

Bacon v Bacon Croke Car 601, 79 ER 1117

Report Date: 1641

CASE 5. GERTRUDE BACON against JAMES BACON AND THREE OTHERS.

Trinity Term, 16 Car. 1. Roll 456.

[See De Geer v Stone, 1882, 22 Ch D. 251.]

Children born abroad of English parents are considered as natural-born subjects; and the daughter of an Englishman, though born abroad, may be an English parent.

Vaugh. 279. 7 Co. 18. 1 Sid. 198. March. 150. Lit. Rep. 26. 1 Vent. 413. 427. Cro. Eliz. 3. 1 Com. Dig. 297. 1 Bac. Abr. 77.

See the case of Durore v Jones, 4 Term Rep. 300.

Trespass for breaking his close in Cramford. Upon not guilty pleaded, a special verdict was found, that Thomas Bacon, late of Cramford aforesaid, was seised in fee of the tenements in the declaration mentioned, and had issue John and Thomas, and 15th October 1610 died so seised, which descended to the said John: who, being a merchant, went beyond seas to Elvin, in Prussia, which is in the dominions of the King of Poland, to merchandize, and used the trade of a merchant there; and during his trading espoused there Elizabeth the daughter of Francis Cockley, an Englishman, who exercised the trade of a merchant in partibus transmarinis: and that 31st August 1615 the said John Bacon died, the said Elizabeth his wife being grossment enseint with the said Gertrude.[Croke Car-602] now the plaintiff, which Gertrude was born the 31st October 1615, at Elvin aforesaid; and that the said Thomas Bacon was brother of the whole blood to the said John; and that the plaintiff is the sole daughter and issue of the said John; and that she, the plaintiff, entered into the said tenements, and was seised prout lex postulat; and the said James, as son and heir of the said Thomas Bacon

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entered and ousted her, and continued the possession, prout in the declaration, &c. Et si super totam materiam, &c. the Court shall adjudge for the plaintiff, they find for the plaintiff, and assess damages twelve shillings and costs; and if, &c.

Brampton, Berkley, and myself, after this had been argued at the Bar, agreed, that judgment should be given for the plaintiff; for her father being an English merchant, and living beyond the seas for merchandizing, his daughter is born a denizen, and shall be heir to him; and it is not material although his wife be an alien, for she is, as Berkley said, sub potestate viri, and quasi under the allegiance of our King. And, as Brampton said, although the civil law is, that partus sequitur ventrem, yet it is not so in our law; but the child shall be of the father's condition: and he being an English merchant, and residing there for merchandizing, his children shall, by the common law, or rather, as Berkley said, by the statute of 25 Edw. 3. st. 2. (a) be accounted the King's lieges, as their father is. And they all agreed the sooner in this opinion, by reason of a case vouched to be adjudged 2 Car. 1. which I remember was argued in the Duchy Court before Hobart and Yelverton, Justices, assisting there; where one Stephens, being a merchant, went over the seas and resided for his merchandizing, and there had children, they resolved, by the advice of the other justices, that those children were denizens; and it is entered there accordingly. And so in this case it was agreed, and judgment was given for the plaintiff.

Prinsor's Case Croke Car 602, 79 ER 1118

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CASE 6. PRINSOR'S CASE.

An arrest cannot be made on a Sunday upon process, for good behaviour. Ante, 395.

10 Co. 76. b. Raym. 250. 5 Mod. 449. 2 Salk. 672. 1 Mod. 56. 3 Bac. Ab. 39. 1 Term Rep. 265. 3 Term Rep. 7-39.

An officer is justified under process of the sessions, although it be irregularly issued.

Edward Prinsor, constable of Offenham, was brought into Court upon an attachment of contempt; where it appeared by his examination, that he had arrested one Anthony Haslewood, Esq. in the church yard, upon a Sunday, as he came from divine service, by a process for the good behaviour (a), out of the sessions, when the said Anthony Haslewood shewed him, that he had a certiorari out of this Court. But he, pretending that he could not read, arrested and detained him, until he went to another house, and procured it to be read to the said Prinsor, who then discharged him.

And for this contempt, because he was arrested upon a Sunday, immediately after divine service, whereas he might have arrested him upon any day of the week, the said Prinsor was fined twenty shillings: and for arresting and detaining him after the writ of certiorari shewn (his ignorance not excusing him), he was ordered to be bound with sureties to the good behaviour.

But the fine and imprisonment were discharged, because the arrest was by process of the sessions of peace, although 1 the Court declared, it was not well awarded according to the statute of 21 Jac. 1. c.

Kings v Hilton Croke Car 603, 79 ER 1118

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[Croke Car-603] CASE 7. KINGS against HILTON AND HIS WIFE.

Trinity Term, 16 Car. 1. Roll

If a man marry an administratrix to a former husband, who has wasted the assets during her widowhood, he shall be liable to the debts of the intestate; for it shall be considered a devastavit in him. Ante, 519.

1 Roll. Ab. 931. 1 Lutw. 672. Moor, 761. 1 Com. Dig. 256. 565.

Debt against husband and wife, administratrix of her former husband, in which judgment was given against them.

(a) See 7 Ann c. 5. 4 Geo. 2. c. 21. and 13 Geo. 3. c. 21.

(a) See 29 Car. 2. c. 7.

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Upon a fieri facias awarded, the sheriff returned nulla bona, &c. of the intestate. Hereupon another fieri facias was awarded against the husband and wife, with a clause in the writ, that if it be found, that the said husband and wife devastaverunt bona et si constare poterit, tunc fieri facias, &c.

(a). And the sheriff returned, that they had not in their hands any of the goods of the intestate; but that the wife, being administratrix to her first husband, had goods of the value of one hundred pounds of the said intestate, and had wasted them during her widowhood (b), and the husband had not wasted any of them; et si devastaverunt according to the writ, the jury prayed the discretion of the Court.

Rolle, Serjeant, argued, for the plaintiff, that it was a devastation in both.

And the Court held, that the sheriffs return of the inquisition finding this matter was good enough. Wherefore it was adjudged for the plaintiff. 1 Sid. 337.