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REPORTS

OF

CASES

ARGUED AND DETERMINED

IN THE

Court of King's Bench,

WITH

TABLES OF THE NAMES OF THE CASES AND PRINCIPAL MATTERS.

BY EDWARD HYDE EAST, ESQ.

OF THE INNER TEMPLE, BARRISTER AT LAW.

Si quid novisti rectius istis,
Candidus imperti: si non, his utere mecum.—Hort.

VOLUME III.

CONTAINING

THE CASES OF MICHAELMAS, HILARY, AND EASTER TERMS, IN THE
FORTY-THIRD YEAR OF GEORGE III., 1802, 1803.

A NEW EDITION,

WITH CORRECTIONS, AND THE ADDITION OF NOTES AND REFERENCES.

BY THOMAS DAY.

PHILADELPHIA:

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1817.

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Ford
v.
Lover.

Wigley shewed cause, and relied on *Maylin v. Townshend*(a), where in an affidavit to hold to bail in 20*l.* and upwards, it was holden sufficient to negative a tender of the said sum in bank notes ; as that was taken to have reference to the specific sum sworn to, which was such as might be so tendered. The only difference there was, that the words (" said sum of 20*l.*) and upwards," were not repeated, as here the words " 16*l.* and upwards" are : But,

Per Curiam. That makes all the difference. Here the words negating the tender expressly refer to a sum beyond the 16*l.*

Rule absolute(b).

(a) *Ante*, 2 vol. 1.

(b) The same point was before ruled in *Barnet v. Wheeler*, *Hil.* 41 G. 3. and in *Major v. Martin*, *E.* 42 G. 3.

Nov. 19th.

SCOTT v. SOANS.

The defendant being sued by the name of "Jonathan otherwise John Soans," is * [112] no cause of demurrer to the declaration; for non constat that it is not all one christian name.

THE defendant was sued in *assumpsit* for work and labour, and on the common counts, by the name of "Jonathan otherwise John Soans." And he demurred to the declaration, and assigned for cause, that "the said John Soans, the defendant, is in and by the said declaration described as having two christian names of Jonathan and John; whereas by law no person can have two christian *names; and also, for that it is uncertain by the declaration which is the defendant's real christian name.

Wood, in support of the demurrer, relied on *Evans v. King*(a), in which *Ld. Ch. J. Willes* notices all the principal cases; where it was holden that a declaration against John A., otherwise John James A., is bad, as a man cannot have two christian names.

LORD ELLENBOROUGH, C. J. That came on upon a plea in abatement, which introduced a fact, that he was known by the one name and not by the other; each of the christian names being prefixed to what appeared to be the surname. So here if the defendant plead in abatement, it will appear probably that he is sued by two christian names: but this comes on upon a demurrer to the declaration, assuming a fact which does not appear: for, *non constat* but that "Jonathan otherwise John" is all one christian name. Names as fanciful as "otherwise" frequently occur. We cannot intend either way; and if the fact really were so, we should be deciding against the fact if we gave judgment for the defendant upon this demurrer. Suppose a man bound himself in a bond by the name of "Jonathan otherwise John Soans," what objection could be made to it? If he had been sued by the name of "Jonathan Soans," otherwise "John Soans," it might perhaps have admitted of a different consideration. But here, at any rate, we are not bound to know that he is sued by more than one christian name.

Per Curiam,

Judgment for the plaintiffs

(a) *Willes*, 554.

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