

**REPORTS OF CASES**

DETERMINED IN THE

**GENERAL COURT**

OF

**VIRGINIA.**

**FROM 1730, TO 1740;**

AND

**FROM 1768, TO 1772.**

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By **THOMAS JEFFERSON.**

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**CHARLOTTESVILLE:**  
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case of Porter\* and Jones was much harder than this, for there was a purchaser for valuable consideration without any kind of remedy; whereas the plaintiff may have remedy for damages against Thompson. But there the court would not relieve, because this very act had declared the deed was not binding. The hardship can never induce the court to decree against a positive law. Besides the hardship is not so great, as there is a remedy against Thompson; and the hardship may be greater upon the purchaser, who has paid the full value of the land upon a supposition that the plaintiff's lease was void, and who purchased under the sanction of the act.

The demurrer was allowed, and the bill dismissed with costs.

Reported by Edward Barradall, Esq.

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*CUSTIS et al. v. FITZHUGH.*

In this case it was adjudged, that slaves as well as lands might be conveyed to uses, and were within the statute of uses. 27. H. 8. 2. Hop. 3.†

Reported by Mr. Hopkins.

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*BRENT v. PORTER.*

Detinue for Slaves.

A right to slaves descended to two sisters, coparceners, and femes sole; but they were in the possession of another who claimed a right to them. One coparcener marries and dies, the slaves having never been reduced into possession. The surviving coparcener brings this action for her moiety. Two causes were assigned by the defendants, why she should not recover. 1. That by the express words of the act of Assembly, this difference is made, viz. where a right descends to a feme covert, that right vests in the husband; but a feme sole by her marriage gives no right to

\* Ante, 62.

† This reference is probably to Hopkins's own notes.

her husband, except to the slaves of which she is possessed. 2. That the husband of the deceased coparcener should have joined with the surviving coparcener in this action for the slaves. The court adjudged for the plaintiffs. But *quære*, on which point, or if on both? Cases cited were *Bronaugh v. Cock*, *Wyld v. his children*, *Southal v. Lucas*, *Elliot v. Washington*, *Harrison v. Valentine*. All determined in the General court. It was said at the bar in this case, and not denied, that wherever the feme is entitled to slaves not in possession, if the wife dies before reducing them into possession, the right survives to the husband. But if the feme survives it shall be hers: and that the act of Assembly only intended to give the husband such a right as he would have to the chattels of the wife; that is, a right to reduce them into possession; and that this reconciles the cases. In this case also, *Pendleton* observed, that the husband surviving might recover, whether he took administration or not; and that if he were to take administration and recover in that right, he would be accountable to no one, the statute of distribution having given the surplus to him as next of kin. But *Wythe*, said it was the second statute of distribution which did this, and that being made after 4. Ja. 1. was not in force here. Therefore, if he recovered, as administrator, he would by our act of distribution, be accountable to the next of kin.

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BLACKWELL v. WILKINSON.

Slaves had been entailed between the years 1705 and 1727, without being annexed to lands, and the question was, whether the entail was good? At a former hearing before twelve judges, the court had been divided, and it came on now to be re-argued.

*John Randolph*, Attorney General, *pro quer.* I shall consider, 1. Whether slaves were entailable, under the act of 1705, c. 23. alone, without being annexed to lands? 2. If they were so, whether the act of 1727. c. 11. can by retrospection affect this case? 1. The legislature, considering the intimacy of connection between slaves and lands, and that the latter in this country could be of but little profit without the former, thought it expedient to declare them real estate. The natural property of land is, that it is fixed and permanent: its legal properties, that it shall descend to heirs in various manners; shall be subject to widows' dowers;