

sufficiently legal foundation to sustain them all; and that too, notwithstanding the default of the holders of any others of them in not answering as warned by the order of publication. The power of the court to take the bill *pro confesso* for the benefit of the plaintiff, upon a defendant not answering after a constructive notice by publication, must be taken to be subject to the nature of the case, and at its discretion; for otherwise, if the court was bound, as in a case of this kind, to take the bill *pro confesso* as against an absent defendant who had failed to answer, then it might be compelled to pass a contradictory decree; to say, that as against one defendant the consideration of a bond was legal and valid; and yet as against another, that the same consideration was corrupt and utterly worthless. It is certain that peculiar circumstances, in a case like this, where the bonds had passed into the hands of several distinct assignees, might have given to the plaintiffs a separate ground of relief against one assignee which would not be of any avail against the holders of the other bonds. But here it is manifest, that all the bonds having the same common consideration, that consideration must be impeached as to all, or be allowed to stand as a legal support for all.

In this case some of the defendants have answered and others have failed to answer after publication; and all the allegations of the bill which would, if admitted or established, entitle the plaintiffs to the relief they ask, have been denied by the answers of the responding defendants, and have not been sustained by the proofs; therefore, as to them, that consideration which is common to all the bonds remains valid and unimpeached. But the same consideration cannot be deemed valid in favour of one as to the whole purchase money, and utterly invalid as regards another claimant, who rests his pretensions altogether upon the same consideration. Hence, as this consideration has been sustained by the responding defendants, it must be deemed valid as to all, although the bill might, in other respects, have been taken *pro confesso*, as against those who have not answered, and therefore the plaintiffs can obtain relief against none of these defendants. (b)

(b) *Lingan v. Henderson*, 1 Bland, 236.

DORSEY v. DORSEY.—The bill stated, that Edward Dorsey had given his bond to Ely Dorsey for the payment of £42 15s. 1d.; that the bond was lost; that the claim had been assigned to the plaintiff; that the obligor was dead; that his personal estate had been exhausted in the payment of his debts; and that he had devised his real estate to the defendants, in whose hands the bill prayed that the real assets