

REPORTS  
OF  
CASES  
ARGUED AND DETERMINED  
IN THE  
COURT OF APPEALS  
OF  
VIRGINIA.

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BY  
*BUSHROD WASHINGTON.*

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V O L. II.

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R I C H M O N D:  
Printed by THOMAS NICOLSON  
M,DCC,XCIX.



## TO THE PUBLIC.

THE case of *Maze* and *Hamilton*, with one other, I had intended to publish in an appendix to this volume. But the manuscript having been unfortunately deposited in a house which was lately consumed by fire. I have great reason to apprehend that it was either burnt, or by some other means destroyed.



PAGE.	LINE.	
11	41	<i>For hinder read hinders.</i>
54	26	<i>Insert by before the words the owner.</i>
66	4	<i>Strike out the comma after mother and put a period.</i>
—	12	<i>Strike out the semicolon after it and put a comma.</i>
68	5	<i>For empowed read empowered.</i>
69	36	<i>For 1 read 3.</i>
70	17	<i>For appellant read appellee.</i>
71	2 & 3	<i>For appellant read appellee.</i>
87	8	<i>After testimony insert of.</i>
98	17	<i>After regarded insert it.</i>
99	31	<i>After rule, strike out the mark of interrogation. and put a period.</i>
106	12	<i>For lands read land.</i>
122	44	<i>For forfeiled read forfeited.</i>
139	7 & 14	<i>For security read surety.</i>
140	4	<i>For principal read plinciple.</i>
163	32	<i>Before superior read the.</i>
182	21	<i>For laws read law.</i>
206	4	<i>After it insert to.</i>
—	21	<i>For principal read principle.</i>
209	14	<i>For determination read termination.</i>
212	11	<i>After but insert where.</i>
224	37	<i>After idea put a semicolon.</i>
225	40	<i>After that insert of.</i>
227	3	<i>Strike out not.</i>
—	34	<i>After endorser, strike out a period and put a comma, after 443 strike out the comma and put a period.</i>
242	14	<i>Strike out the semicolon after fault.</i>
243	24	<i>After not insert an.</i>
244	41	<i>Strike out the semicolon after declarations.</i>
249	2	<i>For is read as.</i>
255	10	<i>For prices read price.</i>
—	12	<i>After Johnson, strike out the semicolon and put a comma.</i>
261	19	<i>Strike out the comma after the word Stockdell, and put a period.</i>
263	37	<i>For law read all.</i>
266	25	<i>For points read point.</i>
270	27	<i>Strike out the comma &amp; put a period after the word plea.</i>
278	9	<i>For 2 read 1.</i>
288	40	<i>For survices read services.</i>
289	1	<i>For stronger read strong.</i>
—	14	<i>For centinental read continental.</i>
	39	<i>For</i>

## PAGE LINE

- 289 39 *For collusion read collision.*
- 292 22 *For decission read decision.*
- 30 *Strike out of after the word General.*
- 31 *For Hooker read Hocker.*
- 293 19 *After the word intended insert )*
- 21 *For legal read regal.*
- 295 23 *After Carolina, put a comma instead of a semicolon,  
and strike out the semicolon after the word loci.*
- 38 *For desribed read described.*
- 296 8 *Strike out the comma after bills.*
- 35 *For there read these.*
- 300 11 *For legal read regal.*
- 301 26 *After damages, put a period.*
- 302 8 *For is due read issue.*
- 22 *After verdict insert ought.*

*Hubbard and Taylor* (*ante* vol. I, p. 259) furnish a complete answer to this objection.

The order of the District Court though right upon the main points, is rather too general, in not specifying the bond more particularly by its date, amount &c. however, as it is spread upon the record, we must suppose, that it was that bond to which the motion and order related.

As to the second execution, there is no doubt, but that the court ought to have quashed it, if a motion for that purpose had been made. But it does not appear that the court were informed of its existence, and therefore we cannot say that they erred.

CARRINGTON, J. — Concurred in the same opinion.

LYONS, J. — It seems to have been admitted by the counsel for the plaintiff, that this bond was faulty, but the power of the court to quash it is denied. It would certainly be highly inconvenient, if ministerial acts like the present were without the controul of that court to which the officer belongs, and if the only remedy for the party aggrieved by his mistakes, were an action against the officer. I hold the law to be otherwise, and that the court may properly correct the ministerial acts of its own officers.

The proceedings in this case have certainly been very irregular; the court ought to have quashed the second execution, if an application for that purpose had been made, because the forthcoming bond whilst in force, was a satisfaction of the first judgment. The general course is to quash the execution, as well as the bond; but as no motion for this purpose was made, we cannot condemn the order which was made.

Order affirmed.

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D A L B Y,

*against*

P R I C E.

THE appellant, against whom a decree had been entered in the High Court of Chancery, filed a bill of review stating new matter. The appellee answered, and a general replication

cation was entered and commissions awarded; in less than a month after these proceedings, the cause was set down; heard, and a decree entered, from which *Dalby* appealed.

The following, was the opinion and decree of this COURT,  
 “Whenever a general commission issues for taking depositions,  
 “upon an answer and replication filed in any suit depending in  
 “the High Court of Chancery, six months from the time of  
 “the replication should be allowed the parties for taking their  
 “depositions, and that such cause ought not to be set for hear-  
 “ing, nor heard and finally determined, without the con-  
 “sent of the parties entered on record, before the expi-  
 “ration of the said six months, according to the direction of  
 “the act of Assembly concerning the High Court of Chancery,  
 “and it appearing by the record, that the replication in this  
 “suit was filed in the month of May 1795, and that  
 “the cause, was without the consent of the parties so  
 “entered on record, heard and finally determined on the  
 “2d of June following, the said decree is erroneous.” There-  
 “fore it is decreed and ordered, that the same be reversed and  
 “annulled, and that the appellee pay to the appellant his costs  
 “by him expended in the prosecution of his appeal aforesaid  
 “here. And it is ordered, that the cause be remanded to the  
 “said High Court of Chancery to be put on the rule docket and  
 “proceeded in according to the foregoing opinion of this court,  
 “allowing the parties six months including the time the cause  
 “had remained at the rules after the replication, and before the  
 “date of the decree aforesaid for taking their depositions, before  
 “the same be again set for hearing.”

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## PEARPOINT,

*against*

## HENRY.

**T**HIS was an action of trover and conversion brought in the District Court of *Monongalia*, by the appellee, for a negro woman. Upon the plea of not guilty, the jury found a verdict for the appellee. The appellant moved in arrest of judgment, and amongst other errors assigned the following viz. “that the price or value of the negro is not set forth in the declaration.”

Judgment