

common, and the course of the court, in that respect, is well settled. The court is involved in no contradiction or inconsistency by any such decree; as a defendant in equity can only be charged to the extent of his liability, so the court's decree against him must be modified accordingly. But as no one can be permitted impertinently to interfere with a matter by which he is not proposed to be, or obviously cannot be charged, a defendant cannot be allowed to direct any sort of defence against all or any distinct portion of the plaintiff's cause of suit in which his interests are not implicated, or by which he can be subjected to no kind of liability. Where, however, a defendant's liability is such, as principal or otherwise, that he must be charged by a decree which affirms the validity of the alleged cause of suit, then he may rightfully direct any defence against it which goes to shew, that neither he himself, nor any one of his co-defendants, ought to be charged by it; and if he succeeds in establishing such a defence, the plaintiff's bill must be totally dismissed.

Hence it is obvious, that this class of cases, in which the court may find it necessary or proper, because of their peculiar circumstances, to pass a separate, a reciprocal, a direct, or an inverted decree, do in reality present nothing which can fairly or in any way be considered as an exception to this general rule.

But where two or more persons have been bound by the contract upon which the suit has been brought, and one of them pleads the statute of limitations in bar, it has been said, that an acknowledgment made, within the limited time, of its then existing validity by such defendant, or by any other of his co-defendants, will take the case out of the statute. The adjudications in relation to this matter are various and contradictory. Therefore, without attempting to reconcile them, it will be sufficient to trace out the reason of the law so far as it is believed to be properly applicable to this and all such cases in equity.

To constitute a valid contract of any description, it is indispensably necessary that the parties should be competent to contract; and being so competent, that they should all of them, in the manner prescribed by law, understandingly have given their free consent to the contract in question. In general, when the contract purports to be the obligation or promise of two or more persons, it must be shewn, that each one of them distinctly gave his consent to it, and thereby actually and in terms for himself became so