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.

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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.

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of *Kinney* v. *Beverley*(*a*) had solemnly settled the point, that an ejectment did not abate by the death of the lessor of the plaintiff; but, it having been decided in the case of *Carter* v. *Washington*,(*b*) that security for the costs ought to be given, it might be a question for the consideration of the Court, whether it would not be error to proceed in the ejectment without giving such security.

(*a*) 1 *Hen. & Munf.* 531.
(*b*) *Ante*, p. 345.

Tuesday, *October* 11. By the whole Court, (absent Judge LYONS,) the judgment of the District Court was AFFIRMED.

Price *against* Strange.

Monday, *October* 10.

An *order* of the Superior Court of Chancery reinstating an injunction, and directing a new trial of an issue at law, is not an *interlocutory* decree from which an appeal can be allowed.

THE *Attorney-General*, as a preliminary point, moved to dismiss the appeal, which he contended, had been improperly allowed, in this case, by the late Chancellor.

The facts were these: *Strange* filed a bill in the Superior Court of Chancery for the *Richmond* District, praying for an injunction to a judgment of the County Court of *Fluvanna*, on the ground that the cause had been tried in his absence, at a time when he was disabled from attending Court by severe indisposition, and also that his attorney had neglected to attend to his business; that the suit having been tried on the last day of the term, he was deprived of an opportunity of moving for a new trial till the next Court, when, before a different set of magistrates, he made the attempt, but it proved unsuccessful. He stated a variety of matter for the interposition of a Court of Equity.

The Chancellor granted the injunction; but, upon the coming in of the answer, dissolved it. At a subsequent day, he reinstated the injunction, and directed a new trial of the issue at law. From this *order*, *Price* took an appeal.

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The *Attorney-General*, for the appellee, insisted that the order of the Chancellor was a mere interlocutory proceeding in the cause, instituted for the purpose of informing his conscience as to the merits of the question, before he could be prepared to render a final decree. Although an appeal might be allowed, by the Chancellor, from an interlocutory *decree*, yet it must be such a decree as *affirmed* or *disaffirmed* some right of either party.(1)

Randolph, for the appellant, contended, that this was not the ordinary case of an interlocutory order. *Price* had obtained a judgment at law; and the object of *Strange's* bill was to have a new trial. By granting a new trial of the issue at law, the right of *Strange* had been *affirmed*, and that of *Price* disaffirmed. As long as the order for a new trial remained unexecuted, the judgment of *Price* would be suspended by the injunction.

Thursday, *October* 13. The Judges delivered their opinions.

Judge TUCKER. This was an injunction to a judgment at law. The Chancellor, on a motion for that purpose,

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(1) The law, by which the Court of Chancery is authorised to grant appeals from interlocutory decrees, is in these words: "It shall be "lawful for the High Court of Chancery, upon any interlocutory decree, "where the right claimed shall have been affirmed or disaffirmed, to "grant, in its discretion, an appeal to the Court of Appeals, if the High "Court of Chancery shall be of opinion, that the granting of such ap-"peal will contribute to expedition, the saving of expense, the fur-"therance of justice, or the convenience of parties." See *Rev. Code*, vol. 1. p. 375.

Under this act, it has been held, that although the *High Court of Chancery* might allow an appeal from an interlocutory decree, yet that the Court of Appeals could not do it. 1 *Hen. & Munf.* 553. *Bowyer* v. *Lewis*. 2. That appeals from interlocutory decrees must be allowed, if at all, by the Chancellor *in Court*, and not by the Judge in vacation. *Ante*, p. 12. *Dawney* v. *Wright*. *The President, &c. of William and Mary-College* v. *Lee's Executors*, and *Fairfax* v. *Muse's Executors*.

dissolved the injunction; but at another day reinstated it, and directed a new trial, and that the verdict should be certified to the Court of Chancery. From this order an appeal was taken.

The verdict not having been set aside altogether, but only a new trial directed, in order to inform the conscience of the Chancellor, I am of opinion that the right was not so far determined as to authorise an appeal; and that this appeal should now be dismissed as having been prematurely allowed.

Judge ROANE. This is an appeal from an order of the Court of Chancery, *reinstating* an injunction, which had been dissolved, and directing another trial of the issue, in the action at law, in which the judgment enjoined was rendered.

I presume that so much of this order as *reinstates* the injunction, is as little the subject of an appeal, as an order *granting* an injunction; and in that case, the allowance of the injunction by the Judge neither affirms nor disaffirms the right of the defendant to avail himself of his judgment at law, but merely *suspends* the effect of such judgment, until the further order of the Court, or until the matter can be heard in equity. That case, therefore, does not come within the act of 1798,(*a*) which extends only to cases, where a *decision* upon "the right claimed," shall have been given, although a *final* decree has not been rendered in the cause. It is a solecism to say, that an appeal lies for the purpose of *correcting* an erroneous opinion of an inferior Court, in a case, in which, *in fact*, no decision has been given. Neither is the case otherwise, in relation to that part of the order, which directs another trial of the issue. This award of a new trial has no manner of effect upon the rights of either party; but is only preparatory to a decision thereupon, to be *afterwards* rendered. It is not by virtue of the award of the new trial, but in consequence of the *granting* or *reinstating* the injunction, that the right

(*a*) *Rev. Code*, vol. 1. c. 223. p. 375.

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of the defendant is affected: but that right is affected (as is before said) by no decree, *affirming* or *disaffirming* the same, but only by an order enjoining or suspending it.

I am therefore of opinion, that the Court of Chancery had no right to grant, nor this Court to entertain, this appeal, but that it ought to be dismissed, and the cause sent back to be proceeded in.

Judge FLEMING said, it was the unanimous opinion of the Court, that the appeal had been prematurely allowed, and ought to be dismissed.

Wednesday, October 12.

Coutt's Trustees and Executor *against* Craig.

On a bill to compel the specific execution of a written agreement, if the defendant, in his answer, denies that interpretation thereof which appears obvious according to its words, parol evidence on the part of the complainant, is admissible to explain it.

CRAIG instituted a suit in the late High Court of Chancery against *Coutts*, to compel the specific execution of a contract whereby *Coutts* agreed to convey to *Craig* the tenement, in the city of *Richmond*, then in the occupation of *Hicks* and *Campbell*, thus described in the article of agreement: "which tenement contains two stores, the "small brick house which Dr. *Cringan* has his shop in, "and a large lumber-house, and the lot of ground extend- "ing to *Crouch's* line."

For the above property, *Craig* was to pay 1,800*l.* viz. the houses and lot in *Manchester*, called "*Goode's* tene- "ment," at the price of 900*l.* and the residue in bonds to be assigned by *Craig* on or before a stipulated period. The bill stated the purchase, and boundaries of the averment; that *Craig* had always been ready to comply with the contract on his part; had actually delivered the tenement in *Manchester*, and assigned bonds to *Coutts*, to nearly the amount of the purchase-money; but that *Coutts*, under various frivolous pretexts, had refused to convey the tenement in *Richmond*, positively denying that the contract