

Great Britain. Courts

R E P O R T S

O F

C A S E S

IN THE REIGNS OF

Hen.viii. Edw.vi. Q.Mary, and Q.Eliz.

TAKEN AND COLLECTED BY

Sir JAMES DYER, Knt.

SOME TIME

CHIEF JUSTICE OF THE COMMON PLEAS.

NOW FIRST TRANSLATED,

WITH ADDITIONAL REFERENCES TO THE LATEST
BOOKS OF AUTHORITY,

MARGINAL ABSTRACTS OF THE POINTS DETERMINED IN EACH CASE,

AND AN

ENTIRE NEW INDEX TO THE WHOLE,

B Y

JOHN VAILLANT, M.A.

OF THE INNER TEMPLE, BARRISTER AT LAW.

To this EDITION a LIFE of the AUTHOR is prefixed;

AND

From an ORIGINAL MANUSCRIPT in the LIBRARY of the INNER
TEMPLE several NEW CASES of his are introduced in the NOTES.

1565-88 ✓

PART III.—



L O N D O N :

SOLD BY J. BUTTERWORTH, FLEET-STREET.

M DCC XCIV.

1794 -

By the death of one of the plaintiffs in *quare impedit* the writ abates. (8) ONE of the plaintiffs in *quare impedit*, where the title to the presentation was by a grant of the next advowson, died pending the writ. It was doubted whether the writ shall abate, or not. * And by the opinion of three Justices it shall abate (a). And for this see *H. 17. E. 3. tit. Briefe* in *Fitz. 665. a* *quare impedit* brought by a husband and wife, and a third person, the wife died, and the husband was entitled to be tenant by the curtesy, yet the writ was abated. And *H. 5. E. 3. [Fitz. Ab. tit. Briefe; 715.]* in *aicl*, one of the defendants being summoned and severed died, and the writ abated: as in *37. H. 6. 12. [9. b.]* by the better opinion in *formedon*, yet the contrary is holden in *M. 9. H. 6. [fol. 30. pl.] 1. obiter*, one of the plaintiffs died pending the writ; and so in *monstraverunt*, *1. H. 5: [13. pl. 28.]*

(8) † *7. Co. 16.* and reported there of *Michaelmas*, before the lord the king, *Rot. 28. exhibet*. *Mr. Noy* brought a *quare impedit* against the Prior of *Lantben*, who pleaded; he dies, yet an inquest was taken, and found for the king: the successor sued by petition, and the judgment is reversed, because a judgment ought by no right to be given against a dead man.

<p>(a) It seems to have generally been ruled against this opinion in <i>quare impedit</i>, but now, by 8. and 9. <i>W. 3. c. 11. §. 7.</i> "If there be two or more plaintiffs or defendants, and one or more of them die, if the cause</p>	<p>" of action survive, the suit shall not abate, but the death, being suggested on the record, the action shall proceed." See <i>1. Burr. 363.</i></p>
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Hyckman against Shotbolt.

Where a man binds himself by a wrong name, the action should be against him, as named in the bond *alias &c.* his right name. (9) ONE *William Shotbolt*, Gentleman, was bound in an obligation to one *Hyckman*, and in the obligation he was called *John Shotbolt*, which was a mistake. But *William Shotbolt*, well perceiving his misnomer, sealed and delivered the bond as his deed. In debt brought upon this

(9) ANDERSON and WALMSLEY, 32. *Eliz.* thought in this case that the obligee has no remedy if he will not appear, for if process of outlawry be awarded against him, as he is named in the bond he may seize any goods: and if the action be brought against him by his true name, he may plead *non est factum*; but if he come in and plead a misnomer, the plaintiff may estop him by the bond.

Micb. 32 and 33. Eliz. C. B. [Ow. 48.] Edward Leverfuch is bound to *West* by the name of *Edmund Leverfuch*: the action is brought against *Edward, alias dicitur Edmund*, and declared accordingly; the defendant demurred, and it was adjudged for him against the plaintiff.

Micb. 8. Jac. C. B. † Dudley and Harris, this ruled accordingly, where his name was *Edmund and Edward* in the bond; and † *Coke* against *Foster*, it seems that he has no remedy, for he cannot have two names of baptism.

Michaelmas Term, 10. and 11. Queen Elizabeth. [279. b.]

bond against him by name of *William Shotbolt, otherwise called John Shotbolt*; he pleaded *non est factum*; and this special matter was found by verdict at *Guildhall, London*, in this Term. Whether he shall be charged by this bond and plea was the doubt; and the *postea* is special as above. And by the opinion of the Justices of the Bench, the plaintiff shall not recover upon this verdict; but it had been better for him to have brought the action by the name of *John* as he is named in the bond, and then if he had appeared to it, and pleaded as above *non est factum*, he should be concluded by the bond. See thereof 3. *H. 6.* [25. pl. 6.] and 34. *H. 6.* [19.] and 5. *E. 4.* this matter well debated. A like case [2. *Rot. Ab.* 135. pl. 2.] between *Turpin* and *Jaxon, s. Anne* for *Agnes*, and she sued by her right name, *nuper dicta Anna*, *Hil. 18. Rot. 738.*

Hil. 17. Jac. B. R. Watkins v. Colliers, accord. 2. *Cro. 558. 9. 640. 30. H. 6. 5. 14. H. 6. 21. 26. H. 6. 33. 9. Co. 14. Mo. 897. 1. Ro. Ab. 872. 23. H. 6. 8. B. Estop. 156. 9. H. 5 8. 40. E. 3. 21. 9. E. 4. 39. 22. H. 6. 48. 50. E. 4. 46. 65. 33. H. 6. 10. 10. H. 6. 8: a. 9. H. 5. 8. a. 18. E. 4. 4. 22. H. 6. 59. 21. E. 4. 51. 1. E. 9. 4. 46. 19. H. 6. 39. Faux Imprisonment, 12. 2. *Rot. Ab.* 135. [1. *Bullf.* 216. *Gilb. Hist. of C. P.* 221, 222. *Salk.* 6. pl. 17. 2. *Bac. Ab.* 652. 3. *Eac. Ab.* 616, 617.]*

The custom of foreign bought and foreign sold within a city prescribed for as seizable by the mayor, sheriff, and citizens, at the same time shewing that this name was by incorporation of *Rich. 2.* where before they were mayor, bailiffs, and citizens, is good. *East. 28. El. Rot. 352.* by *Bendles*, ca. 9. between *W. Cust'* and *H. Litling. Mo. 582. 4. Co. 38. 87. 33. H. 6.*

(10) SEE a precedent of a prescription of wares foreign sold and foreign bought within the liberty of the city of *York*, to be forfeited and seizable by the mayor, sheriff, and citizens. And in the prescription they shewed, that there were *mayor, bailiffs, and citizens* in the city, from time whereof memory runneth not &c. until the first year of *Richard 2.* in which year they were incorporated by the

(10) *Mr. Glanvil*, in his reading *Feb. 5. Car.* said, that he doubted of this case; for he held that this prescription is bad, and that he had searched for the roll of this case among the records, but could not find any such; and he founded his reason upon the very words of the statute 9. *E. 3. c. 1.* for it is expressly contrary to this case. Note, that the *Abridg-*ment makes a *quære* of this case.

Hil. 12. E. 1. C. B. Rot. 36. On the heavy complaint of the citizens of *Lincoln*, that foreign merchants expose to sale their merchandizes in the neighbouring places to the hurt of the city; therefore it is commanded the sheriff, that as to the premises he keep them in the due and usual state; and that he attach all those whom he shall find to practise according to that complaint and suit aforesaid in the aforesaid places in merchandizing in that way contrary to the aforesaid precept of the king sent to him, and that he have their bodies &c. to answer the contempt to the king, and the damages to the citizens.

41. *Eliz. C. B. Walsbam's case*, 8. *Co. 125.* was a grant to the corporation of *Dyers of London* of power to search, and if they find any cloths dyed with logwood that the cloth should be forfeited: and adjudged that no forfeiture can be imposed by patent of the goods of the subject, because *fortior et potentior est vulgaris consuetudo quam regalis concessio.*

So the Archbishop of *York* prescribed that none should exercise a trade in that city without his license: yet 44. *Eliz.* between *Darcy* and *Allen* [*Noy. 173. Mg. 671. 11. Co. 84. b.*] adjudged that the king cannot grant to one that he shall have the sole traffic of playing cards, [*Com. Dig. Trade (D. 1.), (D. 4.), (B.)*.]

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