the stateness of the claims would have bein a good ground of defence even if the length of time should not have been expresly pleaded or relied on.

But taking it as a fact, that the right, being in the State prevented any application to the heirs for a conveyance, let the present suit be considered as if brought by James Clarke on his bond of conveyance and that he had made no assignment thereof The State having a beneficial interest in the property acquired by confiscation is competent to use every defence that could be set up by the original owner or in other words the complainants can have no greater or better remedy against the State than they could have against the person whose title hath devolved upon the State

But there is another consequence which would have flowed from the suit being instituted by James Clarke — He would have been obliged to prove by competent testimony the allegations in his bill, and the several facts stated by him at present as a witness could only have been charged by him as a complainant.

It is to be observed also that altho he had assigned his interest in the bond of conveyance, yet if it was done for a valuable consideration, he might have joined in the bill as a Co plaintiff with the others in order to perfect that interest by procuring a grant from the State, and that it could not be absolutely necessary to make him a defendant to a suit which he appears so ready to promote and assist — Whether the property has been held by the complainants or taken by the State does not appear, but it is to be observed also that it is not shewn that before the assignment to George French in April 1790 any application was made by James Clarke to the heirs of Thomas French or to the State for any of the said lands, or that before June 1803 any application was made by him for the lands assigned to Susana French. But James Clarke having parted with his interest in the bond of conveyance, the right of the complainant derived from his assignment is not to be inquired into — and it was urged for them in the argument that the State ought not to object to the want

of a consideration from them, James Clarke having paid the full consideration, and they being intitled as his assignees — This might have bein more plausibly urged if as before observed they had been made Co plaintiffs, but as they claim by themselves under the assignment, a consideration is necessary to make that assignment valid even against Clarke, whose right must be intended to be affected by his being made a defendant — Accordingly the bill states that in April 1790 he assigned his right in certain tracts to George French for a valuable consideration, and on the 6th of June 1803 assigned over the residue of his interest in the bond to Susana French, meaning probably that the last assignment was also made for a valuable consideration

The answer of James Clarke admits that the assignments were made as set forth which would seem to dispense with the necessity of any proof of the consideration but here, the answer must be taken according to the situation in which he stood and to the character of the transaction as having been bona fide or colourable and fraudulent.

The answer of James Clarke is short but comprehensive. It admits every thing to be true as stated, and among the other admissions says. True it is that the said assignments have been made by him as set forth, altho he has not thought it necessary to state therein what were the considerations therefor. His testimony under the first commission is not resorted to for any certain explanation of those points, because from the manner in which it was taken it is not considered as regularly before the Court or to be evidence in the cause

There is another admission in the answer which is contradicted by his evidence taken under the last commission which is considered regularly before the Court subject only to exceptions to its credibility arising from the circumstances of the case, no positive interest appearing to render the defendant incompetent as a witness.

The answer states that the lands have been in possession of him and those claiming under him, and that the taxes due thereon have been as he believes paid by him and them respectively and in his testimony under the last commission he says that he never saw the lands, but always considered himself the owner of them from the date of the bond until the Assignments, and that he