

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 II.

BY WILLIAM W. HENING AND WILLIAM MUNFORD.

FLATBUSH, (N. Y.)

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1809.

DISTRICT OF VIRGINIA, TO WIT :

BE IT REMEMBERED, That on the twenty-first day of March, in the thirty-third 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 II. By William W. Hening and Wil-
“ liam 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 proprie-
“ tors 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,
Clerk of the District of Virginia.

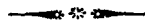
(L. S.)

MAY, 1808. in whom was the *property* and possession of the slave, at the time of executing the deed of release? and, secondly, by whom the same was executed?

Kennedy
v.
Waller
and another.

It appears from a recital in the deed, that the *possession*, and property of the slave in question (and sundry others, to whom *Arnold and wife* claimed title) were in *James Edwards*; and in order to compromise the matter between the parties, the deed of release, above mentioned, was executed by *Arnold and wife*; who, it is presumed, claimed an equitable interest in the slaves, under the deed of *John Butler*, dated the 20th of *July*, 1727, and recited in the release; and although *James Edwards* is named a party to the deed, and probably acquiesced in it, he was not, nor could he have been, divested of the legal property in the *slave* under that instrument, unless he had also signed, and duly executed it: nor does it appear that the slave was ever in the possession of the trustees, or either of them; and, therefore, it seems to me that the action brought in their names cannot be sustained.

By the whole Court, (absent Judge LYONS,) judgment of the District Court REVERSED.



Perkins against Saunders and Wade, Executors, &c.
of Power.

Thursday,
May 5.

FOUR suits which had existed between the parties in the Superior Court of Chancery for the *Richmond* District, were consolidated by the Chancellor at the hearing, and one decree pronounced, in the whole, founded on the report of the master commissioner; each party to bear a proportion of the costs. *Perkins* appealed in all the cases. Several points were made by the counsel for the appellant; which, it was insisted by the counsel for the appellees, were all resolvable into the state of accounts between the Court below, or not taken in such form as to enable this Court to decide on the principle of law or equity on which the item excepted to, was admitted or rejected.

The Court of Appeals will not enter into an investigation of an account taken by direction of a Court of Chancery, when either no exception to the commissioner's report was taken in the

the parties ; and that the decree of the Court of Chancery was justified by the report of the commissioner.

MAY, 1808.

Perkins
v.
Saunders
and Wade.

No exception was taken to that report in the Court of Chancery ; and the only point on which *all* the judges of this Court expressed an opinion, was, how far it would be proper to enter into an investigation of an account taken by direction of a Court of Chancery, when either no exception was taken to the report of the commissioner, or not taken in such form as to enable this Court to decide on the *principle* of law or equity, on which the item excepted to was admitted or rejected. On this point Judges ROANE and FLEMING, during the course of the argument, seemed to concur in the following opinion, delivered *on Thursday, May 12*, by Judge TUCKER.

Judge TUCKER. In these cases a variety of points were presented by the appellant's counsel.

1st. As to the costs of one or two of these suits, the whole of which were consolidated at the hearing and one decree pronounced in the whole, and each party was decreed to bear a proportion of the costs. As no appeal lies for *costs* only, this point ought to be disregarded, even if not perfectly equitable, unless there be some other error in the decree. 2d. It was insisted a Jury ought to have been impanelled to assess damages against the executors for their misconduct in suffering suits to be brought and the property to be sold under execution. This is the first time I have heard of a suit in equity for vindictive damages. 3d. That the executor *R. H. Saunders* ought not to be allowed the benefit of a compromise, or purchase which he made of a judgment and execution against his testator's estate, by which he gained 24 dollars. The principle is in general true,^(a) and in this instance the executor ought not to have been permitted to take the benefit to himself ; nor has he been allowed it, the commissioner on that account, as well as some others having allowed him no commissions.

(a) 2 Fonb.
167.

MAY, 1808.

Perkins
v.
Saunders
and Wade.

As to the remaining exceptions, they relate principally to the settlement of the accounts made by the commissioner with great apparent care and attention, and to which no exceptions were taken in the Court of Chancery. I have considered it as a settled principle, that this Court will not enter into an examination of accounts referred to a commissioner, and settled by him; unless an exception to them has been taken in the Court of Chancery, nor *then*, unless the exception be so stated as that this Court may decide upon the equity, or legality, of the *principle* only, upon which the article is admitted, or rejected, without wasting their time in adjusting the *particulars* of a long and intricate account; a business which is the peculiar province of a *commissioner* and *accountant*; and which, if this Court were to admit themselves to be bound to engage in, would in a year or two put a total stop to the administration of justice in civil causes in this commonwealth. I am therefore of opinion the decree ought to be affirmed.

Judge ROANE thought the decree correct, and that it ought to be affirmed.

Judge FLEMING of the same opinion.

By the whole Court, (absent Judge LYONS,) the decree of the Superior Court of Chancery *affirmed*.