

Friday, 7th
November.

HUDGINS against WRIGHTS.

Where white persons or native American Indians or their descendants in the maternal line are claimed as slaves, the *onus probandi* lies on the claimant; but it is otherwise with respect to native Africans and their descendants, who have been and are now held as slaves.

It seems that no native American Indian could be made a slave under the laws of Virginia, since the year 1691.

In suits for freedom, a variance between the evidence and the case stated by the plaintiff will not be regarded by the court; but the decision will be according to the rights of the parties, and the case made out by the evidence at the trial.

THE appellees, in this case, which was an appeal from the High Court of Chancery, were permitted to sue *in forma pauperis*. The appellant being about to send them out of the state, a writ of *ne exeat* was obtained from the chancellor, on the ground that they were entitled to freedom. In their bill, they asserted this right as having been descended, in the maternal line, from a free Indian woman; but their genealogy was very imperfectly stated. The time of the birth of the youngest was established by the testimony; and the characteristic features, the complexion, the hair and eyes were proven to have been the same with those of whites. Their genealogy was traced back by the evidence taken in the cause, (though different from that mentioned in the bill) through female ancestors, to an old Indian called *Butterwood Nan*. One of the witnesses who had seen her, describes her as an old *Indian*. Others prove, that her daughter *Hannah*, had long black hair, was of the right Indian copper color, and was generally called an Indian by the neighbors, who said she might recover her freedom if she would sue for it; and all those witnesses deposed that they had often seen Indians. Another witness, (*Robert Temple*,) whose deposition was taken on the part of the appellant, proves that the *father of Butterwood Nan* was said to have been an Indian, but he is silent as to her mother.

On the hearing, the late chancellor perceiving from his own view, that the youngest of the appellees was perfectly white, and that there were gradual shades of difference in color between the grandmother, mother, and grand-daughter, (all of whom were before the court;) and considering the evidence in the cause, determined that the appellees were entitled to their freedom; and, moreover, on the ground that freedom is the birth right of every human being, which sentiment is strongly inculcated by the first article of our "political catechism," the bill of rights,—he laid it down as a general position that whenever one person claims to hold another in slavery, the *onus probandi* lies on the claimant.

Randolph, for the appellant. The ground on which the appellees claim their freedom is, that they are lineally descended from a free Indian woman. On the other side it is contended, that they are descended from a negro woman by an Indian. Although the circumstance of their being *white* operated on the mind of the chancellor, who decreed their freedom; yet as the whole of the testimony proved

NOVEMBER,
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" This court, not approving of the chancellor's principles
" and reasoning in his decree made in this cause, except so
" far as the same relates to white persons and native Ame-
" rican Indians, but entirely disapproving thereof, so far as
" the same relates to native Africans and their descendants,
" who have been and are now held as slaves by the citizens
" of this state, and discovering no other error in the said
" decree, affirms the same."



THE COMMONWEALTH against WALKER'S EX'OR.

The com-
monwealth
is not respon-
sible for the
nominal a-
mount of
money paid
into the
Loan-Office
in discharge
of British
debts ; but
only for its
value accord-
ing to the
scale of de-
preciation.

The scale, in
such cases, is
to be applied
at the time
of the pay-
ments : not
at the date of
the govern-
or's receipt
for the certi-
ficates of
those pay-
ments.

THOMAS WALKER on the 28th of November, 1777 and 3rd of April 1778, paid into the Loan-Office certain sums of money, and obtained the proper certificates ; for which the governor gave him a receipt on the 25th of May, 1779, in discharge of a British debt. After the act of 1796, upon the subject of such payments, his executor applied for certificates for the said sums and interest ; but the treasurer insisted upon reducing them by the scale of depreciation of May 1779. This was at first objected to ; but as the treasurer persisted, the executor received certificates for the amount according to the scale ; expressly declaring, however, that it should not prejudice his claim to the original sums and interest. He afterwards applied to the auditor for a warrant for the difference between the sum received and that to which he conceived himself entitled, but was refused it ; in consequence of which he appealed to the High Court of Chancery ; where it was decreed that the Auditor should issue warrants for the *value* of the sums according to the scale at the times when they were paid into the *Loan Office*, from which decree an appeal was taken to this court.

Attorney General, for the commonwealth. The question to be decided by this court is, whether the scale of depreciation is to be applied at the time the money was *deposited in the Loan Office*, or when it was *paid in discharge of the British debt*, by taking the governor's receipt for that purpose.

It will, indeed, be contended by the counsel on the other side, that the debt ought not to be scaled at all. This is an important question, but it is one on which all men seem to have agreed. During our revolutionary war the property of British subjects, in this state, was sequestered, and by an act passed in 1777, citizens of this commonwealth owing money to a subject of *Great Britain* were allowed to pay it into the *Loan Office*, taking a certificate in the name of the