# 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 IV.

BY WILLIAM W. HENING AND WILLIAM MUNFORD.

*NEW-YORK:*

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1811.

## ERRATA.

Page 152, line 5th, for "*Elizabeth*" read "*Anne.*"

Page 155, at the end of the case of *Braxton* v. *Gaines & others*, add,

"*Wednesday, October* 11th. BY THE COURT, consisting of Judges "FLEMING and TUCKER, the decree was reversed, and the bill dismissed, "as to the appellant *Anne Corbin Braxton*, who was ordered to be quieted "in the possession of *Thamar* and her increase."

Page 172, at the end of the case of *Eppes's Ex'rs* v. *Cole & Wife*, add,

"Judge FLEMING said it was the unanimous opinion of the Court that "the judgment be affirmed."

Page 282, *in the note*, the reporters were mistaken in supposing that Judge ROANE was *related* to the plaintiff. Other motives prevented his sitting in the cause.

*Thursday, Nov. 2d.*

## Braxton *against* Lee's Heirs.

1. *Affidavits* filed in support of a bill (there being no proof of *notice*) ought not to be considered as testimony in the cause, unless it appear in the record that they were read either by consent of parties, or without opposition when such opposition might have been made.

IN a suit brought in the late High Court of Chancery, by *Elizabeth Braxton*, widow of *Carter Braxton*, deceased, to recover dower in 25,000 acres of land, (of which her said husband had been seised in his demesne as of fee, during the coverture, and to which she had never relinquished her right of dower,) against a number of defendants, among whom were *Sophia Lee* and *William Lee*, *infant* heirs of *Francis Lee*, deceased; the Court appointed *Nancy Lee* guardian, for the purpose of defending them; but it did not appear in the record that she received any notice of that appointment, or appeared either personally or by attorney. No answer was filed on their behalf, neither did it appear that any compulsory process was issued.

2. It should appear that defendants, against whom a decree is entered, had *answered* the bill, or stood out *process of contempt*; and if this be omitted, a bill of review may be filed on the ground of error *upon the face of the decree*.

Commissioners (appointed for that purpose) having laid off and allotted to the complainant her dower in each parcel of land in controversy, and stated their opinion of the annual value of each; the Court, on the 26th day of *March*, 1802, in conformity with their report, decreed (*inter alia*) that the one hundred acres of land in possession of *Nancy Lee*, guardian of *Francis Lee's* heirs or devisees, distinguished in the surveyor's plat by the figure 1. be delivered to the demandant; "and that the said *Nancy Lee*, for her wards, do pay "to the demandant, at the rate of fifty dollars *per an*- "*num*, for rents and profits, from the time when the

3. In a decree against *infants*, *time* should be given them to make objections after attaining their full age.

4. If a bachelor, seised in fee of lands, prior to the year 1760, contracted to sell them, received part or the whole of the purchase-money, delivered possession to the purchaser without making a deed, and, having afterwards married, died in 1797; *quære*, whether his widow (having had *notice before* the marriage of the purchaser's possession) is entitled to dower of such lands?

" original bill was filed, until the demandant shall ob- " tain possession;" the Commissioners having reported the rents and profits of the *whole* three hundred acres in the possession of *Nancy Lee*, guardian as aforesaid, to be worth one hundred and fifty dollars *per annum*.

To this decree, the defendants *William Lee* and *Sophia Lee*, (being yet *infants*,) by *John Dillard* their next friend, presented a bill of review, alleging,

1. That the profits of the land were rated too high by the commissioners;

2. That they had not been defended in the suit; and,

3. That, since the said decree was pronounced, they had discovered that *Ambrose Lee* their grandfather, purchased the said lands of the said *Carter Braxton*, and " they are informed and believe, was let into possession " thereof by the said *Carter Braxton*, *prior* to his in- " termarriage with the said *Elizabeth*, although the deed " conveying the *legal* title *might not* have been made " *until after* the said intermarriage: wherefore they " conceived that the said *Elizabeth Braxton* had no title " to dower in the said land, the same having *of right* " *belonged* to the said *Ambrose Lee* before the said inter- " marriage."

In support of this bill of review, the " depositions" previously taken, of *David Woodrooff*, *Frances Tucker*, *Jacob Scott* and *John Penn* the elder, were *filed* and inserted in the transcript of the record, without setting forth any acknowledgment or proof of *notice*.

The Court, on the 21st day of *March*, 1803, " after " considering *the said bill*," (saying nothing of the depositions,) " and hearing counsel on both sides, rejected " every part thereof, except that part which complained " of an excess in the valuation of annual profits as afore- " said; and, *as to that*, *received* the bill, and directed " execution of a decree, entered on the 12th day of the " same month, in favour of the said *Elizabeth Braxton*

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"against the complainants and their security, on a for-
"feited forthcoming bond; (taken upon a writ of *fieri*
"*facias* in the nature of a writ of *levari facias*,) to be
"suspended as to so much of the money thereby reco-
"vered, as was equal to one third of the said profits;")
from which order, the plaintiffs, by their counsel, prayed an appeal.

The Court of Appeals, on the 17th of *April*, 1805, being "of opinion that the bill of review should not "have been rejected, but that the appellants should have "been allowed to proceed thereon in the ordinary course "to prove the allegations thereof," reversed the said order, and remitted the cause to the Court of Chancery for further proceedings to be had upon the bill of review; whereupon the last-mentioned Court, "altering "its order according to the foregoing opinion," directed the bill of review "to stand as if received for the pur-"pose of reviewing *every part* of the decree thereby "sought to be reversed;" and *altogether* suspended, until the further order of the Court, the execution of the decree rendered the 12th of *March*, 1803.

*Elizabeth Braxton* then filed her answer to the bill of review, setting forth that she had *heard* that the complainants had *appeared* and defended the suit by their guardian, who having after appearance failed to answer, and (*as she was informed*) having stood out compulsory process, the Court proceeded to make the decree complained of; that the Commissioners having laid off the 300 acres in *Nancy Lee's* possession, into three equal lots, the respondent, upon a fair allotment, had drawn one of them, and, although the said Commissioners, at the request of *Nancy Lee*, had represented the said lot as more valuable than the other two put together, the Court had confirmed the same to her; since, according to their own representation, this accident could not have been prevented by them; that she was entitled to the benefit of her *good* fortune, as she would have been

compelled to put up with it had it been *bad.* The respondent objected to the testimony exhibited in support of the bill, as consisting of *ex parte affidavits*, of *interested* or apparently *partial* witnesses. And, as to the *time* of *Ambrose Lee's* purchase, she relied on an account of *William Cabell*, jun. against *Carter Braxton*, to show that the said *Ambrose* was alive on the 9th of *October*, 1762, and that a survey of the land which *he* purchased of *Carter Braxton*, was *then* made for *him;* that the date of the said *Carter Braxton's* birth appeared, from an inscription on a tomb-stone erected by his father (the patentee of the land in question) over the body of his mother, to have been the 10th of *September*, 1736, which would scarcely have left time for him to sell land to *Ambrose Lee*, after he came to full age in the year 1757; circumstances which, when connected with the date of the deed for the land in question, from *Carter Braxton* to *Francis Lee*, son of *Ambrose*, (which was *May* 3d, 1765,) " rendered all the allegations, in the bill, suggest-" ing error, improbable." This part of the answer seems intended to counteract the *ex parte* " deposition" or " affidavit" of *Frances Tucker*, late *Frances Lee*, widow of the said *Ambrose Lee*, which stated that he purchased the land of *Carter Braxton* in the *summer of* 1757.

The deposition of *David Woodroof*, taken after the answer was filed, proved " that *Ambrose Lee* acted as " overseer or steward for *Carter Braxton*, prior to the " year 1760, and some years after; that he resided on " the said *Braxton's* land, and purchased land of him at " different times; and that the land on which Mrs. " *Nancy Shields* (late *Nancy Lee*) now resides, is a part " of the first purchase, *which was made prior to the* " *year* 1760; but the witness did not know when the " said land was paid for, nor when the deed for it was " made."

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It had been proved by evidence filed in the original suit, that Mrs. *Braxton's* marriage with *Carter Braxton*, took place the 15th of *May*, 1760. The account in the hand-writing of *William Cabell*, jun. (who was dead,) was authenticated by the deposition of *James Penn;* and the inscription on the tomb-stone by that of *Richard Brooke.* The deed from *Carter Braxton* to *Frances Lee*, dated *May* 3d, 1765, "in consideration of the sum of forty pounds paid by the late *Ambrose Lee*," conveyed to the said *Frances Lee*, "a tract or parcel of land containing "two hundred acres, being part of a tract of thirteen "hundred and seventy acres, which the late *Ambrose* "*Lee* purchased of the said *Carter Braxton;*" (without saying at what time;) "reserving to *Frances Lee*, wi- "dow and relict of *Ambrose Lee*, deceased, the uses of the "abovementioned tract of land during her natural life "or widowhood."

This cause came on to be heard on the 20th of *September*, 1806, before the present Judge of the Superior Court of Chancery for the *Richmond* District, who thereupon decided, "that so much of the decree pro- "nounced the 26th of *March*, 1802, as relates to the "present plaintiffs, be reversed; that the decree of the "12th of *March*, 1803, upon the forfeited forthcoming "bond, be also reversed; and that the defendant pay to "the plaintiffs the costs by them expended in prosecu- "ting this suit:" from which decree the defendant appealed to this court.

*Warden*, for the appellant, made three points: 1. That the affidavits filed in support of the bill of review, ought not to be considered as testimony in the cause; there being no proof of notice; and it not appearing from the record that the Chancellor had permitted them to be read;

2. If this were otherwise, the report of the Commissioners was in all respects entitled to higher credit; and,

3. That *Carter Braxton's* seisin of the absolute *legal* estate at the time of the marriage being proved, and no conveyance thereof having been made by him until afterwards, the appellant was certainly entitled to dower. As in the case of *Claiborne and wife* v. *Henderson*,(*a*) it was decided that, before the act of 1785, a widow was not dowable where the husband had held only the *equitable* estate, (having no deed, though in possession of the land,) it would be hard that she should not have dower where the legal estate remained in him until after the marriage.

(*a*) 3 *Hen. & Munf.* 322.

Judge ROANE suggested a point, whether advantage could be taken of *any* error in the process or proceedings previous to the decree, upon a bill of review for error *upon the face of the decree*, and referred to *Quarrier* v. *Carter's Representatives*.(*b*)

(*b*) *Ante*, p. 242.

*Randolph*, for the appellees. It should appear from the proceedings, that the *answer* was filed; and *this* should be considered as part of the decree. If there was no answer, there should have been process of contempt; and, to shew this, the burthen of proof lies on the other side.

But, even if an answer had been filed, the decree should have given the infants leave to open the cause at a future day, the answer of a *guardian* being of no consequence.

On the *merits*, on that branch of the question which relates to the discovery of *new* matter, the original decree was pronounced on the principle that *Braxton sold the land after* the marriage: the bill of review was on the ground that he had sold it, and put *Ambrose Lee* in possession *before* the marriage, though the *deed* was not made until after the marriage; which allegation is fully proved by the testimony of *David Woodroof*.

Such being the case, the question resolves itself to this: if a bachelor, seised in fee of lands prior to the

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year 1760, contracted to sell them, received part of the purchase-money, delivered possession to the purchaser without making a deed, and, having afterwards married, made a deed during the coverture, and died in 1797; whether his widow, having had notice of the purchaser's possession before the marriage, is entitled to dower of such lands?

The question, thus stated, was argued at some length by *Randolph against*, and *Warden in favour of, the widow;* but, for the sake of brevity, this argument is omitted, the Court having been of opinion that the *facts* presented by the evidence did not render the point necessary to be decided in this case.

*Saturday, Nov.* 11. The Judges TUCKER and ROANE pronounced their opinions; Judge FLEMING being absent through indisposition.

Judge TUCKER. Mrs. *Braxton* brought a bill against several persons, and, among others, the appellants, for dower, and obtained an absolute decree against them, without any plea or answer in their behalf, by their mother, who was appointed guardian *ad litem*, but who is neither shewn to have appeared, or to have been served with notice of that order, neither was there any decree *nisi*, or notice of such a decree against these defendants or their guardian, to be discovered in the record, in the original suit. Afterwards, they brought a bill of review by their next friend, and assigned the following reasons for setting aside that decree: *First*, that the yearly profits of the dower lands were rated too high by the Commissioners appointed by the Court to value the same; *secondly*, that they were not defended in the suit; and, *thirdly*, "that they have discovered since the said "decree was pronounced, that *A. Lee*, their grandfather, "purchased the lands in question of *Carter Braxton*, and, "they are informed and believe, was let into poses-

"sion thereof by the said *Carter Braxton*, *prior* to "his marriage with the complainant *Elizabeth*, although "the deed conveying the legal title *might* not have been "made until after the marriage; wherefore they conceive "that she has no title to dower in the lands, which, in "equity, belonged to another before her marriage with "the said *Carter Braxton*."

As to the first of the points, there is no proof in the record, that I can discover, that the lands were estimated too high by the Commissioners. But, inasmuch as the bill against them was not regularly taken for confessed, nor any decree *nisi* in the cause either served upon them, or their guardian appointed by the Court to defend them in that suit, nor does any such decree appear to have been ever made in the cause, as to them or their guardian, nor any proof that the person so appointed guardian, either had notice of such appointment, or voluntarily appeared to defend the suit, nor that any day was given to the infants to shew cause against the decree when they should respectively come of age, I think the decree, as to them, was not only erroneous, but absolutely void; and, consequently, the decree of the Chancellor, reversing that decree upon this bill of review, as to those defendants, is so far perfectly correct.

As to the abstract question which was argued, whether, if a man seised of lands in fee-simple, aliene the same for a valuable consideration, and *gives* the purchaser possession of them, and then marries, and then executes a conveyance for the lands; whether, in this case the wife shall not be barred of her dower in a Court of Equity? It is, I conceive, not necessary to decide it at present. Cases may be put, which I think would operate as a bar of dower. As if a man, seised of lands in fee-simple, should marry a woman *privately*, and then, with her privity and consent, sell his lands for a valuable consideration, and execute a conveyance for them to the purchaser, and die, and then the wife should demand dower of the lands so aliened, and shew that the same was

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done after her marriage; yet in that case she ought to be barred by reason of the fraud and covin on her part, as well as on the part of the husband; and this, notwithstanding she might have been an *infant* as well as a *feme covert* at the time of the alienation. For *covin* and *consent*, as Sir *Edward Coke* expresses it, in such a case should *suffocate* the right which appertained to her, and the wrongful manner avoid the matter that is lawful;(a) and this at common law as well as in equity.

(a) *Co. Litt.* 35. a. 357. a. *Litt. sect.* 678.

But the record before us presents no such case. The suggestions in the bill are extremely vague, and the evidence of *David Woodroof*, the only witness to that point, (for I throw the affidavits taken before the bill filed, out of the question,) is equally so. If the fact were, that *Lee* purchased as early as the year 1757, and that he continued in *Braxton's* employ as his steward, residing upon the principality in extent, which *Braxton* held in a remote county, and made purchases from him from time to time, without demanding conveyances for the lands so purchased, the charge of covin and concealment might, perhaps, be retorted upon him. At least, such *laches* on his part, would afford a strong argument in favour of Mrs. *Braxton's* claim to her dower. Besides, the clause of warranty in *Braxton's* deed, was probably intended to afford a compensation to *Lee* from *Braxton's* heirs, in case his wife should survive him and demand her dower of these lands. And such a warranty was at that time an ample security for such compensation; as *Braxton* had more than twenty times as much land in the tract upon which *Lee* resided as his steward. Having accepted the warranty under such circumstances, I think he ought not to be let in to defeat the legal rights of the widow, but left to his remedy against the heirs of Mr. *Braxton*, upon the warranty.

The whole merits of the case being brought before the Chancellor by the bill of review, and the defendant's answer thereunto, and the cause being equally open as up-

on a rehearing,(a) I think the Chancellor ought to have decreed to the complainant in the original suit, her dower in the lands of the complainants in the bill of review, to be assigned to her by Commissioners for that purpose to be appointed, and a valuation of the annual rents and profits thereof to be made by them, from the —— day of *June*, 1800, when the original bill was filed against the present appellants; and to be paid to the present appellee by the appellants or their guardian, unless the parties, to avoid the expense of such Commissioners, should agree to the former report, survey, and allotment, in the original suit; or should agree to make a new allotment only, without any other report or survey.

(a) 1 *Atk.* 290. *Catterall* v. *Purchase.*

A regular consequence of the preceding opinion is, that the decree upon the forfeited forthcoming bond, taken upon a writ of *fieri facias*, sued out in behalf of the appellant, against the appellees, on the first mentioned decree, ought to remain as a security, so far as it will extend, for the payments of the rents, issues, and profits, which may be awarded to the appellant in pursuance of the decree now to be made, and her costs of suit: and, therefore, that the decree, reversing that decree with costs, is erroneous, and ought to be reversed, and the cause sent back, with directions to be proceeded in according to the principles in the decree now to be made.

Judge Roane. The decree of the 26th of *March*, 1802, is erroneous, so far as it relates to the present appellees, in this, that no day is given them, being infants, to shew cause against the same, after they shall have attained their age. It is also erroneous in this, that the decree was rendered without any answer being filed on the part of the appellees, nor was the bill regularly taken for confessed as to them: and both these errors are

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to be considered as errors apparent on the face of the decree itself.

For this cause, then, and not on the ground of new matter, or of an excessive allowance for profits, (admitting the cause to have been regularly heard,) the bill of review was rightly ordered to be received by this Court. This ground of error went to the *whole* decree; and, therefore, the Chancellor's *partial* allowance of the bill was erroneous. From a note I have of the case when it was formerly before the Court, *this* was the real ground on which the bill of review was directed to be received; though the Chancellor might have been misled in this particular, by the transcript of the judgment of this Court, it stating, (after having said that the bill should not have been rejected,) that "the appellants should "have been permitted, in the ordinary course, to prove "the allegations thereof;" whence it might be inferred, that the bill was allowed by this Court on the *merits*.

If, upon those merits, the cause were now in *favour* of the appellees, although it was not regularly proceeded in as to them, the decree of reversal ought, perhaps, to be simply confirmed, and the cause entirely ended: and this brings us to consider those merits. As to the allowance of *profits* by the Commissioners, they state that the one third of the land which fell to the widow, was superior in value to the other two thirds of the tract: they regret this, and submit it to the consideration of the Court; but, perhaps, the Court can find no remedy therefor, inasmuch as the law seems to require that, in dower, the land is to be divided into three equal parts, and then allotted; which was done in this case. The profits of the whole land are estimated by the Commissioners at 150 dollars *per annum;* and, certainly, therefore, fifty dollars are not an extravagant allowance for *this* third. The proofs, too, by the appellees' witnesses, only reduce the value, severally, according to

the opinions of the witnesses, to forty and forty-five dollars *per annum*. If, therefore, the decree had been regular in other respects, no objection would lie to it on account of an excessive allowance for profits.

With respect to the *new* matter; it is said to have been discovered since the former decree, that *Ambrose Lee* purchased, and was put into possession of the lands in question, prior to Mr. *Braxton's* marriage; but the allegation goes on to *admit* that the deeds might not have been made from *Braxton* to *Lee*, until *after* the marriage. This allegation is therefore a complete *felo de se*, unless this sale and possession were known to Mrs. *Braxton* at the time of the marriage, (which is not charged in the bill, nor proved,) and unless Mr. *Randolph* is also correct in placing purchasers by marriage on the same footing, in equity, in this respect, with other subsequent purchasers with notice. This is a very important question; but the facts in the present case do not make its decision absolutely necessary. I have found no cases placing a wife on a common footing with other purchasers with notice. So many considerations superior to that of *interest*, combine together with it, in relation to marriages, that I think it at least doubtful whether the ordinary doctrines with respect to *money purchasers* will apply also to the case of *marriage*. It seems unreasonable to require the wife, in the language of those cases, as soon as an adverse title is discovered, to stop her hand from completing the marriage, especially after the affections are engaged: on this point, however, I give no conclusive opinion.

But, admitting for the present, that a wife stands on the same footing with other subsequent purchasers, let us test this case by the ground on which such purchasers are postponed in equity to prior purchasers who have not a *legal* title. In the case of *Le Neve* v. *Le Neve*,(*a*) it is said that the intent of the registration act being to secure subsequent purchasers against *secret* con-

(*a*) 3 *Atk.* 646.

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veyances, a subsequent purchaser shall be postponed to a prior unregistered deed, if he had *notice* thereof; for that then he could not be prejudiced. This clear principle of equity will run through, and apply to every analogous case: and, accordingly, it is applied in the same act to the statute of enrolments of 27 *Hen.* VIII. which is pretty similar to our act of 1710; in short, it is applied to a case which is precisely the case at bar, if the wife is to be considered merely in the light of a subsequent bargainee for money. In that case it is held, that such subsequent bargainee shall be affected with *notice* of a prior right, in the same manner as if the prior purchaser had been by *feoffment* with livery of seisin. The ground on which these decisions go, (both on the acts of registration and enrolment,) is that, "although "the subsequent purchaser has the *legal* estate, he is "yet left open to any equity which a prior purchaser "may have, and is postponed, because, having notice, he "might have stopped his hand from proceeding.(*a*)

(*a*) 3 *Atk.* 616.

The ground, more particularly, on which this postponement takes place is, that the taking the legal estate after notice of a prior purchase, makes the party a *mala fide* purchaser; that it is a *fraud*, and a species of *dolus malus*; and that it is a *machinatio ad circumveniendum*.(*b*) But when fraud and an unjustifiable machination is to be imputed, the proof of *notice* must be clear: and, accordingly, it is held in *Hinc* v. *Dodd*,(*c*) that "a mere "*suspicion* of notice" is not sufficient to induce the Court to break in upon an act of parliament; and that there must be clear and undoubted notice, to be a proper ground of relief.

(*b*) *Ibid.*

(*c*) 2 *Atk.* 276.

In the case before us, independently of its not being charged or shewn that Mrs. *Braxton* knew of the sale to, or possession by, *Ambrose Lee*, that possession, at most, was very equivocal: it was, at most, but "a mere suspicion of notice." It was of a piece of *wood land* connected with a larger tract, of which it was originally part, and

holden by a steward, who also held the whole tract; and therefore his possession did not afford that clear *indicium* of property, which results from a separate, exclusive possession of a distinct and separate tract of land.

This case, therefore, is deficient in facts whereon to oust Mrs. *Braxton* in equity of her *legal* title to dower; even admitting that, in general, she is to be considered as an ordinary purchaser for money.

Upon the whole, my opinion is, that the decree now before us is correct in reversing the decree of *March* 6th, 1802, and the decree of *March* 12th, 1803, founded thereon; but that, the reversal being justified in part on the ground that the original decree was rendered without the cause being properly matured for hearing as to these appellees, the decree before us is erroneous in not having further provided for a regular procedure against them from the bill upwards; which being done, the cause would come on regularly to be tried on the merits: therefore, reversing the decree on this ground only, I am of opinion, that the cause be remanded for further proceedings from the bill, as amended, so as to make the appellees parties; and that the appellees should recover their costs, as the party substantially prevailing.

The following was entered as the opinion of the Court, viz. "that there is no error in the said decree of the "Superior Court of Chancery, reversing so much of the "decree of the 26th of *March*, 1802, as relates to the "present appellees, and the decree of the 12th of *March*, "1803, founded thereon; the said first mentioned de-"cree having neither allowed the appellees (being *in-"fants*) a day to shew cause against the same after they "attained their age, nor was grounded upon any an-"swer of the appellees by their guardian or next friend, "regularly exhibited, nor, in default thereof, was the bill "as to them decreed to be taken for confessed: but that "the said decree is erroneous in not setting aside all

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"the proceedings in the said cause, as relative to the "present appellees, subsequent to the bill, and providing that the cause should be regularly matured for "trial on the merits, but instead thereof, barring the present appellant from a recovery to which she may be "justly entitled: therefore, it is decreed and ordered, "that the said decree be affirmed as far as it goes, and "that the appellant pay to the appellees, as the parties "substantially prevailing in this Court, their costs by "them about their defence in this behalf expended. "And this Court, proceeding to make such decree "as the said Superior Court of Chancery ought to have "made, doth further decree and order, that all the proceedings in the cause, in which the decree of the 26th "of *March*, 1802, was rendered, be set aside, subsequent "to the amended bill by which the appellees were made "parties, so far as they relate to the present appellees; "and that the cause be regularly proceeded in and matured for a hearing by the said Superior Court of "Chancery, in order to a just decision upon the merits; "for which purpose the cause aforesaid is remanded to "the said Superior Court of Chancery."

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## Yancey *against* Lewis.

Where a purchaser comes into a Court of Equity for relief against a judgment at law, on the ground of a defect in the vendor's title to part of the tract of land purchased, it is not enough for him to *allege* such defect or want of title: he must *prove* an actual eviction, or superior title in some other person.

THIS was an appeal from a decree of the Superior Court of Chancery for the *Staunton* district, reversing a decree of the County Court of *Rockingham*.

*Layton Yancey* obtained an injunction from the County Court of *Rockingham*, to be relieved from a judgment