

the lapse of time, nine years since the abatement, should be taken into consideration. (k)

But here the abatement took place more than thirty-two years ago, and there is strong reason to believe, that *James Walker*, the administrator of *Casenave*, must have known of the institution of this suit; because it is stated in the award exhibited by the petitioner, that the bonds, the consideration of which was the subject put in issue by this bill, 'were given by the said *Robert Walsh* as agent of the said *Casenave & Walker*, of whom the said *James Walker* was surviving partner.' Considering *Walker* then as administrator, as surviving partner, and as joint *cestui que use* with *Casenave*, the presumption seems to be conclusive, that he must have been fully aware of the situation of this suit, and of the extent to which his and *Casenave's* interests were likely to be affected by the continuance, or dissolution of the injunction. *James Walker*, therefore, could not have had any plausible pretext for asking, at this time, for any farther indulgence, or to be allowed to come in and sustain the equity upon which the injunction had been granted. But *Walker* has been dead more than twenty years; and, during all that time, and when this decree was passed, there was, in fact, no one to whom notice could have been given by these defendants to revive, or have the injunction dissolved. A notice entered on the docket would have been nugatory and a mere waste of time. So that if it could not have been dissolved without notice of any kind, after such a lapse of time, it must have been allowed to stand, in effect, as a perpetual injunction. I am therefore of opinion, that under such circumstances the great lapse of time must of itself be deemed a sufficient ground to entitle any of the surviving parties, or the representative of a defendant, to claim and move for an immediate and total dissolution of the injunction. (l)

It has been urged, however, that as *Casenave* was originally a party with *Walsh* in this bill by which they jointly asked to have *Smyth* and *Lynch*, the vendors, decreed to refund the purchase money which had been paid to them, on the ground, that the consideration of the whole contract was fraudulent and had failed, his representative was therefore a necessary party, without whom there could be no valid decree or regular dissolution of the injunction.

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(k) *Griffith v. Bronaugh*, 1 Bland, 547.—(l) *Willis v. Yates*, 8 Cond. Cha. Rep. 512.