

GOVER, *et al.* vs. HALL, Ex'r. of GARRETT, &c.

1810.

JUNE.

Gover
vs
Hall

APPEAL from a decree of the Court of Chancery. By the record it appears, that a bill was filed on the 15th of June 1772, by *Amos Garrett*, in his own right, and as administrator, with the will annexed, of *Peter Dicks*, against *Jacob Giles*. The objects of the bill being stated in the decrees of the chancellor, and in the opinion delivered by this court, they are here omitted. A *subpena* and injunction issued, as prayed for by the bill. At May term 1774, the defendant put in his answer, to which at May term 1782, the complainant excepted, and in 1784 the chancellor ruled the exceptions good, and ordered the defendant to make a more full and perfect answer. The death of *Giles* was afterwards suggested, and a bill of revivor filed against his executors, devisees and representatives. The executors answered, and in 1785 a commission issued by consent to certain persons to audit the accounts between the parties. In 1789 the death of *Garrett* was suggested, and a bill of revivor filed by *Benedict Edward Hall*, as executor of *Garrett*, and as administrator *de bonis non* of *Dicks*, against the executors, devisees and representatives of *Giles*. In 1790 the auditors made their report. Commissions issued, and testimony was taken and returned. In February 1796 an amended bill of revivor was filed by the complainant, stating that the original bill was filed on the 2d of December 1771, against *Jacob Giles*, and against *Nathaniel Giles*, in his own right and as administrator of *John Giles*, which, on the death of *Jacob*, was revived against his executors, &c. who have become parties. That *Nathaniel* never answered, and is now dead, and his executors are also dead, and no administration on his estate, but that he left four daughters his representatives. That

On a bill in chancery filed in 1772 by one partner, in his own right, and as administrator of another partner, against a third partner, to be relieved on the ground of fraud and imposition against a bond passed by the complainant, on a settlement of the partnership accounts, to the defendant, in 1750; to have an account of the profits of certain works carried on in partnership from 1751 to 1765; and, as representative of the other partners, to have an account of the share of profits, from which that partner was arbitrarily excluded, during the same period. Held, that from the facts in the case, the settlement in 1750 must be taken to be fair, and if liable to any exceptions, it can only be on the ground of error or mistake; and the complainant can now only be permitted to surcharge and falsify, and that no further than the specifications in his bill. The *onus probandi* is on him, and after a voluntary settlement by the parties themselves of long and intricate transactions, which cannot now be fully known or unraveled; the

lapse of nearly 16 years from the time of the settlement, to the filing of the bill; the frequent payment of money upon the bond passed on the settlement, and the death of the only material witness—the surcharge or falsification must be clearly demonstrated and proved before it can be allowed—and from a strict examination of all the proofs, it does not appear that there were any errors or mistakes in the settlement, or that the complainant was in any manner injured. That with respect to the other partners, (for whom profits are claimed by the complainant as his administrator,) it appears that he was left out of the new partnership of 1753, when an account was opened against him, in which he was charged with his proportion of the money advanced by the other partners in the former partnership; that he made considerable payments in money on that account, and in 1754 gave his note for the balance, which was paid to the order of the complainant, and his account closed. He died in 1760, and never claimed any interest in the partnership after 1753, and there is no evidence that he considered himself, or was considered by others as a partner. After which acquiescence and lapse of time, a court of equity will presume that his interest was relinquished.

Where the court of appeals reversed a decree of the court of chancery, and directed that the defendants account with the complainant, and that the chancellor have the account stated by the auditor &c. which having been done, and a decree passed for payment of the sum stated to be due from the defendants to the complainant:—an appeal lies from such decree to the court of appeals.

An act of assembly directing the court of appeals to hear and determine the matter of a former decree of that court.

An appeal lies from an interlocutory decree of the court of chancery.