REPORTS

OF

CASES

ARGUED AND DETERMINED

IN THE

Court of Common Pleas,

AND

OTHER COURTS,

FROM TRINITY TERM, 50 GEO. III. 1810,
TO EASTER TERM, 51 GEO. III. 1811,

BOTH INCLUSIVE.

With Tables of the Cases and Principal Matters.

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OF THE MIDDLE TEMPLE, ESQ. BARRISTER AT LAW.

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43, FLEET-STREET;
AND J. COOKE, ORMOND-QUAY, DUBLIN.

1818.

1811.

WATERS v. REES.

such damages which should be adjudged to the plaintiff against him, or should render his body on that occasion to the prison of the *Fleet:* he prayed for this interest to be computed from 6th *July* 1810 to 14th *May* 1811, when the sum of 1181*l.* was paid to the plaintiff in part satisfaction of his judgment against Sir *W. Mansell*, and that the plaintiff might be at liberty to sue out execution against *Rees* for what was then remaining due on the said judgment against Sir *W. Mansell*, and for such interest, and costs so to be computed and taxed, and for sheriff's poundage, costs of levy, and all other incidental expenses. The circumstances stated were, the action was *assumpsit* for money lent and interest thereon, the plaintiff issued a writ of *capias ad satisfaciendum* against the principal, but being unable to take him, he proceeded in *Michaelmas* term against the bail.

Lens, Serjt. shewed cause against this rule in the first in-
[504] stance. This is a novel attempt, and does not come within the terms of the recognizance. For it is plain that the plaintiff never did or could recover this interest against the principal in this action, whatever he might do in a new action upon the judgment, but it is only in this action that these bail are liable. It would be peculiarly hard to subject the bail to this burthen in the present case, because their principal, by leaving the realm, has put it out of their power to surrender him.

MANSFIELD, C. J. (after inquiry made of the officers). We have never known any instances of this having been granted, which is a sufficient answer to the present application: we ought not to load the bail with more liabilities than they at present incur. Rule refused.

May 24.

GOULD and Others, Administrators of ROBINSON v. BARNES.

If a person enter into a bond by a wrong *Christian* name, and be sued on such bond, he should be sued by such name. A declaration against him by his right name, stating that he, by the wrong name, executed the bond, is bad.

THE defendant, *Joseph Barnes*, entered into a bond to *Robinson* by the name of *Thomas Barnes;* throughout the bond he was called *Thomas*. In debt on this bond, the defendant was sued by his real name *Joseph*, and the declaration stated that he, "by the name and description of *Thomas Barnes*, of, &c., by his certain writing obligatory, sealed with his seal, acknowledged himself to be held and firmly bound," &c. The defendant pleaded *non est factum*. At the trial of the cause before *Lawrence*, J. in *Guildhall*, at the adjourned sittings after *Hilary* term, *Best*, Serjt., for the defendant, contended, that upon

upon this declaration the plaintiff ought to be nonsuited; *Lawrence*, J. however permitted the * plaintiff to take a verdict, and said, that as the objection was on the record, the defendant might move in arrest of judgment if he should think fit. A rule *nisi* for that purpose was applied for and obtained on a former day; and in support of the application *Hyckman* v. *Shotbolt*, *Dyer* 279. *b.*, and *Field* v. *Winlow*, *Cro. Eliz.* 897., were cited.

1811.

GOULD v. BARNES.

[*505]

On this day *Vaughan*, Serjt. shewed cause against the rule.

LAWRENCE, J. Is not the case of *Clarke* v. *Istead*, in error, *Lutw.* 894. directly to the point? Is there any thing in this?

Vaughan, Serjt. admitted, that if the defendant had been sued by the name of *Thomas*, and had pleaded in abatement that his name was *Joseph*, he would have been estopped by the bond; but contended that the sheriff could (*a*) not have executed final process against him by the name of *Thomas* without being a trespasser.

CHAMBRE, J. If the defendant had pleaded in abatement, it might have been replied, that he was known as well by the one name as the other, and the bond would have been evidence of it.

Rule absolute (*b*).

(*a*) *Sed vide* 1 *Roll.* 869. *l.* 50., and *Rock* v. *Leighton*, 1 *Salk.* 310.
(*b*) *Acc. Gilb. H. P. C.* 216, 217.

DOE, on the Demise of LEDGER, v. ROE.

[506]

May 24.

The Court will not set aside a judgment and execution in ejectment in order to let in a person to defend, though he make an affidavit setting forth a clear title, and offer to pay costs.

VAUGHAN, Serjt. moved that the judgment and execution in this case might be set aside on payment of costs, and that one *Palethorpe* might be let in to defend: and grounded his motion on an affidavit made by *Palethorpe*, wherein he swore that the premises descended from his grandfather to his father, and from his father to him, subject to the payment of 5*s.* to the churchwardens, by whom this action was brought; that the churchwardens had brought several other ejectments, and had never proceeded beyond declaration, and that therefore, when this was served, he thought it would be as usual, and did not instruct his attorney. The Court however said that if *Palethorpe* had a good title he might bring his ejectment.

Rule refused.