REPORTS

OF

CASES

ARGUED AND DETERMINED

IN THE

COURT OF APPEALS

OF

VIRGINIA.

BY

BUSHROD WASHINGTON.

VOL. II.

RICHMOND:
Printed by THOMAS NICOLSON
M,DCC,XCIX.

To The PUBLIC.

THE caſe of *Maze* and *Hamilton*, with one other, I had intended to publiſh in an appendix to this volume. But the manuſcript having been unfortunately depoſited in a houſe which was lately conſumed by fire. I have great reaſon to apprehend that it was either burnt, or by ſome other means deſtroyed.

PAGE.	LINE.	
11	41	*For* hinder *read* hinders.
54	26	*Inſert* by *before the words* the owner.
66	4	*Strike out the comma after* mother *and put a period.*
—	12	*Strike out the ſemicolon after* it *and put a comma.*
68	5	*For* empowed *read* empowered.
69	36	*For* 1 *read* 3.
70	17	*For* appellant *read* appellee.
71	2 & 3	*For* appellant *read* appellee.
87	8	*After* teſtimony *inſert* of.
98	17	*After* regarded *inſert* it.
99	31	*After* rule, *ſtrike out the mark of interrogation and put a period.*
106	12	*For* lands *read* land.
122	44	*For* forfeiled *read* forfeited.
139	7 & 14	*For* ſecurity *read* ſurety.
140	4	*For* principal *read* plinciple.
163	32	*Before* ſuperior *read* the.
182	21	*For* laws *read* law.
206	4	*After* it *inſert* to.
—	21	*For* principal *read* principle.
209	14	*For* determination *read* termination.
212	11	*After* but *inſert* where.
224	37	*After* idea *put a ſemicolon.*
225	40	*After* that *inſert* of.
227	3	*Strike out* not.
—	34	*After* endorſer, *ſtrike out a period and put a comma, after* 443 *ſtrike out the comma and put a period.*
242	14	*Strike out the ſemicolon after* fault.
243	24	*After* not *inſert* an.
244	41	*Strike out the ſemicolon after* declarations.
249	2	*For* is *read* as.
255	10	*For* prices *read* price.
—	12	*After* Johnſon, *ſtrike out the ſemicolon and put a comma.*
261	19	*Strike out the comma after the word* Stockdell, *and put a period.*
263	37	*For* law *read* all.
266	25	*For* points *read* point.
270	27	*Strike out the comma & put a period after the word* plea.
278	9	*For* 2 *read* 1.
288	40	*For* ſurvices *read* ſervices.
289	1	*For* ſtronger *read* ſtrong.
—	14	*For* centinental *read* continental.

39 *For*

Page	Line	
289	39	*For* colluſion *read* colliſion.
292	22	*For* deciſſion *read* deciſion.
——	30	*Strike out* of *after the word General.*
——	31	*For* Hooker *read* Hocker.
293	19	*After the word* intended *inſert*)
——	21	*For* legal *read* regal.
295	23	*After* Carolina, *put a comma inſtead of a ſemicolon, and ſtrike out the ſemicolon after the word* loci.
——	38	*For* deſribed *read* deſcribed.
296	8	*Strike out the comma after* bills.
——	35	*For* there *read* theſe.
300	11	*For* legal *read* regal.
301	26	*After* damages, *put a period.*
302	8	*For* is due *read* iſſue.
——	22	*After* verdict *inſert* ought.

then ſince the latter will prevail, the former muſt of neceſſity be conſidered as being altered. If however there be different ſubjects for the two laws to operate upon, there is no inconſiſtency, and conſequently no neceſſity for preſuming a repeal. Now apply theſe principles to the preſent caſe. Continental and ſtate bills, were the ſubject of the firſt law; that law may ſtill ſubſiſt in all its force as to the former, without in the leaſt conflicting with the act of March 1777, which is confined to ſtates bills. The ſame obſervations apply to the act of March 1778; it applies to *ſtate bills* altogether, and was intended to deſtroy the preference, which the legal money had obtained over that emitted by the ſtate. In the ſame manner is the act of May 1778 to be interpreted, which ſpeaks expreſsly of continental bills. There were emiſſions prior, and others ſubſequent to January 1777. The former were provided for by that act; the latter were not. This law then may with propriety, and with great reaſon be applied to the ſubſequent emiſſions, by which the neceſſity of an implied repeal of the firſt law is avoided.

But it is contended, that if the act of January 1777, was in force in March 1780, the tender was not made conformably with the requiſites of that law: that it ought to have been made to all the obligees. As a payment to one is a payment to all, it as certainly follows, that a tender to one is a tender to all, So a releaſe by one, binds the whole. There were four days of grace allowed, in which time the obligee, to whom the tender was made, might have conſulted with the others.

Upon the whole, I concur with the reſt of the court, that the debt in queſtion was diſcharged by the tender and refuſal, and therefore,

The judgment muſt be affirmed.

YOUNG,

againſt

SKIPWITH.

THIS was an appeal from a decree of the High Court of Chancery, wherein the appellee was plaintiff. The ſuit was brought for a ſpecific execution of an agreement, whereby

whereby the defendant was to purchaſe a tract of land on the joint account of himſelf and the plaintiff; the prayer of the bill was for a partition of the land according to certain boundaries agreed upon by the parties, and for a conveyance. The court of chancery decreed in favor of the plaintiff, and directed the ſurveyor of the county to run a line of diviſion, and to report the quantity of land on each ſide thereof.

After a very lengthy argument in this court upon the merits of the caſe, the court diſmiſſed the appeal, as being prematurely prayed before the final decree and remanded the cauſe to the court of chancery.

BOOTH'S Executors,

against

ARMSTRONG.

THIS was an appeal from a judgment of the Diſtrict Court of *Wincheſter*. It was an action of debt, brought by the appellee, upon a bond given by the teſtator. Plea, ſetting forth ſundry judgments obtained againſt the defendant, and "that he hath fully adminiſtered, all the goods of the teſtator which had come to his hands to be adminiſtered, and that he hath not, nor had &c. any goods &c. except the value of £ 133: 3: 3, which are not ſufficient to ſatisfy the ſaid judgments" &c. Replication, "that the defendant hath, and on the day of commencing this ſuit had divers goods &c. more than ſufficient to ſatisfy the ſaid judgments in the ſaid plea mentioned, whereof he could have ſatisfied the plaintiff for his debt aforeſaid."

The verdict was in the following words viz: we of the jury find for the plaintiff, the debt in the declaration mentioned, and one penny damages" judgment *de bonis teſtatoris* &c. &c. *ſi non* the coſts *de bonis propriis*.

WICKHAM for the appellant. It is clear law, that upon a ſpecial or general *plene adminiſtravit*, it is neceſſary, that the jury, if they find for the plaintiff, ſhould aſcertain the amount of the aſſets. This verdict finds only that the truth of the iſſue is with the plaintiff, but it does not aſcertain the value of the aſſets unadminiſtered. MARSHALL,