REPORTS

OF

C A S E S

ARGUED AND DETERMINED

IN THE

SUPREME COURT OF APPEALS

OF

VIRGINIA.

VOLUME I.

BY WILLIAM MUNFORD.

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1812.

DISTRICT OF NEW-YORK, ss.

BE IT REMEMBERED, that on the eighteenth day of March, in the thirty-seventh year of the Independence of the United States of America, LEWIS MOREL, of the said district, hath deposited in this office the title of a book, the right whereof he claims as proprietor, in the words following, to wit:

"Reports of Cases argued and determined in the Supreme Court of Appeals of Virginia. Vol. I. By WILLIAM MUNFORD."

IN CONFORMITY to the act of Congress of the United States, entitled, "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, entitled, "An act, "supplementary to an act, entitled 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 extending "the benefits thereof to the arts of designing, engraving and etching historical and other prints."

CHARLES CLINTON,
Clerk of the District of New-York.

APRIL, 1810.

Fitzgerald v. Jones.

tion account in the years 1779 and 1781; and a further credit for two hogsheads of tobacco, net weight 2,300*lbs.*, which the Jury found to have been destroyed by the *British* troops, at Colonel *Brooking's*, in *Amelia* County; and a further credit for the overseers' share of the said 119,950*lbs.* of tobacco; and also a further credit for the costs of transporting the said tobacco from the plantations to the inspections at *Petersburg*, and for the warehouse expenses of the same: Therefore it is decreed and ordered that the decree be reversed, &c. and that the cause be remanded to the said Superior Court of Chancery for an account to be taken, and a final decree to be entered, according to the foregoing principles; in which account so to be taken the executor is to be allowed *seven and one half*, instead of *five per cent.* on the receipts and disbursements of the whole estate of the said *Daniel Jones* the elder."

Clarke *against* Conn.

Neither *consent*, nor long *acquiescence* of parties can *give* the Court of Appeals jurisdiction. An appeal, therefore, (having been improvidently granted,) was dismissed on motion, five years after it was entered on the docket.

IN this case a decree was rendered in the Superior Court of Chancery for the *Richmond* District, *March* 16, 1804, dismissing the bill with costs; from which decree the plaintiff prayed an appeal, which was allowed him "on his entering into bond with sufficient security in the Clerk's office of the said Court, for the prosecution thereof, on or before the *first day of the next term.*" This he failed to do; and, the 6th of *October* following, on his motion by Counsel, and for reasons appearing to the Court, further time, until the ensuing first day of *February*, was allowed him for giving the said bond and security; which he did accordingly, as certified by the Clerk of the Court of Chancery.

A copy of the record was sent to the Court of Appeals, and the cause entered on the docket, *April* 4, 1805.

At *March* term, 1810, a motion was made by *Wickham*, for the appellee, to dismiss the appeal, as improvidently granted; the power of the Chancellor over it having ceased on the first day of the term ensuing his final decree; according to the case of *Anderson* v. *Anderson*, 2 *Call*, 180.

Randolph, contra, insisted that this objection was now too late, nearly five years having elapsed since the appeal was docketed. The appellee having acquiesced so long in the bond given by the appellant, must be considered as *consenting* to receive it, as executed in due time.

Judge TUCKER observed, that consent could not give this Court *jurisdiction;* and referred to *M'Call* v. *Peachy*, 1 *Call*, 55.

Wednesday, *March* 28th. The Judges pronounced their opinions unanimously, that it was a hard case; but the appeal must be dismissed.

On the last day of that term, this order of dismission was set aside, and the case further considered.

Tuesday, *May* 22d. The Judges again pronounced their opinions.

Judge TUCKER. The question arises upon that part of the chancery law,(*a*) which authorizes the Chancellor to grant an appeal in vacation *next after the term* when the decree shall have been rendered.

(*a*) 1 *Rev. Code*, c. 64. s. 59.

This is a question of *jurisdiction*, not of *discretion*. All the powers of this Court are *statutory;* it has no claim whatever to power from any other source; neither custom, prescription, long usage, or precedent, have any pretensions here, independent of statutory provisions. This has been repeatedly acknowledged in the cases of *M'Call* v. *Peachy*, *Bedinger* v. *the Commonwealth*, and *Stras* v. *the Commonwealth*. The time and manner of proceeding in order to

APRIL, 1810.

Clarke v. Conn.

give this Court cognisance of the cause, is, I conceive, as essential as the nature, or amount of the matter in controversy. If the party suffers it to elapse without proceeding as the law directs, he is as much concluded thereby, as he would be by a verdict for 99 dollars 19 cents damages, instead of 100 dollars, which is the lowest sum of which this Court can take cognisance. Until the Court has *legal* possession of any cause, although it be upon their docket, it has no power over it, but to dismiss it. *Jurisdiction* must in all cases precede *discretion*. In the present case, I conceive, we have not the former, and therefore that we cannot exercise the latter. My opinion therefore is, that the order of dismission be reinstated.

Judges ROANE and FLEMING were of the same opinion.

The order for dismission was therefore reinstated.

Argued *April* 26th, 1810.

Clay *against* White and others.

1. It is not necessary for a patentee of waste and unappropriated land, to make a personal entry thereon, to enable him to maintain ejectment; for the patent *ipso facto* confers *seisin*.

THIS was an action of ejectment, in the District Court of *New London*, for 342 acres of land lying in *Pittsylvania* County. The Jury found a special verdict, stating the following facts:

John Fox obtained a patent from the Commonwealth for the land in question, on the 8th of *July*, 1780. In his will,

2. Such *seisin* may be transferred and continued by deed of *bargain and sale*, or by *devise*: but a person, whose *seisin* is interrupted by the actual entry and *adverse possession* of another, cannot, *while out of possession*, convey by bargain and sale such a title as will enable the bargainee to recover in ejectment.

3. The plaintiff in ejectment may recover less land than the quantity stated in his declaration. But, if the Jury find a special verdict, shewing the plaintiff entitled to a certain number of acres, *part* of the tract sued for; and do not specify the *boundaries* of such part with so much precision as that possession thereof may with certainty be delivered; a *venire de novo* ought to be awarded.