

R E P O R T S

O F

C A S E S

ARGUED and ADJUDGED in the COURTS of

K I N G ' S B E N C H

A N D

C O M M O N P L E A S,

In the REIGNS of

The late King *William*, Queen *Anne*, King  
*George* the First, and His present Majesty.

---

Taken and Collected

By the Right Honourable ROBERT Lord RAYMOND,  
late Lord Chief Justice of the court of King's Bench.

---

In Two Volumes.

---

V O L. I.

---

In the SAVOY:

Printed by HENRY LINTOT, (Assignee of *Edward Sayer*, Esq;) for the  
Executor of *Fletcher Cyles*, and for *C. Woodward* and *C. Davis*  
against *Gray's Inn Gate* in *Holbourn*. MDCCXLIII.

1743

London v.  
Hart.

tainty is not aided by the verdict, and it cannot be made good by intendment; for the promise is the *git* of the action; and the *git* of an action, though after verdict, cannot be taken by intendment. *Noy* 50. 3 *Cro.* 913. *Trin.* 4 *Jac.* 2. *B. R. rot.* 993. *London vers. Hart.*

1 *Sid.* 306.  
2 *Ventr.* 196.

But *e contra* it was argued for the plaintiff, that it shall be intended, that the defendant assumed; for the money paid was to his use, and at his request. Besides that, if the defendant shall not be the nominative case to *assumpsit*, then there is no promise; for it has no nominative case, and so no damages were given for it, but for the breach of the other promise, and to it *praemissorum* must relate. But it would have been otherwise if there had been a promise, but not a binding one in law for some collateral account; because the jury not knowing the law, might be supposed to consider it as a promise, and so give damages for it. But here there is no promise, and therefore no damages given for it. But judgment was given for the plaintiff, because the *cumque etiam* in effect is all one with *ac etiam*, and so couples both the sentences together, and makes the defendant the nominative case to govern the second *assumpsit* as well as the first. For the plaintiff's cause of action arises from both the promises; and it cannot be supposed, that the plaintiff would bring an *assumpsit* against the defendant, because *J. S.* made the promise. See 1 *Sid.* 292. *Latch* 125. 3 *Cro.* 847, 8. 703. *Per Holt* chief justice, if divers considerations are mentioned in one *assumpsit*, and one of them is void and the others good, and damages are given *ratione praemissorum*, this will not arrest the judgment, because the damages shall be intended to be given only for those that are good.

Sheers v.  
Brown, *Trin.*  
2 *Ann. B. R.*  
3 *Salk.* 17.

### Chamberlain *vers.* Harvey.

S. C. *Carth.*  
396.  
5 *Mod.* 186.  
*Trespas* for a  
*Negro* does  
not lie.

**T**respas for taking of a *Negro pretii* 100 *l.* The jury find a special verdict; that the father of the plaintiff was possessed of this *Negro*, and of such a manor in *Barbados*, and that there is a law in that country, which makes the *Negro* part of the real estate; that the father died seised, whereby the manor descended to the plaintiff as son and heir, and that he endowed his mother of this *Negro* and of a third part of the manor; that the mother married *Watkins*, who brought the *Negro* into *England*, where he was baptized without the knowledge of the mother; that *Watkins* and his wife are dead, and that the *Negro* continued several years in *England*; that the defendant seised him, &c. And after argument at the bar several times by Sir *Bartholomew Shower* of the one side, and Mr. *Dee* of the other, this term it was adjudged, that this

this action will not lie. Trespass will lie for taking of an apprentice, or *haeredem apparentem*. An abbot might maintain trespass for his monk; and any man may maintain trespass for another, if he declares with a *per quod servitium amisit*; but it will not lie in this case. And *per Holt* chief justice, *trover* will not lie for a Negro, *contra* to 3 *Keb.* 685. *Butts v. Penny*.

Trespass,  
where it lies?

*Hill. 5 Will. & Mar. C. B.* between *Gelly* and *Cleve*, adjudged that *trover* will lie for a Negro boy; for they are heathens, and therefore a man may have property in them, and that the court without averment made will take notice that they are heathens. *Ex relatione m'ri Place*.

*Pasch. 5 Ann. B. R. Smith v. Gould*, adjudged that it lies not. See 2 *Salk.* 666.

### Derry *vers.* ducissam Mazarine.

**D**erry brought an action against the duchess for wages, and money lent; the defendant pleaded coverture, and issue thereupon. And notwithstanding that there was very strong evidence at the trial, that the duke of *Mazarine* the defendant's husband was alive in *France*, the jury find for the plaintiff; because the duchess had lived here in *England* for twenty years as a *feme sole*, and had contracted continually as such; and he who was her husband, is an alien enemy. And it was moved on behalf of the duchess, that this verdict was against evidence and law, for a *feme covert* cannot be sole charged for debts and contracts, without divorce and alimony, although the husband be a foreigner. But *Holt* chief justice, when the husband is an alien enemy, and under an absolute disability to come and live here, the law perhaps will make the wife of such a husband chargeable as a *feme sole* for her debts and contracts. For this case does not differ from the case of my lady *Belknap* and my lady *Weyland*, who were allowed able to sue and to be sued upon the abjuration or banishment of their husbands, as if they had been sole. And afterwards the plaintiff had his judgment, as Mr. *Colman* told me.

S. C. 1 *Salk.*  
116.  
2 *Salk.* 646.  
Feme covert  
of an alien  
enemy suable.

### Redwood *vers.* Coward.

**E**rror of a judgment of the palace court in *assumpsit* after verdict; S. C. 1 *Salk.* 328. and the error assigned was, that in the verdict the record is, that the jury *assident damna*, where it ought to be *assidunt*; as if judgment is entred with *concessum* instead of *consideratum*, it is error, *Assidunt.* 5 *Mod.* 323. and