REPORTS

OF

SIR GEORGE CROKE, KNIGHT,

OF

SELECT CASES

ADJUDGED IN THE

COURTS of KING's-BENCH and COMMON-PLEAS,

IN THE REIGNS OF

QUEEN ELIZABETH, KING JAMES, and KING CHARLES I.

IN THREE VOLUMES.

VOLUME THE FIRST—PART THE SECOND,

FROM THE

THIRTY-EIGHTH YEAR TO THE END OF THE REIGN

OF

QUEEN ELIZABETH.

M. D.

REPORTS

OF

SIR GEORGE CROKE, KNIGHT,

FORMERLY ONE OF THE

JUSTICES

OF THE

COURTS of KING's-BENCH and COMMON-PLEAS,

OF SUCH

SELECT CASES

AS WERE ADJUDGED IN THE SAID COURTS DURING THE

REIGN of QUEEN ELIZABETH.

COLLECTED AND WRITTEN IN FRENCH,

By HIMSELF;

REVISED AND PUBLISHED IN ENGLISH

By SIR HARBOTTLE GRIMSTON, BARONET,
MASTER OF THE ROLLS.

THE FOURTH EDITION, CORRECTED,

WITH

MARGINAL NOTES and REFERENCES to the LATER REPORTS,

AND OTHER BOOKS OF AUTHORITY,

By THOMAS LEACH, ESQ.

OF THE MIDDLE TEMPLE, BARRISTER AT LAW.

LONDON:

PRINTED FOR E. AND R. BROOKE, BELL-YARD, TEMPLE-BAR;
AND T. WHIELDON, FLEET-STREET.

M,DCC,XC.

Blodwell *againſt* Edwards.

CASE 34.

Hilary Term, 38. *Eliz. Roll* 1061.

ERROR. The caſe was, JOHN BLODWELL, being ſeiſed of land in fee, made a feoffment to the uſe of himſelf for life, and after to the uſe of ſuch iſſue, and iſſues males of the body of *Margaret Lloyd*, from eldeſt to eldeſt, and who by common ſuppoſition or intendments ſhould be adjudged or reputed to be begotten by the ſaid *John Blodwell* upon the body of the ſaid *Margaret Loyd*, whether the ſaid iſſue, and iſſues males, ſo born of the ſaid *Margaret*, and reputed to be begotten upon her by the ſaid *J. Blodwell*, *ſint per legem hujus regni Angliæ adjudicati et legitimè mulierly* begotten, or unlawfully and *immulierly* begotten betwixt the foreſaid *Margaret* and the foreſaid *J. Blodwell*; and to the heirs of the bodies of ſuch iſſue, or iſſues males, *de ſeniore in ſeniorem exiſtent. nat. de prædictâ Margaretâ in formâ prædictâ*. Afterwards *John Blodwell* had iſſue by the ſaid *Margaret Richard Blodwell*, now plaintiff. EDWARDS, the defendant, recovered againſt the ſaid *John Blodwell*, in an aſſiſe 12. *Elizabeth*. *John Blodwell* died; and *Richard Blodwell* brought error, as he in the remainder; and averred, that he was the iſſue engendered of the body of the ſaid *Margaret*, and was always ſince his birth, and yet is reputed to be engendered by the ſaid *John Blodwell*, *&c.*—The firſt error aſſigned was, Becauſe the tenant in the aſſiſe pleads to the iſſue *in nul tort*; and at the day of the *habeas corpora* returned, the enty is, *quidam recognitorum aſſiſæ venerunt, et quidam non venerunt. Ideo* a *diſtringas* with a *decem tales* was awarded, and thereupon trial had; and therefore erroneous, becauſe it is not mentioned that the trial was deferred, and the *tales* awarded, *pro defectu juratorum*: and it may be, notwithſtanding *quidam juratorum non venerunt*, that a full jury might have appeared; and then the deferring of the trial, and the awarding of *tales*, was without cauſe. *Vide* 22. *Edw.* 4. c. 15. 1. *Rich.* 3. *pl.* 4. 15. *Hen.* 7. *pl.* 16.—A ſecond error aſſigned was, Becauſe the ſheriff's name was not to the return of the writ of *habeas corpora*, nor to the return of the writ where the *decem tales* was returned: and for not putting his name to the return, it was vicious, by the ſtatute of *York*, 12. *Edw.* 2. c. 5. And for that *vide* 26. *Hen.* 8. *pl.* 3. 9. *Edw.* 4. *pl.* 19. 11. *Hen.* 6. *pl.* 94. And theſe be not holpen by any of the ſtatutes of jeofails. And the recovery was before the ſtatute of 18. *Eliz.* c. 16. Wherefore, &c.—And all THE COURT reſolved, that both errors were manifeſt; and for that cauſe the judgment reverſable: and the counſel on the other ſide did not much inſiſt upon them to defend them.

The reaſon why a *tales* was awarded muſt appear upon the record; and the ſheriff's name muſt be to the return both of the *habeas corpora* and *decem tales*.

S. C. Moor, 430. 1. Roll. Abr. 799. 2. Roll. Abr. 43. Noy, 35.

Ante, 300.

But it was moved, that the plaintiff had not here ſufficiently entituled himſelf to have any remainder, and then he cannot have a writ of error; for a remainder ought to be limited to a perſon *in eſſe*, or who by intendment ſhall come *in eſſe*, during the particular eſtate. But the law hath not any expectancy of a baſtard ſon to be born which is not *in eſſe* at the time of the limitation. And here it doth not appear by his averment that he is the lawful iſſue. Wherefore, &c.—GAWDY. Admitting he were a

A remainder limited to a baſtard not *in eſſe* is void.

S. C. Moor. 430. S. C. 2. Roll. Abr. 43. S. C. Noy, 35. 6. Co. 66. 68. Plowd. 32. 2. Co. 51.

2. Bl. Com. 170. Co. Lit. 123. Fearne, 176. Powel on Dev. 339. 1. Atk. 410. 1. Peer. Will. 529; See Mr. Hargrave's note 17. Co. Lit. 3. b. 2. Eq. Caſ. Ab. 291. 331. 1. Term Rep. 101.

BLODWELL *v. gainſt* WARDS.

baſtard, yet the limitation to him is good; for although he be not lawful iſſue, yet he is the iſſue of his mother without queſtion; and a remainder to a reputed ſon is clearly good, as 41. *Edw.* 3. *pl.* 19. and *Dyer*, 113. And the limitation here being to the eldeſt iſſue of the feme, he ſhall take it, although he were a baſtard; for ſo appears to be the expreſs intent of the deed.—POPHAM. Although a limitation of a remainder to a baſtard *in eſſe* is good, for that he is a perſon known, and may in time be a perſon known and reputed for the ſon of another, yet it cannot be ſo to a baſtard before he be born; for the law hath not any expectancy that any ſuch ſhould be, nor will give liberty or ſcope to provide for ſuch before they be. And he cannot take by ſuch a name, unleſs he be ſuch a perſon who is reputed a ſon, and none can gain the name at the inſtant time of his birth; but it ought to be by continuance of time and reputation of the country, and not of the father himſelf: and if he cannot take it at the time of his birth, he never afterwards ſhall take; for the law will not expect longer for the increaſing of a reputation. The limitation alſo to one and the iſſues of his body is always to be intended lawful iſſue; and the law will never regard any other iſſue. So here, foraſmuch as he hath not averred himſelf to be a lawful iſſue, but only a reputed, which cannot be, he hath not conveyed unto himſelf a ſufficient title to have this writ of error.—FENNER inclined to that opinion, and ſaid, that they had conferred with divers of the Juſtices in *Serjeants-Inn*, in *Fleet-ſtreet*; and that the greater opinion of them was, that a remainder to his firſt reputed ſon or baſtard is not good; becauſe the law doth not favour ſuch a generation, nor expect that ſuch ſhould be, nor will ſuffer ſuch a limitation, for the inconvenience which might ariſe thereupon. Wherefore, becauſe the plaintiff was in truth a lawful ſon, engendered between the ſaid *John Blodwell* and the ſaid *Margaret Lloyd* after they were married together; and this conveyance was only made in this manner to avoid ſcruple, which otherwiſe peradventure might happen, becauſe the ſaid *John Blodwell* was married to a former wife, and was divorced from her, if this divorce ſhould be repealed, which cannot now be in queſtion, all the parties being dead; the plaintiff diſcontinued this writ of error, and brought a new writ of error *coram vobis reſidet*; and therein averred the ſaid marriage, and that he was the firſt iſſue during the eſpouſals. *Et ſic pendet.*

CASE 35.

Harding *againſt* Sherman.

Venue.

ACTION of trover at *Paxton*, in the county of *Huntingdon*. The defendant pleads a bargain and ſale at *Royſton*, in the county of *Hertford*, in the market there, whereby he after converted them at *Paxton*, in the county of *Huntingdon*. The plaintiff ſaith, that he was poſſeſſed of thoſe goods at *Paxton*, in the county of *Huntingdon*, and that *J. Sherman* there ſtole them from him, and by covin betwixt him and the defendant at *Paxton*, in the county of *Huntingdon*, he ſold them to the defendant, as he hath pleaded. The iſſue was upon the ſale made by covin, &c. And it was tried in the county of *Hertford*, and found for the plaintiff. It was moved to be a miſ-trial; for it ought to have been by a jury of the county of *Hertford*, or at leaſtwiſe by a jury of both counties.—And of that opinion was GAWDY. But the other Juſtices *e contra*;