



Reports of Cases in Equity, Argued and Determined in the Supreme Court of North Carolina, Vol. 6: From December Term, 1860, to June Term, 1863, Both Inclusive (Classic Reprint)

Hamilton C. Jones

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Excerpt from Reports of Cases in Equity, Argued and Determined in the Supreme Court of North Carolina, Vol. 6: From December Term, 1860, to June Term, 1863, Both Inclusive

This was a bill filed by A. E. Myers, to vacate and set aside a judgment rendered at Fall Term, 1859, of Iredell Superior Court, and to enjoin the collection of the same. Plaintiff alleges, in his bill, that in 1856, he sold to the defendant a valuable horse; that shortly afterwards, said defendant alleged that plaintiff had practiced a fraud upon him in the trade, and brought suit against him to Fall Term, 1857, of Iredell Superior Court; that plaintiff and defendant before return term of said writ, agreed to refer the cause to Jacob Fraley, Steptoe Bennet, Williamson Campbell, and Davidson Sharpe, with leave to choose an umpire; that at Fall Term, 1857, of said Court, one of defendant's attorneys entered the reference on the docket, and shortly afterwards the referees met, and after selecting an umpire, decided the cause in favor of plaintiff, Myers, and filed their award in the office of the clerk of said court, in which they used the following language: "We find all issues in favor of the defendant," the present plaintiff. Plaintiff alleges further, that it was distinctly agreed between them, that the cause was "taken out of court," and the decision of said referees was to be final. Plaintiff further alleges, that when said referees decided the cause in his favor, defendant, Daniels, expressed himself satisfied, and he distinctly understood that the suit was at an end; that he, Myers, shortly afterwards removed to Wilkes county, where he still resides. Plaintiff further states, in his bill, that at the Spring Term, 1858, of said Court, defendant's counsel moved to set aside the award, because there were no "issues to be found," no pleas having been entered in the cause, and the award was stricken out; that at Fall Term, 1858, the reference was stricken out, on motion of the counsel of said Daniels, without any notice being given to plaintiff, Myers; that at Spring Term, 1859, a judgment by default and enquiry was entered against him, and at Fall Term, 1859, a jury was empanelled and a verdict rendered against him, in favor of Daniels, for \$296.00, and execution was issued to collect the same.

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