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.

FLATBUSH, (*N. Y.*)
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1809.

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 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

embraced as much ground as was contended for by *Craig*. The answer of *Coutts* moreover alleged, that it was out of the power of *Craig* to make a good title to *Goode's* tenement, in consequence of which, and of the delay which had occurred, he had been deprived of an opportunity of selling it, and thereby had been compelled to submit to great sacrifices of property; that he never contemplated a sale to *Craig* of more ground than that on which the houses were erected; and that even *Craig* himself, at the time of the contract, did not expect to receive a conveyance for the vacant ground, for which he now contends. Under these circumstances, *Coutts* relied that a Court of Equity would not decree him to convey the tenement in *Richmond* to *Craig;* but expressed a willingness to refund whatever he had received, in part execution of the contract.

The exhibits filed in the cause, shewed a small balance, due in bonds, from *Craig* to *Coutts;* but it also appeared, that the tenement in *Richmond*, had previously to the sale to *Craig*, been incumbered by *Coutts* with a deed of trust, of which *Craig* had no notice at the time; the amount of which, added to the payments already made by *Craig*, greatly exceeded the original purchase-money.

A great number of depositions were taken on both sides. On the part of *Craig*, the deposition of the person who drew the articles, together with several others who were present, or had previously been in treaty for the same property, proved the boundaries of the tenement to be as contended for by *Craig;* and that he was to have the whole lot without any reservation. It was further proved, that *Craig* was able, and had always been willing, to comply with the contract on his part. On the other side, it was proved that *Coutts* had made great sacrifices to raise money, which he alleged arose from his not being able to obtain a title for "*Goode's* tenement," from *Craig;* and, moreover, an attempt was made to shew, that the tenement in *Richmond*, as occupied by *Hicks* and *Campbell*, did not comprehend the ground in dispute.

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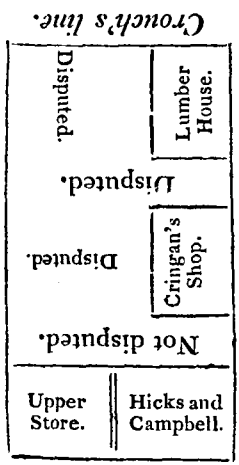

The annexed figure, as drawn from the testimony in the cause, represents the position of the houses, and the ground in dispute. The exterior of the figure shews the boundaries of the lot, according to the interpretation of the agreement given by *Craig*.

An account taken by direction of the Court of Chancery shewed, that after charging *Coutts* with the money paid by *Craig*, in relieving the lot from the incumbrance of the deed of trust, *Coutts* had been overpaid. To this report *Coutts* filed exceptions. The Chancellor, (the late Mr. *Wythe*,) recommitting the report, as to some of the items excepted to; and, being of opinion that the land in controversy was included in the agreement between *Craig* and *Coutts*, and moreover that *Craig* had paid, "with "what the exoneration from a latent incumbrance cost, "more than the consideration agreed to be given for the "land sold," decreed a conveyance for the lot, as described in the exterior of the foregoing figure.

From this decree *Coutts* appealed; and the appeal having abated by his death, was revived, by consent, in the names of his trustees and executor.

The Attorney-General, for the appellant, contended, 1st. That parol evidence was inadmissible in this case, inasmuch as it would go to contradict the written agreement, and shew that more ground was intended to be conveyed, than appeared from the terms of the agreement itself.

2d. That *Craig* not having complied *strictly* with the contract on his part, a Court of Equity ought not to have decreed a specific execution against *Coutts*.

Warden, *Call*, and *Randolph*, for the appellee, insisted that by the terms of the agreement, *Craig* was entitled to a conveyance, according to the boundaries contended for by him. The articles embraced a "*tenement*," and "*lot of* "*ground extending to Crouch's line.*" The word *tenement* was one of the largest signification; and nothing would satisfy the term, *lot of ground*, but a certain quantity forming a parallelogram. It would be monstrous to say that because property on a street was sold *nominatim*, it should not extend back, to include the whole lot.

The defendant having in his answer, attempted to raise an ambiguity, in the agreement, it was proper, according to a well known rule of law, to introduce parol evidence to explain it.(*a*)

That *Craig* had more than complied with his contract was obvious from the report of the commissioner; and the only question was, how much *Coutts* would have to refund.

(*a*) *Roberts on Stat. of Frauds*, 11.

Friday, *October* 14. The Judges delivered their opinions.

Judge TUCKER. In this case, I approve entirely of the Chancellor's decree. The defendant in his answer having positively denied that interpretation of the written agreement, between the plaintiff and himself, which appears obvious upon the face of it, I think the plaintiff was entitled to resort to parol testimony to explain it, according to the intention of the parties, as declared and understood between them, and by the witnesses themselves at the time. That explanation barely confirms the obvious interpretation, and perfectly invalidates the answer, which alone could create a doubt as to the true meaning of the agreement. I am, therefore, of opinion, that the decree be affirmed.

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Judge ROANE. There are only two grounds upon which the appellants' construction of the agreement can be maintained: 1st. That, in point of fact, there is *vacant* land lying between the lumber-house and *Crouch's* line, which may satisfy this expression in the agreement, "a "large lumber-house and the *lot* of ground extending to "*Crouch's* line:" or, 2dly. That, if that expression cannot *thus* be satisfied, the grant of the land in question, is nevertheless *restrained*, by the stipulation on the part of *Coutts*, therein contained, to make a deed "for the lot and houses "before mentioned and NOW IN THE POSSESSION of *Hicks* "and *Campbell*." In the first view, *testimony* must be resorted to, on the part of the appellants, if they would vary the (otherwise) clear construction of the agreement, carrying the land in controversy to the appellee. And, in the second view, the restriction contended for, on the part of the appellant, will be obviated by testimony shewing that, IN TRUTH, the land in controversy was at the time in possession of *Hicks* and *Campbell*. I am inclined to think that, in both cases, such testimony is proper; not as varying the agreement, as upon its own face, but supplying facts necessary for the understanding of it.

As to the first view; it is clear, that *no land* is vacant between the lumber-house and *Crouch's* line; or at least, if any, it is so extremely minute a *slip*, as not to satisfy the expression "lot." I infer, that there is none; because by the deed of *February*, 1793, among the exhibits, *Coutts* leases to *Hicks* a piece or parcel of land "*adjoining* the "land of *Richard Crouch*, containing in front" (on the street leading to the governor's house) "*forty* feet, and "running back *thirty-two* feet," and on which *Hicks* covenants to build a lumber-house of "*forty* by *thirty* feet" dimensions. If, therefore, the house was built according to the terms of the lease, *i. e.* forty feet long, not an inch of vacant ground could be left: but this is not all. *John Hicks* tells us, in his deposition, (referring to this lease,) that he undertook to build a lumber-house of certain dimensions, "*which was erected.*" I take it, therefore, to be

clearly established that no vacant land does exist in that quarter, or at least, no piece large enough to be denominated a "lot of ground," and thus falsify the terms of the agreement. The general expression in the agreement must, therefore, operate in favour of the appellees, unless (in the second view of the case) it be shewn that the land in question, was not IN POSSESSION of *Hicks* and *Campbell;* thus restraining, by proof, the latitude of the expressions in the agreement: but, on the contrary, we are told by *Hicks*, that although he did not claim the land in question, *by virtue of his lease*, yet that he paid a "yearly rent for the back "ground and houses he made use of;" which account is also corroborated by the testimony of *Campbell:* they, therefore, were in possession of the land in controversy. Both grounds of restriction, therefore, fail the appellants, and the Chancellor's construction of the agreement is undoubtedly correct.

I am of opinion that the decree of the Superior Court of Chancery be affirmed.

Judge FLEMING. The principal point in controversy is whether the whole lot of forty-two feet on the main street, and extending the same breadth up to *Crouch's* line, was contracted for? and it seems clearly to me that it was so, by the written contract itself: but had there been a doubt on the subject, I am of opinion, that, from precedents in this Court, particularly in the case of *Flemings* v. *Willis*, parol evidence was admissible to explain the intention of the parties. It is a very plain case; and I concur in opinion that the decree of the Chancellor be affirmed.

By the whole Court, (absent Judge LYONS,) the decree of the Superior Court of Chancery AFFIRMED.