# 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~~ FOUR VOLUMES.

VOLUME THE FIRST—PART THE FIRST,

FROM THE

TWENTY-FOURTH TO THE THIRTY-EIGHTH YEAR

OF

QUEEN ELIZABETH.

# 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;

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MASTER OF THE ROLLS.

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WITH

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AND OTHER BOOKS OF AUTHORITY,

By THOMAS LEACH, ESQ.

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1599.

The chief matter was, admitting the name had been right pleaded, and that *Robert Pitman* had releaſed, if this releaſe was good. COKE argued, that foraſmuch that only the plaintiffs in the premiſes of the indenture were parties of the one part, and the defendant of the other, although *Robert Pitman* is afterwards named in the deed, it is a void deed as to him; and no covenant made to him or by him is good, for he is a ſtranger to it, and his ſealing and delivery is not material: as if *I. S.* by indenture between him of the one part, and *I. D.* of the other, demiſeth lands to *I. D.* and *A. B.* it is void to *A. B.* And he anſwered the caſes put by GODFREY of the other ſide, 4. *Edw.* 2. *Obligation*, where an obligation was made by *I. S.* & *ad majorem rei ſecuritatem inveni J. D. Fide-Juſſorem*, and *I. D.* put his ſeal to it; this was his deed: which caſe he agreed; for it is not mentioned whoſe deed it is; and ſo is the deed of both which are named, and put their ſeals, &c. So when an incumbent grants a rent, by the aſſent of patron and ordinary, and they put their ſeals to it, this is not their deed, but only their agreement to it; and the caſe of 39. *Edw.* 3. *pl.* 9. is upon the ſame reaſon of 4. *Edw.* 2.—In *Mich.* 29. & 30. *Eliz.* it was adjudged for the plaintiffs, and the principal cauſe was the *miſnoſmer*, which the Court held could not be amended. WRAY ſaid, they conceived the matter in law to be alſo for the plaintiffs.

EAST SKIRMORE, &c. *againſt* VAUDSTEVAN.

A perſon whoſe name is not mentioned in the *premiſes* of a deed, is not a party to it. Poſt. 58. 115. 2. Inſt. 673. 2. Rol. 22. Cowp. 600.

## Sir Walter Aſton *againſt* Whitenall.

CASE 6.

WASTE. Error was brought of a judgment, in an action of waſte, and the error aſſigned, that the plaintiff in the action did count, *quòd cum fuiſſet ſeiſitus* of the land, he did demiſe the ſame to the defendant for years, and he had done waſte. The defendant pleaded "*nul waſte fait*," and found againſt him, and judgment given. The error aſſigned was, that he ſaith "*quòd* "*ſeiſitus, &c.*" but ſaid not of what eſtate; and ſo may be intended but an eſtate for life.

*Qu.* If in waſte by leſſor againſt leſſee, it is neceſſary for the plaintiff expreſsly to plead the eſtate of which he is ſeiſed. Ante, 22. Poſt. 65. 87. 9. Co. 27. a.

GODFREY and BEAUMONT ſaid, that the declaration ought to comprehend certainty, and ſhall not be good by intendment: and although the declaration had been good, if he had not mentioned any ſeiſin; yet when he alledges ſeiſin, and that inſufficiently, the declaration is not good; as *Partridge's Caſe* in *Plowden* reciting a ſtatute, &c. (*a*).

But SCHUTE and CLENCH, *Juſtices*, held the declaration to be good; for the allegation of ſeiſin is not material, when it might have been left out; and it is helped by the words ſubſequent, *viz.* "*ad exhæreditationem*," which explain how he was ſeiſed; and it being but matter of form, it is helped by the ſtatute of *jeofails* after verdict.—GAWDY doubted; *et adjournatur*.

(*a*) Plunken *v.* Griffith Poſt. 236. Dougl. 642. 1. Term Rep. 236.

## Diſply *againſt* Sprat.

CASE 7.

EJECTIONE FIRMÆ. They were at iſſue, and in the *venire facias* one of the pannel was named *Thomas Barker* of *D.* and in the *diſtringas jurat'* he was left out, and *Thomas Carter de D.* put in his place. At the *niſi prius Thomas Carter* was ſworn, and, with others, tried the iſſue.—COKE alledged this in arreſt of judg-

A man can have but one name of baptiſm; but he may have two ſirnames.

DISPLY *againſt* SPRAT.

Poſt. 319. 222. 258. 328. 866. Cro. Jac. 558. 5. Co. 42, 43. Co. Lit. 3. a. 3. Bac. Abr. 276. 622.

judgment; for now there were but eleven of the pannel, *Thomas Carter* being miſtaken, and falſly named for *Thomas Baker*; as in a *venire facias*, a juror was returned by the name of *George Tompſon*, and in the *diſtringas jurat'* he was named *Gregory Tompſon*, and ſworn at the *niſi prius*; and this was held a void verdict.—But THE COURT ſaid, there is a great difference between a miſtake in the name of baptiſm, and in the ſirname; for a man can have but one name of baptiſm, but may have two ſirnames.

CASE 8.

## Windſmore *againſt* Hubbard.

*Trinity Term, 27. Eliz. Roll* 850.

A leaſe to one for life *habendum* to his three ſons ſucceſſively, but omitting to mention them in the premiſes of the deed, ſhall be for the life of the father only, and the ſons ſhall not take in poſſeſſion nor by way of remainder; nor can there be an *occupant* to ſuch an eſtate.
Ante 56.
Poſt. 89. 121. 491.
Owen, 138.
Geldb. 51.
Co. Lit. 6. 9. Co. 47.
2. Roll. Abr. 65.
Hob. 275 313.
Hutt. 87.
Cart. 5.
Cro. Jac. 564.
13. Co. 54.
Poph. 126.
1. Wood Con. 17.
1. Salk. 188.

EJECTIONE FIRMÆ. The caſe was, *Lord Sturton* by indenture between him and *J. S.* let certain land to *J. S.* for life, *habendum* to him and *A. B.* and *C.* his three ſons *ſucceſſivè*. The firſt queſtion was, If they all took an eſtate, becauſe the ſons were not named in the premiſes of the deed? Secondly, the queſtion was, If they take, whether they take jointly, or not? And thirdly, If they take no way, whether there ſhall be an occupant for the life of the three others, ſo as it ſhall be a leaſe to *J. S.* for his own life, and for the life of the three ſons? And after argument by *Coke* and others, the clear opinion of the Court was, That the ſons ſhall not take in poſſeſſion, becauſe they are *not named* in the premiſes of the deed, nor ſhall they take by way of remainder; for the intent was, to give the land to them in poſſeſſion, 18. *Edw.* 3. *pl.* 59. *Broke* "*Leaſes*" 54. The only doubt was, if there ſhall be an occupant?—But WRAY, C. J. ſaid, there can be no occupant; for it being limited to the father for his life, this is a greater eſtate than for the lives of others (*vide* 5. *Co. Roſſe's Caſe*) and the three ſons are named as perſons to have an eſtate, and not to make a limitation of an eſtate. And *Trin.* 29. it was adjudged, that there was no remainder, and that there ſhall be no occupant (*a*). *Ex relatione* WALTER.

NOTA. *Delaper's Caſe*, 17. *Eliz.* (*b*). Tenant by the courteſy grants over his eſtate; the grantee deviſeth it, and dieth: this was held a void deviſe, and out of the ſtatute of wills: and it was held, that although the deviſee doth firſt enter after the death of the deviſor; yet he ſhall not have the land as an occupant, for there ſhall be no occupant of an eſtate of tenant by courteſy, or tenant in dower, which are eſtates created by law. *Ex relatione* EDWARD COKE.

(*a*) By 29. Car. 2. c. 3. where there is no ſpecial occupant in whom the eſtate may veſt, the tenant *pur autre vie* may deviſe it by will, or it ſhall go to the executors, and be aſſets in their hands for payment of debts.—And by 14. Geo. 2. c. 20. it ſhall veſt not only in the executors, but in caſe the tenant dies inteſtate, in the adminiſtrators alſo, and go in a courſe of diſtribution like a chattel intereſt.—See 2. Bl. Com. 259, 260.

(*b*) Vide Harg. Co. Lit. 41. b. note [1] where this ſubject is explained. See alſo Powell on Deviſes, p. 37.