

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 King *George* the Second.

Taken and collected

By the Right Honourable ROBERT Lord RAYMOND,
late Lord Chief Justice of the COURT of KING's BENCH.

V O L. III.

CONTAINING THE ENTRIES OF PLEADINGS TO THE CASES
COMPREHENDED IN THE TWO FORMER VOLUMES.

Published by GEORGE WILSON, Esq; Serjeant at Law.

D U B L I N:

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M.DCC.XCII.

used and accustomed to render and deliver to the rector of the parish church of *Huntsbill* aforesaid, or to his farmer or deputy of that rectory for the time being, one lamb of the same 7 lambs in such year, in full satisfaction, payment and content, and in the name and place of the tithes of the same 7 lambs; and if the same occupier in any one year hath had any lambs to the full number of 17 lambs brought forth and forthcoming within the said parish, and the bounds, limits and titheable places thereof, then the same occupier hath rendered and delivered, and for all the time aforesaid hath been used and accustomed to render and deliver to the rector of the parish church of *Huntsbill* aforesaid, or his farmer or deputy of the said rectory for the time being, two lambs of the same 17 lambs, as the said *Nicholas* above thereof complains; and this he prays may be inquired of by the country, and the said *Samuel* likewise, &c.

The like replications and issues joined upon the other traverses, as to the modus for calves, and as to the custom alleged in *non decimando* in the hundred of *Huntsbill*. And a joinder in demurrer as to the rest.

Pleas before the Lord the King at Westminster of the Term of Saint Michael in the eighth Year of the Reign of the Lord William, now King of England, &c. Roll 123.

Chamberline against Harvey. 1 Ld. Raym. 146.

London, **B**E it remembered, that on *Wednesday* next after (to wit) **B** three weeks of *Saint Michael* in this same term, before the lord the king at *Westminster* came *Willoughby Chamberline*, esq; by *Godfrey Woodward* his attorney, and brought here into the court of the said lord the king then there his certain bill against *Robert Harvey*, esq; in custody of the marshal, &c. of a plea of trespass; and there are pledges of prosecuting, to wit, *John Doe* and *Richard Roe*; which said bill follows in these words, to wit, *London*, to wit, *Willoughby Chamberline*, esq; complains of *Robert Harvey*, esq; in custody of the marshal of the *Marshalsea* of the lord the king, being before the king himself, for that the said *Robert* on the first day of *September* in the year of our Lord 1695, with force and arms, one

Count in trespass for a negro slave.

negro of him the said *William*, of the price of 100*l.* of lawful money of *England*, at *London* aforesaid, to wit, in the parish of the *Blessed Mary of the Arches* in the ward of *Cheape*, took and led away from him, and then and there detained and kept possession of the negro aforesaid from the said first day of *September* until the exhibiting of this bill, so that he the said *Willoughby* totally was without, and lost the use and benefit of the said negro for the whole time aforesaid, and other wrongs to the said *Willoughby* then and there did, against the peace of the said lord the now king, to the damage of him the said *Willoughby* of 150*l.* and thereupon he brings suit, &c.

Not guilty.

And the said *Robert* by *Robert Stone* his attorney comes and defends the force and injury when, &c. and saith, that he is not thereof guilty in manner and form as the said *Willoughby* above complains against him; and of this he puts himself upon the country, and the said *Willoughby* thereupon likewise: therefore let a jury thereupon come before the lord the king at *Westminster* on *Thursday* next after the morrow of *All Souls*; and who neither, &c. to recognize, &c. because as well, &c. The same day is given to the parties aforesaid there, &c. Afterwards the process thereupon is continued between the parties aforesaid in the plea aforesaid, by the jury being respited thereupon between them, before the lord the king at *Westminster* until *Thursday* next after fifteen days of *Saint Martin*, unless the lord the king's trusty and well-beloved *John Holt*, kn. chief justice of the lord the king, assigned to hold pleas in the court of the said lord the king himself, shall before come on *Wednesday* next after 15 days of *Saint Martin* at *Guildhall, London*, by form of the statute, for want of jurors, &c. At which day before the lord the king at *Westminster* cometh the said *Willoughby* by his said attorney, and the said chief justice before whom, &c. hath sent here his record before him had in these words: Afterward on the day and at the place within contained, before *John Holt*, kn. chief justice of the lord the king, assigned to hold pleas in the court of the said lord the king before the king himself, come as well the within named *Willoughby Chamberline*, esq; as the within written *Robert Harvey*, esq; by their attornies within contained; and the jurors of the jury, whereof mention is within made, being called, certain of them, to wit, *Thomas Sericole, Richard Martin, Samuel Stone, Benjamin Hodgson, Jeremiah Barratt* and *Nathaniel Spinlow* came, and are sworn upon that jury; and because the rest of the jurors of the same jury did not appear, therefore others of the by-standers, by the sheriffs of

Nisi prius.

Postea

Tales de circumstantibus.

London aforesaid, being chosen to this, at the request of the said *Willoughby Chamberline*, and by the command of the chief justice aforesaid newly appointed, whose names are affixed in the panel within written, according to the form of the statute in such case made and provided; and the jurors so newly appointed, to wit, *Thomas Pool, Richard Martin, Thomas Ward, John Watson, Philip Brewster* and *Richard Chauncey* being called likewise come, who being chosen, tried and sworn to speak the truth concerning the matter within contained, together with the other jurors aforesaid before impanelled and sworn, say upon their oath, that one *Edward Chamberline* long before the within written time when, &c. was seised of a certain plantation in the island of *Barbadoes* in the *West-Indies* in parts beyond the seas in his demesne as of fee, and of certain negro slaves, being slaves belonging and appertaining to the same plantation; and the aforesaid negro slave long before the within written time when, &c. was born within the island aforesaid of negro parents, slaves belonging and appertaining to the same plantation; and that long before the within written time when, &c. to wit, on the 29th day of *April* in the year of our Lord 1668, by one *William Willoughby*, deputy governor, council and assembly, being the representatives of that island in that behalf lawfully authorized and commissioned at the island aforesaid, it was enacted in these *English* words following, *Barbadoes*, An act declaring the negro slaves of this island to be real estates: whereas a very considerable part of the wealth of this island consists in our negro slaves, without whose labour and service we shall be utterly unable to manage our plantations here, thereby relieving our wants, and bringing that considerable increase of revenue which this place affords to his majesty's coffers, as well here as in *England*; and whereas some law-suits have arisen, and other great inconveniencies have followed, where divers persons dying intestate have left their right and interest of their negro slaves to be by law disputed between their heirs, executors and administrators, wherein the various judgments and affections of several courts or jurors have sometimes found for one, and at other times for the other; for a full remedy of these inconveniencies, and to the intent that the heirs and widow who claim dower may not have bare lands without negroes to manure the same, and also that the condition, right and interest of negroes, to all other ends and purposes may be fully known and determined, the deputy governors, council and assembly, being willing that all ambiguities herein should be removed,

moved, and the law in this case be declared and put in a certainty, have ordained and enacted by the deputy governor, council and assembly, and by the authority of the same, that from and after publication hereof, all negro slaves in all courts of judicature, and other places within this island, shall be held, taken and adjudged to be estates real, and not chattels, and shall descend unto the heir or widow of any person dying, according to the manner and custom of lands of inheritance held in fee-simple; provided always, that no person selling or alienating any of his or her negroes, is hereby held or obliged to cause such sale or alienation to be inrolled, as is accustomed to be done and required by the laws of this island, as in all other real estates; any usage, custom or law to the contrary notwithstanding. Provided this act, or any thing therein contained, shall not be taken and deemed to extend unto any merchant, factor or agent, bringing negro slaves to this island, and having the consignments of any slaves under them, but that in all respects they, their executors, administrators or assigns, may hold, possess and enjoy such slaves or negroes in such condition as they might have done before the making of this act, until sale of such slave or slaves hath been made in the island, as by that act more fully appears. And that the said *Edward Chamberline* long before the said time when, &c. at the island aforesaid died seised of his like estate of and in the plantation and negro slaves aforesaid thereunto belonging; by and after whose death, one third part of the plantation and negro slaves aforesaid, whereof, the negro in the declaration aforesaid mentioned was one, descended to *Mary*, the widow and relict of the said *Edward Chamberline*, in the name of her dower, by the laws of the island aforesaid; and the reversion of the said third part descended to the said *William Chamberline*, as the son and heir of the said *Edward*; and being so seised, the said *Mary* afterwards and long before the time when, &c. took for her husband one *John Witham*, knt. by which, the said *John Witham* was seised in right of his said wife of one third part of the plantation and negro slaves for the term of the life of his said wife; and the said *John Witham* being so seised, the within named negro, a true native, long before the within written time when, &c. to wit, in the 36th year of the reign of *Charles* the second, late king of *England*, brought within this kingdom of *England*, and afterwards, the said negro slave above-mentioned remained in the service of him the said *John* within this kingdom of *England* for the space of divers years, from that time and before the said time when, &c. according to the

rites of the church of *England*, but without the knowledge or consent of the said *Willoughby Chamberline*, there was baptized; and that the said *John Witham* afterwards, and after the death of his said wife, but long before the said time when, &c. within this kingdom of *England* absolutely put the said negro slave out of his service; and also afterwards and before the said time when, &c. the said negro slave served other subjects of this kingdom of *England*, and at the within written time when, &c. within this kingdom of *England* was retained in the actual service of the said *Robert Harvey*, to take of the said *Robert Harvey* according to the rate of six pounds by the year for his wages in that behalf: but whether upon the whole matter aforesaid, by the jury aforesaid in form aforesaid found, the said *Robert Harvey* be guilty of the trespass within specified or not, the jurors aforesaid are wholly ignorant, and pray the advice of the court here concerning the premisses; and if upon the whole matter aforesaid, by the jury aforesaid in form aforesaid found, it shall seem to the justices and the court here that the said *Robert Harvey* be guilty of that trespass, then the said jurors say upon their oath, that the said *Robert Harvey* is guilty of the trespass aforesaid, as the said *Willoughby Chamberline* within complains against him; and they assess the damages of him the said *Willoughby*, by occasion of the trespass aforesaid, besides his costs and charges, to fifty pounds; and for his costs and charges three shillings and four pence; and if upon the whole matter aforesaid, by the jury aforesaid in form aforesaid found, it shall seem to the same justices here that the said *Robert Harvey* be not guilty of the trespass aforesaid, then they the said jurors say upon their oath, that the said *Robert Harvey* is not guilty of the trespass aforesaid, as he the said *Robert* hath within in pleading alledged: and because the justices here are not yet advised, &c.