

cree into effect? Let it be supposed that the court had plainly expressed that meaning, and the chancellor to act in obedience to its mandate—what disinterested, impartial, intelligent person is there, that would not declare the common right of a citizen to be violated? It would, in such a case, be fruitless to allege that, as in contemplation of law, the decisions of the court of appeals must be right, it ought not to be supposed to have done wrong in any case whatever.

In a word, the chancellor is most decidedly of opinion, that although in no case will he disobey the plain directions of that tribunal, given on appeal from his decision, he cannot with propriety permit an execution to be taken out against the defendants, until its decree is obtained on the appeal, or unless the defendant shall fail to prosecute it agreeably to the condition of his bond, which the chancellor hath approved.

Most true it is, and much is it to be lamented on various accounts, that this cause hath continued a length of time equal to one half of a long life. For many years no steps was taken by either party; and it was even supposed to be abandoned on one side, and almost forgotten on the other. The chancellor wishes most earnestly an end of it. But had it continued thrice as long, he could not, for that reason, deprive the defendant of what he believes to be every defendant's right; notwithstanding that he is perfectly convinced of the rectitude of his last decree on the auditor's statement, which he considers as conformable to the principles contained in the decree of the court of appeals.

The appeal being granted, the record was transmitted to this court; and during the pendency of the appeal, the act of *November 1809, ch. 87*, passed, reciting that *Samuel Gover*, and others, had represented to the general assembly, that the above cause came on for trial in the late court of appeals at June term 1800; that *Benjamin Rumsey*, *Benjamin Mackall* and *Thomas Jones*, were the judges who signed the decree given in the cause, and that *Benjamin Rumsey*, at that time, was the presiding judge of the court, and that he declared, that being nearly related to one of the parties, he could not act in the usual manner, but that if he concurred in opinion with the other judges, he would sign the decree, so as to make up the legal number of judges required for constituting the court, and

1810.

Gover
vs
Hall