* not take cognizance, because of its being improper to break in upon the regular course of legal proceedings more **274** than is necessary for the purposes of justice, it will prevent a party from taking an unequitable advantage of the Statute of Limitations, or any lapse of time at law. *Bond* v. *Hopkins*, 1 *Sch. & Lefr.* 430.

Defences resting upon the Statute of Limitations at law, or upon the same lapse of time in analogous cases in equity, seem to have been treated with a rather unsteady hand. They have been sometimes regarded as deserving much favor, while at other times they have been scowled upon as subterfuges, resorted to for the purpose of escaping from the real merits and justice of the case; and particularly so, where, as in this instance, such a defence has been relied on by only one of a plurality of defendants as a total bar to the whole cause of suit. But there cannot be, in reality, any such pliability in the general rules of law as will allow of their being bent and twisted in one way or other at the pleasure of any Court of justice by whom they may be administered.

Here, however, it is insisted by this plea, that neither this defendant Richard Henderson, nor John Henderson deceased, did at any time within three years, before the exhibition of this bill of complaint, promise or agree to pay, or satisfy the plaintiffs or James M. Lingan, any sum of money on account of the transaction in the bill of complaint mentioned. From which it would seem, that, although it is insisted, the whole cause of suit has been barred by the Statute of Limitations, yet, as this defendant Richard Henderson has denied, that he himself made any promise, his plea does thereby tacitly concede, that an acknowledgment of this cause of suit, made by himself or any other of his co-defendants, would take the case out of the Statute; upon the ground, that if such a plea from any one defendant would be a bar to the whole, then an acknowledgment by any one would revive the whole. And if so, then, apart from the defences of English and wife, as there is here a default and tacit admission of the whole by two others of these defendants, this plea of the defendant Richard Henderson can be of no avail to himself, or to any of his co-defendants. *Johnson* v. *Beardslee*, 15 *John. Rep.* 3.

If this position be tenable, then it is evident, that as in all cases, where the Statute of Limitations is not expressly relied on, it is considered as waived, it can in no case be received as a valid defence, where there is a plurality of defendants; unless each one, * or all of them together, expressly rely upon it. But, as has been shown, it is a well settled rule, in equity as well **275** as at law, that any defence coming from any one of a plurality of defendants, which goes to the whole, and shows, that the plaintiff has no cause of suit, effectually precludes the Court from giving relief in any way whatever against any other defendant, as well