

Great Britain. Courts,

MODERN REPORTS,

OR,

SELECT CASES

ADJUDGED IN

THE COURTS

OF

KING'S BENCH,

CHANCERY, COMMON PLEAS,

AND

EXCHEQUER.

VOLUME THE SIXTH;

CONTAINING,

CASES argued and adjudged in the Court of QUEEN'S BENCH at Westminster, in the Second and Third Years of QUEEN ANNE, in the Time when SIR JOHN HOLT, KNT. sat as Chief Justice in that Court: together with the Pleadings to several of the Cases.

THE FIFTH EDITION,

CORRECTED:

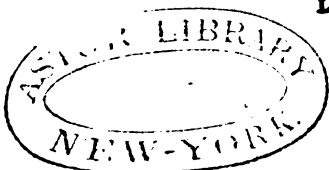
WITH THE ADDITION OF MARGINAL REFERENCES AND NOTES,

By THOMAS LEACH, Esq.

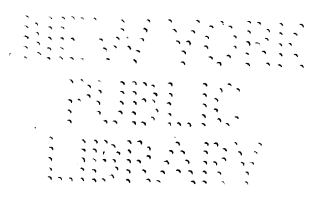
OF THE MIDDLE TEMPLE, BARRISTER AT LAW.

L O N D O N :

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J. BUTTERWORTH; OGILVY AND SPEARE; AND
L. WHITE, DUBLIN.



1794.
214



Case 157.

Morgan against Tomkins.

On outlawry on an indictment being reversed, the indictment stands.
S. C. Holt, 402.

BY THE COURT. If there be an outlawry upon an indictment, and the outlawry is afterwards set aside, the indictment stands good and open to proceed upon: but if judgment be upon an indictment by *nil dicit*, or any other judgment by the Court, and that be reversed, all is set at large, and there is an end of the indictment.

Case 158.

Anonymous.

If a *traverse* be tendered to an inquisition of forcible entry, restitution shall not be granted.
Salk. 260. 588.
4. Com. Dig. "Forcible Entry," (D. 7.)

IT has been held in KELYNGE's time, that if a forcible entry were traversed, yet there should not be a restitution, in the case of *the King v. Carle* (a). But the contrary has been held since, and before; and that there is no way to prevent restitution, but by *certiorari*, or pleading that the party had possession for three years before (b).

(a)

(b) See 31. *Eliz.* c. 11.

Case 159.

Execution upon *habere facias possessionem*.
Anst. 27.
Post. 298.

Anonymous.

PER HOLT, Chief Justice. Upon an *habere facias possessionem*, the execution is not complete until the bailiff deliver the possession, and is gone.

Case 160.

Anonymous.

Departure in pleading.
1. Salk. 222.
5. Com. Dig. "Pleader," (F. 11.)
4. Term Rep. 419.

PER HOLT, Chief Justice. If a man lay a day in his declaration that is not material, and the defendant, by his plea make it material, and then the plaintiff, in his replication, varies from the day in the declaration, it will be a *departure*; otherwise if the day had not been made material by the plea.

Case 161.

Walden against Holman.

If a man sued by the name of Benjamin plead in abatement that he was baptized by the name of John, with a TRVERSE that the said John was ever known by the name of Benjamin, the plea is bad.

HOLMAN was sued by the name of Benjamin Holman, and pleaded in *abatement*, that he was baptized and always known by the name of John; ABSQUE HOC that he the said John was ever called or known by the name of Benjamin Holman. The plaintiff replies, that he was known by the name of Benjamin from the time of his baptism. To which the defendant demurs.

It was urged, that the material part of the plea was, that he was baptized by the name of John; and if so, the plaintiff ought to answer that; for if the defendant were baptized by the name of John, he could not be known by any other name of bap-

S. C. Ed. Ray. 1015. S. C. 1. Salk. 6. S. C. Holt, 492. 563. Cro. Eliz. 897. Cro. Jac. 558. 2. Brownl. 48. Post. 225. Noy, 135. 2. Roll. Abr. 135. 4. Mod. 347. Ld. Ray. 128. 249. 509. 1178. Stra. 556. 816. 1218. 1. Lut. 10. 3. Term Rep. 660.

tism,

Hilary Term, 2. Queen Anne, In B. R.

tism, for one can have but one name of baptism; and the ABSQUE HOC coming after that, which is a material plea, is frivolous, and therefore not to be regarded.

WALDEN
against
HOLMAN.

And to this opinion POWELL, Justice, strongly inclined, for he thought that to say that he was baptized by another name, without more, was a good plea in abatement, and therefore the rest was nugatory (a).

* HOLT, Chief Justice, and the rest of THE COURT, contra; for admitting that it might be relied upon for a plea that he was baptized by such a name, yet that is not done here, but it is only made an inducement to a traverse, which matter of traverse is not immaterial, but would be a good plea in abatement; for it is a good plea in abatement for a defendant to say that he was known and called by such a name, though he never was baptized, as many thousands in England never were: nor is it true to say that one baptized by the name of John cannot be known by another name. Sir Francis Gawdy acquired a new name by his confirmation (b), without, as HOLT, Chief Justice, said, losing his Christian name; at least he said he was not satisfied that his name of baptism did cease upon his taking a new name of confirmation, as POWELL, Justice, would have it (c). [116]

BROTHERICK at the bar remembered a case wherein he was of counsel, in which it was held, that it is not a good plea in abatement for a defendant to say that he was baptized by another name, without shewing likewise that he was always known by it, and not put the plaintiff to shew how his name was altered to enable him to sue them.

DARNELL, Serjeant, affirmed the same thing.

And judgment was given to answer over.

(a) See Jones v. Macquillin, 5. Term Rep. 195. v. Snedson, Cro. Jac. 116. See also 2. Roll. Abr. 135. 5. Co. 43. Poph. 57. Noy, 135. 1. Brownl. 47. the Year-Books 3. Hen. 6. pl. 26. 14. Hen. 7. pl. 11. and Bro. Abr. "Mifnomer," 2. 4. 7. 43.

Rosewell against Pryor.

Case 162.

MIDDLESEX, } NATHANIEL ROSEWELL complains of Samuel Pryor and Richard Avery in the custody of the marshal, &c. for this, that whereas the said Nathaniel, on the first day of June in the ninth year of the reign of

Case for stopping up of lights (a).

(a) It is not said ancient messuage, neither ancient windows. An after verdict this was moved in arrest of judgment. But by the whole Court, it being after a verdict, it shall be intended that it was given in evidence at the trial, that the house and windows were ancient. But WRIGHT, Serjeant, and NORTHY, were of opinion, that the declaration would have been good upon a demurrer. Salk. 460. 714. Mod. Cases, 416. Praet. Reg. 16, 29.

the

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