

been fully satisfied. Hence it is clear, that this contract as against these defendants is as absolutely indivisible and incapable of being broken up into separate parts by them, or in their favour by the court, as it was against *John Henderson* during his lifetime.

It appears, that, of these five defendants, *David English* and *Lydia* his wife, alone have put in such an answer as the bill calls for; that after they had done so, and the bill had been amended, the defendant *Richard Henderson* filed a plea of the statute of limitations, to which answer and plea the plaintiffs put in a general replication; and that the order of publication has been published as required, so that the bill may now be taken *pro confesso* against the absent defendants *Sarah Henderson* and *Janet L. Henderson*. In this situation the case has been brought before the court for a final decree upon the whole matter in controversy.

The defence of *Lydia English*, goes to the whole; because she admits, that such a contract as is stated in the bill was actually made, but avers, that it was satisfied; in others words she confesses and avoids the whole charge; and therefore, if her matter in avoidance be true, the plaintiffs can have no relief against her; because she would thus shew, that the whole claim had been actually satisfied. The defendant *David English* is passive; without expressly denying any thing, he admits nothing; and therefore, unless the plaintiffs establish their claim, as set forth, they can have no relief against him to any extent whatever. The defendant *Richard Henderson* rests his defence upon a plea of the statute of limitations. This defence also goes to the whole. It admits, that although a contract may have been made as alleged, yet it has been barred by the lapse of the prescribed length of time; and therefore, if this plea be properly applicable to the case and true, the plaintiffs can have no relief against this defendant, *Richard Henderson*. But the defendants, *Sarah Henderson* and *Janet L. Henderson*, having failed to answer, the bill may be taken *pro confesso* against them, and any relief may be awarded to the plaintiffs which can, under their general prayer, be sanctioned by the nature of their case.

Whence this important question necessarily arises; whether the court, in any suit against a plurality of defendants, where any one of them makes, and sustains such a defence as goes to the whole, can pass a decree against any other of them, who has made no such defence, or as against whom the bill might otherwise be taken *pro confesso*?