

The appeal bond was given on account of *Pigman*, and a similar bond on account of *Penn*; but the payment was made on a judgment on the appeal for *Pigman*, and the relief is prayed on the ground of substitution for *Gwinn*.

The object of the bill was to affect the land conveyed by *Penn*; and also that conveyed by *Waters* to *Evan Gaither*, who was made a defendant. And the prayer was, that the aforesaid defendants might respectively pay, and contribute in satisfaction of the money paid by the complainants, such sums as might be proper.

The defendant, *Gaither*, is since dead, and has devised the land in question to the defendant, *Waters*; and his wife, *Susanna Waters*, the sister of *Gaither*. *Waters* has not appeared; and an attachment, renewed in April last, for his appearance, has been returned *non est*.

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 *subpœna*, &c.

24th March, 1812.—KILTY, Chancellor.—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.