REPORTS OF CASES

ARGUED AND DETERMINED

IN THE

English Courts of Common Law.

WITH

TABLES OF THE CASES ARGUED AND CITED, AND THE PRINCIPAL MATTERS.

EDITED BY

HON. GEORGE SHARSWOOD.

VOL. LXXIX.

CONTAINING

THE CASES DETERMINED IN EASTER TERM, TRINITY TERM AND VACATION, AND MICHAELMES TERM AND VACATION, 1851, AND HILARY TERM, 1852, XIV. AND XV. VICTORIA.

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1866.

QUEEN'S BENCH REPORTS.

BY

JOHN LEYCESTER ADOLPHUS, OF THE INNER TEMPLE, ESQ.,

AND

THOMAS FLOWER ELLIS, OF THE MIDDLE TEMPLE, ESQ.,

BARRISTERS AT LAW.

NEW SERIES.

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JUDGES

OF

THE COURT OF QUEEN'S BENCH,

DURING THE PERIOD OF THESE REPORTS.

The Right Hon. JOHN Lord CAMPBELL, Chief Justice.

Sir JOHN PATTESON, Knt.
Sir JOHN TAYLOR COLERIDGE, Knt.
Sir WILLIAM WIGHTMAN, Knt.
Sir WILLIAM ERLE, Knt.

ATTORNEY-GENERAL.

Sir ALEXANDER JAMES EDMUND COCKBURN, Knt.

SOLICITOR-GENERAL.

Sir WILLIAM PAGE WOOD, Knt.

difference between the common fund of a Union under stat. 4 & 5 W. 4, c. 76, and the general fund of a Union under stat. 22 G. 3, c. 83, the language of stat. 10 and 11 Vict. c. 110, s. 1, which is clearly supplementary to, and in pari materiâ with, stat. 9 & 10 Vict. c. 66, and consequently with stat. 4 & 5 W. 4, c. 76, also, charges "the common or general fund" of the Union with the expenses of the maintenance of paupers in the cases there specified; which shows that the Legislature intended this provision, and the previous and subsequent enactments of a similar nature, to apply to both kinds of funds. (He also argued on the other points.)

Lord CAMPBELL, C. J.—The real question is, Whether a Union formed under Gilbert's Act, 22 G. 3, c. 83, falls within the provisions of stat. 12 & 13 Vict. c. 103, s. 5. I think that it clearly does, if we *64] give to the *words of the latter Act their natural construction. I see nothing to warrant us in coming to a different conclusion. Sect. 109, the interpretation clause, of stat. 4 & 5 W. 4, c. 76, which must be taken to apply to all subsequent statutes in pari materiâ, declares expressly that the word "Union" is to include a Union under Gilbert's Act. The order of Sessions, therefore, is bad, and must be quashed.

PATTESON, WIGHTMAN, and ERLE, Js., concurred.

Order of sessions quashed.(a)

(a) See the late Lunatic Act, 16 & 17 Vict. c. 97, which does not repeal stat. 12 & 13 Vict. c. 103, but makes a new provision (sect. 102) for the cases contemplated in sect. 5.

The QUEEN v. JOHN DALE. *May* 7.

Declaration, in scire facias on a recognisance to keep the peace, stated that the recognisance was acknowledged "before Lee P. Townshend, Esquire, and J. H. Harper, Esquire," two justices of the peace:—Held, on demurrer, that the Christian names of the justices did not appear to be insufficiently stated.

It is not a ground for demurring to such a declaration, that the recognisance is not shown to be in compliance with the Crown Office Rules, Hil. T. 1844.

DECLARATION in scire facias, on a recognisance to keep the peace, against defendant as one of the sureties. The declaration stated that heretofore, &c., in the county of Chester, to wit, on., &c., "before Lee P. Townshend, Esquire, and J. H. Harper, Esquire, two of our keepers of the peace and justices assigned," &c., came Joseph Molyneux, of, &c., John Cawley, of, &c., and John Dale, of, &c., and then, before the said two justices, in the said county, by a certain recognisance, severally acknowledged themselves to be indebted, &c., on condition that the said Joseph Molyneux should keep the peace towards John Worsley, of, &c., *65] for six months. *The declaration then averred a breach of the peace by the said Joseph Molyneux, and the forfeiture of John Dale's recognisance in consequence.

Demurrer. Joinder.

The points stated for defendant were: 1. "That it does not appear by the writ that the Crown Office Rules of Hilary Term, 1844,(a) Nos. 24 and 25, have been complied with: 2. That the Christian names of the magistrates before whom the recognisance was taken are not sufficiently stated."

W. R. Cole, in support of the demurrer.—The writ is irregular. [Lord CAMPBELL, C. J.—You say that the writ itself ought to show, on the face of it, that the regulations, in respect of the recognisance, were complied with.] Yes. The second objection is, that the Christian names of the magistrates are not properly stated. The cases are conflicting: Miller *v.* Hay, 3 Exch. 14,† is an authority in support of this objection; Lomax *v.* Landells, 6 Com. B. 577 (E. C. L. R. vol. 60), is against it. [ERLE, J.—Is there any decision that all proceedings are void in consequence of such an irregularity? In a commission of oyer and terminer I have seen the initials only of the Christian names inserted; would that render invalid all sentences pronounced by a Judge named in the commission? In actions on bills of exchange, and other civil actions, the objection has been taken on special demurrer. But I recollect no instance of the point having been raised in criminal proceedings.] The objection is, no doubt, a technical one; still the part of the declaration in which the irregularity occurs is material, and cannot be treated as mere inducement. *The proceeding is itself vexatious. [ERLE, J.—Is there any instance of such a point being taken on a recognisance to keep the peace?] A scire facias on such a recognisance is not an ordinary proceeding. [*66

Coxon, contrà, was stopped by the Court.

Lord CAMPBELL, C. J.—I see no hardship upon the defendant in bringing a scire facias upon such a recognisance. If the objection be frivolous, we must overrule it. There is no authority for holding the scire facias to be void for the recognisance not appearing to comply with the Crown Office Rules. With respect to the second objection, I do not see that there is any reason for supposing that the magistrate's actual name is not "J. H. Harper." The objections which might be raised as to this point upon a bill of exchange do not appear to me to apply to proceedings like these. Nor can I acquiesce in the distinction suggested, in Lomax *v.* Landells, 6 Com. B. 581 (E. C. L. R. vol. 60), between a consonant and a vowel. There is no doubt that a vowel may be a good Christian name; why not a consonant? I have been informed by a gentleman of the bar, sitting here, on whose accuracy we can rely, that he knows a lady who was baptized by the name of "D." Why may not a gentleman as well be baptized by a consonant?

PATTESON, J.—The first objection is upon a mere point of practice,

(a) Corner's Crown Office Forms, pp. 1, 6.

which does not affect the record. The second also appears to me to be quite unfounded.

WIGHTMAN and ERLE, Js., concurred.

Judgment for the Crown.(a)

(a) See, as to the first point, Regina v. Irwin, 9 Irish Eq. Rep. 546.

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*67] *In the Matter of JAMES EDMUNDSON. *May* 9.

An adjudication by two justices, under The Lands Clauses Consolidation Act, 1845, and Railways Clauses Consolidation Act, 1845, of the sum (below 50*l.*) to be paid by a railway company as compensation to a party whose lands have been injuriously affected by the exercise of their statutory powers is an order within stat. 11 & 12 Vict. c. 43, s. 1, and is bad, under sect. 11, if the complaint on which the order is founded be made more than six calendar months after the cause of complaint arose.

Such order may be brought up by certiorari, to be quashed.

R. HALL, in last Hilary Term, obtained a rule calling on Joseph Greenwood and William Bushfeild Ferrand, Esquires, two justices for the West Riding of Yorkshire, to show cause why a certiorari should not issue to remove into this Court the order after mentioned, on the grounds (among others): "that the said justices had no jurisdiction in the matter respecting which the said order was made; that the said order shows, on the face thereof, and the fact also is, that the cause or several causes of complaint therein mentioned did not, nor did any of them, arise within six calendar months before the making of the said order or the making of the complaint, or laying of the information, whereon the said order was made; that the said justices had notice, on the hearing, that the said cause or causes," &c., "did not, nor did any of them, arise within six calendar months as aforesaid;" "that the sum awarded comprises compensation for injuries and damage for which the justices had no jurisdiction to award compensation, to wit:" the said trespasses, and the compensation awarded, in respect of the road in the order mentioned: "that the supposed damages and injuries were not done in the exercise of any statutory power; that none of the notices or proceedings under which alone the said damages and injuries would
*68] be done in the exercise of the statutory powers referred to *in the order, so as to give jurisdiction to justices to award compensation in that behalf, are alleged on the face of the said order, nor were any such notices ever given or proceedings ever taken."

The order, a copy of which was annexed to the affidavits on behalf of the Company, recited a complaint made 13th September, 1850, wherein it was stated before the said justices that the said James Edmundson was, at the time, &c., and still was, the occupier of certain closes and a road adjoining the railway of the Company; that the Company, in