

REPORTS

OF

CASES

ARGUED AND DETERMINED

IN THE

COURT OF APPEALS

OF

VIRGINIA.



BY

BUSHROD WASHINGTON.



V O L. I.

R I C H M O N D:

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M,DCC,XCVIII.

troduced, by a re-settlement of paper money claims, passed a law, declaring "that all actual payments made by any person or persons, of any sum, or sums of the paper currency, there mentioned, at any time, or times, either to the full amount, or in part payment of any debt, contract, or obligation, whatsoever, the party paying the same, shall have full credit, for the nominal amount of such payments, which are not to be reduced." It is remarkable, that to the words *debts and contracts*, are added, *or obligations whatsoever*, which comprehend legacies. Courts of Equity, are as much bound by this legislative declaration, as courts of law. The executor therefore, by the payments made to the guardian, was by this law totally discharged, and since the guardian was guilty of no fault, either in receiving, or in the application of the money, he ought not to be subject to the loss, by further depreciation, subsequent to the payment by the executors. The bill must be dismissed as to the executors and residuary legatees, and the cause remanded to the High Court of Chancery, as to the guardian, for an account to be taken of the money received by him, according to the principles of this decree.

JACOB WESTFALL,
against
JOHN SINGLETON.

THIS was an appeal from a decree of the High Court of Chancery. Sometime in the year 1749, Lord Fairfax, by a public advertisement, invited settlers, to that part of the Northern Neck where the land in question lies, promising to make rights to such, as would settle there. A man of the name of Vanderpool, having previously made a settlement upon the tract in dispute, he, about this time, sold the same to Abel Westfall, who took possession, and continued to hold it, until the year 1755, when he died, intestate, leaving two sons, Cornelius his eldest, and John. Lord Fairfax, having granted a very large tract of country, (including within it, the land in question,) to Bryant Martin, received a reconveyance of it, and laid off the whole into a manor.

In the year 1770, upon the application of the settlers, he, by a writing under his hand, agreed to convey to them their respective

tive settlements, for three lives, renewable for ever, reserving an annual rent; which agreement was proved and recorded, Cornelius Westfall, who at the time of his fathers death, and long after, lived in the state of New Jersey, removed to this commonwealth, and took possession of the land in question, about the year 1773, and continued to hold it until his death, in 1780, having by his will devised it to his sons Isaac, and Zachariah, who afterwards conveyed the same, to Jacob Westfall, the plaintiff. Cornelius, paid rent for this land for some years, tho' lord Fairfax had refused to convey it to him.

The defendant (who claims under a purchase from John Westfall, the younger, son of Abel Westfall, by the defendant's father, and a deed in consequence thereof from lord Fairfax in the year 1773, to the defendant) states in his answer, that it was customary in that part of the country, for persons, having mere settlement rights, to transfer the same, by death-bed donations, which were always considered as valid. That Abel Westfall made such a disposition of the land in question, to his son John, who had shared with him in the toil and danger of making this settlement, and of securing it from the Indians; that the defendant and his father held possession until 1774, when Cornelius Westfall took possession.

There is some evidence, proving a custom, similar to that mentioned in the answer. The defendant having recovered the land in ejectment, this bill was filed praying an injunction and a conveyance.

The Chancellor dismissed the bill, being of opinion, that the equity therein stated, was neither admitted by the answer, nor established by the evidence.

The PRESIDENT delivered the opinion and decree of the court as follows: If lord Fairfax had not originally invited settlers on his lands on the South Branch, by a promise of making them titles, he was nevertheless bound, by his advertisement of the 5th of August 1740, to grant such titles to all persons then settled thereon. That Abel Westfall, being at that time settled on the land in dispute as a purchaser from Vanderpool, the original settler, was entitled to a grant thereof, from lord Fairfax, on the usual terms of granting his lands; and Abel, dying so entitled, in possession of the land, in the year 1755, without making a will, or other disposition of it, his equitable interest therein, descended to Cornelius Westfall, his eldest son and heir at law; who not appearing to have done any act, to forfeit, or to shew that he abandoned his title, but on the con-

“trary,

trary, having entered on the land, within 20 years, (the time allowed by law for his entry if it had been a legal title, and he in the state,) he was entitled to the like grant from lord Fairfax, which his father might have claimed: But as it appears, that the settlers within the manor, generally agreed, to accept leases on the terms of lord Fairfax's advertisement in 1770, and Cornelius himself, applied for such lease, and paid the annual rents accordingly, which amounted to his consent, to waive the claim to an absolute title, that he ought to hold the land, under the heirs, or assigns of lord Fairfax, on the terms, and subject to the covenants contained in the lease. That John Westfall, the younger, son of Abel, having no title in law or equity, to the land; no right could be derived to Thomas Singleton from him; and therefore; it is immaterial, whether their contract was for an absolute purchase, or for a term only.*

That lord Fairfax being bound in equity, to lease the land to Cornelius, at the time he executed the lease to John Singleton the appellee, the latter, ought to be considered in equity as a trustee for Cornelius, and those claiming under him, as to so much of the said land, as was within Abel Westfall's settlement.

The decree therefore must be reversed with costs, and it is decreed and ordered, that the appellee do, at the costs of the appellant, execute to him a proper deed, for assigning to him, his heirs and assigns, the said lease, made to him by lord Fairfax, and bearing date the 2d day of August 1773; with all the benefits, and subject to the covenants and conditions therein contained, on the part of the said Singleton. That the injunction granted by the said Court of Chancery, to stay the proceedings on the judgment at law, obtained by the appellee, against the appellant in the county court of Hampshire, stand and be perpetual. That the appellant be quieted in his possession of the said land, and that the parties bear their own costs in the said Court of Chancery: Liberty however, being reserved to the appellee, to state, and shew to the said Court of Chancery, that part of the land contained in the lease, was not included in Abel Westfall's settlement, and to the said Court of Chancery, on that being made to appear, to vary the decree, so as to confine the assignment of the lease, the injunction, and quieting of possession in the plaintiffs, to the lands, to which Abel Westfall was entitled." JONES

* There is some contradictory testimony in the cause upon this subject.