

sideration, which is inseparably common to them all, in such case the decree would be palpably inconsistent which should grant relief against one and not against another, upon the ground that the same claim or consideration was good as to one and bad as to another. *Lingan v. Henderson*, 1 *Bland*, 236. But where several obligors have a ground of relief or defence of which all may take advantage, that relief or defence may certainly be asserted or waived by any one without prejudice to another of them. *Wheteroft v. Christee*, 4 *H. & McH.* 387. So here, if the consideration of this purchase had so failed as to enable both Walsh and Casenave to claim a return of the purchase money from Smyth and Lynch, the Court might grant relief, or sustain the defence of both, or of either Walsh or Casenave as against Smyth and Lynch; but as Smyth and Lynch must claim together under the same consideration, its invalidity must be established as to each, since the Court must, upon that ground, grant the same relief to both of them.

Hence as Walsh and Casenave might each be relieved separately without prejudice to the other, or to the interests of these defendants, it was not indispensably necessary, that they should both

26 * come or be brought before the Court as parties to this suit, although they might well have been permitted to sue together. *Finley v. Bank U. S.* 11 *Wheat.* 304; *Minor v. The Mechanics Bank of Alexandria*, 1 *Peters*, 47; *The Mechanics Bank of Alexandria v. Seton*, 1 *Peters*, 306.

It would seem from the little interest taken in the matter by Casenave, for it appears that he never swore to the bill nor joined in the injunction bond, that he was by no means very earnest in assuming the position taken by Walsh; and his administrator Walker, it would seem, had refused or neglected to concern himself about the affair in any way whatever. Upon the whole, I am of opinion, that this decree may well stand as it does, binding the interests of Walsh alone.

The petitioner asks to have the injunction reinstated and the case reheard, as a necessary means of protecting the interests which the creditors of his intestate have in the proceeds of a certain tract of land, in the manner described in the award exhibited by him. But, that award was made in a suit between Samuel Moale, trustee of James Walker, an insolvent, against Robert Walsh; and the conveyance directed by that award was to be made to that trustee of Walker; consequently, that trustee, and not this petitioner, is the representative of the creditors, who alone, by the terms of the award, are to be benefited by the continuance of the injunction. This petitioner is Casenave's administrator, he represents him alone, and is considered in equity as a trustee for the benefit of Casenave's creditors and next of kin. The award secures no benefit to them, but to the creditors of James Walker,