

plaintiff is charged, but that they have done so, and indulged and settled with *Harding*, who was the principal debtor, in a manner

produce in court all the aforesaid books, papers and documents, if in their possession or control; or if not, that they state particularly what has become of them, and in whose possession or control they now are.

11th February, 1811.—KILTY, *Chancellor*.—The Chancellor has considered the within petition. The order prayed for cannot be made without a compliance with the requisites of the act of 1798, *ch.* 84.

After which one of the plaintiffs, Williams, filed his affidavit of the truth of the facts and allegations stated in their petition, asking for the production of books and papers.

15th February, 1811.—KILTY, *Chancellor*.—On considering again the within petition, together with the affidavit now annexed thereto: it is required and decreed, that David Stewart and David C. Stewart, defendants in the suit referred to, in the said petition, do forthwith produce to this court, the following books and papers, viz.: The ledger of David Stewart & Son, from the year 1799, till the dissolution of their partnership, &c. &c. or that they forthwith produce to this court copies of the said several books and papers certified by a justice of the peace; if the said books and papers respectively are in their possession or power. Provided, that inasmuch as the application is made by petition, and not by motion in court; any motion or cause shewn against this requisition and decree will be heard at any time during the first week of the ensuing February term.

A solicitor of the defendants having been heard in shewing cause against making this order absolute:

25th March, 1811.—KILTY, *Chancellor*.—During the present term, cause was shewn by R. G. Harper, counsel in this suit for Hall and Stewart, against the above decree; but on considering the argument urged by him, the Chancellor does not think the cause shewn to be sufficient against the said decree, which therefore remains absolute except as to the time of producing the said books and papers. Provided, that a copy of this order and of the said decree be served on the said D. Stewart and D. C. Stewart, or either of them, before the 10th day of April next.

On the 25th of July, 1811, David Stewart by his petition, on oath, stated, that the firm of David Stewart & Son being embarrassed in their commercial concerns, transferred all their property, estate and effects, including their books, papers, letters and accounts of every description, to Elias Ellicott, William Winchester, and John Munnykhsin who is since deceased, in trust for the benefit of their creditors; that David Stewart was appointed by them their agent to settle the affairs of the firm of David Stewart & Son, and in that capacity he has ever since held possession of those books and papers; that Ellicott the trustee objects to the removal of them; and therefore this defendant David Stewart submits, whether they are so far in his possession and control as to enable him to comply with the requisition.

25th July, 1811.—KILTY, *Chancellor*.—The Chancellor has already passed such orders on the subject mentioned in the within petition as he thought proper. If the books and papers were in the possession of any other person, he would be ordered to produce them. The sentiments expressed by Elias Ellicott, and his unwillingness to have the books removed, can have no effect on the court, and are not proper to be stated as an excuse for not complying with the order thereof.

After which the defendant having failed to produce all the papers as ordered:—