

urged, that it has not been shewn, that Eleanor Dawson has received her share of the estates referred to in the codicil.

But I am of opinion, that it was the intention and meaning of this testatrix by that codicil merely to declare, that Eleanor Dawson should not be hindered, obstructed, or impeded in obtaining the benefit of the estates referred to, by any positive or active interference of the legatee Margaret R. Clerklee; and not that Margaret R. Clerklee should actually aid and assist Eleanor Dawson in obtaining her rights, and see that she received her full share of those estates. And consequently, that it lays upon the defendant Eleanor Dawson to prove, that her right has, in fact, been contested; and that she has been hindered and prevented by Margaret R. Clerklee from obtaining her full share of the estates spoken of in the codicil. So far, however, from there being any proof of that kind, the testimony is full and conclusive, to the extent it goes, that she has met with no impediments whatever; but **292** on the * contrary, has had every assistance, that could be given, or was necessary; and has, in fact, recovered her full share of those estates wherever it appears she had required or demanded it. There is then not the least foundation, in point of fact, for this defence resting upon the conditional bequest over to Eleanor Dawson.

The defendant Elizabeth Clerklee, having attained her full age, is now in a situation to demand and receive that proportion of this legacy which has vested in her. By her answer she avers, that she has nothing to do with this bill as a defendant; and prays that it may be dismissed, and such other benefit afforded her as may seem meet. All persons having the same interest, should stand on the same side in this suit; but if any one, identified in interest with the plaintiff, refuses to appear as a plaintiff, he may be made a defendant, by stating in the bill that he refused to concur as plaintiff, or by stating the nature of his interest, as in this instance. *Calvert on Parties*, 11. For it is well settled, that the Court not only may, but must as a duty, decree between co-defendants, where the matter comes fully before it, and a case is fully made out between them; so that the whole controversy may be finally and at once closed. *Chamley v. Lord Dunsary*, 2 *Scho. & Lefr.* 709, 718; *Taliaferro v. Minor*, 2 *Call*, 190; *Harwood v. Ogländer*, 8 *Ves.* 123; *Colegate D. Owings' Case*, 1 *Bland*, 404. Therefore the defendant Eleanor Dawson will, in addition to the shares of this legacy due to the plaintiffs, be directed to pay this share now due to her co-defendant Elizabeth Clerklee.

It now sufficiently appears, that of the six children of the late Margaret R. Clerklee, four have been entitled, according to the terms of the bequest, to take the whole of this legacy in case the two, who are now infants, should die under age and before they