REPORTS OF CASES

ARGUED AND ADJUDGED

IN THE

COURT OF APPEALS

OF

VIRGINIA.

BY DANIEL CALL.

IN SIX VOLUMES.

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TO WHICH, (THROUGH THE FIRST THREE VOLUMES,) BESIDES THE NOTES OF THE LATE JOSEPH TATE, ESQ., ARE ADDED COPIOUS REFERENCES TO STATUTES AND SUBSEQUENT ADJUDICATIONS ON THE SAME SUBJECTS.

BY LUCIAN MINOR,

COUNSELLOR AT LAW.

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is no error in the judgment of the said Court of Hustings upon the demurrer joined, nor in the writ of enquiry executed thereupon, but that there is error in the final judgment of the Court of Hustings aforesaid, in this, that the appellee had not previously entered *nolle prosequis* upon the three last counts in his declaration, and had not, after the judgment, entered a *nolle prosequi* as to the issue on the first count. It is further considered, that the final judgment of the Court of Hustings aforesaid, be also reversed and annulled, and that the appellant recover against the appellee his costs by him expended in the prosecution of his appeal in the said District Court, and it is ordered, that the cause be remanded to the Court of Hustings aforesaid, for further proceedings to be had therein, from the execution of the writ of enquiry."

The order for setting aside the judgment was as follows: [Nov. 2, 1796.] "On motion of the appellant, by his counsel, and for reasons appearing to the Court, it is ordered that the judgment rendered in this cause the twenty-seventh day of October last, be set aside, and that the cause be continued till the next Court, and then be re-heard."

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[376] WHITE *v.* ATKINSON.

Wednesday, November 15th, 1800.

The Court of Chancery cannot make any alteration in the terms of a decree of this Court certified thither, in order that a final decree may be made in the cause.*

See the statement and decree in this case, 2 Wash. 94 to 106. Upon the cause going back in pursuance of the decree of this Court, to the Court of Chancery: *That* Court, after the issue directed had been tried, made the following decree: "By the verdict certified to have been found upon the trial of the issue, between the plaintiff and the defendant Roger Atkinson, directed by the decree of the fourteenth day of March, in the year 1796, the 487 acres of land, mentioned in

*The Chancery Court cannot correct, on motion, or by bill of review, any error apparent on the face of the proceedings, in a decree *which has been affirmed by the Court of Appeals.* *Campbell* v. *Price, &c.* 3 Mun. 227.

the said decree, appearing to have been worth seven shillings and sixpence by the acre, on the last day of September, 1779, the Court this 13th of September, 1797, doth adjudge, order and decree, that the plaintiff do pay unto the defendant Roger Atkinson £167, 12s. 6d. being, *with the eighteen pounds paid by the plaintiff*, the value of the land aforesaid, with interest thereupon to be computed after the rate of five *per centum per annum*, from the said last day of December, 1779, and that upon such payment the defendant Roger Atkinson do seal and deliver to the plaintiff a sufficient conveyance of the said land, with a covenant for general warranty of the title: The Court of Appeals, when they declared this Court to have erred in decreeing to the defendant Roger Atkinson the value of the money at the time appointed for the payment thereof, instead of the value of the land at the time of contract, and in not allowing to the plaintiff the option of abandoning his claim, and losing the eighteen pounds, which he had paid, and the value of improvements which he might have made, and when they corrected the decree in both instances, but in the former only, in case either party should choose at his own expense another trial to ascertain the value of the [377] land, are supposed not to have intended that the plaintiff, in case of abandonment, should make no satisfaction *for occupation of the land in the mean time:* And, therefore, this Court doth further adjudge, order and decree, that the plaintiff, if he will not accept the conveyance aforesaid, do resign to the defendant Roger Atkinson possession of the land aforesaid, on the last day of December, in the present year; and *for occupation of the land aforesaid*, pay that defendant the annual interest upon the said £167, 12s. 6d. to be computed from the said last day of December, 1779, and that the plaintiff do pay unto that defendant the further costs expended by him, &c." From which decree White appealed to this Court.

RANDOLPH, for the appellant.

The Court of Chancery could not decree an account of the profits, as this Court had made no provision for them. Because, that Court can only execute the decrees of this, according to the letter; and cannot extend them on a presumption that this Court would have provided for the additional relief, if the supposed necessity of it had been foreseen. Perhaps a bill of review might lie; but it was clearly out of the power of the Court of Chancery as the proceedings stood, to afford any other relief than the decree of this Court had prescribed.

CALL, contra.

Although the Court of Chancery cannot decree against the directions of this Court, yet it may decree consistently with them.

In the present case, no direction was given as to the profits; and, therefore, the Court of Chancery might provide for them, in consequence of the new circumstance of the abandonment having occurred. The Court of Chancery is to decree according to the principles of the decree here, which necessarily supposes that it is to have power to provide for the unforeseen [378] contingencies which may take place during the details of the business. If a bill of review would have lain for that purpose, it is decisive; because, whilst the cause was still unfinished and the parties in Court, the Chancellor might proceed to do effectual justice, without the formality of a bill of review; the only object of which is, to apprize the Court of the new facts.

RANDOLPH. The difference would have been, that on a bill of review, White might have rebutted with new matter.

CALL. That would not be material in a case like this; because, the parties would have to go before a Master, who would report the special matter.

PER CUR. The Court is of opinion, that if the provision in the said decree, in the case of abandonment, had been proper, it ought to have gone further, and allowed the appellant the eighteen pounds paid by him, and satisfaction for stable improvements also; but that the said High Court of Chancery was precluded, by the former decree of this Court, from changing the terms of abandonment. Therefore, so much of the decree as makes such change, is to be reversed, with costs, and the residue affirmed.