

Brudenell v. Vaux.

character and operation ; but the written paper, in the present instance, is of no more force, than any other testimony of its contents would be. The words in the declaration must, therefore, be considered as surplusage, and do not affect the material parts of the charge.

As to the other variances between the contract as laid, and the written contract produced, the same principles will apply. And the non-attendance *³⁰²] of the plaintiffs at the place of transfer, *is sufficiently excused by the waiver, which has been proved on the part of the defendant.

Verdict for the plaintiffs, for \$19,400.

Lewis, Rawle, Randolph and Dallas for the plaintiffs. *E. Tilghman, Ingersoll, Wilcocks and Sergeant*, for the defendant. (a)

APRIL TERM, 1794.

Present, WILSON and PETERS, Justices.

BRUDENELL *et al.* v. VAUX *et al.* •

Computation of time.

A statute requiring mortgage to be recorded within six months, held, to mean calendar, not lunar months.

THE question in this cause arose upon the act of assembly for recording mortgages (1 Dall. Laws, 112), the mortgage of the defendants having been recorded after the expiration of six lunar, but within six calendar, months, from the date : And THE COURT, having compared this with other acts of the legislature, were of opinion, that by the word "months," calendar months were intended.¹

Lewis and Tilghman, for the plaintiff. *Ingersoll, Rawle and Thomas*, for the defendant.

(a) The defendant's counsel tendered a bill of exceptions to the admission of Anderson's testimony ; and, also, to the opinion of the court on the points stated in the charge. A writ of error was, accordingly, brought ; but never prosecuted.

¹ *Commonwealth v. Chambre*, 4 Dall. 143 ; 4 Wend. 512 ; *People v. New York*, 10 Id. 393 ; *Moore v. Houston*, 3 S. & R. 159 ; *Snyder v. Leffingwell v. White*, 1 Johns. Cas. 99 ; *Sheets Warren*, 2 Cow. 518 ; *Parsons v. Chamberlin*, *v. Selden*, 2 Wall. 177.