REPORTS

OF

CASES

ARGUED AND DETERMINED

IN THE

Court of Common Pleas,

AND

OTHER COURTS,

FROM

HILARY TERM, 55 GEO. III. 1815,

TO

EASTER TERM, 56 GEO. III. 1816,

BOTH INCLUSIVE.....WITH

Tables of the Cases and Principal Matters.

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VOL. VI.

BOSTON:

WELLS AND LILLY, COURT-STREET.

1823.

1816.

Taylor v. Zamira.

PARK J. I should be sorry if there were any inveterate rule of law, which prevented the Defendant from recovering in this case. *Sullivan* v. *Stradling* has been relied on, as deciding that *nil habuit in tenementis* is no plea, but this plea is compounded of that fact and other things, and is a good plea. In a late case (*a*) in this Court, the substance of the Defendant's argument was, that the plea amounted to *nil habuit in tenementis*, but the Court held otherwise. Here is a compulsory payment under a threat of distress, and in *Sapsford* v. *Fletcher* there was no more.

BURROUGH J. was of the same opinion. *Carpue*, consistently with the plea in bar, had a good title to create the title under him. The land was therefore liable to distress; no one can doubt about that. If premises be liable to a distress, the tenant has a right to pay the charge to which they are liable; and the Plaintiff having so paid the annuity, has a right to deduct from his rent the sum so paid; and if the payment had exceeded the rent due, it appears to me that he might have brought *assumpsit* against the Defendant for the surplus. The Defendant's counsel felt the difficulty of this case, and therefore took in his argument the course he did. The judgment must be for the

Plaintiff. (*b*)

(*a*) *Rogers* v. *Pitcher*, *ante*, vi. 202.
(*b*) [See 3 Barn. & Ald. 516, *Stubbs* v. *Parsons*. 1 Brod. & Bing. 37, *Andrew* v. *Hancock*.]

* 530

*WALKER v. WILLOUGHBY.

May 8.

[2 Marsh. 230. S. C.]

The Court will not discharge a Defendant arrested by a wrong *Christian* name, who has signed that name in dealing with the Plaintiff.

ONSLOW Serjt. had obtained a rule *nisi*, on the authority of *Wilks* v. *Llorck* (*a*), to discharge the Defendant out of custody, upon the ground that he had been arrested by the name of *William*, whereas his baptismal name was *Hans William*, which rule

Shepherd, Solicitor-General now discharged, upon an affidavit that the Defendant had sent the Plaintiff orders for the goods for which the action was brought, by notes signed *W. Willoughby* only, and that the Plaintiff did not

(*a*) *Ante*, ii. 389.

1816.

Walker v. Willoughby.

know his name was *Hans*. This evidence, as it would suffice to prove a replication in abatement that he was known as well by the one name as the other, so would it suffice to repel the present application.

Onslow in support of his rule.

Rule discharged. (*a*)

[(*a*) [See 3 Campb. 108, *Price* v. *Harwood*.]

(IN THE EXCHEQUER-CHAMBER.)

May 8.

MARTIN *v.* EMMOTE. In Error.

[2 Marsh. 230. S. C.]

Where an entire verdict passes in covenant for liquidated freight, payable at a certain date after delivery, and for unliquidated damages for detention of the ship, the Court cannot sever them in order to give interest on the freight.

UPON affirmance in error from the Court of King's Bench of an entire judgment in covenant on a charter-party on several breaches, one of which was *for 1500*l.* *531 specifically recoverable as freight, and payable at so many days after delivery which was equivalent to a day certain, and another went to recover a compensation for delay in unloading the ship, beyond the lay days stipulated, *Taddy* moved for interest on the freight, suggesting that the Court could by the aid of the record separate the specific sum of 1500*l.* from the residue of the damages, which were unliquidated. But

The Court held that as the damages were entire, they could not sever them, and refused the application.

May 8.

HUMPHRIES *v.* WILLIAM WINSLOW.

[2 Marsh. 231. S. C.]

Affidavit to hold to bail, stating that the Defendant is indebted to the Plaintiff as indorsee on a bill drawn by a stranger, is insufficient.

THE Solicitor-General had obtained a rule *nisi* to discharge the Defendant out of custody upon the ground that the affidavit made to warrant the arrest was defective, in stating that the Defendant was indebted to the Plaintiff, who was indorsee, on a bill of exchange drawn by *T. Winslow*, not shewing in what relation the Defendant stood to that bill, so as to be thereon indebted.