

But, although they might be allowed to join, it was not indispensably necessary that both *Walsh* and *Casenave* should have been originally made parties to this suit. The consideration of all the bonds was certainly one and indivisible, as regarded all the defendants who held and claimed payment of them; and that consideration, being joint, when put in issue, must stand or fall as regards them all. The relief, however, asked by *Walsh* and *Casenave*, was not so necessarily and indissolubly conjoined; they did not derive their title through a conveyance from several, some of whom were not parties to the suit; (m) nor did they or either of them ask the distribution of a fund in which they or either of them, with others, claimed a right to participate. (n) Either of them, without prejudice to the other, might have waived the benefit of any substantial ground of relief in this case, of which, both might have taken advantage. If their bonds had been tainted with usury, a plea of usury sustained in favour of one would not, of itself, be a bar to a recovery against the other, who did not choose to rely on any such defence. (o) Where a party rests his right to relief or recovery against several upon the validity of a claim or consideration, which is inseparably common to them all, in such case the decree would be palpably inconsistent which should grant relief against one and not against another, upon the ground that the same claim or consideration was good as to one and bad as to another. (p) But where several obligors have a ground of relief or defence of which all may take advantage, that relief or defence may certainly be asserted or waived by any one without prejudice to another of them. (q) So here, if the consideration of this purchase had so failed as to enable both *Walsh* and *Casenave* to claim a return of the purchase money from *Smyth* and *Lynch*, the court might grant relief, or sustain the defence of both, or of either *Walsh* or *Casenave* as against *Smyth* and *Lynch*; but as *Smyth* and *Lynch* must claim together under the same consideration, its invalidity must be established as to each, since the court must, upon that ground, grant the same relief to both of them.

Hence as *Walsh* and *Casenave* might each be relieved separately without prejudice to the other, or to the interests of these defendants, it was not indispensably necessary, that they should both

(m) *Dandridge v. Washington*, 2 Peters, 376.—(n) *Hunt v. Wickliffe*, 2 Peters, 215.—(o) *Selwyn's N. P.* 582.—(p) *Lingan v. Henderson*, 1 Bland, 286.—(q) *Whetcroft v. Christee*, 4 H. and McH. 387.