REPORTS OF CASES

ARGUED AND ADJUDGED

IN THE

COURT OF APPEALS

OF

VIRGINIA.

BY DANIEL CALL.

IN SIX VOLUMES.

VOL. III.

THIRD EDITION.

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,

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RICHMOND:
PUBLISHED BY A. MORRIS.
1854.

CHAS. H. WYNNE, PRINTER, RICHMOND.

Barrett and others *v.* Floyd and others.

Tuesday, July 6th, 1790.

Two parties, F. and others, and B. and others, capturing a stranded enemy's ship, agreed on their respective shares in case she were condemned as a prize. The Admiralty Court condemned her, and adjudged to the parties their agreed shares, which they received. But B. and Co., afterwards being dissatisfied, sued for more, in *assumpsit* against F. & Co.; obtained a judgment, after an earnest contest; and issued execution, for the amount of which, F. & Co. gave their bond, payable at a future day. On this bond also, judgment was rendered; to which B. &c. obtained an injunction, which was perpetuated, and the decree of perpetuation approved by the Court of Appeals.*

This was an appeal from the High Court in Chancery. In the year 177 ,† a British merchantman stranded and sprung a leak near one of the little islands in the Chesapeake, and, with her cargo, was totally abandoned by her crew. Berry Floyd, and others with him, came on board her, and began to save the cargo. Almost immediately after, Barrett, with another company, came up in a boat, and were asked to come on board and work. They replied that they wished first to know on what terms; and were told that, if the vessel should be condemned as a prize to them, Floyd and others, that they, Barrett and others, should be allowed 11-17ths of what they should save: but that, if the vessel should not be condemned as a prize, they would of consequence be entitled to what they could save. Barrett and others thereupon came on board, and by their labor saved the greater part of the cargo. Floyd and others immediately libelled the vessel and cargo in the Court of Admiralty, and filed a claim, for Barrett and others, to 11-17th parts of the proportion saved by them. By the sentence of the Court of Admiralty, the vessel with the cargo, &c., were condemned, and 11-17ths of the part saved by Barrett and others were decreed to them. Soon after the decree was rendered, Barrett and others, who had designed to contest the

* Other cases where relief was given in equity, after a judgment at law.—*Wall's ex'ors.* v. *Gressom's distributees*, 4 Mun. 100; *Spencer* v. *White*, id. 130; *Hawkins* v. *Depriest*, id. 469; *Spotswood* v. *Higginbotham*, 6 Mun. 313; *Pendleton's adm'rs.* v. *Stuart*, id. 377; *Poindexter* v. *Waddy*, id. 418; *Pickett* v. *Stuart*, 1 Rand. 478.

Cases in which equity will *not* interpose, after judgment at law.—*Maupin* v. *Whiting*, 1 Call, 222; *Terrell* v. *Dick*, id. 546; *Chisholm* v. *Anthony*, 2 H. & M. 13; *Turpin* v. *Thomas*, id. 139; *Morris* v. *Ross*, id. 408; *Syme* v. *Montague*, 4 H. & M. 180; *Yancey* v. *Lewis*, id. 390; *Stanard* v. *Rogers*, id. 438; *Kincaid* v. *Cunningham*, 2 Mun. 1; *Fenwick* v. *McMurdo*, id. 244; *Chapman* v. *Harrison*, 4 Rand. 336. See also, 4 Rand. 113; and 5 Leigh, 359; 7 Leigh, 157, 227, 238; 6 Leigh, 530; 5 Leigh, 364.

† During the Revolutionary War.

condemnation of the vessel, arrived; but being advised that they were too late, they received the part to which they were entitled under the sentence of the Court. On their return to the Eastern shore, where they both resided, Barrett and others were induced to suppose that the sentence of the Court of Admiralty was illegal, and unfairly obtained, and that the subject might be received in a Court of Law. They brought an action of *assumpsit* against Floyd and others, in the County Court, to
[532] recover the difference between the money received by by them, under the sentence of the Court of Admiralty, and the amount of sales of that part of the cargo which was saved by them; and declared for so much money had and received to their use. Issue was joined on the plea of *non assumpsit*, and the first jury disagreeing, was discharged, and the cause continued. At a subsequent Court, verdict and judgment were rendered for the plaintiffs. An execution issued, which was satisfied by a bond for the amount, payable at a future day. On this bond a judgment was obtained, which was injoined in a Court of Chancery; and, on a final hearing, the injunction was rendered perpetual: from which decree Barrett and others appealed to this Court.

MARSHALL, for the appellants, admitted that, whatever sentence the Court of Admiralty ought to have rendered, still that which they did render not having been appealed from, was binding on the parties, and the verdict in the County Court ought to have conformed to it; but, admitting this, he insisted on the binding force of that verdict, and on the total incapacity of a Court of Chancery to control it. A verdict ought always to consist with the very right of the case; but it often happens that a Court of Chancery would have determined the cause otherwise than a jury has determined it: yet, when this does happen, the Court of Chancery cannot, unless there be some unfair ingredient to give them jurisdiction, fashion the verdict according to its opinion of the right of the case.

It is not easy to conceive a case which affords less cause for the interposition of a Court of Equity than the present. The trial has been a full and a fair one; from the complexion of the whole case, it is obvious that the defendant in the Court of Law was not and could not be surprised. He knew the claim of the plaintiff; he came prepared to contest it. It is not
[533] pretended that any unfair practice was used; nor is it even alleged by the party himself in his bill, that he was not fully prepared, or that the whole case was not before the Court and jury. The action was an equitable action.

The plaintiff could only recover on the equity of his case. The defendant could not possibly resort to a single principle for defence in a Court of Equity, which was not of equal avail in a Court of Law. The cause comes on to be tried in Chancery precisely on the same facts which have already been decided on in a Court of Law and a jury. Nothing is or can be alleged, but that the Court of Law decided against the law of the case. If this be sufficient ground for equitable interposition, then does the Court of Chancery erect itself into an appellate Court from general verdicts and judgments thereon both as to law and fact. The decision of a County Court, unappealed from, as entirely binds the subject as the decision of the Court of Appeals. As well, therefore, may a Court of Chancery correct legal errors in this Court, as legal errors in another Court, whose judgment the parties have made final by taking no exception and praying no appeal. If that Court may interpose in this case, there is no point of law which may not be carried into it. Suppose an action of detinue, where the only question was the legal title to the thing sued for, should be determined in a Court of Law against the law of the case, would it be a sufficient cause for going into Chancery, to say that although the whole case came fully before the Court and jury, yet they misunderstood the law, and the counsel for the defendant permitted the point of law to be buried under a general verdict? If that would not be a proper case for a Court of Chancery, still less is the present. In that case, the legal title would, generally speaking, give its possessor some equity; in this case, the legal title gives him none. If there be any original equity in either of the parties, it is only produced by the labor expended in saving the cargo. Each party then had an equitable title to the portion [534] saved by itself. Barrett and others have now only what they saved. Each party, then, is now possessed of that, and of that only, to which, with respect to each other, each party was originally equitably entitled. The sentence of the Court of Admiralty, it is admitted, gave to Floyd and others a legal right to that which was adjudged to them; but it gave them only a legal right; it did not enlarge their equity. They had then a legal title, but of that legal title which the Admiralty sentence gave them, the judgment of the County Court has deprived them. The law which was once in their favor is now against them, and they have not even the pretext for coming into this Court which the person would have in common cases, who had lost a good title by a general verdict; because they never had in their favor any thing but positive law.

If the jurisdiction of a Court of Chancery be so extensive, as it must be, to comprehend this case, then surely some authority for it may be produced, either from some treatise on the general principles of that Court, or in some adjudged cases. If there be such, let them be adduced. It is believed, however, that none exist: on the contrary, those which have been consulted assign much more limited powers to a Court of Equity than must be assumed in order to support this decree. 3 Black. Com. 430: 1 Eq. Ca. Abr. 130; 2 Eq. Ca. Abr, 243, 524, 162.

But the case of *Langdon* v. *The African Co. & Dockwray*, Prec. Ch. 221, is the very case. In that case, as in this, the vessel was condemned by the sentence of a Court of Admiralty. In that case, as in this, a Court of Law rendered a judgment in direct opposition to the sentence of the Court of Admiralty. In that case, as in this, application was made to the Court of Chancery to be relieved against the judgment; but in that case the relief was refused.

[535] Upon authority, then, as well as upon principle, the decree of the Chancellor ought to be reversed.

NELSON, for the appellees.

The confusion would be great indeed, and litigations endless, if, after a Supreme Court has decided upon a subject, an inferior Court may take cognizance thereof, and re-judge it. This cause was fairly tried in the Court of Admiralty, which was the proper Court to decide upon it. The decision of that Court must be admitted to be right; and, consequently, the judgment of the County Court being contrary thereto, must be against the principles of justice. It appears from the note in 1 Eq. Ca. Abr. 130, that relief may be granted after a trial at law. For a verdict, such as this, attaint would lie; but still that is a harsh punishment, and not an adequate remedy to the injured person. In 1 Eq. Ca. Abr. 237, pl. 11, 12, equity relieved against a judgment at law rendered against an executor on the plea of *ne unques executor*. This was affording relief against a judgment rendered according to the soundest principles of law.

A Court of Equity will not suffer a person to be injured when he has no other relief. The Court of Law has committed an error, which will admit of correction no where else: it must, then, be the province of this Court to correct it, or the party is without redress. Harr. Ch. Prac. 11, 9; 3 Black. Com. 54. The case resembles those of usury and gaming; in

which it has been often held that Equity will relieve against judgments rendered by a Court of Law.

MARSHALL, in reply.

It has never been contended that inferior tribunals may draw before themselves subjects which have been determined in Superior Courts. It is admitted that, had the counsel for the defendant spread the case upon the record, the judgment of the County Court might have been reversed at law. The question is not, whether the County Court erred, but whether the error be of such a sort as to give jurisdiction to a Court of Chancery? The judgment was against law, [536] but not necessarily against the justice of the case; because it was contrary to the sentence of the Court of Admiralty. However, admitting it to be unjust does by no means admit the cognizance of a Court of Equity. Juries, under the direction of a Court of Law, judge upon the justice as well as law of a case; and it would erect a Court of Chancery into still more than a Court of Appeals, if their verdicts might be set aside for injustice.

This case does not resemble the case of relief granted to an executor. It is the admitted province of a Court of Chancery to relieve against the rigor of the law, as in case of penalties; and, in the case cited, a heavy penalty was incurred by accident. It is true that Equity will relieve against judgments on usurious and gaming contracts: but if, in either case, the whole fact had been fairly tried in a Court of Law, and judgment rendered, no case can be shewn where such a judgment was injoined upon the same testimony, and merely because a Court of Law had decided against law.

BY THE COURT.

It is not necessary to go over the extensive ground of conflict between the Courts of Common Law and Chancery. The jurisdiction of the Court of Chancery has regularly increased, and is found to be beneficial to society: it should rather be enlarged than circumscribed. Numerous cases shew that Courts of Chancery have interfered after trials at law. The case of a receipt evidencing the payment of money, for which, notwithstanding a judgment has been rendered; and that of a judgment against an executor on the plea *ne unques executor*, may be put as examples. The latter was a case of extreme severity, and merited relief. It would be cruel [537] that a man, for so small a mistake, should be liable for so large

a sum; it would be contrary to moral justice; but if the rule that equity was not to interfere after judgments at law, was never to be departed from, it must have stopped at the threshold.

In this case the complainant says that the decree of the Court of Admiralty was a bar to the action at law. The defendant says he should have availed himself of it at law.

A receipt is a defence at law, yet it has ever been admitted to be used in equity after a judgment at law.*

A proper distinction is, where the defence comes to the knowledge of the party after the judgment.

In the case cited from Prec. Ch. the action brought was in trover; and the declaration gave notice of the cause of action. Therefore it was then incumbent on the defendant to set up the proper defence.

This is an action for money had and received to the plaintiff's use. Although it be a liberal and beneficial action, yet it must be allowed that the declaration gives no notice to the defendant of the nature of the claim.† The foundation of the decision in both Courts was the same.

Whether the vessel was a prize or wreck, was properly triable in the Court of Admiralty. Both parties so understood it, and applied to that Court. They are at issue, and it is decided to be a prize. The receipt of their proportion of the money is a stronger acquiescence under the decree of the Court of Admiralty than the bond is under the judgment of the County Court.

The decree was affirmed by the unanimous opinion of the Court.

Judge FLEMING was absent.

[* *Countess of Gainsborough* v. *Gifford*, 2 P. Wms. 425: See *Barbone* v. *Brent*, 1 Vern. 176.]

[†See *Wood* v. *Luttrell et al.* 1 Call, 209, note.]