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 WYTHE,

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
DAVID COCHRAN, *plaintiff*,
AND
JOHN STREET, *defendent*.

In an action for slander, the judgement was enjoined, and new trial awarded by the County Court, on the ground that four of the jurors would not have found any damages but for the impression produced on them by the other jurors that they were bound to yield to the majority. The jurors were allowed to testify as to the facts The H. C. C. refused new trial, and dismissed the bill. Reversal by the Court of Appeals; on the ground that the verdict was found under a mistake. See this case reported in 1 Wash. R. 79.

The defendent, in an action on the case against the plaintiff for slander, commenced in Hanover county court, to the declaration in which the plea was not guilty, had recovered 150 pounds damages.

The county court granted an injunction to stay execution of the judgement until further order, upon a bill filed by the present plaintiff, stating that the trial of the issue had been brought unexpectedly and as he conceived irregularly, and when for that reason he was not prepared to make a defence, that not only the damages were excessive, if the words alleged to be defamatory had not been true, but, that the truth of them would have been proved, if the plaintiff had not been surprised by a premature trial, and that some of the jurors, who were disposed to condemn the plaintiff in trifling if in any damages, being convinced by the reasoning of their more experienced, and as they believed at that time more knowing, brethren, who affirmed that the less number were bound by law to acknowledge their agreement in a verdict, however discordant with their own sentiments, which the greater number had approved, concured in the sentence of which the plaintiff complaineth, and to which they would not otherwise have assented.

The defendent by answer denied the trial to have been brought on irregularly, and neither admitting nor denying the allegation relative to the influence of some jurors over others, objected that the examination of them, in order to prove their own misconduct, would be a mischievous practice.

No irregularity in bringing on the trial of the issue was made to appear.

Several witnesses were examined to prove, on one side, the truth, and, on the other, the falsehood, of the words alledged to be defamatory.

As to the influence of some jurors over others, one juror de

posed, that, from the evidence, he was of the opinion no damages ought to have been found against the plaintiff, but being unacquainted with the law concerning juries, he was imposed upon by some of his brethren, who told him that all the jurors must acknowledge their agreement in any verdict in which a majority were agreed ; and under this imposition he did acknowledge his agreement in the verdict then found ; whereas had he known that his own conscience ought to be satisfied in the propriety of the verdict, he would not have consented to a verdict for any damages against the plaintiff.

Another juror deposed to the same purpose with respect to himself, and indeed in the same words, adding that he desired the foreman, whilst he was writing the verdict, to consider him the deponent as dissenting from it.

A third juror deposed to the same purpose as the first, adding that he desired the foreman to write that the majority but not the whole were for a verdict in favour of the plaintiff.

And a fourth juror also deposed to the same purpose as the first.

Not one of them, when the verdict was returned, and the usual question ' have you agreed in a verdict ?' was propounded, signified his dissent.

Four other jurors, who were examined, acknowledging the diversity of opinions among them, at first, insomuch that some would have found 500 pounds damages, others less damages, and others no damages at all, do not admit or believe any means to have been practised by any of the jury for the purpose of misleading others, and state their own opinions respectively to be that, after some time the majority appearing inclined to find 150 pounds, all of them agreed to the verdict returned for those damages.

The county court decreed another trial of the issue between the parties.

From this decree the defendent appealed to the high court of chancery, who, the 28 day of october, 1791, delivered this

OPINION:

That, if the damages found on trial of the issue in the action at common law, had been excessive, the application to obtain redress, for that cause, to the court of equity, in the first instance, was improper, unless, for some reason not apparent in this case, a motion to the court before which that trial was, to award another trial, either could not have been made, or if made

must have been unsuccessful; (a) and that no other good cause for awarding the new trial in this case appeareth, the surprise upon the appellee (plaintiff) not being proven; the truth of the slanderous words spoken by him of the other party being a proper subject of inquiry, upon a motion, which ought to have been made instead of a bill in equity, for awarding a new trial; and that some of the jurors should at length join in a verdict which they do not approve, prevailed upon by their fellows to do so, being in most cases unavoidable, and perhaps generally those verdicts being the most just, which are the result of discussion introduced by diversity of sentiments professed by different jurors on thoir first consultations:

And, reversing the decree of the county court, dismissed the bill.

This decree was reversed the 16 day of may, 1792, by the court of appeals, whose opinion was, " that the fact ' that the verdict in the suit at common law between the parties was founded in mistake of some of the jurors, ' being well established by the depositions was a good ground for a court of equity to decree another trial in the said suit."

This last decree is acknowledged to be right if we may attend to four jurors, of whom, although three of them were more than 30 and the other 26 years of age, neither had before served in that office, and who having declared their disapprobation of the sentence in which they seemed to concur to have been so invincible that they would not have concured in it, if they had not been missled by some of their brethren into a belief that in questions refered to juries the opinion of a majority was decisive. But to permit part of a jury to retract a verdict recognized in solemn form is thought by some a dangerous precedent. *

(a) In some cases, where the damages were said to be excessive, two or three judges, who heard the evidence, would have approved motions for new trials; but the others would give no opinion, because they were not present at the first trials: so that there were no courts who would hear the motions. in other cases where verdicts have seemed exceptionale for various reasons, prejudices against one of the parties have been so prevalent that from their influence even justices of the peace have not been free. motions for new trials to courts composed of such judges must be vain. in cases like these interposition of the court of equity may be justified

*[See *Ross v. Pleasants, Shore & Co.*, in this vol. note p. 10, and in 1 Wash. 158. The doctrines as to whether and to what extent jurors should be permitted to testify by affidavit or in open court, against their verdicts, have been very recently a good deal discussed in the Federal Court, for this *Circuit;* in the Superior Court of Law for Henrico County and in the General Court—The questions are now pending in the Appellate Courts both of the Union and this Commonwealth. In this State, they are involved in the case of *Nicholas O. Thompson,* found guilty in the