REPORTS

OF

CASES

ARGUED AND DECIDED

IN THE

COURT OF APPEALS

OF

VIRGINIA.

BY DANIEL CALL.

VOLUME IV.

RICHMOND:
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NOTE BY THE EDITOR.

There is no printed report of the decisions of the first court of appeals, and of those which have been omitted by reporters from that period to the death of Mr. *Pendleton*, although such a work is obviously wanted; and it is to supply that defect, that the present volume is published: which consists of two parts: the first includes all the important cases determined from the commencement of the first court, to its final dissolution in the year 1789; the second contains the unreported cases in the new court of appeals, from that period to the death of judge *Pendleton* in 1803, besides two cases in the general court, and court of admiralty.

MORING *v.* LUCAS, *&c.*

1795. *April.*

The heir, legatee, or distributee, must either bring the executor or administrator of the decedent before the court, or administer himself; without which, he cannot sustain a bill for an account of the effects of the deceased; for it is not sufficient to alledge that the rights of his predecessor are all united in him, as there may be outstanding claims to adjust.

John Moring, in 1793, filed a bill in the high court of chancery, stating himself to be eldest son and heir at law to *William Moring*, who was eldest son and heir at law to *William Moring*, son and devisee of *Christopher Moring*, the elder; and that the said *Christopher Moring*, on the 27th of December, 1751, made his will; and, thereby, among other things, bequeathed as follows, "I give to my sons *Christopher Moring* and *William Moring* all the rest of my estate, that I have not forenamed in this will, to them and their heirs forever, to be equally divided between my two sons *Christopher* and *William Moring*;" of which will, he appointed the said *Christopher Moring*, the younger, sole executor; who died, without having rendered an account of his administration, and without any partition of the said devised property. That *John Lucas* and *John Jarret*, who married the two daughters of the said *Christopher Moring*, took administration upon his estate. That the plaintiff's grandfather, the said *William Moring*, died after the death of the said *Christopher Moring*, leaving *William Moring*, his eldest son and heir at law; who died, leaving the plaintiff his eldest son and heir at law; and thereby that a right to a moiety of the said devised property has descended to the plaintiff. The bill, therefore, makes *Lucas* and *Jarret* the administrators of *Christopher Moring*, the younger, defendants, and prays a decree for partition accordingly, with general relief.

The defendant, *Jarret*, pleaded 1. That he and the said *John Lucas* deceased, were administrators of *Christopher Moring*, the younger, and not executor of *Christopher Mo-*

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ring, the elder; and that he never had any of the effects of the said *Christopher*, the elder, in his possession. 2. The act of limitations. He likewise demurred to the bill, because neither the executors nor administrators of *William Moring*, the elder, or of his son *William Moring*, the younger, were parties to the suit. He also answered, admitting the will of *Christopher Moring*, the elder; but says he does not know whether *Christopher Moring*, the executor, rendered any account of his administration. Gives an account of the devised property: and believes there was a fair division made of it among those entitled to it.

Sarah Lucas, the administratrix of *John Lucas*, filed similar pleas, and a like demurrer and answer.

Sundry depositions were taken; and the court of chancery dismissed the bill upon a hearing, because the plaintiff "hath not shewn himself entitled to the estate and profits by him claimed, nor, if he were entitled, the defendants to be properly chargeable therewith." The plaintiff appealed to the court of appeals.

For the appellant, it was said, that the whole interest of his predecessors had centered in him; and as it did not appear that any of them owed debts, so as to make an administration to either of them necessary, there was nothing to impede the plaintiff's recovery immediately, without going through unnecessary forms, which would only create delay and expence, and could be attended with no benefit. That there was no necessity for an administration, *de bonis non*, upon the estate of *Christopher Moring*, the elder, as it was not shewn that he owed any debts, and it ought to be presumed, after so great a lapse of time, that none existed.

For the appellees, it was said, that the heir or legatee has no right to immediate possession of the devised or undevised subject, until there is an executor or administrator to the deceased; for the latter may owe debts, or there may be claims to adjust. That this objection applies as well to the

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unadministered estate of *Christopher Moring*, the elder, as to that of the immediate, and intermediate, predecessors of the plaintiff; who, if he wishes to discuss the subjects, must either take administration himself, or procure some other person to do it.

Cur. adv. vult.

LYONS, Judge, delivered the resolution of the court as follows:

The point debated was, whether there were proper parties to the cause, so as to enable the appellant, if he had any right, to assert it: and the court discovers no cause to find fault with the decision of the chancellor. For the appellant represents none of his predecessors, in the legal acceptation of the word, when a distribution of the personal estate of the decedent is called for, as he is neither executor nor administrator of either of them; and some, or all of them may owe debts, or may have devised their property into other directions, and not left it to the distribution of the law. For aught that appears to the contrary, there may be executors or administrators, to some, or other of them, who ought to have an opportunity of being heard. Until this is done, the plaintiff shews no title; for even the administrator of *Christopher Moring*, the elder, may be disposed to contest the legacy; and, without his consent, the plaintiff cannot be entitled to the property, unless, in the opinion of the court, the consent is unreasonably withheld. Besides, the executors or administrators of the predecessors of the plaintiff may have solid objections to make, on the score of creditors, and unadjusted claims, which ought to be discussed and finally disposed of, before the plaintiff, if he has any title, takes possession. As, therefore, the plaintiff has left his case imperfect; and, if he has title, shews no right to present possession, the decree is unexceptionable.

Decree affirmed.