



The Works Of Alexander Pope Esq.

In Nine Volumes Complete. With His Last Corrections, Additions, And Improvements; As they were delivered to the Editor a little before his Death

Containing His Miscellaneous Pieces In Verse and Prose

Pope, Alexander

London, 1751

A Specimen od Scriblerus's Reports, Stradling versus Stiles

Nutzungsbedingungen

[urn:nbn:de:hbz:466:1-56113](https://nbn-resolving.org/urn:nbn:de:hbz:466:1-56113)

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S P E C I M E N

O F

SCRIBLERUS'S REPORTS.

Stradling *versus* Stiles.

Le Report del Case argue en le commen Banke
devant tous les Justices de mesme le Banke, en
le quart an du raygne de Roy *Jacques*, entre
Matthew Stradling, Plant. et *Peter Styles*, Def.
en un Action propter certos Equos coloratos,
Anglicè, Pyed Horses, post. per le dit *Matthew*
vers le dit *Peter*.

Le recitel **S**IR John Swale, of Swale-Hall in
del Case. Swale-Dale fast by the River Swale,
kt. made his Last Will and Testament: In
which, among other Bequests was this, *viz.*
Out of the kind Love and Respect that I bear unto
my much honoured and good Friend Mr. *Matthew*
Stradling, Gent. I do bequeath unto the said *Mat-*
thew Stradling, Gent. *all my black and white Horses.*

The Testator had six black Horses, six white Horses, and six pyed Horses.

The Debate therefore was, The Point, whether or no the said Matthew Stradling should have the said pyed Horses by Virtue of the said Bequest.

Pour le Pl. Atkins Apprentice pour le Pl. moy semble que le Pl. recouvera.

And first of all it seemeth expedient to consider what is the Nature of Horses, and also what is the Nature of Colours; and so the Argument will consequently divide itself in a twofold way, that is to say, the Formal Part, and Substantial Part. Horses are the Substantial Part, or thing bequeathed: Black and White the Formal or descriptive Part.

Horse, in a physical Sense, doth import a certain Quadrupede or four-footed Animal, which by the apt and regular Disposition of certain proper and convenient Parts, is adapted, fitted and constituted for the Use and Need of Man. Yea, so necessary and conducive was this Animal conceived to be to the Behoof of the Common-weal, that sundry and divers Acts of Parliament have from time to time been made in Favour of Horses.

1st Edw. VI. Makes the Transporting of Horses out of the Kingdom, no less a Penalty than the Forfeiture of 40 l.

2d and 3d Edward VI. Takes from Horse-stealers the Benefit of their Clergy.

And the Statutes of the 27th and 32d of Hen. VIII. condescend so far as to take Care of their very Breed: These our wise Ancestors prudently foreseeing, that they could not better take care of their own Posterity, than by also taking care of that of their Horses.

And of so great esteem are Horses in the Eye of the Common Law, that when a Knight of the Bath committeth any great and enormous Crime, his Punishment is to have his Spurs chopt off with a Cleaver, being, as Master Bracton well observeth, unworthy to ride on a Horse.

Littleton, Sect. 315. saith, If Tenants in Common make a Lease reserving for Rent a Horse, they shall have but one Assize, because, saith the Book, the Law will not suffer a Horse to be severed. Another Argument of what high Estimation the Law maketh of an Horse.

But as the great difference seemeth not to be so much touching the substantial Part, Horses, let us proceed to the formal or descriptive Part, viz. What Horses they are that come within this Bequest.

Colours are commonly of various Kinds and different Sorts; of which White and Black are the

two Extremes, and consequently comprehend within them all other Colours whatsoever.

By a Bequest therefore of black and white Horses, grey or pyed Horses may well pass; for when two Extremes, or remotest Ends, of any thing are devised, the Law, by common Intendment, will intend whatsoever is contained between them to be devised too.

But the present Case is still stronger, coming not only within the Intendment, but also the very Letter of the Words.

By the Word Black, all the Horses that are black are devised; by the Word White, are devised those that are White; and by the same Word, with the Conjunction Copulative, And, between them, the Horses that are Black and White, that is to say, Pyed, are devised also.

Whatever is Black and White is Pyed, and whatever is Pyed is Black and White; ergo, Black and White is Pyed, and, *vice versa*, Pyed is Black and White,

If therefore Black and White Horses are devised, Pyed Horses shall pass by such Devise; but Black and White Horses are devised; ergo, the Pl. shall have the Pyed Horses.

Pour le Catlyne Serjeant, Hoy semble al' Defend. contrary, The Plaintiff shall not have the Pyed Horses by Intendment; for if by

the devise of Black and White Horses, not only black and white Horses, but Horses of any Colour, between these two Extremes may pass, then not only Pyed and Grey Horses, but also Red or Bay Horses would pass likewise, which would be absurd, and against Reason. And this is another strong Argument in Law, *Nihil, quod est contra rationem, est licitum*; for Reason is the Life of the Law, nay the common Law is nothing but Reason; which is to be understood of artificial Perfection and Reason gotten by long Study, and not of Man's natural Reason; for *nemo nascitur artifex*, and legal Reason *est summa ratio*; and therefore if all the Reason that is dispersed into so many different Heads, were united into one, he could not make such a Law as the Law of England; because by many Successions of Ages it has been fixed and refixed by grave and learned Men; so that the old Rule may be verified in it, *Neminem oportet esse legibus sapientiores*.

As therefore pyed Horses do not come within the Intendment of the Bequest, so neither do they within the Letter of the Words.

A pyed Horse is not a white Horse, neither is a pyed a black Horse; how then can pyed Horses come under the Words of black and white Horses?

Besides, where Custom hath adapted a certain determinate Name to any one thing, in

all Devises, Feofments, and Grants, that certain Name shall be made use of, and no uncertain circumlocutory Descriptions shall be allowed; for Certainty is the Father of Right, and the Mother of Justice.

Le reste del Argument jeo ne pouvois oyer, car jeo fui disturb en mon place.

Le Court fuit longement en doubt' de c'est Matter; et apres grand deliberation eu,

Judgment fuit donne pour le Pl. nisi causa.

Motion in Arrest of Judgment, that the pyed Horses were Mares; and thereupon an Inspection was prayed.

Et sur ceo le Court advisare vult.