

W. J. G. Smith

R E P O R T S

OF

C A S E S

ARGUED AND DETERMINED

IN THE

1817 Courts of Common Pleas

AND

Exchequer Chamber,

WITH

TABLES OF THE NAMES OF THE CASES AND PRINCIPAL
MATTERS.

BY CHARLES MARSHALL,

OF THE INNER-TEMPLE, ESQUIRE, BARRISTER AT LAW.

VOL. II.

CONTAINING THE CASES FROM MICHAELMAS TERM 1815 TO MICHAELMAS
TERM 1816, BOTH INCLUSIVE.

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AND
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1817.

J U D G E S
OF THE
COURT OF COMMON PLEAS,
DURING THE PERIOD OF THESE REPORTS.

The Right Hon. Sir VICARY GIBBS, Knt., Lord Chief Justice.

The Hon. JOHN HEATH, Esq.

The Hon. Sir ALAN CHAMBRE, Knt.

The Hon. Sir ROBERT DALLAS, Knt.

The Hon. Sir JAMES ALLAN PARK, Knt.

The Hon. Sir CHARLES ABBOTT, Knt.

The Hon. Sir JAMES BURROUGH, Knt.

1816.

In the Exchequer Chamber.

Wednesday,
May 8.

MARTIN v. EMMOTE. (In error.)

In covenant on a charter-party, the plaintiff assigns two breaches; one for a specific sum, the other, for unliquidated damages; on judgment by default, damages are assessed generally. Upon affirmance in the Exchequer Chamber, the court refused to allow interest.

THIS was an action of covenant on a charter-party, and the declaration contained two breaches; *first* for non-payment of a specific sum, in gross, for freight; *secondly*, for unliquidated damages, for delay in unloading beyond the lay days allowed by the charter-party. The defendant having suffered judgment by default, damages were assessed generally on both breaches; and now, on judgment being affirmed,

Mr. *Taddy* moved for interest: But the court said that though the *first* breach was for non-payment of a specific sum, on which, if it stood alone, interest might be claimed, yet as the *second* was for unliquidated damages, on which no interest could be claimed, and as the damages had been assessed generally, the court could not separate them, and say how much the jury gave on each breach; and the application was, accordingly,

Refused.

Mr. *Ross*, *contra*.Thursday,
May 9.

WALKER and another, v. WILLOUGHBY.


Where *A.*, having two *christian* names, has omitted one of them in his dealings with *B.*,

he cannot, in an action brought against him by *B.*, make the same omission a ground for setting aside the proceedings.

MR. Serjt. *Onslow*, on a former day, obtained a rule to shew cause why the bail-bond should not be cancelled, and proceedings stayed, on the ground that the defendant

had been sued by the name of *William Willoughby*, whereas his christian names were *Hans William (a)*.

The *Solicitor-General* now shewed cause on an affidavit, which stated that the plaintiffs had repeatedly received orders for goods written by the defendant, by the name of *William Willoughby*, and that he had obtained credit with them by that name: And the court held that after having called himself by the name of *William* only, he could not make this objection.

1816.

 WALKER
 v.
 WILLOUGHBY.

Rule discharged.

(a) A similar rule was made absolute in last *East* term, on the same ground, in an action against the same defendant: *Ante*, vol. i. p. 477.

HUMPHRIES v. WILLIAMS.

Thursday,
 May 9.

THE *Solicitor-General*, on a former day, obtained a rule to shew cause why, upon a common appearance being entered for the defendant, the bail-bond should not be delivered up to be cancelled, on the ground that the affidavit of debt was insufficient. It stated that the defendant was indebted to the plaintiff in the sum of £95 and upwards, 'as the indorsee of a certain bill of exchange, 'drawn by one *T. Winslow*, at a certain day now past;' without stating how the defendant became liable; whether as acceptor, or indorser.

An affidavit of debt, stating that the defendant is indebted to the plaintiff, as indorsee of a bill of exchange, drawn by one *T. W.* at a day now past, without stating in what character the defendant became liable, is insufficient.

Mr. Serjt. *Best* now shewed cause. In *Bradshaw v. Saddington (a)*, an affidavit, stating that the defendant was

(a) 7 *East*, 94.

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