

The right of the bank, as founded upon the purchase of the title of Thomas Ellicott, is directly antagonistic to the title set up by the bill. All the pretensions of the complainant must be overthrown, before the bank's title can be set up, and if, therefore, the bank had joined in the bill as a complainant, the allegations must have been, not that the complainants were jointly or severally entitled, but that one or the other was entitled, and the question therefore is, whether parties having interests thus conflicting can unite in the same bill. That is, can a plaintiff say that I am entitled to the property in controversy, but if I am not, my co-plaintiff is?

In this case, it is manifest that if the parties who filed the bill, are entitled to recover, the Union Bank is not, and that if the latter is, the former are not, and they, therefore, must have said, if they had united in the same bill, that they or the bank, was entitled. This would have made it, in some respects, like the case of *Cholmondely vs. Clinton*, in 11 *Cond. Eng. Ch. Rep.*, 62, in which *Lord Eldon* said, that if "that was the nature of the record, it was a record quite singular and quite different from any he ever recollected, that two persons can come into this court, and say the title is either in me or you, each contending it is in himself, and bring before the court a defendant," and he asks, "is this the course of the court?" He further observed, that *Lord Redesdale's* opinion as declared in the house of lords, was, that a bill in equity with such an averment, could not be supported.

In the absence of opposing authority, and none has been produced, the opinion of *Lord Redesdale*, sanctioned, as it clearly seems to be, by that of *Lord Eldon*, must be regarded as conclusive.

But there are other objections to this application, on the part of the bank, growing out of the stage of the cause at which it is made. The answers have been filed, and commissions are out, under which it is understood a good deal of proof has been collected.

Now, by delaying the application until after the answers were filed, the defendants may be deprived, if the application