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parent, that its operation did not commence before the first Wednesday in March 1789, before which time, Virginia had passed the act which is alleged to violate the constitution.

In the trial of the cause, the defendant produced a witness to prove that the lot for which the suit was instituted, was a part of the 100 acres vested in trustees by the act of assembly. To this testimony, the plaintiff objected, because the witness stated, that he had sold a lot in Bardstown, with warranty, and was in possession of another. He added, that no suit had been brought for the said lot, and that he was not interested in this suit. The court admitted the witness, and to this opinion also, a bill of exception was taken. It is so apparent, that the witness had no interest in the suit in which he was examined, and it is so well settled, that only an interest in that suit could affect his competency, as to make it unnecessary to say more, than that the court committed no error in permitting his testimony to go to the jury.

There was also an exception taken to the opinion of the court, in allowing the book of the board of trustees, in which their proceedings were recorded, and other records belonging to the corporation, to be given in evidence. The book was proved by the present clerk, who also proved the handwriting *424] of the first clerk, and of *the president who were dead. The trustees were established by the legislature for public purposes. The books of such a body are the best evidence of their acts, and ought to be admitted whenever those acts are to be proved. There was no error in the opinion admitting them. There is the less necessity in this case for entering more fully into this question, because the record contains other evidence of the facts, which the testimony, to which exceptions were taken, was adduced to prove.

Judgment affirmed, with costs.

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Equity.—Appeal.

In appeal to this court, from the circuit courts, in chancery cases, the parol testimony which is heard at the trial in the court below, ought to appear in the record.

▲ final decree in equity, or an interlocutory decree, which, in a great measure, decides the merits of the cause, cannot be pronounced, until all the parties to the bill, and all the parties in interest, are before the court.

APPEAL from the Circuit Court of Pennsylvania.

March 14th, 1820. This cause was argued by *Pinckney* and *Jones*, for the appellants, and by the *Attorney-General* and *Sergeant*, for the respondent.

*425] *March 16th. MARSHALL, Ch. J., delivered the opinion of the court.—This is an appeal from a decree of the circuit court for the district of Pennsylvania, dismissing the bill of the plaintiffs. Without going into the merits of the case, the counsel for the plaintiffs contend, that the decree ought to be reversed, because it appears to have been pronounced in part on parol testimony, which has not been introduced into the record, and because the decree was made when the parties interested were not all before the court.

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The laws of the United States have always proceeded on the supposition, that in revising decrees in chancery, the facts, as well as the law, should be laid before this court. The judiciary act, which directs that the mode of proof shall be by oral testimony, and that witnesses shall be examined, in open court, also directs that a statement of facts shall be placed on the record. The act of 1802 leaves it to the discretion of the courts in those states where testimony in chancery is taken by depositions, to order, on the request of either party, the testimony of the witnesses to be taken by depositions. The act of 1803 repeals those parts of the judiciary act which authorize a writ of error, and a statement of facts in chancery cases; allows an appeal from the decrees of a circuit court sitting in chancery; and directs that a copy of the bill, answer, depositions and all other proceedings, of what kind soever, in the cause, shall be transmitted to this court, and that no new evidence shall be heard.

*Previous to this act, the facts were brought before this court by the statement of the judge. The depositions are substituted for that [*426 statement; and it would seem, since this court must judge of the fact, as well as the law, that all the testimony which was before the circuit court ought to be laid before this court. Yet the section which directs that witnesses shall be examined in open court, is not, in terms, repealed. The court has felt considerable doubts on this subject, but thinks it the safe course, to require that all the testimony on which the judge founds his opinion, should, in cases within the jurisdiction of this court, appear in the record. The parties may certainly waive testimony by consent, but if this consent does not appear, it cannot be presumed; and where it is shown on the record, that witnesses were examined in open court, this court cannot say how much the opinion of the circuit court was influenced, and ought to have been influenced, by their testimony.

In this case, an interlocutory decree was rendered, which decided, to a great extent, the merits of the cause, at a time when one of the defendants named in the bill was not before the court, and when it appeared, that a person not made a defendant was deeply concerned in interest. This decree granted relief, on certain conditions, to certain classes of the plaintiffs, and directed them to appear before commissioners, and to exhibit their proof that they came within the descriptions of persons who were entitled to relief.¹ They refused to appear before these commissioners; *and [*427 upon the coming in of the report, stating this fact, their bill was dismissed with costs.

The object of this bill was to obtain conveyances from John and William Penn of certain lands which they were supposed to hold as tenants in common, and to which the plaintiffs asserted an equitable title. It was irregular, to make the decree which was made, respecting the title, until both the defendants were before the court. But it is the fault of the plaintiffs, that they were not. The bill prays conveyances of the legal title, on the payment of so much money as was still due, on certain principles on which they allege their equitable title to have been acquired. It was referred to commissioners to ascertain the amount of these sums, as well as to class the respective claimants according to the interlocutory decree. They refuse to

¹ See Pet. C. C. 496.

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appear before the commissioners, and to exhibit either their equitable titles, or to show the payments they have made. On what pretence can such plaintiffs claim the aid of a court of equity? What is a court to do, in such a state of things? Where a party asking its aid refuses to comply with the conditions on which that aid must depend, a court is certainly correct in refusing its aid, and may dismiss the bill. But in such a case, we think, it would be harsh to make the decree of dismissal a bar to a future action. It is not certain, that this decree is on such a hearing as to be a bar to a future action; and this point is not positively decided. It is unnecessary to decide it, because we think the interlocutory decree was irregular, and ought not to have been made, until William Penn, a tenant in common *428] with John Penn, was before the court. The defendants are left at liberty to proceed with their legal title, and this must be sufficient to prevent the plaintiffs from practising unnecessary delays.

For the irregularities which have been stated, we think the decree ought to be reversed, and the cause remanded, that the proper proceedings may be had therein.

DECREE.—This cause came on to be heard, on the transcript of the record, and was argued by counsel: on consideration whereof, this court is of opinion, that the parol testimony stated by the circuit court, in the interlocutory decree, to have been heard at the trial, ought to have appeared in the record, and that the interlocutory decree ought not to have been pronounced, until William Penn was before the court by his answer, or otherwise. This court is, therefore, of opinion, that the decree of the circuit court for the district of Pennsylvania, dismissing the bill of the plaintiffs, ought to be reversed, and the same is hereby reversed, and the cause is remanded, that further proceedings may be had therein, according to equity. All which is ordered and decreed accordingly.¹

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Explanation of the former decree of this court in the same case. (9 Cranch 500.)

APPEAL from the Circuit Court of the District of Columbia.

March 13th, 1820. This cause was argued by *Key*, for the appellant, and by *Jones*, for the respondents.

March 16th. JOHNSON, Justice, delivered the opinion of the court.—The principal question in this case is, whether the circuit court has executed the decrees formerly pronounced between these parties (9 Cranch 500), according to their true intent and meaning. Some obscurity has been thrown over the meaning of those decrees, from an obvious error in copying them into the minutes. The primary object of this court was, to give to Law the benefit of a foreclosure in all the lots included in the mortgage from Morris, Nicholson and Greenleaf, in whose right, Pratt, Francis & Company founded their claim. But being called upon by the equity of intervening interests (in creating which Law himself had had some agency), they decreed a dis-

¹ For a further decision in this case, see 4 W. C. C. 430.