REPORTS

OF

CASES

ARGUED and ADJUDGED in the COURTS of

KING'S BENCH

AND

COMMON PLEAS,

In the REIGNS of

The late King *William*, Queen *Anne*, King *George* the First, and King *George* the Second.

Taken and collected

By the Right Honourable *ROBERT* Lord *RAYMOND*, late Lord Chief Justice of the COURT of KING'S BENCH.

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MDCCXC.

BALL v. manucaptors of RUSSEL.

Holt ſaid, that the marſhal of the houſhold is never ſtiled *mareſchallus mareſchalciae noſtrae.*

Warner *verſ.* Sir Edward Irby.

A defendant cannot plead a miſpriſion of addition after he has admitted himſelf to be the perſon mentioned in the declaration. R. acc. ante 1015.

IN two actions againſt the defendant by the name of Sir *Edward Irby* baronet, the defendant pleads in one thus: *Et praedictus Edwardus Irby armiger, in propria perſona ſua venit et dicit*, that he is not a baronet: and in the other he pleaded the ſame matter, only with this difference, that he ſaid only *praedictus Edwardus venit*, &c. The plaintiff demurred. Mr. *Southouſe* took exception to the pleas, that it was ſaid *praedictus Edwardus*, which was admitting himſelf to be right named, and after that he is eſtopped to plead any *miſnoſmer*. But he ought to have pleaded, that *Edwardus Irby armiger, qui per nomen Edwardi Irby baronetti* is ſued, *venit in propria perſona ſua*, &c. *et dicit*, &c. Serjeant *Broderick* for the defendant inſiſted, that there was a difference, where *miſnoſmer* of the ſurname or addition is pleaded in abatement, and where *miſnoſmer* of the *Chriſtian* name: there you may ſay *praedictus* the *Chriſtian* name, where it is the *miſnoſmer* of the ſurname is pleaded, or *praedictus* the *Chriſtian* and ſurname where it is only the *miſnoſmer* of the addition: but otherwiſe if *miſnoſmer* of the *Chriſtian* name be pleaded. And he cited 1 *Edw.* 4. 3. and ſaid, that all the books were ſo. *Holt* ſeemed to doubt the difference, but ſaid, that if it were ſo, yet the plea was naught, for want of ſhewing what he is. For every one that will abate the plaintiff's writ, muſt give him a better. And therefore it is not enough for the defendant to ſay, he is not a baronet, without ſhewing what he is. And beſides he ſaid, one of the pleas was not within his own rule, for he ought according to that to have ſaid only, *praedictus Edwardus*, or *praedictus Edwardus Irby*, and not *praedictus Edwardus Irby armiger*. But the ſureſt way of pleading it would have been, to have ſaid, *venit Edwardus Irby armiger*, who is ſued *per nomen Edwardi Irby baronetti*, *et dicit*, that he is an eſquire, and not a baronet.

By beginning his plea with the words, "and the ſaid *J. S.*" he admits himſelf to be the perſon mentioned in the declaration.

A plea in abatement muſt ſhew how the plaintiff ſhould have ſued. R. acc. Turton v. Worſley. B. R. M. 24 G. 3. poſt. 1541. Adm. Ann. 286. Bl. 21. acc. 3 Bl. Com. 302. Vide poſt. 1207. Therefore a plea of miſpriſion of addition muſt ſhew what the defendant's right addition is. R. acc. poſt. 1541. Adding a particular one after his name in the beginning of the plea is not ſufficient to ſhew what it is; it ought to be ſubſtantially ſtated in the body of the plea.

The court gave judgment, that the defendant *reſpondeat ulterius*, *niſi*, &c.