

R E P O R T S
O F
SIR GEORGE CROKE, KNIGHT,
FORMERLY ONE OF THE
J U S T I C E S
O F T H E
COURTS of KING'S-BENCH and COMMON-PLEAS,
O F S U C H
S E L E C T C A S E S
AS WERE ADJUDGED IN THE SAID COURTS DURING
THE REIGN OF JAMES THE FIRST.

COLLECTED AND WRITTEN IN FRENCH,

By H I M S E L F ;

REVISED AND PUBLISHED IN ENGLISH,

By SIR HARBOTTLE GRIMSTON, BARONET,
MASTER OF THE ROLLS.

THE FOURTH EDITION, CORRECTED,
WITH
MARGINAL NOTES and REFERENCES to the LATER REPORTS,
AND OTHER BOOKS OF AUTHORITY,
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M,DCC,XCI,
1791

WATERS
against
BRIDGE.

money laid out for the wife at her request: and the arbitrament is, that he shall pay three hundred and forty pounds for all sums laid out for the wife, omitting "at her request;" so it is more than was submitted.—ALL THE COURT was of that opinion.

In debt on an award, if request be part of the agreement, it must be specially alledged. Ante, 102. 183. Cro. Car. 35. 385.

SECONDLY, The arbitrament is to pay three hundred and forty pounds, *cum inde requisitus esset*: so, request being part of the agreement, there ought to be an express request alledged; and *licet sapius requisitus* will not serve: and it is not like to debt due upon a bond or upon contract; for there the debt being due by specialty or contract needs not a special demand, but *licet sapius requisitus* will serve; but being due by arbitrament, *cum requisitus fuerit*, it is not due but according to the arbitrament upon special demand.—ALL THE COURT was of that opinion. Wherefore the judgment was reversed.

CASE 4. **Maby against John Shepherd, Executor of Edmund Shepherd.**

If a declaration be of a deed executed in the name of Edmund, in which he is named Edward, the variance is fatal.

DEBT upon an obligation for forty pounds by *Edmund Shepherd*. The defendant demanded oyer of the deed, and of the condition, which was entered in *hæc verba*: "NOVERINT UNIVERSI per presentes me EDWARDUM teneri, &c. in forty pounds;" and he subscribed it by the name of *Edmund Shepherd*, which was his true name.

Ante, 221. Post. 261. S.C. Godh. 283. 1. Roll. Ab. 872. 1. Lutw. 519. 3. Hen. 6. pl. 25. 2. Roll. Ab. 21. Owen, 48. Cro. Eliz. 897. Salk. 76.

The defendant pleaded *non est factum testatoris*. The jury found that it was the deed of the said *Edmund Shepherd* the testator. It was moved, that notwithstanding the verdict is found for the plaintiff, yet the judgment ought to be given against the plaintiff: for he declares upon a bond by *Edmund Shepherd*, and shews a bond of *Edward Shepherd*, which is another person; and they never were the same, but distinct names. And although it be subscribed by the name of *Edmund*, yet that is no part of the bond; which being apparent to the Court, the plaintiff cannot have judgment, but ought to be barred.

THE WHOLE COURT was of that opinion: and although the jury hath found it to be the deed of the said *Edmund*, yet that will not help it; but he ought to have brought his action according to the bond. Wherefore it was adjudged, *quod querens nihil capiat per billam*. Vide *Dyer, 279. in marg. Skotbolt's Case*, and *Watkins v. Oliver, Ante, 558*.

CASE 5. **Thomas Simpson and John Simpson against Jackson.**

The guardian and the next friend of an infant are distinct characters; and an infant may sue by either; but he must defend by guardian, and not by his *prochein amy*.

ERROR of a judgment in *Durham*. The error assigned was, Because in an ejectment against *Thomas Simpson* the father, and *John Simpson* his son, the father appearing by *Timothy Commyn* his attorney, and the said *John Simpson* by the said *Timothy Commyn, proximum amicum suum*, who was admitted, *per Curiam, pro eodem Johanne Simpson ad prosequendum*, and pleaded not guilty; whereas he ought to have been admitted to plead by his guardian, and not by *prochein amy*; and the admittance ought to have been *ad defendendum*, and not *ad prosequendum*.

Ante, 217. 441. — Cro. Car. 86. 161. 2. In. 261. 300. Palm. 205. Co. Lit. 135. b. 4. Co. 53. 5. Roll. Rep. 257. F. N. B. 27. 1. Sid. 69. 173. Jones, 177. 1. Bull. 24. Hutt. 92. 1. Lev. 224.

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