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.*)
PRINTED AND PUBLISHED BY I. RILEY.
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, entituled, "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, entituled, "An act, supplementary to an act, entituled, 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,
(L. S.) Clerk of the District of Virginia.

G. Winston, who died insolvent, and had none,) the *representatives* of such of the legatees as were *dead*, and those *legatees* who were living. Mr. *Lyons*, as security for one of the executors, *demurred*, on the ground that a *devastavit* had not been previously fixed upon his principal at law.

SEPTEMBER, 1807.

Clarke v. Webb and others.

Per Curiam. The rule of law as laid down by the Supreme Court in the case of *Braxton* v. *Winslow*, 1 *Wash.* 31. is well understood and admitted, that, *at law*, the security of an executor shall not be made liable for a *devastavit* committed by his principal, until it has been fixed upon him by a suit: but, although this be the case, *at law*, yet, surely, a creditor, after a judgment and the return of an execution, "*no effects*," may either proceed against the executors for a *devastavit*, according to the rule laid down in that case, or may bring his bill in *equity* to have a *discovery* of the assets: and such is the present case. The court should therefore entertain the cause, and settle all disputes between the parties: but, to do this, all the parties, (however remotely concerned in interest,) against whom a decree can be rendered, must be before the Court; and therefore, it was right, in this case, to make Judge *Lyons* a party. His demurrer must be overruled; and he must be directed to answer. Surely it is unnecessary to cite authorities to prove such plain principles.

Lindsay *against* Howerton.

Wednesday, Sept. 9, 1807.

THE commissioners, in this case, appointed to settle the defendant's administration account, refused to allow some charges made for fees paid to counsel, because they were for more than the law allowed.

An executor or administrator ought to be credited in his administration account for fees paid to counsel, notwithstanding those fees were more than the law allowed.

SEPTEMBER, 1807.

Lindsay v. Howerton.

Per Curiam. There can be no doubt but that the defendant has paid those fees on account of his intestate's estate; and, as he could not do without the aid of counsel, whose conduct he could not regulate, he should be allowed the sums he has paid. The Court, in giving this opinion, is supported by the opinion of the former Chancellor, as appears by his notes in this very case.

Saturday, Sept. 19, 1807.

Degraffenreid *against* Donald & Co.

A complainant whose remedy was complete at *common law*, but who *by accident* was prevented from making it *there*, may be relieved against the judgment, but ought to pay the costs in Chancery.

THE complainant, in this case, claimed in his bill of injunction certain discounts against a judgment at law; stating that he had failed to defend the suit, (which otherwise he might have opposed successfully,) in consequence of his attorney's sickness, and his own absence from the commonwealth. The last mentioned allegations were neither admitted nor denied in the answer. On the final hearing he was relieved against part of the judgment; and a question then arose concerning the costs.

The Court decided that, since the plaintiff's defence was *at law*, and he had not made it *there*, he should pay the costs *here*.

Monday, Sept. 21, 1807.

Campbell and Wife *against* Winston and others,
Winston and Wife *against* Campbell and others,
and
Henry *against* Winston and others.

A settlement (by commissioners appointed by the Court of Chancery) of an administration account, without *notice* to the legatees or distributees, is against the constant course of the court.

IN these cases, a decree had been made for the settlement and division of *Patrick Henry's* estate; and the commissioners appointed had reported the administration ac-