

REPORTS

OF

C A S E S

ARGUED AND DETERMINED

IN THE

SUPREME COURT OF APPEALS

OF

VIRGINIA.

—
VOLUME II.
—

BY WILLIAM MUNFORD.

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1814.

DISTRICT OF NEW-YORK, ss.

BE IT REMEMBERED, that on the twenty-first day of January, in the thirty-eighth year of the Independence of the United States of America, **LEWIS MOREL**, of the said district, hath deposited in this office the title of a book, the right whereof he claims as proprietor, in the words following to wit:

“ Reports of Cases argued and determined in the Supreme Court of Appeals of Virginia. Vol. II. By **WILLIAM MUNFORD**.”

IN CONFORMITY to the act of Congress of the United States, entitled “ 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, entitled “ An act, supplementary to an act, entitled 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 extending the benefits thereof to the arts of designing, engraving and etching historical and other prints.”

THERON RUDD,
Clerk of the District of New-York.

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“Decree reversed with costs; and suit remanded to be proceeded in to a final decree according to the principles of this decree.”

Thursday,
December
19th.

Young against Price and others.

Under circumstances, the payment of the damages assessed in a mill case ought to be presumed; especially, if a great length of time has elapsed, during which the owner of the land, to whom such damages were assessed, acquiesced in the building of the mill, without claim or objection on his part.

UPON an appeal from a decree of the superior court of chancery for the *Richmond* district, by which a bill, exhibited by *William Young*, against *William Price*, administrator of *Charles Price*, *Robert Price*, and *Samuel Williamson*, was dismissed with costs.

The complainant having purchased of *Charles Price*, agent for *Robert*, a mill-seat in the county of *Henrico*, for the sum of 130*l.* of which 40*l.* remained unpaid, was informed by *Samuel Williamson*, that he was owner of the land which, in the year 1776, had been condemned, upon a writ of *ad quod damnum*, for an abutment of the mill dam, and other uses connected with the mill; and that the damages assessed in his favour, including those allowed his brother, *Thomas Williamson*, (who owned a part of the said land, of which he the said *S. Williamson* had since become the purchaser,) had never been paid. He therefore demanded the same, (amounting, with nineteen years' interest, to 54*l.* 12*s.*) and threatened to institute an action of ejectment for the land, if payment were refused. Upon this, the complainant gave the said *Robert Price* a written notice, that, unless he would pay the money so demanded by *Williamson*, the complainant would be obliged to pay it, and to claim a discount for it; whereupon, *Robert Price* having refused, or neglected, to make the payment, or to settle the business in any other way, the complainant paid to *Williamson* the 54*l.* 12*s.* and took a special receipt, stating the circumstances:

A suit at law was afterwards brought by *William*

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Price, administrator of *Charles Price*, upon the complainant's note for 40*l.*; and judgment obtained; to enjoin which, and to recover the difference between that sum and the 54*l.* 12*s.* were the chief objects of the bill.

The ground relied upon, for relief *in equity* against the judgment was, that the complainant was unable to set off, at common law, against his note, the sum he had paid as aforesaid; to reimbursement of which he was justly entitled, either from the estate of *Charles Price*, or from *Robert Price*, for whom the said *Charles* was agent; the mill-seat having been sold to the complainant without notice of the encumbrance, and he having been compelled to pay this money to avoid an ejection, which must have been successful against him, since he had nothing to show to maintain a title; the records of *Henrico* court being destroyed by the *British* troops in the late war.

The defendants were severally called upon to answer and say, "whether the said *Robert*, or *Charles Price*, ever paid to the said *Williamson* the damages assessed by the jury on *Robert Price's* petitioning *Henrico* court, for an acre of *S. Williamson's* land? The defendant *Williamson* was particularly required to say whether he did not *compel* the complainant to pay the 54*l.* 12*s.* as aforesaid?" A decree was also prayed against *him*; that, "if he had received more than he ought, he should be directed to refund the money with interest."

William Price, in his answer, averred that he always understood, and verily believed, that *Robert Price* had paid (*without taking a receipt*) the whole of the damages assessed to *Thomas Williamson*; (*saying nothing of damages allowed to Samuel Williamson*;) that *Charles Price* was applied to *by the complainant* to purchase the mill-seat; that the complainant was well acquainted with the circumstance that a part of the land had been condemned by a jury, and insisted that the difficulties relative thereto should be removed before he would make the

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purchase; "whereupon the said *Charles Price* applied to the said *Thomas Williamson*, in whose favour the damages had been assessed as aforesaid, *paid him the amount thereof*, and took a receipt for the same; as the respondent thinks he shall be able to prove:" *but of this no proof was adduced*. The respondent contended that the payment by the complainant to *Samuel Williamson* was in his own wrong, and ought not to operate to the prejudice of *Robert Price*, or of the estate of *Charles Price*.

The answer of *Robert Price* said nothing about damages assessed to *Thomas Williamson*, but alleged that "when this respondent obtained an order of court for building said mill, the said *Samuel Williamson* promised to remit to him whatever damages the jury might assess, for the injury by him sustained by the erection of the said mill: but this defendant, not satisfied with his said promise, tendered him the whole amount of the said damages, which this defendant does not believe exceeded three pounds; but the said *Samuel Williamson* being, or pretending to be, mindful of his said promise, *refused the money when tendered by this defendant*. And, further, this defendant conceives that, as the said *Charles Price* was only authorized to sell the said mill, *as she stood, without any clause of warranty to bind this defendant*, and as the complainant may have paid the said sum of 5*l.* 12*s.* improperly and in his own wrong, this defendant should not be thereby aggrieved."

Samuel Williamson having departed this life, without answering the bill, a bill of revivor was filed against *Dabney Williamson*, his executor, who appeared and pleaded to the court's jurisdiction, on the ground that if the plaintiff had any right against his testator on the subject matter of the said bill, he had his remedy in the most ample manner at common law." He, also, *answering*, said, "that his testator was justly entitled to the money received by him from the complainant, for the damages in

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the bill mentioned, which had not been paid or discharged to his testator, in any shape, before the complainant paid them, as far as this defendant knows, has heard, or believes; that, on the contrary, his testator, until payment aforesaid, always asserted his right thereto; and the payment of those damages was in consideration of his testator's relinquishing his right (which was unquestionable) to the ground which the pond of the mill then covered."

No depositions were taken on either side. The deed from *Robert Price*, to the complainant, for the mill-seat in question, (which deed was among the *exhibits*,) contained a clause of general warranty.

The late chancellor, WYTHE, on the 18th of *May*, 1801, overruled the plea to the jurisdiction, and directed "a jury to be empannelled and charged, before the county court of *Henrico*, to inquire what damages the said court, upon hearing the petition of the defendant *Robert Price*, for leave to build the mill in the bill mentioned, did adjudge that the said defendant should pay to owners of lands which would be overflowed? and *who were those owners?* (which inquiry, by *loss of the record* of proceeding upon the said petition, (as is suggested,) hath become necessary;) and *whether that defendant paid those damages?* and that the verdict of the jury be certified," &c.

No step appears to have been taken to carry this order into effect. And on the 8th of *September*, 1808, the present chancellor set it aside, and dismissed the bill, as to all the defendants, with costs; from which decree the plaintiff appealed.

The following was pronounced as the opinion of this court.

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“The court is of opinion that, under the actual circumstances of this case, and especially, the great lapse of time which has occurred since the assessment of the damages under which the claim of *Samuel Williamson* to the sum in controversy is founded, and the acquiescence of the said *Samuel Williamson* (who probably resided in the neighbourhood) in the building the mill, (for which these damages were given,) without claim or objection on his part, the damages aforesaid ought to be presumed to have been paid; and that, therefore, the bill of the appellant as to the appellees, *William Price* and *Robert Price*, was properly dismissed by the decree now in question; but, inasmuch as the payment of the sum of fifty-four pounds twelve shillings, by the appellant to the said *Williamson*, was coerced by representations, on the part of the latter, which made it proper for the former to come into a court of equity to have the questions resulting from the claim aforesaid adjusted, if not, to pay the said sum to the said *Williamson* in the first instance, and, (as the matter now appears,) the said sum being so paid to him without consideration; the court is of opinion that the said bill ought to have been sustained as to the appellee *Dabney Williamson*, and he decreed to repay the sum aforesaid, with interest and costs, to the appellant. Therefore, it is decreed and ordered that the said decree, so far as it dismisses the bill as to the last-mentioned appellee, be reversed and annulled; that the residue thereof be affirmed; and that the appellee *Dabney Williamson*, out of the estate of his testator in his hands to be administered, if so much thereof he hath, but, if not, then out of his own estate, pay to the appellant his costs by him expended in the prosecution of his appeal aforesaid here. And this court, proceeding, &c. it is further decreed and ordered, that the appellee *Dabney Williamson*, out of the estate of his testator in his hands to be administered, if so much thereof he hath, pay to the ap-

pellant the said sum of 54*l.* 12*s.* with interest thereon, to be computed, after the rate of five *per centum per annum*, from the 19th day of *August*, 1795, till paid, and his costs by him expended in prosecuting his suit in the said court of chancery; but, if not, then the costs aforesaid to be levied of his proper goods and chattels."

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1811.

Holladay
v.
Littlepage.



Holladay and Wife against Littlepage.

Saturday,
November 2d.

IN an action of detinue, in the district court of *Richmond*, the declaration demanded "a negro woman slave *Amy*, and *her issue*, of the value of 1,000 dollars, and *Rachel*, a negro woman slave, and *her issue*, of the value of 1,000 dollars." Pleas, *non detinet*, and the act of limitations, and issue. The verdict was, "that the defendant doth detain the negro woman slaves in the declaration mentioned, to wit, *Amy* and *Rachel*, and the issue of the said *Amy* named *Maria*, and the issue of the said *Rachel* named *Dixon*, in manner and form, &c.; that the said *Amy* is of the price of 100*l.* the said *Rachel* of the price of 100*l.* the said *Maria* of the price of 50*l.* and the said *Dixon* of the price of 50*l.* and that the action of the plaintiff did accrue within five years next before the suing out the original writ," &c. and damages were assessed to forty shillings.

A motion was made in arrest of judgment, on the ground that the declaration was *vague* and *uncertain*, in demanding the *issue* of the two negro women therein mentioned; that the jury erred in finding for the plaintiff the two negroes *Maria* and *Dixon*, whose names were not mentioned in the declaration: and that the jury found *general* damages, which applied, as well to the detention of the negroes not named in the declaration, as of those who were named therein.

The district court was of opinion that the said errors

1. In detinue, if a negro woman, by name, and her "issue" (without naming them) be demanded in the declaration, and the jury find the names of the issue, the defect (if any) is cured, and judgment should be entered according to the verdict.

See *Royall v. Eppes*, ante, 479. pl. 7.

2. The failing to lay a separate value, as to each slave demanded, is an error which would be fatal on demurrer, but is cured by a verdict severing the values.

3. It is not error that the jury find *general* damages for detaining several slaves, but the *alternative value* of each slave ought to be *separately* found.