

ETER S. DU PONCEAU.

John Harrison
C A S E S

ARGUED and ADJUDGED,
IN THE

Court of King's Bench.

At WESTMINSTER,

In the 7th, 8th, 9th, and 10th Years of the Reign of his Late MAJESTY,
KING GEORGE the SECOND.

DURING WHICH TIME THE LATE

Lord Chief Justice HARDWICKE

PRESIDED IN THAT COURT.

TO WHICH ARE ADDED,

Some Determinations of the Late LORD CHIEF JUSTICE LEE;
AND ALSO

Two Equity Ones by LORD CHANCELLOR HARDWICKE.

31995

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A NOBLE LORD, and EMINENT LAWYER.

With NOTES and REFERENCES to all the Cotemporary Reporters.

LIKEWISE,

TWO TABLES; one of the NAMES of the CASES; and the other
of the PRINCIPAL MATTERS therein containe

L O N D O N :

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MDCCLXX.

the case of *Bishop* and *Burgefs* was directly this case, and the court changed the venue, so that I think the venue should be changed.

Page and *Probyn* of the same opinion upon the authorities cited. And a rule was made accordingly.

Read and Matteur.

Misnomer
pleaded.

TROVER against *Christopher Matteur*; defendant pleads in abatement, that he is called *John Metber*, and by the same name and surname was always known and called, *absque hoc*, that he is named by that name and surname of *Christopher Matteur*, or by the same name or surname was never known or called; to which plea plaintiff demurred.

Serjeant *Hayward* for plaintiff, objects, 1st, That this is a double plea, because here are two matters put in issue, *viz.* Whether his christian name be *John*, and whether his surname be *Metber*. 2dly, If the plea is not double, this he submits that there is no variance in the surname for both found the same, and where the variance is in the christian name, the defendant ought to set out the place where he was baptised, and aver that he was baptised by such name, which is not averred in this plea, and therefore plea is bad.

Kyffin for defendant, The two names are but one description, and shewing the whole name to be mistaken is but one fact put in issue. As to the want of the averment objected; this plea is right according to the case of *Warden and Holman*, 1 *Salk.* 6. and the precedents are so too, as 1 *Lutw.* 10. *Thompson's Entries*, fo. 1. pl. 6.

Lord *Hardwicke*: I think the plea is well enough, and not double. It is an uncommon thing for plaintiff to mistake both the names of defendant, and therefore there may not be many precedents of such a plea, but when such a mistake is made, I do not see how the defendant can plead otherwise: and as the defendant is in plea in abatement to give the plaintiff a better writ, how could he do so in this case without shewing what his real name is. As to the other objection, I think there is nothing in that neither, the precedents and authorities are otherwise, so *Rafall's Entries*, fo. 296. tit. *Error*, There are two assignments for misnomer in the christian name, without averring that defendant was baptised by the right name, but only as the averment is here; so likewise in *Herne's Pleader*, fo. 9. a plea in abatement in the same manner, and the case in *Salk.* 6. is strong in point, and as it is reported in 6 *Mod.*

116. It is said, a defendant may plead such a mistake in his prænomens, though he were never baptised; and if that were the case, how could it be pleaded in any manner but this, therefore I think the bill must abate.

Lee: The defendant to be sure may, if he will, plead in abatement that he was baptised by another name, and if he should, there must be a venue laid as in *Skinner*; but it appears from the precedents and authorities that it is not necessary to plead so. Nor is this a double plea, for both make but one name.

Judgment that the bill be abated.

Cock and Ratcliffe.

CASE against the defendant upon a promisory note made to plaintiff's testator; defendant pleads in bar, That it was corruptly agreed between them that the testator should be paid in hand 10*s.* upon giving the note, which exceeds the rate of 5*l.* per cent. and therefore insists that the note is void; plaintiff replies, That the note was given for a just debt, without this, that it was agreed *modo et forma* as the defendant pleads; to which replication defendant demurs, and shews for cause, that the replication does not traverse the corrupt agreement.

Usurious agreement how pleaded and replied to.

Benny for defendant. Serjeant *Boote* for plaintiff.

Lord *Hardwicke*: This is a good replication, and is a fairer way of pleading than to say it was corruptly agreed, because that is but the consequence of law upon the facts as they shall appear, though I agree it is more usual to plead in that manner: the old way was to traverse all the circumstances of the agreement, and if that were good, this must be so too.

Page, At the trial, no evidence is given, of the corruptness, but the facts themselves.

Judgment for the plaintiff.

Mitchell versus Pate.

DEFENDANT was superseded at the plaintiff's suit, for want of plaintiff's proceeding to judgment in three terms, but being in prison at the suit of another person, he still continued in custody, after

Practice: Execution not set aside.

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