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.

OCTOBER, 1806.

Taylor's Adm'r v. Nicolson.

purports on its face. If they could do this, Juries might certify in every case against their own verdicts. But, what is the cause of complaint? Was there any thing unconscionable done by them, even according to their certificate? By the original agreement, *Nicolson* was not to pay immediately. Seven years of the lease were yet to run; and a discount of ten per cent was surely very moderate for cash, instead of so long a credit; to make

* 70 *amends for which, as far as was right, ten per cent for the nine months delay of payment, was allowed to *Taylor*.

This question, however, is foreign to the present subject, for, notwithstanding the certificate given, no credit was allowed in the award itself, which was absolute and final, and might have been enforced immediately.

The award was not that a thing was to be done by a stranger to the submission, but that *Nicolson* was to obtain a release from *Mayo*. It was, therefore, not void on that account; but *so much of it*, being impertinent, was properly rejected by the Chancellor.

Wednesday, *October* 29, the President delivered the opinion of the Court, (consisting of Judges *Lyons*, *Roane*, and *Tucker*,) that no calculations or grounds for an award, which are not incorporated in it, or annexed to it at the time of delivery, are to be regarded or received as reasons or grounds to avoid it; that, therefore, there is no error in the decree, which must be affirmed.

He farther observed, as his own opinion, that there is not the same strictness now in awards as formerly. The Courts in *England* have relaxed; and they are benignly construed, to give them full effect, when there is no fraud in obtaining them. He cited 2 *Wilson*, 268.(*a*)

(*a*) *Fox* v. *Smith*.

Saturday, *October* 25.

Wigglesworth *against* Steers and others.

A contract may be avoided by the legal representatives of a party thereto, on the ground of his having been drunk when it was made, although such drunkenness was not occasioned by the procurement of the other party.

THIS was a petition for a *supersedeas* to a decree of the Superior Court of Chancery for the *Richmond* District, pronounced in *May* last, affirming a decree of the County Court of *Spotsylvania*.

The case was, that *Steers*, who was addicted to intoxication, and was drunk at dinner, (but not from the procure-

ment of *Wigglesworth* as appeared from any of the evidence,) was prevailed on by the latter, about midnight of the same day, or, as some of the witnesses think, afterwards, (being still drunk,) to execute a bond for the conveyance of his lands in this state, in exchange for lands in *Kentucky*. *Wigglesworth* got possession of the lands of *Steers*, but never made any conveyance for those in *Kentucky*, though he frequently expressed his willingness to execute a deed, whenever he should obtain one from *Steers* but which was never done. In this state of things *Steers* died, intestate; and a bill was brought by persons *claiming to be his heirs at law to vacate this bond, stating the circumstances of the contract, and suggesting that it was not in the power of *Wigglesworth* to make a good title to the land in *Kentucky*, designated in his bond: the bill also prayed for a re-delivery of the land, of which *Wigglesworth* had got possession, and for an account of the profits. One of the witnesses proved that the contract was made in the morning, while *Steers* was sober, but another stated that *Steers* was called on by *Wigglesworth* to *bargain* about the land, after dinner, and when he was evidently drunk; and all the witnesses agreed that he was drunk when it was consummated by his entering into bonds. The person who drew up the writings, declared that he did it with reluctance, believing that *Steers* was drunk at the time, and also, that it was after midnight, (and if so, *Sunday* morning,) when they were executed; that a stranger, who was present, urged the impropriety of closing a bargain of consequence at so unseasonable a time; that the witness "discovered a back-"wardness on the part of *Steers*, and a forwardness on the "part of *Wigglesworth*," in completing the contract.

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The Court of *Spotsylvania* decreed the contract to be annulled, and that *Wigglesworth* should re-deliver the land to the complainants, but without any account of profits. On an appeal to the Superior Court of Chancery, this decree was affirmed.

Botts moved for a *supersedeas* upon the following grounds —1st. That upon the face of the bill, the plaintiffs had a plain and adequate remedy at law, upon a question purely legal; without any one circumstance to give jurisdiction to a Court of Equity—2d. That the bill charging "that the three "complainants were heirs at law to *Abel Steers*—that he "died leaving neither children nor father or mother, nor "brother to your orator, whereby they became heir at law "to the said *Abel*," made out too imperfect a title under *Abel Steers* to warrant a decree—and if a decree could be founded on such a bill with proof of its verity, that proof

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is not furnished, although the answer denies their right of inheritance—and, 3d. That *Steers* was not drunk when he made the contract, though he was when he consummated it; and that, if he had been intoxicated without the procurement of the defendant, the contract could not be avoided.(*a*)

The Court, (*Lyons*, *Roane* and *Tucker*, Judges,) denied the *supersedeas*; conceiving that under the particular circumstances *of this case, the rule stated from *Powell* would not be infringed thereby; that the bill was sustainable on the ground of vacating the bond; and that on both grounds the decision of the Court seemed warranted by *Reynolds* v. *Waller*,(*b*) and other cases.

(*a*) See *Powell on Contracts*, p. 29, 30.

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(*b*) 1 *Wash.* 164.

Thursday, October 30.

Ford *against* Gardner and others.(1)

Where, on a trial by Jury, the evidence adduced does not appear on the record, all must be presumed to have been legal and right.

THOMAS GARDNER and others, next of kin to *Mary Gardner*, deceased, filed a bill in Chancery in *Louisa* County Court, against *Francis Ford*, alleging that he had by undue means procured a writing, purporting to be the last will of the said *Mary*, and bequeathing to him her whole estate; which had before been offered for probate in the County Court, and rejected, but on an appeal to the

(1) See the case of *Paul* and others v. *Paul*, vol. 2.

Upon an issue from a Court of Chancery to try the validity of a will, the Court ought to give directions respecting the reading of the papers filed in the cause: otherwise the omission to read any of them on the trial of such issue will not be a ground for reversing the proceedings, if the Court of Chancery refuses to grant a new trial.

When the verdict, in such a case, is certified to the Court sitting in Chancery, and a new trial refused, the allegations relative to what passed at the trial stated in a bill of exceptions to the opinion of the Court in refusing the new trial, if no proof of the truth of those allegations appear on the record, are not to be taken as admitted to be true by the Court's signing and sealing.

After the probate of a will, any person interested, who had not appeared and contested such probate, may, within seven years, file a bill in equity to contest its validity: and any such person, even though he had appeared and contested the probate, may file a bill as aforesaid, on the ground of a fraud, to the existence of which he was a stranger at the time of the probate.

Notwithstanding a will has been admitted to record in a District Court, a County Court in Chancery has jurisdiction to try its validity.

A County Court sitting in Chancery has a right to direct an issue to be tried on the common law side of the same Court.

An issue to try the *validity* of a will has the same effect with an issue to try whether the writing in question is the will, or not.