

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.

and had done nothing to confirm the sale, the same was void as to him, and the plaintiffs entitled to his moiety upon payment of the £40, with interest as offered in his bill. And the following was the decree which was entered :

“The court, having maturely considered the transcript of the record, and the arguments of counsel in this cause, are of opinion, that so much of the said decree, as dismissed the bills of the plaintiffs *Mary Taliaferro* and *Harry Taliaferro*, ought to be reversed and annulled ; and, proceeding to give such decree as the said late general court ought to have given, do decree and order, that the plaintiffs *Mary Taliaferro* and *Harry Taliaferro* do recover of the defendants one moiety of the slaves mentioned in the answers of the defendants, together with their increase and profits since the year 1726, including the profits of those who are dead, down to the times of their respective deaths, if any such there be, to be ascertained and adjusted, either by commissioners, who shall make a reasonable allowance for the raising and maintaining children, and supporting those which were unprofitable, or by a trial at law, as the high court of chancery shall think fit to direct, and also their costs by them expended, as well in the said late general court as in the prosecution of their appeal here ; and that the residue of the said decree, as to the plaintiff *Mildred Strother*, be affirmed. All which is ordered to be certified to the said high court of chancery.”

1786.
November.
Taliaferro
& al.
v.
Taliaferro
& al.

COMMONWEALTH *v.* RONALD & *al.*

1786.
November.

Judges, attornies, witnesses, and suitors are exempt from arrest in civil suits during their attendance at court.

Chancellor WYTHE mentioned to the court a circumstance which he had accidentally heard, and considered as a high

1786.
November.
Common-
wealth
v.
Ronald.

breach of privilege. The chief justice of the general court had, a few days before, been served with a process from the county court of Henrico, the moment he stepped off the bench of this court. He therefore submitted to the court, the propriety of making a rule against the attorney who ordered the process, the clerk who issued it, and the officer who served it, to appear before this court on the first day of the next term, to shew cause why an attachment, against them, should not issue for their contempt to this court.

Ronald, the attorney, who issued the writ, was present, and said that he knew of no law which privileged the judges from arrest *sedente curia*, although he thought it proper that such a law should be made.

WYTHE, Chancellor. No law is necessary to be made. This privilege is part of the common law of England, which we have adopted, and extends, not only to judges, but to attornies, witnesses, and the parties themselves.

LYONS, Judge. There is no point more clear. Parties attending their suits are privileged; so are their attornies and witnesses: and so the judges must be.

Rule awarded.

Ronald, now appeared agreeable to the rule. He stated, and so it appeared by the evidence, that he had acted with a good deal of delicacy towards the chief justice; and that it was by the desire of that gentleman, that the writ was issued and served. That he (*Ronald*) wished the question of privilege to be considered; for, by the common law, the same privilege, which it is contended, in this case, ought to be extended to the judges, extends also to counsel, attornies and suitors. That the bill of rights says, no person shall be entitled to privileges, but in consideration of services; and, as the act of assembly had exempted witnesses from

arrest, without mentioning the other characters, the latter were not privileged; for *expressio unius, exclusio alterius*. 1786.
November.

The rule was discharged; and the following is the entry on the order book:

“The court, on consideration of the rule against *Andrew Ronald, Adam Craig and David Royster*, do declare, That the judges are, by law, privileged from the service of all process in civil suits during the time of their attendance at court, and a reasonable time for travelling to and from the place of their session. But, as the officers on the present occasion, do not appear to have had any design to violate the privileges of the court, the rule is discharged.”

Common-
wealth
v.
Ronald.

PICKETT v. CLAIBORNE.

1787.
October.

After a judgment confessed, the want of a declaration is not error.

If there be judgment upon a general count in assumpsit; or by confession without a declaration; the plaintiff, in a second action for the same cause, must shew two subsisting debts, or he cannot sustain his action, if the former recovery is pleaded.

If in an action on the case, the plaintiff lays his damages in tobacco; and the defendant confesses judgment, the judgment is not erroneous.

A power of attorney to confess a judgment, directed to five, with a subscribing witness, was proved by one of the five, without calling the attesting witness: But this was probably, through oversight, as the point was not mentioned in the argument.

Pickett brought case in the county court of Henrico, against *Herbert Claiborne* and *William Claiborne*, and laid his damages at “one hundred thousand pounds of inspected crop tobacco of the value of one thousand pounds.” The defendants appeared, but no declaration was filed; and the cause was continued, by consent, until the next term, when judgment was rendered for the plaintiff in the following words, “and now at this day, to wit, on Tuesday the 6th