

being one by which she confesses and avoids the cause of suit, it lays upon her to prove her allegations in avoidance; or otherwise, if the plaintiffs sustain their cause against the broad defence of her husband *David*, they must be relieved as prayed against both of them. Again, the defendant *Richard Henderson* pleads the statute of limitations; by the form of which he, in substance, avers, that, although the cause of suit might have once existed; yet, as the original contract had not been, in any way renewed by any recent acknowledgment or promise, it has been altogether barred by the prescribed lapse of time. If this be a plea properly applicable to the nature of this case, and if it be in fact true, then, as it goes to the whole cause of suit, and shows that it has been totally barred, the plaintiffs can have no relief whatever.

It is perfectly clear, therefore, from what has been said, that if either one of these three defences be sustained, the plaintiffs can have no relief; and that their bill must be dismissed with costs, notwithstanding it might otherwise have been taken *pro confesso* against the two defendants who have made default.

The plaintiffs have stated their case with a double aspect, so as to entitle themselves to relief in either of the alternatives upon which they rely. They have rested their case upon its being considered either as a conveyance in trust, or as a bargain and sale, leaving the purchase money unpaid. They have stated their case in this way, as they believe it to have been; but as a reason for not being more exact in every particular, they say, "of this, or of the terms of the contract, if any, they have not been able to discover any positive proof;" and thus admit, that their statements may be in some respects inaccurate; because they were not in possession of that information which would enable them to set forth their case with greater certainty; and therefore, they pray a discovery of the defendants. If then the statements of the bill were in any essential particular incorrect, the defendants should have objected to it on that account; but they have not done so; and therefore the plaintiffs are entitled to have their bill now regarded as entirely sufficient, so far as it sets forth a case which, in substance, entitles them to the relief they ask.(c)

There is no proof of any thing like a trust; therefore, that alternative view of the plaintiff's case may be at once put aside. The

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(c) *Carew v. Johnston*, 2 Scho. & Lefr. 305; *Wright v. Plumtre*, 3 Mad. 480; *Zane v. Zane*, 6 Mun. 406.