

*HUNTER v. FAIRFAX's Devisee.

Continuance.

The death of a party's only counsel, so recently before the term, that sufficient time to employ other counsel, and have the case prepared for argument, had not elapsed, at the commencement of the term, is cause for continuing a case of magnitude and difficulty.

By order of the court, a letter from the plaintiff in error, dated the 29th July 1796, and directed to the clerk, was read. The letter stated, "that the plaintiff had employed Mr. Campbell, of Virginia, to argue the cause; that on the 25th of July, he was informed, that Mr. Campbell had died in Richmond, on the 18th of the same month; and that, being left without counsel, in consequence of this event, he prayed the cause might be continued till next term."

Lee and Ingersoll, in objection to the request, stated, that from the nature of the cause, delay would be worse to the defendant in error, than a decision adverse to his claim; that the plaintiff ought always to be ready for trial; that there had been sufficient notice of Mr. Campbell's death, for engaging the assistance of other counsel; that the case depended entirely on the record, might yet be considered by counsel, so as to obtain a decision during this court, and that it had already been postponed one term, at the instance of the plaintiff in error. But—

BY THE COURT.—In all questions of this nature, we must be governed by a sound discretion; in order to prevent, on the one hand, an unnecessary procrastination, and on the other hand, to avoid an injurious precipitation of trials. In the present instance, we think, there is a sufficient foundation laid before us, to justify our granting a continuance until the next term. If the cause were now to be taken up, it must be heard and decided *ex parte*. It is true, that counsel might, even at this time, be employed, so as to admit, perhaps, of an argument before the court rises; but it is reasonable, that in a cause of such magnitude, (a) the counsel should have an opportunity *to investigate the principles, and to consider the authorities connected with it, out of term, and unincumbered by the pressure of the current business of the court.

Let the cause be continued.

(a) The attorney-general stated the point in controversy to arise on these facts: Lord Fairfax was a citizen of Virginia, and died in the year 1780; having made a will by which he devised certain lands in that state, to the defendant in error, who then was, and ever has been, a British subject, resident in Great Britain. The question is, whether, being thus an alien, the defendant in error can take and hold the lands by devise? And it will be contended, that his title is completely protected by the treaty of peace, concluded between the United States and Great Britain, in the year 1783.

CHASE, Justice.—I recollect, that in Harrison's case, a decision in favor of such a devisee's title was given, by a court in Maryland. It is a matter, however, of great moment; and ought to be deliberately and finally settled.