

indivisible contract, utterly incapable of being broken up into distinct parts. The subject of it, taken in either alternative, may be divided. The land may be reconveyed in separate parcels, and the purchase money may be satisfied in many small payments; but, yet the one original contract covers all, and can exist only as a whole. The parties themselves may alter, relinquish, or receive satisfaction for the whole or any part of it, at their pleasure; but, to the court, it is a sacred unalterable whole, which must stand or fall together.

A plaintiff cannot be permitted to put his case in the alternative, so as to evade any of those settled rules which have been established by the court for the protection of its suitors from unreasonable vexation; as by giving to his bill such a disjunctive frame and alternative prayers, as, that it may be treated either as a bill of review, or as a bill of revivor and supplement, so as thereby to elude the protective operation of those rules by which a party is restrained from filing a bill of review at his pleasure.<sup>(n)</sup> And as a plaintiff must state a clear case of equitable jurisdiction, much less can he be permitted to call on the court to act upon a hypothetical bill praying relief, either at law or in equity; since he must distinctly determine for himself whether his case is at law or in equity.<sup>(o)</sup> But it is not irregular to bring a bill in which the case, taken in any way, being within the jurisdiction of a court of equity, is stated in the disjunctive or with two different aspects; so that if the plaintiff fails to sustain by his proof the one alternative, he may, by authenticating the other, obtain the relief he seeks.<sup>(p)</sup> Here, however, the alternative presented to the court is that of a conveyance in trust; or an absolute sale, with an incident equitable lien; so that, whether the plaintiffs sustain by their proof the one alternative or the other, they have, by their bill, presented a case which, without invading any rule, comes entirely within the cognizance of a court of equity.

But the originally contracting parties were both of them dead when this bill was filed. The plaintiffs are the legal representatives of *James M. Lingan*, deceased; and the defendants legally represent the late *John Henderson*. The rights, as well as the liabilities, under this contract, have thus passed into other hands and devolved

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(n) *Perry v. Phelps*, 17 Ves. 176.—(o) *Edwards v. Edwards*, Jac. Rep. 335.  
 (p) *Cresset v. Kettleby*, 1 Vern. 219; *Bennett v. Vade*, 2 Atk. 325; *Jones v. Jones*, 3 Atk. 111.