REPORTS
OF
CASES
ARGUED AND DETERMINED
IN THE
COURT OF APPEALS
OF
VIRGINIA.

BY
BUSHROD WASHINGTON.

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the money without the consent of Barnett, Woolfolk & Co. If they had been litigious, or inclined to evade a performance of their promise, they might have delayed payment under a pretext of this sort. But knowing that they had induced Forest and Stoddart to advance the money, they very properly and without delay repaid it with interest, having nothing to do with any dispute between them and the appellants; but leaving it to be litigated between them, when and how they pleased. This may still be done if the appellants are inclined, and nothing sworn by Stoddart in this suit, can avail him in that.

Another objection to this deposition is, that the witness has not subscribed it. Whether Stoddart could be prosecuted for perjury (in case he has taken a false oath,) in consequence of this omission, is a question which we leave to be determined by those before whom the prosecution shall be instituted. The deposition is certified, by two magistrates, to have been taken before them *upon oath*, which gives it sufficient authenticity.

The objection to the verdict applies meerly *to the form* of it. The damages assessed by the jury are *for the non-performance of the assumption, in the declaration mentioned*, and the irregularity, in the extension of the verdict, is apparently a clerical misprision and therefore amendable.

Judgment of the District Court affirmed.

BRAXTON *against* MORRIS.

THIS was an appeal from a decree of the High Court of Chancery. At the last term, a rule was obtained by the counsel for the appellee, that the appellant should shew cause, why this appeal should not be dismissed, unless bond and security in a penalty sufficient to cover the decree were given. The Chancellor allowed the appeal upon the appellants giving bond in a sum merely nominal. The question depended upon the construction of the acts of Assembly relating to this subject.

The PRESIDENT. The law constituting the Court of Appeals passed in 1792, refers (as to this point) to the law relating to appeals from the County Courts, to the High Court of Chancery and District Courts.

The County Court law, after referring to the Chancery law for the *manner* of exercising the right of appeal, declares that bond and security shall be given by the *plaintiff* if he appeal, but totally

totally omits the clause in the old County Court law, which directed bond and security to be given by the *defendant*, if he appealed. The chancery law does not supply the defect in a case where the appeal is prayed for at the *time of pronouncing the decree*, although (where that has been neglected) it provides for the case of a petition of appeal *afterwards*, and in this latter case, requires bond and security to be given. It takes no further notice of an appeal prayed for at the time of a decree, as it respects the bond, than to declare it valid, if given by sureties of sufficient ability, tho' it should not be executed by the party himself. But this is not enough to warrant a County Court in demanding bond and security from a *defendant* praying an appeal, as the condition upon which it is granted; nor can the Chancellor require it. This was probably a mere omission in the legislature, but it belongs to them, not to this court to rectify it.

The court are therefore of opinion, that the Chancellor took the only bond which he was authorised to require: viz. a bond in the penalty of £20, from Mr. Braxton as a *plaintiff appealing*.

PENDLETON *against* VANDEVIER.

THIS was an ejectment brought upon the demise of *Jacobus* Vandevier the appellee, against the appellant, in the District Court of Winchester. The jury found a special verdict to the following effect viz: That John Vanmeter being seized in fee simple of a tract of land, of which the land in question was a part, departed this life at some time previous to September 1745, having first duly made and published his last will and testament, bearing date the 13th of August, in the same year, whereby he devised the land in question by the following clause viz: "Item, I "give and bequeath to my daughter Magdalena, twenty shil- "lings, as her full legacy, which when paid, is to bar her of a- "ny title to my real or personal estate, and I do devise *unto her* "*heirs lawfully begotten on her body*, a certain tract of land "part of that on which I now live, bounded as follows; [here "follows a particular description of this parcel according to cer- "tain courses and distances] containing by estimation 250 acres "more or less, to be held by the heirs of my said daughter un- "der the limitations and restrictions according to the devise made "to my son *Abraham Vanmeter's heirs*." That he devised to

Abraham