

R E P O R T S

OF

C A S E S

ADJUDGED IN THE

Court of King's Bench:

WITH SOME

SPECIAL CASES

IN THE

Courts of Chancery, Common Pleas, and Exchequer,

ALPHABETICALLY DIGESTED UNDER PROPER HEADS;

From the First Year of King WILLIAM and Queen MARY,
to the Tenth Year of Queen ANNE.

By WILLIAM SALKELD,
LATE SERJEANT AT LAW.

THE SIXTH EDITION:

Including the NOTES and REFERENCES of KNIGHTLEY D'ANVERS, Esq.
and Mr. Serjeant WILSON;

And large Additions of NOTES and REFERENCES to Modern Authorities
and Determinations,

By WILLIAM DAVID EVANS, Esq.
BARRISTER AT LAW.

IN THREE VOLUMES.

V O L. III.

L O N D O N:

PRINTED BY A. STRAHAN AND W. WOODFALL,
LAW-PRINTERS TO THE KING'S MOST EXCELLENT MAJESTY;
FOR E. AND R. BROOKE, IN BELL-YARD, NEAR TEMPLE-BAR;
AND J. BUTTERWORTH, FLEET-STREET.

1795.

5. Anonymous.

[Hill. 2 Annæ.]

Traverse of his name, where it is repugnant.

Vide Rep. B. R. Temp. Hard. 286. 1 Salk. 6.

THE plaintiff declared against the defendant by the name of *John*; the defendant pleads he was baptized by the name of *Benjamin*, and traversed, that *ipse idem Johannes* was ever known by the name of *John*, and upon a general demurrer to this plea, per Holt, Ch. Just. this traverse is repugnant in itself, and stands but as matter of form, yet pleas in *abatement* are not within the statute of *Eliz.*, but only pleas to the *right* and to the merits of the cause; but though the *traverse* was repugnant, it is not immaterial, because it waived the precedent matter, which was pleaded before of baptism, and was become the substance of the plea itself, so that now the issue must be by what name the defendant was called and known, and not by what name he was baptized; but he might have relied upon his name of baptism; and concluded with it, for a man can have but one name of baptism, therefore it implies a negative of itself, without saying, that he was called or known by no other name (*a*).

(a) But at last a *respondeas orestet* was awarded. 1 Salk. 6, 15.

6. Anonymous.

[Mich. 10 Will. 3.]

Where an alias dictus is proper. 1 Lutw. 10, 295, 519. 6 Mod. 217. Cumb. 188. 2 Sho. 394. 6 Mod. 225. 1 Salk. 7, 17.

THE obligor was bound by the name of *W. R.*; he may be sued by the name of *W. R.*, *alias dictus W. C.* if his name is so; but if his name is *R. W.* the obligee cannot sue him by the name of *S. W.*, *alias dictus R. W.*, for he cannot have two names of baptism, neither is there any remedy unless he hath estopped himself by appearance.

7. Knight's Case.

[Trin. 2 Annæ, 2 Ld. Raym. 1014. S. C.]

1 Salk. 329. Where John was sued, and he pleaded in abatement, that his name was Thomas. 6 Mod. 310.

ACTION against *John Knight*; the defendant pleaded in *abatement*, that his name is *Thomas*, and thereupon the plaintiff commenced a new action against him by his right name *Thomas*; the defendant pleaded in *abatement* a former action depending; and upon a demurrer to this plea it was insisted, that the averment was against the record, for that *John* and *Thomas* could not be the same person:

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