

1810.

Gover
vs
Hall

when, if he continued a partner, he would have been entitled, under the contract, when it did become due, to set off against it his proportion of the profits of the works, a court of equity will presume that his interest was relinquished.

Upon the whole, therefore, I am of opinion, that *Benedict Edward Hall* ought not to have an account of the profits of the works either in right of *Garrett* or *Dicks*; and that the decree of the chancellor of the 28th of November 1803, ought to be REVERSED, and his decree of the 22d of December 1797 AFFIRMED; and that the respective parties in this appeal, and in the appeal before the late court of appeals, pay their own costs by them incurred and expended in the court of chancery, in the late court of appeals, and in this court.

EARLE, J. Concurred in the statement of facts, the reasoning and opinion of Judge *Buchanan*.

GANTT, J. also concurred, except that he considered the decree of the chancellor of the 22d of December 1797, erroneous, so far as a perpetual injunction was decreed against the bond from *Garrett* to *Giles*, and that this court ought to dissolve that injunction.

NICHOLSON, J. I am opinion in this case, that *Benedict Edward Hall*, as executor of *Garrett*, is not entitled to an account, there being no such circumstances of fraud disclosed as ought to induce the court to open a settlement voluntarily made by the parties sixteen years before the bill was filed.

I am of opinion, that *Benedict Edward Hall*, as administrator of *Dicks*, is entitled to an account, as it does not appear to me that the evidence in the case is sufficient to warrant the conclusion that *Dicks* ever withdrew from the concern. Thinking, as I do, that *Dicks'* administrator is entitled to an account of stock and profits, the necessary consequence is, that I should decree the whole costs to be paid by *Gover* and wife. But as the other members of the court disagree with me in regard to *Dicks'* claim, and as to costs, it follows that I cannot sign the decree of the court.

THE DECREE OF THE COURT. The arguments of counsel in this cause having been heard, and the bill, answers, and the proceedings in the case, read and considered, the