REPORTS

OF

C A S E S

ARGUED AND DETERMINED

IN THE

SUPREME COURT OF APPEALS

OF

VIRGINIA :

WITH SELECT CASES,

RELATING CHIEFLY TO POINTS OF PRACTICE,

DECIDED BY

THE SUPERIOR COURT OF CHANCERY

FOR

THE RICHMOND DISTRICT.

VOLUME II.

BY WILLIAM W. HENING AND WILLIAM MUNFORD.

FLATBUSH, (*N. Y.*)
PRINTED AND PUBLISHED BY I. RILEY.
1809.

DISTRICT OF VIRGINIA, TO WIT:

BE IT REMEMBERED, That on the twenty-first day of March, in the thirty-third year of the Independence of the United States of America, WILLIAM W. HENING and WILLIAM MUNFORD, of the said district, have deposited in this office the title of a book, the right whereof they claim as authors, in the words following, to wit:

"Reports of Cases argued and determined in the Supreme Court of Appeals of Virginia: "with Select Cases, relating chiefly to Points of Practice, decided by the Superior Court of "Chancery for the Richmond District. Volume II. By William W. Hening and Wil- "liam Munford."

IN CONFORMITY to the act of the Congress of the United States, entituled, "An act for "the encouragement of learning, by securing the copies of maps, charts, and books, to the "authors and proprietors of such copies, during the times therein mentioned;" and also to an act, entituled, "An act, supplementary to an act, entituled, an act for the encouragement "of learning, by securing the copies of maps, charts and books, to the authors and proprie- "tors of such copies, during the times therein mentioned, and extending the benefits thereof "to the arts of designing, engraving and etching historical, and other prints."

WILLIAM MARSHALL,
(L. S.) Clerk of the District of Virginia.

MAY, 1806.

Tatum and Wife v. Snidow.

ment, because the appeal bond, which is part of the record, recites a judgment. After the amendment in the County Court, the District Court had a right to take up the record, and enter such judgment as the County Court ought to have rendered.

Friday, May 27. The President *pro tem.* delivered the opinion of the Court, (absent Judge LYONS,) that the District Court ought to have dismissed the appeal, on the ground that it had been allowed by the County Court of *Montgomery* before any judgment had been rendered in the cause.

Judgment of the District Court REVERSED.

Friday, May 20.

Fletcher *against* Pollard.

If, pending a suit in Chancery brought by one of three mercantile partners against the other two, for a settlement of the accounts of the copartnery, the plaintiff and one of the defendants agree to refer all matters in difference between them, relative to the subject in controversy, to arbitrators, (whose award is to be the decree of the Court,) according to which agreement an order of reference is made; and the arbitrators make a *report* that they had *examined* and *stated* the books of the copartnery, and *award* the payment of certain sums by the other defendant, as the *only debtor* to the plaintiff and to the defendant, who agreed to the reference; and state that the payments already made by that defendant *discharge him from any further claim of the plaintiff on account of the copartnery*; such report ought to be considered as an *award*, and sufficiently final and good *between the parties who agreed to the reference.*

In settling the accounts of a mercantile concern, in a controversy between the *partners only*, it is sufficient to examine and state the *books* of the copartnery, without requiring *vouchers* in support of each specific item.

ON an appeal from a decretal order made by the Judge of the Superior Court of Chancery for the *Richmond* District, on the 1st of *June*, 1803, whereby an award of referees chosen by the parties was set aside, and a new account directed to be taken.

Robert Pollard filed his bill in the late High Court of Chancery against *Thomas C. Fletcher* and *Richard C. Pollard*, stating that a copartnery had existed between himself and the defendants under the firm of *Fletcher and Pollard;* that he was a creditor partner to a considerable amount; that *Fletcher* undertook to keep the books in a regular and

mercantile manner, which had not been done, inasmuch as there were various entries in them in which the sums had not been extended; that *Fletcher* had executed a deed of trust on a tract of land and sundry slaves to indemnify the complainant for his advances to the copartnery; and had assured the complainant, during the progress of the business, that it was a profitable one; notwithstanding which the company were involved in debt and perplexed with law-suits, which a proper attention, on the part of the said *Fletcher* might have prevented. The object of the bill was for an account, and to subject to sale the property conveyed in trust by *Fletcher* as an indemnity to the complainant.

The answer of the defendant *Richard C. Pollard* was a mere echo of the complainant's bill.

Fletcher, in his answer, denied that he had undertaken to keep the books, or that it was more obligatory on him than the other defendant, or the assistants in the store; that he did not know of any loss which had been sustained by blank entries in the books; and expressly denies that any debts had been lost through his neglect. He admits, that during the copartnery he told the complainant they were making money because they sold their goods at a high advance, but avers, that the losses afterwards sustained arose from circumstances over which he had no controul; for being compelled, for the re-establishment of his own health and that of his family, to leave the place at which their store was kept, the other defendant, *on whom the whole business devolved*, advertised the goods for sale at public auction, and did not even attend the sale himself, having previously thereto gone to the Western Country on business of his own and of the complainant; and that the goods were sold much below cost; that he has paid large sums of money since the dissolution of the partnership without the assistance of the complainant or the other defendant, although he holds the complainant's obligation to exonerate him from more than one-third of the debts;

MAY, 1808.
Fletcher v. Pollard.

and that he has always been willing to come to a settlement of the accounts, which had hitherto been prevented by the non-attendance of the other partners.

The cause being set down for hearing, the following entry was made: "Pursuant to an agreement in writing "between the plaintiff and the defendant *Thomas C.* "*Fletcher*, filed with the papers in the cause, the Court "doth refer all matters in difference between those parties "relative to the copartnery of *Fletcher* and *Pollard* to *Na-* "*thaniel Anderson* and *Hudson Martin*, and, in case of "their disagreement, to such umpire as they shall choose, "whose award is to be made the decree of the Court."

The referees *reported* that they had *examined and stated the books* of the copartnery of *Fletcher and Pollard*, (an account of each partner with the firm being annexed,) the result of which was, that *Fletcher* had overpaid his proportion, that *Robert Pollard* was a creditor partner to a considerable amount, but that the debtor partner was *Richard C. Pollard.* The referees finally proceeded to *award*, that *Richard C. Pollard* shall pay to *Fletcher* 10*l.* 0*s.* 8 1-2*d.* and to *Robert Pollard* 819*l.* 6*s.* 5*d.* they then make provision for the distribution of the outstanding debts when collected. In making their report they expressly state, that the payments made by *Fletcher* leave a balance due to him, after discharging his proportion of the partnership debts, of the above sum of 10*l.* 0*s.* 8 1-2*d.* *and discharge him from any further claim of the complainant on account of the copartnery.*

The plaintiff filed exceptions to the award: 1st. Because it was not *final*, the interest account being still unsettled; 2dly. Because the *items* of the account were unsupported by vouchers.

The Chancellor was of opinion, that the referees had neither pursued their authority, nor completely performed their function; that the plaintiff had ascribed the losses of the company to the negligence of *Fletcher*, to which he gave an evasive answer; that the bill alleged, that the legal

costs with which the complainant would be burthened might have been avoided by the sedulous attention of *Fletcher* to his duty, to which he gave no answer; yet the referees had overlooked these articles; that they had debited the plaintiff with *interest*, although some of the accounts stated by them shewed that he had advanced more than his proportion of the joint stock, so that had his copartners been equally provident, interest as well as costs would have been saved; and although, too, the defendant *Fletcher* flattered the plaintiff with a prospect of gain, instead of warning him of a danger of loss. The Chancellor, therefore, *rejecting* the report, which he says was improperly called an *award*, the prefatory words of its authors being, " We have examined and stated the BOOKS of " the copartnery of *Fletcher and Pollard*, the accounts of " which, from our REPORT, appear as follows," &c. made a new reference of the accounts to a commissioner. From which opinion the defendant *Fletcher* prayed an appeal, which was allowed.

The *Attorney-General*, for the appellant. The opinion of the Chancellor was founded on a misapprehension of facts. Every allegation in the bill was as fully answered by *Fletcher* as it was possible from the nature of the case. *All the matters in controversy* were referred to arbitrators, and they, after *reporting* upon the state of accounts, proceed to make up an *award* between the parties. This was complete and final, and ought to have been made the decree of the Court. Justice and sound policy require, that, after men have chosen their own Judges, their decision shall be binding. No sufficient reason has been assigned for setting aside this award. As to the first exception, that the interest account was unsettled, it was altogether a mistake; interest was given to both parties: and with respect to the second, that the *items* of the account were unsupported by vouchers, it was not necessary that they should be; but even if it were, it does not appear that the *books* were the only documents before the referees.

MAY, 1808.
Fletcher v. Pollard.

Randolph, for the appellee, admitted that some of the reasons given by the Chancellor for his decree were untenable, but contended that the result was correct.

On the face of the award it appears, that the referees have taken the books as conclusive evidence, instead of requiring vouchers in support of each item. These books were kept by *Fletcher;* and it was therefore incumbent on him to produce evidence to establish the several entries. *Robert Pollard*, being a creditor of the firm to a much greater amount than *Fletcher*, ought to have been allowed interest for his superior advance. The award ought therefore to have settled this question of interest, which has not been done.

Again: *Robert Pollard* was in advance for the firm, considerably over his proportion of the debts; notwithstanding which he has been subjected to an equal proportion of interest and costs. This is neither legal nor equitable. He ought to have been exempted from the payment of interest and costs, inasmuch as his money was in the hands of the other partners. Mr. *Randolph* concluded by observing, that he asked an affirmance of the decree, for the purpose only of having a new account taken.

Monday, *May* 23. The Judges delivered their opinions.

Judge TUCKER. In this cause, the Court of Chancery, pursuant to an agreement in writing entered into between these parties, referred *all matters in difference* between these parties relative to the copartnery of *Fletcher and Pollard*, to *Nathaniel Anderson* and *Hudson Martin*, who returned their *award* pursuant thereto, which the Court of Chancery rejected, on the ground that the arbitrators had not adverted to the subjects in controversy, except in one particular instance; and referred the accounts between the parties to a commissioner. From which opinion *Fletcher* prayed and was allowed an appeal.

Upon examining the award, it appears to me not to be liable to the objection made to it by the Chancellor, or to any other. I think it final, as to the subjects of controversy, though it was objected at the bar that it was not so. And I also think it perfectly just and equitable, and therefore that it ought to have been made the decree of the Court.

Judge ROANE was of opinion that the award was good, and ought to have been confirmed by the Chancellor. He was, consequently, in favour of reversing the decree.

Judge FLEMING. The award now under consideration was made by referees or arbitrators, chosen by the parties themselves, and under a special order of the High Court of Chancery, which Court had, at a preceding day, referred the accounts of the copartnery in the bill mentioned, to one of the commissioners of the Court, in the usual form.

The referees, in pursuance of the *special* order, which was made on the 27th day of *May*, 1801, proceeded to examine and state the accounts between the parties, from the books of the copartnery of *Fletcher and Pollard;* the only ground, in my apprehension, on which they ought to have proceeded. The award appears to be perspicuous and just, and ought, in my opinion, to be conclusive, at least, between the parties who agreed to the special reference. The plaintiff however, filed two exceptions to the award; 1st. That it was not final, the interest account not being settled; and 2dly. That the *items* of the account were unsupported by vouchers. With respect to the first objection, it appears, from the general account stated by the referees, that the credit of 1,524*l.* 17*s.* 2 1-2*d.* due to *Robert Pollard*, was for advances by him made with *interest* to the first of *September*, 1801; the period to which interest on all the accounts was calculated.

As to the second exception, It appears a novel doctrine to me, that in the settlement of accounts from the books

MAY, 1808.

Fletcher v. Pollard.

of a copartnery, where all the partners of the company are equally interested, vouchers for the specific items should be required.

The opinion of the Court was, that the decree of the Superior Court of Chancery was erroneous in rejecting and setting aside the award made by the referees *Nathaniel Anderson* and *Hudson Martin*. Decree REVERSED at the costs of the appellee in the Court of Appeals; the award of the referees confirmed as between the appellant and appellee; the bill of the appellee as against the appellant dismissed, as to so much thereof as relates to the settlement of the accounts between the said parties, as partners in the house of *Fletcher* and *Pollard;* and each party to pay his own costs in the Court of Chancery.

Friday, May 20.

Faulcon, Administrator of Hamlin, *against* Harriss.

A bond was given in 1782, in the penalty of 50,000*l.* conditioned for the payment of 1,000*l.* "*or such farther sum as shall be equal to the said* 1,000*l. in* 1774, *that is to say, to purchase as much land and as many negroes, as it might have done at that time*:" this was held not to be an usurious contract.

THIS was a *supersedeas* obtained by the plaintiff in the Court below, to a judgment of the District Court of *Petersburg*.

Faulcon, as administrator of *Hamlin*, brought an action of debt against *Harriss* upon a bond, dated the 3d of *May*, 1782, in the penalty of fifty thousand pounds; the condition of which recited that *Harriss* had purchased a certain tract of land of *Hamlin*, in consideration of which, he agreed to pay him "1,000*l.* specie, or such further sum as "shall be equal to the said 1,000*l.* in the year 1774, that is

But if an action be brought on such bond, *and there be no averment in the declaration as to the amount of any extra sum, which would be necessary to purchase as much land, or as many negroes, as the thousand pounds would have purchased in* 1774; no evidence ought to be admitted as to that fact; nor can the plaintiff recover more than the thousand pounds with legal interest.

A judgment ought not to be reversed on the ground, that improper evidence offered to the Jury by the *appellant*, was admitted by the inferior Court, where it appears that such evidence did not influence the verdict.