REPORTS

OF

ADJUDGED CASES

IN THE

Court of Common Pleas

DURING THE TIME

LORD CHIEF JUSTICE WILLES

PRESIDED IN THAT COURT;

TOGETHER WITH SOME FEW CASES OF THE SAME PERIOD DETERMINED

IN THE

HOUSE OF LORDS, COURT OF CHANCERY, AND EXCHEQUER CHAMBER.

Taken from the Manuſcripts of Lord Chief Juſtice Willes.

WITH NOTES AND REFERENCES

TO PRIOR AND SUBSEQUENT DECISIONS,

By CHARLES DURNFORD,

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Dublin.

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1800.

1744. 5. or if they cannot be indicted for perjury becauſe the fact was committed in another country. Thoſe therefore who are plainly not liable to be indicted for perjury have often been, and for the ſake of juſtice muſt be, admitted as witneſſes; and ſo there is an end of this objection.

ORICHUND *againſt* BARKER.

From what I have ſaid it is plain that my opinion is that theſe depoſitions ought to be read in evidence."

F. 18 Geo. 2. Monday, May 18th.

EDWARD EVANS *againſt* HENRY KING, otherwiſe HENRY VAUGHAN KING.

A declaration on promiſes againſt John A., otherwiſe John James A., is bad, for a man cannot have two Chriſtian names.—It is a bad plea in abatement, that the defendant's name of *baptiſm* is not ſo and ſo.

HENRY King, otherwiſe *Henry Vaughan King*, of &c was attached to anſwer *Edward Evans*. The declaration, which was in aſſumpſit for work and labour, deſcribed the defendant by the name of *Henry*.

The defendant pleaded in abatement, thus; *Henry Vaughan King*, who was attached by the name of *Henry King* ſays that he is not nor can be underſtood to be the ſame perſon againſt whom the ſaid *Edward* hath brought his action, becauſe his name of baptiſm is *Henry Vaughan* and his ſurname *King*, and by the ſame name hath always been named and called, without this *that his name of baptiſm* is that of *Henry* alone, or by the name of baptiſm of *Henry* alone he was ever named or called &c.

The plaintiff replied that the ſaid *Henry Vaughan* is and at the time of ſuing forth the original writ and long before was called and known as well by the name of *Henry* alone as by the ſaid name of *Henry Vaughan* &c; and this he prays may be enquired of by the country.

The defendant demurred, and ſhewed for cauſe that the plaintiff replied new matter, and had concluded his replication to the country, when he ought to have concluded with an averment.

This

This case was argued on *Wednesday* the 15th of *May* by *Belfield* Serjt. for the defendant, and by *Draper* Serjt. for the plaintiff; and the opinion of the Court was now given by 1745.

Evans against King.

Willes, Lord Chief Justice (after stating the pleadings,) as follows.

"Upon this demurrer it comes now before the Court; and objections have been taken by my Brother *Belfield* to the declaration and the replication, and by my Brother *Draper* to the plea.

The objection to the declaration was, that the defendant is sued by two Christian names, whereas a man cannot have two Christian names at one and the same time; and for this my Brother *Belfield* cited *Panton* v. *Chowles*, *Moor* 89; *Field* v. *Winlow*, *Cro. Eliz.* 897; and *Watkins* v. *Oliver*, *Cro. Jac.* 558. The case in *Moor* of *Panton* v. *Chowles* is thus; the plaintiff, as administrator of *Eleanor Dancastell*, brought an action of debt against the defendant upon a bond entered into by him; he pleaded that *Eleanor* in her lifetime by the name of *Ellen* released to him all actions and demands: the plaintiff replied non est factum *Eleanoræ*, on which issue was joined, and found for the plaintiff; and upon a motion in arrest of judgment it was holden that the verdict was right, for that a person cannot have two names of baptism at the same time. But the pleadings may happen to be so that a person may be concluded by estoppel to say that his name is otherwise than that by which he has signed a deed (*a*). The case of *Field* v. *Winlow* in *Cro. Eliz.* is thus; in debt on bond the plaintiff declared that the defendant *James* by the name of *John Winlow* bound himself in a bond to the plaintiff; the defendant prayed oyer of the bond, and it appeared that the defendant had bound himself by the name of *John*, to which the defendant demurred; and all the Court held that the action lay not, for *John* cannot be *James* (*b*). The case of *Watkins* v. *Oliver*, in *Cro. Jac.* is much the strongest

(*a*) Vid. *Smithson* v. *Smith*, E. 17 G. 2. sup. 461.

(*b*) But if the defendant had been sued by the name of *John*, and had pleaded in abatement that his name was *James*, the plaintiff might have replied that the defendant was as well known by the one name as the other, and given in evidence the defendant's signature to the bond by the name of *John*.

of

1745. of the three. There the plaintiff declared againſt *Edmund* alias *Edward Watkins*, that he by the name of *Edmund* was bound in a bond for 100*l*., and for nonpayment the action was brought; the condition was that *Roger Watkins* ſhould pay 50*l* to the plaintiff upon ſuch a day. The defendant pleaded payment at the day, and iſſue thereupon, and found for the plaintiff, and judgment for him in the King's Bench. But upon error brought in the Exchequer Chamber the judgment was reverſed by all the juſtices and Barons, for *Edward* is bound and *Edmund* is ſued, which cannot be intended to be one and the ſame perſon; and no averment can help it, for one cannot have two Chriſtian names, and there can be no eſtoppel as this caſe is. The caſe of *Clarke* v. *Iſtead* in 1 *Lutw.* 894. is thus; in debt on a bond the plaintiff declared that Sir *Robert Clarke* the defendant, by the name of *John Clarke*, became bound; the defendant pleaded non eſt factum, and on a ſpecial verdict judgment was given in the King's Bench for the plaintiff: but it was reverſed by the whole Court in the Exchequer Chamber. Many caſes were cited in 1 *Lutwich* as a foundation for this reverſal; among the reſt the caſes before mentioned and the caſe of *Shotbolt* in *Dyer* 279. *b*. *Tr.* 10 & 11 *Eliz.* There an action of debt on a bond was brought againſt *William Shotbolt*; and the plaintiff declared againſt him by the name of *William Shotbolt* alias *John Shotbolt*: The bond appeared on the evidence to be made and ſigned by *John Shotbolt*; and upon a ſpecial verdict found the Court were of opinion that he could not recover in that action, but that the action ought to have been brought againſt him by the name of *John*, and then he would have been eſtopped to ſay that his name was not *John*, he having ſigned the bond by that name. Another caſe likewiſe is there ſaid to have been afterwards adjudged in the ſame manner between *Turpin* v. *Jaxon*, *Hil.* 18 *Eliz.* There is alſo cited in *Lutwich* the caſe of *Maby* v. *Shepherd*, where in an action of debt brought againſt *John* the executor of *Edmund Shepherd*, the bond ſet forth is ſaid to be the bond of *Edmund*: but upon oyer prayed it appeared that he was called *Edward* in the bond, and though it appeared that he ſigned it by his right name *Edmund*, and though on non eſt factum pleaded a verdict was given for the plaintiff, yet

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(*a*) *Cro. Jac.* 640.

judgment

judgment was arreſted by the opinion of the whole Court, which was I think going a great way. 1745.

However, whatever might be my own opinion if this were a new point, I think I am obliged by theſe authorities, which are moſt of them much ſtronger than the preſent caſe, to be of opinion that the writ and declaration in this caſe are not good. For theſe caſes are all upon bonds, where there is much more reaſon to ſay that the defendant may have two names than in the preſent caſe. For in the caſe of a bond if the action be brought againſt the defendant by the name mentioned in the bond, he is eſtopped to ſay that that is not his name; and to be ſure he cannot ſay that his right name is not his name; ſo that in that caſe he may in ſome ſenſe be ſaid to have two names. But the defendant cannot be ſaid in any ſenſe to have two names in the preſent caſe, which is an action on the caſe upon ſeveral promiſes and neither of them on a note. And therefore as no man can have two names at the ſame time, this declaration muſt be wrong. As to what is ſaid in *Salk.* 6. (*a*), that a man may have two names, the one of baptiſm and the other at confirmation, and that after confirmation his name of baptiſm does not ceaſe, no more can be meant, but that if before confirmation (for a man may not happen to be confirmed until after twenty-one) he executed any thing by his name of baptiſm he may be ſued by that name after his confirmation. But after confirmation he has no other name but the name that he then took (*b*); otherwiſe the rule would not hold (which yet is certainly true) that a man cannot have two chriſtian names at the ſame time. Evans againſt King.

As therefore I am of opinion that the declaration is not good, it is immaterial whether the plea or replication be good or not. But as objections have been made to both of them, I will ſay a little upon each.

And firſt, as to the plea; I am clearly of opinion that it is not good, for that it is no anſwer to the plaintiff's declaration. For he only ſays that his name of baptiſm is *Henry Vaughan*,

(*a*) *Holman* v. *Walden*, *Salk.* 6.
(*b*) See the inſtance of Sir *Francis Gawdy*, Chief Juſtice of the Court of Common Pleas, *Co. Lit.* 3. *a.*

and

1745. and traverſes that his name *of baptiſm* is *Henry* alone, or that he was ever called or known by that name *of baptiſm*, which may be true and yet his name may be *Henry*; for it may be his name of confirmation, or he may be a Jew or a Heathen. And I can find but one precedent of this ſort which is that of *Shield* v. *Cliff*, in *Fureſley* 104; and there the plea was over-ruled, and a reſpondeat ouſter awarded. In all the precedents in *Raſtall* (*a*) which were cited, the defendant traverſes that the plaintiff was ever called or known by that name, and there is not a word of baptiſm in any of them. And the plea in 1 *Lutw.* 10, from which it was ſaid that this was copied, is quite different from this; for there the traverſe is in theſe words, abſque hoc quod ipſe nominatur vel vocatur Robertus ſeu per idem nomen vel cognomen unquam cognitus ſeu vocatus fuit &c, and not a word of the name *of baptiſm*.

Evans against King.

Being clearly of opinion that the plea is bad for this reaſon, I ſhall ſay nothing of the other objection to it, that it begins with ſaying that the defendant was attached by the name of *Henry King*, which is contrary to the declaration.

And being of opinion that the declaration and plea are both bad, I will give no poſitive opinion on the replication, but I am inclined to think that that is bad likewiſe for the reaſon aſſigned as cauſe of demurrer; for the plaintiff having alleged new matter, and not barely denied the defendant's plea, he ought to have given the defendant an opportunity of anſwering it, and ſo not to have concluded to the country but with a hoc paratus eſt verificare. The caſe of *Holman* v. *Walden*, *Salk.* 6. can be no authority in the preſent caſe either on the one ſide or the other, becauſe there the declaration plea and replication were all different from the preſent. The defendant is named but by one name in the writ and declaration; in the traverſe which is the material part of the plea there is not a word of the name of baptiſm; and there the replication exactly follows the words of the traverſe, and therefore a concluſion to the country was proper. Beſides, as the caſe is reported, I cannot help ſaying that it is a ſingle caſe.

(*a*) *Raſt. Entr.* 50; 108; 234.

But

But upon the ſtrength of the authorities which I have mentioned, I am of opinion that the declaration is not good, and that judgment in abatement muſt be given for the defendant, that the plaintiff's writ be quaſhed." 1745. EVANS *againſt* KING.

STONE *againſt* RAWLINSON and Another.

E. 18 Geo. 2. Monday, May 27th.

THIS was an action on a promiſory note for fifty guineas made by the defendants dated the 11th of *May* 1730, and payable to *James Watſon* or order; and the declaration ſtated that *Watſon* died on the 1ſt of *April* 1734 inteſtate, upon whoſe death adminiſtration of his goods and chattels was granted to *Ann Webb*, who indorſed the note to the plaintiff.

The executor or adminiſtrator of a perſon, to whoſe order a promiſory note is made payable, may aſſign it over, ſo as to enable the indorſee to ſue in his own name. —But the indorſee need not in his declaration make a profert of the letters of adminiſtration &c granted to the indorſer. Barnes 164. S. C.

To this declaration the defendants demurred, and ſhewed for cauſe that the plaintiff did not bring into the Court, or ſhew to the Court, any letters of adminiſtration of *J. Watſon*'s goods granted to *Ann*, and that he did not ſhew who granted adminiſtration of *Watſon*'s effects to the ſaid *Ann*.

This caſe was twice argued, the firſt time in *Michaelmas* term 1744 by *Agar* Serjt. for the defendant, and *Draper* Serjt. for the plaintiff, the ſecond in *Hilary* term following by *Birch* King's Serjt. for the former and by *Prime* King's Serjt. contrà. And though Mr. J. *Burnett* appears at firſt to have been inclined to give judgment for the defendant, he afterwards agreed with the reſt of the Court, whoſe opinion was now delivered, as follows, by .

Willes, Lord Chief Juſtice. "This comes before the Court on a demurrer to the plaintiff's replication.

There are two cauſes of demurrer aſſigned in the pleadings,

1ſt, That there is no profert made of the letters of adminiſtration;

2dly, That it is not ſaid by whom the letters of adminiſtration were granted, ſo that it does not appear whether they were granted by proper authority.

And