

further proof of the intention, the grant or being indebted at the time.

A third ground is, that the deeds were made to confirm gifts before made to the children, or in consequence of their being settled on the lands which their father had intended to give them. On this ground the Chancellor does not perceive, from the evidence, any acts or declarations, that would have obliged Charles Penn, the father to make the conveyances; and even if he had gone so far as to make them, and had kept them in his power, it would not have bound him.

The other ground, of the payment having been made to Deakins, is not supported by the testimony:

The Chancellor is, therefore, of opinion, that the complainants are entitled to relief against all the defendants; but the manner, and the proportion in which they ought to contribute, he has not considered; nor the specific manner of granting the relief; both which will be determined, on the counsel for the complainant preparing a decree.

Nathan Waters, and Evan Gaither were named as defendants in the bill. There are no answers by them, and it is not perceived how they are disposed of, although Evan Gaither's will is among the papers.

After which, the case was again brought before the Court by the plaintiffs, who asked for instructions as to the form of the final decree.

KILTY, C., 18th September, 1811.—The Chancellor has again examined the papers in this suit. It appears that Penn and Waters were equally liable; whether as principals in the bond to Gwinn, or as sureties. Waters was not taken on the writ against him, but his property might have been made liable.

\* The appeal bond was given on account of Pigman, and a similar bond on account of Penn; but the payment was made on a judgment on the appeal for Pigman, and the relief is prayed on the ground of substitution for Gwinn. 33

The object of the bill was to affect the land conveyed by Penn; and also that conveyed by Waters to Evan Gaither, who was made a defendant. And the prayer was, that the aforesaid defendants might respectively pay, and contribute in satisfaction of the money paid by the complainants, such sums as might be proper.

The defendant, Gaither, is since dead, and has devised the lands in question to the defendant, Waters, and his wife, Susanna Waters, the sister of Gaither. Waters has not appeared; and an attachment, renewed in April last, for his appearance, has been returned *non est*.