there four of the Judges held it to be wilful murder, for the same reasons as four of these do now; but the other eight held it to be but manslaughter; because the subject is wrongfully restrained of his liberty, and there is a provocation to all men to endeavour his assistance: where there is a violence used to restrain a man from his liberty, that can be but manslaughter. And those four who differed, gave judgment according to the opinion of the eight, and allowed him his clergy.

Now, how doth that case differ from this? They say there was a fighting by the press-master; but doth that make an alteration? No, it is the wrongful imprisonment that makes the alteration, if any there be. If a man without any provocation draw his sword upon another, and then the other draw his sword, and is killed, that is **[492]** murder, as was the resolution in *The Lord Morley's case*, Kelyng 53.

They say it could not be a provocation to the prisoners, because they knew not that she was illegally arrested. But surely, a man must not lose his life for his ignorance, when he happens to be in the right. Cro. Car. 271. Sir H. Ferrar was arrested by a warrant that named him knight, whereas he was a baronet; his servant kills the bailiff; this was adjudged manslaughter only, because the warrant was ill.

I am as much for a reformation as any one: but in a legal way, for,

——— Vir bonus est quis?

Qui consulta patrum, qui leges, juraque servat.

It was adjudged only manslaughter.

NAME.

1. HOLMAN *versus* WALDEN. Hill. 2 Ann.

1 Salk. 6. Mod. Cases, 115.

In action of the case against the defendant B. W. he pleaded in abatement, that he was baptized by the name of John, & per nomen & cognomen de J. W. always was known and called; without that, that he was called or known by the name and surname of B. W. On a demurrer, it was insisted, that the material part of the plea was the name of baptism, and he could not have another name; therefore the traverse was needless and frivolous.

Holt C.J. One may have a nomen & cognomen that never was baptised; and a person may be baptised by the name of A. and confirmed by the name of B. as Sir Francis Gawdy was, not that I think the first name ceased: and I think it would not be a sufficient answer for the defendant to say, he was baptised by the name of J. unless he averred also, that he was ever called and known by that name. But supposing it had been an answer sufficient without more; yet saying he was baptised, &c. was only an inducement, which is waved by the traverse; and then the effect of the plea is, that he was never called by the **[493]** name of B. W. And here the traverse is material, and likewise the inducement.

Judgment to answer over.

2. LEPARA *versus* SIR JOHN GERMAINE. Pasch. 2 Ann.

3 Salk. 235, 236.

In assumpsit, the plaintiff sued the defendant by the name of J. G. Knight; to which he pleaded, that he was a knight and baronet; and the question was, whether baronet was a necessary part of his name, to support the action?

Holt C.J. The title baronet is an essential part of a man's name, because 'tis a dignity, and whether it be created by Act of Parliament or letters patent, 'tis part of his name; as in case of a duke, marquis, viscount or baron: though as to this last name, there is a difference between a baron by tenure, and by patent; for in the first case, baron is not a name of dignity, but the baron by letters patent is a dignity, and part of his name.