

Great Britain. Courts,

MODERN REPORTS,

OR,

SELECT CASES

ADJUDGED IN

THE COURTS

OF

KING'S BENCH,

CHANCERY, COMMON PLEAS,

AND

EXCHEQUER.

VOLUME THE SIXTH;

CONTAINING,

CASES argued and adjudged in the Court of QUEEN'S BENCH at Westminster, in the Second and Third Years of QUEEN ANNE, in the Time when SIR JOHN HOLT, KNT. sat as Chief Justice in that Court: together with the Pleadings to several of the Cases.

THE FIFTH EDITION,

CORRECTED:

WITH THE ADDITION OF MARGINAL REFERENCES AND NOTES,

By THOMAS LEACH, Esq.

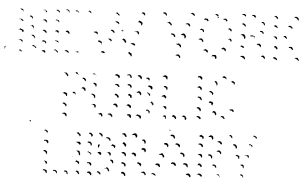
OF THE MIDDLE TEMPLE, BARRISTER AT LAW.

L O N D O N :

PRINTED FOR G. G. AND J. ROBINSON ; E. AND R. BROOKER ;
J. BUTTERWORTH ; OGILVY AND SPEARE ; AND
L. WHITE, DUBLIN.



1794.
24



Michaelmas Term, 3. Queen Anne, In B. R.

Fox against Tilly.

Case 326.

DEBT UPON A BOND conditioned to save the plaintiff harmless against all escapes which he *had* suffered as WARDEN OF THE FLEET PRISON.

And on demurrer to the rejoinder, which was in itself a departure from the plea, which was a *non fuit damnificatus*, and a special damage replied, and continuance given to the first day of this Term,

THE COURT took a diversity between a bond to save harmless against *future escapes*, for that would be void, and a bond to save harmless against *past escapes*; for though it were unlawful to suffer them, yet one may contract to indemnify one against a penalty already incurred against law.

AND NOTE, Here the Court was informed that the plaintiff was dead, and therefore they ought not to go to judgment.

To which they answered, that if that were so, the defendant must come and plead it as a plea *puis darrein continuance*, and make oath of the truth of it, otherwise they would not take notice of it; and if the plaintiff were alive on the *continuance-day*, they might well give judgment.

And accordingly the plaintiff had judgment. For, *PER CURIAM*, if he die before the *first day of Term*, we cannot take notice of it without it be pleaded as *puis darrein continuance*; and if he were alive the *first day of Term*, the judgment shall relate to that day.

A bond given to save a gaoler harmless against *past escapes* is good, but not against *future escapes*.

2. Salk. 438.

653.

5. Com. Dig.

"Pleader"

(2. W. 25.).

If a plaintiff die between the day of *mise prius* and day in bank, the fact must be pleaded *puis darrein continuance*.
Inst. Leg. 604.

Linch against Hooke.

Case 327.

PER CURIAM. If *A.* give bond by name of *B.* and he is sued by name of *B.* he may plead *misnomer*, and the other must plead that he made the bond by the name of *B.* and estop him by demanding judgment whether against his deed he ought to be admitted to say his name is *A.*; and then the defendant may rejoin, and say, that he made no such deed: and this the defendant must do without *oyer*; for if he pray *oyer*, he admits his name to be *B.*

If *A.* make a bond in the name of *B.* and is sued by the name of *B.* he may plead *misnomer*.

S. C. post. 311.

S. C. 1. Salk. 7.

Ante, 28.

* [226]

* Anonymous.

Case 328.

IF A WRIT be returnable in one Term, the defendant ought to put in bail in that Term, that is, at any time before the *effoin-day* of the next Term, and until then it is irregular to proceed upon the bail-bond; but one in the mean time may take an assignment upon it, and take out a warrant.

It is irregular to proceed on bail-bond until the *effoin-day* of the next Term.

Stra. 399.

Andr. 374. 1. Com. Dig. "Bail" (Q. 1.).—Sec 4. & 5. Anne, c. 16.

Adams

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