REPORTS

OF

CASES

ARGUED AND DETERMINED

IN THE

COURT OF APPEALS

OF

VIRGINIA.

BY

BUSHROD WASHINGTON.

VOL. II.

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

39 *For*

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.

WHITE *againſt* ATKINSON.

THIS was an appeal from a decree of the High Court of Chancery in a ſuit inſtituted there, by *White* againſt *Atkinſon*, for the conveyance of a tract of land, ſold by *Coleman*, the agent of *Atkinſon*, to the appellant.

In November 1779, *Coleman*, the agent of the appellee, contracted with the appellant to ſell him a certain tract of land belonging to the appellee, according to certain metes and bounds, for the price of £ 6 per acre, the quantity to be afterwards aſcertained by a ſurvey. Two thirds of the purchaſe money was to be paid in the months of May, or June following; when a title was to be made, and a bond was to be given by the appellant for the balance of the purchaſe money, payable in twelve months thereafter, and to carry intereſt from the date. The ſurvey was accordingly made in March 1780, and the quantity aſcertained, at which time a memorandum in writing was ſigned by Coleman and delivered to the appellant, expreſſive of the contract before mentioned, except as to the time of payment of the two thirds of the purchaſe money which is ſtated in the memorandum to be when the deed ſhould be *acknowledged* by the appellee.

The bill charges, that a tender of the money was made to *Atkinſon* in ſpecie, according to the ſcale of depreciation, but there is no proof of it, nor that even a demand of a deed was made and an offer to pay, until long after paper money had ceaſed to circulate.

The defendant *Coleman* admits in his anſwer, that a deed was neither made, nor tendered by *Atkinſon*, but that he agreed late in the year 1781, that *White* ſhould have a conveyance, if he would then pay the money. No deed was ever executed, nor was any part of the purchaſe money paid, except £ 18 paid by *White* to *M'Craw*, a creditor of *Atkinſon's*, and for which he had credit with the ſaid *M'Craw*. It alſo appears, that long after the contract was made, *White* was willing to make payment, if he could have obtained a conveyance, but the parties differing about the value of the money, nothing was done.

Upon a hearing of this cauſe, the High Court of Chancery decreed, that the defendant ſhould convey the land in queſtion to the plaintiff, upon his tendering, or paying to the defendant ſo much money, as with £ 18, was equal to the *value of the land, on the laſt day of June* 1780, to be eſtabliſhed by a jury on an iſſue to be tried for that purpoſe.

The

The verdict upon this issue being certified, it was decreed that the plaintiff should over and above the sum found by the jury, pay to the defendant the interest thereof, to be computed from the last day of June 1780, and the costs expended by *Atkinson*, as well on the trial of the issue, as in the said Court of Chancery, upon *Atkinson's* executing a sufficient conveyance of the land in question to *White* and to his heirs, and delivering the same, or (if refused by him) depositing it with the clerk of the court.

From this decree *White* appealed.

CAMPBELL for the appellant. I admit that he who applies to a Court of Chancery for equity is bound to do equity. But the question is, what is that equity which the contract in question required the appellant to do? The court cannot possess an arbitrary power of deciding what the party shall do who applies for equity, but must be governed by general rules and principles which bind that court. What then was the contract sought to be specifically executed? That *Atkinson* should convey the tract of land to *White*, and should receive payment at the rate of £ 6 per acre, two thirds at the time the conveyance should be made, and the residue in twelve months thereafter, for which a bond was given. This is proved by the written paper delivered by *Coleman* to *White*.

The argument of hardship drawn from a depreciation of the paper money, is repelled, by considering that it was in the power of *Atkinson* at any time to coerce the payment of two thirds of the money by tendering a conveyance.

But I ask, could the depreciation of the money furnish a sufficient reason for the decree given in this cause? Suppose the money had appreciated, and *Atkinson*, who had it in his power to enforce payment of the money, had sued at law for the purchase money, or had applied to a court of equity for a specific performance; could either court have protected him from the payment of the money at its encreased value? surely not. Ought not the same principle then to exist where the *purchaser* seeks a specific performance? The tobacco contracts made during the war have uniformly been enforced, and they were not less oppressive upon the debtors. The court is called upon to carry a contract into effect; instead of which, a new one is made for the parties, and the purchaser is decreed to pay according *to the value of the land*, instead of the value of the *money* at the time of the contract.

It appears that *White* had the money ready to pay for the land, though he did not legally tender it, nor demand a conveyance. But I contend it was not necessary for him to do either.

It

It was the duty of *Atkinſon* firſt to acknowledge the deed, or to inform *White* that he was ready to do ſo. But he did neither; and to permit him now to demand the money at the value ſtated in the decree, is to ſuffer him to avail himſelf of his own wrong. Beſides; if the legiſlature of a country ſhall declare iron, leather, or any other thing to be money, and ſhall give to it a certain value, I cannot underſtand how any court can eſtabliſh a different ſtandard of value.

MARSHALL for the appellee. This is a caſe where precedents cannot be expected. Men differed as much in their opinions reſpecting the value of paper money, as upon any ſubject whatever. The legiſlative declaration reſpecting depreciation, could not regulate the various opinions of men as to the value which they annexed to the money at the time they were forming their contracts.

Suppoſe in this caſe, the appellant had brought his ſuit at law for damages; the jury would not have been bound by the arbitrary value put upon the money by the legiſlature, but would have given ſuch damages as they thought the party in juſtice entitled to. But if he prefer an application to this court for a peculiar relief, which no other tribunal could afford him, he muſt ſubmit to the rule of this court, which requires him to do equity, in return for the equity he ſeeks. Upon this principle it is, that a mortgagor coming here to redeem his eſtate which is forfeited at law, muſt do equity by paying other debts due to the mortgagee, tho' not ſecured by the mortgage. The court lay him under theſe terms, not becauſe the parties have agreed to it, but becauſe it is equity. Might not all the arguments uſed by Mr. *Campbell* in this caſe, apply with equal weight to the one juſt mentioned?

I do not agree that the contract is as ſtated by Mr. *Campbell*. The bill deſcribes the agreement agreeably to the memorandum given to *White* by *Coleman*. This is denied in the anſwer, and *Coleman* ſtates, that the money was to be paid in the June following and then the conveyance was to be made. The appellant then has been the cauſe that the agreement has not been executed, and yet ſeeks to gain an advantage by his own wrong.

CAMPBELL in reply. In caſes where the ſpecific execution of an agreement is aſked for, the court may refuſe to interfere if the contract be inconſiſtent with the principles of equal juſtice & good conſcience, but if it do interfere, the terms of the contract muſt be purſued. But this decree cannot upon any principle be right. The moſt which the court could have required of the appellant, was to convey according to the *value of the paper money at the time it ought to have been paid*, and not

the *value of the land*; this would be to take from the appellant a good bargain which he may have made, and which, having made fairly, he was entitled to enjoy. The case of an application by the mortgagor to redeem, is not appolite. There the court goes upon an implied agreement of the mortgagor, that the subsequent loan should be secured by the mortgaged property; for as to debts contracted prior to the mortgage, the principle does not apply.

ROANE, J.—This is a bill praying for the specific execution of an agreement, whereby, the agent of the appellee contracted to sell to the appellant a tract of land, for the consideration in the bill mentioned. The appellant alleges this contract to have been made on the 18th of March 1780; but as the memorandum then given, and on which he seems to rely, is consistent with the declaration of *Coleman* the agent, in his answer, that the contract was really made in the November, or December preceeding; and as *Barksdale* a witness in the cause, states his belief, that this land was sold prior to the year 1780; I shall consider this contract as really made in one of the said months of November or December; and as *Coleman* the agent of the appellee admits, it might have been in the month of December, (which admission is to be taken most strongly against the party who makes it) I shall fix upon the month of December 1779, as the time of the contract. This contract was a general one, by which the agent of the appellee, agreed to sell the land in question to the appellant for £6 current money per acre; whereof two thirds was to be paid in the months of May or June following, when a deed was also to be executed, and for the balance the appellant was to have a longer credit. The appellant did not punctually pay the money according to his undertaking, and although he afterwards shewed a willingness to do so, it was refused by the appellee, because of its depreciation. The appellee also refused to give a conveyance of the land, unless the appellant would make such a settlement and payment, as would be satisfactory to his agent, *Coleman*. Thus matters rested untill after the abolition of paper money, when *White* exhibited his bill.

This case is not as I conceive distinguishable from the common one of a bill for the execution of an agreement, after a failure of payment on the part of the purchaser, except so far as a distinction may arise from the situation of this country at the time of the transaction, in respect to its circulating medium.

I will therefore consider this case 1st, as independent of that circumstance: and 2dly, as affected by it.

It will not, I presume, be denied, but that in the case of a general agreement, made in times when the currency is permanent, and unattended with any peculiar circumstances, a court of equity would decree a conveyance upon payment of the principal money contracted for, and legal interest. It would make such principal money the measure of that which the purchaser is to pay, on one of two grounds; 1st, as being a fulfillment of the very agreement made on the part of the vendee, and consented to by the vendor. Or 2dly, if it should be proper on the ground of there having been a forfeiture, to consider what is a just compensation, it could fix upon no criterion whereby to estimate this compensation so proper as the contract of the parties themselves.

There is no doubt, but that if the real value of the property sold is to be regarded, ought to be ascertained *as at the time of the contract*; and the opinion of both parties as to such value at that time, ought to be conclusive upon both.

That is however the case of a contract in currency of a fixed value, and for the non-payment at the time it became due, the law has settled the equivalent, namely, 5 *per centum per annum*. But the case now under consideration is that of a contract made in a depreciated and depreciating currency. We will therefore consider how it is affected by that circumstance. I very readily admit, that where a party against whom a bill is brought for the specific execution of an agreement, shews that such would be unconscionable, and prays that it may not be decreed but upon such terms as are just, a court of equity may impose such terms upon the plaintiff, and if he will not submit to them, may dismiss his bill. But to decide what are, and what are not such equitable terms as the court ought to impose, will depend upon the circumstances of every case, and upon the exercise of a *sound discretion* by the court. I say of a *sound discretion*, because it ought not to be an arbitrary one, and in particular, it should respect the laws of the country, and so far as may be, the agreement of the parties themselves. The act of 1781,—establishing a scale of depreciation, and declaring that out standing current money contracts should be regulated by such scale *as at the date* of such contracts,—appears to me, in effect, to have converted such current money contracts into specie contracts; for it declares that such shall now be discharged by as much specie, as shall appear, by the application of the scale, to have been

then

then (viz. at the date of such contracts) the value of the current money. In the case of specie contracts generally (as is above supposed,) upon payment of the sum contracted for, and interest, a specific execution would be decreed. But the case is not different in substance where the contract was for paper money: the value of that paper money, and not the numerical sum, is what the vendee is bound to pay, and the vendor entitled to receive. If the scale forms a just rule for ascertaining the value of paper money in specie, by the application of it to the current money contract of the parties, we can find the value in specie of that which was contracted to be paid, not less truly, than if the contract had been for specie itself. And the seller can no more complain of receiving such a sum with interest, as being less than he contracted to receive, than he could complain of receiving principal and interest in case of a specie contract. The legislature have established this scale as a just rule, whereby to settle paper money contracts in specie. It was no doubt made after due deliberation, and upon good information. It has been generally acquiesced in by the people of this Commonwealth, and has prevented much litigation. It affords, I suppose the best rule for ascertaining the value of the paper money, having been made by those, who represented every part of the state, and had the best opportunity of judging. The opinion of the Court of Appeals in the case of *Hill vs Southerland's executors* (ante vol. 1. p. 128) does not preclude me from considering this scale as affording a just rule for estimating the value of paper money, as it respects the years posterior to 1778. Perhaps, that case impliedly admits the scale to afford a just rule, *except as to the years* 1777, & 1778. At any rate, I have no data whereby I am justified in saying that as to the contract in question, the scale does not afford a just rule. But the appellee alleges, that he had immediate use for the money, and that he sustained an injury by the want of punctuality in the payment. If he had shewn to the court the amount and particulars of the injury, and moreover, that he had apprized the appellant that his situation was so peculiar as to render punctuality in the payment important to him, I will not say, but a court of equity would lay hold of those circumstances to vary the decision, which I think ought now to be given. But it seems to me, that without such data, we ought not to go into the consideration, how far the seller may have sustained a loss by the non-payment of the money when due. Neither ought the purchaser to be affected by a loss resulting to the seller on account of any peculiarity in his situation, when such situation was not made known to him.

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In fact, the pretenſion which I am now conſidering, would as well apply to a ſpecie, as to a paper money contract; with this additional circumſtance attending the latter, that the money if paid, might have been refuſed by the appellee's creditor, and in that event, or if he were not himſelf a debtor, it might and probably would have died in his hands by the abolition of that currency. I might here add, that ſuch was the peculiar ſituation of this country during the exiſtence of paper money, that many, if not moſt creditors were ruined by a punctual performance of contracts made on credit; whereas it was by the virtuous and honourable conduct of ſome debtors in withholding payments, that many creditors were ſheltered from deſtruction.

The 5th ſection of the act of 1781, eſtabliſhing a ſcale of depreciation, gives to the court a power to depart from ſuch ſcale, where circumſtances ſhall ariſe, which in their opinion would render a determination according to it unjuſt. Such a power I have already admitted is exerciſeable by a court of equity, upon an application like the preſent, independent of this ſection, where the circumſtances will juſtify it. What thoſe circumſtances are, which are contemplated in this ſection, I will not undertake to ſay; but it would ſeem to me that they muſt be ſuch as are peculiar to that very caſe, and not ſuch as are common to every caſe. The one now under conſideration appears to exhibit no circumſtances which may not reaſonably be ſuppoſed to attend every paper money contract, which was not punctually complied with. But it is ſaid, that the court ought in this caſe to depart from the ſcale, becauſe otherwiſe, the appellee will not get the value of his land. The counſel for the appellee candidly acknowledged that he did not place his hopes of ſetting aſide the contract in the preſent caſe, upon the equality of the ſum produced by the ſcale, compared with the real value of the land. Indeed a contrary doctrine would involve the court in a difficulty, where to draw the line, if every (even the minuteſt) inequality, ſhould not be deemed ſufficient to juſtify a departure from the ſcale; but before we can ſay that a given ſum is unequal to the value of the ſubject, that value itſelf muſt be aſcertained.

In the preſent caſe, the value of the land at the time of the contract, is not aſcertained, otherwiſe than by the original contract of the parties. There are two witneſſes who ſay they think the land was worth fifty pounds of tobacco per acre; but what was the value of the tobacco in ſpecie at that time, or whether theſe witneſſes are credible, this court cannot undertake to ſay.

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A jury has also said the land was worth six shilling per acre. But the time to which their valuation has reference, was six months posterior to the time of the contract, within which period, the land might for any thing known to the court, have considerably risen in value.

Upon the whole, as by the application of the scale of depreciation, (which in this instance is presumed to afford a just, as well as a legal rule of liquidation,) to the current money contract of the parties, we can precisely ascertain the value in specie which was *contracted* to be given for the land, at the time the purchase was made, such application ought to have formed the criterion by which the Chancellor should have estimated the compensation to be paid by the appellant, and by this rule, the appellee will receive more *in value* than he would, if the money had been punctually paid, in consequence of its progressive and rapid depreciation.

I am of opinion therefore, that the decree should be reversed, and modelled as to the compensation, according to the ideas above stated.

FLEMING, J.—It is a rule at law, that the breach of one covenant, cannot be pleaded in bar to another. The appellant might have brought his action at law; and if he had, he must have proved performance on his part. Instead of resorting to a court of law, he has applied to a Court of Chancery for an equitable relief, and therefore, he must submit to the rules of the court which require him to do equity. This, is certainly very different from common cases. The agreement was made at a time when money was much depreciated, and was every day still farther depreciating. This condition of the circulating currency was known to both parties, and therefore punctuality was more necessary than it would have been, if the value of the money had been stationary. Since therefore, the appellant made the first breach in the contract, which operated to the injury of the other party, he is not entitled to the relief he asks for, but upon the terms of his doing equity: and this consists in his paying the real value of the land at the time of the contract. This was properly preferred by the Chancellor to a dismission of the bill, since the appellant had paid part of the money, and very probably had made some improvements. I am for affirming the decree.

CARRINGTON J.—When this cause was first brought on, I was struck with the impropriety of interfering with the contracts of parties. But upon fuller consideration of the circumstances

ſtances of this caſe, I think that juſtice cannot otherwiſe be done. The real value of paper money was very little known to any perſon. There were few, who were not deceived by it. A want of punctuality never failed to produce a loſs, and the longer payment was delayed, the more the loſs was accumulated. The parties in this caſe certainly had depreciation in view, and *Atkinſon*, may have calculated upon the uſe of the money, if punctually paid at the time agreed upon. Beyond that time, no calculation could have been made. As to the payment of the money, it ought to have preceded the conveyance, and it is evident that *White* himſelf thought ſo from his conduct. Yet it does not appear that he tendered the money, or had it to pay. It is clear that *White* forfeited all his rights under the contract, at law, and then the queſtion is, in what ſituation does he ſtand in a Court of Equity. The Chancellor inſtead of diſmiſſing the plaintiff's bill, more properly decreed a conveyance upon the equitable terms of his making compenſation; the ſtandard of which compenſation he very rightly conſidered to be the value of the land, as aſcertained by a jury. I am of opinion that the period to which the valuation ſhould have related ought to have been that, when the contract was made, and not that, when the firſt payment was to be made. The difference in this caſe is not important, but if either party requeſts an iſſue to try the value at the date of the agreement, I have no objection to indulging him. As to the danger of a precedent like this, I think that all ſuch caſes muſt depend upon their particular circumſtances, and that the opinion now given will not apply but in a caſe preciſely like the preſent.

LYONS, J.—The general rule in executory contracts reſpecting perſonal things is, that if the purchaſer does not pay and take away the property in convenient time, the ſeller is not bound, and may diſpoſe of it again. If earneſt be given, the vendor muſt requeſt payment of the conſideration, after which he is abſolved from the bargain if it be not paid. In caſes of ſales of real property, the rule of equity is, that though a forfeiture take place at law by a failure on either ſide, yet if it be a caſe lying in compenſation, a Court of Chancery will relieve againſt it. But if that court do interfere, it muſt be in caſes perfectly fair, equal and juſt. Another rule in a court of equity is, that he who would receive the benefit muſt ſuſtain the loſs. Here then occurs the difficulty of the caſe. The legiſlature have eſtabliſhed a ſcale, by which to aſcertain the ſum in

ſpecie

ſpecie which ſhould be paid in diſcharge of contracts entered into at particular periods, whilſt paper money was in circulation. This law was very properly paſſed, for otherwiſe the value in each particular caſe muſt have been aſcertained by a jury, in the ſame manner as in actions for foreign money. This would have produced infinite trouble and litigation, which this law, (affording I believe the beſt *general rule*) is wiſely calculated to prevent. It is of more conſequence that the law ſhould be fixed and known, than that it ſhould always be ſtrictly juſt. The debtor is to pay according to the ſcale at the *date of the contract*, becauſe, as the payment was not punctually made, by which the debtor had the benefit of the money, and deprived the creditor of the uſe of it, the debtor ought to bear the loſs by depreciation. This rule would have been enforced, if the creditor had brought his ſuit to coerce payment. This furniſhed an equitable courſe of reaſoning with the Chancellor to depart from the ſcale, when he was applied to for equity. On the other hand if the creditor refuſe the money when tendered, or if there be other circumſtances to warrant a departure from the ſcale, it may be made; in no other caſe, can a ſmaller ſum be allowed; in none more.

The ſcale is binding where the creditor ſues. But where the debtor applies for equity, the rules which govern courts of equity may properly be applied to him. The caſe of *Wilſon* and *M'Rae vs Keeling*, (ante vol. 1, p. 194,) went upon the principle, that he who would have ſuſtained the loſs ſhall have the benefit. So here, if the money had been paid, a ſpecie debt might have been diſcharged with it, or it might have been applied to other valuable uſes. I agree, that *the time when the contract was made*, was the proper period for fixing the valuation of the land, and that in this reſpect the Chancellor was wrong.

The PRESIDENT.—To view this caſe as a general one, unaffected by the particular circumſtances which attend it, the appellant has wholly failed in performing his part of the agreement. It does not appear that he was ready to do ſo during the whole year. If *White* had brought his action at law he could not have ſucceeded, without avering and proving performance on his part, or that he was ready to perform. The agreement therefore was entirely forfeited at law, and how does he ſtand in a Court of Equity? He has paid part of the purchaſe money, and has perhaps made improvements upon the land. This being a caſe where compenſation can be made, a Court of Chancery will relieve, but upon what terms? If the contract

tract had been made in *ſpecie*, the value fixed by the parties would have furniſhed the juſt meaſure of retribution. But even in caſes of ſpecie contracts, I will not ſay that this meaſure would in all caſes be reſorted to. Suppoſe a man ſells at half price upon condition of punctual payment, calculating upon an ability which he might thence derive of making a beneficial inveſtiture of the money. Suppoſe it ſhould appear that he had loſt this advantage by want of punctuality. The court I think would properly depart from this rule, and might refuſe to relieve but upon payment of the full value of the land. However this might be, it is certain, that in a caſe of a contract made in *paper money* where the ſcale furniſhes no juſt rule for fixing the value of the money, the rule above mentioned ought to be departed from. No juror can ſay what were the ideas of the parties as to *the value of the money* at the time of the agreement.

The act of 1781, furniſhes a good *general rule* for ſcaling paper money contracts; perhaps the beſt which could have been made. But it is certainly not juſt in all caſes. What is the objection to the meaſure of compenſation adopted by the Chancellor? Becauſe the appellant had got an advantageous bargain, it is ſuppoſed hard to deprive him of it. But why is he deprived of it? Why did he not perform thoſe acts which entitled him to retain the advantage? This court does not deprive him of it; he has been himſelf the cauſe of its being loſt.

I agree with the other judges, that the period to be fixed for aſcertaining the value of the land was that, at which the contract was entered into. The difference in ſpecie is not conſiderable, but if either party wiſhes an enquiry (at his own expence) according to this opinion he may be gratified.

The opinion and decree as entered, is as follows, viz:

"That there is no error in the principle of the ſaid decree, "ſo far as it ſubjects the appellant, to the payment of the ſpecie "value of the land, as a condition upon which the land is to be "conveyed to him; and although the value at the time of the "contract ſhould have been enquired of, inſtead of the value at "the day of payment, yet as the difference is probably trivial, "and not equal to the expence and trouble which would be incurred by a new trial of the iſſue for that purpoſe, the verdict of "the jury ought to ſtand as the valuation, unleſs either party "ſhall chooſe at his own expence to have ſuch new enquiry made "in which caſe a new iſſue ought to be made up, and tried by "a jury, to aſcertain what was the ſpecie value of the land at "the time of the contract; and that there is error in the decree

"in

" in this, that the appellant is decreed at all events to pay the " money and take a conveyance of the land, instead of allowing " him the option of abandoning his claim, and losing the mo- " ney he has paid. Therefore it is decreed and ordered that " the said decree be reversed and annulled, and that the appel- " lant pay to the appellee *Roger Atkinson*, as the party sub- " stantially prevailing in this court, his costs by him about his " defence in this behalf expended. And this court proceeding " to make such decree as the said High Court of Chancery " should have pronounced, is of opinion, that the appellant hav- " ing failed to perform on his part the agreement sought to be " carried into execution, had forfeited all claim to the aid of " this court for that purpose; but having paid part of the pur- " chase money, and probably made improvements on the land, " he ought to be relieved against that forfeiture upon making " the appellee *Roger Atkinson* just compensation, the rule of " which ought to be the value of the land at the time of the " contract; and altho' that value usually is, and ought to be in " such cases considered as fixed by the contract when specie of " stable value is the medium of payment, yet in this case, " where that medium was to be in paper depreciated and ra- " pidly depreciating at the time, the contract affords no just rule " for ascertaining the specie value of the land, which was there- " fore properly enquired of and settled by the verdict of a jury, " and ought to stand as the rule of compensation; therefore, it " is further decreed and ordered, that upon the appellant's pay- " ing or tendering to the appellee *Roger Atkinson*, within three " months from the time of his being served with a copy of the " final decree in the High Court of Chancery the sum of one " hundred and twenty eight pounds, two shillings, with inter- " est thereon at the rate of five *per cent. per annum* from the " last day of June 1780, till payment, and the costs of this suit, " the said appellee shall execute a good and sufficient deed or " deeds for conveying to the appellant the land in the proceed- " ings mentioned in fee simple with a general warranty, but " if the appellant shall fail to make such payment or tender, " within the time aforesaid, that his bill in that case shall stand " dismissed with costs. But if either party shall upon this de- " cree being certified to the High Court of Chancery apply to " that court and desire a new enquiry to be made by a jury at " his expence, what was the specie value of the land on the last " day of December 1779, an issue shall be made up, and di- " rected to be tried by a jury to ascertain such value at that pe-

" riod; which being tried and certified to the ſatisfaction of the " ſaid High Court of Chancery, ſhall ſtand as the rule of com- " penſation inſtead of the former valuation, and with the inter- " eſt thereon from the ſaid laſt day of December 1779, after " deducting the eighteen pounds paid, be paid or tendered to " the appellee *Roger Atkinſon*, within ſuch reaſonable time as " ſhall then be allowed by the ſaid court to entitle him to the " conveyance in the above decree mentioned, or ſubject him " to the conſequence therein ſtated in caſe of his default."

MARTIN, & WILLIAM PICKET,

againſt

JAMES DOWDALL.

THIS was an appeal from the High Court of Chancery, in a ſuit brought by the appellee againſt the appellants for the conveyance of two tracts of lands. The caſe was as follows: *James Crap*, in the year 1741, obtained a warrant from the office of *lord Fairfax* for ſurveying a certain parcel of land lying in the Nothern Neck. The ſurvey was made and returned in the ſame year, but no further ſteps were taken towards obtaining a grant by *Crap*, who died in 1773. His ſon, aſſigned all his right in the ſaid land to the appellee, not conſidering it worth the expence of obtaining a grant. It appears by the depoſition of one witneſs, that the plaintiff applied at the office for the papers, (but at what time is not ſtated,) and that they could not be then found; but they were afterwards found in the year 1786, or in 1787. A grant of the land to *Crap* was made out and regiſtered in the *Proprietor's* office, but it was never executed by *lord Fairfax*. In December 1788, the appellee applied for and obtained a grant for theſe lands from the Commonwealth's land office.

In 1762, the father of the appellants obtained a warrant, from the *Proprietor's office*, and ſurveyed 243 acres, part of the land ſurveyed by *Crap*, for which a grant was made by *lord Fairfax* to his ſon, *Martin Picket*, one of the appellants, in the year 1780. In 1779, the other appellant *William Picket*, alſo procured a warrant, and ſurveyed 420 acres adjoining the above, which in-

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