

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.

THE SECOND EDITION, REVISED AND CORRECTED BY THE AUTHORS.

VOLUME I.

BY WILLIAM W. HENING AND WILLIAM MUNFORD.

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.....
1809.

DISTRICT OF VIRGINIA, TO WIT :

BE IT REMEMBERED, That on the fifth day of April, in the thirty-third 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. The second edition, revised and corrected by the
“ authors. Volume I. 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
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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 proprie-
“ tors 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.”

(L. S.)

WILLIAM MARSHALL,
Clerk of the District of Virginia.

CASES
ARGUED AND DETERMINED
IN THE
SUPREME COURT OF APPEALS
OF
VIRGINIA :

AT THE TERM COMMENCING IN JUNE, 1807,

IN THE
THIRTY-FIRST YEAR OF THE COMMONWEALTH.



Cheshire *against* Atkinson.

Tuesday,
June 2, 1807.

IN this case the following points were decided.

1. That an attachment would not lie from this Court against a sheriff, for proceeding to carry into effect an execution under a decree of a Superior Court of Chancery, after an appeal had been granted in vacation(1) by the Judge of that Court ; (although the sheriff had notice of the appeal ;) if such proceeding by him took place before the record was brought up ; for it was said to be no contempt to this Court, until the cause was depending therein.

2. That the act of the last session of Assembly, *Rev. Code*, vol. 2. c. 102. sect. 4. p. 128. which declares, that no appeal from a decree of a Superior Court of Chancery, nor any writ of error or *supersedeas* shall be granted by the Court of Appeals *in Court*, but only by a *Judge*, or by the *Judges* thereof during the term, or *in vacation*,

The Court of Appeals will not award an attachment against a sheriff for proceeding to carry into effect an execution under a decree, from which an appeal has been granted by the Judge who pronounced it ; although he had notice of the appeal ; if such proceeding took place before the record was brought up.

(1) See *Rev. Code*, 1st vol. c. 64. sect. 59. as to granting appeals in vacation.

Such a *supersedeas* as is merely *auxiliary* to the proceedings of the Court, may be granted *in Court* : notwithstanding the 4th section of the act of 1806, concerning the Court of Appeals.

JUNE, 1807. was not meant to extend to such a *supersedeas* as is merely auxiliary to the proceedings of the Court; for example, to stay the execution of a decree of a Superior Court of Chancery; where an appeal had been granted in vacation, and no *supersedeas* had been awarded at the time.

Cheshire
v.
Atkinson.

Present, Judges *Lyons, Fleming and Roane.*



* 211

Tuesday,
June 2.

Interest is not to be allowed from a period antecedent to the time appointed for the payment of money, without an express stipulation to that effect; mere implication not being sufficient.

The counsel for the appellee may take up an appeal out of its turn on the docket, as a delay case, and confess error.

*Buchanan against Leeright.

This was an appeal from a decree of the Superior Court of Chancery for the *Staunton* District.

The appellant, on the 1st of *October*, 1796, executed a mortgage to the appellee to secure the payment of 1,350*l.* the proviso in which mortgage was in the usual form, that, if the mortgagor should pay to the mortgagee the same sum of money, "on or before the 1st of *December*, 1800, or "within sixty days thereafter, then," &c. There was also a covenant on the part of the mortgagor to pay the said sum "on or before the day and year aforesaid," (*viz.* the 1st of *December*, 1800,) "or within sixty days thereafter;" and a stipulation between the parties, that "provided the said sum of money shall be punctually paid on or before the times stipulated and thereby agreed on, that then "and in that case *no interest shall accrue or be charged thereon.*" There was no other expression in the mortgage which related to the payment of interest.

The decree of the Chancellor was, that unless the principal sum *with interest from the first day of October*, 1796, (the date of the mortgage,) were paid on or before a certain day, then the mortgaged premises should be sold, &c. From this decree an appeal was taken to this Court.

Hay for the appellee, moved to take up the cause out of its turn on the docket, as a delay case, it not presenting any point for argument. He admitted that there was no *express* stipulation for the payment of interest from the date of the mortgage; and if that was not *implied* by the subsequent agreement of the parties, that in case the money was punctually paid *no interest should accrue or be charged thereon*, the decree was erroneous so far as it gave interest from the 1st of *October*, 1796, (the date of the mortgage,) to the 1st of *December*, 1800, (the time of payment.)—He was therefore willing, if the Court should be of that opinion, to confess error as to the interest antecede-