

a component part of the title relied upon by the surviving defendants, it may, in some instances, be expedient and proper to pass a decree upon the matter in controversy as to the surviving defendants, and to leave the separate interest of the deceased open to be afterwards brought before the Court at a more convenient season, or when required by his representatives. *Bressenden v. Decreets*, 2 Ca. Cha. 197; *East India Company v. Coles*, 3 Swan. 142; *Ferrers v. Cherry*, 1 Eq. Ca. Abr. 4; *Lingan v. Henderson*, 1 Bland, 236.

But here all the original defendants alike derive title under or in opposition to one and the same deed; upon the true construction **600** * of which all their titles must mainly depend; and therefore they have all of them been properly brought before the Court as parties. It is true, that any one of them might, under circumstances peculiar to himself, have been enabled to sustain his own pretensions alone; yet the deed of the 17th of August, 1797, being that foundation upon which the plaintiff plants his claim against all, an expression of the Court's opinion upon that deed, from what has been shewn, must necessarily and alike affect all; and the directions, upon that ground, have been given for taking the accounts. Hence, although the property in the hands of each defendant may be entirely distinct, and the *quantum* of liability of each may be different; yet the origin and foundation of the controversy is essentially and necessarily the same as to all. And, therefore, before the case can be suffered to proceed, the bill must either be dismissed or absolutely abated as to the claim of the deceased defendant Chittenden, or be revived against his representatives.

Whereupon it is ordered, that the foregoing petition be and the same is hereby dismissed with costs.

After the filing of a petition to make Harriet Chittenden a party, and she had been returned summoned as the administratrix and legal representative of the deceased defendant Nathaniel Chittenden, by a writing, signed by the solicitors of the parties, and filed on the 14th of May, 1832, it was agreed between the complainant and Harriet Chittenden, administratrix of Nathaniel Chittenden, deceased, that the petition filed against her should be dismissed; and the agreement heretofore entered into relative to the property in her intestate's possession be confirmed.

BLAND, C., 4th August, 1832.—This case standing ready for hearing and having been submitted by the plaintiff without argument, and no one appearing for the defendants before the close of the sittings of the term, the proceedings were read and considered.

It appears, that the auditor has, in all respects, made his estimates according to the principles, and in the manner directed by