

Before a decree can be made, some further proceeding is necessary. Either, that Waters should, on application for amendment, be struck out of the bill, if the complainant's counsel should think it safe and advisable to make such an application; or, that he should be compelled to appear; or the necessary orders be applied for, and passed for taking the bill, as against him, *pro confesso*; and also, that his wife, the other devisee, should be made a party in order to have her interest in the land affected. After which the decree should be for a sale of the interest of Waters and wife for half of the debt; and Penn's for the other half, in the first instance. but leaving each eventually liable for the whole.

On the 19th of September, 1811, the plaintiffs filed a bill of revivor, in which they stated, that Evan Gaither was dead, and by his will had devised his interest in the property in dispute to Nathan Waters and Susanna his wife; against whom the plaintiffs prayed relief, a subpoena, &c.

KILTY, C., 24th March, 1812.—This case had been submitted on notes; but was considered by the Chancellor as not ready for decision for the reasons stated in his order of September 18th, 1811.

Since that time process has issued against Nathan Waters and Susanna his wife; and, such of the parties as appeared have been heard by their counsel at the present term.

The Chancellor finds no reason to change the opinions, which he had formed, and which were expressed by him in his order above referred to; and by his remarks in writing, dated the 1st of May, and the 18th of September, 1811; and will proceed to decree accordingly.

34 * Since the order of May 1st, 1811, a bill of revivor has been filed by the complainants, Hoyer and Stoddart, against Nathan Waters and Susanna his wife, devisees of Evan Gaither, whose death is therein stated. The death of Susanna has since been suggested on the docket; but her interest is considered as surviving to Nathan Waters; and, against him there has been an attachment, with proclamations, which enables the Chancellor to take the bill *pro confesso* against him.

With respect to the sums due, the Chancellor is of opinion, that as there was no decree to account, but only an agreement of the parties to have the sum due stated; the sum of £459 9s. 7½d., charged as interest in the auditor's statement, ought not to be made principal as is usual in other cases.

It is thereupon decreed, that the bill of the complainants, against Nathan Waters, be taken *pro confesso*. It is further decreed, that the real estate, stated in the bill to have been con-