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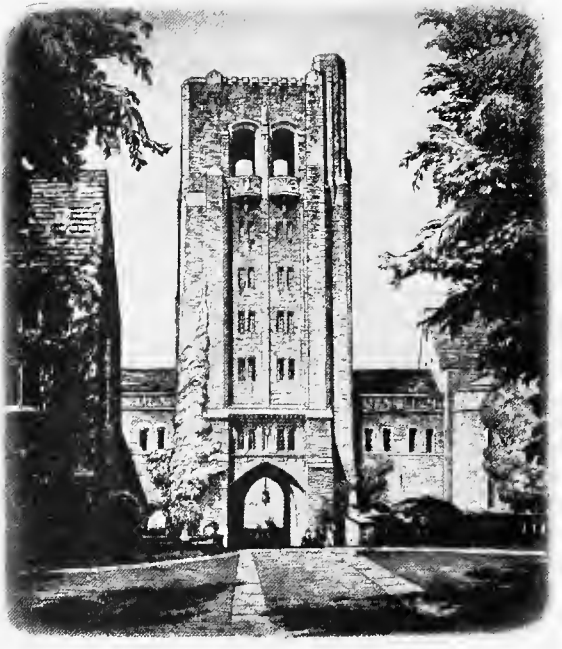

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EQUITY IN PENNSYLVANIA.

A LECTURE

DELIVERED BEFORE THE

LAW ACADEMY OF PHILADELPHIA,

FEBRUARY 11, 1868.

BY

WILLIAM HENRY RAWLE,

ONE OF ITS VICE PROVOSTS.

WITH AN

APPENDIX,

BEING THE

REGISTRAR'S BOOK OF GOVERNOR KEITH'S COURT OF CHANCERY.

PRINTED FOR THE LAW ACADEMY.

PHILADELPHIA:
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PHILADELPHIA:

COLLINS, PRINTER.

Extract from the Minutes of The Law Academy.

Resolved, That a Committee be appointed to wait upon William Henry Rawle, Esq., to request him to permit the publication of his Address delivered before The Law Academy on the 11th inst:—and further,

Resolved, That the Record of Governor Keith's Court of Chancery be published as an appendix to Mr. Rawle's Address.

Feb. 12, 1868.

SIR,

The undersigned, a Committee appointed by The Law Academy, respectfully solicit of you for publication your Address delivered before that body on Tuesday evening, February 11th.

SAML. S. HOLLINGSWORTH,
W. W. WILTBANK,
GEO. W. SPIESE,
Committee.

Feb. 13, 1868.

TO WM. HENRY RAWLE, ESQ.,

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710 WALNUT STREET,
PHILADELPHIA, February 17, 1868.

GENTLEMEN,

I send you the manuscript of my Address before The Law Academy, in compliance with your request.

Through the kindness of the Attorney-General, the consent of the State Department to the publication of the Registrar's Book has been procured.

Very respectfully yours,
WM. HENRY RAWLE.

MESSRS. SAML. S. HOLLINGSWORTH,
W. W. WILTBANK,
GEORGE W. SPIESE,
Committee, &c. &c.

ADVERTISEMENT.

After the manuscript of this lecture had been given to the Law Academy, it was suggested that the interest of its subject might warrant a more extended publication than the limited number of copies printed for the use of its members. The Committee of the Academy has, therefore, made such an arrangement with the publishers as enables them to present the lecture in this form to the profession.

EQUITY

IN

PENNSYLVANIA.

More than forty years ago, the Provost and Vice-Provost of this, our Law Academy, appointed as the subject of a dissertation to be prepared during vacation, "Equity in Pennsylvania"—under which head were to be considered the nature and extent of the Chancery Powers of our State Judiciary, and the manner in which they were exercised. "The subject is to be treated," said the Faculty, "in an historical as well as legal point of view, and the whole reduced to a system under proper divisions. The question whether, in Pennsylvania, a separate court of chancery is indispensably necessary, is to be considered, and in case the writer maintains the negative, he is to point out the manner in which it may be supplied."

The modest essay which, in answer to this call, was submitted by a student at law in his twentieth year, now forms part of our legal literature. Its merits have been recognized on both sides of the

Atlantic; it is read by every student; and you gentlemen of the Law Academy, have especial reason to be proud that the "Essay on Equity in Pennsylvania, by Anthony Laussat, jr.," claims its origin as an academical exercise of your Institution. The author of the essay, and those who then composed the faculty, sleep in their honored graves; another generation, and still another, have succeeded them, and the system itself, which, in this little book, was so clearly traced and so ably defended, has also yielded to the advance of time. There may, therefore, in answer to your kind invitation to address you, be a peculiar propriety in attempting to take up, even though, *longo intervallo*, the subject which has never since received a connected consideration.

All of you are aware of the wide distinction between equitable principles, and equitable jurisdiction—between the doctrines of equity, which, at this day, are not less consistent and harmonious than are those of the common law, and the peculiar means by which they are enforced through the process of a court of chancery. It has fallen to the lot of Pennsylvania, through necessity, to have blended together, in a single tribunal, equitable principles and equitable jurisdiction, and to have dispensed those *principles* through the medium of common law forms. The administration

of justice has, under this system, grown up from its youth to its manhood, and now, after a century of trial, while we still retain that system, we have, of late, gradually but liberally, vested in our courts equitable *jurisdiction*, to be exercised according to the course and practice of chancery. Thus, at the end of a century, we have, by our course of legislation, frankly acknowledged that to dispense equity through such remedies alone as the common law affords must, in many cases, amount to a denial of justice.

It is not a little singular that upon the other side of the Atlantic—in that country from which we derived our laws—it has at last been acknowledged that to administer equity in a court of equity alone, and solely according to the course and practice of chancery, must, in many cases, be equally a denial of justice. Thus, while legislation has, in the one country, been directed to the administration of equitable principles in a court of equity, it has, in the other, been directed to the administration of those principles, in certain cases, in the courts of common law. And thus both countries have, after a long trial of each system, approached each other, though over widely different roads. It cannot be unprofitable to follow the path which has thus been trod by our ancestors, and by those of our own time.

Years before Charles the Second, in 1681, granted by his charter to William Penn the Province of Pennsylvania, chancery jurisdiction seems to have been, in some fashion, exercised over it and the other provinces by their governor.*

It is familiar to all of you that, by the express provisions of that charter, the proprietary received authority to appoint any judges, magistrates, and other officers, for such causes, with such powers, and in such form as to him or his heirs should seem most convenient,† and it was provided that the laws for regulating and governing property within the province "as well for the descent and enjoyment of lands, as likewise for the enjoyment and succession of goods and chattels, and likewise as to felonies," be and continue the same as they

* Hazard's Annals of Pennsylvania, 424; Records of the Court of Upland, 40. There were then about four thousand persons under the government of New York on both sides of Delaware Bay and River. In 1676, Sir Edmund Andross granted, in New York, an injunction to stay execution on a judgment at law in the court of New Castle, upon security being given, "and all proceedings, writings, and proofs to be transmitted to New York for a final determination in equity."—*New York Records*, cited in HAZARD, *supra*.

† Charter of 4th March, 1681, § 5. The section goes on to say, "and to do all and every other thing and things which unto the complete establishment of justice unto courts and tribunals, forms of judicature and manner of proceedings do belong, although in these presents express mention be not made thereof; and by judges by them delegated, to award process, hold pleas, and determine in all the said courts and tribunals, all actions, suits, and causes whatsoever, as well criminal as civil—personal, real, and mixt."

were by the general course of law in England until the said laws should be altered by the proprietary and freemen of the province.*

This charter would, therefore, by its terms, have allowed the creation of a court of equity.

In the "Conditions or concessions" between Penn and his "adventurers or purchasers," it was, among other things, agreed that the laws as to slanders, drunkenness, swearing, cursing, pride in apparel, trespass, distress, replevins, weights and measures, should be the same as in England, until altered by law in the province,† and the "Laws agreed upon in England" contained a provision that in all courts, persons of all persuasions might freely appear in their own way and according to their own manner, and there personally plead their own cause themselves, or, if unable, by their friends.‡

The "Great Law," as it was imposingly termed, contained the same provision, and provided further, that in every county there should be one court erected, to which the inhabitants thereof might every month repair for justice; from this lay an appeal to the Provincial Court, composed of not less than five judges, who should hold quarterly sessions; and from this court, an appeal lay to the

* § 6. † § 7.

‡ 5 May, 1682, Art. VI.

Provincial Council, which was the "last jurisdiction."*

In Penn's letter to "the Free Society of Traders," after referring to the happy condition of the Indians, who, he says, "are not disquieted with bills of lading and exchange, *nor perplexed by Chancery suits*," he refers to the establishment of courts of justice in every county for their well government, but adds that, "to prevent lawsuits, there are three peacemakers, chosen by every county court, in the nature of common arbitrators, to hear and end differences between man and man."† These peacemakers derived their authority from a statute passed but a few months before Penn wrote, and these laws are all which were then in force with respect to the administration of justice. The Society of Friends had, indeed, internal regulations, by which all differences between its members were submitted to their meetings.

When we reflect upon the simple-mindedness of a people who could thus hope to administer a science without the aid of scientific principles, we will not be surprised to find that at the same session which produced these peacemakers, two laws were said to have been proposed to the council, one compelling all young men over a certain age to marry, and the other that two sorts

* 10 Dec. 1682.

† Penn's letter, 16 Aug. 1683; 1 Proud's History of Penna. 262.

of cloths only should be worn, one for winter and one for summer use.* Nor does it appear that the simplicity of manners and of morals which should breathe through the every-day life of such a people, preserved them from at least some of those frailties to which flesh was heir; for the first case which seems to have been tried was an assault and battery, in which *both* parties were found guilty; at the third meeting of the Provincial Council, three sheriffs sent in a petition for the establishment of a fee bill; the next day one of the members of the council was fined five shillings for "being disordered in drink;" on the next, a "bill for hog stealers" was introduced; and one of the earliest matters which engaged attention was the building of prisons and houses of correction.†

The administration of justice by the Provincial Council seems to have been—and perhaps from

* Proud's History, 238; Gordon's History, 80. This is asserted doubtfully by the first, and positively by the second of these writers. The proceedings themselves show no trace of such propositions. It is familiar that for thousands of years, at different periods of civilization, laws with respect to marriage and the regulation of dress have been enacted.—LECKEY'S *Rationalism in Europe*, vol. 2, p. 311; BUCKLE'S *Civilization*, passim. In the Talmud it was ordained that a senator must be married and have children of his own, for deep miseries of families would be laid bare before him, and he should bring with him a heart full of sympathy.—Article on The Talmud, *London Quarterly Review*, October, 1867.

† 1 Colonial Records, p. 4 *et seq.*

necessity—a singular mixture of original and appellate jurisdiction. Thus, the petition of the inhabitants of Duck Creek as to cutting a canal through the marsh, was referred to the county court in which the same did lie,* while the case of an ejectment for lands in Bucks County, which came up from the court of *Philadelphia* County, ended in the cause being referred to the Bucks County court, for "all causes shall be first tried where they arise," and the Philadelphia court was then fined forty pounds "for giving judgment against law."† At the same time, original jurisdiction was exercised in many cases—civil, criminal, and admiralty; a petition for the payment of boat hire—another for the payment of seamen's wages—another for the payment of a simple contract debt—a complaint against a captain for beating his crew on the high seas—an indictment for passing counterfeit money, and another for witchcraft (in which the prisoner was convicted of "having the common fame of being a witch"), were all considered and determined by the Provincial Council. In the middle of all this, the question was asked in council, whether the peacemakers should sit once a month—but the question does not seem to have been answered.

Until 1684, the council would probably not have hesitated to exercise occasional equitable jurisdic-

* 1 Colonial Records, p. 4. † Noble *v.* Mann, July, 1683.

tion, as it had, before the charter, been exercised by the Governor of New York.* But in this year, two bills respecting courts of equity were passed. The first of them, numbered 156, provided that monthly and quarterly sessions be held in every county by the respective justices, and that each quarter sessions be as well a court of equity as law, concerning any judgment given, in cases by law capable of trial in the respective county sessions and courts, and the other, numbered 158, entitled "a bill that every court of justice should be a court of equity as well as law," established a provincial court, consisting of five judges, who should have the trying and determining of all appeals from inferior courts, also all trials of titles of land, and all causes, as well criminal as civil, both in law and equity, not determinable by the respective county courts.†

The judges of this court were commissioned by Penn on the 4th of August, 1684, a few days before he sailed for England.‡

* See *supra*, p. 4, note.

† 1 Colonial Records, 47. The act itself differs somewhat from the report in the minutes of Council. I regret to say that these acts, with very many others, have never been published—a single copy exists, compiled and printed by a member of the bar (for many years one of your Vice-Provosts) for his own use, and to this collection I am indebted for many statutes that must otherwise have been obtained from the manuscripts at Harrisburg.

‡ 1 Proud, 286; 1 Col. Rec. 68.

Neither the proceedings of the council nor of the Assembly tell us much as to the forms of procedure under these acts of 1684, except that the distinction between the law and the equity sides of the court seems to have been strongly marked. In 1686, we find the appointment, by the council, of the judges for the next provincial court, authorizing and empowering them as judges both of law and equity,* and in the next year, the Assembly came, with their Speaker, to the council, and desired the explanation of some laws, which were, they thought, "liable to divers interpretations or expositions," of which one was "The law concerning Quarter Sessions—how far the County Quarter Sessions may be judges of equity as well as law; and if after a judgment at law, whether the same court hath power to resolve itself into a court of equity, and to mitigate, alter, or reverse the said judgment."† The Quarter Sessions Court thus referred to was the same established by the act, No. 156, and the council rather evasively answered, "that the law No. 156, made at Newcastle, doth supply and answer all occasions of appeal, and is a plainer rule to proceed by."‡

In 1690, an act was passed, providing that "all trials of titles of lands, all actions of debt, account,

* 1 Col. Rec. 142. † Id. 159.

‡ 1 Votes of Assembly, p. 41. The minutes of the House refer to the act as No. 157.

or slander, actions personal, and all actions civil and criminal whatsoever, except treason, murder, manslaughter, and other heinous and enormous crimes," should be first tried in the proper county courts, which were to be held quarterly in every county, "which county courts," says the act, "*shall be courts of equity* for the hearing and determining of all causes cognizable in the said court under the value of ten pounds."*

It will have been observed that in none of these statutes was any reference made to any particular form of process or procedure.†

But in 1701 was passed an elaborate "Act for establishing courts of judicature in this province and counties annexed," which provided that the judges of the Common Pleas should have full

* § 197, Ch. 7, of the Session. In the report of the Revisers of the Civil Code, this act is quoted as passed in 1693, and the language of the act is not quite correctly given.

† Side by side with these laws had been several which had re-enacted the provision in the "Laws agreed upon in England" that "in all courts, all persons of all persuasions may freely appear in their own way, and according to their own manner, and there personally plead their own cause themselves, or if unable, by their friends." Such re-enactments are to be found, in nearly the same words, in 1682 (ch. 43), in 1683 (§ 66, ch. 4 of the Session), in 1693, and 1700 (ch. 91, A), and that portion of these statutes which provides that parties may personally plead their own cause, may perhaps be considered as still in force, except so far as supplied by the act of 21st March, 1806, which provided that every suitor and party concerned shall have a right to be heard by himself and counsel, or either of them.

power to hear and decree all such matters and causes of equity as should come before them, "*wherein the proceedings shall be by bill and answer*, with such other pleadings *as are necessary in Chancery Courts*, and proper in these parts; with power also to the said justices to force obedience to their decrees in equity by imprisonment or sequestration of lands, as the case may require." And an appeal in equity cases lay to the Supreme Court, which had power to make such decrees thereon as should be agreeable to equity and justice.* It would seem that, for some time at least, no proceedings were had before this court. In 1703, one of the council presented a complaint that notwithstanding the laws of the government had erected courts of equity, and the justices were commissioned for the same, yet that, to the great oppression of the people, there had been no such courts held in pursuance of the present law, the rules of court not having yet received so full a sanction as it was thought might be requisite.†

The statute itself was, however, soon after repealed in England,‡ and then commenced that

* Act of 1701, ch. 2, MSS. Collection. This act was passed and approved in the end of October, at the close of that stormy session which resulted in the Charter of Privileges. 1 Proud, 434; 2 Col. Rec. 23 &c.; 1 Votes of Assembly, 143 *et seq.*, *passim*.

† 2 Col. Rec. 115.

‡ In 1705.

long and angry quarrel between the new governor, the Provincial Council and the House, in which the establishment of courts of judicature formed an element. It is familiar to all that, in the early history of England, the king, who was considered the fountain of justice, exercised, through his council, judicial functions, and that the chancellor, who at first was merely an assistant, was, from time to time, vested with certain of these functions. He was a privy councillor by virtue of his office; he was the keeper of the king's conscience; the visitor, in right, of all hospitals and colleges of the king's foundation; the general guardian of infants and lunatics, and had the general superintendence of all charitable uses. Besides which was the jurisdiction which he exercised in his judicial capacity in the Court of Chancery, on its common law and its equity side. When the counties palatine were created, these had their separate courts, and among them their separate courts of chancery. The charters of some of the principal American colonies made them, in a measure, resemble the counties palatine, and the doctrine that the office of chancellor ought to vest in one who, under the great seal of England, acted as the king's representative, crossed the Atlantic, and was tenaciously supported by the prerogative lawyers of the colony, and in New York, in New Jersey, in Virginia, and in

South Carolina, the office of chancellor was exercised by the Governor of the Province.* It has been only within the recollection of many of us, that in some of these States a different regulation has been made.

Upon this point—whether the Governor of the Province should or should not be the chancellor—arose the contest which finally cost us our Court of Chancery. Governor Evans proposed that himself, by virtue of his commission, and certain of the council (whom he thus added in order to strengthen his position) should have the power to hold a court of equity;† but the House were opposed to such an extension of his authority,‡ and this question was, as you will find from the minutes of the Provincial Council and the proceedings of the Assembly, tenaciously fought upon both sides.§

* The difference between the judicial systems in the several colonies was, of course, in a great degree owing to the different character of their several governments, which were, respectively, provincial, proprietary, and charter governments. See *passim* 1 Story on the Constitution, Chapters I. to XVII.; Parke's Equity Jurisdiction in the United States, 48.

† 2 Col. Rec. 263.

‡ 1 Col. Rec. 265; 1 Votes of Assembly, 106.

§ 2 Col. Rec. 274, 288. On behalf of the governor, it was urged that it was proper that this province should follow the example of New York, New Jersey, and some other provinces, in which the offices of chancellor and governor had always been united, but the House deemed "that the Court of Equity should be lodged in commissioners of the governor's appointing, whereby we prevent the council here to fall into that inconsistency which the council table did by assuming

It is both sad and instructive, at this day, to review this bitter quarrel, which lasted through more than three sessions, during which the people of the province suffered, while each party threw up to the other its shortcomings, till, said the Governor once, "If we have lived free from open rapine, 'tis more owing to the honesty of the people, than any public provision made against it."* And yet in this very quarrel may be seen

unto itself a power to intermeddle in civil causes, and matters only of private interest between party and party." (2 Col. Rec. 278, Nov. 27, 1706.) To this the governor answered that what was proposed was the practice of all the governments in America—that it was "everywhere always thought most reasonable that those persons who, particularly chosen to counsel in matters of state and of the greatest importance, should be considered the fittest to judge in matters of equity. . . . The answer to this," he added, "as well as some other cases, seems really to be, to divest the proprietary and governor and all those about him, of power." (2 Col. Rec. 283.) The House replied, that "if a law could pass here to settle the Court of Equity in the governor and council, it might meet with a like rebuke at home, as that part of the ordinance of Wales did, which gave the president and council there the power of a chancery court," and which was suppressed by the 1 W. & M. c. 27 (id. 288), and the governor rejoined that "that particular court had been found to be an intolerable burden," yet the queen, in most or all of her governments abroad, expressly established her courts of equity in the governor and council alone, and therefore if the same were done here, the old abusive chancery of Wales could be no objection, since by the queen herself such courts are settled in New York, Maryland, Virginia, and the Islands, &c. (Id. 295–6.)

* Feb. 4, 1707; 2 Col. Rec. 312.

the germ of that spirit which, more than half a century later, cost the crown its colonies.

At last, in 1710, two years after Governor Evans had been succeeded by Governor Gookin—the latter as mild, steady, and economical, as the former had been hot-headed, tactless, and extravagant—another "Act for establishing courts of judicature" was passed. Its equity powers were *not* vested in the governor. A court of equity was to be held by the Common Pleas judges four times a year in every county, with power "to hear and decree all such matters and causes of equity as should come before them," and express power was given to issue subpœnas and all other process to "compel appearance, to award commissions for the examination of witnesses, to grant injunctions for staying suits at law and for stopping wastes, * * *observing, as near as may be, the rules and practice of the High Court of Chancery in Great Britain.*"*

An appeal lay from the decrees of these courts to the Supreme Court, which was constituted, for this purpose, a court of equity in every county of the province. This act contained a proviso

* Bradford's Laws, Ed. 1714, p. 120. Gordon says: "The judiciary bill was a compromise between the proprietary and popular interests, and most probably was opposed by the former before the throne" (GORDON'S *History of Pennsylvania*, p. 166); but the correctness of the author's supposition may be doubted.

that the courts should have no powers to hear and determine in equity any cause wherein sufficient remedy might be had before any other magistrate or judicature, either by the rules of the common law or the laws of the province; and when matters of fact should arise in the hearing of any cause, the court should first refer them to issue and trial before the Common Pleas, before proceeding to decree in equity. But, as might have been supposed, this statute was, in 1713, repealed in council, the attorney-general objecting that the clause as to determining no matter of fact save by an issue at law, must make proceedings in equity insufferably dilatory, and multiply trials at law in plain cases to no manner of purpose.*

Again, in 1715, "a Supreme or Provincial Court of law and equity" was established, which had, in general terms, authority "to hold pleas in equity by bill, appeal, petition, or suit, to be brought or exhibited in the said court by, for, or against any person or persons whatsoever, for any discovery or other matter relievable in equity, and for the parties to proceed thereon and thereupon *according to such rules, and under and in such manner and form as the Courts of Chancery and Exchequer in Great Britain have used to proceed by.*"

After an infancy of four years, this court also came to its grave.

* Penna. Archives, 158.

You will have observed that the life of these statutes (the acts of 1701, 1710, and 1715)—that is, the period between their enactment here and their repeal in Great Britain—was, respectively, four, three, and four years, and it may be reasonably asked why they remained so long unrepealed, and why, if so, they were repealed at all. The answer, I believe to be, that the jealousy in England of the exercise of power in the colony was in proportion to the ignorance which was there entertained of its real internal condition, and this was well understood on this side of the Atlantic. The colonists had, by the terms of the charter, five years within which to transmit their laws for approval, and, after their passage, they would keep them here and act under them as long, within that period, as they decently could; they were then sent to England, and, when repealed there, other laws, as nearly similar as they dared to pass, would be enacted here. When, after some years, these were sent to the mother country, they were repealed in council.

Nor was our province the only one which thus suffered. In Massachusetts, at the very beginning of the eighteenth century, four acts for establishing courts of justice had, within seven years, been sent, one after another, to England before the royal approbation could be obtained.*

* 1 Parkes' Eq. Jurisdiction in the United States, Introduct., p. 50.

We come now to the first and last Court of Equity which, as a *separate* tribunal, has existed in our State.

William Keith had, in 1717, become the governor. In the following year Penn died, and in the year after, the act of 1715 was repealed. Complaints as to the administration of justice were then constant and well founded. Courts had not, they said, been held for many terms.* The opportunity was favorable, and the governor was popular, for he had thoroughly studied the errors of his predecessors. In a message to the House in May, 1720, he informed them that it having been represented to him that a court of chancery was very much wanted, he had consulted those learned in the law and others of good judgment, who all agreed that the office of chancellor could only be lawfully executed by him who, by virtue of the great seal, might be understood to act as the king's representative; but, he added, that upon this subject the opinion of the House should principally direct his conduct. A resolution was the next day unanimously passed† that, considering the present circumstances of the

* See the subsequent petition to Governor Gordon, in 1735. 3 Votes of Assembly, 270.

† The unanimous passage of the resolution is not recorded in the Votes of Assembly (2 Votes of Assem. 271), but in the minutes of the Council it is stated to have been unanimous. 3 Col. Rec. 100.

province, it was the opinion of the House that "for the present the governor be desired to open and hold a court of equity for the province, with the assistance of such of his council as he shall think fit, except such as have heard the cause in any inferior court."

The governor laid this resolution before the council, who not only considered that he might safely comply with the desire so expressed, but that holding such a court might be of great service to the colony, and was, moreover, agreeable to the practice which had been approved of in the neighboring governments. And here the governor interposed, and referred to his own want of experience in judicial affairs, and represented the great addition of attendance and fatigue in the public business which would be thereby laid upon him, but was pleased to add, nevertheless, that, considering the many marks of confidence which had been shown him, he should not decline to serve the public in that station, but insisted that while, on the one hand, no court of chancery could be held without him, so, on the other, he should not fail of having a due assistance from the council on their parts. The result of this delicate coquetry was, that it was agreed that no decree in chancery should be pronounced but by the governor as chancellor, with the assent of two or more of his six oldest counsellors,

who might also be employed as masters in chancery.*

On the 10th of August, 1720, only four days after the last proceedings of the council, appeared the governor's proclamation.

It recited that "courts of chancery or equity, though absolutely necessary in the administration of justice, for mitigating, in many cases, the rigor of the laws, whose judgments are tied down to fixed and unalterable rules, and for opening a way to the right and equity of a cause for which the law cannot, in all cases, make sufficient provision, have, notwithstanding, been too seldom regularly held in this province in such manner as the aggrieved subjects might obtain the relief which, by such courts, ought to be granted," and declared that, with the assistance of the council, the governor proposed to hold a court of chancery or equity on the 25th day of that month, "from which date the said court will be and remain always open for the relief of the subject, to hear and determine all such matters arising within this province aforesaid as are regularly cognizable before any court of chancery according to the laws and constitution of that part of Great Britain called England."†

No published record exists of the proceedings

* 3 Col. Records, 100.

† 2 Votes of the Assembly, 270, 271–273.

of this, our only separate Court of Chancery, nor is allusion made in any reported case, to any cause said to have been determined therein. But I became satisfied, from the familiarity with the *principles* of equity shown in the early reported cases, that there must have been a time when those principles were administered in more or less conformity with the course and practice of chancery. A careful search was, therefore, made, but a few weeks ago, among the old records and archives of our state department, and there, in one of the many cases in the main room, and among a quantity of old and dusty books, was found a modest folio, of no great size, and bearing no title, which appeared to have hitherto escaped the research of the curious. Its existence was unknown to any of the state officials, and it bore none of those marks of annotation and indorsement which appear upon most of the colonial archives.

It was the Registrar's Book of Keith's Court of Chancery.*

* Since this was written, I have seen the report of the secretary of the commonwealth in 1838 as to the publication of the Colonial Records, in which, under the head of "Colonial Documents in the Secretary's Office," he refers to "one book of records of chancery from 1729 to 1735," and afterwards among the records recommended to be printed, he included "The volume of chancery proceedings before the governor (who seems to have been *ex-officio* chancellor) and the

It commences, in the beautiful and clear handwriting of Charles Brockden, who was the first registrar, with the oath of the chancellor taken on the 25th of August, 1720, that "well and truly he shall serve in the office of Chancellor of this Province of Pennsylvania wherewith he is intrusted, that he shall do right to all manner of people, as well to Poor as to Rich, according to ye laws and usages of that part of his Majestie's Realm called England, that he shall not know nor suffer the hurt nor disheriting of the King, nor that the Rights of the Crown and the Proprietor of this Province be distressed by any means as far forth as he may it let, and if he may not let it, he shall make it clearly and expressly be known, that he shall do and purchase the King's profit and the right of the Proprietor of the Province of Pennsylvania in all that he reasonably may."

Then follow the appointment and the oath of Charles Brockden as registrar, and of James Logan, Jonathan Dickinson, Samuel Preston, Robert Hill, and Anthony Palmer as masters in chancery.

The record of the causes in this court shows curiously the nature and extent of the chancery jurisdiction which it exercised.

masters in chancery." But the legislature did not act upon the recommendation, so far as this book was concerned. It is now printed as an Appendix hereto, through the kindness of the attorney-general.

Although the first case which it contains (England *v.* Shute) is entitled "Anno 11 Georgii Regis" (1724), yet it is probable that there were many cases before this, for there are consecutive entries of the appointment of masters in chancery in the years 1720, 1721, 1722, and 1723, and there are allusions and references in this case to previous cases in the same court.

An attachment had issued against the defendant for not answering, which his counsel moved to set aside, "praying the chancellor that the several heads from which he deduceth his arguments for that purpose, may be set down, in order to have the mind of the court the more clearly thereunto, viz:

"1. The attachment was not regularly entered in the six clerk or Register Book.

"2. The process was not signed by a six clerk or one fully authorized.

"3. The special cause of issuing the writ was not endorsed thereon.

"4. The writ ought to be close and not patent, whereas this is an open writ.

"5. No one is compellable to appear in any other court than that which the writ commands, whereas, by the style of this writ, it seems to direct otherwise.

"6. The seal ought to be always in the Chan-

cellor's custody, and not affixed without his special direction."

But all these objections were overruled, on the ground that the writ had, in all respects, conformed to the "constant practice of issuing writs out of this court."*

To the fifth objection it was answered that "the style complained of, viz: 'before us in our Court of Chancery wheresoever it shall be in our province of Pennsylvania' hath been hitherto used for the style of this court."

In the case of Sanderlands *v.* Munday, in the following year, the court, being informed that the defendant's plea, answer, and demurrer "would not be argued by any of the practitioners of the court, for the many gross errors therein contained, the defendants having procured them to be drawn by some persons unskilful in the law," ordered the same to be dismissed with costs, and that the defendants a better answer make on or before a certain day.

In this, as in many other cases, orders of the court upon interlocutory applications begin with the words, "The prayer of the petition appearing to be agreeable to the practice of the High Court of Chancery in England, it is ordered," &c.

* By the expression "this court," was probably meant not Keith's Court in particular, but the Court of Chancery.

As to the cases in which our Court of Chancery exercised jurisdiction, we find bills for account—for partition; to subject real estate to the payment of debts and legacies; to stay waste; to restrain proceedings at law; to take the testimony of witnesses in foreign parts; to settle differences between partners; petitions for writs *de lunatico inquirendo*, and many writs *ne exeat provincia*. I will briefly refer to a few of the cases which thus appear.

In the case of Shippen *v.* Shippen, which was presented in 1731, it appeared that Edward Shippen died in 1714, having bequeathed a legacy of £800 to his son William, and devised to his wife Esther, certain real estate in trust to secure its payment, with power of sale for that purpose. The latter died in 1724, having appointed Samuel Preston and Samuel Powell her executors, against whom and Joseph Shippen (who was the testator's residuary devisee) William Shippen filed a bill for the payment of his legacy, and it was ordered that the real estate devised, or so much thereof as might be sufficient, be publicly sold by the executors, so that from the sale the said £800 with interest be paid to the complainant on or before a certain day named in the decree, the surplus to be disposed of according to the original trusts of the will. The sale was accordingly

made, and a return by the executors confirmed absolutely.*

So, in the case of Philips *v.* Evans, which was a bill filed to subject the real estate of a testator to the payment of debts and legacies, the master having, on the 6th of May, 1735, reported that there were not sufficient assets in the hands of the executor for the payment of the same, it was ordered that the executors make sale of certain lands in the manor of Moreland *not devised* by the testator, and bring the money into court to abide its order, and the record shows the disposition of the fund.†

Emanuel Jocelin filed a bill against Robert Charles, naval officer of Philadelphia, praying for a commission to examine witnesses in the Island of St. Christopher, which was issued and returned; whereupon it was ordered "that a certified copy of the said examination be sent unto the Court of Common Pleas of the county of Philadelphia where the information exhibited by the

* The registrar's book does not set forth all the facts which I have stated above, some of which I have obtained from examination of the wills in the register of wills' office. The proceedings in this cause are recited at some length in a subsequent deed for this same property, which is on record in our recorder's office.

† Mr. Hazard, when collecting and arranging the Pennsylvania Archives, came across this master's report (whose date corresponds with that stated in the registrar's book), and also the decree, which is in the same words. Pennsylvania Archives, 440–456.

naval officer *qui tam*, &c., against sundry goods, wares, and merchandise reclaimed by the complainant Jocelin, is now depending."*

Upon a complainant's affidavit that the defendants intended and threatened to pull down and destroy some buildings and outhouses to which he believed and was advised he had a good title, an injunction to stay waste was issued, which, being disregarded by one of the defendants, he was attached to answer the contempt, and it was ordered that he be examined by one of the masters of the court upon certain interrogations filed by the complainant, and remain in custody until the coming in of the master's report.

Thomas Willing and others, creditors of William Dowell, presented a petition setting forth that the latter had been, for several months past, *non compos mentis*, that he was unable to order his estate, and had made alienation and waste thereof, whereby the petitioners were in danger of losing their just debts, and praying that a writ *de lunatico inquirendo* might be granted, and it was ordered that the writ do forthwith issue.

* It is familiar that the courts of common law were deemed to have no power to procure the depositions of witnesses, which was always done by a commission issued out of chancery. The testimony so taken, when returned, was sent into the common law court. See 2 Story's Eq. Jur. § 1514, *passim*. The statutes 13 Geo. III. 63, and 1 Will. IV. 32, were the first that gave to English common law courts power to issue such commissions.

Lord Hardwicke said, more than a hundred years ago, that the origin of the custody of idiots and lunatics was more matter of curiosity than use,* and yet the exercise of the jurisdiction in this Court of Chancery seems to call for a passing notice.

The general opinion has been, that the jurisdiction of the chancellor over idiots and lunatics was specially delegated. It is certain that, originally, their custody and that of their lands was a royal prerogative, and though prior to the statute *de prerogativâ regis*,† this custody was vested in the lords of the fee,‡ yet this statute, introduced to correct the abuses of that system, was said to be only declaratory of the common law, and introduced no new right in the crown.§ It has been thought that, before the passage of the statute, the chancellor had committed to his care such idiots and lunatics as the king had then charge of, and that, after its passage, this branch of the prerogative was generally, though not universally, dele-

* Ex parte Grimstone; Ambler, 706; S. C., 4 Brown's Ch. Rep. 235.

† 17 Edward II. c. 9 and 10. "The king shall have the custody of the lands of natural fools, taking the profit of them without waste or destruction, and shall find them their necessaries, of whose fee soever the lands shall be holden. And after the death of such idiots, he shall render them to the right heirs, so that by such idiots no alienation shall be made, nor shall their heirs be disinherited."

‡ 1 Blackstone's Commentaries, 303. Shelford on Lunacy, 10.

§ Beverley's Case, 4 Coke, 126; Oxenden *v.* Lord Compton, 2 Vesey, jr. 27, per Lord Loughborough.

gated to the chancellor by special appointment under the sign manual, which took its origin from the statute.* But Lord Campbell has considered that a commission *de idiota inquirendo* would issue at common law from the Court of Chancery under the great seal, and that the chancellor, without any special delegation for this purpose, would have authority to control its execution, and he acted upon this opinion, when, being made Chancellor of Ireland, the usual warrant under the sign manual had, by some oversight, been omitted to be delivered to him, and he made several orders in lunacy before he received this warrant.†

* 1 Spence's Equitable Jurisdiction of the Court of Chancery, 418; Stanton *v.* Percival, 5 House of Lords Cases, 284. The warrant has been given to the Lord High Treasurer. Wigg *v.* Tiler, 2 Dickens, 553.

† 1 Campbell's Lives of the Chancellors, 35. Judge Story has said: "If one might make a suggestion in a case where there seems no small diversity of opinion, it would be that, upon general principles, the king, as *parens patriæ*, has an original prerogative to take care of all persons and property of infants, of idiots, and of lunatics in all cases, where no other guardianship exists. So long as any special guardianship exists by law or custom in other persons, the prerogative of the crown is inactive, but not suspended. The jurisdiction generally belongs to the Court of Chancery, as delegate of the crown, except where it is specially or personally delegated, or restricted by statute. The Statute de Prerog. Regis, ch. 9 and 10, has rendered special commissions for certain purposes necessary to be granted under the sign manual; and the jurisdiction being in fact committed to the same person, has, in practice, become mixed. If this view be admitted to be correct, it will clear away some of the difficulties now encumbering the subject." 2 Story's Eq. Jur. 1336, note.

I have paused to notice this, because there is no pretence that Governor Keith ever received any special delegation of jurisdiction as to idiots and lunatics. He exercised it by right of his being the chancellor.

John Meredith set forth in a petition that he, being seised of a certain plantation in Bucks County, and of sundry goods and chattels, did, from his affection to his son Thomas, "and for the better advancing him in the world, convey all his estate in the premises to him the said Thomas, who is now possessed of great part thereof, and other goods and chattels acquired by his own industry, but that of late the said Thomas is by the visitation of God become *non compos mentis* and wholly unfit for the government of himself and his said estate; and that having already, by the craft of evil-disposed persons, sustained great losses, and being in danger of sustaining much greater, the said Thomas is like to be reduced to beggary and want without the aid and interposition of this court, and therefore praying that a writ *de idiota inquirendo* may be awarded, directed to the sheriff of the county of Bucks, to inquire into the truth of the premises by the oaths or affirmations of good and lawful men of his bailiwick, and in case the premises be found true, that the said Thomas, together with his goods, chattels, lands, and tenements aforesaid, may be committed

to the care, government, and management of discreet and honest persons to be appointed by this court as in such cases is usual." The sheriff returned the writ which was awarded, with an inquisition "whereby it appearing that the said Thomas Meredith is not of composed mind, but is unfit for the government of himself and his estate," the custody of the person and estate of the said Thomas was committed to his father and cousin, and the survivor of them.

Isaac Miranda presented a petition with an affidavit annexed, praying that for the reasons therein set forth, the leaving a subpœna with the defendant's attorney might be deemed good service, which was granted, and the subpœna issued, and, ten days after, he applied for an injunction "to stop the sale of certain houses and lots of land to be exposed to sale by virtue of a writ of *venditioni exponas* issuing out of the Court of Common Pleas of Philadelphia County," which was granted accordingly.

Here was a case in which the chancellor ordered what is called substituted service. Independently of any statute, the Court of Chancery had no power to order actual personal service to be made out of the jurisdiction, but in some cases, the court has ordered service to be effected *within* the jurisdiction on some person other than the actual defendant, and has treated such service as valid

against him, and this practice was and is most frequent in cases to restrain proceedings at law, instituted by persons out of the jurisdiction of the court.*

In another case, the complainant had obtained an injunction to restrain the defendant from proceeding at law against him, and upon the coming in of the answer, it was ordered, by consent, "that the defendants be at liberty to proceed at law against the complainant, so far as to obtain judgment against him and his bail; or otherwise that he, the complainant, bring into this court within three days the money sued for at law by the defendants, subject to the direction of this court; wherein if he fails, the injunction to stand dissolved."

The widow of Joseph Growdon had also obtained an injunction to restrain proceedings at law, and on the coming in of the answer, an order was made that the injunction stand dissolved, unless cause to the contrary be shown within ten days, at the expiration of which time it was prayed that the injunction might not be dissolved till the exceptions then being prepared to the answer should

* Anderson *v.* Lewis, 3 Brown's Ch. R. 429. 1 Daniel's Ch. Prac. 437. Substituted service is now provided for by statute, both in England and in Pennsylvania, though the English statute (15 and 16 Vic. c. 86, s. 5) is much more ample, leaving the whole matter within the discretion of the court. Our own statutes on the subject are referred to *infra*.

be heard, and the chancellor, a few days after, ordered that both parties be heard the next day on their respective applications, which was accordingly done, and the complainants were thereupon ordered to file their exceptions on or before the 10th of October next. And here the cause rested till the following June, when the complainant filed a petition setting forth "that notwithstanding the injunction in this cause filed, the defendant Lawrence Growdon, in the term of April last, did proceed, *ex parte*, in the Supreme Court of Pennsylvania, to try the said cause, and obtained judgment thereupon, in open contempt of the said injunction and in manifest violation of the course of equity and justice, and now threatens, by execution of the said judgment, to eject the complainant out of the lands settled upon her in jointure, and therefore praying an attachment against the defendant Lawrence Growdon, his counsel and solicitors, for the contempt aforesaid, and an injunction for quieting the complainants' possession until the matters aforesaid be duly heard and decreed upon in this honorable court." No further proceedings appear in the cause.

Daniel Moore, collector of his majesty's customs at New Castle, filed a bill against Joseph Browne, judge of the Court of Vice-Admiralty for the Province of Pennsylvania, praying an injunction, which was awarded accordingly. A few

weeks after, the counsel for the owner or freighter of the schooner Sarah, alleging that the injunction had been obtained to stay proceedings "in a certain cause then depending upon an information exhibited in the said court by the complainant *qui tam*, &c., against the said schooner and her lading, and the said judge, being the person enjoined, had never apply'd to this court to have the same injunction taken off, neither had the complainant made any further proceedings in the cause since the obtaining the said injunction, which is now four weeks, and that the said Peter Baynton and the other persons interested in the said vessel and cargo are, therefore, much hurt and damnified by this delay, it was therefore prayed that the said injunction may stand dissolved," and it was ordered that the complainant have notice to attend the court at three o'clock on that afternoon, to show cause why the injunction should not be dissolved, and upon proof of service of notice, it was then ordered that the injunction stand dissolved, unless within ten days the complainant show cause to the contrary, and at the expiration of that time, on proof of service of notice, the order was made absolute and the injunction dissolved.

This, you will observe, was not an injunction to restrain a party from proceeding at law, but an injunction, as it was called, to restrain the Court of Vice-Admiralty itself. It was, therefore, a

writ of prohibition, which, you are aware, was a writ directed to the ecclesiastical, admiralty, and some other courts, where they had concerned themselves with any matter not within their jurisdiction. Thus, in a case at the close of the last war with Great Britain, a petition was presented in the English Chancery praying that a writ of prohibition, returnable in the King's Bench, might issue to the judge of the Admiralty Prize Court, to prohibit him from further proceedings in holding pleas before him in any manner touching the seizure of the brig Harmony, which had, in ignorance of the treaty of peace, been captured since its date. The writ was refused, not, of course, by reason of any doubt as to the right to issue it, for none such was even suggested, but because the court thought that, under the circumstances of the case, it came properly within the jurisdiction of the Prize Court.*

In the next year, certain part owners of a ship presented a petition setting forth that the defendant, who was part owner with them, had refused

* Ex parte Lynch, 1 Maddock, 20 (1815). For the difference between writs of prohibition to the Admiralty, and an injunction to restrain parties from proceeding in admiralty courts, see the note to Earl of Oxford's Case, 3 Leading Cases in Equity, 526; and as to prohibitions to the admiralty courts in the colonies, see the opinion of the attorney-general in 2 Chalmers' Opinions on the Colonies, 187 *et seq.*

to join them in fitting out and loading the vessel on a proposed voyage; that she was about to sail in ten days for Barbadoes, and that there being no person in this government then acting as a judge of the Court of Vice-Admiralty, they were obliged to make this application to the governor, as chancellor, to be aided by him in equity, and prayed that, according to the custom and usage in such cases, the chancellor would appoint appraisers of the defendants' interests, they being willing to account to him for the appraised value. The defendant prayed for time that he might dispose of his part of the vessel, and four days were given him to either sell or join with the petitioners in fitting out the ship, but he left town without leaving any notice of what he had done or intended to do, whereupon an appraisement was accordingly ordered and had.

This case also deserves notice. It was not an appeal to the chancellor as a sort of fountain of justice and *ex necessitate*. You will observe that the application was that the chancellor would appoint these appraisers "according to the custom and usages in such cases," referring plainly to the admiralty jurisdiction of the Court of Chancery, which, though now deemed obsolete, was certainly considered to be in force as late as the time of Lord Nottingham, who, scarce fifty years before, had, as chancellor, on several occasions,

distinctly asserted and exercised the admiralty jurisdiction of his court.*

The case of Ellis *v.* Ellis was a long story of a bill filed for a partition, in which John Ellis, one of the defendants, was singularly recalcitrant. He would not appear to the subpœna *ad respondendum*, nor to an *alias*, whereupon he was attached and committed. This was in June, 1733, and he remained in jail till November, 1734, when, all the other answers being in, Mr. Kinsey, the complainants' counsel, moved that the bill be taken as confessed against John Ellis, "who had hitherto remained in custody and absolutely refused to

* See Peter Blad's case in the Privy Council, 3 Swanston, 603 (1673), when Lord Nottingham said, significantly, "*I stood up* and said, this is not a question of state, but of private injury," &c., showing that in the Privy Council he spoke as chancellor, and in Blad *v.* Bamfield, id. 605, he said: "I took this occasion to show that the Court of Chancery hath always had an admiral jurisdiction not only *per viam appellationis*, but *per viam evocationis* too, and may send for any cause out of the admiralty to determine it here; of which there are many precedents in Noy's MSS. 88, and in my little book, in the preface, de officio Cancellarii, sec. 18, and in my parchment book in octavo, tit. 'Admiralty.'" See also Denew *v.* Stock, id. 664, and Rex *v.* Carew, id. 670, where he said: "I observed that this cause was properly in chancery upon many accounts, not only as it was a *scire facias* to repeal letters patent, but as it was a cause of state, and likewise as it was a marine cause and did not concern depredations on the high seas, in which cases the Chancery as well as the Admiralty hath a clear jurisdiction." The "little book de officio Cancellarii" was written by Lord Nottingham while in full practice at the bar. See 3 *Campbell's Lives of the Chancellors*, 312.

answer, whereby he had contemned the authority of the court (the other defendants having, by their answers, disclaimed all right, title or interest in or to the lands in question by the bill)," and the court thereupon sent for Ellis, had the bill read to him, and admonished him to answer it, "which, that he might be the better enabled to do so, the counsel for the complainant consented to his enlargement, and to free him from all costs for contempt;" whereupon he was ordered to answer the bill within a month. That time, and more, elapsed, and still John Ellis "obstinately persisted" in refusing to answer, and the complainants then obtained a decree *pro confesso*. "Nevertheless, for the greater satisfaction of the court, the counsel produced divers deeds, evidences, and writings in the bill mentioned, by which the court were sufficiently satisfied of the truths of the several matters and things in the complainants' bill contained," and ordered that the complainants' third part of the lands be set out to him in severalty by metes and bounds by three persons named for that purpose, and that the defendants do thereupon execute conveyances of their interest in the same to him accordingly, unless John Ellis should show cause to the contrary on or before the first day of June thereafter.

You are aware that the effect of a decree in equity confirming the report of the master and

commissioners in cases of partition, merely ascertains the purparts, and that the partition is afterwards consummated by conveyances between the parties.* Of course John Ellis would not execute any conveyance, and Mr. Hazard has printed in his collection of archives the affidavit which he somewhere found, of the proof of service of notice of the decree, which says that Ellis "then and there declared that he had been informed before that time that there was a decree against him, but that he did not care."† On the eleventh of June, the decree was, upon this proof of service, made absolute. The partition was, however, still incomplete, and the complainant did not seem disposed to repeat his former experiment of attachment, and upon the next day is the entry, "a writ for the partition of the lands, pursuant to the decree of this court, is issued." This is the last entry in the cause; and, whether this was a commission, or an original process in the common law court, or something analogous to the judicial writ of partition, can only be conjectured.

The writs of *ne exeat provincia* were frequent.

* This is now altered by statute in this State. See *infra*.

† Pennsylvania Archives, p. 442. This disconnected paper and the decree in Phillips *v.* Evans, already referred to, are, with the petition and order hereafter noticed as to Quakers wearing their hats in court, the only published records of this Court of Chancery.

As you know, this also was a prerogative writ, and whatever may have been its origin, and its former application only to political objects and purposes of state for the safety of the realm, it became, by custom and usage, applicable to private cases, and though used therein at first with caution and jealousy, it has, within the last two hundred years, been considered simply as a means of obtaining equitable bail,* being confined, however, to cases of purely equitable debts and claims, for it is considered that the writ shall not issue for a demand in which the party can be held to bail in an action at law.† To this rule there are two

* This writ had no place in the ancient common law, and the right of every man to depart from the realm at his pleasure was expressly recognized in Magna Charta and the Articles which preceded it. This right had been encroached upon when Fleta and Britton wrote, and the statute of 5 Richard II. c. 2 (which was repealed by 4 Jac. I. c. 1) forbid all persons whatever to go abroad without license, except only the lords and other great men of the realm and true and notable merchants and the king's soldiers. "Upon what grounds," says Lord Eldon, "the writ was originally applied to civil purposes, whether upon the principle that no better service could be done to the state, than to compel its subjects to do justice to each other, it is difficult to determine; but whatever the principle may have been, it is without all question that this court, if not bound *ex debito justiciæ* (and I do not say that it is so bound), is bound in the exercise of a sound discretion to grant the writ if the case be a case where the writ ought to be granted." Bœhm *v.* Wood, Turn. and Russ. 343.

† Note to De Carriere *v.* De Calonne, 4 Vesey, 592; 2 Story's Eq. Jur. § 1470; Beames on Ne Exeat Regno, 29; Mitchell *v.* Bunch, 2 Paige, 606.

exceptions: one, in the case of alimony decreed by the spiritual court, in which case, as that court could not afford a complete remedy, a court of equity has lent its assistance to the wife;* and the other, where equity has concurrent jurisdiction, as in a suit for an account.† Few of the cases in the registrar's book, in which this writ was issued, show the cause of action, but the practice as to issuing the writ, and also as to dissolving it, seems to have been according to the course and practice of chancery.‡

One case, indeed, is given at length: Miss

* See the cases cited in the note to 3 Daniels' Ch. Prac. 1802. Although it was formerly held that the writ might issue before sentence of divorce was decreed by the ecclesiastical court, yet it is now settled that the writ can only be marked for sums actually due.

† 2 Story's Eq. Jur. § 1473.

‡ Lord Talbot said in ex parte Brunker, 3 P. Williams, 312, that in his experience he never knew the writ granted without a bill in equity first filed, but both previously and subsequently this has been thought unnecessary (Lloyd *v.* Cardy, Pr. in Ch. 171; Roddam *v.* Hetherington, 5 Vesey, 92; 3 Dan. Ch. Prac. 1810); and in several of the cases in the registrar's book it will be found that the writ was granted before bill filed, and in one of them an order was made that the bill be filed by a certain day or the defendant have leave to depart. The act of Congress of 2 March, 1793, ch. 22, § 5, provides that no writ of *ne exeat* shall be granted, in the Federal courts, unless a suit in equity be commenced.

The writ being, as has been said, simply a means of obtaining equitable bail, is dissolved upon the defendant's giving security or paying the money into court, as was done in many of the cases in Governor Keith's court, and the amount of the debt is always marked on the writ.

Bohn, *alias* Mrs. Miller, obtained a *ne exeat* against George Miller, between whom and herself a marriage had been, she said, celebrated, but never consummated, which she had borne for a long time, till he threatened her life and committed other abuses. He sometimes gave out in speeches that he would sell all that he was worth, and, by virtue of his authority as a husband, take away the complainant from her friends and relations to parts remote and unknown, and at other times that he would go and leave her behind, which latter course would, she said, disable her from moving her alleged ground of divorce. Her case was stated in plainer language than I have used, and the court having granted the writ, made an appropriate order of reference, of which, however, the result was favorable to the gentleman, and no further proceedings seem to have been had in the cause.

Nearly a hundred and forty years after Mrs. Miller thus sought to restrain her fugitive husband, another wife applied to the Court of Common Pleas of this county for a writ of *ne exeat* against her husband, who having converted to his own use certain of her securities, was about to take them with him out of the country. The writ was granted, and the case was said to be "a remarkable one, inasmuch as it was the first

instance of the issuing of a writ of *ne exeat* by a Pennsylvania court."*

The names of the counsel who practised in Governor Keith's Court of Chancery are familiar to most of us. John Kinsey, who was afterwards chief justice, was engaged in most of the cases, and Andrew Hamilton, Peter Evans, Joseph Growdon, who was then attorney-general, and Thomas Hopkinson were generally his colleagues or opponents. The story is familiar that in 1725 Mr. Kinsey, who was an eminent "Friend," came into this court with his hat on, and refused, by reason of his conscience, to remove it, whereupon it was taken off by order of the chancellor, who was also himself a Quaker. This produced "great consternation" in the pro-

* Dransfield *v.* Dransfield (1866), 23 Legal Intelligencer, 229. "It is obvious," says the report of the case, "that the only question that could arise in this case was, whether it was a proper one for the exercise of this extraordinary jurisdiction; in general, the writ of *ne exeat* can only issue where an equitable debt is owing to the plaintiff, and our act to abolish imprisonment for debt confines this class of cases within a very narrow compass. This appears to have been a case in which, by reason of the breach of trust, the husband, under the Pennsylvania married women's act, had become equitably indebted to his wife; and besides, in Torlade *v.* Barrazo, 1 Miles, 385, note, Chief Justice Marshall granted the writ of *ne exeat* in a case in which it could only have been an equitable substitute for the action of trover and conversion." In general, it is not considered that the power of chancery to issue writs of *ne exeat* is taken away by the passage of laws abolishing imprisonment for debt. 3 Daniels' Chan. Prac. 1801, n.

vince, and in a "humble address by the people called Quakers," they represented to the governor in respectful but very plain words, that his late act, however slight, had a tendency to the subversion of their religious liberties, and they reminded him of the law which provided that in all courts, all persons of all persuasions might freely appear "in their own way and in their own manner." It is gratifying to the lovers of toleration to find that at once, upon the presentation of this address, it was made a standing rule of court, that any practitioner of law or person whatsoever professing himself to be one of the people called Quakers, might be permitted to officiate therein without being obliged to observe the usual ceremony of uncovering his head.*

Such is all the history which we now have of our only Court of Chancery. It is probable that an extended search among the records in our State department may disclose more than you have already seen, but it has, I think, been sufficiently shown that there was a time in Pennsylvania, when chancery jurisdiction was administered in a court of chancery with more exactness and precision than we had probably supposed.

* 2 Proud's History of Pennsylvania, p. 200. The order provided that the address be filed with the registrar, but no entry of it appears in the book I have referred to.

How exactly, and when, this court became unpopular, cannot now be distinctly ascertained. Keith's quarrel with James Logan and the Penns is matter of history, and we all know how, at last, the Penns superseded Keith by the appointment, in 1726, of Patrick Gordon. Soon after assuming his office, the new governor acquainted the council that being informed that there had been held for some time past by the late governor, a court of equity or chancery, and that several matters were depending in that court touching which he had frequently been applied to by the persons concerned, to the end that he might take upon himself the execution of the office of chancellor, but that he had hitherto declined the same until he should be better informed how the said court came to be created and have the advice of the council which he desired on that head. The latter replied that the erection of that court had been in compliance with the unanimous resolution of the Assembly and the approbation of the council, and it was the opinion of the present council that the governor might lawfully take upon himself the execution of the office that there might be no stop in the administration of justice, provided always that due regard be had to the rule that the members of council near Philadelphia should attend as his assistants.

Thus fortified by this opinion, Governor Gordon took the oath of office as chancellor.*

But two of the causes appearing upon the registar's book were decided by Sir William Keith. All the others were in the time of his successor, and the latest entry in any cause is dated June 7th, 1736. But in February of that year, a petition had come to the Assembly from Bucks County, which was soon followed by others, complaining of the Court of Chancery "as it is at present established in the province." The seed seems to have fallen upon good ground, for, on the same afternoon,† a message was sent to the governor, requesting to be informed how the Court of Chancery was constituted, which he answered by sending them copies of all the proceedings in 1720. But the court so established was, the legislature then seemed to discover, a violation of the sixth article of the Charter of Privileges, that no person should, at any time, be obliged to answer any complaint relating to property before the governor and council, or in any other place but in the ordinary courts of justice, and they proceeded to introduce a bill, not unlike

* It was then proposed that some certain rules for the better regulation of the court and the speedier dispatch of business should be drawn up, and David Lloyd, Chief Justice, and Andrew Hamilton were named for that purpose.—Minutes of Council, 3 Colonial Records, 281.

† February 7, 1736; 3 Votes of Assembly, 253.

those which had formerly been repealed in council, vesting the power of determining suits in equity in the Common Pleas judges, and providing, moreover, for a supreme court, to consist of three persons commissioned by the governor, to hear appeals from the decrees of the county courts, and empowered also to take cognizance of all matters in equity *prima instantia*, where the value exceeded one hundred pounds. While they debated the clauses of this bill, an angry correspondence went on between the House, on one side, and the governor and council, on the other. The governor urged that, on his arrival, he had found the court to have been established for years, and the country in the practice of it; if the fees were too high, it would have been easy to have altered them; but, he said, there could not be much complaint as to that, since in the nine years that he had presided there but two causes, and both by consent, had been brought to a decree, and very little other process had been entered there, and it seemed strange how, all at once, such petitions should be set a-foot over the province and come in at the same time, without any particular occasion being discovered therefor.*

* By the governor's remark as to but two causes being brought to a decree, he, of course, meant a final decree; and although the registry of his court scarcely bears out his assertion, yet it is familiar that the proportion of cases in chancery which are brought to final decree is not

In addition to the governor's letter, the council also, at his suggestion, prepared an elaborate vindication of the Court of Chancery. They referred to the fact that for more than eighteen years after the Charter of Privileges, there had been in the House "divers persons of figure and consideration," than whom none were more capable of judging of its true intent and meaning—many who had been members of the House in 1701, when the charter was adopted, and who were members of the House in 1720, when the court was established. They argued that the word *property* in the charter had not its usual signification, but referred to cases only of *proprietary* property,* which, they said, of course should not be heard before the governor and council; and that, in such a court of chancery as this, the people were *not* obliged to answer otherwise than in the "ordinary course of justice," according to the words themselves of the charter, and they dismissed the matter of the petitions against the court, with the remark that "the practice and method of obtaining names to petitions amongst us are now so very well known, that all persons of judgment must be sensible that the

very large. Certain it is, that the governor sat in not less than twenty-nine cases, and that all of these, save very few, are marked upon the registry, "ended."

* This was not only evasive, but in strange ignorance of the *principle* of the sixth article of the Charter of Privileges.

matter and not the numbers of the signers is principally to be considered and regarded"—a suggestion which the experience of several subsequent generations has, perhaps, confirmed.

But to these papers, the House replied with much force and dignity. No mere vote of the House could, they said, erect a court of equity, which could only be done by a law of the province; no opinion of counsel, nor silence of subsequent assemblies were of any consideration, nor indeed had they, upon strictest inquiry, been able to find that any one ever thought of the charter at the time; no practice of other colonies could be a precedent unless it were shown that they, too, had a similar charter of privileges; the restricted definition of the word "property" was, with submission, an absurdity; it was clear that a court of equity could only be established by act of Assembly, and then, and not before then, a suit therein would be "in the ordinary course of justice." No one pretended that in England the king could, by his mere charter, create a court of equity,* and if not the king, how much less the

* For this they cited "the case of one Flood, in 40th Eliz." The case is Stepney *v.* Lloyd, Cro. Eliz. 646, also reported 4 Inst. 97. The opinion of the attorney and solicitor-general in England, in favor of the legality of Keith's Court of Chancery was that although the king could not *now* erect, by a commission, a court of chancery in England, where all necessary courts were already in being, yet Charles

deputy of the king's patentee. And, finally, they suggested that if the governor and council were mistaken as to their prerogative, they were not the first great men who had exceeded their jurisdiction, and that, too, they added, referring to the angry tone of the paper which they were answering, "without giving any such offence."*

Further proceedings seem to have stopped here. The Assembly soon after adjourned without passing the act for establishing courts of equity, and the governor continued to act as chancellor up to the time of his death, but a few months after. For when the Assembly met in August, they had to lament the loss "of that worthy gentleman, our late governor," whose duty had, they said, been

II. might, by his commission to Penn, have authorized him to erect courts of equity without the consent of the legislature being necessary, until Penn himself made it so by the Charter of Privileges; that such consent had been given, in 1720, by their request to the governor to open the court, and that the court thus opened, with their assent (but not without), was no violation of the charter of 1701.—*Brightly's Eq. Jur.* 32, n. So, in 1703, the attorney-general (Sir Edward Northey) was of the opinion that there was nothing in the clause in the charter of Massachusetts Bay, which was submitted to him, which excluded the power of the crown to erect by its prerogative a court of equity in that province, "as by her royal authority they are erected in other of her majesty's plantations, and it seems to me that the General Assembly there cannot by virtue of this clause erect a court of equity." 1 Chalmer's Opinions, 482. The difference in the frame of government between Massachusetts and some of the other colonies will, of course, be remembered. See 1 Story on the Constitution, chapters iv. to xvii.

* 3 Votes of Assembly, 252 *et seq.*

so well discharged, both to the proprietaries and the people. No successor of his office has ever attempted to exercise chancery powers, and thus it was that, as we are told, "Pennsylvania lost the system, because her governor and representatives could not agree by whom the office of chancellor should be held,"* and equity, as a separate system, slept for just one hundred years.

In the registrar's book it appears that on the 1st of September, 1739, the registrar, then Robert Charles, applied to Governor Thomas for leave to resign his office, and to deliver up the books and papers in his custody, and an order was made that he be dismissed from his office, and deliver up all the books, papers, and writings in his custody to Thomas Lowrie, secretary, to be by him kept till further orders.

I have ventured, at the risk of being tedious, to enter into these details of what some might consider useless and obsolete history, with the desire to ascertain how, and when, and why it was, that we, in Pennsylvania, began to administer equitable principles through the medium of common law forms. The impression is, perhaps, a general one, that such had always been our practice, and there is not wanting authority in its favor. "I think it not an ignorant prejudice," said a late chief justice,

* Mr. Binney's Eulogium on Ch. Justice Tilghman, Appendix to 16th Serg. & Rawle, 448.

"but high political wisdom which caused our ancestors to refuse a court of chancery any place among their judicial institutions. The men who founded this commonwealth, who built up her reputation, achieved her liberties and settled her laws, knew very well the amount of good and evil that such a court had done elsewhere, and, upon sound and deliberate judgment, they repudiated it as far as they could. The administration of law, blended and mixed with equity principles, was a happy conception. It was no bungling substitute, but a most admirable improvement of both legal and chancery practice."*

But the review which we have just taken of our earlier history may induce us rather to adopt the conclusion, arrived at by equally high authority, "that this (the absence of a court of chancery) was the consequence of a jealousy of the principles and practice of that court entertained by the people, is not indicated by their early juridical history."†

And the history of other colonies discloses much of the same feeling. In Massachusetts there had been the same disagreement as to the office of chancellor, but we are told that the unpopularity of a court of chancery does not seem to have been

* Black, C. J., in Finley *v.* Aitken, 3 Pittsb. Leg. Int. 2, cited in Brightly's Eq. Jur. 27, note.

† Mr. Binney's Eulogium, *supra*.

caused by any aversion or dislike of the people to such a court, but by a disagreement between themselves and their parent government as to the manner in which the tribunal should be established. In New York, there was no question as to the necessity or expediency of a court of chancery, but much question whether the governor or the council should be chancellor.*

Our ancestors seem, from the first, to have recognized the distinction between law and equity, and to have desired that their principles should be administered, if not in separate tribunals, yet at least in distinct and separate branches of the same tribunal, as was, until lately, the case in the Court of Exchequer. It is quite likely, when we consider that most, if not all, our earlier judges were laymen, incapable, of course, of observing the scientific difference between law and equity, and prone, therefore, to blend them together, that, at times, equitable principles were administered in the courts of common law. But if our judges were laymen, our bar was composed of men who understood their profession, and who would have been unlikely to have considered the

* Parkes' History, *supra*, Introduction, p. 53. It is rather singular that, with the exception of an article in the *North American Review*, written by Judge Story (1820, New Series, vol. xi. p. 142, see Story's Life and Letters, vol. i. p. 379), the only history of equity jurisdiction in the United States should have been written by an English lawyer.

mixture of law and equity in a single tribunal as an act of high political wisdom.* When, too, we add to this history of the times the expressions of regret, in the early reported cases, of the absence of a court of chancery, we are constrained to think that some wrong has been done to the lawyers and the judges of that day; it was not voluntarily that they forced the jurisdiction of equity upon the common law courts, to be administered as best it might, but when they had no alternative, they made the most of the materials that were given them.

We must not of course suppose that it was first and only in Pennsylvania that the courts of common law recognized and enforced equitable principles. We find in the Year Books the doctrine that parcels of land subject to a common charge are liable in the inverse order of their alienation; there, too, we find that an executor cannot purchase

* In the early case, in 1768, of Swift *v.* Hawkins, 1 Dallas, 17, where the plaintiff opposing the introduction of evidence to show want (qu. failure) of consideration of a bond, Chief Justice Allen remarked that there being no court of chancery in our province, it was necessary, to prevent a failure of justice, to admit the defence, and he added that he had known this to be the constant practice of the courts of the province for thirty-nine years past. If the chief justice thus spoke from his actual knowledge, this would carry back the practice to the year 1729, three years after Keith's retirement, when the unpopularity of the Court of Chancery had probably at least commenced; but if he referred to his own recollection of the practice, it is proper to remember that the chief justice was originally a merchant, and only came on the bench in 1750.

a debt of his testator and claim more than he paid for it; the law of bailments is especially a matter of trust and confidence, while the introduction of the action of assumpsit as a means of enforcing equitable demands, the doctrines of equitable estoppel, of relief from the penalty of a bond, of contribution among sureties, and of the discharge of a surety by giving time to the principal—all are cognizable in courts of law.

But in Pennsylvania we had to go much farther, and to administer *every* equitable principle in a common law court. That we accomplished as much as we did, may be matter of wonder, but it can be no matter of wonder that many equitable principles were not administered at all.

The history of the system may, perhaps, be divided into three several periods of time—

First, from the abolition of the Court of Chancery in 1736, or a little before this time, to the adoption of the new Constitution in 1790.

Secondly, from 1790 to the passage of the act of 1836; and

Thirdly, from that time to the passage of the act of 1857.

Mr. Laussat has considered the subject down to the year 1826, when he wrote his essay, and I shall but briefly go over this ground.

The first *reported* case before the Revolution was one that arose in 1768, where, in an action of

debt on a bond, the court admitted evidence of a want of consideration,* which, said the chief justice, was a matter of necessity in order to prevent a failure of justice, there being no court of chancery in the province.†

In the year 1785, Chief Justice McKean, in charging a jury upon the question (not, unhappily, unknown in our own times), whether a bond could be paid in a currency which was then depreciated, said that the want of a court with equitable powers like those of the chancery in England, had long been felt in Pennsylvania. The institution of such a court, he observed, had once been agitated here, but the Houses of Assembly, antecedent to the Revolution, successfully opposed it, because they were apprehensive of increasing, by that means, the power and influence of the governor, who claimed it as a right to be chancellor. For this reason, many inconveniences had been suffered. No adequate remedy was provided for a breach of trust, no relief could be obtained in cases of covenants with a penalty, &c. This defect of jurisdiction had, he said, necessarily obliged the court, upon such occasions, to refer the question to the jury under an equitable and

* Probably a misprint for *failure* of consideration. Mere want of consideration would be no defence, either at law or in equity, to an action on a sealed instrument.

† Swift *v.* Hawkins, 1 Dallas, 17.

conscientious interpretation of the agreement of the parties, and it was upon that ground that they must consider and decide the cause.*

Later in the same year came up the case of a *scire facias* on a mortgage, under our most simple and efficient statute of 1705 (an act which, after a hundred and sixty-two years of trial, has not been attempted to be improved), in which the doctrine of tacking was sought to be introduced. The plaintiff contended that it was not enough that the mortgagor should pay to the mortgagee the principal and interest of his money, with costs, but that equity would also subject the mortgaged premises to the payment of subsequent simple contract debts due the mortgagee, and it was ingeniously urged that the chancery jurisdiction for redemption of mortgages having been transferred by the legislature to the common law courts, these would take care that he who claimed equity should do equity. But it was held, that although courts of law in this State had, in some instances, adopted chancery rules to prevent the absolute failure of justice, yet in this case there was no necessity to usurp the power of a court of chancery; there was a positive statute directing the mode of proceeding upon mortgages, entirely different from those prescribed in England, and which confined the remedy of the mortgagee to the recovery of

* Wharton *v.* Morris, 1 Dallas, 125.

the principal and interest due on the mortgage.* And it is familiar to all of you that the doctrine of tacking has never been recognized in Pennsylvania.†

Immediately after the commencement of the Revolution, the Constitution of 1776 gave to our courts, besides their other powers, those of a court of chancery so far as related to the perpetuation of testimony, the obtaining of evidence from places not within this State, the care of persons and estates of those *non compotes mentis*,‡ "and such other powers as may be found necessary by future general assemblies, not inconsistent with the Constitution."

No "such other powers" were, however, then granted, if we except the acts of 1786 and 1789.§ The first of these authorized the Supreme Court, upon bill or petition filed setting forth the loss of deeds or other writings, to issue a subpœna, requiring the persons named to appear and make answer or oath, to refer the cause to a master, and to make such decree as to justice and equity should appertain, and this statute is in force at this day. The statute of 1789 simply authorized a proceed-

* Dorrow *v.* Kelley, 1 Dallas, 142.

† Anderson *v.* Neff, 11 Sergeant & Rawle, 223. Thomas's Appeal, 6 Casey, 378, went to the verge of the opposite doctrine.

‡ See *supra*, note to pages 28, 29.

§ Acts of 28 March, 1786, and 28 September, 1789.

ing in the nature of a bill of discovery against garnishees in cases of foreign attachment.

Upon the formation of the new Constitution of 1790, the question of chancery powers, and, indeed, of a separate court of chancery itself, came up for debate. As to this, it need only now be said, that the political events of the past years had impressed upon most of the members of the convention "a bitter animosity to everything that savored of unusual power," and the efforts of the lawyers of that body in favor of chancery powers, or a separate chancery court, failed to succeed.* The utmost that was done was that, in place of the concluding clause in the Constitution of 1776 to which I have referred, were inserted the words, "and the legislature shall vest in the said courts such other powers to grant relief in equity as shall be found necessary, and may, from time to time, enlarge or diminish those powers, *or vest them in other courts*, as they shall judge proper for the administration of justice." But the power to establish a separate court of chancery thus given to the legislature was not exercised, nor, for nearly half a century afterwards, was any equitable jurisdiction given to the courts then in existence, save in the most parsimonious manner. The acts, such as they were, you will find referred to in the

* See Minutes of Council of 1790, pp. 38–42.

Report in 1835 of the Revisors, "On the administration of justice." Their sum was little more than the grant of powers to compel trustees to account, to appoint and dismiss them, to compel answers on oath in certain cases of execution, and to complete the contract for the sale of lands, in cases where the vendor had died. The much more important class of cases, viz: the specific performance of contracts *inter vivos* was, until 1836, left to the common law courts.

I will not now detain you by working out the problem which was thus attempted to be solved.

Apart from certain general heads of equitable jurisprudence, Mr. Laussat has considered, first, the equities of a *plaintiff* as administered in the courts of common law, and secondly, the equities of a *defendant*.

As to the former, he has reverted to the decision which rendered unnecessary the profert of a bond—which gave a remedy not only against a surviving partner, but also against the representatives of a deceased partner—and which recognized the right of an equitable plaintiff to sue in the name of his assignor, giving the former and not the latter, the control over the action. Principally, however, and naturally, he has dwelt upon the head of specific performance, enforced, with us, as to lands, by means of the action of ejectment, and as to chattels, by means of the action of replevin. As

to the former, you are all familiar with the practice by which a conditional verdict, to be released on the specific performance of the contract, was made the ingenious, though clumsy substitute for the neat, simple and flexible remedy which equity provides. It was confessed that the substitute was insufficient when the defendant, without relying on the statute of frauds, confessed a parol unperformed agreement,* and it is obvious, that where the equity of the complainant to specific performance, however clear in itself, is partially met by the equity of the defendant for compensation, it may be difficult to work out the equity of the latter in an action of ejectment brought by the former. The same remark will of course apply to the case of an ejectment as a means of enforcing a resulting trust.

With respect to the action of replevin as a means of enforcing the right to specific chattels, while it may be admitted that with us, as in some of our sister States, a broader remedy exists than is the case in England, "lying in all cases where one man improperly detains the goods of another, it is, in no instance, effective to enforce a specific return of chattels; since a claim of property, and bond given, is always sufficient to defeat a recla-

* Mr. Laussat's Essay, p. 56. But as to this, it must be remarked that in a really contentious litigation, such a waiver of the right of pleading the statute could not occur.

mation, no matter what may be the eventual issue of the contest.*

With respect to the equities of a defendant, Mr. Laussat has classed these under the heads of want of consideration, fraud, mistake and accident, set-off, and performance; in a word, the defendant was considered entitled to give in evidence anything which, *ex æquo et bono*, should defeat the plaintiff's right to recover.

And whatever may be said as to the insufficiency of the remedy afforded to a plaintiff, it must be acknowledged that as to the protection given to a defendant, we were in advance of the law as elsewhere administered. "It must sound oddly to a foreigner," says a great living legal author,† "that on one side of Westminster Hall, a man shall recover an estate without argument, on account of the clearness of his title, and that on the other side of the hall, his adversary shall, with equal facility, recover back the estate." And yet scarcely twenty years after these words were written, we find in the English "Common Law Procedure act,"‡ that it shall be lawful for the defendant (or plaintiff in replevin) in any cause in any of the superior courts in which, if judgment were obtained, he would be entitled to relief on equitable grounds,

* McGowin *v.* Remington, 2 Jones, 56.

† Lord St. Leonards; Sugden's "Letters to a Man of Property," p. 4.

‡ 17 and 18 Victoria, § 125.

to plead the facts which entitle him to such relief by way of defence, "and the said courts are hereby empowered to receive such defence by way of plea, provided that such plea shall begin with the words 'for defence on equitable grounds,' or words to the like effect."*

And thus we find, after long years of different experience and of travel over different paths, the older and the younger country approach each other.

Indeed it is easy to see why in the administration of equitable principles through the medium of common law forms, the plaintiff should suffer, rather than the defendant. The common law had its origin in the wants of the people, and grew with their necessities. Its forms soon assumed certain definite channels, through which, and through which alone, the law was administered. Thus we had the different forms of action, modes of trial, rules of evidence, means of enforcing

* "The statute does not say," said Parke, B., in the Mines Royal Society *v.* Magnay, 10 Exchequer, 489, "that the courts of common law are to give relief on equitable conditions, but that a plea shall be allowed which discloses a defence upon equitable grounds." And such an equitable defence can, it is held, be pleaded only in cases where the plea sets up an equity that will entitle the party pleading it to an unconditional and perpetual injunction; and where the common law court overrules the plea as not establishing a case for unconditional relief, the defendant may still apply to the Court of Chancery for an injunction. See note to Chitty's Collection of Statutes (London, 1865), p. 785.

judgments, and, in time, the outlines of these forms became more defined, and the forms themselves necessary incidents to the administration of the common law. If a plaintiff brought an action *ex delicto* when it should have been *ex contractu*, he was turned out of court, and it was natural that at times new cases should arise, to which no form of action was applicable, not even that very comprehensive one, the action of trespass on the case.

The forms of action and the rules of pleading necessarily were, to some extent, rigid. Had it been otherwise — had suitors been permitted to seek redress through the courts in their own way — uncertainty and fraud would have entered, where now certainty of proceeding, and justice in result, are ornaments of the jurisdiction. And whatever may be, in any respect, the defects and the rudeness of the common law, "we should ever remember," said a late chancellor, "its favor to personal liberty, and its admirable machinery for separating law and fact and assigning each to a distinct tribunal, wherein it excels all other systems of jurisprudence which have appeared."*

It is true that these forms and rules of the common law may be, and in Pennsylvania they

* Lord Campbell; 1 Lives of the Chancellors, 33, note.

were, tempered and moulded to meet many cases which, in strictness, should be remedied only in equity. And with us, for a time, owing to a more primitive condition of society, the ability of the judges, aided by the ingenuity of the bar, enabled us so to mould these forms and rules as to include the most common and simple classes of equitable remedies.* But with advancing civilization, questions of a more complicated nature must constantly arise, which common law forms are wholly inadequate to comprehend, and any attempt to mould these forms so as to include cases to which they are inapplicable, must change the very principle and character of common law procedure. Take, for example, the case of nuisance. It is true that the infliction of a nuisance is contrary to the *principles* of the common law,

* Of the period of time between the abolition of Keith's Court of Chancery and the commencement of the Revolution, it has been said: "Scientific equity fell under general proscription, and with some few exceptions was made to give place to a spurious equity, compounded of the temper of the judge and the feelings of the jury, with nothing but a strong infusion of integrity to prevent it from becoming as much the bane of personal security, as it was the bane of science. It was to expel this usurper that the days and nights of Chief Justice Tilghman were devoted—a work suggested, it is true, by that distinguished predecessor to whom he owed his office, but consummated by himself and his colleagues, to whom we owe a debt not to be acquitted, for having fully established the principles of methodized and scientific equity in their just sway, as part of the common law of the land."—Mr. Binney's *Eulogium*, supra.

but it is idle to deny that the *forms* of the common law, mould them as we will, are inadequate to the speedy and efficient redress of the evil. Hence it was, that from the very necessity of the case, the party injured was allowed to take the law into his own hands and abate the nuisance. But as this opened the door to breaches of the peace, it was necessary, in order to prevent a still greater evil, to provide that the nuisance should be abated *peaceably*, the effect of which was, of course, to reduce the privilege to nothing, for when the aggressor offered resistance, the party aggrieved was still driven to the common law remedies, viz: the *assize of nuisance*, and the writ *quod permittat prosternere*, or, in case of a public nuisance, an indictment. A contrast can scarcely be borne between these impracticable forms of the common law, and the facile, summary, and powerful remedy by injunction, in which the nuisance, if proved, is judicially redressed as speedily as the aggrieved party could abate it himself.

Shall cases be further added? Cases of preventive justice enforced by injunction—to restrain proceedings at law where, from the nature of the case, no adequate remedy can be had in the courts of law—to restrain waste where the writ of estrepement would be wholly inadequate—to restrain the transfer of negotiable paper—the disclosure of

confidential communications—the piracy of trade-marks—the infringement of copy-right and of patent-right—the invasion of corporation franchises, which, alone, has in modern times opened almost a new volume of equitable jurisdiction; shall I add to these the jurisdiction in cases of discovery—of the reformation, the cancelling and the delivering up of instruments—of specific performance—of account—of partition—of contribution—of marshalling assets—of confusion of boundaries—of bills *quia timet* and bills of peace? Can the most ardent admirer of the common law refuse to acknowledge that, at least in some of these cases, the remedy afforded by that law is inapplicable and ineffective?

It is impossible that much of all this should not have been felt by the profession. True it is, that the want of familiarity with the forms of equitable procedure had, especially in the interior counties, brought about a distaste for equitable principles save through those common law forms by which, and by which alone, they had been administered. Still, it was felt, both on the bench and at the bar, that the system was, at the best, a makeshift. "Before the Revolution," it was said in 1826, "when the bench was rarely graced by professional characters, juries were considered almost the same as chancellors," and although a certain degree of control had naturally ensued,

much was still unavoidably left to the jury. "And how uncertain," it was added, "is the result of a suit committed to twelve men, however honest and upright, unused to professional intricacy and scientific principles, and whose decision is not binding on another jury, either in the same or an exactly similar case that may succeed. * * * In fact, it is time to reduce the uncertain corruscations of Pennsylvania equity to the safe and steady light of chancery."* And in the following year, when our bar met to listen to the tribute paid to the memory of that judge, who, more than any other, "taught us how to clothe a large body of equity in the drapery of the law,"† we were told that "in those cases in which equity consists in the very methods of her administration, the chief justice looked for final relief from the representatives of the people, and he waited patiently, and was content that they should wait the instruction of time. Is the hope

* Address to the "Associated Members of the Bar of Philadelphia," by William Rawle, senior. So, as was said by Chief Justice Gibson, in 1832, in speaking of the doctrine which in Pennsylvania allowed a purchaser to defend from payment of unpaid purchase-money of real estate, though the defect might not be covered by the covenants in the deed, "the greatest practical evil of the doctrine is that it subjects the contract to the control of a jury, prone to forget that to cut a man loose from his bargain from motives of humanity is the rankest injustice." Lighty *v.* Shorb, 3 Penna. R. 451.

† Mr. Binney's Eulogium on Chief Justice Tilghman, *supra*.

vain," it was added, "that the opinion of this pure and enlightened judge may be received instead of that instruction?" So from the bench it was soon after said, "As we cannot *hope* to see a separate administration of equity, we are bound to introduce it into our system as copiously as our limited power will admit."*

The time came at last, and the history of the introduction of equitable jurisdiction and its subsequent extension is in the highest degree instructive.

Under the joint resolution of our legislature of the 23d of March, 1830, three commissioners were, as you are aware, authorized to revise the civil legislation of our State, and, among other assigned duties, they were directed to report whether it would be expedient to introduce any and what change in the forms and mode of proceeding in the administration of the laws. The commissioners appointed under this resolution made several reports, the last of them being in the year 1836, and that "On the Administration of Justice" in 1835, in which the subject of chancery jurisdiction was considered, is the most elaborate of them all. Themselves men of large experience and practice under the system which had prevailed for more than a hundred

* Torr's Estate, 2 Rawle, 253.

years, the revisers considered that "the whole *theory* of equitable jurisprudence was already incorporated with our code, and that its principles circulated through all the channels of our judicial system." For the purpose, however, of determining whether such a system was sufficient to meet every reasonable requirement in the administration of justice, they referred to the general heads of equitable jurisprudence.

We have seen that both the constitutions of 1776 and 1790 gave to the Supreme Court and the several courts of common pleas, the power of a court of chancery as far as related to—

1. The perpetuating of testimony;

2. The obtaining of evidence from places not within the State;

3. The care of the persons and estates of those who are *non compos mentis*.

The revisers, in their draft of the proposed laws, gave to the same courts these same powers in the same words. But they recommended the addition of the following powers, which had not theretofore been exercised save through the medium of common law forms:—

4. The control, removal, and discharge of trustees, and the appointment of trustees and settlement of their accounts;

5. The supervision and control of all corporations, other than those of a municipal character,

and unincorporated societies or associations and partnerships;

6. The care of trust-moneys and property, and other moneys and property made liable to the control of the said courts;

7. The discovery of facts material to a just determination of issues and other questions, arising or depending in the said courts;

8. The determination of rights to property or money claimed by two or more persons, and in the hands or possession of a person claiming no right of property therein;

9. The prevention or restraint of the commission or continuance of acts contrary to law, and prejudicial to the interests of the community, or the rights of individuals;

10. The affording specific relief, where a recovery in damages would be an inadequate remedy;

"And in such other cases as the said courts have *heretofore* possessed such jurisdiction and powers under the constitution and laws of this commonwealth."

"And," it was added, "in every case in which any court as aforesaid shall exercise any of the powers of a court of chancery, the same shall be exercised according to the practice in equity prescribed or adopted by the Supreme Court of the United States, unless it be otherwise provided by

act of Assembly, or the same shall be altered by the Supreme Court of this commonwealth by general rules and regulations, made and published as is hereinbefore provided."

The jurisdiction was, therefore, to extend to the heads of

Trusts and trustees,
Corporations,
Partnership,
Discovery,
Interpleader,
Injunction, and
Specific performance.

As to mortgages, the revisers conceived that our system of proceeding by *scire facias* was so simple and effective as to need no change.

They deemed it inexpedient, notwithstanding the regrets expressed in the cases of Yohe *v.* Barnet* and Slifer *v.* Beates,† to give any authority to enforce a wife's equity to a settlement, deeming the English rule to be unsatisfactory that the wife's equity would be enforced only when the husband came into a court of chancery to obtain the possession of her property, and would not interfere when she could so obtain it in a common law court.

As to the persons and estates of infants, there was, they considered, obviously no need of legis-

* 1 Binney, 363. † 9 Sergeant & Rawle, 182.

lation. The guardians of their persons and estates were fully under the jurisdiction of the Orphans' Court. Those questions which might arise between parents as to their custody, were decided upon writs of *habeas corpus*, and upon the subject of their *marriage*, the Orphans' Court had never interfered.

With respect to charities, it was said that the common law courts had the power to dismiss and appoint trustees for charitable as well as other uses, but none to keep them in the channel of the donor's intention, and the *cypres* doctrine had been distinctly repudiated ;* the only powers were the indirect ones of removing the trustees upon cause shown, and of determining, on the settlement of the trust accounts, whether the funds had been properly applied, and though these remedies were admitted to be but indirect and even insufficient, it was deemed that the nature of the questions on trusts for religious and charitable purposes was so delicate that it was better to suggest no change.

The practice of chancery in cases of boundary, partition, and dower was referred to, and the superiority of a commission over an inquest in the two latter admitted, but these heads were not added to the list.

* See now the act of 26th April, 1855, § 10, Pamphl. L. 331.

The jurisdiction under the heads of accident, mistake, fraud, enforcing delivery of specific chattels, and relief against forfeitures and penalties, was considered to be sufficiently exercised in the common law courts.

As to the *manner* in which equitable jurisdiction should be exercised, the revisers considered, first, that the establishment of a separate court of chancery was unadvisable; and, secondly, that the union of a court of chancery with existing courts of law—as was the case with the Court of Exchequer in England, and was and is the case in the Circuit Court of the United States—was even less advisable. They recommended, therefore, thirdly, that the common law courts should continue to administer equitable principles through the medium of common law forms as theretofore, *but with the addition of chancery forms and materials in certain specified cases.*

It is easy for us, at this day, to wonder at the reserve with which the grant of equitable jurisdiction was suggested to the legislature, but limited as this jurisdiction was, it was too enlarged for the legislature of thirty years ago.

They passed the bill as reported by the revisers, giving to the Supreme Court and the several courts of common pleas, the powers of a court of chancery so far as related to the first six heads I have just referred to, and here they stopped, so far as

jurisdiction throughout the State was concerned. But to the Supreme Court when sitting in banc in *Philadelphia*, and to the Court of Common Pleas of *that county*, they gave the jurisdiction of a court of chancery so far as related to—

1. The supervision and control of partnerships, and corporations other than municipal corporations;

2. The care of trust-moneys and property, and other moneys and property made liable to the control of the said courts;

3. The discovery of facts material to a just determination of issues and other questions, arising or depending in the said courts;

4. The determination of rights to property or money claimed by two or more persons in the hands or possession of a person claiming no right of property therein;

5. The prevention or restraint of the commission or continuance of acts contrary to law and prejudicial to the interests of the community or the rights of individuals; and

6. The affording specific relief where a recovery in damages would be an inadequate remedy.

Thus the jurisdiction under these heads was withheld by the legislature from the State at large, and confined to Philadelphia County, and in order to preclude every doubt, it was expressly provided that no process to be issued by the courts of that

county or the Supreme Court sitting therein, under the chancery powers so granted, should, at any time, be executed beyond the limits of that county.

In the spring of 1840, a little more equitable jurisdiction was doled out to Philadelphia County, and to it alone, by giving to the Supreme Court within that county, and to its Court of Common Pleas, equity jurisdiction in all cases over which courts of chancery entertained jurisdiction on the grounds of fraud, accident, mistake or account;* and in a later statute it was added, "whether such fraud, accident, mistake or account be actual or constructive."† The distinction between actual and constructive fraud is familiar to all of us. It may be more difficult to define what may be constructive accident, mistake or account.

In the autum of 1840, the legislature gave the first extension of equity powers beyond this county, by providing, in a curiously drawn statute, that the Supreme Court, the several district courts and courts of common pleas should have all the powers and jurisdiction of courts of chancery in settling partnership accounts, and such other accounts and claims as by the common law and usages of the court had heretofore been settled by

* Act of 13th June, 1840, Pamphl. Laws, 671. It was the 39th section of "an act for regulating election districts."

† Act of 16th April, 1845, § 3, Pamphlet Laws, p. 542.

the action of account render, and it should be in the power of the party to proceed either by bill in chancery or at common law, but no bill in chancery should be entertained unless counsel should certify that the case was of such a nature that no adequate remedy could be obtained at law, or that the remedy therein was attended with great additional trouble, inconvenience, or delay.*

In 1844, the District Court of Alleghany County received all the chancery powers that had theretofore been conferred upon any other court of the commonwealth.†

In the next year an important act was passed,‡ of which the last section gave equitable jurisdiction in all cases of dower and partition in Philadelphia County, and the first two regulated, in an elaborate manner, appeals in equity suits in that county from the Court of Common Pleas to the Supreme Court "from *any interlocutory* or final order or decree," but so much of the act as related to interlocutory decrees was repealed within a month,§ and I need not, therefore, dwell upon its provisions. It is easy to imagine how the machinery of a court of equity, part of whose usefulness consists in having, if necessary, an

* Act of 13th October, 1840, Pamphl. Laws, 7.

† Act of 29th April, 1844, Pamphl. Laws, § 2, P. L. 526.

‡ Act of 17th March, 1845, Pamphl. Laws, 158.

§ Act of 8th April, 1845, § 4, Pamphl. Laws, 543.

almost daily control over the cause, would be clogged by an appeal taken to any and every interlocutory decree made therein, where such appeal operated, upon security being given, as a suspension of proceedings in the cause. It is familiar, that save upon points where the determination complained of was merely the result of the exercise of discretion, in a case when the matter complained of was fairly a subject for the exercise of discretion (as for example the question of costs), an appeal from the decree of the court which pronounced it was according to the course and practice of chancery, though it did not, of course, stop the proceedings under the decree complained of, without the special order of the court. It was otherwise in the common law courts; no writ of error lay save to the final judgment of the court below, and it has been in consequence of our habit of administering equity through common law forms, that we have at times forgotten the different modes of procedure in the two tribunals. Thus, a very recent act provides that an appeal shall lie in all cases where a special injunction shall be granted, but that the pendency of such appeal shall not prevent the operation of the injunction, or the proceedings in the original suit,*

* Act of 14th February, 1866, Pamphl. Laws, 48.

but it seems to have been forgotten that such was an ordinary practice of the Court of Chancery.*

In 1848, the same jurisdiction and power were given to the courts in Philadelphia County as to the discovery of facts, as was possessed by courts of chancery.†

You will remember that under the revised acts of 1836, it was especially provided that no chancery process issued by the Supreme Court or Court of Common Pleas in Philadelphia County should, at any time, be executed beyond the limits thereof, but in 1852, the first step was taken towards the diffusion of general chancery powers throughout the State. A statute in that year‡ declared that nothing in that part of the act of 1836 should be construed to prevent the Supreme Court from exercising original jurisdiction in equity, in any of the cases enumerated therein, within any of the counties of this commonwealth, or to prohibit the process of the court from running into any other county; but the Supreme Court, when in session in any district, should exercise original jurisdiction, in the cases enumerated, throughout the State, and provision was made for causes not finally determined before the close of a session

* 2 Daniel's Chancery Practice, 1548, *passim*.

† Act of 10th April, 1848, § 4, Pamph. Laws, 449.

‡ Act of 8th April, 1852, § 1, Pamph. Laws, 291.

in any district, being certified to the next district,* &c.

At last, in 1857, the opposition to the extension of equity jurisdiction seems to have broken down, and the legislature then gave to the courts of common pleas of the several counties of the commonwealth, in addition to the powers and jurisdiction theretofore possessed and exercised, the same chancery powers and jurisdiction then vested in the courts of Philadelphia County, with similar provisions for an appeal to the Supreme Court.†

And thus, after the lapse of nearly a century and a half, we find, once more, chancery jurisdiction throughout the State of Pennsylvania.

Certain recent acts, however, extending chancery powers, have been restricted to the county of Philadelphia. In 1858, jurisdiction was given within this county to the Supreme Court and the Court of Common Pleas in all cases of disputed boundary between adjoining and neighboring lands, whether the parties held under the same

* Two provisos were added: one that the court should not have original jurisdiction under that act to supervise any partnerships or unincorporated associations, and the other, that it should not be construed to repeal that provision, in the act of 1844, which prohibited the issuing of any injunction until a sufficient bond of indemnity should have been given; but it is difficult to see why the latter proviso was deemed necessary.

† Act of 14th February, 1857, Pamphl. L. 39.

or different titles,* and in the following year, this was extended to cases where such boundaries had become confused or rendered uncertain by lapse of time, by natural causes, or by the act, neglect or default of the owner or occupant.† In 1863, the jurisdiction under the former of these acts was extended to Alleghany County.‡

The jurisdiction in cases of partition may be here particularly noticed. It is familiar that courts of chancery issue commissions for partition, not under the authority of any act of Parliament, but on account of the difficulty attending the process at law, where the plaintiff must prove his title as he declares, and also the titles of the defendants, and this was attended with so much embarrassment that, by analogy to the jurisdiction in cases of dower, partition was obtained by bill. There were advantages and disadvantages which attended this. The advantages were obvious: Where upon a bill filed, the court obtained jurisdiction of the subject-matter, it could give not only the specific relief which, and which alone, a writ of partition could afford,§ but it could adjudi-

* Act of 15th April, 1858, Pamphl. L. 267.

† Act of 5th April, 1859, Pamph. L. 359.

‡ Act of 15th April, 1863, Pamph. L. 499.

§ Writs of partition were abolished in England by the act of 3 and 4 William IV. c. 27, and now the only mode of obtaining partition is by deed between the parties, or in equity.

cate any question properly arising under the pleadings. Under such a bill, both real and personal estate might be divided—an account might be had, and the judgment of the court might be readily obtained upon questions of title between the joint owners.* The principal disadvantage was that while, at law, the final judgment that the partition be and remain firm and stable forever, operated *of itself* to transfer the legal estate to the several parties, a decree in equity, as has been already remarked,† merely ascertained and allotted the purparts, and the partition was afterwards consummated and perfected by conveyances between the parties, and where any of these were minors, the execution of the conveyances was respited until their majority,‡ and there was no power to decree a sale, in case the partition could not be made without prejudice to or spoiling the whole.

It is instructive to observe the difference of the manner by which the inconvenience attending the respiting of conveyances in the case of minors has been remedied in England, and in Pennsylvania: There, the infant had, after coming of age, a day

* See *passim*, note to Mundy *v.* Mundy, 1 Supplement to Vesey, jr. 171; notes to Agar *v.* Fairfax, 2 Leading Cases in Equity, 398.

† *Supra*, p. 39.

‡ Brook *v.* Lord Hertford, 2 P. Williams, 518; Attorney-General *v.* Hamilton, 1 Maddock, 21; Jackson *v.* Edwards, 7 Paige, 405.

to show cause against the decree, but since the Trustee Act of 1850,* the court, instead of giving him a day to show cause, declare him a trustee, within the meaning of the Act, of such parts of the property as have been allotted in severalty to the other parties.† Here all the analogies attending the administration of equitable principles are observed. But our own legislation on the subject is another instance of the effect of our habit of administering these principles through common law forms. In 1857, the legislature passed an act, which in cases of partition in equity provided for the allotment of the purparts by the master, and the awarding of the sums to be charged for owelty of partition, and then declared

* 13 and 14 Vict. c. 60; 4 Chitty's Statutes, 794.

† Bowra *v.* Wright, 4 De Gex and Smale, 265; S. C. 3 Eng. Law and Eq. R. 190. The 7th section of the act provides that "where any infant shall be seized of any lands upon any trust, it shall be lawful for the court to make an order vesting such lands in such persons, in such manner, and for such estate, as the court shall direct; and the order shall have the same effect as if the infant had been twenty-one years of age, and had duly executed a conveyance of the lands in the same manner, for the same estate;" and the 30th section provides that "where any decree shall be made by the court for the partition of any lands, it shall be lawful for the court to declare that any of the parties to the suit wherein such decree is made, are trustees of such lands within the meaning of this act, and, thereupon, it shall be lawful for the court to make such orders as to the estates, rights, and interests of such persons as the said court might, under the provisions of this act, make concerning the estates, rights, and interests of trustees."

that the decree confirming a partition should have *the same effect as a judgment of a court of law* in like cases, and of course no deeds are, therefore, necessary.* For some reason, this statute was confined, in its operation, to the county of Philadelphia, but in 1863, provision was made for a sale of the property by the master, in case all the parties to the partition should refuse to take the same at the valuation, and the master was directed to make return of the sale, and, upon its approval, to execute a deed of the property sold to the purchaser,† and this act does not seem to be restricted as to its local operation.‡

* Act of 14 March, 1857, Pamph. L. 97. Griffith *v.* Phillips, 3 Grant's Cases, 381.

† Act of 22d April, 1863, Pamph. L. 519.

‡ Before leaving this subject, it may be remarked that in a recent case in England (Clarke *v.* Clayton, 2 Giffard, 335, 1860), upon a bill filed for partition, the Vice-Chancellor (Stuart) said that a commission in a partition suit was an expensive and generally a very unnecessary proceeding; under its improved practice, the court could give facilities for dividing the estate in a way much more satisfactory and less expensive than the old mode of proceeding by commission, even in cases where there was adverse litigation, and he therefore ordered a decree that the estate be divided into equal third parts, and then that the parties were entitled in the proportion which had been shown, with liberty to each of the parties to bring in proposals, before the judge in chambers, for partition. The decree was in substance thus: Upon motion for a decree, &c., this court doth declare that the real and leasehold estates of the testator ought to be divided into equal third parts, and doth order and decree the same accordingly. And it is ordered that one of the said third parts be allotted in severalty to the plaintiffs, one other third part thereof to the defendant Venton, and the remaining third part thereof

Recent statutes have also conferred upon the several courts of common pleas, jurisdiction in equity, in cases arising under the general plank-road law.*

I have already referred to the early decision in which our courts refused to import into our system some of the incidents of chancery jurisdiction in cases of mortgages. Since that time, a class of mortgages, then comparatively unknown, has become very common. I mean mortgages given by a corporation to a trustee to secure the payment of bonds which are issued and sold in the market. In 1860, a bill in equity was filed by the trustees under such a mortgage for its

to the defendant Clayton. And it is ordered that proposals for a partition of the said hereditaments among the said persons and in the said proportion be laid before the judge for his approval. And it is ordered that the plaintiffs and the defendants do hold and enjoy their respective thirds in severalty according to such allotments, and do execute mutual assurances to each other of such respective thirds according to their respective interests therein, such assurances to be settled by the judge in case the parties differ.—Then followed the usual order as to production of title-papers, &c., and leave to apply for further instructions.

* Act of 14th April, 1854, P. L. 374. This was probably owing to the decision in Commonwealth *v.* Wellsboro' Plank-Road Co. 11 Casey, 152, where a bill having been filed to enjoin the collection of tolls on the ground that the road was not properly in order, it was dismissed by the Supreme Court, who held that the general plank-road law gave a special remedy by throwing open the gates. The act of 12th April, 1867, P. L. 71, as to the equity jurisdiction in cases of fraudulent insolvency of banks, seems rather to impose a duty on assignees than to confer any new equity jurisdiction.

foreclosure, and a decree for the sale of the premises was entered in the court below. But this was reversed by the Supreme Court, who held that the grant of equity powers by the legislature did not extend to cases of mortgages, nor could they be so construed in this case under the jurisdiction as to trusts and trustees.* But not long after, the legislature declared that the Supreme Court should have and exercise all the powers and jurisdiction of a court of chancery in all cases of mortgages given by corporations,† and it is familiar to all, that under this act proceedings have been had involving very many millions of dollars.

We have seen that the acts of 1701, 1710, and 1715 had given to all the county courts jurisdiction in matters of equity, and this jurisdiction, like that of Keith's Court of Chancery, was not prescribed, limited, nor defined. But the acts which have given to our present courts equitable jurisdiction, have confined it to certain specifically enumerated heads, and to these alone. These, however, are sufficiently numerous to cover most of the cases in which equitable relief is needed. Thus we have the jurisdiction under the heads of partnership, corporations (other than those of a

* Ashhurst *v.* Montour Iron Co. 11 Casey, 30.

† Act of 11 April, 1862, Pamph. L. 477.

municipal character), trust, discovery, interpleader, injunction, specific performance, fraud, accident, mistake, account, dower, partition, boundary, mortgages of corporations, obtaining evidence beyond the State, and the perpetuation of testimony. It is seldom that a case arises in which a party finds himself without a remedy, where he has a right which is properly cognizable in equity.

But the grant of these chancery powers has not, in theory, taken away from our common law courts the administration of equitable principles, though the limits of its exercise have perhaps, in practice, been gradually narrowed, and the former tendency towards its extension has certainly been checked. We have a law side and an equity side in our courts, as was formerly the case in the Court of Exchequer; but upon the law side we also administer equitable principles. And so, as we have seen, do the common law courts in England at this day, on behalf of the defendant, when complete relief can be given in the action pending.

One word (for I have already detained you too long) as to the present form of equity pleadings. These are now simple in the extreme. In England, the act of 15 and 16 Victoria, c. 86,* and the subsequent orders of 7th of August, 1852, abolished

* 3 Chitty's Collection of Statutes, 882.

the writ of subpœna—provided that the bill should contain a concise narrative of the facts, divided into paragraphs of distinct allegations, and should pray specifically the relief sought. No interrogations were allowed to be contained in the bill, but were to be filed separately. Provision was also made for simplicity in the answer, which was to be in the first person, and, like the bill, divided into distinct statements. The practice of excepting to bills for impertinence was abolished, provision was made for the oral examination of witnesses, and many other alterations in practice and pleading, as to which time will not allow me to dwell. Many of these alterations have been adopted in the recent Rules of Equity Pleading promulgated by our Supreme Court. One of them, the 58th, as to the oral examination of witnesses on motions for preliminary injunctions, which was intended to dispense with the use of affidavits, which were justly deemed demoralizing and unreliable, has been since repealed, at the request, as I understand, of the judges of the courts of common pleas, who have complained that the loss of time caused by the oral examinations was even a greater evil than that which it sought to redress.

You have thus been kind enough to follow me in the rapid retrospect which I have taken of the

history of equity in Pennsylvania. Certainly, no State was ever more "traduced and taxed of other nations" for having, through mere necessity, engrafted one branch of the science of jurisprudence upon another. There have not been wanting those who, without perhaps taking the time to study the philosophy of our system or its history, have accused us of blending indiscriminately together the principles of law and equity, administering both with but an imperfect knowledge of either, and "producing thereby a hybrid monster with none of the virtues and all the vices of either parent," and a sneering analogy has been suggested to the well-known opening lines of the *Ars Poetica*—

Humano capiti cervicem pictor equinam, &c.

How undeserved has been much of all this you may now judge; for history—that philosophy which teaches by example—has, I think, sufficiently vindicated us from these aspersions.

Nor can it be said that with us at the present day much evil is produced by allowing equitable principles to be administered in our common law courts. The chief evil of the system once was, that it was the *only* system—the means were inadequate to the end—but now that we have other means, let us not decry those which for a time served us so well, especially when we see that elsewhere, others have at this day begun to

adopt, through choice, some part of that which, long ago, we were forced to adopt through necessity.

Yet while it may be admitted that the science of equity can never be fully administered through the medium of trial by jury, there is, I think, in the fact that we have no separate court of chancery—that we have an equity side to our common law courts—a great benefit to both the bench and the bar. Abler pens than mine have dwelt upon the advantages which a judge derives from the mixing with the outside world which comes from trying causes at Nisi Prius,* and any one who has mingled with the chancery and the common law bar in England, cannot fail to be struck with the difference between them—a difference which can be attributed only to the atmospheres in which they respectively live.

And here then I must pause—here even upon the very threshold of my subject—for we have but entered the outer court of that temple which has so many sanctuaries. Having thus trodden these dry and rugged paths, there is, indeed, every temptation to dwell upon the beauties of that science whose object is "the amelioration of the

* See *passim* the Report of the Committee of the New York Bar, in 1827; Parke's Eq. Jur., Introduction, p. 35.

law in that wherein, by reason of its universality, it is deficient." But from other sources than a mere popular lecture, must be learned the development of that system which, in England, exhibits so completely the adaptation of human wisdom to human frailties and shortcomings. And when you seek to know how far the principles of equity, transplanted to this side of the Atlantic, have here taken root and flourished, you will find that—in the language of that accomplished writer whose loss we were forced to deplore so soon after he had given to the profession the last fruits of his matured labor and judgment—

"Upon the whole, the jurisprudence of this country has developed an equity system scarcely less comprehensive or less complete than that which has been established in England, and it is a conclusive testimony to the wisdom and practicable usefulness of the English chancery, that, at the suggestions of experience, its scheme has been adopted substantially, throughout a country not influenced by considerations of authority, but proceeding freely in quest of essential justice, and under the guidance of a reason proud of its independence."*

* Mr. Wallace's Preface to the American edition of "White and Tudor's Leading Cases in Equity."

The good work to which one of your Association lent his hand so many years ago, and to which I have ventured to make some addition, has shown some of the difficulties under which Equity in Pennsylvania has struggled, and we may now, from our checkered experience, be all the better able to appreciate that which, denied to us so long, we have at last received in the fulness of time.

APPENDIX.

THE REGISTRAR'S BOOK OF

GOVERNOR KEITH'S COURT OF CHANCERY.

Anno Septimo Georgij Regis Magnæ Britaniæ, &c.

1720
Augt. 25.

PENSILVANIA, SCT.

The Honourable William Keith Esq. Governour of this Province &c. took ye Qualification for Chancellor of sd. Province to this effect vizt: That well and truly he shall serve in the Office of Chancellor of this Province of Pensilvania wherewith he is Intrusted That he shall do right to all manner of People as well to Poor as to Rich according to ye Laws and Usages of that Part of his Majesties Realm called England. That he shall not know nor Suffer the hurt nor disheriting of the King nor that the Rights of the Crown and the Proprietor of this Province be Distressed by any means as far forth as he may it let, and if he may not let it he shall make it clearly and expressly be known. That he shall do and Purchase ye Kings Profits and the Right of the Proprietor of the Province of Pensilvania in all that he reasonably may.

In Council.

Charles Brockden Gent. was appointed Register of the Court of Chancery for this Province who did then thereupon Qualify himselfe by takeing the Solemn Affirmation according to Law to this effect vizt: That he would well and faithfully execute ye Office of Register of the Court of Chancery of this Province according to ye best of his Skill and Learning. Eodm die.

Before the Governour in Canc.

James Logan Esqr. a Member of the Governour's Council of this Province was Appointed one of the Masters of the Court of Chancery for the same Province Who did then Eodm die.

thereupon Qualify himselfe by takeing the Solemn Affirmation according to Law To this effect vizt: That he would well and faithfully execute and discharge the Office of one of the Masters of this Court according to ye best of his Skill and Learning. Before ye Govr. in Canc.

Eodm die. Jonathan Dickinson Esqr. Nominated by ye Governour a Master in Canc. Who thereupon Qualified accordingly &c. Ut Supra.

Samuel Preston Esqr. Nominated by the Governour a Master in Canc. Who thereupon Qualified accordingly &c. Ut Supra.

Eodm die. Richard Hill Esq. Nominated by the Governour a Master in Chanc. Who thereupon Qualified accordingly &c. Ut Antea.

Eodm die. Anthony Palmer Esq. Nominated by the Governour a Master in Canc. Who thereupon Qualified accordingly &c. On Oath. Ut Antea.

October 4. William Trent Esq. Nominated by the Governour a Master in Canc. Who thereupon Qualified accordingly &c. Ut Antea.

[*2] Ao. 8°. Georgij Rs.

1721
Aug. 19. Thomas Masters Esq. Nominated by the Governour a Master in Canc. Who thereupon Qualified accordingly &c. Upon his Solemn Affirmation. Ut Antea.

1722
July 25. Robert Assheton Esq. Nominated by ye Governour a Master in Canc. Who thereupon Qualified accordingly &c. On Oath. Ut Antea.

Eodm die. William Assheton Esq. Nominated by ye Governour a Master in Canc. Who thereupon Qualified accordingly &c. Ut Antea.

Mch. 1st. John French Esq. Nominated by ye Governour a Master in Canc. Who thereupon Qualified accordingly &c. Ut Antea.

Ao. 10° Georgij Rs.

1723
July 30. Andrew Hamilton Esq. Nominated by ye Governour a

Master in Canc. Who thereupon Qualified accordingly &c. Ut Antea.

Henry Brooke Esq. Nominated by ye Governour a Master in Canc. Who thereupon Qualified accordingly &c. Ut Antea. Eodm die.

Ao. 12° Georgij Rs.

William Fishbourn Esq. Nominated by ye Governour a Master in Canc. Who thereupon Qualified accordingly &c. Upon his affirmation. Ut Antea. 1725 June 17th.

Thomas Graeme. Nominated by ye Governour a Master in Canc. Who thereupon Qualified accordingly &c. Upon his Affirmation. Ut Antea. 1726 Aug. 4.

Evan Owen nominated by ye Governour a Master in Canc. Who thereupon Qualified accordingly &c. On Affirmation. Ut Antea. Eodm die.

Thomas Lawrence nominated by the Governour a Master in Can. who thereupon qualified accordingly on Oath. Ut Antea. 1730 July 23.

Ralph Asheton nominated by the Governr. a Master in Can. who thereupon qualified accordingly on Oath. Ut Antea. Eod. die.

Clement Plumsted nominated by the Govr. a Master in Can. who thereupon qualified accordingly on affirmation. Ut Antea. Eod. die.

Samuel Hassel Esqr. nominated by the Governor a Master in Can. who thereupon qualified accordingly on Oath. Ut Antea. 1731 Ap. 8th.

Charles Osborne Was appointed an Examiner in the Court of Chancery for this Province Who did then thereupon Qualify by taking the Solemn Affirmation to this effect, Vizt. That he shall duly justly and equally Examine their Causes that shall be Committed unto him That he shall be Attendant as well to further ye Kings Business and ye Business of the Proprietary of this Province as also ye same Causes and that he shall not publish or shew the Depositions before Publication in the Court without the Warrant of the Court. 1725 Jany. 22nd.

Patrick Bard Was Appointed an Examiner as above Who thereupon Qualified accordingly &c. on Oath. Ut Supra. March 15.

[*5] Anno 13° Georgij Regis.

1727 PENSILVANIA, SCT.

Thursday the 6th of April Ao. Di. 1727.

Before the Honourable Patrick Gordon Esq. Lieutenant Governour of this Province and Chancellor of the same and Richard Hill, Robert Assheton, Samuel Preston, Anthony Palmer and William Fishbourn Esqrs. Masters in Canc.

Upon ye humble Petition of Charles Brockden Register in Chancery for this Province Setting forth That his duty incumbent in other Offices in this Government and the Ill state of his health will not longer permit him to Officiate as Register of this Court And therefore Praying that it may please the Chancellor to Dismiss him from the sd. Office of Register and Appoint some other fit Person Register in his Stead and Order the delivering of all the Writings Books and Papers in his Custody belonging to this Court unto such new Appointed Register. And ye sd. Charles Brockden having this day humbly moved this Honourable Court on ye Subject of ye same Petition It is Ordered by the Court That the sd. Charles Brockden as he hath requested be Dismissed from ye Office of Register of this Court That Mr. Robert Charles Secretary of Council of this Province be Qualified for Register in his Stead And that ye sd. Charles Brockden thereupon deliver up All and Singular the Books Minutes Pleadings and other Writings in his Custody as Register aforesd. unto ye sd. Robert Charles by Indenture.

P. Cur.

In Pursuance of which Appointment the said Robert Charles did thereupon qualify himself by taking an Oath according to Law to this Effect, that he would well and faithfully execute the Office of Register of the Court of Chancery of this Province according to the best of his skill and Learning.

Before the Governour in Can.

Anno 13° Regni Regis Georgij Secundi. [*6]

PENNSYLVANIA, ss. September 1st 1739.

Upon the humble Application of Mr. Robert Charles Register in Chancery for this Province of Pennsylva., setting forth, that he is about to depart the said Province, and to return to Great Britain, and therefore praying that he may be dismissed from the said Office, and a fitt Person appointed in his Stead, to whom the several Books, Papers and Writings to the said Office belonging, in the Custody of him the said Robert Charles, and likewise those yet remaining in the hands of Mr. Charles Brockden the former Register may be delivered up. It is this day Ordered by the Honble. George Thomas Esq. Lt. Governor and Commander in Chief of the Province afd. and Counties of Newcastle, Kent and Sussex on Delaware, that the said Robert Charles be dismissed from this office aforesaid, and that all and singular the Books Papers and Writings thereunto belonging in his Custody and in Mr. Brockdens, be by them respectively delivered up by Indenture, to Mr. Thomas Lawrie Secretary, to be by him kept till further Order.

[*The pages between* 6 *and* 17 *are blank in the original.*]

[*17] Anno 11° Georgij Regis.

JOSEPH ENGLAND and als. Complts. JOHN KINSEY per Quer. Cont.
THOMAS SHUTE &c. Defdts.

1724-5 March 20. The Complts. Bill filed.
Subpœna ad responds. issued. Returnable 29th Instant.

1725 Mch. 26. The Defdts. Appearance entered.

30. Rule to the Defendants to file their Answer by the 8th of April next, or shew cause to the contrary, or an attachment.
p. J. Kinsey P. Complts.

April 9th. Notice given the Complts. of the Dfts. Motion in Court for Dismission of the Complts. Bill, for Insufficiency, as soon as Council can be heard.
Pr. James Parnell p. Defdts.

1724 April 13th. His Excellency Sr. William Keith will hear the Defdts Motion by their Council on Tuesday the 20th of this Instant April.
Chas. Brockden Regr. Canc.

20th. Upon the Motion of Mr. Parnell and Mr. Assheton for Dismission of the Complts. Bill of Complaint, suggesting to the Court that the Proceedings of Mr. Kinsey in this Cause for the Complts. are irregular, And the sd. Kinsey producing to the Court the Notice of this Motion served upon his Clyents, and the same being read and the Matter debated by the Council on both sides, It is Ordered by the Court that the Motion of the Dfts. Council be overruled For the too much Generality contained in the sd. Notice of Motion, And that there be a further Rule for the Defdts. to file their Answer with the Register of this Court on or before the Tenth Day of May next insuing or attacht. to issue.
Per Cur.

May 10th. Petition of the Defdts in this Cause to the Chancellor with their Affidavit to Support it, filed.

Attacht. issued for Contempt in not answering pursuant to an Order of this Court in this Cause. Returnable 27th Instant. 11th.

Messrs. Assheton and Parnell appear for the Defdts. to answer the contempt for which the Attacht. was issued against them. 27th.

Notice of a Motion by Mr. Parnell and Mr. Assheton in this Cause filed. And the same day Mr. Kinsey for the Complts. served with Copy thereof. June 8th.

p. Cha. Brockden.

The Chancellor appoints the 17th Instant for a hearing Motion in this Cause. June 11th.

James Steel's Disclaimer and Answer, ffiled. 16.

Affidavit of James Steel and Thomas Shute ffiled.

It is ordered that the Sheriff have the Bodies of Thomas Shute and James Steel Defdts. in this Cause in this Court on Wednesday the 23rd of this Instant June, to answer their Contempt, for which an Attacht. of this Court was lately awarded against them. Until which day on Request of the Defts. their Council being absent, the Hearing of the Defts. Motion for setting aside sd. Attacht. is (by Consent of the Complts.) respited. [*18] 17th.

Per Cur.

Exceptions to the Defdt. James Steele's, answer ffiled. 1725 June 19th.

Per Kinsey.

The Sheriff served with Copy of the Rule of 17th Instant in this Cause. 21.

Per Cha. Brockden.

23rd June.

Mr. James Alexander for the Defts. made a Motion in the Court for setting aside an Attachment issued out of this honble. Court against the Defdts. the 11th day of May last and returnable the 27th of the Same Month for their not answering Praying the Chancellor that the several heads from which he deduceth his Argumts. for that purpose may be set down in Order to have the Mind of the Court the more clearly thereunto Vizt.

First. For that the Attacht. was not regularly entered in the Six-Clerk or Register Book.

2dly. For that this Process is not Signed by a Six-Clerk, or any one fully and regularly authorized.

3dly. For that the special Cause of issuing this Writt is not thereon indorsed.

4thly. For that the Writt ought to be Close and not Patent Whereas this Writt is an open Writt.

5thly. For that no Person is compellable to appear in any other Court than that to which the Writt commands; Whereas by the Stile of this Writt it seems to direct otherwise.

6thly. For that the Seal ought to be always in the Chancellor's Custody and not affixed without his special Direction.

Upon hearing Council on both Sides, the Court took the special Matters into Consideration, and Over-ruled the Motion of Mr. Alexander.

First. For that the Attacht. was well entered the Register and issued pursuant to an order of this Court of the 21st of April last.

2ndly. For that this Process is signed by the Register of this Court with Mr. Kinsey's name thereunto Clerk for the Complts. agreeably to the constant Practice of issuing Writts out of this Court.

3dly. For that the Praecipe or Note of the Writt (setting forth the particular matter for which this Writt was issued) was filed with the Register. And so to the end of such Indorsement fully answered.

4thly. For that the Writt is such as this Court has always used and find no Inconvenience arising from this Method of sealing such.

5thly. For that the Stile in the Writt (objected against by Mr. Alexander under the fifth head of Argt.) vizt: before us in our Chancery wheresoever it shall be in our Province of Pensilvania, has been hitherto used for the Stile of this Court.

6thly. For that the Chancellor's Direction for sealing this Writt and all others regularly issuing out of this Court is special.

[*19] Whereupon Mr. Alexander further moved for discharging the Prisoners Setting-forth, that Interrogatories were

not filed in 8 Days after their Appearance entered with the Register, whom Mr. Alexander urged to the Complts. Clerk with whom their Pleadings were filed—

And the Matter being debated by Council on both Sides, this Motion of the Defdts. Council, is also over-ruled For that the Council or Sollicitors appearing in the Cause must be allowed and understood here to be the Clerk of this Court, unto whom all Notices in that Case are to be directed Since a Multiplication of Officers here seems impracticable and if established would become a grievous Burthen to the Subject.

Whereupon Mr. Alexander further moved for an Order of this Court, for striking the Name of James Stell, one of the Dfts. in this Cause, out of the Complts. Bill of Complaint upon his Disclaimer And that Thomas Shute, the other Defendt. and also James Steel (if the Motion for Striking out his Name of the Bill Complaint shall be over-ruled) may have a longer Time to answer in. To the first Part of this Motion Mr. Kinsey objected their not giving him timely Notice, yet agreed to argue the Matter next Morning, on the Dfts. paying costs in Case the Motion was overruled.

24th June.

Mr. Alexander renewed his Motion of Yesterday for more Time to answer, for want of certain Writings and Conference to be had with Andrew Hamilton, as set-forth in the Defts. affidavits. And the Council for the Plaintiffs insisting, that besides the Title to the lands, to which those Writings related, there was a fraudulent Will and other Things suggested in the Complts. Bill, to which the Defts. ought to be compelled to answer, Mr. Alexander for the Defts. said that the whole matter of the Bill being to ascertain the Title of Lands, they could not answer it by Parts, but if the Plaintiff's Council insisted on any Matter of Fraud, it must be first proved and if he thought fitt, he might take proper measures, by examining Witnesses *de bene esse* or otherways to answer his Purpose.

Hereupon the Chancellor did Order that the Deft. Thomas Shute have further time to Answer the Complts. Bill by the First day of September next.

And, upon the further Motion of Mr. Alexander which was agreed Yesterday to be argued this Morning a Disclaimer of James Steel one of the Defts. was read, praying that his Name might be struck out of the Plaintiffs Bill of Complt. The Council on both Sides were fully heard and after mature Advisement by the Court had thereupon It was adjudged that the sd. Disclaimer was good as to his Title to the Lands contained in the Bill. But as to other Matters, in the sd. Bill also contained, It is Ordered by the Court, that he the said James make answer by the 1st day of September next.

Per Cur.

Anno 12° Georgij Regis.

[*20] 1725. August 26th.

The several Petitions of the Defdts. in this Cause, to the Chancellor, with their several Affidavits annexed to support sd. Petitions ffiled.

August 28th.

Upon the several Petitions (with affidavits annex'd) of the Defdts. in this Cause, filed with the Register of this Court the twenty sixth Day of this Instant August, praying the Chancellor for a longer Time to answer the Complts. Bill of Complaint than is given them by a Rule of this honble. Court, of the twenty fourth Day of June last past, which Ordereth the sd. Defts. to make Answer by the First day of September next. It is Ordered that the sd. Defts. by their Council, attend his Excellency the Governour, in the Court of Chancery on Wednesday the sd. First Day of September next, on the Subject of those Petitions And give Notice thereof to the Complts. or their Council in this cause.

Per the Chancellor.

September 1st.

Upon the humble Request of Mr. Growden the Defts. Council, to his Excellency for prolonging the time to Hear these Defdts. Motion pursuant to the above Rule of the 28th of August last past, It is Ordered, that the same Rule be continued until Saturday the Fourth Day of this Instant Sep-

tember. That sd. Defdts. by their Council, then attend his Excellency in the Court of Chancery, on the Subject above And give due Notice thereof to the Complts. or their Council in this Cause.

Per the Chancellor.

September 4th.

Upon hearing the Council on both Sides, relating to the Defdts. Petitions for more Time in this Cause, It is Ordered That the Defts. be further indulged to make Answer to the Plaintifs Bill of Complaint on or before the First day of December next And this Order to be peremptory Unless other more Sufficient Reasons, than has hitherto been offered to this Court shall be set forth agreeably to the Practice in the Chancery of England and to the full Satisfaction of this Court.

Per Cur.

The Petition of the Defts. in this Cause to the Chancellor, with their affidavits to Support it; ffiled. Nov. 27th.

The Chancellor will hear the Parties in this Cause, on the Subject of the Defts. Petition; To-morrow at Three of the Clock in the Afternoon. Dec. 9th.

Upon hearing the Counsel on both Sides and the Council for the Plaintiffs insisting that the Defts. be obliged after so many Delays as they have been favoured with already to make such answer as they can do to the Bill without Sight of the Deeds mentioned, It is ordered that the Defts. do by the tenth of the next month peremptorily make such Answer as they are able unto the Plaintiffs Bill of Complt. Or that the Matter of the sd. Bill be then held Pro Confesso. Dec. 10th.

Per Cur.

1726

The Answer of James Steel one of the Deft. filed. [*21] 12 Jany.

The Answer and Demurrer of Thomas Shute the Other Dft. filed. "

The Demurrer of Thomas Shute to the Plffs. Bill of Complt. to be argued when the Chancellor shall appoint a Time. 18.

Per Ra. Assheton p. Dfts.

Jan'y 29. Notice That the First of February next the Court will be moved for Quashing ye Demurrer of Thomas Shute &c.

Per Ja. Graeme p. Complts.; filed.

29. Notice That the sd. 1st February next the Court will be moved That the Name of James Steel one of ye Defts. be Struck out of the Complts. Bill. And be dismist with Costs.

p. J. Growdon per Defts. ffiled.

1st Feby. For as much as it appears by the Several Rules that have been made by this Court in Favour of the Defnt. Thomas Shute for giving him further Opportunities from Time to Time to make a sufficient Answer to the Plaintiffs Bill of Complaint That the sd. Thomas Shute ought not to have offered any Demurrer, but to have proceeded to Answer the Matters contained in ye Plaintiffs Bill of Complaint against him ye said Thomas And for as much as the sd. Thomas Shute his Demurrer and Answer jointly filed with the Register of this Court cannot by the Practice and Rules in Chancery be received as a complyance with the last peremptory Rule for Answering the Plaintiffs Bill It is therefore Ordered That the sd. Demurrer be quashed as out of Time with Three Pounds Costs. Nevertheless the Court does not think fitt to make the sd. Rule Absolute in this Case on the Defnt. Thomas Shute, by taking the Matter of the Bill pro Confesso against him Therefore it is Ordered that the sd. Thomas Shute do make a sufficient and plain Answer to the Matters contained in the sd. Bill of Complaint against him on or before the Twenty fifth day of March next Or Attacht. to issue of Course.

Per Cur.

Feb. 21st. The Petition of Joseph England on Behalf of himself and the other Complts. in this Cause That they may be admitted to examine Witnesses de bene esse; ffiled. With J. England's Affidavit to Support it also ffiled.

Upon an affidavit being made agreeable to ye Practice and Rules in Chancery the Prayer of this Petition is allowed.

Per the Chancellor.

Mch. 25. The Answer of Thomas Shute one of the Defts. ffiled.

The Petition of James Steel Deft. in this Cause to [*22] the Chancellor with Affidt. ffiled Wth. Order thereupon. Feb. 9.

Spa. Issued with Complts. to reply ret. 20th March next. Feb. 10.

The several Reps. of dixt. Complts. and J. Steele and T. Shute filed. Mch. 20th.

Feb. 10th.

JOSEPH ENGLAND and wfe and als. Complts.
cont.
THOMAS SHUTE and al. Defts.

Complants. Bill Complt. filed.

Spa. ad respd. England and al. v. Andr. Hamilton, George Fitzwater and David Evans issued Ret. 22 March next ensuing. Feb. 10.

Spa. ad repd. England al. v. Peter Pole, Thomas David and Daniel Kidd issued Ret. 22 March next ensuing.

Spa. ad repd. England and al. v. Simon Butler, Thomas Edwards, and John David issued Ret. 22 March next ensuing.

Spa. ad respd. England and al. v. John Edwards, Squire Boon and David John Ret. 22 March next ensuing.

Spa. ad respd. England and al. v. Daniel Davis, David Evans and David Williams Ret. 22 March next ensuing.

Spa. ad respd. England and als. v. Simon Matthews, Joseph Eaton and John Bartholemew Ret. 22 March next ensuing.

Spa. ad respd. England and al. v. Jenkin Evans, Mark Evans and James David Ret. 22 March next ensuing.

Andrew Hamilton, George Fitzwater, David Evans Peter Pole Thomas David Daniel Kidd Simon Butler Thomas Edwards John David John Edward Squire Boon Daniel Davis David Williams Simon Mathews Joseph Eaton Jno. Bartholemew Jenkin Evans Mark Evans and James David. Mch. 22.
ads

Joseph England and wfe and al. appear by Mr. Peter Evans p. those Defts.

David John David Evan Thomas Shute and James Steele Mch. 23.
ads

Dixt Complts. appear by sd. Mr. Evans per those Defts.

Aug't 6. [*23] PENSA. SCT.

Thursday the 6th day of April Ao. Dome. 1727 Before the Honble. Patrick Gordon Esq. Lieut. Governour of this Province and Chancellor of the Same and Richard White, Robert Assheton, Samuel Preston, Anthony Palmer and William Fishbourn Esqs. Masters in Cancer.

Andrew Hamilton George Fitzwater David Evans Jenkin Evans Mark Evans James David Joseph Eaton John Bartholomew Daniel Davis David Evan David Williams John Edwards John David Peter Pole Thomas David and Daniel Fridd Defts.

ads

Joseph England and Elizabeth his Wife Henry Flower, William Robinson and Richard Hall Complts.

Messrs. Hamilton and Growden per Defts.
Messrs. Kinsey and Graeme per Complts.

Upon the Motion of Messrs. Hamilton and Growden for Dismission of a Bill Complt. lately Exhibited agt. these Defts. by the Complts. and filed in the Court. For that the Lands Deeds Rents and Profitts Demanded in a Bill of Complt. formerly Exhibited and now Depending in this Court at the suit of those Complts. agt. ye sd. Thomas Shute and James Steel are ye same Lands Rents and Profitts Demanded agt. all these Defts. in this Second Bill Whereunto ye sd. Thomas Shute and James Steel are likewise made Defts. And for that the same Bill Complt. now Exhibited being only for adding Parties to the former Bill The Names of them the said Andrew Hamilton George Fitzwater David Evans Jenkin Evans Mark Evans James David Joseph Eaton John Bartholemew Daniel Davis David Evan David Williams John Edward Squire Boon David John Simon Butler Thomas Edwards John David Peter Pole Thomas David and Daniel Kidd are added without any Order of Court or Petition for ye Purpose Filed or entered Pursuant to ye sd. Rules of this Court.

And Upon hearing Council on both Sides and taking ye matter into Advisement It is Ordered by the Court That this

Second Bill of Complt. of these Complts. agt. all of ye sd. Defts. be Dismissed That ye Writts thereupon Issued against them be Null and Void And that ye sd. Complts. Pay these Defts. five Pounds Costs.

Per Cur.

Anno 11° Georgij Regis.

JONAS SANDERLANDS Complt. JOHN KINSEY per Quer. cont.

HENRY MUNDAY and uxr. Defts.

The Complt. Bill ffiled. 1725 22 April.

Subpœna ad respond. issued. Returnable First of May next. 23d.

The Defts. Appearance, entered. 1 May.

Rule to the Defts. to file their Answer by the Seventeenth Instant, or shew Cause to the Contrary, or Attacht. to issue. 8th.

The Defts. Demurrer to the Complts. Bill ffiled. 17.

Per Mr. Assheton.

The Demurrer to be argued when the Chancellor will please appoint a Time. 25.

Per Assheton per Defts.

The Chancellor Appoints a Hearing the Seventeenth Instant. 11th June.

17th June.

Upon the Motion of Mr. Kinsey of Council for the Complainant, Signifying his Consent (in the Absence of Mr. Assheton of Council for the Defts. in this Cause) for requiting the Time for hearing the Demurrer of the Defts. in this Cause argued. It is Ordered that Wednesday the twenty third Day of this Instant June, be set down for hearing the Argumt. thereupon.

Per Cur.

24th June.

Upon the Motion of Mr. Assheton, for Dismission of the Complts. Bill For that the Same was not signed, when the Demurrer filed Ordered that the Bill stand the Complt. paying Twenty Shillings Costs to the Defts. And that the Demurrer

be over-ruled and that the Defts. file their Answer in Thirty Days, or Attacht. to issue.

Per Cur.

24 July. The Defdts. Answers, Pleas and Demurrer's; ffiled.

Anno 12° Georgij Regis.

23d September.

Upon the Motion of Mr. Kinsey, of Council for the Plaintiff setting forth the Defts. neglect of putting down for Argt. their Plea Answer and Demurrer, filed with the Register the twenty fourth Day of July last past, agreeably to the Practice of this Court. And therefore praying that the same Plea, Answer and Demurrer may be dismissed with Costs and that the Defts. a better Answer, make. The Court taking the Matter into Consideration, and being also informed that the same Plea Answer and Demurrer would be argued by any of the Practitioners of the Court, for the many gross Errors therein contained the sd. Defts. having procured it to be drawn by some Person unskilful in the Law. Therefore Ordered that the same Plea, Answer and Demurrer as filed as aforesd. be dismissed with Costs to the Complt. And that the Defdts. a better Answer make on or before Thursday the [*28] Fourth day of November next insuing.

Nov. 4th. The Defts. Answer ffiled.

26. The Complt's. Replication ffiled.

30. Issued Subpœna to the Defts. to rejoin and join in Comission to examine Witnesses. Returnable 15 Decem. next.

Dec. 4th. The Affidavit of James Barber, of Service of Subpœna to rejoin &c., ffiled.

15. The Defts. Rejoinder ffiled.

Jan'y 22. Rule to Defts. to examine their Witnesses, if any they have, by the 29th Instant.

29. Petition to the Chancellor by the Complt. that the Depositions formerly taken may be read upon the Hearing this Cause; ffiled. The Prayer of the Petition appearing to be agreeable to the Practice of the High Court of Chancery in England—it is allowed.

Per the Chancellor.

Second Rule to the Defts. to examine their Witnesses by the 7th of February before the Examiner. Jan. 31st.

Rule to the Defts. to shew Cause, if any they can, why Publication should not pass in this Cause on the 15th of February Instant. Feb'y 8th.

The Complt. Petition, praying that a Peremptory Day be sett by which the Deft. be obliged to examine their Witnesses, if they should think Proper, Or that Publication should Pass in this Cause ffiled. 21.

Let the Defts. be served with Copy of this Petition and a Rule peremptory to examine their Witnesses in fifteen Days from this Date Otherways Publication to Pass. 23.

Per the Chancellor.

Affidavit of Thomas Giffing, of service of the Deft. with Copy of the last mentioned Petition and Order ffiled. Mch. 8.

Affidavit of Prudence Munday one of the Dfts. ffiled. 9.

Monday the 28th Day of this Instant March is sett down for a Hearing in this Cause. 14.

Per the Chancellor.

Subpœna ad audiendum Judiciam issued Returnable 28th Inst.

For as much as the twenty eighth of March Instant was sett down for a Hearing in this Cause But the Chancellor being in the Country in so ill a state of Health that he cannot Travel to Town for some Time—It is therefore Ordered that the Cause be adjourned to be heard on Monday the Fourth Day of April next insuing. 25.

Per the Chancellor.

Affidavit of Service of Subpœna ad audiendum Judiciam ffiled. March 28.

Affidavit of Service of Rule to adjourn the Hearing 4 April ffiled. April 4.

Mr. Kinsey for the Complt. moving the Court for a hearing in this Cause in pursuance of the several Rules of this Court of the 14 and 25 Days of March last past Mr. James Graeme for the Defts. opposed the Motion Praying that the Hearing may be respited alledging that the Defts. were not regularly served with Rules to examine Witnesses. They

having certain material to examine. Upon hearing Council on both Sides It is Ordered that Publication be prolonged unto the 24th Day of this Instant April That the Defdts. pay Forty Shillings Costs That the Hearing in this Cause be adjourned until the First Day of May next And that the [*29] Defdts. then attend Gratis.

Per Cur.

15. Subpœna to Witnesses, ex pte. Defts. to John Wright John Reece and Thomas Phillips Returnable 18th Instant.

The same to John Minshall John Wade and James Mather returnble. 20th Ins't.

20. The Same to Ruth Hoskins Catherine Fairlamble Robert Barber, retble. 21st Ins't.

20. Attachment agt. John Wright for his not Yielding Obedience to a Writt of Subpa. to Witness on ye Part of Defts. ads Complts. retble. 22nd Instant.

The same agt. Robert Barber ret. 22 Inst.

20. Affidavit of James Bingham of service of dict Subpas. on Wright and Barber to Witness Ex Pte. Defendt.

26. Petition of dict Wright and Barber to discharge them of said Contempt With the Governor's Order accordingly &c. thereon Indorsed.

June 4th. The Cause being at hearing and debated by Council on both sides Vizt. Kinsey and Growden for ye Complts. and Graeme for ye Defts. Before Sr. William Keith Chancellor and Richard Hill Robert Assheton Henry Brooke and Thomas Graeme Masters in Chancery.

The Chancellor Pronounced a Decree in Substance as is more Particularly and at large set forth in the Ingrossment In the bundle of Pleadings in this Cause under the Hand of Sr. William and Henry Brooke a Master in Chancery.

[*31] Anno 1mo Georgij 2di Regis.

Daniel Moore Esq. Collector of His Majties. Customs at Newcastle.

Cont.

Joseph Browne Esquire Judge of the Court of Vice Admiralty for the Province of Pennsylvania.

The Complts. Bill, praying an Injunction—filed. 1727 Aug. 23.
Upon the motion of Peter Evans Esqr. Council and Solicitor for the Complainant an Injunction is awarded according to the Prayer of the Bill. Eodm die.

Present Sept. 21st.

The Chancellor.

Richard Hill and Wm. Fishbourn Mars. in Chancery.

Upon the Motion of James Logan Esquire, in behalf of Peter Baynton Owner or Freighter of the Scooner Sarah alledging that whereas the Complainant obtained an Injunction against Joseph Browne Esqr. Judge of the Court of Vice Admiralty of this Province, to stay his proceeding in a certain Cause then depending before him, upon an Information exhibited in the said Court by the Complt. qui tam &c. against the said scooner and her Lading &c. and the said Judge being the Person enjoined had never applyd. to this Court to have the same Injunction taken off, neither had the Complainant made any further Proceedings in the Cause since the obtaining the said Injunction, which is now four Weeks and that the said Peter Baynton and the other Persons interested in the said Vessell and Cargoe are therefore much hurt and damnified by this Delay, It was therefore prayed that the sd. Injunction may stand dissolved. It is Ordered that the Complainant have notice to attend this Court at three a clock in [*32] the afternoon to shew Cause why the said Injunction should not be dissolved.

P. M. Present Septm. 21st.

The Chancellor.

Richard Hill Samuel Preston Isaac Norris Wm. Fishbourn } Esqrs. Masters in Chancery.

Upon the Motion of James Logan Esquire, in behalf of Peter Baynton, claiming that it appears by Affidavit that Peter Evans Solicitor for the Complainant had Notice given him to attend this Honble. Court at three a clock this afternoon; and the said Peter Evans or any other Person in behalf of the Complainant not appearing to shew any Cause against the Dissolution of the aforesaid Injunction, it was therefore

prayed that the sd. Injunction may stand Dissolved. Which is Ordered accordingly, unless the Complainant or his Sollicitor having notice thereof, shall in two days shew unto this Court good cause to the contrary.

Sept. 27. Affidavit of Edward Perril of service of the Complainants Council with a Copy of the above Order—filed.

And the foregoing Order touching the said Injunction was then made absolute and the same Injunction Dissolved.

[*35]

CHARLES BLAKEY Attorney of Arthur Moore and John Atkinson and Administrator of the Goods and Chattells of Thomas Suxpitch deceased late Mariner of the Ship Aphia Galley.

Cont.

GEORGE SMITH Master of the said Ship.

1727
Sep. 21st. Affidavit of the Complainant in order to obtain a Writt of Ne Exeat Provincia against the Deft. filed.

And upon Motion of Andrew Hamilton Esqr. Council for the Complainant a Writt is granted.

Per the Chancellor.

The Deft. having made Satisfaction to the Complainant and paid the Costs was discharged.

Ended.

[*37] JAMES PARRISH.

Cont.

JOHN DICKINSON one of the Executors of the last Will and testament of John Wilson deceased.

1727
Decr. 8th. Affidavit of the Complainant, in order to obtain a Writt of Ne Exeat Provincia agst. the Defendt.—filed.

And upon Motion of Mr Hamilton Council for the Complainant It is Ordered that the said Writt issue, and that the Complainant file his Bill in four days, otherwise the said Writt to stand dissolved.

Per the Chancellor.

Ended.

[*39]

WILLIAM COLE, HENRY NEWTON and JOSEPH KIRKBRIDGE Part owners of the Ship New Bristol Hope.

Cont.

THOMAS WATHELL another Owner of the said Ship.

1728

A Petition of the Complainants setting forth that the Deft. Ap. 25. being owner of seventeen sixty fourth parts of the said Ship had been often requested by the other Owners to joyn with them in fitting out and loading his part of the said ship on a Voyage proposed to be made to Bristol in England or to the Island of Barbadoes, but had refused to contribute his proportionable part That the said Ship being now near laden, is about to depart in ten days for the Island of Barbadoes, That there being no Person in this Government to the Petrs. Knowledge acting as a Judge of the Court of Vice Admiralty, they are obliged to make this Application to the Governor as Chancellor to be aided by him in Equity And therefore praying that, according to the Custom and Usage in such Cases the Chancellor would please to appoint some proper Persons to value and appraise the said Thomas Wathells Share of the Ship aforesaid the Petrs. being willing to be accountable to the said Wathell for the value at wch. the same shall be appraised—filed.

Upon hearing the Matter this day before the Chancellor Ap. 26. Time was prayed by the Defendant that he might dispose of his part of the said Ship; Which is accordingly granted and Time is given him to the thirtieth Instant for that Purpose, or otherwise to joyn proportionably with the other Owners in fitting out and loading the said Ship.

[*40]

An affirmation of Alexander Seaton Master of the said May 1st. Ship setting forth that he went to the Defendant's house to enquire if he had disposed of his Share of the said Ship, or was willing to joyn the other Owners in fitting out and loading her pursuant to the Order of the 26th Ulto. and that the Deft. was gone out of Town without leaving (as the Affirmt. verily believes) any notice to the said Owner of what he had done or intended to do therein—filed.

An Order directed to Alexander Wooddrop and Thomas Eodem die.

Willing of the City of Philadelphia merchants and James Parrish of the same Ship Wright or to any two of them for appraising the Defendants Share of the said Ship is issued.

Per the Chancellor.

Return is made by Thomas Willing and James Parrish that they value the Seventeen sixty fourth parts of the said Ship the Share of Thomas Wathell at Two hundred and forty pounds current money of Pennsylva. clear of all charges upon the Outsett of this Present Voyage.

Ended.

Evan Jones Complainants.
Cont.
William Allen and Joseph Turner Defts.

Mr. Hamilton for Defts.

1728 May 8. The Complainants Bill filed.

Eod. die. The Defendants Answer filed.

Upon hearing the Matter by Council It is Ordered that the Sheriff of the City and County of Philadelphia cause the Moiety of the Scooner Swallow and of the One hundred and sixteen barrells of Pitch and fifty four barrells of Tar, in the Bill of Complaint mentioned, the Property of Mitchel Downes and attached at the Suit of the Defendants in the Court of Common Pleas of the said City and County for a Debt of One hundred and seventy four pounds six shillings and ten pence due to them by the said Mitchell, to be appraised and thereafter sold to the highest Bidder, and that the money arising from the said Sale do remain in the hands of the Sheriff to abide the Judgement of the said Court of Common Pleas.

Ended.

[*45] Anno 2do. Georgij Secundi Regis.

1728 August 13th.

Present

The Chancellor

And two Masters in Chancery.

Upon a Petition this day presented to the Chancellor by Thomas Willing of Philadelphia Merchant in behalf of himself and others Creditors of William Dowell of the same place Merchant setting forth that the said Dowell hath been for sevl. months past and now is Non Compos Mentis and is like so to continue, that he is unable to Order his Estate and hath made alienation and Waste thereof, whereby the Petitioners are in danger of losing their just Debts, and therefore praying that a Writt de Lunatico Inquirendo may be granted to enquire of the Lunacy of the said William Dowell; And upon the Motion of Mr. Hamilton for the Petitioners It is Ordered that the said Writt forthwith issue.

ANNA MARIA BOHM als. ANNA MARIA MILLER. [*47]
MR. HAMILTON per Quer.
Cont.
GEORGE MILLER her husband.

1728–9
Jan. 6. A Petition of the Complainant setting forth that a marriage was celebrated between her and the Defendant but by reason of his Impotency never Consummated, that she was for a long time unwilling to divulge his Shame, till by other abuses, and threatening his Life, she finds herself obliged to do it, That he hath sometimes given out in speeches, that he would sell all he is worth, and by Virtue of his authority as a Husband take away the Complainant from her Friends and Relations to parts remote and unknown, and at other times that he would sell all he is worth and goe to parts unknown, and leave the Complainant behind, by which means it will not be in the Complainants Power to Prove his Impotency or be relieved from the Bond of the same pretended Marriage and therefore praying a Writt of Ne Exeat against the Deft. until he shall give Security to answer the Bill of Complaint now preparing to be filed against him and abide the further Order of this Court—filed.

Jan'y 6. Affidavit made by the Complainant of the Facts Sett forth in her Petition filed.

Eod. die Upon the Motion of the Complainant's Council on the

foregoing Petition and Affidavit a Writt of Ne Exeat against the Deft. is Ordered.

Per the Chancellor assisted by

[*48] two Masters in Chancery.

1729
Oct. 9th. A Petition of the Complainant setting forth that tho' she is well assured the Defendant can never, by Reason of his Frigidity and Incapacity and being defective in the Conformation of the parts necessary for Generation, consummate his Marriage, yet as he does insist that he hath consummated the same, and hath offered as a Proof of his ability and compleat Conformation, to be visited by Physicians and for that Purpose hath named on his part John Kearsley and Christopher De Witt, the Petr. begs that Doctor Thomas Graeme and Patrick Baird may be on her part added, and an Order issued to them for visiting the Body of the said Defendant—filed.

Interrogatory's on the part of the Complainant agt. the Defendant were at the same time filed.

Oct. 11th. An order by Consent of the Parties was issued to Thomas Graeme, John Kearsley Christopher De Witt and Patrick Baid for the Purpose in the above Petition sett forth.

Per the Chancellor.

Anno 3tio. Georgij Regis.

Report of the said Physicians, concluding with their Opinion, that for the Reasons in the said Report mentioned the Defendant is capable of consummating his Marriage filed.

[*51] Sept. 16th 1729.

The Revd. Archibald Cumings M. A. Commissary appointed in and for the Province of Pennsylvania pursuant to his Majesties Royal Letters Patent to the Right Reverend Father in God Edmund Lord Bishop of London did this day take the Oaths of Allegiance and Supremacy and likewise the Oath of a Commissary as directed by the CXXVII Canon of the Church of England and did also subscribe the Articles of Religion mentioned in and according to the said Canon.

Before the Chancellor

Anno 4mo. Geo. 2di Regis. [*53]

JOHN THOMAS. MR. HAMILTON per Quæren.
Cont.
OWEN THOMAS.

Petition of the Complainant, in order to obtain a Writt of Ne Exeat against the Defendant filed. 1730 June 18th.

Affirmation of the Complainant in Support of the allegations contained in his Petition filed.

Upon the Motion of the Complainant Council on the above Petition and Affidavit a Writt of Ne Exeat is granted and Security ordered to be taken in three Hundred Pounds.

Per the Chancellor assisted by four Masters in Chancery.

The Sherif returns that he hath taken Security on the Writt aforesaid. June 20th.

The Complainants Bill filed. 29th.

Subpœna ad respond. issued Ret. the 3rd of July.

Affidavit of the Service of the said Subpœna by Joseph Harrison filed. July 3rd.

The Defendants Appearance entered. Eod. die.

Ended.

Anno 4mo. Georgij 2di Regis. [*55]

WILLIAM SHIPPEN. MR. HAMILTON p. Quærente.
Cont.
JOSEPH SHIPPEN et al. to witt Saml. Preston Saml. Powel.

The Complainants Bill filed. 1730 June 29th.

Subpœna ad respd. issued Ret. the 3rd of July.

The Defendants appear. July 3.

Rule to the Defendants to file their Answers by the 10th Instant or shew Cause to the Contrary or attacht. to issue.

The Defendant Joseph Shippen brings a Paper signed by him, but not sworn to, as his Answer. 4th.

The Answer of Preston and Powel Defts.—filed. 8th.

Anno 4to. Georgij 2di Regis.

Rule to the Deft. Shippen that he a better Answer make by the Eighteenth Instant.

July 18th. The Answer of the Deft. Shippen filed.

The Chancellor appoints a Hearing on the 23rd Instant.

23d. Before the Chancellor and James Logan
William Fishbourn, Clement Plumstead
Thomas Lawrence and Ralph Assheton Esqr.
Masters in Chancery.

Upon hearing the Answer of Samuel Powell and Saml. Preston and the Answer of Joseph Shippen to the Bill of Complaint exhibited against them by William Shippen and taking the matter into Advisement this Court does Order and Decree that the Lands Messuages and Tenements devised in Trust by the Testator Edward Shippen to Esther Shippen for the Payment of Eight hundred Pounds with Interest to the Complainant, or so much thereof as may be sufficient to answer the said Sum and Interest be publickly sold to the best advantage by the said Samuel Powel and Samuel Preston Executors of the Last Will of the said Esther Shippen, so that from such Sale the said Eight hundred Pounds with Interest from the thirty first day of October last to the Day of Payment, be paid to the said Complainant on or before the tenth Day of September next ensuing. And it is further Ordered and Decreed that if after such sale and [*56] Payment made, any Money be remaining in the hands of the said Samuel Powel and Samuel Preston, or any of the said Lands Messuages and Tenements devised as afd. remain unsold, the said Samuel Powel and Samuel Preston as Executors of the last Will of the said Esther Shippen do convey and deliver the same in such manner as the said Esther Shippen was empowered to do by the last Will and Testament of the said Edward Shippen.

Per Cur.

1732
May 26. The Report of Samuel Powel and Samuel Preston in

pursuance of the Decree afd. with an accot. annexed filed.

Before the Chancellor and Clement Plumstead Thomas Lawrence Ralph Assheton and Samuel Hassel Esqrs. Masters in Chancery and Js. Norris Esqr. Mar. Eod. die.

Was read the Report and Account of Samuel Powel and Samuel Preston Executors of the last Will and Testament of Esther Shippen late of Philadelphia Widow deceased, who was Devisee and Trustee of the last Will and Testament of Edward Shippen late of Philada. Merchant deceased; of the Sales of several Messuages Lotts of Ground and Lands in the City and County of Philadelphia decreed to be sold for the Payment of a Legacy of Eight hundred Pounds and Interest devised to William Shippen by his Father the said Edward Shippen together with the Account of sevl. Receipts and Payments made in pursuance and in Consequence of the said Decree. Which said Report together with the sales and other Proceedings therein mentioned are approved and confirmed, unless the Parties concerned or some Person in their behalf, shall shew Cause to the contrary on or before the fifth day of June next, of which Rule Notice is ordered to be given to the Deft. Joseph Shippen. Per Cur.

Anno 6to. Georgij 2di Regis. [*57]

Affidavit of Francis Sherard of Notice by him given on the 1st Instant to the Deft. Joseph Shippen of the last Order in this Cause by delivering to the Deft. a Copy thereof filed. 1732 June 3d.

None appearing to shew Cause, the Order aforesd. is made absolute. 10th.

Per the Chancellor.

Anno 4to. Georgij 2di Regis. [*59]

Isaac Miranda Complt. Mr. Kinsey p. Quær.
Cont.
John Acworth Defendt.

1731 Ap. 6th. The Complainants Bill filed.

Eod. die. A Petn. of the Complt. with Affidat. annexed praying for the Reasons therein sett forth that leaving a Subpœna with the Defendants Attorney may be deemed good Service filed.

Be it so. p. the Chancellor.

Eod. die. Subpœna ad respondendm. issued Ret. 8th.

A Petition of the Complainant and affidt. of the Truth of the Facts therein contained with a Certificate of certain Auditors appointed by the Court of Common Pleas filed.

Eod. die. Before the Chancellor and Samuel Preston, Anthony Palmer, Henry Burke, Thomas Lawrence and Samuel Hassell Masters in Chancery.

Upon reading the Petition and Affidavit of Isaac Miranda the Complainant, praying an Injunction to stop the Sale of certain Houses and Lotts of Land to be exposed to Sale by virtue of a Writt of Venditioni Exponas issuing out of the Court of Com. Pleas for the City and County of Phila. And upon Motion of Mr. Kinsey Council for the Complainant It is Ordered that an Injunction issue according to the Prayer of the Petn. and it is issued this day accordingly.

Per Cur.

[*63]

Cornelius Vanhorne and John McEvers Complts.

Cont.

Jonathan Lees Factor to Joseph Clegg and Richd. Gradwell. Kinsey p. Quær. Evans for Dfts.

1751 May 1st. Petition of the Complainants praying for the Reasons therein sett forth a Writt of Ne Exeat agst. the Dfts. until he shall have given security &c. and answered to certain Interrogatory's to be exhibited on the part of the Complainants filed.

The Prayer of the Petn. is granted.

Per the Chancellor.

5th. The Writt of Ne Exeat issued.

13th. Affidavit of Jonathan Lees filed.

Interrogatorys on the part of the Complainants with the Answer of Jonn. Lees thereunto before one of the Masters of the Court filed. 25th.

Before the Chancellor, and Henry Brooke Clement Plumstead and Saml. Hassell Esqr. Masters. 1731 May 1.

Mr. Evans moves for dissolving the Writt of Ne Exeat issued agst. Jona Lees he having fully answered the Interrogatory's exhibited by the Complainant and being willing to deposite the money which he hath in his hands belonging to Joseph Clegg or to give Security for ye same.

Lett notice of this motion to be given to the Complainant's Council and that they attend this Court on Thursday the 27th Instant.

Per Cur.

Affidavit of Notice served on Mr. Kinsey per Mr. Lees filed. May 26.

Before the Chancellor and the above named Masters. 27.

Upon Mr. Evan's Motion for dissolving the Writt of Ne Exeat and upon reading the Affidavits Interrogatories and Answers and hearing Council on both sides It is Ordered that Jonathan Lees be discharged of the said Writt upon his depositing in the hands of the Register of this Court [*64] the sum of twelve Pounds five Shillings and one penny the Effects of Joseph Clegg which by his Affidavit he hath acknowledged to be in his hands, it appearing to this Court that the Goods shipt on board the Pine Apple Richard Pinketh Master were shipt before the Attacht. was laid and that Jonathan Lees the Garnishee is not answerable for the same.

Per Cur.

The money deposited pursuant to the above Order was this day paid by the Register to Willing and Shippen by Order of Cornelius Vanhorne the Complainant. 1733 Ap. 5.

Ended.

Anno 5to. Georgij Secundi Regis.

[*67] EMANUEL JOCELIN Complt.
Cont. KINSEY per Quær.
ROBERT CHARLES Navl. Offr. of Phila. Deft.

1731 Nov. 12th. The Complts. Bill filed.

Eod. die. The Deft. appears Gratis and consents that a Commission as prayed in the bill issue he having leave to name two Commissioners on his part, wch. is agreed to by the Complainant.

1732 Ap. 1st. A Commission directed to Gilbert Flemming Thomas Bororey James Gregory and Robert Jesson of the Island of St. Christopher Gent. or to any three or two of them for examining Witnesses as well on the Part of the Complainant as on the part of the Defendant is issued.

Per the Chancellor.

Sept. 25th. The Commission aforesaid is returned sealed up under the hands of three of the Commissioners and their Seals by George Dukeman, whose Affidavit of having received the same at the hands of Robert Jesson and that it hath not been opened or altered since he received it, is this day filed.

Nov. 6. Publication papers by Consent of Parties.

Whereupon it is Ordered that a certified Copy of the said Examinations be sent into the Court of Common Pleas of the County of Philadelphia where the Information exhibited by the Naval Officer qui tam &c., against sundry Goods Wares and Merchandizes reclaimed by the Complainant Emanuel Jocelin is now depending. Per the Chancellor.

Ended.

Anno 6to. Georgij 2di Regis.

[*69] JAMES AXFORD et Ux. Complts.
Cont. KINSEY p. Quærent.
RICHARD HAINES et Ux. Defts.

1732 July 28. Affidavit of Clement Hall in behalf of ye Complainants this day filed.

Eod. die. Upon motion of the Complainants Council a Writt of Ne Exeat against the Defts. is granted.

Per the Chancellor.

SOLOMON GOADE Complt. [*71]
Cont.
FRANCIS TONES Defendt.

Petition of the Complainant and Affidavit of the Facts therein sett forth, in order to obtain an Injunction filed. 1732 Sept. 19.

Upon Motion of Mr. Assheton Council for the Complainant an Injunction is allowed according to the Prayer of the Petition. Per the Chancellor. Eod. die.

[*73]

JACOB DIEMER, MICHAEL HILLEGAS, PETER HILLEGAS, JOOST SCHMIDT, HENDRICK WELLER, JACOB SIEGEL, and WILHELM ROHRICH in behalf of themselves and divers other members of the German reformed Church in Philadelphia Complainants.

Cont.
JACOB REIFF Defendant.
GROWDON for Quær.
HOPKINSON for Deft.

Petition and Affidavits of Complainants filed. 1732 Novem. 23rd.

Upon Motion of the Complts. Council on the said Petition and affidavit a Writt of Ne Exeat against the Deft. is granted. Per the Chancellor. Eod. die.

The Sherif of Philadelphia returns that he hath taken security on the Writt aforesaid.

Notice of a Motion by Mr. Hopkinson, on Monday the 25th Instant for discharging the Defendant and his Sureties from the Bond by them entered into on the Writt of Ne Exeat. 1733 June 20th.

The Notice for this day countermanded and new notice for to-morrow given the Complainants Council p. Affidavit of Mr. Hopkinson filed. 25.

Upon Motion this day made by Thomas Hopkinson Sollr. for Jacob Reiff and upon reading an Affidavit of the Service of Notice of Motion on the Petitioners Sollicitor and his Clerk, and also upon reading the Registers Certificate that no Bill of Complaint is filed in this Cause It is Ordered that unless the Petitioners or their Sollicitor file their Bill of Complaint against the said Jacob Reiff on or before Tuesday next 26.

the 3rd of July the said Jacob Reiff be at Liberty to depart this Province, and that the said Jacob Reiff his Manucaptors or Securities be discharged from a Bond or Recognizance entered into by them on a Writt of Ne Exeat Provincia issuing out of this Court and that the said Petitioners pay to the said Jacob Reiff full Costs to be taxed by a Master. Whereof lett the Petitioners have notice.

Per the Chancellor.

1733 July 3rd. [*74] On Motion of the Plaintiffs Sollicitor and by Consent of the Defendants Sollicitor, further Time is given the Petitioners to file their Bill to witt to Thursday the 12th Instant under the Rule aforesaid.

Per the Chancellor.

July 12th. The Petitioners Bill of Complaint filed.

14. Subpœna ad respondm. issued ret. ye 20th Instant.

Sept. 4. The Answer of the Defendant filed.

1733–4 Feb. 20th. Notice of a Motion by Mr. Hopkinson on Friday the 22nd Instant for vacating the Bond or recognizance entered into on the Writt of Ne Exeat issuing out of this Court and Affidavit of the Service of the said Notice filed.

Feb. 22. Upon Motion this day made by Mr. Hopkinson of Council for the Deft. and by Consent of Mr. Growden of Council for the Complt. It is Ordered that the Bond or Recognizance entered into by the Defendant and his Sureties on a Writt of Ne Exeat Provincia issuing out of this Court be vacated and discharged, the Defendant entering into Bond with sufficient Sureties in the sum of Five Hundred Pounds current Money of America to abide by and full fill such Order or Decree of this Court as shall be made on the Hearing of this Cause.

Per the Chancellor.

[* 79]

Evan Ellis Complt.

Cont.

John Ellis, Theodore Ellis, Jane Jones, John Jones, Nathan Lewis, William Lewis, Zepthath Lewis, Enos Lewis, David Lewellyn, David Lewellyn junr., John Humphreys and Jane his Wife, Anne Lewellyn, Edward Jones and Gainer his Wife, Humphrey Jones and Katherine his Wife Defts.

The Complt's Bill filed. 1732–3 Jan. 29th.

Subpœnas ad respondendum issued. Ret. the 26th inst. Feb'y 9th.

The Appearance of all the Defendants entered, except of Edward Jones and Garner his Wife who live out of the Province as 'tis said and of John Ellis. 26.

Another Spa. ad resm. John Ellis issued. Ret. 25th instant. 1733 April 4th.

Affidavit of Service of the said Spa. by Owen Roberts filed. May 21st.

Attachment directed to the Sherif of the County of Bucks agst. John Ellis for contempt issued Ret. 18th Inst. June 5th.

Per the Chancellor.

The Sherif aforesaid returns that he hath taken John Ellis whose Body he hath ready this day as by the said Writt he is commanded. And the said John Ellis is committed to Prison until he answers the Contempt. 18th.

Rule that the Defts. Theodore Ellis, Jane Jones, John Jones, Nathan Lewis, William Lewis, Jepthath Lewis, Enos Lewis, David Lewellyn, David Lewellyn junr., John Humphrey's and Jane his Wife, Anne Lewellyn, Humphrey Jones and Katherine his Wife answer the Complainants Bill in this Cause on or before the 12th day of this inst. March or an attachment against them to issue. 1733–4 Mar. 2d.

Lett Notice of this Rule be given them.

Per the Chancellor.

The Answer of the last named Dfts. filed. 1734 Nov. 27th.

Before the Chancellor and Isaac Norris Thomas Lawrence Masters in Chancery. 30th.

Anno 8vo. Georgij 2di Regis.

Upon Motion of Mr. Kinsey Council for the [*80] Complainant that the Bill of Complaint should be taken as confessed agt. John Ellis who had hitherto remained in Custody, and obstinately refused to answer thereunto whereby he had Contemned the Authority of this Court (the other Dfts. having by their Answer disclaimed all Right, Title or Interest in or to the lands in Question by the Bill) The Court made a Rule for bringing up the said Ellis, who appearing in Court, the said Bill was read to him, and the

Disclaimer of the other Defendants and he was admonished to answer the said Bill, which that he might be the better enabled to do, the Council for the Complt. consented to his Enlargement and to free him from all Costs for Contempt Whereupon it is Ordered that the Deft. John Ellis make Answer to the Bill of Complaint within the Space of One month, or otherwise the same to be taken as confessed.

Per Cur.

1735
April 15. Spa. agst. John Ellis and the other Defendants to Hear Judgment issued Ret. the 29th Instant.

29. Affidavit of the Complainant of Service of the said Spa. on the Defendant John Ellis filed.

Eod. die. Before the Chancellor and James Logan, Saml. Preston, Henry Brooke, Clement Plumstead, Ralph Assheton, Saml. Hassell Esqrs. Masters in Chancery.

Upon the opening of the Matter this present day by Mr. Kinsey of Council for the Complainant, and reading an Affidavit of the Service of a Spa. to hear Judgment upon the Deft. John Ellis. It was alledged on behalf of the same Complainant that by virtue of the former Order of this Court and pursuant to the practise of the Court of Chancery in like Cases the Bill afd. ought to be taken as Confessed, for that the said John Ellis from time to time obstinately persisted in refusing to make any Answer thereunto and therein had contemned the Authority of this Court. Nevertheless for the greater Satisfaction of the Court, the Council afd. produced divers Deeds, Evidences and Writings in the [*81] Bill mentioned by which the Court were sufficiently satisfied of the Truths of the several Matters and Things in the Complainants said Bill of Complaint contained. Whereupon, and upon hearing as well the Council afd. on the part of the Complainant and the Council for the other Defts., this Court have thought it fitt and do therefore so Order and Decree that the Lands Tenements and Hereditaments in the Bill mentioned, late the Inheritance of Margaret Jones als. John in the Bill named be divided by Malachi Jones, Owen Evan, and John Jones of the County of Phila. Gentlemen, or any two of them in such manner as to allot and assign the

equal third parts (Respect being had to the Value of the same) unto the Complainant Evan Ellis, so as not to interfere with the part of the same Lands claimed by the Deft. Theodore Ellis To Have and to Hold to him his Heirs and Assigns for ever in Severalty, and that peaceably and quietly to be enjoyed agst. any Claim and Demand of the Defts or any of them or any others claiming under the said Margaret Jones. And it is further Ordered and Decreed that the same John Jones, Jane Jones, Nathan Lewis, Wm. Lewis, Jepthath Lewis, Enos Lewis, David Lewellyn, David Lewellyn junr., John Humphreys and Jane his Wife and John Ellis do make a Conveyance of the same third part to him the said Evan Ellis accordingly, and that on executing such Conveyance the same Defts., except John Ellis, be excused from the Payment of any Costs to the same Complainant, but that the same John Ellis do pay to the said Complainant Evan Ellis his full Costs of suit thereupon to be taxed, Unless Cause to the contrary of any of the Premises decreed as afd. shall be shewn to this Court by the same John Ellis on or before the first day of June next.

Per Cur.

1735 June 11th. Affidavit of John Williams of the service of Notice of the Decree afd. and that the same would become absolute unless Cause shewn to the Contrary as afd. on the Deft. John Ellis. [*82]

And the decree afd. is made absolute.

Per the Chancellor.

June 12. A Writt of Partition of the Lands pursuant to the Decree of this Court is issued.

Per the Chancellor.

Anno 6to. Georgij 2di Regis.

[*85]

Marens Tucks Complt.
Cont. Kinsey per Quær.
Thomas Carvell Deft.

1732-3 Feb'y 9. The Compli. Bill filed.
Spa. ad respd. issued Ret. 26th Instant.

1733 Apl. 10th. Upon Affidavit of the Complainants Soll. filed and upon Motion this day made an Injunction to stop the Proceedings at Common Law is issued.

Per the Chancellor.

[*89] Anno 7mo. Georgij 2di Regis.

JOHN PHILIPS Admr. of ye Goods of MARY ASHTON formerly MARY DUNN deceased, RICHARD MORGAN and JANE his Wife late JANE DUNN and SARAH DUNN Complts. Cont.

THOMAS EVANS and MARGARET his Wife formerly MARGARET DUNN and RALPH DUNN Defts.

KINSEY per Quær.
EVANS per Defts.

1733-4 Feb. 2. The Complainants Bill filed.
4th. Spa. ad respd. issued Ret. 18th instant.
18th. The Defendants Appear by Mr. Evans.
1734 July 24th. The Answer of the Dfts. filed with an Account Annexed.
Nov. 12th. Spa. for the Dfts. to Hear Judgment Ret. ye 30 inst.
30. Before the Chancellor and Isaac Norris and Thomas Lawrence Esqrs. Masters in Chancery.

The Complainants Bill of Complaint, and the Defts. Answer with an Account annexed being read It is Ordered on the Motion of the Complainants Council and with Consent of the Dfts. Council that the Account exhibited be referred to Thomas Lawrence Esqr. a Master in this Court to examine and report what Share of the personal Estate of Ralph Dunn remains in the hands of the Defendants.

Per Cur.

Anno 8mo. Georgij 2di Regis.

1735 May 6. The Report of the Master filed in pursuance of the above order.

Aug. 14. Before the Chancellor and Ralph Assheton and Samuel Hassell Esqrs. Masters in Chancery.

It appearing by the Report of the Master, to whom the Accounts exhibited by the Defendants in this Cause were

referred, that there are not sufficient Assetts remaining in the Executrixs hands for the Payment of the Debts and Legacies in the Bill mentioned; On the Motion of Mr. Kinsey of Council for the Complainant and by Assent of Mr. Evans of Council for the Defts. It is Ordered that the said [*90] Executrix make Sale of the Two hundred acres of land lying in the Manner of Moreland, and not devised by the Will of the Testator, as soon as conveniently may be, and that the Monies arising by the Sale be brought into Court subject to such order as the Court shall think proper to make concerning the same: And that the further Consideration of the Report aforesaid be deferred till that time.

Per Cur.

Anno 9mo. Georgij Regis.

On the sale of the Lands pursuant to the Order afd. there was deposited in the Regrs. hands Notes and Cash amounting to One hundred and sixty Pounds

Whereof

Fifty Pounds wh. consist of the Defts. were paid to John Phillips Complt. per receipt.

Fifty Pounds by Consent of Parties to Wm. Branson in right of Richard Morgan and Jane his Wife Complts. pr. Bransons Receipt.

Fifty Pounds by Consent afd. to Thomas Walmsley who since exhibiting the Bill intermarried with Sarah Dunn another of the Complts. per receipt.

Anno 7mo. Georgij Regis. [*93]

William Ghiselm, junr., Katherine Gheselm and Hannah Ghiselm Infants by Elizabeth Ghieselm their Mother and next Friend Complts.

Cont.

William Ghiselm Defendants.

Kinsey per Quær.

Petition of the Complainants by the Mother and her Affidat. to the Truth of the Contents thereof filed. 1733–4 Mar. 11.

Eod. die. Upon Motion of the Council for the Petitioners on ye Petn. and Affidavit aforesaid a Writt of Ne Exeat agst. the Deft. is issued.

Per the Chancellor.

19th. The Complainants filed.

Eod. die. Spa. ad respd. issued Ret.

Ended.

Anno Septo. Georgij Secundi Regis.

[*97] THOMAS EDWARDS Complt.

Cont.

JOHN WHITE and JOHN CADWALLADER Exers. of the last Will and Testament of Tr. Roberts deceased.

KINSEY per Quær.

1733-4. March 19th The Complainants Bill filed.

Spa. ad respd. issued Ret.

The Appearance of the Defendants entred.

1734 July 11th. Rule to the Defts. to file their Answer by this day Se'enight or shew Cause to ye contrary or an Attachment to issue.

Ended.

[*99] WILLIAM HOWELL and MARTHA his wife Complainants.

Cont.

JOHN WHITE and JOHN CADWALLADER Exrs. of the last Will and Testament of John Roberts deceased.

KINSEY per Quær.

1733-4. March 19th The Complts Bill filed.

Spa. ad respd. issued Ret.

The Appearance of the Dfts. entred.

1734 July 11. Rule to the Dfts. to file their Answers by this day Se'enight or shew Cause to ye contrary or an Attachment to issue.

Ended.

Anno 8vo. Georgij Regis.

[*101]

LAWRENCE REYNOLDS Complainant,
Agst.
JOHN BEWLEY and REBECCA his Wife and
KENNEDY FARRELL and ISABELLA his wife } Defts.

The Complainants Bill filed.	1734 June 26.
Spa. for the Defendt. to Answer Ret. ye 3rd of July next.	29.
The Appearance of Bewley and his Wife entred.	July 3.
Rule to them to file their Answer by this day se'enight or shew Cause to ye contrary, or an Attacht. to issue.	18.
Plea for the Defts. Bewley and his Wife filed per Kinsey.	Aug. 3rd.
Affidavit of the Service of the Subpœna on Farrell and his Wife Defts. by Peter Aston filed.	27th.
An Attacht. against them is issued Ret. 31st inst. Per the Chancellor.	Eod. die.
Before Service of the attachment they appear and offer to pay the Costs that shall be awarded against them.	Eod. die.

JOHN KNOWLES and JOHN SMITH Executors in the last Will and Testament of Michael Jobson, deceased, Complts. [*105]

Agst. KINSEY per Quær.
SAMUEL JOBSON Deft.

The Complainants Bill filed.	1734 July 20th.
A Writt of Ne Exeat agst. the Dft. is issued. Per the Chancellor.	Eod. die.

[*109]

EDWARD DRURY Complt.
Agst.
RICHARD and CATHERINE BERWICKS Exers. of the last Will and Testament of Simon Berwick, deceased, Dfts.
GROWDON and HOPKINSON per Quær.
KINSEY per Dfts.

The Complainants Bill filed.	1734 Sept. 6th.

Eod. die. An affidavit of the Complainant filed. And upon Motion of his Council an Injunction to stop the Proceedings at Common law is issued.

Per the Chancellor.

Oct. 31st. Subpœna to answer filed Ret. ye 9th Proxo.

Nov. 2. The Defendants appear.

20. The Answer of the Df't Richard Berwick filed.

27. The Answer of the Df't Catherine Berwick filed.

Before the Chancellor and Isaac Norris and Thomas Lawrence Esquires Masters in Chancy.

30. Upon Motion of the Defendants Council and with Consent of the Council for the Complainant. It is Ordered that the Defendants be at Liberty to proceed at Law agst. Edward Drury the Complainant, so far as to obtain Judgment against him and his Bail; Or, otherwise that he the said Complainant bring into this Court within three days the Money sued for at law by the Defts., subject to the Direction of this Court, wherein if he fails, the Injunction to stand dissolved.

By the Court.

[*111]

1734-5 Jan. 18. A Petition of John Meredith setting forth that he being seized in his Demesne as of Fee of and in a Plantation of the County of Bucks containing by Estimation about One hundred and Eighty Acres of Land and being also possessed of Sundry Goods and Chattells, did, from his Affection to his Son Thomas Meredith, and for the better advancing him in the World convey all his Estate in the Premisses to him the said Thomas who is now possessed of great part thereof and of other Goods and Chattells acquired by his own Industry but that of late the said Thomas is by the Visitation of God become Non Compos Mentis and wholly unfitt for the Government of himself and his said Estate, and that having already by the Craft of evil disposed Persons sustained great Losses and being in danger of sustaining much greater the said Thomas is like to be reduced to Beggary and Want without the aid and Interposition of this Court, and therefore

praying that a Writt de Ideota inquirendo may be awarded directed to the Sherif of the County of Bucks to enquire into the Truth of the Premisses by the Oaths or Affirmns. of good and lawfull men of his Bailywick and in case the Premisses be found true that the said Thomas together with his Goods Chattels Lands and Tenements afd. may be committed to the Care Governt. and Management of discreet and honest Persons to be appointed by this Court as in Such Cases is usual—filed.

A Writt according to the Prayer of ye Petn. is awarded. Jan. 25.
By the Chancellor.

The Sherif returns the Writt afd. together with [*112] Feb. 24th.
an Inquisition, whereby it appearing that the said Thomas Meredith is not of Composed Mind but is unfitt for the Government of himself and his Estate, a Writt is this day issued committing the Custody of the said Thomas, and of all his Lands Tenements Goods and Chattels, to John Meredith the Father, and to James Meredith the Cousin, of the said Thomas, and to the Survivors of them.
By the Chancellor.

ELIZABETH the Widow of John Read Complts. [*113]
against
RICHARD MITCHELL Deft.
KINSEY for ye Complt.

The Complainants Bill filed. 1734–5 Mar. 7th.
Spa. to answer filed Ret. ye 19th Instant.
The Defendant appears. 19.

[*115]
ANN GROWDON Widow of Joseph Growdon Complt.
Agst.
LAWRENCE GROWDON Deft.
EVANS for Complt.
KINSEY for Deft.

The Complts. Bill filed. 1735 Ap. 11th.

Eod. die. Upon Motion of the Complts. Council an Injunction to stop the Proceedings at Law against her is issued.

Upon the Motion of Mr. Evans and with the Consent of Mr. Kinsey Leave is given to amend the Bill of Complaint.

June 28. The Bill of Complaint amended, is this day filed, wherein Anne Growdon Joseph Growdon and Hannah Growdon are Complts. against Lawrence Growdon and Grace Lloyd Defendants.

30th. The Defds. by Mr Kinsey appear Gratis.

July 21. The Separate Answer of Lawrence Growdon and of Grace Lloyd Defts filed.

Aug. 30. Petition of Lawrence Growdon Deft. for dissolving the Injunction because of the Delay of the Proceedings on the part of the Complainants filed.

Eod. die. The Injunction to stand dissolved unless Cause to the contrary be shewen on or before the 10th day of September next whereof the Complainant forthwith have Notice.

Per the Chancellor.

Sept. 10. Petition of Joseph Growdon with a Certificate under the hand of Dr. Thomas Græme, Physician, praying for the Reasons therein sett forth that the Injunction may not be dissolved until the Exceptions he is preparing to the Dft's' Answers be filed and heard—filed.

16. On the Motion of the Council for the Defendants It is Ordered that both Parties be heard to-morrow forenoon at eleven a clock on the subject matter of their respective Petitions whereof lett the Complts. have Notice forthwith.

By the Chancellor.

17. [*116] Before the Chancellor, and Samuel Preston Clement Plumstead, Thomas Lawrence and Ralph Assheton Esqrs. Mars. in Chancy.

Upon reading the Petition and hearing the Council on both Sides It is Ordered that the Complainants file their Exceptions to the Answers of the Defendants on or before the 10th of October next.

By the Court.

1735
Oct. 9. Exceptions filed.

Anno nono Georgij 2di Regis.

A Petition of the Complainant Anne Growdon, setting forth, that notwithstanding the Injunction in this Cause issued, the Defendt. Lawrence Growdon in the Term of April last, did proceed ex parte in the Supreme Court of Pennsylvania, to try the said Cause, and obtained Judgment thereupon, in open Contempt of the said Injunction, and in manifest Violation of the Course of Equity and Justice, and now threatens, by Execution of the said Judgment, to eject the Complainant out of the Lands settled upon her in Jointure, and therefore praying an Attachment against the Deft. Lawrence Growdon his Council and Sollicitors for the Contempt aforesd, and an Injunction for quieting the Complainants possession, until the matters afd. be duly heard and decreed upon in this Honble. Court filed. 1736 June 1st.

[*123]

JAMES PORTUES Complt.
Agst.
CHRISTOPHER TAPHAM, EDWARD WILLIAMS and JOSEPH DRINKER Defts.
EVANS for ye Complainant.

Affidavit of the Complainant that the Defts. intend and threaten to destroy some Buildings or Outhouses to which he believes and is advised he has a good Title in Fee Simple filed. 1735 Octr. 29th.

Upon Motion of the Council for the Complts. and on the Affidavit aforesaid, an Injunction to stay waste is issued. Eod. die.
By the Chancellor.

Affidavit of Charles Hughes of the Service of the said Injunction upon the Defendants, and of a Contempt of the same by Edwd. Williams filed. 30th.

An Attacht. agt. Edwd. Williams Ret. ye 4th inst. is issued. Novem. 1.

The Sherif returns that he hath attached Edwd. Williams, whom he hath here ready this day. 4th.

Interrogatorys on the part of the Complainant to be administered to Williams upon the Contempt afd. filed.

Upon Motion of the Complainants Council It is Ordered that Ralph Assheton one of the Masters of this Court examine Edwd. Williams on the Interrogatorys afd. and report thereon and that in the meantime the said Edwd. Williams be continued in Custody till such Report is made.

By the Chancellor.

THE END.