REPORTS

OF

CASES

ARGUED AND DETERMINED

IN

The Court of King's Bench,

WITH TABLES OF THE NAMES OF THE CASES
AND THE PRINCIPAL MATTERS.

BY

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Sit ergo in jure civili finis hic, legitimæ atque usitatæ in rebus causisque civium æquabilitatis conservatio. CICERO.

VOL. III.

Containing the Cases of TRINITY, MICHAELMAS, and HILARY Terms, in the 54th and 55th Years of GEORGE III. 1814, 1815.

LONDON:

JOSEPH BUTTERWORTH AND SON, LAW-BOOKSELLERS, 43, FLEET-STREET;
AND J. COOKE, ORMOND-QUAY, DUBLIN.

1816.

1814.

POUGETT *against* TOMKYNS.

indeed, that *the dormant name is brought forward, and the name by which the party was universally known suppressed.* At the time of the marriage, the clergyman questions the young man as to his name and place of residence, to which he replies that his name is *William Pougett*, and appears much confused; the woman's brother then comes forward, not to tell the truth, but to give evasive answers, for the purpose of deceiving the clergyman and preventing the postponement of the marriage. The banns of marriage were published in the church of *St. Andrew's, Holborn*, and it is pleaded that the parties resided in the parish of *St. Mary-le-bone.* This part of the plea was objected to by counsel as contrary to the 10th section of the statute; to which it was answered, that it was used only as a circumstance to shew fraud, and not for the purpose of invalidating the marriage on the ground of non-residence within the parish. The words of the act are very broad and positive, and it was not without considerable hesitation that the Court permitted this part of the libel to stand. The doubts which the Court then entertained are not now removed, and if the question in any degree turned upon this part of the case I should feel great difficulty in deciding it. But here is another fact pleaded to which the same objection does not apply, namely, the attempt to get the banns published at *Highgate.* Upon the whole, then, this is not a case of mere inadvertence or casual omission; it is not a case of fraud by one party on the other; but it is a confederation of both against the rights of the father, and therefore I pronounce the marriage null and void under the statute.

[265]

NOTE, No. 3.

The following are extracts from the minutes of some of the cases in the Consistory Court here alluded to.

Consistory Court, *July* 10th, 1807.

MATHER *v.* NEY.

THE real name of the woman was *Ney*, and the banns were published in the name of *Wright.*

Per Curiam. This is a proceeding to obtain a declaratory sentence of nullity of marriage on account of publication of banns in a wrong name. The proof of this fact is full. No reason is given for it, it seems to have been from mere unthinking levity. No circumstance of fraud is suggested; no imposition was necessary to be practised. The question is, whether under the statute, and the construction which has been put upon it, this marriage must be pronounced void ab initio. The parties cohabited together as man and wife, were reputed such, the children were baptized not as children of the husband and wife, but as of the mother by her maiden name. If the marriage be void ab initio, no length of time can render it valid. The act requires a publication of banns. In common reason it must be supposed to require the true names, if not the true names, then it is no publication at all. The intent of the publication must be to give notice that the marriage is to be solemnized between the parties. Whether a name acquired by reputation might have sufficient legal effect is a question different from the present. If the evidence before me brought the present case to that point, it would be my duty to determine it upon that. This point, I believe, has not hitherto been decided. But on the other facts the decisions have been uniform, namely, that banns must be published by the names of the parties. It was, indeed, stated, that the woman had used the name by which the banns were published, and that a witness might have been called to prove this. But her own sister is examined, and does not say any thing of the matter. And no foundation is laid for calling further evidence to prove this fact. If there had been,

I should have thought it necessary for the protection of the children to have called for this evidence. Upon the whole, I shall pronounce the marriage void ab initio. 1814.

Consistory Court, *May* 17th, 1812.

HEFFER *v.* HEFFER.

THIS was an objection to the admission of a libel in a suit for the restitution of conjugal rights brought by the wife.

Sir W. SCOTT. The objection principally relied on arises upon the copy of the parish register which is exhibited. The libel pleads that the parties were married by virtue of banns duly published. The woman's real name, it appears, was [266] *Anna Colley*, but in the exhibit it is stated that *George Heffer* and *Anna Sophia Colley* were married, and hence it has been inferred by the counsel, that the banns were so published, and that the marriage is invalid on the ground of undue publication. Now it does not necessarily follow, that the banns were so published. It may be a mere mistake of the minister in giving the certificate; it may be, that the banns were published by the right names, and that the additional name was used only at the celebration of the marriage. But admitting that the banns were published with the additional name, still if no fraud be shewn, if there be no doubt as to the identity, the Court would be very unwilling to question the validity of the marriage after the long cohabitation of the parties, under the constant acknowledgment of each other as husband and wife. This case differs very materially from that of *Pougett* v. *Tomkyns*, which has been cited. That was a case of clear fraud against the rights of the father. If the husband can shew, that he has been imposed upon by a false name, he may upon that ground falsify the marriage, but he must set forth the fraud, and prove it to the satisfaction of the Court. I shall admit this libel.

Consistory Court, *May* 29th, 1812.

TREE, otherwise QUIN, *v.* QUIN.

THIS was a suit for nullity of marriage brought by the father of a minor by reason of publication of banns by a false name of one of the parties. One of the articles pleaded, that the woman was baptized by the name of *Martha*, and that she was known by no other, and that the banns were published in the name of *Martha Caroline*.

Per Curiam. Do you contend, that this would be sufficient to annul the marriage without shewing fraud?

Swabey. In clandestine marriages, which the act was passed to prevent.

Per Curiam. I shall admit the libel, but without determining the law of the case till I see what is proved as to fraud.

It does not appear, that any further proceeding was had in this case.

Consistory Court, *June* 9th, 1812.

MAYHEW *v.* MAYHEW.

THIS was a proceeding on the part of the husband for divorce by reason of adultery. The wife in a responsive allegation denied that any legal marriage had taken place, and the case came before the Court on the admissibility of this allegation. It was pleaded, that in the publication of banns the woman was described as *Sarah Kelso*, widow, but that her name was not *Kelso*, and that she [267] was not a widow.

The woman had gone by several different names; her maiden name was *Sarah White*, or at least so stated by her to Mr. *Mayhew*. She had passed by the name of *Aikin*, but was generally known by that of *Kelso*, being the supposed widow of a person of that name.