

them. In the other alternative, considering this contract as a bargain and sale, Henderson's administratrix is liable, as the holder of his personal estate, for the purchase money as one of his debts, for the payment of which, that part of his estate is primarily liable; and his heirs are liable, because the real estate itself, encumbered with an equitable lien for the payment of the purchase money, has passed into their hands; and also because of any other real estate of the intestate which may have descended to them, in case his personal estate may be found insufficient to pay his debts. But, it must be recollected, that the liability of each, and of all of these defendants is only in respect, and to the extent of the assets which may have come to their hands from the deceased contractor, who they thus far and no farther represent. But to the amount, that may be necessary to give to the plaintiffs complete and entire satisfaction, all the estate of John Henderson deceased in the hands of these defendants is liable, and no part of it can, by any act of any one, or all of them together, be disengaged from that liability without making to the plaintiffs a full and entire satisfaction. The Court may, in some cases, like this, so marshal the bearing of the liability, provided it be attended with no delay or risk to the plaintiffs, as to place its burthen equally upon every part, or upon that portion of the estate by which it ought first to be borne; but as every part of the estate of the deceased is liable for the whole claim of the plaintiffs, no portion of it can be discharged until they have \* been fully satisfied. Hence it is clear, that this contract as against these 254 defendants is as absolutely indivisible and incapable of being broken up into separate parts by them, or in their favor by the Court, as it was against John Henderson during his life-time.

It appears, that, of these five defendants, David English and Lydia his wife, alone have put in such an answer as the bill calls for; that after they had done so, and the bill had been amended, the defendant Richard Henderson filed a plea of the Statute of Limitations, to which answer and plea the plaintiffs put in a general replication; and that the order of publication has been published as required, so that the bill may now be taken *pro confesso* against the absent defendants Sarah Henderson and Janet L. Henderson. In this situation the case has been brought before the Court for a final decree upon the whole matter in controversy.

The defence of Lydia English, goes to the whole; because she admits, that such a contract as is stated in the bill was actually made, but avers, that it was satisfied; in other words she confesses and avoids the whole charge; and therefore, if her matter in avoidance be true, the plaintiffs can have no relief against her; because she would thus shew, that the whole claim had been actually satisfied. The defendant David English is passive; without expressly denying any thing, he admits nothing; and therefore,