

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

BY
BUSHROD WASHINGTON.

V O L. II.

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 & 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.*

peeled to be made by the testator, the admission, if it can be considered in that light, (for the expressions are extremely vague and indefinite as to that,) is no longer binding upon the representatives of the testator.

I am therefore of opinion, that the decree is erroneous in not allowing the credit for the £300, at its nominal amount.

THE COURT gave the following opinion and decree viz:
 “ By the appointment of *John Thoroughgood* to the guardianship
 “ of the appellee, the guardianship of the appellant’s testator, as
 “ also his habit of receiving and disbursing monies generally,
 “ on account of the appellee, having ceased, the receipt thereaf-
 “ ter of any money by the said *John Thoroughgood*, from the said
 “ preceding guardian, should be considered as a payment on ac-
 “ count of a debt, admitted to be due from him as guardian a-
 “ fore said; that by authority of the act of the General Assembly
 “ passed in 1781, entitled “ an act directing the mode of adjust-
 “ ing and settling the payment of certain debts and contracts,
 “ and for other purposes” and in conformity to former decisions
 “ by this court, the payment of £300, made the 3d of January
 “ 1780, by the appellant’s testator to the subsequent guardian,
 “ was not subject to the operation of the scale of depreciation?
 “ That there is error in the decree of the High Court of Chan-
 “ cery, permitting that payment to stand reduced, and that
 “ there is no error in the residue of the said decree, there-
 “ fore &c.”

DAVENPORT,

against.

MASON.

THE appellee, obtained an injunction in the County Court, to a judgment rendered against him in the same court. After answer put in, a motion was made to dissolve, and on a hearing the court over-ruled the motion, but continued the cause and awarded commissions to take depositions. At a subsequent court, on hearing the bill, answer, depositions and exhibits, the court dissolved the injunction, and decreed the plaintiff in that court to pay costs.

From

From this decree the defendant appealed. The High Court of Chancery directed issues between the parties, which were accordingly tried and a verdict certified thereon. The Chancellor reversed the decree of the County Court, and decreed a perpetual injunction, from which *Davenport* appealed.

Mr. CAMPBELL for the appellant contended, that the decree of the County Court was interlocutory, since it only dissolved the injunction. That no appeal could have been taken until the decree was made final by a dismissal of the bill; until this was done, the cause was still depending.

Mr. MARSHALL for the appellee insisted, that this is a decree *for costs* and, as to that, is final. But if not final, then the County Court erred in decreeing costs, and therefore the reversing decree is right either way.

The court affirmed the decree of the High Court of Chancery.

RAGSDALE Executor of RAGSDALE,

against

BALTE Executor of BALTE.

THIS was an action of debt instituted in the District Court of *Brunswick* by the defendant in error against the plaintiff for £ 32: 4: 2 with interest thereon from the 16th of June 1770, also one penny, and 460lbs. of gross tobacco. The action was founded upon a judgment of the General Court rendered in the year 1784, in favor of the testator of the defendant against the plaintiff for £ 64: 8: 4, for debt, also one penny for damages, and 460lbs. of gross tobacco for his costs, but to be discharged by the payment of the above mentioned sum of £ 32: 4: 2, with interest thereon from the 16th of June 1770, together with the damages and costs above mentioned. Upon the plea of payment, a verdict was found for the defendant in error, in the year 1794; whereupon judgment was entered, "that he recover the said sum of £ 32: 4: 2, with interest from the 16th of June 1770," as also the damages and costs aforesaid.