# 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 JAMES THE FIRST.

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 WHIELDON AND BUTTERWORTH, NO. 43, FLEET-STREET.
M,DCC,XCI.

CASE 3.

## Gregory *against* Wikes.

On a promise to enter into a bond, on request, for the payment of money by instalment, a request and refusal to give a bond in double the sum will support an *assumpsit*. Post. 652. 1. Roll. Ab. 19. Yelv. 44. 49. Winch. 76. Hob. 70. 77. Cowp. 128. 460.

ASSUMPSIT. Whereas the defendant was indebted to the plaintiff in fifteen pounds, that the defendant promised to pay it by twenty-five shillings the quarter, and to enter into bond upon request for the payment of those sums; and alledgeth request to enter into bond of thirty pounds for the payment of those sums; which request was made after the end of the quarter after the promise.

After verdict for the plaintiff, it was moved in arrest of judgment, that this request to enter into bond of thirty pounds, and refusal thereof, was not any breach; for there is not any promise to enter into bond in any sum certain.

*Sed non allocatur*: for the *assumpsit* being to enter into bond, no sum being mentioned, it is intended a bond of the double sum; which is the usual course betwixt parties, and after the common intendment: wherefore it is good enough.

On a promise to enter into a bond on request, to pay money by instalments, the request must be made before the first instalment.

SECONDLY, Because the request is after a quarter past, which is not sufficient, being after the day of payment; for if there should be a bond for the payment at a day past, it should be a forfeiture presently.—Wherefore for this cause it was adjudged for the defendant.

CASE 4.

## Green *against* Austen.

The *after-mowth* may be discharged by making the tythe-hay of the *first vesture*. Ante, 42. Yelv. 86. Cod. J. E. 706. Moor, 910. Ld. Ray. 242.

PROHIBITION, to stay a suit for tithes. It was surmised to be a custom within the parish, that the parishioner should cut his grass and make it into cocks, and set out the tenth cock for the parson, which was a discharge of the first and second vesture: and the suit being for tithes of the after-mowth by the vicar, this prescription being alledged against him, he demurred thereupon.—And it was adjudged a good prescription and bar against him.

Cro. Car. 340. Cro. Eliz. 660. Hob. 250. 12. Mod. 498. Bunb. 10. 314. 2. Peere Wms. 522, 523. 1. Eq. Cas. Abr. 735.

CASE 5.

## Blunt and Farly *against* Snedston.

*Michaelmas Term*, 2. *Jac.* 1. *Roll* 353.

If a *juror* be returned in the *venire* and *distringas* of the christ an name of CONSTANTINUS, and be called, in the *panel*, CONSTANTIUS, the judgment is erroneous. Post. 396. 457. 2. Roll. Ab. 411. 5. Co. 43. a. Cro. Car. 203. 563. Cro. Eliz. 57. 222. Hob. 64. 5. Com. Dig. 301. 3. Bac. Abr. 276. Cowp. 425. Dougl. 194. 665.

ERROR of a judgment in the common pleas, in ejectment: where one of the defendants pleaded not guilty; and verdict for the plaintiff against both, and judgment accordingly. The error assigned was, Because in the *venire facias* CONSTANTINUS CALLARD was returned, and so named in the *distringas*; but in the panel annexed thereto by the sheriff CONSTANTIUS CALLARD was returned and sworn, and so was returned by that name upon the dorse of the *postea*. This Error being assigned *ore tenus*, the record of the *venire facias* and *distringas* being removed before, it was held to be manifest error; for they are distinct names of baptism, and there cannot be any amendment as this case is. Wherefore they were of opinion to reverse it; but gave day to advise from *Hilary Term* until this Term.

The

THE DEFENDANT in the writ of error, in the mean time, obtained a releaſe of all errors from one of the plaintiffs in the writ of error; and the firſt day of this Term pleaded it in bar, as a plea *puis darreigne continuance*. Thereupon a demurrer was entered in the name of both the plaintiffs in the writ of error; for, *in nullo eſt erratum* being pleaded before, there could not now be any *ſummons and severance*. And it was now argued, Whether this releaſe of one of the plaintiffs in the writ of error ſhall bar both, or none of them? for it was moved, that in regard the action was in the perſonalty, the releaſe of the one ſhould bar the other.

If judgment be given in *ejectment* againſt ſeveral defendants, and one of them obtain a releaſe pending a writ of error, he may plead it in bar againſt the RELEASOR "*puis darrein continuance.*" Poſt. 243. 616.

But ALL THE COURT, after argument at the bar, reſolved, that it ſhould bar but him only who releaſed it; for the plea being by way of action, to diſcharge themſelves of damages which were recovered againſt them, and to be reſtored to the poſſeſſion which was loſt by the firſt judgment; and they being joined in the firſt action by the act of the plaintiff, and not by their own voluntary act; it is not reaſon that the act of one ſhould charge or prejudice the other; for then by ſuch practice any one might be charged, and ſhould not have any remedy to diſcharge himſelf: but if they had been plaintiffs in the record by their own act, as in debt upon an obligation, and had been barred in judgment, in error upon that judgment, the releaſe of one ſhould bar the other; for as the one might have releaſed the obligation, or diſcharged the principal action which ſhould bar his companion, wherein they are joint plaintiffs by their voluntary act, ſo the releaſe of the writ of error by the one ſhall bar the other; but it ſhall not do ſo in the principal caſe, for the reaſon before alledged. Wherefore it was adjudged, that the judgment ſhould be reverſed as to him who did not releaſe, and that he ſhould be reſtored to all what he loſt; and as to the other who releaſed, that he ſhould be barred in his writ of error.

6. Co. 25. Hob. 304. 2. Roll. Ab. 412. 3. Mod. 109 135. 3. Bac. Ab. 41. Dougl. 109. 3. Ter. Rep. 555.

NOTE. This manner of judgment was entered by ſpecial direction of the Court. *Vide* 2. *Hen.* 4. *pl.* 16. 11. *Edw.* 4. *pl.* 8. 11. *Rich.* 2. "*Condemnation,*" 16. and a judgment in *Eaſter Term*, 39. *Eliz. Roll* 359. in the caſe of *Razin v. Ruddock*.

See the entry in Brownlow Redivivus, p. 134. *L. C. B. Parker's MS.*

## Oſley *againſt* Paradine.

CASE 6.

*Trinity Term*, 3. *Jac.* 1. *Roll* 481.

DEBT, upon a leaſe for twenty-one years by *John Paradine*, 31. *January*, 26. *Eliz.* from the *Chriſtmas* before, rendering twenty pounds a year at the four uſual Feaſts, of the *Annunciation*, *Midſummer*, *Michaelmas*, and *Chriſtmas*, or at the end of one month after every of the ſaid Feaſts; who conveyed the reverſion by common recovery to *Hugh Oſley*; who died ſeiſed, and this reverſion deſcended to the plaintiff, who is yet ſeiſed of the reverſion at the day of the bill purchaſed, which was 1. *February*, 2. *Jac.* 1.; and the defendant being poſſeſſed of the term by virtue of

A declaration in debt for rent on a leaſe, ſtating that the plaintiff is yet ſeiſed of the reverſion, when it appears that at the time of the writ the leaſe was determined, is not erroneous, if he was ſeiſed when the cauſe of action accrued. Poſt. 377. 550.