

REPORTS  
OF  
CASES  
ARGUED AND DETERMINED  
IN THE  
COURT OF APPEALS  
OF  
VIRGINIA.

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BY  
*BUSHROD WASHINGTON.*

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V O L. I.

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R I C H M O N D:  
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M,DCC,XCVIII.

to be read as evidence before him. But the court, refusing to examine these witnesses, determined that the award should be made the judgment of the court. To this opinion, the plaintiff filed a bill of exceptions, which was sealed.

From this judgment, John M<sup>c</sup>Alister appealed to the District Court of Winchester, where it was reversed, the award set aside, and a new trial directed; the court being of opinion, that the oath of the party, was improperly admitted as evidence by the umpire.

The plaintiff in this court, obtained a superedeas, to the judgment of the District Court, assigning for error, that that court reversed the judgment of the County Court, because the umpire admitted improper evidence, whereas, if the County Court erred in refusing to examine the witnesses, all that the District Court should have done, would have been to reverse that judgment, and to direct the evidence to be admitted to prove the admission of the improper testimony, if any there was.

The following is the opinion and judgment of this court.

“ That the testimony of the defendant James M<sup>c</sup>Alister and Sarah his wife, was not proper in this suit, and ought not to have been admitted without the consent of the plaintiff; and that if the umpire on the proceedings mentioned, did receive and admit their depositions as evidence, in the matters in difference between the parties in this suit, submitted to him, his umpirage and award should have been set aside, and a trial by jury awarded by the County Court. The judgment of the District Court is therefore erroneous. The judgment of the County Court is also erroneous, in not allowing the plaintiff to prove, that the depositions of the said James and Sarah M<sup>c</sup>Alister were admitted as evidence by the said umpire, as (it is stated in the bill of exceptions filed in this cause,) the plaintiff offered to do.”

Both judgments reversed with costs. The cause sent back to the County Court, to receive such proof, and for further proceedings.

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### WILSON & M<sup>c</sup>RAE *against* KEELING.

**T**HIS was an appeal from the High Court of Chancery—Keeling, the plaintiff in that Court, borrowed from M<sup>c</sup>Rae in April 1778, a sum of paper money amounting to £422: 18, not

to be repaid in less than twelve months thereafter, which money, (the answer states,) belonged to the ward of M<sup>r</sup>Rae, being so much received by him in discharge of a specie debt due to the ward. Keeling conveyed to Wilson as a trustee for M<sup>r</sup>Rae, certain property by way of mortgage, to secure this loan—after the money became due, but not on the very day, Keeling tendered the debt in paper money, to Wilson the trustee, who refused to receive it. An ejectment being brought, to recover possession of the mortgaged premises, a judgment was thereupon obtained. Keeling filed his bill in the High Court of Chancery praying an injunction, and liberty to redeem, upon paying according to the scale of depreciation, at the time when the money was lent. The answer states, that the money was borrowed by Keeling, for the purpose of discharging a specie debt, and that it was actually so applied.

The Chancellor being of opinion, that the debt in question for money borrowed and secured by mortgage, might be discharged in the same manner, as a debt created and secured by a pact in any other form; and that by refusal of the money tendered, the right to interest, between the time when the tender was made and the time when the debt was demanded by M<sup>r</sup>Rae, was extinguished, decreed a reconveyance to the plaintiff upon his paying to the defendants, £84:11:8, with interest thereupon, from the time of the loan, until that of the tender, and from the 1st day of September, 1784, (when a demand was made,) until payment of the principal debt, with the costs of the suit at law, and his costs in defending this suit; but upon his failing to do this, the court decreed a foreclosure and sale, in the usual manner.

CAMPBELL for the appellants. The appellant M<sup>r</sup>Rae, having gained the legal title to the mortgaged property, has thereby obtained an advantage, of which a Court of Chancery will never deprive him, without forcing the party, who seeks its aid, to retribute the other party by doing compleat equity. This is an over-ruling maxim in that court. If the appellee shall be found to sustain no injury, or to be deprived of no equitable right by paying the nominal amount of the debt in specie, what is it, that shall warrant the interposition of a court of equity, to deprive the mortgagee of the full benefit of his judgment at law? Keeling cannot lose any thing, by paying the full amount of the loan in specie, because he made a specie use of the money. On the other hand, M<sup>r</sup>Rae is injured, by applying the scale of depreciation to the debt; because the money

ney lent, tho' it consisted of paper bills, was the representative of so much specie, as it was received by him in discharge of a specie debt.

M<sup>c</sup>Rae is to be considered in this court, as standing in the shoes of the person, to whom Keeling paid the sum he had borrowed, in the same manner, as if that debt had actually been assigned to him. That the parties considered this as a specie contract, is evident, from the value of the property mortgaged.

But the decree is surely erroneous, so far as it stops the interest from the tender of the money, to the time of the subsequent demand, since the present case cannot be likened to that, of a tender made in specie. In the latter case, the money always continuing of the same value, no injury can arise, if it be not tendered on the day of payment. But in the case of paper money, its value was continually lessening, and therefore it ought to have been tendered on the *very day*, as the lender, (relying on the punctual payment of the money,) might have made contracts, providing for the immediate application of it, and might lose the benefit of such contracts by disappointment.

MARSHALL for the appellee, was stopped by the court.

LYONS J. delivered the opinion of the court. The case is too clear to be argued. This is a downright attempt to evade the law, directing the mode of settling debts contracted in paper money, without a single circumstance to countenance it.

In the case of Wily and Panky, in the General Court, it was determined, that the creditor who concealed himself in his house, to evade a tender, should sustain the loss by the depreciation of the money.

Decree affirmed.

WILLIAM PAYNE, Executor of John Payne,

*against*

WILLIAM DUDLEY, Executor of Fleet.

**T**HIS was an appeal from a decree of the High Court of Chancery. The appellant filed his bill in that Court, stating, that his testator was indebted to the testator of the appellee by bond, upon which a judgment had been obtained in the year 1756, during the lives of the parties. That the bond, being