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.

THE SECOND EDITION, REVISED AND CORRECTED BY THE AUTHORS.

VOLUME I.

BY WILLIAM W. HENING AND WILLIAM MUNFORD.

FLATBUSH, (*N. Y.*)

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1809.

DISTRICT OF VIRGINIA, TO WIT:

BE IT REMEMBERED, That on the fifth day of April, 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. The second edition, revised and corrected by the "authors. Volume I. By William W. Hening and William 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.

ought to have moved the Court for a writ of *habere facias esisinam*, and at the same time for an inquest as to the profits.

Curia advisare vult.

Monday, June 29. The President delivered the opinion of the Court, (consisting of all the Judges,) that the judgment of the District Court was erroneous, in this, "that a suit was brought against a tenant for years only, "and not against a tenant of the freehold, having the in-"heritance, or an estate equal in duration to the life of "the demandant." Judgment of the District and County Courts reversed.

Nice *against* Purcell.

Monday, June 20.

ON an appeal from a decree of the Superior Court of Chancery for the *Richmond* District, pronounced in *May*, 1802, reversing a decree of the Hustings Court of the City of *Richmond*.

Purcell filed a bill in the latter Court against *Nice*, stating that he had sold to him a horse for 120 dollars, and received in part payment, certain soldier's claims for military servises, to the amount of 102 dollars, which *Nice* assured him he was entitled to, and that, on application at the war-office, the money would be as punctually paid as on bank notes; that, if the money was not paid from any cause whatever, *Nice* was to pay that sum on application, or return the horse; that, on application at the war-office, he found that neither he nor *Nice* himself could draw the certificates for want of proper authority from the original claimants; that *Nice* refused to comply with his engagement, and the subject in controversy having been referred to arbitrators, they made a report, but no final decision, only enjoining *Nice* to use his endeavours to procure from the original claimants, proper transfers: that *Nice* had *used no exertion to procure such transfers; that, at the time of reference, the parties placed twenty dollars each in the hands of the referees to compel a performance; but that either party might vacate the award by forfeiting the twenty dollars; that the arbitrators, not considering the award final, recommended that each party should receive back his own money, and, with that view, laid it on the table; but *Nice* took possession of the whole of it, in op-

A Court of Equity is not bound to direct an issue, on the ground that the evidence before it is contradictory; but may judge of the weight of evidence, and if its conscience be satisfied, decide without a Jury.

See the same point incidentally admitted in the case of *Rowton* v. *Rowton, ante*, p. 93.

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position to the opinions of the arbitrators. The bill prays for a discovery and for general relief.

The answer of *Nice* stated the contract differently from that set forth in the bill. It represented that *Purcell* proposed that he should assign the certificates to him, but he expressly refused. He admits, however, that he did tell *Purcell* he believed they would be paid; and it is possible, he did say they would be paid as promptly as bank notes; but this was founded entirely on the information he received from others; that he was not to be answerable for the certificates in any event, unless it should appear that they were forged or counterfeited, or that there was not as much money due on them as was expressed on their face; and that *Purcell*, after inquiry, was satisfied to take them on the terms proposed.

The award of the arbitrators (which was filed among the exhibits) appeared not to be final, but only recommendatory as stated in the bill.

The answer was supported by the deposition of one witness, and the allegations of the bill by the depositions of two; besides which, there was other conflicting testimony in the cause.

On a hearing, the Court of Hustings dismissed the bill; from which an appeal was taken to the High Court of Chancery.

The Chancellor being of opinion that the evidence supporting the bill outweighed that supporting the answer, and moreover, that the award being void, *Nice* had no right to detain the deposit of twenty dollars, placed in the hands of the arbitrators by *Purcell*, reversed the decree of the Court of Hustings, and directed that *Nice* should pay to *Purcell* the amount of the value of the certificates, together with the twenty dollars which had been deposited with the arbitrators, and taken by *Nice* as a forfeiture for not performing the award. From which decree an appeal was prayed to this Court.

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**Randolph*, for the appellant, contended that the deposition of a witness going to support the answer of the defendant, which expressly denied the allegations of the bill, was decisive of the question, and shewed that the complainant had no ground of equity. But, even admitting the evidence to be equal, yet as it is contradictory, he submitted it to the Court, whether the Chancellor ought not to have directed an issue.

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Warden, for the appellee, insisted that, as the appellant had not procured the transfers of the original claimants to the certificates, which, under the act of Congress, could be done only by the parties themselves, the consideration on which the contract was founded had failed, and the appellee was entitled either to his property, or to money in lieu of the certificates; but that when the decree was pronounced, *money only* could be decreed by the Chancellor. He admitted the evidence was contradictory; but contended that the Chancellor had correctly determined the weight of it to be with the appellee. The Chancellor must have a conscience of his own. Doubting as to the weight of evidence, he may direct an issue; but, if his conscience be satisfied, there is no necessity; for no law requires it.

Curia advisare vult.

Wednesday, July 8. By the Court, (consisting of all the Judges,) the decree of the Chancellor, reversing that of the Court of Hustings, was unanimously AFFIRMED.

Garland *against* Bugg.

Monday, June 29.

THIS was an appeal from a judgment of the District Court of *Charlottesville*, rendered in *April*, 1807.

The appellee brought an action of detinue against the appellant, for a negro woman:—the defendant pleaded *non detinet*;—and moreover a special plea in bar, "That he "had sold the said negro woman with her two children to "the plaintiff, who, by his deed in writing, bearing date, "&c., did agree that the sale of the slave in the declara- "tion mentioned should be void and defeasible, and the "title of the plaintiff in her forfeited and vested in the *de- "fendant, if the said plaintiff should sell, hire, convey "away, or otherwise divide the said slave from her two "children, until they should respectively attain the age of "ten years, unless such sale, &c. should be of the mother "and children collectively and all together, upon the de- "fendant's paying to the plaintiff the sum of 500 dollars; "that the plaintiff had broken the condition of the said

An *affidavit* filed in support of a motion for a continuance which was overruled, is not a part of the record, unless it be made so by a bill of exceptions.

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In detinue the defendant pleaded *non detinet*, and a special plea in bar; to which pleas there was a general replication, denying the truth of them both, and issues were joined. A general verdict for the plaintiff was considered sufficiently responsive to both the issues.

An appeal may be taken out of its turn on the docket, as a delay case, if the counsel for the appellant will not say, in general terms, that, in his opinion, there is error, but merely states points which, in the opinion of the Court, do not constitute error.