

plainants, it was ordered, that a commission issue to the complainants' commissioners Thomas Russel, James B. Latimer, J. Spear Nicholas, and Robert Wilson, Jr., unless the defendants name and strike on or before the 27th of November, 1826. On the 28th of December, 1826, a commission was issued accordingly. A commission was issued on the 17th of February, 1830, to take testimony on the part of the plaintiffs, which was returned and filed on the 6th of March, 1830. Jared Bull, the only witness examined, stated, that in the year 1794, he went to Georgia as agent for the plaintiffs to examine and enquire into the title, situation and quality of the lands so purchased by them; that he could find no such warrants for some of the lands as represented by the vendors; that some of the lands were held by others under elder patents; and that other parcels of the lands were within the Indian Territory.

BLAND, C., 6th September, 1830.—This case standing ready for hearing, and having been submitted on notes by the solicitors of the parties, the proceedings were read and considered.

It is clear, that the purchase of the lands, which was the consideration of the several bonds, held by the defendants, must be taken as one entire and indivisible contract; although the bonds themselves are several, and have, for a valuable consideration, been assigned to and are now held by several distinct assignees. Consequently, if the consideration of those bonds is to be deemed a valid support for any one, it must, in like manner, be taken as a *sufficiently legal foundation to sustain them all; and that too, notwithstanding the default of the holders of any others **16** of them in not answering as warned by the order of publication. The power of the Court to take the bill *pro confesso* for the benefit of the plaintiff, upon a defendant not answering after a constructive notice by publication, must be taken to be subject to the nature of the case, and at its discretion; for otherwise, if the Court was bound, as in a case of this kind, to take the bill *pro confesso* as against an absent defendant who had failed to answer, then it might be compelled to pass a contradictory decree; to say, that as against one defendant the consideration of a bond was legal and valid; and yet as against another, that the same consideration was corrupt and utterly worthless. It is certain that peculiar circumstances, in a case like this, where the bonds had passed into the hands of several distinct assignees, might have given to the plaintiffs a separate ground of relief against one assignee which would not be of any avail against the holders of the other bonds. But here it is manifest, that all the bonds having the same common consideration, that consideration must be impeached as to all, or be allowed to stand as a legal support for all.