

1810.

Gover
vs
Hall

for the years 1754 and 1755, he was informed, they were sunk by the debts, and that the lands and works were involved beyond their value—that at the time of the settlement in 1756, *Giles* had in his possession a memorandum book, showing the clear profits of the works for the years 1754 and 1755, to exceed £4000—that on his objecting to enter into a settlement on an account produced by *Giles* for that purpose, *Giles* abused him, and threatened him with a gaol, and that he was obliged to throw himself upon his mercy, and without examining the books or accounts, and ignorant of the state of the concern, he entered into the settlement and bonds of 1756—are all positively denied in the answer, and wholly unsupported by any proof exhibited in the cause. Nor is it probable that *Garrett*, who was a sensible discerning man, would under such circumstances of suspicion have entered into a settlement without an inspection of the books, which he was entitled to, when he could not suffer by delay, and it was not in the power of *Giles* to coerce him. Moreover, the circumstances that *Caldwell* was present and assisted at the settlement; that *Giles* offered to refer the whole business to arbitrators, who he knew would only act upon an inspection of the books; that after the settlement, he passed his bond to rectify mistakes, and continued *Garrett* in his employment as a clerk, until the year 1769, and thus put it in his power to discover the frauds and errors if any existed; that all the instruments of the 12th of March 1756, are in the handwriting of *Garrett* himself, and that he made frequent payments on his bond, irresistibly force the presumption that no fraud, violence or imposition, was practised.

The settlement then of the 12th of March 1756, 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 the 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 unravelled, the lapse of nearly sixteen 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 *Caldwell*, the only material witness, the