

DECISIONS OF CASES

IN

VIRGINIA,

BY THE

HIGH COURT OF CHANCERY,

WITH REMARKS UPON DECREES,

BY THE

COURT OF APPEALS,

REVERSING SOME OF THOSE DECISIONS.

BY GEORGE WYTHER,

CHANCELLOR OF SAID COURT.

SECOND AND ONLY COMPLETE EDITION, WITH A MEMOIR OF THE AUTHOR, ANALYSIS
OF THE CASES, AND AN INDEX,

By B. B. MINOR, L. B., OF THE RICHMOND BAR.

AND WITH AN APPENDIX, CONTAINING

REFERENCES TO CASES IN PARI MATERIA, AND AN ESSAY ON LAPSE;
JOINT TENANTS AND TENANTS IN COMMON, &C.,

By WILLIAM GREEN, Esq.

RICHMOND:

J. W. RANDOLPH, 121 MAIN STREET.

1852.

BETWEEN
ALEXANDER LOVE, *plaintiff*.

AND
CARTER BRAXTON and Thomas Ham, *defendants*.

1. *H.* purchased of *B.* a London estate; thereby hindering *L.* from enjoying a right and exercising a lawful power derived to him from an agreement and letter of Attorney from *B.* to *L.* If *H.* had notice thereof, before his purchase was complete and before payment of the purchase money, he is liable to *L.* for damages in an action at law.—*L.* not being able, by decree of any Court here, to subject the estate which lieth in Great Britain; nor ought *L.* to be compelled to resort for redress to any Court of Great Britain, where, if *H.* be so liable, the remedy is no more proper than here; and he might be disappointed of his remedy against the land by a sale thereof to a purchaser without notice of his claim.
2. Equity will also grant him relief in a suit for discovery whether *H.* had such notice, and though *H.*'s answer deny such notice, the bill is still sustainable in order that plaintiff may endeavor to prove the purchase such an one as ought not to avail him who pleaded it.

UPON one question in this cause, the court, on the 19 day of march, 1792, delivered this

OPINION :

That, if the defendant Thomas Ham had notice of the agreement between the other defendant, Carter Braxton, and the plaintiff of the 28 day of June, 1783, and the letter of attorney, of the first day of July thence next following, given by the former of those parties to the later, before the defendant Thomas Hams purchase of the London estate, mentioned in those exhibits, from the other defendant was complete, and before payment of the purchase money, the plaintiff, who, by decree of any court in this commonwealth, cannot subject the estate, because it lieth in Great Britain, to his demand, ought to recover satisfaction for the damage which he hath sustained, if indeed he hath sustained damage, by the purchase; that by this intermission of the defendant Thomas Ham, if he had such notice, the plaintiff was injured, being hindered from enjoyment of a right. and from exercise of a lawful power, derived to him by that agreement and letter of attorney; that, for redress of such an injury, he ought not to be compelled to resort to a court of Great-britain, where, if the opinion that the defendant Thomas Hams intromission was injurious be correct, the remedy is

not more proper than here, and where, in one event, which may indeed not have happened in this case, but which may happen in a similar case, he might be disappointed of his remedy against the land, by a sale thereof to one who had not notice of the plaintiffs clame; but that for such an injury an action at common law to recover satisfaction in damages is maintainable; and that the plaintiff may now procede to obtain that satisfaction in this court, where the suit originated properly for discovering a necessary fact which he suggested his inability to prove: for although the bill was partly for discovering that fact by the defendent Thomas Ham, namely, his notice of the agreement before his purchase, and although by his answer he denied the notice to have been prior to his purchase, the bill is supposed to be sustainable afterwards, in order that the opposite party might endeavour to prove the purchase to have been such an one as ought not to avail him, who pleaded it.