MODERN REPORTS;

OR,

SELECT CASES

ADJUDGED IN

THE COURTS

OF

KING'S BENCH,

CHANCERY, COMMON PLEAS,

AND

EXCHEQUER.

VOLUME THE FOURTH;

CONTAINING,

A Collection of ſeveral Special Caſes argued and adjudged in the Courts of KING AND QUEEN'S BENCH, from the Second to the Sixth Year of WILLIAM AND MARY, and Judgments thereupon; with ſeveral of the Pleadings at large; being carefully examined by the Records: And alſo the Number of the Rolls of moſt of the other Caſes.

THE FIFTH EDITION,

CORRECTED:

WITH THE ADDITION OF MARGINAL REFERENCES AND NOTES,

By THOMAS LEACH, Eſq.

OF THE MIDDLE TEMPLE, BARRISTER AT LAW.

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1793.

ROBINSON *againſt* SMITH.

at de ſtatu cuſtumario hæreditario deſcendible from anceſtor to heir, according to the cuſtom of the ſaid manor, and that the plaintiff's cow was in the ſaid cloſe doing damages, &c.

The plaintiff demurred generally.

FIRST, It was ſaid for him, that it did not appear by the plea, that *Lowhill* was parcel of *the land* of which the defendant was ſeiſed, but parcel of *the manor*; for the word *unde* being a relative, refers *ad proximum antecedens*, which is *the manor*.

SECONDLY, It is ſaid he was ſeiſed *de ſtatu hæreditario* deſcendible, &c. and does not ſhew of whoſe grant; for though it may not appear who was the firſt grantee, it being ſo long ſince the copyhold was granted, yet the admittance of an heir upon a ſurrender or deſcent amounts to a grant, and ought to be ſo pleaded.

E contra. The defendant does not juſtify by reaſon of a title, but for a wrong done; and therefore though he ſays *ſeiſitus fuit*, &c. and does not ſhew how, or in what manner, yet ſince it was only *a tort* with which he was charged, it is well enough, and it muſt have been agreed to be ſo if he had ſaid *poſſeſſionatus fuit* inſtead of *ſeiſitus*.

But THE COURT were of another opinion, for where *ſeiſin in fee* is pleaded of a copyhold eſtate by way of juſtifying of an offence with which the defendant is charged, he muſt ſet out the commencement of his eſtate.

And therefore the plaintiff had judgment.

* [347]

* Allen *againſt* Symonds.

Caſe 124.

Eaſter Term, 6. Will. & Mary, Roll 299.

A defendant may plead a miſnomer of his *ſurname* with a *traverſe*, and the plaintiff reply that he was known as well by the one name as the other.

AN ACTION on the caſe was brought againſt the defendant by the name of *Symonds*. He pleaded in *abatement*, that from the time of his birth to the time of the action brought he was known by the name of *Symms*; and traverſed that he was known by the name of *Symonds*. The plaintiff replied, that the ſaid defendant was known as well by the one name as by the other.

And upon *a demurrer* THE COURT inclined that this plea was a good plea. But at another day, they being of opinion that the precedents were both ways upon *a traverſe* (*a*), the defendant was adviſed to take a new declaration, which he conſented to do accordingly; but without coſts (*b*).

S. C. 3. Salk. 239. 210. S.C.Comb.308.

3. Mod. 203. 10. Mod. 208. 284. Comy. 371. 541. 1. Com. Dig. "Abatement" (F. 18.). 3. Bac. Abr. 624, 625. Stra. 156. 316. 614. 787. 850. 1218. Ld. Ray. 118. 249. 301. 509. 1015. 1308.

(*a*) Old Ent. 27. Raſt. Ent. 616.

(*b*) The queſtion in this caſe ſeems to have been, Whether the plaintiff ought to have concluded his replication *to iſſue*, or with a *verification*? S. C. Comb. 308. And it is ſaid, that the defendant having added a *traverſe* to his plea, the replication ought to have been to *the country*; for in pleas the traverſe is a negative, and every general negative muſt conclude to the country, and therefore the miſconcluſion of the replication had made a diſcontinuance. S. C. 2. Salk. 260. See Haywood v. Davis, 1. Salk. 4.; Robinſon v. Rayley, 1. Ran. 317. Boyce v. Whitaker, Dougl. 95; Smith v. Dover, Dougl 427; Hedges v. Sandon, 2. Term Rep. 439.

Crump