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 III.

BY WILLIAM W. HENING AND WILLIAM MUNFORD.

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1810.

DISTRICT OF VIRGINIA, TO WIT:

BE IT REMEMBERED, That on the twenty-second day of January, in the thirty-fourth 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 III. by "William W. Hening and William Munford."

IN CONFORMITY to the act of the 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."

WILLIAM MARSHALL,

(L. S.) Clerk of the District of Virginia.

sedeas could not lie in his name, to the order of *Hanover* Court, giving *Wingfield* leave to build a mill according to the prayer of his petition. If the appellee is aggrieved by the order he may seek redress by another remedy.

I am therefore of opinion that the *supersedeas* ought to be quashed, and the judgment of the District Court reversed.

Wright *against* Dawney.

Saturday, November 26.

IN this case the Chancellor for the *Richmond* District, at a subsequent *term*, after the *vacation* in which he refused an appeal from his interlocutory decree between the same parties,(*a*) granted an appeal under the act of Assembly.(*b*)

The power of the Superior Courts of Chancery to grant appeals from interlocutory decrees, in certain cases, is not limited to the terms at which such decrees were rendered; but may be exercised at any subsequent term.

Williams moved to dismiss this appeal as improvidently granted, saying the Chancellor had no right to allow it after the term at which the decree was entered.

Judge TUCKER said that, as to *final* decrees, the power of the Court ceased at the end of the term; but over *interlocutory* decrees it always continues; for the Chancellor may, at any subsequent term, set such decrees aside, and therefore may grant appeals from them.

(*a*) 2 *Hen. & Munf.* p. 12.
(*b*) *Rev. Code*, 1 vol. c. 223. s. 1. p. 575.

Judge ROANE observed the great inconvenience which would result from the construction of the law contended for by the counsel of the appellee. This Court having decided that appeals from interlocutory decrees cannot be granted by the Chancellor in *vacation*, it might happen that the party aggrieved by a decree would be deprived of his appeal altogether, if it could not be allowed him at a subsequent term, since he might be absent when the decree was

OCTOBER, 1808.

Wright v. Dawney.

rendered, and know nothing of it until after the term. Such a construction should prevail as advances the object the Legislature had in view, which was the convenience of the people: and, moreover, no words exist in the act restricting the power of the Chancellor to the term when the interlocutory decree was entered.

Judge FLEMING was of the same opinion; and the motion was unanimously overruled.

Monday, November 28.

Moore *against* Chapman.

Trespass, assault and battery, and false imprisonment, will not lie against the plaintiff, for suing out a writ of *capias ad satisfaciendum*, and causing the defendant to be taken in execution, while he was attending Court as a witness, under the protection of a *subpœna*, although the debt for which the execution issued had been previously paid.

Nor can any action be sustained, *as it seems*, till the process of execution be quashed, or superseded.

THIS was a *supersedeas* to a judgment of the District Court held at *Haymarket*, reversing a judgment of the County Court of *Fairfax*.

Moore brought an action against *Chapman* in the County Court of *Fairfax*; the declaration charges an assault, battery, and false imprisonment of the plaintiff by the defendant, on such a day, at the *Parish of Fairfax*, in the *County of Fairfax*. The defendant filed certain pleas, not in the record, (neither is the nature of them mentioned,) which, by consent, were afterwards withdrawn; and, thereupon, he pleaded not guilty; and, by *consent*, leave was granted him to give all matters in evidence at the trial that he could have specially pleaded. After which, the parties went to trial; when a bill of exceptions was filed by the defendant's counsel; stating that, on the trial, the *plaintiff* offered evidence to prove that, on the application of one *Willoughby Tebbs*, an execution was issued by the Clerk of *Dumfries* D. C. on behalf of the defendant *Chapman*, against the body of the plaintiff, for 37*l.* 2*s.* 7*d.* with interest thereon and costs, which execution was not directed to any Sheriff, but was put into the hands of the said de-