DECISIONS OF CASES

IN

VIRGINIA.

BY THE

HIGH COURT OF CHANCERY,

WITH REMARKS UPON DECREES,

BY THE

COURT OF APPEALS,

REVERSING SOME OF THOSE DECISIONS.

BY GEORGE WYTHE,

CHANCELLOR OF SAID COURT.

SECOND AND ONLY COMPLETE EDITION, WITH A MEMOIR OF THE AUTHOR, ANALYSIS OF THE CASES, AND AN INDEX,

BY B. B. MINOR, L. B., OF THE RICHMOND BAR.

AND WITH AN APPENDIX, CONTAINING

REFERENCES TO CASES IN PARI MATERIA, AND AN ESSAY ON LAPSE; JOINT TENANTS AND TENANTS IN COMMON, &C.,

BY WILLIAM GREEN, ESQ.

RICHMOND:
J. W. RANDOLPH, 121 MAIN STREET.
1852.

BETWEEN
JOHN HOOMES, *plaintiff*,
AND
JACOB KUHN, *defendent*.

New trial in action of assault and battery refused;—The judge below having refused it, and there being no matters before this Court which ought to have changed his sentiments.

The bill in this cause, brought for another trial of the issue in an action of assault and battery, was dismissed, the 28 day of october, 1791, the opinion of the court being, that a motion for the new trial having been rejected by the judge before whom the verdict was found and no matters now appearing to this court, which, if they had been known to that judge, ought to have wrought a change in his sentiments, in such a case the interposition of this court would be improper.

This decree of dismission, from which the plaintiff appealed,* was affirmed, the 20 day of october, 1792.

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second degree of the murder of his wife.—His motion for a new trial, based, in a great measure, upon the testimony of the jurors themselves, was overruled by the Superior Court. The General Court not having time, at its last session, owing to the unavoidable delay in presenting his petition, to decide the questions arising thereon, awarded a writ of error, and will hear and determine them at their next term. Questions as to the separation of the jury, and their taking something to drink, though only in moderation, are also involved in the case.—*Ed.*]

[*This case, reported in 4 Call., 274, decides:

"If the defendent has been negligent in his preparation for the trial of the cause a court of equity will not relieve against the verdict on account of absence of witnesses, who can only prove, in substance, the same things which other witnesses can.

"If the defendant only asks one witness to attend and sends a subpœna, by a servant to another, which reaches him on the day of appearance, at so great a distance from the court where the cause is depending that there is no probability that he can reach it in time. this is a gross negligence; especially if he does not communicate those circumstances to his counsel, nor make any other preparations for the trial.

"And in such case, equity will not interfere if the judge who tried the cause, and knew what passed at the trial twice refused it upon the same representation." —*Ed.*]