
ENGLISH REPORTS.

**COURT FOR THE CONSIDERATION OF
CROWN CASES RESERVED, MAY 6.**

(Present, Lord Chief Justice ERLE and Justices BLACKBURN,
MELLOR, SMITH, and Baron CHANNELL.)

THE QUEEN V. MALANY.

Criminal law—County Courts—Perjury on examination on judgment summons.

The prisoner was indicted for perjury, committed in the County Court of Birmingham. He was a defendant in a suit. After judgment had been given in the case against the prisoner, the judge was about to decide as to whether he should make an order for immediate payment of the debt, or whether it should be paid by instalments, and he asked the prisoner whether his names were not Bernard Edward Malany, in which names he had been sued. The prisoner swore that his name was Edward Malany only. The judge of the County Court upon this struck out the cause. The prisoner was tried before Mr. Baron Martin, who reserved a point, whether, under the circumstances, the prisoner was indictable for perjury.

Gibbons now appeared for the prosecution, and urged that under the County Court Act it was expressly stated that no misnomer should vitiate the suit if the person was commonly known by the name. The question was, whether it was material to the issue, and that depended upon the view taken by the judge. He submitted that the judge had made it material, and the jury had found that it was corruptly false.

The LORD CHIEF JUSTICE said the alleged perjury was that the prisoner swore that his name was Edward, and not Bernard, and that in so saying he acted wilfully and corruptly. The objection was, that it was an immaterial inquiry. The court were of opinion that the objection could not be sustained. It was made material by the judge in the course of forming his judgment; he was going through the process, whether it should be judgment for instant payment or for payment by instalments, and in considering that he made inquiry as to the Christian names of the prisoner, and, in answer, the prisoner swore that which was false. He was of opinion that the conviction could be sustained. Conviction affirmed.

CORRESPONDENCE.

*Fees on return of executions—Forfeited fees
—Returns of.*

TO THE EDITORS OF THE LOCAL COURTS' GAZETTE.

GENTLEMEN:—As you have given reason to expect that you will, in due time, give us your views upon the questions submitted by your correspondent, "CLERK, 2ND D. C. LINCOLN," and as you invite Division Court Clerks throughout the country to give their atten-

tion to the subject, I beg to submit the following observations, viz :

It seems to me that your correspondent is not sufficiently accurate in his questions and statements: e.g.: The 141st sec. Con. Div. Courts' Act, does not state "that all executions shall be returned by the bailiff within thirty days from the day the said execution issues to him." The section reads as follows: "Every execution shall be dated on the day of its issue, and shall be returnable within thirty days of the date thereof." (Quære? are the words returned and returnable, of the same signification.)

2. The 53rd section does not state, "If execution be not returned within the time mentioned, &c." but, "If the bailiff neglects to return any process or execution within the time required by law, he shall for each such neglect, forfeit his fees thereon."

3. I think also, that your correspondent is equally inaccurate in supposing that, "returns to the fee fund are done away with." The 38th sec. Con. Div. Courts' Act, provides for two distinct returns to be made by the clerk to the County attorney; the first is, "a full account in writing of the fees received in his court;" and the second, "a like account of all fines levied by the court." The former is done away with by the 6th section of 27 & 28 Vic., cap. 5, but the latter remains unaltered. I take it, but under submission to your better judgment, that the forfeited fees are of the nature of fines, and should be returned among them. I beg also to submit, though this merely in passing, that if such a return be made, the clerk making it is still entitled to retain \$4, as that item in the tariff is not repealed.

But this discussion leads to another question of great importance to both clerks and bailiffs, to which I trust, when you come to give your views upon the questions submitted by your correspondent, you will direct special attention. It is this: what is the time required by law, for the return of any process or execution, and especially the latter? Practically, it is frequently inconvenient, if not impossible, for a bailiff to make a return within thirty days, without ruining or greatly delaying the prospects of the execution creditor. He may, for instance, have been unable to find any property till the 29th day after the date of his writ; or he may have made seizure of property of such a description as could not,