

# The Reports

OF

SIR EDWARD COKE, KNT.

IN THIRTEEN PARTS.

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A NEW EDITION,

WITH ADDITIONAL NOTES AND REFERENCES,  
AND WITH ABSTRACTS OF THE PRINCIPAL POINTS :

THE FIRST THREE PARTS AND THE FOURTH TO FOL. 38 a.

By JOHN HENRY THOMAS, Esq.

THE REST OF THE FOURTH AND THE REMAINING NINE PARTS

By JOHN FARQUHAR FRASER, Esq.

OF LINCOLN'S INN, BARRISTER AT LAW.

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IN SIX VOLUMES.

VOL. III.

PARTS V—VI.

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LONDON :

JOSEPH BUTTERWORTH AND SON, 43, FLEET-STREET ;

AND J. COOKE, ORMOND QUAY, DUBLIN.

1826.

IN debt on a bond of 500*l.* brought by the Countess of Rutland: the defendant pleaded to issue, and it was found for the plaintiff. And now in arrest of judgment it was shewed, that one Robert Moore was returned on the *Venire facias*, and so named in the distress, but in the panel before the Justices of *Nisi prius*, by misprision he was named (a) Robert Mawre, and so on the *Postea*; upon which it was said that a stranger, who was not returned, was sworn and gave verdict; for which cause judgment should not be given. But it was resolved by the whole court, that if it could appear by examination that his \*right name is Robert Moore, so that he is well named in the panel on the (b) *Venire facias*, and also that he is the same man who was returned, and was sworn, there, the *Postea* should be amended. And to this purpose, *vide* 9 E. 4. 14. by Danby, & 19 H. 6. 39. tit. Amendment Br. 37. 27 H. 6. 5. by which books it appears, that if one be well returned in the panel of *Venire facias*, and misnamed in the *Distringas*, or *Habeas corpora*, that it was not amendable; but the process against the jurors was discontinued: but at this day, after verdict, judgment shall not be therefore stayed, for all discontinuances are remedied by the stat. of 32 H. 8. and 18 Eliz. But at this day, if a juror be misnamed in the panel of *Venire facias*, although he be well named in all the subsequent process, it cannot be amended. And so it was adjudged M. 35 & 36 Eliz. in the King's Bench in Codwell's case; and afterwards the Sheriff was examined, and on examination it appeared that the true name of the juror was Robert Moore, and the said Robert Moore who was returned appeared and gave his verdict; and thereupon for the reason aforesaid, the record of the *Postea* was amended by the opinion of the whole court, *viz.* Popham, Chief Justice, Clench, Gawdy, and Fenner (A).

(a) 1 Roll. 197.  
8 Co. 162. b.  
Moor, 762.  
1 Roll. Rep.  
200. 2 Roll.  
Rep. 168. 483.  
[ \* 42 b. ]  
(b) 8 Co. 162. b.  
Moor, 762.  
1 Roll. Rep.  
200. 2 Roll.  
Rep. 168. 483.  
Postea, 43. a.  
1 Roll. 197.  
Cr. El. 57. 222.  
32 H. 8. cap.  
30. 18 El. c. 14.  
21 Jac. cap.  
13. Cr. Jac.  
457, 458. Cr.  
Car. 278.  
1 Roll. 404.

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(A) Vid. n. (A) *Rowland's case*, ante p. 86.

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## CODWELL'S CASE.

Mich. 35 & 36 Eliz.

In the King's Bench.

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WHEN a juror is misnamed in the panel of the *venire facias*, after verdict for the plaintiff the judgment shall be arrested. S. C. Cro. Eliz. 320.

CODWELL  
v.  
PARKER.  
Part V.—42 b.

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IN an appeal of Mayhem between John Codwell plaintiff, and Thomas Parker defendant, the parties came to issue, and the ju- 1 Roll. 197,  
198.

Goldsb. 184,  
185. Moor. 762.  
Cr. Jac. 457,  
458. Cr. Car.  
203. Palm.  
103, 104.

[ \* 43 a. ]

(a) 1 Roll. 197,  
198. 1 Jones,  
448, 449. Cr.  
Car. 32. 203.  
563. Cr. El. 57.  
222. 258. 866.  
Cr. Jac. 23.  
116. 353, 354.

396. 457, 458. 653, 654. 1 Roll. Rep. 474, 475. Hutt. 81. 3 Bulst. 179, 180. Hob. 328. 1 Leon. 278. Owen, 61, 62. 1 Sid. 66. 1 Keb. 182. (b) Cr. El. 256.

ry found for the plaintiff; and now it was moved, in arrest of judgment, that there was variance between the panel of the *Venire facias* and the *Distringas* and *Postea* in the name of one of the jury, who appeared and gave verdict; for in the panel of the *Venire facias* he was named Palus Cheal, and in the *Distringas* and \* *Postea* he was named Paulus Cheale; and because the name of the juror (a) was misnamed in the *Venire facias*, and especially in his (b) christian name; therefore the judgment was arrested; but if he had been well named in the pannel of the *Venire facias* and misnamed on the *Distringas* or in the *Postea*, there, on examination it should be amended (A).

(A) The stat. 21 Jac. 1. c. 13, does not extend to appeals of felony or murthor, nor to any indictment or presentment of felony, murthor or treason, nor to any writ, bill, action or information upon any popular or penal statute.

Appeals of murder, felony, and other offences are now taken away by stat. 59 Geo. 3. c. 24.

The 21 Jac. 1. s. 2. mentions only mistakes in the surnames or additions, and therefore a mistake in the Christian name in the *venire facias* is incurable, Gilb. C. P. 107. But the Court of Common Pleas refused to set aside a verdict and grant a new trial, because one of the jurors was named Henry in the *venire, habeas corpora*, and *postea*, his real Christian name being Harry, *Wray v. Thorn*, Willes, 488. S. C. Barnes, 454. And in a late case where the son

of a juryman summoned and returned, had answered to his father's name when called on in the panel, and served without objection as one of the jury on the trial of the cause, the Court of King's Bench after consulting with the other judges, held that this was not of itself a sufficient ground for setting aside the verdict as for a mis-trial, *Hill v. Yates*, 12 East, 230. But where a person not summoned to serve on a jury answered to the name of a person who was, and served in his room, the objection having been made before the verdict was taken, the Court of Common Pleas awarded a *venire de novo*, *Dovey v. Hobsan*, 6 Taunt. 460. S. C. 2 Marsh. 154. Vid. Tidd's Practice, 958. 8th edit.

## NICHOLS'S CASE.

Mich. 37 & 38 Eliz.

In the King's Bench.

CHAMBER-  
LAIN  
v.  
NICHOLS.  
Part V.—43 a.

To debt on a single bill, the defendant pleaded payment without acquittance, and on issue joined, it was found for the plaintiff, and held that it was helped by Stat. 32. H. 8. & 18 Eliz. S. C. [Cro. Eliz. 455. Moore, 692. Jenk. Cent. 257.]

3 Salk. 305.  
Cr. El. 157.  
679. 716. 884.  
1 Brownl. 225.  
229. 232.  
Moor, 13. Dy.

CHAMBERLAIN brought debt against Nichols on a single bill; the defendant pleaded payment without acquittance, on which they were at issue, and found for the plaintiff; and although

6. pl. 3. 1 Roll. 243. pl. 4. Cr. Car. 27. 78. Cr. Jac. 86. 377. 435. 447. Noy, 85, 86. Latch. 158. 1 Jones, 140, 141. Hob. 68, 69. 113. 1 Keb. 5. pl. 13. Winch. 76. Hutt. 54. 3 Bulst. 301, 302. O. Benl. 127. Hard. 2, 3. 40. Lane, 81. Style, 198.

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