N. Newey

REPORTS

OF

CASES

ARGUED AND DETERMINED

IN THE

Court of King's Bench,

WITH

TABLES OF THE NAMES OF THE CASES AND PRINCIPAL MATTERS.

BY EDWARD HYDE EAST, ESQ.
OF THE INNER TEMPLE, BARRISTER AT LAW.

Si quid novisti rectius istis,
Candidus imperti: si non, his utere mecum...Hor.

VOLUME V.

CONTAINING

THE CASES OF EASTER, TRINITY, AND MICHAELMAS TERMS, IN THE FORTY-FOURTH AND FORTY-FIFTH YEARS OF GEORGE III....1804.

A NEW EDITION, WITH CORRECTIONS, AND THE ADDITION OF NOTES AND REFERENCES.

BY THOMAS DAY.

HARTFORD:
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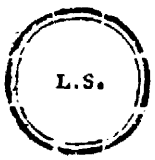
DISTRICT OF CONNECTICUT, TO WIT.



BE IT REMEMBERED, That on the first day of September, in the thirty-ninth year of the Independence of the United States of America, THOMAS DAY, of the said District, hath deposited in this Office, the title of a Book the right whereof he claims as Proprietor, in the words following—to wit:

"Reports of Cases argued and determined in the Court of King's Bench, with "Tables of the names of the cases and principal matters. By Edward Hyde "East, Esq. of the Inner Temple, Barrister at Law.

"*Si quid novisti rectius istis,*
"*Candidus imperti: si non, his utere mecum*....Hor.

"Vo V. Containing the Cases of Easter, Trinity and Michaelmas Terms, in "the forty fourth and forty-fifth years of George III. 1804. A new edition, "with corrections, and the addition of notes and references. By Thomas "Day."

In conformity to the act of the Congress of the United States, entitled, "An Act "for the encouragement of learning, by securing the copies of maps, charts, and "books, to the authors and proprietors of such copies, during the times therein "mentioned."

HENRY W. EDWARDS,
Clerk of the District of Connecticut.

JUDGES

OF THE

COURT OF KING'S BENCH,

DURING THE PERIOD OF THESE REPORTS.

EDWARD Lord ELLENBOROUGH, C. J.
Sir NASH GROSE, Knt.
Sir SOULDEN LAWRENCE, Knt.
Sir SIMON LE BLANC, Knt.

ATTORNEY-GENERAL.
The Honourable SPENCER PERCEVAL.

SOLICITOR-GENERAL.
Sir THOMAS MANNERS SUTTON, Knt.

TABLE

OF

THE CASES REPORTED

IN THIS FIFTH VOLUME.

N. B. Those cases which are printed in *Italics* were cited from MS. Notes.

TABLE OF THE CASES.

CASES

ARGUED AND DETERMINED

IN THE

Court of King's Bench,

IN

EASTER TERM,

IN THE FORTY-FOURTH YEAR OF THE REIGN OF GEORGE III.

IN the last vacation died, at his house in *George-street, Westminster*, the Right Honourable RICHARD PEPPER Lord ALVANLEY, Lord Chief Justice of the Court of Common Pleas. He was succeeded in this term by

JAMES MANSFIELD, Esq. one of his Majesty's Counsel learned in the Law, who was sworn into office on *Tuesday* the 24th of *April*, and was knighted. And on the 25th, he was called to the degree of Serjeant at Law, and took his seat on the Bench, and gave rings with this motto, *Serus in Cœlum redeas*.

On *Saturday* the 28th of *April*, the following Gentlemen took their places within the Bar:

As one of His Majesty's Serjeants learned in the Law, Mr. Serjeant *Williams*.

*As His Majesty's Counsel learned in the Law, * [2]

Richard Hollist, of the Middle Temple, Esq.
Thomas Milles, of Lincoln's Inn, Esq.
George Wilson, of Lincoln's Inn, Esq.
James Topping, of the Inner Temple, Esq.

With a Patent of Precedence,

John Fonblanque, of the Middle Temple, Esq.

1804.

Woolnoth v. Meadows.

not to agree in the meaning which has been imputed to these words in the declaration.

Judgment for the plaintiff upon the demurrers to the 2d, 3d, and 5th pleas.

COLLINS *v.* Ld. Viscount MATHEW.

Nov. 13th

A plea of *nul tiel record*, pleaded to an action * [474] of debt on an Irish judgment recovered, must conclude to the country; for though since the Union, such judgment be a record, yet it is only proveable by an examined copy on oath, the veracity of which is only triable by a jury.

THE plaintiff declared in debt upon a judgment recovered in the court of Exchequer in *Ireland* for 360*l.* 16*s.*, and also 50*s.* and 2*d.* *Irish* currency, for damages and costs, "as by the *record* and proceedings thereof remaining in the said court of our Lord the King of his *Exchequer at *Dublin* in *Ireland* aforesaid, more fully appears, &c. which said judgment still remains in the same court of *Dublin* in *Ireland* aforesaid in full force and not satisfied," &c.: and concluding with an averment that the said 360*l.* 16*s.* and 50*s.* 2*d.* so recovered were of the value of 335*l.* 7*s.* 2*d.* of lawful money of *Great Britain*. To this there was a plea of *nul tiel record*, with a verification; and a demurrer on the part of the plaintiff to such plea; assigning for special causes, that the plea of *nul tiel record* is not pleadable to an action of debt on a foreign judgment; or, if pleadable at all, it ought to have concluded to the country, and not with a verification.

Wood, in support of the demurrer, contended at first, that this fell within the same distinction as governed the case of actions on foreign judgments, to which it was settled that *nul tiel record* could not be pleaded. For since the appellate jurisdiction of this Court from the courts of *Ireland* was taken away (*a*), there is no method of bringing the original *Irish* record into this court, and consequently no way of trying its existence but by an examined copy, and that verified on oath, of which a jury only can judge, and not the court by whom the question of the identity of our own records is properly determinable. And this gives rise to the next objection, that if it be pleadable at all as a *record*, the plea ought to have concluded to the country, and not with a verification.

The Court now intimated a clear opinion, that since the Union between *Great Britain* and *Ireland* the judgments of the *Irish* courts are properly pleadable as *records*. And Lord *Ellenborough*, C. J. said, that such records were now *brought before the House of Lords of the United Kingdom on appeals and writs of error, though no longer returnable into this court by *certiorari*. But his Lordship, addressing himself to the defendant's counsel, asked what answer could be given to the last cause of demurrer assigned? For though the *Irish* judgment be a record, yet being only proveable by an examined copy on oath, the verity of the evidence could only be tried by a jury, and not by the Court; and therefore the conclusion should have been to the country.

* [475]

Lawes in support of the plea, (as to this, which was the prin-

(*a*) Vide 23 *Geo.* 3. *c.* 28. explaining and enforcing the stat. 23 *Geo.* 3. *c.* 53

cipal point made in argument,) said, that the judgments of the *Irish* courts being admitted to be records since the Union, must be taken to be and pleadable as such, with all legal consequences, as the records of other courts within this part of the kingdom: and such pleas have always been pleaded with a verification. The cases of *Walker* v. *Witter*(*a*), and *Galbraith* v. *Neville* there cited(*b*), which were actions of debt on foreign judgments, where the plea of *nul tiel record* was said to be a nullity, do not apply.

1804.

Collins v. Ld. Mathew

The Court all agreeing that the objection to the conclusion of the plea was well founded, for the reason before stated, gave

Judgment for the plaintiff.

(*a*) *Dougl.* 1.

(*b*) *Ib.* 5. 6. It is there stated, that the rule for a new trial in *Galbraith* v. *Neville* was made absolute. But according to my note of the case, it stood over from *Easter* 29 to *Mich.* 31 *Geo.* 3. for the Court to advise upon it, when Lord *Kenyon*, C. J. said, that the Court had considered the matter, and were all of opinion, that no new trial ought to be granted. He added, that, without entering into the question how far a foreign judgment was impeachable, it was at all events clear that it was *prima facie* evidence of the debt; and they were of opinion that no evidence had been adduced to impeach this; and therefore discharged the rule. [Vide *Taylor* v. *Bryden*, 8 *Johns.* 173. 178. and the authorities cited in the editor's note to *Buchanan* v. *Rucker*, 9 *East* 194.]

*SMITH *v.* M'CLURE.

* [476]

Nov. 16th.

A bill of exchange payable to the *order* of *A.* is payable to *A.*, without alleging any order made, and it is sufficient to declare that *A. delivered* the bill to the defendant, which he *accepted*, and by reason of the premises and according to the custom of merchants became liable to pay the contents to

THE plaintiff declared upon a bill of exchange, dated 1st *December* 1802, drawn by himself upon the defendant at two months for 134*l.* *payable to his own order*, and that he delivered the said bill to the defendant, which he upon sight thereof *accepted* according to the custom of merchants; *by reason of which said premises*, and according to the said custom and law of merchants, the defendant became liable to pay to the plaintiff the sum specified in the said bill, &c. and being so liable the defendant promised to pay, &c. To this there was a demurrer assigning for special causes, 1st, that although it is alleged that the plaintiff delivered the said bill of exchange to the defendant before his acceptance thereof, yet it is not alleged, nor does it appear, that he ever re-delivered the same to the plaintiff. 2. That it is not alleged, nor does it appear, that the plaintiff did not make any *order* for the payment of the said bill to any other person, or that he ever made any *order* for the payment of it to himself.

W. Walton in support of the demurrer, as to the first objection said, that it did not appear by the declaration but that the defendant had kept the bill when it was delivered to him; and as it was drawn by the plaintiff himself, it never was of any value while in his hands, nor could become so till re-delivery by the acceptor, by which he finally consented to charge himself with the payment of it. And secondly, that being drawn paya-

l.; without alleging a *re-delivery* of the bill by the defendant: for if a re-delivery, or something tantamount to shew the assent of the drawee to charge himself, be necessary to an acceptance, the demurrer, by admitting the acceptance, impliedly admits the re-delivery, &c.