamersley, 44 **Conn** 419; Hightower v Bigoney (**Fla** App) 145 So 2d 505, revd on other grounds (**Fla**) 156 So 2d 501; Hill v McBurney Oil & Fertilizer Co. 112 Ga 788, 38 SE 42; Lyman v Suburban R. Co. 190 **Ill** 320, 60 NE 515; McAfee v Reynolds, 130 **Ind** 33, 28 NE 423; Shannon v Dillon, 8 B Mon (**Ky**) 389; Bryson v Rayner, 25 **Md** 424; Rogers v Boston Club, 205 **Mass** 261, 91 NE 321; Godfrey v White, 60 **Mich** 443, 27 NW 593; Parham v Randolph, 4 How (**Miss**) 435; Stone v Jefferson, 317 **Mo** 1, 293 P 780, 52 ALR 879; Powell v Campbell, 20 **Nev** 232, 20 P 156; Walker v Walker, 63 NH 321; Bomeisler v Forster, 154 **NY** 229, 48 NE 534; Cushman v Thayer Mfg. Jewelry Co. 76 **NY** 365; Falkner v Streator, 56 **NC** (3 Jones, Eq) 33; Kaufmann v Liggett, 209 **Pa** 87, 58 A 129; Suckley v Rotchford, 12 Gratt (**Va**) 60; Gardner v Buckeye, Sav. & L. Co. 108 **W Va** 673, 152 SE 530, 78 ALR 1.

Annotation: 22 ALR2d 86, § 17 (refusal of corporation to transfer stock).

vening principle, and subject, of course, to the recognition of all equitable defenses.[16] However, the converse of this proposition, namely, that equity does not have, or will not entertain, jurisdiction where the remedy at law is adequate, is much more frequently encountered in the cases.[17] The habit of mind which induced the chancellors to put the test thus negatively was formed in England during the long period of controversy with the common-law judges, and in America not only was this attitude inherited, but it was accentuated out of deference to the constitutional right of trial by jury. The adequacy of the legal remedy thus appears as a negative limitation on the exercise of equitable jurisdiction.[18]

The general principles set forth above and in the following sections have been invoked in respect of nearly every manner of case or controversy sought to be presented for equitable relief.[19] Many specific applications of these principles have been noted in the course of the discussion which deals with particular subjects of equity jurisdiction,[20] and the existence or nonexistence of an adequate remedy at law is a factor which determines the court's decision in withholding or granting any equitable remedy, such as injunction,[1] cancellation,[2] reformation,[3] specific performance,[4] or creditors' bills.[5]

§ 87. Adequate legal remedy as precluding equitable relief.

So far as the effect of a legal remedy is concerned, there must, in order to exclude the jurisdiction of equity, be a remedy at law and, in addition, that remedy must be adequate. The general rule, subject to certain exceptions hereinafter discussed, is that if the law affords a remedy and that remedy is adequate,[6] the cause may not be made the basis of a suit in equity.[7] In

Practice Aids.—Allegation of inadequacy of legal remedy. 8 AM JUR PL & PR FORMS 8:248.

16. State ex rel. Lien v House, 144 Ohio St 238, 29 Ohio Ops 399, 58 NE2d 675; Columbus Packing Co. v State, 100 Ohio St 285, 126 NE 291, 29 ALR 1429, ovrld on other grounds 106 Ohio St 469, 140 NE 376, 37 ALR 1525.

In this class, it is said, falls the case where a substantive right is merely legal, arising out of no true traditional equity relationship, and the resort to equity is permitted only because some extraneous circumstance makes it impossible to secure relief at law. Fur & Wool Trading Co. v George I. Fox, Inc. 219 App Div 398, 219 NYS 625, revd on other grounds 245 NY 215, 156 NE 670, 58 ALR 181.

17. § 87, infra.

18. McCampbell v Brown (CC Ohio) 48 F 795; Elliott v Lawhead, 43 Ohio St 171, 1 NE 577.

19. Newman v Westcott (CC Iowa) 29 F 49; Lehigh Zinc & I. Co. v Trotter, 43 NJ Eq 185, 10 A 607; Oakville Co. v Double-Pointed Tack Co. 105 NY 658, 11 NE 839.

Annotation: 123 ALR 1300 (suit to subject legacy, devise, or distributive share in estate to claim of creditor of legatee, devisee, or distributee).

20. §§ 52 et seq., supra.

For equitable subjects of jurisdiction treated in other articles in this work, see the Scope of Topic discussion at the beginning of this article.

1. See INJUNCTIONS (Rev ed §§ 38 et seq.).

2. See 13 Am Jur 2d, CANCELLATION OF INSTRUMENTS § 3.

3. See REFORMATION OF INSTRUMENTS (1st ed § 9).

4. See SPECIFIC PERFORMANCE (1st ed §§ 10 et seq.).

5. See 21 Am Jur 2d, CREDITORS' BILLS §§ 4 et seq.

6. As to what constitutes an adequate legal remedy, see §§ 94 et seq., infra.

7. Schoenthal v Irving Trust Co. 287 US 92, 77 L ed 185, 53 S Ct 50; White v Sparkill Realty Corp. 280 US 500, 74 L ed 578, 50 S Ct 186; Twist v Prairie Oil & Gas Co. 274 US 684, 71 L ed 1297, 47 S Ct 755; Broderick v American General Corp. (CA4 Md) 71 F2d 864, 94 ALR 1359; Green River v Fuller Brush Co. (CA10 Wyo) 65 F2d 112,

other words, the broad, although not universally exclusive,[8] rule is that equity will not intervene where there is an adequate remedy at law.[9] Some decisions to this effect have been under statutes[10] or rules of practice[11] which prescribe this limitation on the jurisdiction of equity. Furthermore, many decisions refer to a constitutional provision which guarantees the right of trial by jury,[12] and have held that such provision makes it necessary that the plaintiff proceed at law.[13]

One who invokes the interposition of the equity court must generally show that he has no remedy at law or none that is adequate.[14] However, although

88 ALR 177; Gulf Compress Co. v Harris, C. & Co. 158 Ala 343, 48 So 477; McGehee v Mid South Gas Co. 235 Ark 50, 357 SW2d 282; De Witt v Hays, 2 Cal 463; De Mattos v McGovern, 25 Cal App 2d 429, 77 P2d 522; Otte v Pierce, 118 Colo 123, 194 P2d 331, 4 ALR2d 536; Munson v Munson, 28 Conn 582; Davis v Davis, 29 App DC 258; Manning v Clark (Fla) 56 So 2d 521; Moss v Sperry, 140 Fla 301, 191 So 531, 125 ALR 909; Adams v Dixon, 19 Ga 513; Ada County v Bullen Bridge Co. 5 Idaho 79, 47 P 818; Stuart v La Salle County, 83 Ill 341; Proctor v Hansel, 205 Iowa 542, 218 NW 255, 58 ALR 153; Lexington Life, F. & M. Ins. Co. v Page, 56 Ky (17 B Mon) 412; Chappell v Stewart, 82 Md 323, 33 A 542, error dismd for want of jurisdiction 169 US 733, 42 L ed 1215, 18 S Ct 940; Maguire v Reough, 238 Mass 98, 130 NE 270; O'Melia v Berghoff Brewing Co. 304 Mich 471, 8 NW2d 141, 145 ALR 679; Goodrich v Moore, 2 Minn 61, Gil 49; Curtis v Blair, 26 Miss 309; State ex rel. Stewart v District Ct. 77 Mont 361, 251 P 137, 49 ALR 627; Massman Const. Co. v Nebraska Workmen's Compensation Court, 141 Neb 270, 3 NW2d 639; Sherman v Clark, 4 Neb 138; Franklin Twp. v Crane, 80 NJ Eq 509, 85 A 408; Pankey v Ortiz, 26 NM 575, 195 P 906, 30 ALR 92; Thomas v Musical Mut. Protective Union, 121 NY 45, 24 NE 24; Lyerly v Wheeler, 45 NC (Busbee, Eq) 267; Isherwood v Salene. 61 Or 572, 123 P 49; Norris v Crowe, 206 Pa 438, 55 A 1125; Kocon v Cordeiro (RI) 200 A2d 708; Chisolm v Pryor, 207 SC 54, 35 SE2d 21; Holzworth v Roth, 78 SD 287, 101 NW2d 393; The Sailors v Woelfle, 118 Tenn 755, 102 SW 1109; Smith v Pettingill, 15 Vt 82; Thompson v Smith, 155 Va 367, 154 SE 579, 71 ALR 604; Ewing v Dutrow, 128 Va 416, 104 SE 791; Reed v Reeves, 160 Wash 282, 294 P 995; Kwass v Kersey, 139 W Va 497, 81 SE2d 237, 47 ALR2d 695; Gardner v Buckeye Sav. & L. Co. 108 W Va 673, 152 SE 530, 78 ALR 1; Royal Indem. Co. v Sangor, 166 Wis 148, 164 NW 821, 9 ALR 397.

Annotation: 87 ALR2d 777, § 24 (breach of contract between grower and canner).

Practice Aids.—Defense that plaintiff has adequate legal remedy. 8 Am Jur Pl & Pr Forms 8:249.

8. For special circumstances under which equity may take jurisdiction despite an adequate legal remedy, see the discussion infra, this section.

9. Sovereign v Sovereign, 354 Mich 65, 92 NW2d 585; Schantz v Ruehs, 348 Mich 680, 83 NW2d 587; Empire Engineering Corp. v Mack, 217 NY 85, 111 NE 475; Jones v Amsel, 388 Pa 47, 130 A2d 119; Lare v Young, 153 Pa Super 28, 33 A2d 662.

Equity will not afford relief where there is a plain, adequate, and complete remedy at law. Union P. R. Co. v Weld County, 247 US 282, 62 L ed 1110, 38 S Ct 510.

Where the main cause of action is of a legal nature, equity has no jurisdiction, provided the complainant has a full and adequate remedy at law for the wrongs complained of. United States v Bitter Root Development Co. 200 US 451, 50 L ed 550, 26 S Ct 318.

10. Hodges v Kowing, 58 Conn 12, 18 A 979; Smith v Ashcraft, 25 Ga 132; Coleman v Jaggers, 12 Idaho 125, 85 P 894; Jones v Newhall, 115 Mass 244; Atty. Gen. v Tudor Ice Co. 104 Mass 239; Abernethy v Orton, 42 Or 437, 71 P 327; Lining v Geddes, 6 SC Eq (1 M'Cord) 304.

11. Jones v Newhall, 115 Mass 244; Eggers v Anderson, 63 NJ Eq 264, 49 A 578; Ewing v Dutrow, 128 Va 416, 104 SE 791; Hoff v Olson, 101 Wis 118, 76 NW 1121.

12. Generally, as to the right to jury trial, see Jury.

13. Scott v Neely, 140 US 106, 35 L ed 358, 11 S Ct 712; Buzard v Houston, 119 US 347, 30 L ed 451, 7 S Ct 249; Killian v Ebbinghaus, 110 US 568, 28 L ed 246, 4 S Ct 232; Root v Lake Shore & M. S. R. Co. 105 US 189, 26 L ed 975; Houston v New York L. Ins. Co. 166 Wash 611, 8 P2d 434; Reed v Reeves, 160 Wash 282, 294 P 995.

A party cannot be deprived of his right to a trial by jury unless the facts conferring equitable jurisdiction are alleged, proved, and found. Fox v Fitzpatrick, 190 NY 259, 82 NE 1103.

14. Schoenthal v Irving Trust Co. 287 US 92, 77 L ed 185, 53 S Ct 50 (holding that in the absence of a clear showing that a court

there is an adequate remedy at law, equity may under certain conditions grant relief, as where in some cases the jurisdiction of law and equity is concurrent, or the case involves an equitable cause of action,[15] or where in some cases the defendant submits to the jurisdiction of equity or fails to raise the objection properly that the plaintiff has an adequate remedy at law; if no objection is seasonably made on the ground that there is an adequate remedy at law, the objection may be considered as waived and the equity court may proceed with the case if it does not see fit to raise the objection itself.[16] A court of equity is not precluded from rendering a summary judgment on a bond which has been given by a party to a suit for the purpose of securing the issuance of process, arresting the operation of a decree, or the like. The existence of an adequate remedy at law by action on the bond is not a controlling consideration. Having had jurisdiction of the principal cause of action, the court may properly dispose of its incidents and put an end to further litigation.[17] In cases wherein equity lends its aid to one who has a legal claim or right, however, the court will not as a rule grant such relief until an available remedy at law has been exhausted.[18]

Adequacy of a legal remedy in a federal court precludes resort to a federal court of equity. In determining the adequacy of the remedy at law, federal courts are generally guided by the historic distinction between law and equity existing at the time of the adoption of the Constitution and the enactment of the Judiciary Act of 1789, and moreover, the remedy at law which prevents a federal court of equity from assuming jurisdiction must be a remedy at law in federal courts, rather than in state courts. On the other hand, procedural changes which remove the inadequacy of a remedy at law may sharply diminish the scope of traditional equitable remedies by making them unnecessary.[19]

§ 88. Legal or equitable nature of cause; concurrent jurisdiction.

Equity may take cognizance of some disputes or situations notwithstanding the availability of a remedy at law.[20] While the existence of an adequate legal remedy precludes the granting of equitable relief where the primary right of the complainant is legal in its nature,[1] the rule is otherwise where a party asserts an equitable cause of action.[2] For example, it is the prevailing

of law lacks capacity to give the relief which the allegations show the plaintiff is entitled to have, a suit in equity cannot be maintained); Rothman v Engel, 97 **Ohio** St 77, 119 NE 250; Holzworth v Roth, 78 **SD** 287, 101 NW2d 393.

As to pleading the absence of an adequate legal remedy, see § 181, infra.

15. § 88, infra.

16. §§ 91, 92, infra.

17. Pease v Rathbun-Jones Engineering Co. 243 US 273, 61 L ed 715, 37 S Ct 283.

As to incidental remedies generally, see §§ 108 et seq., infra.

18. § 11, supra.

19. See FEDERAL PRACTICE AND PROCEDURE (1st ed UNITED STATES COURTS § 25).

20. On occasions conditions may arise in which it would be appropriate for an equity court to take jurisdiction even though there was a remedy at law of which a plaintiff might avail himself. Frey v McGaw, 127 **Md** 23, 95 A 960.

1. State ex rel. Stewart v District Ct. 77 **Mont** 361, 251 P 137, 49 ALR 627; Holzworth v Roth, 78 **SD** 287, 101 NW2d 393.

2. State ex rel. Rhodes v Saunders, 66 **NH** 39, 25 A 588.

Where the complainant has an equitable cause of action, a different rule applies as to the jurisdiction of equity than where the cause of action is legal, since where equity jurisdiction attaches as a matter of right, the claims of all proper parties to the suit will be adjusted notwithstanding such claims constitute actions at law triable to a jury. Davis v Forrestal, 124 **Minn** 10, 144 NW 423.

view that a beneficiary of a trust is not precluded from proceeding in equity to enforce the trust by the fact that a remedy at law is available to him.[3] On the other hand, it has been held that where the main subject of an action is legal, and the equitable right is merely incidental and may be disposed of in connection with the main subject in a law court, the chancellor may dismiss the action.[4]

In some cases in which the jurisdiction of law and equity is concurrent, as for instance in the case of fraud or of accounting, the view is taken that equity may administer relief irrespective of the existence of an adequate remedy at law; in other words, the existence of the legal remedy is not a defense.[5] The cases over which the courts have concurrent authority are exceptions to the rule which precludes the equity court from hearing a cause where the law affords a remedy.[6]

§ 89. Claim available as defense in action at law.

It is a general rule that no cause of action exists in equity as to a matter of which the plaintiff can obtain full avail by asserting it in an action at law as a defense whenever such an action is brought.[7] In other words, one who has a good defense to an action at law on a legal demand may not resort to a court of equity for relief.[8] In such a case, jurisdiction of the controversy having been obtained by a court of law, equity will not interfere.[9] This assumes, of course, that the remedy by way of defense is adequate; if such remedy is inadequate, equity has jurisdiction.[10]

§ 90. Equity jurisdiction as affected by subsequent change of law or circumstances.

The jurisdiction of an equity court is, as a rule, determined with reference to the conditions existing at the time of filing suit.[11] Consequently, if at that time the complainant had no remedy at law and, as a consequence, the court of equity could take cognizance of the case, the fact that thereafter a legal remedy became available does not oust the court of jurisdiction.[12] Thus, if

3. See TRUSTS (1st ed § 565).

4. Tucker v Simmons, 199 **Tenn** 359, 287 SW2d 19.

5. Bradford v Greenway, 17 **Ala** 797; Fred Macey Co. v Macey, 143 **Mich** 138, 106 NW 722; John Hancock Mut. L. Ins. Co. v Dick, 114 **Mich** 337, 72 NW 179; Parham v Randolph, 5 **Miss** (4 How) 435; McCrea v Purmort (**NY**) 16 Wend 460 (holding that since both law and equity have concurrent jurisdiction of an action for an accounting of property held in a fiduciary relationship and transferred in disregard of the agent's duty, it is no defense to an action in equity that the plaintiff had a sufficient remedy at law); United States Trust Co. v Greiner, 124 Misc 458, 209 **NYS** 105, affd 215 App Div 659, 212 **NYS** 931 (stating that a sufficient remedy at law is a good defense in equity unless the cause is one of which both law and equity have concurrent jurisdiction, and the plaintiff may elect in which tribunal to prosecute his claim); Poore v Price, 32 **Va** (5 Leigh) 52.

6. Graves v Boston Marine Ins. Co. (**US**) 2 Cranch 419, 2 L ed 324.

7. Reiner v Galinger, 151 App Div 711, 136 **NYS** 205.

8. American L. Ins. Co. v Stewart, 300 **US** 203, 81 L ed 605, 57 S Ct 377, 111 ALR 1268; Grand Chute v Winegar (**US**) 15 Wall 373, 21 L ed 174; Phoenix Mut L. Ins. Co. v Bailey (**US**) 13 Wall 616, 20 L ed 501; Dohse v Market Mens Mut. Ins. Co. 253 **Iowa** 1186, 115 NW2d 844.

9. Dohse v Market Mens Mut. Ins. Co. 253 **Iowa** 1186, 115 NW2d 844.

10. Bomeisler v Forster, 154 **NY** 229, 48 NE 534.

11. § 8, supra.

12. Dawson v Kentucky Distilleries & Warehouse Co. 255 **US** 288, 65 L ed 638, 41 S Ct 272; New York L. Ins. Co. v Seymour (CA6 Ohio) 45 **F2d** 47, 73 ALR 1523; Jay-Bee

a case appears to be one of which equity has customarily taken cognizance, the jurisdiction of the equity court thereover is not lost by the fact that a remedy at law has in the meantime been created by statute,[13] unless the statute uses language prohibiting or restricting the jurisdiction of equity;[14] concurrent jurisdiction of the court of law and the court of equity is held to have existed from the date when the statute became effective.[15]

§ 91. Objection to jurisdiction; loss of right to object.

Undoubtedly, there are circumstances under which a party may be deemed to have lost his right to object on the ground that a court of law affords an adequate remedy, to the assumption of jurisdiction by a court of equity.[16] Thus, the right to object to an exercise of jurisdiction by the equity court may be waived[17] if the subject matter of the suit is that of which the court may take cognizance.[18] On the other hand, an objection to the jurisdiction of the equity court on the ground that the law affords a remedy may be interposed by the chancellor sua sponte or of his own motion[19] if no such

Realty Corp. v Agricultural Ins. Co. 320 Ill App 310, 50 NE2d 973; Fish v Prudential Ins. Co. 225 Ind 448, 75 NE2d 57; Carter v Suburban Water Co. 131 Md 91, 101 A 771.

42 Mich L Rev 945.

13. United States v Howland (US) 4 Wheat 108, 4 L ed 526; Jay-Bee Realty Corp. v Agricultural Ins. Co. 320 Ill App 310, 50 NE2d 973; Milwaukee v Drew, 220 Wis 511, 265 NW 683, 104 ALR 1387.

14. Heflin v Heflin, 177 Va 385, 14 SE2d 317, 141 ALR 391.

15. Nixon v Clear Creek Lumber Co. 150 Ala 602, 43 So 805; Hall v Hall, 43 Ala 488; Hempstead v Watkins, 6 Ark 317; Jay-Bee Realty Corp. v Agricultural Ins. Co. 320 Ill App 310, 50 NE2d 973; January v January, 23 Ky (7 TB Mon) 542; Jones v Newhall, 115 Mass 244; Payne v Ballard, 23 Miss 88; Re Connor, 254 Mo 65, 162 SW 252; Brandon v Carter, 119 Mo 572, 24 SW 1035; Smithson v Smithson, 37 Neb 535, 56 NW 300; King v Baldwin (NY) 17 Johns 384; Cook v Carpenter, 212 Pa 165, 61 A 799; Herring v Wilton, 106 Va 171, 55 SE 546; Johnson v Black, 103 Va 477, 49 SE 633.

42 Mich L Rev 945.

16. American Mills Co. v American Surety Co. 260 US 360, 67 L ed 306, 43 S Ct 149; McGowan v Parish, 237 US 285, 59 L ed 955, 35 S Ct 543; Brown v Father Divine, 260 App Div 443, 23 NYS2d 116, reh or app den 260 App Div 1006, 24 NYS2d 991.

Equity will not refuse to take jurisdiction of a case on the ground alone that the complainant has a perfect remedy at law, if the parties have submitted themselves to the jurisdiction of equity without objection. Mentz v Cook, 108 NY 504, 15 NE 541.

17. American Mills Co. v American Surety Co. 260 US 360, 67 L ed 306, 43 S Ct 149; Lyons Mill. Co. v Goffe & Carkener (CA10 Kan) 46 F2d 241, 83 ALR 501 (holding that in a suit for an accounting in equity the defendant waives the objection that the plaintiff has an adequate remedy at law by failing to move to transfer the cause to the law docket, and by requesting the court to try the cause sitting as a chancellor); Frawley v Forrest, 310 Mass 446, 38 NE2d 631, 138 ALR 999.

Where equity jurisdiction has been properly invoked, the defendant may waive his right to object because of the alleged existence of a legal remedy. McGowan v Parish, 237 US 285, 59 L ed 955, 35 S Ct 543.

Although an objection may have been duly interposed, if the defendant, instead of relying on his motion to dismiss the suit for lack of jurisdiction, proves a legal counterclaim, the right to object is deemed to have been waived. American Mills Co. v American Surety Co. 260 US 360, 67 L ed 306, 43 S Ct 149.

Where an answer explicitly admits an allegation of a complaint that the plaintiff has no adequate remedy at law, the defendant waives the objection and cannot raise it at the trial. Mentz v Cook, 108 NY 504, 15 NE 541.

18. Lyons Mill Co. v Goffe & Carkener (CA10 Kan) 46 F2d 241, 83 ALR 501.

As to subjects of jurisdiction, see §§ 52 et seq., supra.

19. Matthews v Rodgers, 284 US 521, 76 L ed 447, 52 S Ct 217; Sullivan v Portland & K. R. Co. 94 US 806, 24 L ed 324; Hipp v Babin (US) 19 How 271, 15 L ed 633; Manning v Clark (Fla) 56 So 2d 521; Coast Co. v Spring Lake, 58 NJ Eq 586, 47 A 1131.

The court, for its own protection, may prevent matters purely cognizable at law from being drawn into equity at the pleasure of the parties interested. Brown, B. & Co. v