

REPORTS

OF

CASES

ARGUED AND DETERMINED

IN THE

English Courts of Common Law.

HERETOFORE CONDENSED BY

HON. THOMAS SERGEANT AND HON. THOMAS M'KEAN PETTIT.

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CONTAINING

*The Cases in the Court of Common Pleas, in Michaelmas Term and Vacation, 1847, and
Hilary Term and Vacation, and Easter Term, 1848.*

PHILADELPHIA:

T. & J. W. JOHNSON, LAW BOOKSELLERS.

1852.

COMMON BENCH REPORTS.

CASES ARGUED AND DETERMINED

IN

THE COURT OF COMMON PLEAS,

IN

MICHAELMAS TERM AND VACATION, 1847, AND HILARY TERM AND
VACATION, AND EASTER TERM, 1848.

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

BY

JAMES MANNING,

SERJEANT AT LAW;

T. C. GRANGER,

OF THE INNER TEMPLE, ESQ.

BARRISTER AT LAW;

AND JOHN SCOTT,

OF THE INNER TEMPLE, ESQ., BARRISTER AT LAW.

VOL. V.

PHILADELPHIA:

T. & J. W. JOHNSON, LAW BOOKSELLERS,

NO. 197 CHESTNUT STREET.

1852.

JUDGES
OF
THE COURT OF COMMON PLEAS,

DURING THE PERIOD COMPRISED IN THIS VOLUME.

The Right. Hon. Sir THOMAS WILDE, Knt., Ld. Ch. J.
The Hon. Sir THOMAS COLTMAN, Knt.
The Hon. Sir WILLIAM HENRY MAULE, Knt.
The Hon. Sir CRESSWELL CRESSWELL, Knt.
The Hon. Sir EDWARD VAUGHAN WILLIAMS, Knt.

ATTORNEY-GENERAL.

Sir JOHN JERVIS, Knt.

SOLICITOR-GENERAL.

Sir DAVID DUNDAS, Knt.

NASH v. CALDER. Nov. 19.

The court refused to set aside, as frivolous, a demurrer to a declaration against the acceptor of a bill of exchange, in which the cause assigned was, that it was uncertain, inasmuch as the defendant, as to part of his Christian name, was described by the initial letter only.

ASSUMPSIT on a bill of exchange, by indorsee against acceptor. The declaration described the defendant as "William Henry W. Calder."

Special demurrer, assigning for cause, amongst others, that the declaration was uncertain, inasmuch as it described the defendant by the initial letter only of one of his Christian names.(a)

Unthank now moved for a rule to show cause why the demurrer should not be set aside as frivolous. A mistake in, or even a total omission of, the Christian name of a party, was formerly ground only for a plea in abatement: Com. Dig. *Abatement*. (E. 18.) Now, by the 3 & 4 W. 4, c. 42, s. 11, it is enacted that "no plea in abatement for a misnomer, shall be allowed in any personal action; but that, in all cases in which a misnomer would, but for this act, have been by law pleadable in abatement in such actions, the defendant shall be at liberty to *cause the declaration to be amended, at the costs of the plaintiff, by inserting [*178 the right name, upon a judge's summons, founded on an affidavit of the right name." This is, at most, a mere misnomer, and therefore the defendant ought to have adopted the course pointed out by the statute. *Non constat* but that the party may have been baptized by the initial only.

MAULE, J. The letter "W." certainly cannot be a name of baptism. This is not a misnomer, but an incorrect description of the party. I should incline to say that the declaration, which alleges no excuse(b) for so describing the defendant, is bad, and would recommend the plaintiff to amend on payment of costs. The demurrer clearly is not frivolous.

The rest of the court concurring,

Rule refused.

(a) i. e. of part of his Christian name.

(b) As to the cases in which designation by an initial is excused, see 3 & 4 W. 4, c. 42, s. 12.

 BEAMES, an Infant, v. FARLEY. Nov. 22.

The resolution of Trinity term, 3 Vict., declaring the costs of the application to be consequential on making a judge's order a rule of court, applies where the party sought to be charged, is an infant.

C. JONES, Serjt., moved to make a judge's order a rule of court, *with costs*, pursuant to the resolution of the judges of Trinity term, 3 Vict., which provides, that, "when a judge's order is made a rule of court, it shall be a part of the rule of court, that the costs of making the order a rule of court shall be paid by the party against whom the order is made, provided an affidavit be made and filed, that the order has been served on the party, or his attorney, and disobeyed."

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