

REPORTS

OF

C A S E S

ARGUED AND DETERMINED

IN THE

SUPREME COURT OF APPEALS

OF

VIRGINIA.

—
VOLUME II.
—

BY WILLIAM MUNFORD.

NEWYORK:

PUBLISHED BY I. RILEY, No. 4. CITY-HOTEL.

C. Wiley, Printer.

1814.

DISTRICT OF NEW-YORK, ss.

BE IT REMEMBERED, that on the twenty-first day of January, in the thirty-eighth year of the Independence of the United States of America, **LEWIS MOREL**, of the said district, hath deposited in this office the title of a book, the right whereof he claims as proprietor, in the words following to wit:

“ Reports of Cases argued and determined in the Supreme Court of Appeals of Virginia. Vol. II. By **WILLIAM MUNFORD**.”

IN CONFORMITY to the act of Congress of the United States, entitled “ 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, entitled “ An act, supplementary to an act, entitled 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 extending the benefits thereof to the arts of designing, engraving and etching historical and other prints.”

THERON RUDD,
Clerk of the District of New-York.

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1811.

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rest, for the same; but the complainant never complied with any of those proposals.”

A number of depositions were taken; by which, in general, the statement in the bill was supported. It also appeared that, in the year 1796, the defendant having threatened to turn the plaintiff out of possession, the plaintiff agreed to give him the sum of one hundred and eighty pounds in the fall of the same year, and, if he failed in such payment, to quit claim to the land; but this agreement was not mentioned in the answer.

The county court decreed according to the prayer of the bill; and that decree was affirmed by the superior court of chancery for the *Staunton* district; whereupon the appellant again appealed to this court.

Hay, for the appellant.

Call, for the appellee.

Monday, March 25th. The president pronounced the unanimous opinion of the court, that the contract was properly considered a mortgage, and that the decree be affirmed.



Thursday,
March 28.

Goodwin and others, Executors, Widow, and Devisees of Matthew Mayes, deceased, against Miller and others.

A decree empowering an executor, for payment of debts, to sell the lands of his testator, and report his proceedings, in execution thereof,

IN this suit, brought by certain creditors of *Matthew Mayes*, deceased, to subject the lands, devised by him, in the possession of the devisees, the late judge of the superior court of chancery for the *Richmond* district, on to the court, is not final, but interlocutory.

See *The President, &c. of William and Mary College v. Hodgson and others*, and *Fairfax v. Muse's Ex'rs*, 2 H. & M. 557.

See also *Allen v. Belches and others*, *id.* 595.

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Miller.

the 20th of *May*, 1805, decreed as follows: "The court, being of opinion that the lands, whereof the testator *Matthew Mayes* was seised at the time of his death, are by his testament made subject to payment of his debts, doth empower the defendants, who are executors thereof, if not before empowered, to sell such of the said lands as, after application of the testator's goods and credits, shall be necessary to the payment of his debts, and report their proceedings, in execution of this decree, to the court."

From this decree the chancellor, in vacation, granted an appeal: but it appearing to this court, on inspecting the record, "that the said appeal, having been allowed from an interlocutory decree, in time of vacation, was improvidently granted," it was ordered that the same be dismissed, and that the cause be remanded for further proceedings.



Heffner *against* Miller and others.

Monday,
March 25.

THE circumstances of this case (which was an appeal from the superior court of chancery for the *Stanton* district, and turned chiefly on the weight of evidence) are sufficiently set forth in the following opinion of Judge TUCKER.

After argument, by *Williams*, for the appellant, and *Wickham*, for the appellees, the judges, on *Thursday*, *March* 28th, pronounced their opinions.

Judge BROOKE. The chancellor's decree is perfectly correct; except that the bill should have been dismissed,

1. The testimony of one witness is not sufficient to outweigh an answer denying the allegations of a bill. See *Maupin v. Whiting*, 1 Call, 224. *Pryor v. Adams*, id. 390. *Beatty v. Smith & Thompson*, 2 H. & M. 395. *accordant*. See also *Payne v. Coles*, 1 Munf. 373.

2. If, in a decree of a superior court of chancery, reversing that of a county court, there be no error but an omission to direct the bill to be dismissed, the court of appeals will affirm the decree, and add the proper direction.

See *Mantz v. Hendley*, 2 H. & M. 317, 318. and *Ellzey v. Lane's Ex'x*, id. 594.