

Brit. Courts.



*D. Williams*

REPORTS OF CASES

DETERMINED AT

NISI PRIUS,

IN THE COURTS OF

KING'S BENCH AND COMMON PLEAS,

AND ON

THE HOME CIRCUIT,

8941

FROM THE

SITTINGS AFTER MICHAELMAS TERM, 48 Geo. III. 1807,

TO THE SITTINGS AFTER MICHAELMAS TERM, 49 Geo. III. 1808,

BOTH INCLUSIVE.

BY JOHN CAMPBELL, Esq.

OF LINCOLN'S INN, BARRISTER AT LAW.

*Si de interpretatione legis queratur; in primis inspiciendum est, quo jure civitas retro in ejusmodi casibus usa fuisse.*

PAND. L. I. p. 3

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1810.

son authorized to give the defendant a discharge. A demand by the attorney himself, his Lordship said, might have done. The defendant had a verdict. *Vide Spybey v. Hide, ante, 181.*

*Weleker v. Le Pelletier.*

Same day.

THE defendant, being sued by the name of *Louis Le Pelletier*, pleaded in abatement, "that he was baptized by the name of *Louis Auguste Alexander*, and by the christian name of *Louis Auguste Alexander* had always since his baptism hitherto been called and known." Replication, "that the defendant was not baptized by the name of *Louis Auguste Alexander*," and issue thereupon.

If a defendant sued by the name of A pleads in abatement, that he was baptized by the name of B., he must prove that this name was given him by baptism, and it is not enough for him to shew, that he has always been known and called by the name of B.

*Gaselee*, for the defendant, stated, that from his client being a French emigrant, it had been found impossible to procure any direct proof of his baptism; but he offered to adduce the following evidence, from which, he contended, it must be inferred by the jury, that the defendant had been baptized by the name of *Louis Auguste Alexander*. 1. The fact that he was always known in France by this name before the revolution in that country. 2. A commission to him as an officer in this name from Louis XVI. 3. A commission to him in this name as a cornet in the British service from George III. 4. Letters of denization to him in this name from the same sovereign.

LORD ELLENBOROUGH. How does it appear from such evidence, that the defendant was ever baptized

at all? If it had been proved, that he was carried out to church when an infant, for the purpose of being baptized, and that ever after his return he was called by a particular name, there would have been fair ground for the presumption, that this was his name of baptism. But without some evidence of this sort, how do I know that he is not of the Jewish or some other persuasion in which the rite of baptism is unknown? According to the argument for the defendant, I must presume, that in all cases the name that a man goes by was given him by baptism. This presumption would not unfrequently be against the fact. There is an instance commonly given in the books, of Sir Francis Gaudie, so called by his name of *confirmation*.<sup>(a)</sup> If this plea went to the merits of the action, I should be disposed to make great allowances for the difficulty of procuring evidence under such circumstances in support of it ; but it is quite collateral to the justice of the plaintiff's demand, and deserves no favour. You must therefore go farther, and give some evidence of the baptism.

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(a) "If a man be baptized Francis ; and that name of by the name of Thomas, and Francis, by the advice of all the after at his confirmation by the judges, in *anno* 36 Hen. VIII. the bishop he is named John, he he did bear, and after used in may purchase by the name of all his purchases and grants. his confirmation. And this And this doth agree with our was the case of Sir Francis ancient books, where it was holden that a man may have Gaudie, late chief justice of the divers names at divers times, court of common pleas, whose but not divers Christian name of baptism was Thomas, names." *Co. Litt.* 3. a. and his name of confirmation

*Gaselee* observed, that it was not necessary for the defendant to have pleaded that he was *baptized* by the name of Louis Auguste Alexander ;(b) and that the substance of the issue might be considered to be, whether he had been always called and known by that name.

LORD ELLENBOROUGH. As the defendant has pleaded (although unnecessarily) that he was *baptized* by a particular name, he is bound to prove this allegation.(c)

The plaintiff had a verdict with nominal damages, being unprepared with any evidence of his demand.

*Garrow* and *Espinasse*, for the plaintiff.

*Gaselee*, for the defendant.

[Attorneys, *Popkin* and *Pitcher*.]

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(b) *Com. Dig. Abatement*, or known by the name and surname of B. W." and *HOLT*, F. 17. C. J. said "that the traverse was material, and likewise the inducement. One may have a nomen and cognomen that never was baptized, and thousands in fact have."

(c) *Vide Walden v. Holman*, 1 *Salk.* 6. where defendant pleaded, "that he was baptized by the name of J. et per nomen et cognomen de J. W. semper, &c. cognitus et vocatus fuisset, absque hoc, that he was called

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