REPORTS OF CASES

DETERMINED IN THE

GENERAL COURT

OF

VIRGINIA.

FROM 1730, TO 1740;

AND

FROM 1768, TO 1772.

By THOMAS JEFFERSON.

CHARLOTTESVILLE:
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ALLEN, *et al.* v. ALLEN, *et al.*

In this case, one question among others was, whether, where a father entitled to a reversion in slaves dies, and afterwards the particular estate (which here was for life) falls in, the heir at law shall be obliged to account to his brothers and sisters for a proportion of their value? And the court determined he should. It was also insisted that some children by a second wife, (whose mother had by a marriage contract reserved a right of appointing her own slaves at her death as she pleased,) should bring into hotchpot whatever they should get under such appointment, or not be entitled to take with the children of the first marriage, a proportionable part of the value of the father's proper slaves. But the court determined that the right of hotchpot, does not take place in dividing the value of slaves.

BRADFORD *v.* BRADFORD.

Appeal.

This was a dispute between two conterminous landholders, with respect to their boundary. The jury found specially, that the line in truth was as the plaintiff below suggested, but that it had been six times processioned according to the line which the defendant below would establish. They recite the proceedings, before the processioners in *hæc verba*, which proceedings mentioned that the plaintiff himself was present at the first processioning, but do not say who was present at those subsequent; and they referred it to the court, whether these processionings were binding on the plaintiff? The court below had adjudged that they were not binding; from which judgment the defendant there appealed.

Wythe, for appellant, admitted the hardship of the case on the side of the appellee, but relied on the words of the act of 1710. c. 13. which comprehend this case; on the importance of the method of processioning towards preserving boundaries in quiet; and on the maxim, that institutions tending to promote public utility, must prevail, though injurious in particular instances. He cited a similar institution among the Romans, by them called Terminalia.

Pendleton for the appellee, cited the words of the act, 'that the

processioners should report who were present at the processioning.' He urged that the intention of the act was, that the parties should be present, or at least have notice, and that this should appear in the proceedings: whereas in the present case, it does not appear that the appellee was present or had notice, except at one of the processionings. And the law being hard, and this case particularly so, the judges would not conclude the appellee, unless it appeared that the act was strictly complied with.

Wythe, in reply observed, that the law does not require the parties' presence, only that the church-wardens should publish at church, the persons and times appointed for processioning in every precinct, which was intended to amount to actual notice, and that we should presume this was done.

The judgment below was affirmed.

Gwinn *v.* Bugg.

Appeal.

The case was this. A Christian white woman between the years 1723 and 1765, had a daughter, Betty Bugg, by a negro man. This daughter was by deed indented, bound by the churchwardens to serve till thirty-one. Before the expiration of her servitude, she was delivered of the defendant Bugg, who never was bound by the churchwardens, and was sold by his master to the plaintiff. Being now twenty-six years of age, and having cause of complaint against the plaintiff, as being illy provided with clothes and diet, he brought an action in the court below to recover his liberty, founding his claim on three points. 1st. That himself having never been bound by the churchwardens, the master of his mother had no right to his service. 2nd. That if he had, yet he had forfeited it by selling him to the plaintiff. 3rd. That if both these points were against him, yet the plaintiff had forfeited his right by his failure to provide him with necessaries. The fact of ill treament was, I suppose, proved in the court below, for this as well as the defendant not having been bound, was set forth in the record as the grounds of the judgment; from this judgment Gwinn appealed, and it now came on to be argued before the General court.

Pendleton, for the plaintiff. That the defendant is obliged to serve