

REPORTS  
OF  
C A S E S  
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.

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VOLUME III.

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BY WILLIAM W. HENING AND WILLIAM MUNFORD.

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1810.

DISTRICT OF VIRGINIA, TO WIT :

**B**E IT REMEMBERED, That on the twenty-second day of January, in the thirty-fourth year of the Independence of the United States of America, WILLIAM W. HENING and WILLIAM MUNFORD, of the said district, have deposited in this office the title of a book, the right whereof they claim as authors, in the words following, to wit :

“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 III. by William W. Hening and William Munford.”

IN CONFORMITY to the act of the 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.”

WILLIAM MARSHALL,

(L. S.)

Clerk of the District of Virginia.

# CASES

ARGUED AND DETERMINED

IN THE

*SUPREME COURT OF APPEALS*

OF

VIRGINIA:

At the Term commencing the first of October, 1809.

IN THE THIRTY-FOURTH YEAR OF THE COMMONWEALTH.

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Judges, WILLIAM FLEMING, ESQUIRE, *President*.\*  
SPENCER ROANE, ESQUIRE.  
ST. GEORGE TUCKER, ESQUIRE.

ATTORNEY-GENERAL,  
PHILIP NORBORNE NICHOLAS, ESQUIRE.

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Spotswood *against* Dandridge and others.

*Tuesday,*  
*October 3d,*  
1809.

THIS was a suit brought by *Alexander Spotswood*, the appellant, against the appellees, in the late High Court of Chancery. The bill (which was filed in *October, 1791*) charges, that Major General *Alexander Spotswood*, being seised and possessed of a very considerable estate, both

1. To prevent length of time from barring a claim, on the ground that the possession of the defendant was *fiduciary*, such possession must have been *fiduciary as to the plaintiff, or those under whom he claims*: its being fiducia-

\* On *Sunday* the 30th day of *July, 1809*, Judge LYONS, late President of the Supreme Court of Appeals, departed this life, in the *seventy-fifth* year of his age. In consequence of his death, that Court now consists of three Judges only; a provision having been made by law, that the vacancy should not be supplied. See vol. I. p. 208, 209.

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ry as to any  
other person,  
is not suffi-  
cient.

2. An execu-  
tor having de-  
livered cer-  
tain slaves to  
legatees, as  
their prop-  
erty under the  
will, a subse-  
quent action  
of detinue  
against him,  
for other  
slaves which  
the testator  
held in the  
same right, is  
not sufficient,  
though prose-  
cuted to a  
judgment, to  
prevent the  
act of limita-  
tions from  
running, both  
at law and in  
equity, in fa-  
vour of the le-  
gatees.

real and personal, made and published his testament and last will, whereby, among other things, he devised to his son and heir, *John Spotswood*, all his lands and working slaves *in tail male*, with several remainders over, and also all the tradesmen and servants which should be employed, or, in any way, used in and upon his mine tract of land at the time of his death; and appointed his wife *Butler, Eliott Bengler* and *Robert Rose*, his executrix and executors; that, after the testator's death, the said *John Spotswood* gave to his sister *Dorothea*, a negro woman called *Molly*, who, proving pregnant some time after, was received by him and replaced by another, called *Mary Ann*, who was one of the entailed slaves; that, after the death of *John Spotswood*, *Nathaniel West Dandridge*, who had intermarried with the said *Dorothea*, demanded of *Mary Campbell*, the widow of the said *John Spotswood*, *Molly*, with her increase, (four in number,) which she declined delivering until she should see *Bernard Moore*, the executor of *John Spotswood*, and guardian of the plaintiff; upon which *N. W. Dandridge* procured from *Bernard Moore* an order for the said slaves, who were accordingly delivered by *Mrs. Campbell*; that *Mary Ann* and her children, at the request of *Dandridge*, were permitted by *Bernard Moore* to remain in his possession, she being the wife of a negro man belonging to him; the said *Dandridge* agreeing to pay hire for her; that she and her children continued in the possession of *Dandridge*, under that agreement, till his death, which happened in the year \_\_\_\_\_, during which time she had a number of children; that *N. W. Dandridge* left a will, in which he appointed his son, *William*, and his second wife, *Jane*, executor and executrix, of whom the former only proved the will, and took possession of *Mary Ann* and her children; and, although acquainted with the plaintiff's title, as appears by a letter from him annexed to the bill as part thereof, divided the said *Mary Ann* and her children between the representatives of his father, *N. W. Dandridge*, taking bonds to indemnify him

against the plaintiff's claim ; that the plaintiff instituted a suit in the District Court of *Richmond* to recover the said *Mary Ann*, and such of her descendants as had been retained by the defendants, executors of *Nathaniel W. Dandridge*, and obtained a judgment for *Mary Ann* and her two daughters, *Betty* and *Hannah*, as also *Jack* and *Polly*, children of *Betty*, and *Polly* and *Johnny*, children of *Hannah* ; that, in consequence of that verdict, *Woodson Payne*, who intermarried with *Mary*, one of the daughters of *N. W. Dandridge*, delivered to him *Rachel*, another daughter of *Mary Ann*, and her two children, *Milly* and *Henry* ; but he has received no satisfaction for the hires, which he claims from the agreement of *N. W. Dandridge*, who was to pay hire ; that several of the descendants of *Mary Ann*, some of whom are named in the bill, others not known, are in the possession of *Patrick Henry*, who intermarried with *Dorothea*, *John Moore*, who intermarried with *Anna*, and *Philip Payne*, who intermarried with *Elizabeth*, daughters of the said *N. W. Dandridge*, and were delivered to them by his executors ; that he commenced a suit against *N. W. Dandridge*, in his life-time, for the negroes, which abated by his death ; and has since demanded them of the present defendants without success ; and concludes with praying a discovery, and decree for the slaves and their profits, and for general relief.

The answer of *Philip Payne* and *Elizabeth*, his wife, admits, that *Mary Ann* is the reputed mother of two slaves, given as a part of the said *Elizabeth's* portion of her father's estate, the names of whom are set forth ; that, when they received them, they were unable to labour, so that the trouble of raising them was fully worth their hires ; that the respondents heard of the plaintiff's setting up a claim to the slaves, but deny that they gave any bond to the executor to indemnify him against such claim ; alleging, that the bond they gave was, in the usual form, for refunding, in case of debts ; that, as to *Woodson Payne's* giving up the slaves in his possession, they have often heard

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him say that the plaintiff agreed to return them, in case he should fail in this suit, and have understood he is under a similar engagement with Mrs. *Dandridge*; that they have understood Mrs. *Dorothea Dandridge* was entitled to a proportional part of Major General *Alexander Spotswood's* house servants, under his will; that none were allotted to her except *Molly* and *Mary Ann*; and, from the great length of time which has elapsed since his death, they are now unable to prove any thing respecting it. They refer to his will, and rely upon the act of limitations in the same manner as if formally pleaded, mentioning among other things, that *N. W. Dandridge* died about the year 1785.

The answer of *Patrick Henry* and wife, is nearly the same as that of *Philip Payne* and wife. They have heard *N. W. Dandridge* and his wife say, that the negro *Molly*, in the bill mentioned, was the property of Mrs. *Dandridge*, under the will of her father General *Spotswood*, who gave her a fifth part of his house servants; that on her marriage with Mr. *Dandridge*, Mrs. *Campbell*, then the wife of *John Spotswood*, and mother of the complainant, was unwilling to give up the said *Molly*, and prevailed on them to take the said *Mary Ann* in lieu of her; that, after the division of the house servants, it appeared that several valuable slaves were due to them, and, as they never could get either of them, they (after the death of the said *John Spotswood*) took back the said *Molly*, not in full satisfaction for their share of house servants, there being one or more then due, counting both *Mary Ann* and *Molly*. Mr. *Henry* farther states, that, being applied to as a lawyer for his advice (to the best of his recollection) in or before the year 1773, he advised that *N. W. Dandridge* should claim and hold *Mary Ann* and her children, as his property, until the negroes due to him as his wife's share of the house servants were delivered up, agreeably to the will of General *Spotswood*; that he cannot ascertain the time when the claim set up to *Mary Ann* as his absolute property commenced, but well remembers he had refused

to give her up to the complainant *before* he asked his advice.

The answer of *John Moore* and wife states, that they have heard, and believe it to be true, that *N. W. Dandridge*, deceased, and those who claim under him, have been in quiet possession of the slaves for more than twenty years since the complainant was of full age, and refers to, and relies upon, the answer of *Patrick Henry* and wife, and the act of limitations.

No answer was filed by *William Dandridge*, the executor. The deposition of *Anna Catherine Moore*, one of the daughters of General *Spotswood*, fully established the fact, that only two negro girls (*Molly* and *Lucy*) were allotted to her sister *Dorothea*, as her proportion of his slaves; and she believed that *Lucy* never came into the possession of her said sister. Another witness, *Benjamin Pendleton*, deposed to some circumstances, (rather vague and inconclusive,) tending to shew that, between the years 1764 and 1769, *N. W. Dandridge* held a part, or all, of the negroes in dispute, by a hiring from *Bernard Moore*, the executor of *John Spotswood*, deceased. The letter from *W. Dandridge* (one of the executors of *N. W. Dandridge*) to the plaintiff, mentioned in the bill, was dated *December 24, 1791*, after this suit was brought. In that letter he said that he "always thought the plaintiff's right to *Mary Ann* and her children was undeniable."

The Chancellor dismissed the bill, with costs, whereupon the plaintiff appealed to this Court.

*Williams*, for the appellant.

*Munford* and *Warden*, for the appellees.

On the part of the *appellant*, it was contended, that the possession of the slaves in controversy, by *N. W. Dandridge*, had always been *fiduciary*; that the acknowledgment by *William Dandridge*, his executor, of the justice

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of the plaintiff's claim, and the suit and recovery at law against him, prevented the act of limitations from being a bar.

On behalf of the *appellees*, it was urged, that the testimony to prove that *N. W. Dandridge's* possession ever was fiduciary, was very defective ; that, if at any time it was fiduciary as to *John Spotswood* or *Bernard Moore*, his executor, it never was so as to the *plaintiff*, who claimed (as issue *in tail*) under his *grandfather's* will, not under *John Spotswood*, his father ; that since it appeared that the negro *Lucy*, who had been allotted to *Dorothea Dandridge*, had never been delivered, but remained with the estate, which was held by *John Spotswood*, and the bulk of which passed from him to the plaintiff, it would now be iniquitous to compel the descendants of *Dorothea Dandridge* to give up *Mary Ann* (whom it was probable she received instead of *Lucy*) and her increase ; that, according to the maxim, *that he who seeks equity must do equity*, the plaintiff, if he recovered the children of *Mary Ann*, should give up the children of *Lucy* ; that the acknowledgment by *William Dandridge*, the executor, could not affect the rights of the present defendants, their claim being under the *testator*, though the property, in coming to them, passed through the hands of the executor, neither could the action of detinue and recovery therein, against *him*, be given in evidence against *them*, who were no parties to that suit, and received the slaves from him as their property, by virtue of the will of his testator, especially as the judgment against the executor was for other slaves, held indeed in the same right, but not those now held by the defendants.

*In reply*, it was said, that the legal representatives of *John Spotswood* (not the plaintiff *only*) were responsible for *Lucy* and her increase, if the defendants had a right to them ; that the plaintiff was certainly entitled to *Mary Ann*, as being one of the *entailed* slaves ; that the judg-



ment against the *executor* bound the *legatees*, because they necessarily claimed under him, since they could not get their legacies without his assent.

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*Saturday, October 7.* The President, after stating the case nearly as above, pronounced the following opinion of the Court :

“ The defendants all rely on the statute for limitation of actions, to bar the plaintiff’s claim, which he would repel, by urging that the possession of the slaves by *N. W. Dandridge*, under whom the defendants claim, was fiduciary ; and being in trust for the plaintiff, must be considered as his possession ; therefore, the act of limitations cannot operate against him. Admitting that the possession of *N. W. Dandridge* was fiduciary, so far as it respected *John Spotswood*, (father of the plaintiff,) or *Bernard Moore*, executor of the said *John*, yet, inasmuch as the plaintiff claims, not under his said father, but as heir in tail under the will of his grandfather, *Alexander Spotswood*, the possession of *N. W. Dandridge* ceased in the year 1785, and *this suit* was not instituted till *October, 1791*, there were more than five years anniversary possession in the defendants, which is a complete bar to the plaintiff’s title.

“ This being the opinion of the Court, and decisive of the cause, it seems unnecessary to investigate its merits ; in which there appears much equity in favour of the defendants ; and I shall only add that the decree is AFFIRMED.”