REPORTS

OF

CASES

ARGUED AND DECIDED

IN THE

COURT OF APPEALS

OF

VIRGINIA.

BY DANIEL CALL.

VOLUME V.

RICHMOND:
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1804. *April.*

Auditor *v.* Chevallie.

The judge, who preceded me, considers the report of the committee as evidence, because it was not objected to by the attorney general. If this be the case, the consequence would be truly alarming: that every thing, which is not objected to, is admitted! But is this report only admitted *in part?* And, if admitted *in toto*, this particular paragraph is merged and lost in the two contradictory parts before stated. Besides this rule, if it works at all, must work both ways; and how does it operate against the appellee? It lets in the certificate, before stated, from the books of the council: which goes conclusively to shew, that the appellee was satisfied with the settlement by the solicitor. I am of opinion that the decree should be reversed.

FLEMING, Judge. I was of opinion, in the former suit, that the contract was subject to the scale of four for one only; and, as I see no cause to change it, I am of opinion that the decree ought to be affirmed.

CARRINGTON, Judge. I thought, in the former cause, that the contract was subject to the scale of five for one; and I still retain that opinion. But, as the judges are equally divided upon the question, the decree is to be affirmed.

PRICE *v.* CAMPBELL.

1804. *April.*

The court of chancery cannot, upon the same facts, alter a decree of the court of appeals.

The suit, in this case, was brought to foreclose a mortgage given to secure payment of a sterling debt; but, through mistake, the commissioner in stating the account calculated it, as current money; which, of course, greatly reduced the demand. This report however was, without observing the

1804. *April.*

Price v. Campbell.

error, confirmed, and an interlocutory decree made for a sale of the mortgaged property to satisfy it. The defendants appealed to the court of appeals; where the decree was affirmed. But, when the cause went back to the court of chancery, the mistake was discovered; and, by that court, corrected. The defendants appealed from the correcting decree to the court of appeals.

For the appellants it was insisted, that the court of chancery had not authority to change the decree of this court. That the precedent would be dangerous, if inferior tribunals should be allowed to alter the decrees of the court of appeals, as there would then be no end to controversies; and no man could say when a suit was ended. That, if the practice prevailed, the decrees of this court might be altered after they had been carried into execution by the court of chancery; the cause put off the docket; and to every appearance finally ended. That *interest reipublicæ ut sit finis litium* was a sound maxim; and it was, upon that ground, that *White* v. *Atkinson*, 2 Call, 376, was decided: which ought to be adhered to.

On the other side, it was contended, that, as the decree was interlocutory, it might be corrected: and that no danger could result from it, as the point had never been mentioned, or adverted to by this court at the time of affirming the first decree.

Cur. adv. vult.

TUCKER, Judge. The single question is, Whether the chancellor could, upon the same facts, change the decree of this court? The case of *White* v. *Atkinson*, 2 Call, 376, decides that he could not; and I approve of that decision. It makes no difference, that it does not appear that the mistake was noticed at the time of affirming the former decree; for the point was fairly presented upon the record; and it cannot be admitted that the court did not advert to it. A

contrary doctrine would overthrow the whole theory of the law; which supposes every thing contained in the record to have been decided on; and has wisely established the rule that *interest reipublicæ res judicatas non rescindi.* For I cannot conceive of any thing more inconvenient to society, than a power in the courts below to reverse and alter the solemn judgments of the supreme tribunal, as controversies would then be perpetual, and suits become interminable. I think therefore that the principle established, in the case of *White* v. *Atkinson*, ought to be adhered to; and consequently that the decree ought to be reversed.

ROANE, Judge, was of opinion that the decree should be reversed.

CARRINGTON, Judge. *White* v. *Atkinson*, was a similar case; and there it was decided, that the court of chancery could not, upon the same facts, alter the decree of this court; which decision ought to be adhered to: or there will be no end to controversies; and parties will never be certain as to the result of the suit.

Per Cur. Reverse the decree.