REPORTS

OF

CASES

ARGUED AND DETERMINED

IN THE

Court of Common Pleas,

AND

OTHER COURTS,

FROM TRINITY TERM, 53 GEO. III. 1813,
TO MICHAELMAS TERM, 55 GEO. III. 1814,

BOTH INCLUSIVE.

With Tables of the Cases and Principal Matters.

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FOR J. BUTTERWORTH AND SON, FLEET-STREET,
AND J. COOKE, ORMOND-QUAY, DUBLIN.
1815.

1814.
GROJAN
v.
LEE.

has been there decided in more than one caſe (*a*), that both the month and the year muſt be written in words at length; and that though the month be written at length, yet if the year be in figures, it is bad. Suppoſing that the ſtatute does not require the year to be added, although the blank left in the form given by the act may as well be intended for the year as for the month, yet if the year is added, the year is a qualification of the month; and therefore the year muſt be expreſſed in words as well as the month. Conſequently we think, that upon the reaſon of the thing, as well as upon authority, the ſervice of the writ, not the writ itſelf, (for the writ is right, and the *Engliſh* notice only is wrong;) is bad, and the rule muſt be altered accordingly: and as the rule was drawn up for ſetting aſide the writ, it became neceſſary for the Plaintiff to appear and defend his writ, which is not vicious, and therefore the Defendant is not entitled to his coſts.

Rule abſolute to ſet aſide the ſervice of the writ of *capias ad reſpondendum* upon payment of coſts.

(*a*) The following note was communicated to this Court by *Bayley J.*

In *Williams* v. *Jay*, *Hilary* term 1814, the Court of King's Bench held the ſervice of the proceſs irregular where the day and month in the notice were in words at length, and the year in figures. The Court did not ſet aſide the writ, but merely the ſervice.—

The caſe in *Str.* 1232. was cited.

June 25.

DOCKER *v.* KING.

A plea in abatement muſt begin by alleging that the Defendant, ſtyling him by his real Chriſtian name, comes, &c.

And it muſt alſo give his real ſurname.

THE Defendant pleaded in abatement as follows. And he againſt whom the Plaintiffs have iſſued their original writ by the name of *Willoughby King*, in his pro-

per

1814.

DOCKER v. KING.

per perſon comes, and pleads that he was baptized by the name of *Welby*, to wit, at *London*, and by the Chriſtian name of *Welby* hath always ſince his baptiſm hitherto been called or known, without this, that the ſaid *Welby* now is, or at the time of ſuing forth of the ſaid writ, or ever before, was, or ever ſince hath been, known by the *Chriſtian* name of *Willoughby*. The Plaintiffs demurred, and aſſigned for cauſes, that the Defendant had admitted that he was the perſon named and ſued, and that he had not commenced his plea with the words, "and *Welby King*, againſt whom the Plaintiffs have iſſued their original writ," &c. in the uſual and known mode of pleading a plea in abatement; and alſo that the plea only ſtated that the Defendant was called *or* known by the name of *Welby*, and not that he was called and known; and alſo for that the plea did not ſet out the ſurname as well as the Chriſtian name of the Defendant, as it ought to do.

Beſt Serjt., in ſupport of the demurrer, cited *Haworth* v. *Spraggs*, 8 *T. R.* 515. as deciſive in favour of the laſt objection.

Vaughan Serjt. *contrà*.

The Court were clear that the Plaintiff was entitled to judgment.

Judgment *reſpondeat ouſter* (*a*).

(*a*) PEAKE *v.* DAVIS. 1813. *May* 19.

THE Defendant pleaded in abatement in the ſame terms as in the caſe of *Docker* v. *King*, and prayed judgment of the writ. The Plaintiff ſpecially demurred, for that the Defendant had admitted himſelf to be the perſon ſued by the name of *John*, and that his ſurname was not ſhewn with certainty. *Sellon* Serjt., in ſupport

A Defendant cannot in this court now plead in abatement to the original writ, for the Court will not grant him oyer.

A Defendant who pleads a miſnomer in abatement muſt come and appear by his right name, and not by the deſcription "he who is ſued."

And he muſt ſhew his ſurname with certainty.

PEARE v. DAVIS.

support of the demurrer: There is a fundamental objection to this plea, on grounds of general demurrer: it is a plea to the original writ, and the Defendant prays judgment of the writ. That cannot be done without craving oyer of the writ, which will not now be given, and therefore the Defendant cannot at this day have a plea in abatement to the writ, in this court: he may plead in abatement to the declaration.

Shepherd Serjt., *contrà*. It is not neceſſary to have oyer of the writ, except in a caſe where the Defendant wiſhes to take advantage of a variance between the writ and the declaration. *Herne's Pleader*, and he who by the writ aforeſaid is named *G.*, comes and pleads, &c. The caſe in 8 T.R. 515. *Howarth* v. *Spraggs*, was decided without reference to any of the old caſes. The form "and *he*, who," &c. is very antient.

The Court, on the authority of *Howarth* v. *Spraggs*, gave judgment for the Plaintiff.

1814.

June 27.

CONNOR *v.* SMYTHE.

If a ſhip-owner covenants to take a cargo at *O.*, and therewith proceed with the firſt convoy that ſhould ſail for *England* 14 working days after the veſſel was ready to load, and the freighter covenants to load and diſpatch her within 14 days after notice that ſhe is ready to load; but it is declared that the ſhip may be detained 15 days on demurrage: the freighter, on detaining her on demurrage for the 15 days and paying for the ſame, is in the ſame condition at the end of that time, in which he would otherwiſe have been at the end of the 14 days.

COVENANT on a charter-party, whereby the Plaintiff covenanted that his ſhip, the *Nimble*, ſhould join and ſail with the firſt convoy for *Oporto*, and there receive a cargo of wines and cork, and therewith proceed with the firſt convoy that ſhould ſail from *Oporto* for *England* 14 working days after the veſſel was ready to take on board her cargo; and the Defendant, the freighter, covenanted to ſhip, on the veſſel's diſcharging her outward cargo at *Oporto*, a cargo of wines and cork, and to diſpatch her to join and ſail with the firſt convoy for *England*, within 14 working days after ſhe ſhould be ready to receive her cargo, and to diſcharge her cargo in *London*, and that, within the lay-days, or days of demurrage thereinafter granted; and it was declared lawful for the freighter to detain the veſſel 15 running days more, on demurrage, if required, at four guineas per day: the Plaintiff averred performance, and alleged for breach, firſt, that after the ſhip's arrival at *Oporto*, on the 2d of

February