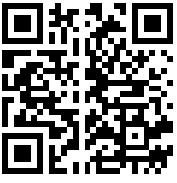

REPORTS

OF

SIR GEORGE CROKE, KNIGHT,

OF

SELECT CASES

ADJUDGED IN THE

COURTS of KING's-BENCH and COMMON-PLEAS,

IN THE REIGNS OF

QUEEN ELIZABETH, KING JAMES, and KING CHARLES I.

IN THREE VOLUMES.

VOLUME THE FIRST—PART THE SECOND,

FROM THE

THIRTY-EIGHTH YEAR TO THE END OF THE REIGN

OF

QUEEN ELIZABETH.

M. D.

REPORTS

OF

SIR GEORGE CROKE, KNIGHT,

FORMERLY ONE OF THE

JUSTICES

OF THE

COURTS of KING's-BENCH and COMMON-PLEAS,

OF SUCH

SELECT CASES

AS WERE ADJUDGED IN THE SAID COURTS DURING THE

REIGN of QUEEN ELIZABETH.

COLLECTED AND WRITTEN IN FRENCH,

By HIMSELF;

REVISED AND PUBLISHED IN ENGLISH

By SIR HARBOTTLE GRIMSTON, BARONET,
MASTER OF THE ROLLS.

THE FOURTH EDITION, CORRECTED,

WITH

MARGINAL NOTES and REFERENCES to the LATER REPORTS,

AND OTHER BOOKS OF AUTHORITY,

By THOMAS LEACH, ESQ.

OF THE MIDDLE TEMPLE, BARRISTER AT LAW.

LONDON:

PRINTED FOR E. AND R. BROOKE, BELL-YARD, TEMPLE-BAR;
AND T. WHIELDON, FLEET-STREET.

M,DCC,XC.

SMITH *against* SMITH.

with the conſtable, in the night, brake open the houſe where the woman was. Whether it were juſtifiable? was the queſtion.—And ALL THE COURT held clearly, that it was not; for neither upon a *capias excommunicat.* nor for any other cauſe, unleſs for felony or treaſon, is it lawful for any to break an houſe in the night. As alſo for another cauſe, THE WHOLE COURT held that it was not juſtifiable: for they of the ſpiritual court, by reaſon of excommunication, or by reaſon of any other matter, are not to meddle with the perſon of any man, or to ſend any proceſs to have the body before them. And therefore, if any, for any cauſe whatſoever, be excommunicated, and ſo continue in contumacy for forty days, they ought to certify it into the chancery, and from thence to have an *excommunicato capiendo*, but they of themſelves cannot award any proceſs to take him; and if they might, the writ of *excommunicato capiendo* ſhould be vain (*a*). And the ſtatute of 1. *Eliz.* c. 1. which gives the authority to the high commiſſioners, doth not alter the law in this point: for that ordains only, that their proceeding ſhall be according to the ſpiritual law, which is no otherwiſe than as before is expreſſed. Wherefore, &c.

4. Inſt. 331.

(*a*) See 3. & 4. Jac. 1. c. 35. 4. Bac. Abr. 455.

CASE 4.

Wotton *againſt* Shirt.

Hilary Term, 41. *Eliz.* *Roll* 625.

Upon an *elegit*, two-thirds of a rent may be extended, though the defendant has the whole. Ante, 655.

Co. Lit. 148. 6. Co. 1. 8. Co. 105. 4. Bac. Abr. 368. Dougl. 473. Co. Lit. 164. b. Imp. Off. of Sh. 167, 168. See 29. Car. 2. c. 3.

REPLEVIN. The defendant avows for a rent-charge; and ſhews how the plaintiff's father was ſeiſed in fee of the place WHERE, and granted a rent-charge to *Sir John Wotton*, younger brother to the plaintiff, of 100 marks *per annum* in fee, and that *Sir John Wotton* granted it in fee to *Luke Cobham*, whereto the tenant attorned (*a*), and that *Luke Cobham* was indebted to the avowant by judgment, and two parts of that rent was extended by a *fieri facias*, and delivered unto him in execution; and ſo avows for two parts of the rent. The plaintiff replies, that at the time of the extent, *Luke Cobham* was poſſeſſed of the entire rent, which might have been extended; and thereupon the avowant demurs. The ſole queſtion was, Whether an extent of two parts of the rent were good?—And ALL THE COURT held, that it was: for although by the act of the party the tenant ſhall not be liable to two diſtreſſes, yet by act in law he may. And this act of the ſheriff's is an act in law; and his delivery of two parts was good.

(*a*) See 4. Ann. c. 16. ſ. 9. and 11. Geo. 2. c. 19. ſ. 11.

CASE 5.

Taylor, and Joan his Wife, *againſt* George Sayer.

Trinity Term, 41. *Eliz.* *Roll* 522.

A deviſe of a remainder to a man's *iſſue*, where he hath ſeveral children, is void for uncertainty. Ante, 470.

Gilbert, on Dev. 116. 2. And. 134. Godb. 302. Sed vide 3. Lev. 433. 6. Co. 17. *contra*, and Ray. 83. where this caſe is denied to be law. 10. Mod. 376. 2. Ld. Ray. 1313.

PARTITION. Upon iſſue, "*non tenuit inſimul, et pro indiviſo*," a ſpecial verdict was found. The caſe was, *Thomas Sayer*, ſeiſed in fee of the lands in queſtion, holden in ſoccage, deviſed them to his wife for life; "and after her death, the ſame "ſhall remain to my iſſue." It was found, that at the ſame time he had iſſue two ſons, VIZ. *Robert*, and *George* the now defendant; and two daughters, VIZ, *Alice*, and *Joan* the now plaintiff. And

deviſed

TAYLOR *against* SAYERS.

deviſed to his two daughters, each of them 10l. *ſolvendum* at their age of eighteen years; and that one of them ſhould be heir to the other of their legacies; and died. *Robert* the eldeſt ſon died without iſſue. *Alice* the daughter died without iſſue. The wife of the deviſor died. *George* the now defendant, and *Taylor*, who married *Joan*, entered with him and brought partition. *Et ſi ſuper totam, &c.*—After argument, it was adjudged for the defendant, that he did not hold "*inſimul, et pro indiviſo*;" for they held, that this deviſe of the remainder to his iſſue, is uncertain what iſſue he intended, he having divers iſſues; and it ſhall not be extended to all his iſſue: for a will ſhall be conſtrued according to the intent of the deviſor, where a certain intent may be collected; but where it is uncertain it is void. And therefore a deviſe to his ſon, where he hath two ſons, is void; becauſe it appeareth not which of them he intended; and it ſhall not be conſtrued to be to the eldeſt more than to the other. But *Chapman's Caſe* in 16. *Eliz.* may have a good conſtruction, becauſe it is to the moſt worthy of blood; and the intent of the deviſor ought to be collected upon plain words, and not upon words which engender confuſion; and if it may not be collected by the words, it is void. As a deviſe to two *et hæredibus*, ſo a deviſe *melioribus hominibus* in *D.* is void; for it cannot be known whom he intended to be the beſt men. And as WALMSLEY ſaid, it is a good way, when the words in a will are ambiguous, ſo as the intent may not be collected, to expound the will according to the law, ſo there ſhall not be any prejudice.—And here they ALL held, if by the deviſe to the iſſue, it ſhould be extended to all the iſſues, they ſhould have it for life only; and when the reverſion deſcended to one joint-tenant for life, or the other joint-tenant for life purchaſed the reverſion, the jointure is ſevered; and the eſtate for life drowned (*a*). And not like where two purchaſe, to them and the heirs of one of them; for there the agreement at the beginning was, that the eſtate for life ſhould continue; and it was cited to be ſo ruled 33. *Eliz.* in *Lady Morgan's Caſe*, in the court of wards; and in 37. *Eliz.* to be ſo adjudged in this court. And between *Portley* and *Portley*, it was ruled that it was all one; where the one purchaſeth the reverſion, and where the reverſion deſcends to the one joint-tenant (*b*).

(*a*) Ante, 53. 479. 481. 696. 6. Co. 16. Co. Lit. 182. 2. And. 202. Cro. Jac. 60.

(*b*) This caſe denied, Ray. 83. 1. Vent. 229. 3. Lev. 431. and 1. Salk 224. Legg v. Pool, Hil. 2. Geo. 2. C. B. *L. C. B. Parker's MSS.*

An exception was taken to the writ, becauſe it was general againſt the defendant as joint-tenant, which is intended a joint-tenancy in fee; whereas it ought to have been ſpecially framed upon the 32. *Hen.* 8. c. 1. and to have ſhewn the ſpecial matter, how it was a joint-tenancy for life.—*Sed non allocatur.* Becauſe the precedents are, that always in ſuch caſe the writ is general. Wherefore it was adjudged for the defendant.

A general writ by joint-tenants on 32. *Hen.* 8. c. 1. is ſufficient, without reciting the caſe particularly. Poſt. 760. 2. Bl. Rep. 1134.

See 8. & 9. Will. 3. c. 31.

Baldry *againſt* Johnſon.

CASE 6.

Trinity Term, 41. *Eliz.* *Roll* 1702.

ACTION upon the caſe againſt the defendant, gaoler of the priſon in *Bury*. For that a plaint being before the bailiffs of the ſame vill, according to the cuſtom there, they directed a warrant to the under-bailiffs to take the party, *ita quòd habeant* to his care, upon an arreſt made by the under-bailiffs of an inferior court. Ante, 26. 2. Bac. Abr. 244. Ld. Raym. 655. 1. Salk. 273. Cowp. 403. 2. Term Rep. 5.

A gaoler is not liable to the plaintiff for the eſcape of a priſoner committed 1. Roll, 78.