

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 the 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. (t) 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. (u) 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 have been married; and consequently as to those two-sixth parts of this legacy it is now ascertained, they must certainly go to the two infants, on their becoming qualified to take; or equally among the four in whom the interest in the legacy has already vested. And therefore these children have now such a contingent interest in the preservation of those two shares as entitles them to ask the aid of this court in having them placed in a state of security until the happening of those events which are to determine to whom they are to be paid.

As between these plaintiffs and the defendant *Eleanor Dawson*, and also between her and her co-defendants, the children of the

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(t) Calvert on Parties, 11.—(u) Chamley v. Lord Dunsary, 2 Scho. & Lefr. 709, 718; Taliaferro v. Minor, 2 Call. 190; Harmood v. Oglander, 8 Ves. 123; Colegate D. Owings' Case, 1 Bland, 404.