

1754.

April Term, 1754.

Present WILLIAM COLEMAN, }
ALEXANDER STEDMAN, } Justices.

The Lessee of ALBERTSON versus ROBESON.

MOVED to admit a Witness to prove the Age of the Plaintiff, his Brother (about sixty Years old) from the hearsay of their Father and Mother. Opposed, and refused by the Court.

The Votes of Assembly were admitted to prove the time of the notification of the Repeal of an Act of Assembly by the King and Council. But not answering the purpose fully, the Minutes of Council were sent for, and given in evidence without opposition.

N. B. The Defendant supported his Title under a Decree of a Court of Chancery established by Act of Assembly; the Decree was made two Months after the Act was repealed by the King and Council, but six Weeks before we had Notice of it.

THE COURT gave it in charge to the Jury, that the Act was not repealed, till Notification here; and the Jury were of the same opinion, by finding a Verdict for the Defendant.

THE KING versus PHILIP HENRY RAPP.

INDICTMENT for Misdemeanor, in marrying a Man to a Woman who had another Husband living.—Moved, on the Part of the Defendant, to put off the Trial on Affidavit of material Witnesses wanting, and that he had taken the proper steps to get them.—Opposed by the Attorney General, as being a criminal Case, and not within the Rules of civil Cases. But granted BY THE COURT, the Defendant being a Clergyman, and his Living depending on his acquittal: but declared not to be a Precedent.*

THE KING versus HAAS and others.

MOVED on the Part of the Defendant to oblige the Attorney General to bring on the Trial, or discharge the Defendant. THE COURT said they would not force the Crown to bring on the

* In *Rex versus D'Eon & Burr* 1713. The Court said that in all Cases, whether criminal, or civil, a Trial shall not be hurried on, so as to do injustice to the Defendant.

1764. Trial, nor discharge the Defendant from Bail, without some appearance of oppression. *

The Lessee of RICHARDSON versus CAMPBELL.

PLAINTIFF supported his Title by a Patent dated in 1762. The Defendant produced Receipts from the Proprietary's Officers, with a Warrant from Mr. *Peters*, Secretary of the Land Office, several Years prior to Plaintiff's Patent, and proved upwards of twenty Years Possession; but the Plaintiff contending that the Receipts were only for Money paid on account of an adjacent Tract, and that there was some imposition on the Land Officer when the Warrant was granted; the Defendant produced a Witness to prove a parcel Declaration of Mr. *Thomas Penn* (when he was in the Country) that the Land in dispute was sold to Defendant.—This piece of Evidence was opposed by the Plaintiff, and refused BY THE COURT.

N. B. The Plaintiff could prove no imposition on the Officer, and the Court gave a Charge in favour of the Defendant, and the Plaintiff would not take the Verdict, but became nonsuit.

STORY and WHARTON versus AMOS STRETTELL.

SUR Policy of Insurance. The Captain's Protest in *Jamaica* under the Seal of a Notary Publick there, given in Evidence to prove the Capture, and not opposed.

Instructions from the Plaintiffs (Owners of the Vessel insured) to the Captain at the Time of his sailing, sworn by the Captain to be the only Instructions he had, were given in Evidence by the Plaintiffs, to prove they had given the Captain no Orders to buy the Vessel on their account in case of a capture and re-capture, slightly opposed by Defendants Council, and given up without debate.

The Defendant in this case underwrote an open Policy on the Vessel from *Philadelphia* to *Jamaica*, she was taken by the Enemy and retaken, and carried into *Jamaica*, where by Agreement between the Captain and Recaptors; without going into the Court of Admiralty, she was sold at public Sale for about one fourth of the Sum insured, and bought by the Captain for the former Owners, who afterwards acquiesced in the purchase, and now sued for the whole Sum insured as a total loss. The Sale was proved to be fair, and the Plaintiff's Council insisted that from the moment of the Capture, there was a total loss, and cited divers cases to shew, that if there be a Capture; though it be not such a one as by the Law of Nations would change the Property, yet it would be sufficient to charge Underwriters with a total Loss, and the Assured in many instances.—*Beauv. Lex Mer.* 268. *Coryngham* 225. 250. 300. 340.

* But see the *Hab. Corp.* Act § 3. Passed the 18th Feb. 1705.