WE *do allow and approve of the printing and publiſhing of this Book, entitled* Notes of Caſes in Points of Practice, taken in the Court of COMMON PLEAS at *Weſtminſter*, from *Michaelmas* Term 1732 to *Hilary* Term 1754, (inclusive); in Two Volumes, by *Henry Barnes*, one of the Secondaries of the ſaid Court.

3d July 1754.

J. Willes,
E. Clive,
Tho. Birch,
H. Bathurſt.

NOTES OF CASES IN Points of PRACTICE:

Taken in

The Court of Common Pleas at Weſtminſter.

From *Michaelmas* Term 1732, to *Hilary* Term 1754, (inclusive.)

With a TABLE containing the Names of the CASES, and an INDEX of the PRINCIPAL MATTERS.

By *HENRY BARNES*,
One of the Secondaries of the ſaid Court.

In TWO VOLUMES.

VOL. II.

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A

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Actions Real.

Rutter *againſt* The Biſhop of Hereford and the Univerſity of Cambridge.. Trin. 16 Geo. 2.

In Quare Impedit. THE Court ordered a Commiſſion to examine touching ſecret Truſts for Papiſts, according to the Statute 12 *Ann.* to Commiſſioners in the Country, and directed the Prothonotary to ſtrike Commiſſioners Names, and ſettle the Interrogatories. *Hayward* for Plaintiff; *Birch* for Defendant.

Foſter *againſt* Kirkley. Trin. 26 & 27 Geo. 2.

In Dower. THE Tenant after appearing to the *Grand Cape*, returnable the third Return of this Term, obtained a Rule, on *Poole*'s Motion, to ſhew Cauſe why he ſhould not have an Imparlance; which was diſcharged on hearing *Draper* for the Demandants. In Dower *unde nichil habet*, or any other real Action, Imparlance is not to be given; Eſſoins are ſufficient Delay; real Actions are not within any of the Rules of Court concerning Imparlances.

Amendments.

Fowke *againſt* Horabin and others. Trin. 13 & 14 Geo. 2.

AFTER a Verdict found for the Plaintiff, ſeveral Objections were made in Arreſt of Judgment: The principal were, That tho' the Action was Treſpaſs upon the Caſe, the *Jurata* at the Foot of the Record of *Ni. pri.* was in Treſpaſs only. That inſtead of ſaying, unleſs the Chief Juſtice ſhould come before on the 12th of *July*, it was ſaid, unleſs he ſhould come before the 12th of *July*. That two of the Defendants being Sheriff of *Middleſex*, the *Ve. fa.* was awarded to the Coroners, but by the *Jurata* the Writ was alledged to be delivered to the Sheriff to be executed. That the Writ of *Ve. fa.* inſtead of being made returnable in Court, was made returnable before the Chief Juſtice. And that the Declaration recited an Original againſt *James Brooke* and others, and counted againſt the ſaid *John Brooke*. As to the firſt Objection, the Court held it to be help'd by the Statute of Jeofails. As to the ſecond Objection, by the Writ of *Ha. cor. Jur.* the Day of Trial was rightly appointed, and the *Jurata* is amendable by the Writ. As to the third Objection, The *Ve. fa.* appeared to be

returned by the Coroners, and the *Jurata* is only wrong by Miſpriſion of the Clerk. The Return of the *Ve. fa.* tho' defective, is within the Statutes of Amendment. And as to the laſt Objection, the Word *John* in the Declaration muſt be rejected, and then the Count will ſtand againſt the ſaid *Brooke*, which muſt be the *James Brooke* before mentioned. The ſeveral neceſſary Amendments were ordered, and thereupon the Rule to ſtay the Entry of Final Judgment was diſcharged, and the Plaintiff's Attorny, who had made ſo many groſs Blunders, was ordered to pay Coſts. *Prime* and *Draper* for Defendants; *Wynne* and *Agar* for Plaintiff. *Vide* Waldo *againſt* Harriſon. Trin 7 & 8 G. 2.

Cook *againſt* Shone and others.

THIS was an Action brought againſt Defendants, Surveyors, *&c.* for building *Weſtminſter* Bridge, for taking away and deſtroying Plaintiff's Timber, to the Value of 500 *l.* and by the Act of Parliament for building the ſaid Bridge, Plaintiff is confined to bring his Action within ſix Months, and to lay it in *Middleſex*. By Miſtake of *Gillman*, Plaintiff's former Attorny, who now abſconds, the Action was laid in *London* inſtead of *Middleſex*; and the Miſtake was not diſcovered till after Plea pleaded and Iſſue joined. The Fact appeared to be committed on

on 22d *Auguſt* 1739, and the Action to be commenced within the ſix Months. Plaintiff now moved for Leave to change the *Venue* from *London* to *Middleſex*; which was ordered, upon Payment of Coſts. If the Amendment could not be made, Plaintiff muſt loſe his Remedy; he is now too late to bring a new Action. In an Action upon a Penal Statute the Court probably would not interpoſe, but in the Caſe of a Remedial Law, the Amendment muſt be made. *Skinner* for Plaintiff; *Prime* for Defendant. 3 *Lev.* 347. *Bearcroft* againſt *The Hundred of Burnham.*

Maſters *againſt* Ruck.

In Error. THE Teſte of a Writ of *Certiorari*, by Miſtake, was made in the 13th Year of our [Lord] inſtead of our [Reign]. Upon a Motion for Leave to amend the ſame, it was doubted whether the Court had Power to amend ſuch a Writ, or not. In order to ſupport the Amendment, *Prime* for Plaintiff cited the Statutes of Amendment, 8 *H.* 6. *c.* 8. and 14 *Ed.* 3. *c.* 6. and the Caſe of *Brooke and others* againſt *Cooper*, *in B. R. Trin.* 6 *G.* 2. to ſhew that the Teſte of a Writ of Inquiry out of Term was amended; and an Anonymous Caſe in 3 *Ventris* 171. as to different Sorts of Amendments; and *Blackmore*'s Caſe in the 8th Report. *Draper* for Defendant inſiſted, that

this was ſuch a Writ as could not be amended; and he cited the Caſe of *Heath* againſt *Paget*, 1 *Lev.* 2. to ſhew, that no Original Writ can be amended, and to ſhew that the Teſte of a Writ of Error is not amendable, he cited the Statute 5 *G. c.* 13. But *Prime* by Reply argued, that this is not an Original but a Judicial Writ, therefore amendable by all the Statutes of Amendment. The Court doubted; and pending their Conſideration, in *Trinity* Term 1740, the Amendment, by Conſent of the Parties, was ordered, on Payment of Coſts.

Chriſtie *againſt* Huggins.

THIS was an Action brought by Plaintiff againſt Defendant for ſuffering Sir *Alexander Anſtruther* to eſcape out of his Cuſtody, when Warden of the *Fleet*; and Iſſue was joined in *Trinity* Term 11 *G.* and Plaintiff having by his Declaration, among other Things, ſhewn, that Sir *Alexander* was removed from the *King's Bench* by *Ha. cor.* teſted 26th *June* 10 *G.* being the laſt Day of *Trinity* Term, returnable *immediatè*, before Mr. Juſtice *Dormer*, and by that Judge committed to the *Fleet*, It was (as Plaintiff thought) requiſite to prove a Copy of the Entry of ſuch *Ha. cor.* upon the Roll, with the Return thereto, and the Commitment of Sir *Alexander* thereon, at the Trial of the Cauſe. Therefore a Motion was made, *Eaſter*

12 *G.*

12 *G.* 2. on Plaintiff's Behalf, that ſuch a Roll might be filed; and a Rule was granted to ſhew Cauſe.

On Defendant's Behalf it was alſo moved, that the Roll on which the Iſſue between the Parties had been enter'd, might be taken out of the Bundle of Rolls in the Treaſury, and vacated, and that the Clerk of the Treaſury might be reſtrained from receiving any Roll in this Cauſe, without Leave of the Court. And a Rule *Niſi* was granted, upon Affidavits that ſeveral Searches had been made at different Times in the Treaſury for that Roll, and that it was not then filed; and it likewiſe appeared, that a Caution had been given to the Treaſury-Keeper againſt receiving this Roll. The Clerk of the Treaſury and Treaſury-Keeper were directed to attend, to inform the Court what the Practice is concerning the bringing in and filing of Rolls in the Treaſury, and how the ſaid Iſſue Roll came into the Bundle.

Upon Cauſe being ſhewn againſt the above Rules, in *Trinity* Term 1740, as to the Iſſue Roll it appeared, that the Clerk of the Eſſoins had made two different Files of the ſame Numbers of *Trinity* Term, and that neither the Clerk of the Treaſury or Treaſury-Keeper knew any thing of that Roll coming into the Treaſury; conſequently that it was in the Bundle when the Search had been made by Defendant: But as there was no

Apprehenſion of there being two different Files of the ſame Numbers, this Roll was not found for want of ſearching that File, (where it really was) but the other. And as to the other Roll, it appeared that the Entry produced, which Plaintiff wanted to file, was made upon a Roll of *Michaelmas* Term 10 *G.* 2. that being the Term in which it was alledged Mr. Juſtice *Dormer* had delivered the Writ, *&c.* into Court to be recorded; and that an Entry had been made of the *Ha. cor.* Return and Commitment, upon a Roll of *Trinity* Term, when the Writ was teſted, and that the ſame was filed among the Rolls of that Term, which the Court thought was an Entry of the proper Term: But ſuch Entry not agreeing exactly with the *Ha. cor.* and it not ſhewing that Mr. Juſtice *Dormer* had on the firſt Day of *Michaelmas* Term delivered the Writ, *&c.* into Court, to be inrolled, the Court therefore diſcharged both the Rules to ſhew Cauſe, and ordered that the Entry of the Writ of *Ha. cor. &c.* upon the Roll of *Trinity* Term ſhould be amended, by inſerting (*cameram ſuam ſituat' in le Serjeants Inn in le Chancery-Lane London*) thoſe being the Words omitted in the Entry which were in the Writ; and that the following Words ſhould be inſerted at the Concluſion of ſuch Entry, (*viz.*) *Quam quidem Commiſſionem idem Juſtic' Robertus Dormer Ar' poſtea ſcilt' viceſima tertio die Octobris*

bris Anno regni dicti Domini Regis nunc undecimo per manus ſuas proprias deliberavit hic in Cur' de recordo irrotuland' ac irrotulat', &c. *Skinner* and *Prime* for Defendant; *Agar* and *Draper* for Plaintiff.

Stone *againſt* Overton. Hil. 14 G. 2.

RULE to ſhew Cauſe why a new Record of *Ni. pri.* and *Ha. cor. Jur.* ſhould not be made out and returned by the Aſſociate, agreeable to his Minutes taken at the Trial, the old Record having been loſt, made abſolute. It was objected for Defendant, that the Names of the twelve Jurors who were ſworn can't now be known, (the Aſſociate not having kept any Entry of their Names) ſo as to make a new Return. But the Objection was over-ruled; the Jurors are not now named in the Return of the Record of *Ni. pri.* or in the Final Judgment, nor were they before the late Ballotting Act, unleſs in Caſe of a *Tales*. *Draper* for Plaintiff; *Gapper* for Defendant.

Broadbent *againſt* Wilkes. Eaſter 14 Geo. 2.

DEfendant miſtook a Fact, and ſet out a Cuſtom wrong; he applied to Mr. Juſtice *Parker* for Leave to amend, but Plaintiff not conſenting, the Judge made no Order.

Order. Plaintiff ſigned Judgment, and before Enquiry executed, Defendant gave Notice of Motion: Defence was made on the Enquiry. *Per Cur'*: Let the Judgment and Enquiry be ſet aſide, and let the Plea be amended on Payment of Coſts, and Defendant's bringing 15 *l.* Damages, found by the Inquiſition, into Court. *Bootle* for Defendant; *Draper* for Plaintiff.

Priddle *againſt* Skurray and others. Trin. 14 & 15 Geo. 2.

MR. Juſtice *Forteſcue Aland* made an Order that Plaintiff ſhould have Leave to amend his Declaration, in the Particulars to the Order annexed. Defendants moved to diſcharge the Order upon the Face of it for Precedent Sake. Particulars are the Subſtance of the Order, and ought to be inſerted in the Body of it. Of that Opinion were the Court, and the Rule to ſhew Cauſe why the Order ſhould not be diſcharged, was made abſolute. *Belfield* for Defendants; *Burnet* for Plaintiff.

Anonymus. Hil. 14 Geo. 2.

PER *Cur'*: In an Action on a Penal Statute, Defendant cannot plead doubly. This Caſe is not within the Statute for the Amendment of the Law.

Ingham

Ingham *againſt* Chiſhull and Noke. Eaſter 17 Geo. 2.

THIS was a joint Action on ſeveral Aſſumptions. *Chiſhull* pleaded Bankruptcy. *Noke* pleaded a former Recovery for the ſame Demand. After Judgment againſt *Noke* on *Nul tiel Record*, Plaintiff confeſſed *Chiſhull*'s Plea to be true, and entered a *Nolle proſequi* as to him, purſuant to the Statute 7 *Ann.* Plaintiff made out his Writ of Enquiry in the ſame Manner as if the interlocutory Judgment had been againſt both Defendants, but by the Inquiſition, Damages were found againſt *Noke* only. Defendant *Noke* moved to ſet aſide the Writ of Enquiry and Inquiſition, and obtained a Rule to ſhew Cauſe; pending which Rule, Plaintiff moved to amend the Writ, by ſtriking out *Chiſhull*'s Name after the *Taliter proceſſum fuit*; and the Rule for the Amendment was made abſolute, without Oppoſition. After which Amendment the Writ tallied with the Inquiſition, and the Defendant's Rule was diſcharged. *Draper* for Plaintiff; *Skinner* for Defendant *Noke*.

Greenwood

Greenwood *againſt* Richardſon, one, &c. Mich. 19 Geo. 2.

THE Bill was, by Miſtake, entitled *Trin.* 19 *Geo.* 2. inſtead of 19 & 20. Defendant moved to ſtay Proceedings, and had a Rule to ſhew Cauſe; which Rule was diſcharged, and the Title of the Bill ordered to be amended, on Payment of Coſts. Plaintiff alledged, that the Statute of Limitations would take Place if he was put to file a new Bill. But the Court paid no Regard to that. *Clarke* againſt *Cotton, one, &c. Mich.* 6 *Geo.* 2. was quoted, where the Bill was amended from *producit ſectam* to *petit Remedium*; *producit ſectam* ſignifies no more than that Evidence is ready, *petit Remedium* ſeems unneceſſary. The Court have a different Controul over Original Writs iſſued out of Chancery, and Original Bills filed here. This *Vitium Clerici*, or *Neſcience* of the Clerk of the Court, is amendable by his Inſtructions, and by the Entry of the Bill in the Prothonotary's Book of *Trin.* 19 & 20. An Original out of Chancery is amendable by the Curſitor's Inſtructions. This Caſe is not ſimilar to a Declaration in Ejectment; the Title thereof is not amendable, there being nothing to amend by. *Hayward* for Plaintiff; *Draper* for Defendant.

Beaumont

Beaumont *againſt* Coſin, one, &c. Hil. 19 Geo. 2.

RULE to ſhew Cauſe on Plaintiff's Application, why Declaration ſhould not be amended, by inſerting in the Memorandum the true Day of proclaiming, *viz.* 28th *November*, (inſtead of 23d *October*, which was before the Cauſe of Action.) Rule abſolute, on Payment of Coſts. Defendant to have Time to plead *de novo*, pleading in Bar. *Bootle* for Plaintiff; *Agar* for Defendant.

Driver, on the Demiſe of Scrutton, *againſt* Scrutton and others. Hil. 18 Geo. 2.

In Ejectment. RULE to ſhew Cauſe why the Demiſe ſhould not be amended in Point of Time diſcharged. This is never done without Conſent. *Willes* for Plaintiff; *Prime* for Defendant.

Wynne,

Wynne, Eſq; and Kynaſton, Eſq; *Demandants*, Thomas, Gent. *Tenant*, Apperly, Dr. of Phyſick, and Alathea his Wife, *Vouchees*, by Attorny. Hil. 18 Geo. 2.

WRIT of Entry returnable *Quinden. Paſchæ*, Teſted 2d *April*, laſt Summons returnable *Craſtino Aſcenſionis Domini*, being 16th *May*; the *Dedimus Poteſtatem* to take the Vouchees Warrant of Attorny bore Teſte 25th *April*, and the *Mittimus* 18th *May*. The Recovery was arraigned at Bar 5th *May*. Mrs. *Apperly* the Wife, a Vouchee, died 10th *May*, ſix Days before the Return of the Summons. A Writ of Error being brought, and the Death of the Vouchee before the Return of the Summons, aſſigned for Error in Fact, Application was made to this Court to amend the Teſte and Return of the Writ of Entry, and a Rule to ſhew Cauſe. The Court, after hearing Council on both Sides, and Conſideration, was of Opinion, That all Amendments muſt be conſidered with Rules of Law, and there muſt be ſomething to amend by. In this Caſe, the Vouchees by Law could not appear till the Return of the Summons; and the Power of Attorny given by *Alathea* to appear at that Day, was revoked by her Death in the in-

termediate Time. By Statute 3 *H.* 6. *c.* 12. Original Writs amendable if wrong by Miſpriſion of the Clerk, or where there is any thing to amend by. Here is no Miſpriſion of the Clerk; the Writ is made agreeable to his Inſtructions, and nothing to amend by. The Amendment prayed, is to amend in the firſt Inſtance. The Rule diſcharged. *Willes & al.* for Doctor *Apperly* and Demandants and Tenant; *Skinner & al.* for *Wynne*, Eſq; and his Wife, entitled to the Eſtate in Remainder.

Beaumand *againſt* Stuart, a Priſoner. Hilary 20 Geo. 2.

RULE abſolute, giving Plaintiff Leave to deliver a new Iſſue properly entitled; in the Title of the Iſſue already delivered, the Word (*George*) was omitted, it ſtood thus, *Hilary* Term 20th King the Second. *Wynne* for Plaintiff; *Bootle* for Defendant.

Marks, Spinſter, *by* Brimmer her next Friend. Trin. 21 Geo. 2.

PLaintiff's next Friend ſworn to be a material Witneſs for Plaintiff, who was now of full Age: Plaintiff moved for Leave to ſtrike out *Brimmer*.

Davids

Davids, Spinſter, *againſt* Wilſon. Hil. 21 Geo. 2.

RULE to ſhew Cauſe why final Judgment on Verdict ſhould not be amended *in particularibus*, after Writ of Error and Record tranſcribed, but the Tranſcript not carried into the King's Bench. The Amendments were, to inſert the Words

agreeable to the ſtanding Form uſed by the Clerks of the Judgments; ſome other little Miſtakes, which were *Vitium Clerici*; and to make a Juryman's Name *Marſhall* inſtead of *Marſhell* by the Panel, *&c.* to make the Record conſiſtent; on reading *Poſtea*, *Ha. cor.* and Panel. *Skinner* for Plaintiff; *Belfield* and *Poole* for Defendant.

Garway *againſt* Stevens. Eaſter 21 Geo. 2.

PLaintiff moved to add a new Count to his Declaration, which was of laſt *Michaelmas* Term, on Payment of Coſts. Defendant objected, that by the Courſe of the Court a Count cannot be added after the ſecond Term; which was agreed to be the Practice: But as Plaintiff might diſcontinue, and to ſave the Trouble of a new Action, the Rule for the Amendment was made abſolute, on Payment of Coſts of Plea and Application,

tion, and Defendant having Leave to plead *de novo*. *Bootle* for Defendant; *Skinner* for Plaintiff.

Bird, Executor of Smith *againſt* Foſter the younger. Trin. 21 & 22 G. 2.

In Aſſumpſit. PLaintiff having laid his Action in *London*, and declared with a *Profert* of Letters Teſtamentary from the Biſhop's Court at *Durham*, obtained a Rule to ſhew Cauſe why he ſhould not amend the Declaration, by laying the *Venue* in *Northumberland* inſtead of *London*. On ſhewing Cauſe, the Court diſcharged the Rule, it not being uſual to amend the *Venue* at Plaintiff's Inſtance, unleſs where the Action by Act of Parliament is confined to a particular County, (ſuch as the *Weſtminſter* Bridge Act, *&c.*) and Plaintiff by Miſtake lays it in another County: Simple Contract Debts follow the Perſon of the Debtor, Specialties are Aſſets where found. In this Caſe, the Amendment prayed ſeems to be to make good an Adminiſtration, which probably is void in Law. *Bootle* and *Wynne* for Defendant; *Prime* for Plaintiff.

Bludwick and Wife, Executors, *againſt* Uſborne, Executor. Same Term.

RULE to ſhew Cauſe why Defendant ſhould not have Leave to add to former Pleas already pleaded, by Leave of the Court, two new Pleas, diſcharged. The Queſtion was Matter of Title, and the Cauſe to be tried at the Sitting after Term. Defendant had Time to apply laſt Term, he is under no Surprize: Plaintiffs can't now be prepared to anſwer new Matter. *Bootle* and *Poole* for Defendant; *Prime* and *Draper* for Plaintiffs.

Wood *againſt* Boon, Eſq; having Privilege of Parliament. Mich. 22 Geo. 2.

POOLE moved to amend the Declaration by adding Pledges to proſecute, and a Memorandum making the Declaration agreeable to the Bill on Record, on Payment of Coſts. Rule to ſhew Cauſe, which was afterwards made abſolute.

Ring,

Ring, *Demandant*; Bold, *Tenant*; Harrington, *Vouchee*. Eaſt. 22 G. 2.

WILLES for the Vouchee moved to amend the Recovery, by ſtriking out *It is adjudged*, and inſerting, *It is Conſidered*. Granted abſolutely; the Amendment prayed relating to the Act of the Court in giving their Judgment.

Merefield *againſt* Hulls. Trin. 24 G. 2.

HAbeas *Corpus cum Cauſa* to remove Defendant to the *Fleet*, was made returnable before Lord Chief Juſtice at his Chambers, and Defendant was committed by the late Mr. Juſtice *Forteſcue Aland*: Motion by *Agar*, to amend the *Ha. cor.* by making it returnable before the Judge by whom the Priſoner was committed. But *per Cur'*: The Amendment prayed is unneceſſary. The Commitment is warranted by the Practice, and is ſimilar to the *Ha. cor.* Act, 32 *Car.* 2. In the Abſence of the Chief Juſtice, the other Judge had the ſame Power.

Lacy and Garrick *againſt* Barry. Eaſter 24 Geo. 2.

In Debt, for a Penalty in Articles of Agreement.

DEfendant moved for Leave to amend his Plea, and for Oyer of the Articles, after Demurrer to the Plea, Joinder and Argument, and farther Day appointed. On ſhewing Cauſe, the Matter of Oyer was given up, as not prayed within Time, and as to it the Rule was diſcharged; but the Amendments tending to ſtate Facts neceſſary to bring the Conſtruction of an Act of Parliament, and the true Merits of the Caſe, before the Court, the Rule as to them was made abſolute, on Payment of Coſts. Amendments to be made within three Days; and if Plaintiffs demur again, Defendant to join in Demurrer immediately. *Prime* and *Bootle* for Defendant; *Willes* and *Poole* for Plaintiffs.

Murry *againſt* Bowen. Eaſter 24 G. 2.

DEclaration of *Hilary* laſt delivered the Evening before the Eſſoign Day of this Term, with an Imparlance. Defendant's Attorny, by Miſtake, entered a Special Imparlance as for a Plea in Abatement, and then pleaded

pleaded a Tender, to which Plaintiff demurred. Defendant moved, and obtained a Rule to ſhew Cauſe why he ſhould not amend his Plea, by leaving out the Special Imparlance, and pleading as of laſt Term. On ſhewing Cauſe, it was urged on Plaintiff's Part, that in Abatement there can be no Amendment: But the Declaration having been delivered ſo late, (the laſt Minute) and Pleas of Tender being in Bar, and ſuch as ought to be favoured, the Rule was made abſolute, on Payment of Coſts. *Poole* for Defendant; *Bootle* for Plaintiff.

Loggin, *Demandant*; Rawlins, *Tenant*; Pullen and his Wife, *Vouchees*.

THIS Recovery, ſuffered nine Years ago, was ordered to be amended, by putting the Word (*Trul*) the Name of a Vill, into its proper Place, according to the Deed of Uſes. *Trul* had, by Miſtake, been put into the Recovery as an Advowſon, not as a Vill where Lands lay. It was objected againſt this Amendment, 1*ſt*, That the Eſtate was in Truſtees at the Time of the Recovery, and conſequently the Truſtees not being Parties, there is no good Tenant to the *Præcipe*. 2*dly*, That the Lands are of Cuſtomary Tenure, Part of the Manor of *Taunton-Dean*. 3*dly*, That the Parties who ſuffered the Recovery were Volunteers, not to be conſidered

as claiming under a Family Settlement, or as Purchaſers for a valuable Conſideration. *4thly*, That *Pullen*'s Wife is dead, and a Recovery can't now be ſuffered to diveſt thoſe in Remainder. The Court will not enter into the Queſtion, Whether or no, in Equity, Recoveries of Truſt Eſtates bar legal Remainders, or into the other Objections; when the Recovery is amended, *Valeat quantum*, &c. The Intention of the Parties is the Foundation for the Amendment. The Tranſaction appears to be fair, and without Fraud or Colluſion. The Principle upon which the Court goes, is the Statute 8 *Hen.* 6. to amend the Miſpriſion of the Clerk. A *Præcipe* is the Curſitor's Inſtruction for an Original Writ; a Deed of Uſes is the Clerk's Inſtruction for a Recovery: This *Præcipe* and this Deed are the Things to amend by. Mrs. *Pullen* being dead, an Amendment is the only Remedy left. *Prime* and *Poole* for *Pullen*; *Willes* for Lord *Middleton* and his Lady; *Belfield* for *Ready* and his Wife, Claimants in Remainder.

Dryden, Clerk, *againſt* Langley. Trinity 24 & 25 Geo. 2.

In Replevin. DEfendant had avowed for a Quit-Rent, and Iſſue was joined laſt *Eaſter* Term; Defendant moved, and obtained Rule this Term to ſhew Cauſe why

why he ſhould not amend, by adding three Avowries for Quit-Rent payable at different Times, on Payment of Coſts; which Rule (Plaintiff refuſing to conſent that Defendant might give the Matter in Evidence on the preſent Iſſue) was made abſolute; Defendant rejoining *Gratis*, and taking ſhort Notice of Trial. *Draper* for the Avowant; *Belfield* for Plaintiff.

Tarrant, *Demandant*; Randal, *Tenant*; Sheppard, Eſq; and another, *Vouchees*. Mich. 25 Geo. 2.

THE Recovery was ordered to be amended, by ſtriking out the Word *Adjudged*, and inſerting inſtead thereof the Word *Conſidered*, in the giving of Judgment by the Court. *Prime* for Demandant, Tenant and Vouchees.

Witton, Eſq; *Demandant*; Eaſt, Gent. and Weddell, Gent. *Tenants*; Thomas Fairfax, Eſquire, *Vouchee*; of Lands in *Clementhorpe* in the County of the City of *York*: Recovery of *Eaſter* 9th *William* 3d, Roll 195. *Winford*'s Office. Entry returnable *Cro. Pur.* Summons returnable *Menſ. Paſch.* Seiſin returnable *indilate.*

THE Court, on the Motion of Serjeant *Poole*, on the Part of *Elizabeth Fairfax* Heir of the Vouchee, ordered the Prayer of Seiſin to be amended, and the Return of the Writ of Seiſin to be perfected by the Clerk of the Return-Office, the proper Officer who makes the Return. This Writ was rightly directed to the Sheriffs of the City of *York*, but not returned in the Name of any Sheriff, tho' a miſtaken Return in the ſingular, inſtead of the plural Number, was indorſed on the Writ: The Prayer of Seiſin, and Return of the ſaid Writ, were ordered to be firſt amended, and then the Roll and Exemplification accordingly. The particular Amendments were as follow; *1ſt*, To amend the

the Prayer of the Writ of Seiſin, by ſtriking out (*Com.*) and inſerting (*Civit.*); to amend the Return of the Writ of Seiſin, by ſtriking out (*mihi*) and inſerting (*nobis*); by ſtriking out (*feci*) and inſerting (*fecimus*); by ſtriking out (*prædict.*) and inſerting (*infra ſpecificat.*) and by adding the two Sheriffs Names; to amend the Entry of the Return of the Writ of Seiſin, by ſtriking out the Words (*Thomas Pulleyne, Armiger, then Sheriff of the County of York*) and inſerting (*Ric'us Wood & Sam. Buxton, then Sheriffs of the City of York*); by ſtriking out (*ipſe*) and inſerting (*ipſi*); by ſtriking out (*ſibi*) and inſerting (*eis*); and by ſtriking out (*fecit*) and inſerting (*fecerunt.*)

Harriſon, Chamberlain of London, *againſt* Potter. Mich. 26 Geo. 2.

POOLE for Lord-Mayor, Aldermen and Sheriffs of *London*, moved to amend their Return of Defendant's Writ of *Ha. cor. cum cauſa.* The Subſtance of the Return was the Action between the ſaid Parties, in Debt, for the Penalty of a By-Law, brought againſt Defendant for employing a Foreigner, (no Freeman of the City,) and the Cuſtom to make By-Laws; but the Cuſtom to employ Freemen, and not Foreigners, within the

the City, was omitted; which laſt mentioned Cuſtom *Poole* prayed might be inſerted in the Return. *Draper* for Defendant, ſubmitted whether the Return was amendable, or not; eſpecially, as another Rule touching the granting of a *Procedendo* was pending. Rule abſolute to amend the Return.

Attach=

Attachment.

Stephenſon *againſt* Brookes. Trin. 13 & 14 Geo. 2.

[*Wyat* againſt *Winkworth*, *Eaſter* 1 *Geo.* 2. *B. R.* *Hammond* againſt *Stewart*, *Mich.* 8 *G. B. R.* *Hopkins* againſt *Purſer*, *Trin.* 2 & 3 *Geo.* 2. *B. R.* *Dallyſon* againſt *Allen*, *Mich.* 10 *Geo. in Scaccario.*]

PLaintiff had obtained a Rule for one *Hall* of *Kingſton* upon *Hull*, an Officer of the Cuſtoms, to ſhew Cauſe why an Attachment ſhould not be iſſued againſt him, for not attending at *Guildhall*, *London*, to give Evidence, after having been ſerved with a *Subpœna*; Plaintiff having been nonſuited by Reaſon thereof. It appeared, that five Guineas were tendered *Hall* for his Expences, but he being a fat unweildy Man, and not able to travel on Horſeback, inſiſted upon ten Guineas, and offered, upon Receipt thereof, to undertake the Journey by Coach. *Per Cur'*: There is not any Precedent produced of a Rule of this Court for ſuch an Attachment, but the Party aggrieved has always here been put to his Action upon the Stat. 5 *Eliz. cap.* 9. Where ſufficient Amends are tendered, and a Witneſs obſtinately refuſes to attend,

attend, or is corrupted, the Court of King's Bench have, and there would be great Reaſon for this Court to interpoſe. The Sum tendered muſt be according to the Countenance and Calling of the Witneſs: Five Guineas were not ſufficient, and *Hall* had not Aſſurance that the Reſidue would be paid; if, after *Hall*'s Arrival at *London*, Plaintiff had not thought fit to examine him, the Court would not have ordered Payment of more Money. Ten Guineas do not ſeem to be an unreaſonable Demand. The Rule was diſcharged. *Draper* for *Hall*; *Prime* for Plaintiff.

George *againſt* Evans. Eaſter 16 G. 2.

ADminiſtrator of Defendant demands of Plaintiff Coſts accrued in Defendant Inteſtate's Life-time, ſhewing Letters of Adminiſtration. An Attachment granted for Nonpayment. *Skinner* for Plaintiff; *Bootle* for Defendant's Adminiſtrator.

The King *againſt* Lever, High Bailiff of Weſtminſter, on the Proſecution of Iſaac Tallon *againſt* Waldron. Eaſter 16 Geo. 2.

AN Attachment of Contempt iſſued forth againſt Defendant, for not bringing *Waldron*'s Body into Court, purſuant to a peremp-

peremptory Rule; and Defendant having been examined upon Interrogatories, it was referred to the Prothonotary (as uſual) to examine whether he had cleared himſelf of the Contempt, or not. The Prothonotary reported the Matter ſpecially; and the Fact appeared to the Court to be, That *Waldron* being confined in the *Gatehouſe* Priſon, *Weſtminſter*, for a Criminal Matter, was, by Leave of a Judge, charged there with a Bailable Action, in the following Manner: A *Capias ad reſpondendum* was directed to the Sheriff of *Middleſex*, who made a *Mandate* to the High Bailiff of *Weſtminſter*, and Defendant was charged in Cuſtody therewith, and afterwards eſcaped from the Keeper of the *Gatehouſe*, which is the Priſon for the Liberty of *Weſtminſter*, to which Priſon the High Bailiff is obliged to carry his Priſoners within twenty-four Hours after Arreſt. The High Bailiff being called upon for a Return of the *Mandate*, returned *Cepi Corpus*, and that *Waldron* remained in the Cuſtody of the Keeper of the *Gatehouſe*. Both the Chief Bailiff and the Keeper of the *Gatehouſe* are appointed by, and hold their Places under, the Dean and Chapter of *Weſtminſter*, and both give Security to the Dean and Chapter; but the Keeper gives no Security to the High Bailiff.——The Court were of Opinion, that the High Bailiff had cleared himſelf of the Contempt, and ordered the Attachment to be diſcharged. The

High

High Bailiff did every Thing in his Power to ſecure the Priſoner, and ought not to be criminally puniſhed. *Reſpondeat Superior* extends to Civil Matters only. The Proſecutor may bring his Action for the Eſcape. *Draper* and *Ketelbey* for the Proſecutor; *Bootle* for Defendant.

Vaughan, one, &c. *againſt* Sawyer. Trin. 19 & 20 Geo. 2.

RULE made for an Attachment of Contempt againſt the Bailiff of the Liberty of *Holderneſs* in the County of *York*, for not returning a *Mandate* made by the Sheriff, on an Attachment of Privilege, purſuant to a peremptory Rule to return the ſame, within ſix Days after Notice, without any Return of a *Mandavi Ballivo*, antecedent to the ſaid peremptory Rule; on an Affidavit of Service of that Rule, and an Affidavit of ſearching the Sheriff's Office, after the Expiration of the ſix Days, and that the *Mandate* was not returned; all the Officers preſent reporting this to be the Practice. *Bootle* for Plaintiff.

Richardſon *againſt* Bailey. Mich. 23 Geo. 2.

THE Under-Sheriff of *Hampſhire* ſhut himſelf up, and could not be perſonally ſerved with a Rule to return the Writ of *Capias ad reſpondendum*. Rule that leaving a Copy at his Houſe ſhall be good Service. *Poole* for Plaintiff.

Brodie *againſt* Tickell. Hil. 24 Geo. 2.

AFTER a Nonſuit, Motion by Plaintiff againſt *John Gray*, Eſq; for an Attachment for not attending as a Witneſs at the Sittings at *Niſi prius*. It did not appear that a *Subpœna* was perſonally ſerved; but Notice by Receipt of a *Subpœna* Ticket was admitted by Mr. *Gray*, who on Plaintiff's Application, before the *Subpœna* Ticket left at his Lodgings, had informed Plaintiff that he knew nothing of the Matter in Queſtion between the Parties, and could not give any Teſtimony for Plaintiff's Advantage. Mr. *Gray* for this Reaſon, in his Affidavit, endeavoured to excuſe his Non-attendance, and ſaid, that he would have attended the Trial notwithſtanding he could not give any material Evidence, had he not been hindered by other urgent Buſineſs. The Court enlarged the Rule for Mr. *Gray* to ſhew Cauſe why

why an Attachment, till after a new Trial had; and declared, that in ſome Caſes they will grant Attachments againſt Witneſſes for not attending Trials, tho' hitherto the ſame has not been done. *Prime* for Plaintiff; *Willes* for *Gray*.

Friend *againſt* Hope. Trin. 25 & 26 Geo. 2.

PLaintiff obtained a Rule for *John Hunt*, an Officer to the Sheriff of *Middleſex*, to ſhew Cauſe why an Attachment ſhould not be iſſued againſt him, for not attending the Trial at *Niſi prius* as a Witneſs on Plaintiff's Part, for Want whereof, Plaintiff made Affidavit that his Damages were leſſen'd 16 *l.* But on ſhewing Cauſe, the *Subpœna* to teſtify did not appear to have been regularly ſerved; for which Reaſon the Rule was diſcharged without Coſts. *Willes* for Plaintiff; *Prime* for *Hunt*.

Attornies, Warrants of Attorny.

On Behalf of Heaton, *an Attorny.* Mich. 14 Geo. 2.

THE Court, after hearing Council for *Heaton*, and for the Deputy-Lieutenancy who oppoſed his Motion, made the Rule abſolute for a Writ of Privilege, to excuſe *Heaton* from ſerving in the Trained-Bands of the City of *London*, the Service being perſonal.

Mr. John Moody's Caſe. Trin. 16 Geo. 2.

IN the Treaſury Chamber 22d *June*, Mr. *John Moody* of *Havant* in the County of *Southampton* had heen, at his own Inſtance, ſtruck out of the Roll of Attornies, and was put into the Commiſſion of the Peace, and made a Commiſſioner of the Land-Tax. He now moved upon an Affidavit (ſetting forth his Reaſons) to be reſtored to his Privilege; which was granted, he conſenting to take no Advantage of any Action pending, if ſuch there be.

Lunn, an Attorny, *againſt* Aſcough, an Attorny. Mich. 16 Geo. 2.

DEfendant being indebted to Sir *John Wray* by Promiſſory Note, Sir *John* left the Note with *Lunn*, to put it in Suit; *Lunn* contrived to bring the Action in his own Name, as Indorſee, and arreſted *Aſcough* by Attachment of Privilege, and held him to Bail, upon an old Notion, that Privilege cannot be pleaded againſt Privilege of equal Nature. The Attachment was a *Non omittas*, without an Attachment to warrant it. *Per Cur':* Attornies Privilege is for the Sake of the Suitors; one Attorny is not to ſue another of the ſame Court by Proceſs, but ought to do it by Bill. An Attorny of the King's Bench ought to ſue an Attorny of this Court by Bill, and an Attorny of this Court ought to ſue an Attorny of the King's Bench in like Manner. Plaintiff's Privilege ought not to draw Defendant into another Court. *Radcliffe* againſt *Bailey*, *Mich.* 14 *Geo.* 2. in *B. R.* the ſame Determination. Plaintiff and Defendant were both Attornies of that Court: (But not as to an Attorny of one Court ſuing an Attorny of another Court.)

Vincent

Vincent *againſt* Willoughby, an Attorny. Eaſter 17 Geo. 2.

PEnding a Fore-judger obtained againſt Defendant by another Perſon, Plaintiff ſued him by Bill, as having Privilege of an Attorny. Defendant moved to ſet aſide the ſecond Fore-judger, inſiſting that his Privilege was ſuſpended by the firſt; and Plaintiff ought to have ſued him by Original in the common Way. Rule to ſhew Cauſe made abſolute, without Oppoſition. *Eyre* for Defendant.

Launder, an Attorny, *againſt* Cokayn. Trin. 17 & 18 Geo. 2.

HELD *per Cur'*, That an Attorny of this Court may, for a Debt *bona fide* (but not a Note colourably indorſed without Conſideration) ſue an Attorny of the King's Bench by Attachment of Privilege, and the King's Bench Attorny would not be intitled to Privilege. But where the Attornies Plaintiff and Defendant are both of the ſame Court, the Proceeding muſt be by Bill, and not by Attachment, Defendant being intitled to Privilege.

Vilmott *againſt* Barry, Eſq; commonly called Lord Buttevant. Maguire *againſt* The Same. Mich. 20 Geo. 2.

WArrants to enter Judgments executed by Defendant when in Cuſtody, in the Preſence of Mr. *Periam*, an Attorny of the Court of King's Bench, declared by the Court to be ſufficient, though *Periam* was not an Attorny of this Court. Other Matters were complained of, and the Rule to ſhew Cauſe why the Judgment ſhould not be ſet aſide, *&c.* was enlarged till next Term. *Skinner* and *Willes* for Defendant; *Prime* for Plaintiff.

Thompſon, one, &c. *againſt* Raſh, one, &c. Hilary 20 Geo. 2.

THE Plaintiff and Defendant being both Attornies of this Court, the Proceedings by Attachment of Privilege were ſtay'd. *Prime* for Defendant; *Skinner* for Plaintiff.

Coles, Executor, *againſt* Haden. Eaſter 20 Geo. 2.

MOtion for Leave to enter Judgment at the Suit of *Coles*, the Executor, on a Warrant of Attorny, the Words whereof extended

tended to enter Judgment at the Suit of *Coles* the Teſtator, his Heirs, Executors or Adminiſtrators; the Court made a Rule to ſhew Cauſe, which was afterwards made abſolute, on Affidavit of Service, (no Cauſe being ſhewn). *Bootle* for *Coles*, Executor. The Serjeant quoted a Caſe in *Salkeld*, where a Warrant of Attorny to enter Judgment was given to a Feme Sole, and ſhe having married before the Judgment entered, the Court gave Leave to enter Judgment at the Suit of the Huſband and Wife.

Cockſedge, one, &c. *againſt* Rickwood.

OBjected for the Plaintiff, That the Affidavits *ex parte Def'tis* were ſworn before *J. C.* and *A. F.* as Commiſſioners who were at that Time ſworn to be Clerks or Agents to *Raſh*, Defendant's Attorny. The general Rule extends only to Attornies themſelves; thoſe Commiſſioners are not ſworn to be Agents in this Cauſe. The Objection was over-ruled. It was ſaid, but not ſworn, that they were menial Servants, which the Court ſeemed to think would have been a ſufficient Objection. *Prime* and *Willes* for Plaintiff; *Skinner* for Defendant.

Laycock, who ſurvived Kitching, *againſt* Garforth. Eaſter 21 Geo. 2.

PRIME moved, on the common Affidavit, for Leave to enter Judgment at the Suit of *Laycock* the ſurviving Plaintiff, by Vertue of an old Warrant of Attorney to enter Judgment at the Suit of the two, and quoted a Treaſury Rule made *ſub ſilentio*, in the like Caſe, *Still* againſt *Still*, *Mich.* 11 *Geo.* 2. The Court's Opinion was, That the Power ought to be ſtrictly purſued; and that a Power to enter Judgment at the Suit of two Perſons, doth not extend to the Survivor. The Intereſt of the Surviving Plaintiff cannot be purſued againſt the Authority. The Thing prayed is *Feſtinum Remedium*, which cannot be granted contrary to the Agreement of the Parties. The original Debt will remain as before the Warrant of Attorny given. Had the Application been made laſt *Hilary* Term, the Judgment would have related to a Time when both Plaintiffs were alive, and then perhaps the Court might have given Leave to enter Judgment at the Suit of the two. The Motion was denied. Act 8 & 9 *W.* 3. out of the Caſe.

Jones

Jones *againſt* Hayman. Trin. 21 & 22 Geo. 2.

PLaintiff, after having been ſtruck off the Rolls of Attornies and Solicitors, carried on Proceedings in his own Name, alledging that he was ſtill a Solicitor, and acting in the Name of one *Vaughan*, an Attorny, purſuant to a pretended written Authority; but not being able to verify theſe Pretenſions, Rules were made abſolute to ſet aſide the Proceedings, with Coſts. *Wynne* for Defendant; *Willes* for Plaintiff.

Trim *againſt* Slater. Trin. 22 & 23 Geo. 2.

TWO Judges had been formerly applied to for an Order to tax Mr. *Butler*'s Bill, late Attorny for Defendant; the Bill, amounting to little more than 3 *l.* had been paid in Parcels, ſome Part four Years ago, the laſt about twelve Months: Both the Judges refuſed to order a Taxation. Defendant moved that the Bill might be taxed, without diſcloſing what had paſſed before, and had a Rule to ſhew Cauſe, which was now diſcharged, with Coſts. The Act of Parliament directing Taxation of Attornies Bills, ſuppoſes them unpaid; this appears to have been paid long ago. After Application

to one Judge, (unleſs he had been doubtful) no Application ought to have been made to another Judge; after the Opinion of two Judges, neither of whom doubted, or directed a Motion, the Application to the Court wrong. *Agar* for Defendant; *Wynne* for *Butler*.

Whetham, Eſq; Aſſignee, *againſt* Needham and Atkins. Trin. 24 G. 2.

Edward Owen, Plaintiff's Attorny, now a Priſoner in the *Fleet* under Proceſs of Contempt from the Court of Chancery, having commenced this Action on the Bail-Bond, aſſigned ſince his Impriſonment, Defendants moved to ſet aſide the Proceedings, with Coſts, as contrary to the Statute *Geo.* 2. making void the ſame; and obtained a Rule to ſhew Cauſe: But it appearing that the Original Action was commenced before *Owen*'s Impriſonment, and there being an Exception in the Statute as to carrying on Proceedings before commenced; the Court taking this under the Statute for Amendment of the Law, 4 & 5 Q. *Anne*, to be a Continuance of the Original Suit incorporated to make it effectual, diſcharged the Rule. *Willes* for Plaintiff and *Owen*; *Wynne* for Defendant.

Craven

Craven *againſt* Billingſley. Mich. 24 Geo. 2.

ON Complaint of one of Defendant's Bail, of his having been made liable to pay Plaintiff's Debt and Coſts, by a Proſecution on the Bail-Bond, through the Miſconduct of Mr. *Skinner*, an Attorny employed for Defendant, who had put in Bail in the Court of King's Bench, inſtead of this Court; and it not being controverted by *Skinner*'s Council, for want of proper Inſtructions, that he was an Attorny of this Court, a Rule was made abſolute upon him to reimburſe the Bail; but it afterwards appearing that *Skinner* was not an Attorny of this Court, and that he never acted by himſelf, or in the Name of another Attorny, in any one Inſtance in this Cauſe in this Court, the Rule was diſcharged. *Prime* and *Poole* for *Skinner*; *Hayward* for the Bail.

November 16th 1750. *Declared* by all the Judges in the Treaſury-Chamber, That if a Warrant of Attorny to enter Judgment be above a Year old and under ten Years old, Leave to enter Judgment may be given by a Treaſury Rule; but if the Warrant be above ten Years old, the Court muſt be moved for Leave to enter Judgment. If the Warrant be under twenty Years old, the common Affidavit

fidavit of due Execution of the Warrant, that the Defendant is unpaid, and Parties living, is ſufficient for an abſolute Rule; but if the Warrant be above twenty Years old, the Rule muſt be to ſhew Cauſe, and ſerved on Defendant.

On the Part of Boyer and others, *againſt* John Allen, an Attorny. Eaſter 24 Geo. 2.

A Complaint having been laid before the Court againſt *Allen*, ſhewing that he had impoſed on the Judge who ordered him to be admitted, by ſwearing to a Service of five Years to an Attorny of *Newcaſtle under Lyne*, *Com. Staff.* as an articled Clerk, tho' (as ſuggeſted) he never lived at *Newcaſtle*, but conſtantly reſided at *Loughborough*, *Com. Leic.* where he was an Under-Schoolmaſter, and Collector of the Window-Light Duty; a Rule was made for *Allen* to ſhew Cauſe why he ſhould not be ſtruck off the Roll of Attornies. On ſhewing Cauſe, the Complaint was fully anſwered. It appeared, that though *Allen* reſided ſometimes at *Newcaſtle* and ſometimes at *Loughborough*, he was during his whole Clerkſhip conſtantly employ'd and inſtructed by his Maſter. The Rule diſcharged, with Coſts. *Hayward*, *Bootle* and *Poole* for *Allen*; *Prime*, *Willes* and *Belfield* for *Boyer* and others.

Britten

Britten, who as well, &c. *againſt* Teaſdaile. Trin. 24 & 25 Geo. 2.

THIS was an Action brought on a Penal Statute (13th *Elizabeth*) againſt Defendant, for entring a fraudulent Judgment; and the Suit being by Original and *Capias ad reſpondendum*. Defendant, who was an Attorny of this Court, *rectus in Curia*, moved to ſtay the Proceedings, inſiſting that he ought to be ſued by Bill. On ſhewing Cauſe it was urged, That this was a Proſecution for the Crown; and that Defendant, if intitled to Privilege, may plead it. But *per Cur'*: Theſe *Qui tam* Actions are never conſidered as the King's Cauſes. In Proſecutions at the Suit of the Crown, Defendants, tho' acquitted, can have no Coſts; but in Actions *Qui tam* 'tis otherwiſe. The proceeding by Original is irregular. Rule abſolute to ſtay Proceedings. *Prime* for Defendant; *Willes* and *Agar* for Plaintiff.

Todd *againſt* Todd. Trin. 25 & 26 Geo. 2.

In Banco Regis. RIchard *Todd* executed a Warrant of Attorny, dated 8 *May* 1746, to confeſs Judgment to *John Todd* the Elder and *John Todd* the Younger. On the Warrant of Attorny, an Agree-

Agreement was indorſed, reciting that *John Todd* the Elder and *John Todd* the Younger had entered into a Bond for the Payment of a certain Sum of Money to *W. S.* whichwas the proper Debt of *Richard Todd*; it was therefore agreed, that the Judgment ſhould be a Security and Indemnity to *John Todd* the Elder and *John Todd* the Younger, againſt all Coſts, Charges and Damages which they might ſuſtain, on Account of the Bond which they had entered into.

John Todd the Elder died in the Year 1748, and by his Will made *John Todd* the Younger his Executor; Motion was made by Mr. *Williams* to enter up Judgment at the Suit of the ſurviving Plaintiff. The Court doubted whether it could be done, and directed him to inquire if there was any Inſtance where the like Motion had been granted; and if not, to ſpeak to it as a Point of Law; which he afterwards did: And ſubmitted, That the Difficulties which occurred in the preſent Caſe were,

1*ſt*, That bare Authorities muſt, by the Rules of Law, be ſtrictly purſued; which could not be done in the preſent Caſe, the Warrant of Attorny being to appear to an Action to be commenced by two Perſons, to receive a Declaration at the Suit of two Perſons, and to confeſs a Judgment in ſuch Actions; which would not empower the Attorny to appear to an Action commenced by one

one Perſon only, and to receive a Declaration at the Suit of one only, and to confeſs Judgment in ſuch Action.

2dly, That by the Death of one of the Plaintiffs the Authority is determined.

In anſwer to which, he ſubmitted,

1ſt, That where a Contract is made with two Perſons, and one dies, the Survivor ſhall have the Benefit of it. In the preſent Caſe, *John Todd* the Younger is intitled to the Benefit of this Agreement, as Survivor.

2dly, If a Joint Action is brought by two Perſons, and one dies before Interlocutory Judgment, if the Cauſe of Action ſurvives, the Action is not abated, but the Surviving Plaintiff may proceed againſt the Defendant.

This is in Caſe of Adverſary Actions, and it will hold *a fortiori* in Amicable Actions, founded upon the Agreement of the Parties.

3dly, That in the Execution of a Power of Attorny, it is ſufficient and good if it be executed in Subſtance, and according to the Intention of the Parties, though not ſtrictly and exactly according to the Letter. Feoffment on Conſideration to re-enfeoff the Huſband and Wife and the Heirs of their Bodies; Feoffee makes a Gift in Tail accordingly, and a Letter of Attorny to make Livery; before Livery made the Huſband dies, yet the Attorny may make Livery to the Widow, and ſhe ſhall take an Eſtate in Tail according to the Gift. *Moor* 280.

Feoffment

Feoffment of two Acres, one of them is before demiſed for Years; a Letter of Attorny to make Livery of Seiſin of thoſe two Acres, without ſaying, 'or any Part thereof,' the Attorny may make Livery of Seiſin of that Acre only which is in Poſſeſſion, and that will be good. *Moor* 280.

Co. Lit. 52. A Letter of Attorny to deliver Seiſin to two, the Attorny may make Livery to one, in the Abſence of the other. In the preſent Caſe, the Attorny may execute this Warrant in Subſtance, and agreeable to the Intent of the Parties; the Intent of the Parties was, that this Judgment ſhould be a Security. By the Death of *Todd* the Elder, *Todd* the Younger becomes liable alone to the Payment of the whole Money due upon the Bond; he therefore ought to have the whole Benefit of the Indemnity. It never could have been the Intent of the Parties, that the Security ſhould become a Nullity, upon an Event which made the Surviving Plaintiff liable alone to the Payment of the whole Mony due upon the Bond.

4*thly*, That if an Attorny is empowered to do an Act to two jointly, and the Benefit of that Act, when done, will ſurvive, if one dies, the Act ſhall be done to the Survivor.

Perkins, Title *Feoffment*, Sect. 192. If a Letter of Attorny be made to make Livery of Seiſin unto two, and one of them dies

before Livery of Seiſin made, and the Attorny makes Livery of Seiſin, according unto the Deed, unto the other Feoffee who is living, it is good to him for all the Land. In the preſent Caſe, the Attorny is empowered to do an Act to two, the Benefit of which Act, if done, would have ſurvived; and therefore the Attorny may execute that Power to the Survivor. This Caſe likewiſe ſhews, that the Death of one of the Perſons to whoſe Benefit the Power is to be executed, is not, in Point of Law, a Revocation of the Authority.

5*thly*, That ſuppoſing, by the Event which has happened, this Warrant of Attorny is determined, or cannot be executed agreeable to the ſtrict Rules of the Common Law; but in the preſent Caſe, it is ſubmitted, That Proceedings upon Warrants of Attorny to confeſs Judgment, are to be conſidered as Proceedings founded upon the Agreement of the Parties, and the Judgment is to be conſidered as a common Security: That in Caſes of this Sort, the Court exerciſes an Equitable Juriſdiction, in order to prevent the Party from being defeated of his Security, either by Fraud, by Accident, or Neglect.

A Power of Attorny is in its Nature revocable, though declared in the Inſtrument to be irrevocable. 8 *Coke* 82. *Vinior*'s Caſe. But in the Caſe of a Warrant of Attorny to confeſs Judgment, though the Party revokes it,

it, yet the Court will permit the Judgment to be entered. *Odes* and *Woodward*, Ld. *Raymond* 849.

A Power of Attorny determines by the Death of the Party who gives it, yet in Caſes of this Sort, the Court permits the Attorny to execute the Power after the Death of the Party. *Andrews* and *Shewell*, *Raym.* 18. The Defendant gave a Warrant of Attorny to *A. B.* to confeſs Judgment in Debt to the Plaintiff, by *Non ſum informatus*; Warrant of Attorny given at eight o' Clock in the Morning, and at ten o' Clock Defendent died: Judgment was afterwards ſigned. Defendants prayed to ſet aſide this Judgment, but reſolved, it was well obtained, it being for a juſt Debt. If a Warrant of Attorny is given in *Eaſter* Vacation, to confeſs a Judgment as of the next *Trinity* Term, and Defendant dies in *Trinity* Term, yet the Judgment may be entered up at any Time before the Eſſoin Day of *Michaelmas* Term. *Salk.* 87. *Comberbatch* 212. By the Practice of the Court, a Warrant of Attorny before the Eſſoin Day, to enter up Judgment as of the preceding Term, is good; yet there, the Judgment is conſidered as of the preceding Term, at which Time there was an Authority exiſting. Where a Judgment is confeſſed upon Terms, the Court will ſee thoſe Terms performed. *Per* Holt, *C. J. Salk.* 400. 1 *Shower* 91. If a Woman gives a Warrant

rant of Attorny to confeſs Judgment, and then marries, you may file a Bill againſt Huſband and Wife, and enter up Judgment againſt both, by the Practice of the Court. Ruled upon Motion. In this Caſe, the Marriage of the Woman was, in Point of Law, a Revocation of the Power; as where a Feme Sole ſubmits to refer Matters to Arbitration, and afterwards marries, this is a Revocation of the Submiſſion. 1 *Roll. Abr.* 331.

Warrant of Attorny was given to confeſs a Judgment to a Feme Sole, who afterwards married; in this Caſe, the Court made a Rule to enter up Judgment notwithſtanding the Marriage. *Salk.* 117.

Theſe two laſt Caſes are liable to all the Objections with the preſent.

Submitted, That if a Warrant of Attorny was given to confeſs Judgment to two Executors, and one dies, the Judgment may be entered up for the Survivor.

Still againſt *Still, Mich.* 11 *Geo.* 2. *Notes of Caſes in Points of Practice in* C. P. *fol.* 35. Defendant gave a Warrant of Attorny to enter Judgment at the Suit of Plaintiff *John Still*, and one *Suſanna Still* ſince dead; the Judges in the Treaſury gave Leave to enter Judgment at the Suit of the ſurviving Plaintiff: But admitted, that in a ſubſequent Caſe that Court was of a different Opinion.

Eaſter 21 *Geo.* 2. *Laycock* againſt *Garforth.* Motion by Serj. *Prime* to enter up

Judgment upon an old Warrant of Attorny, at the Suit of the ſurviving Plaintiff, upon the Authority of the Caſe of *Still* and *Still*; the Court denied the Rule, and were of Opinion, That the Power ought to be ſtrictly purſued; and that a Power to enter Judgment at the Suit of two Perſons, doth not extend to the Survivor. The Thing prayed is *feſtinum Remedium*, which cannot be granted contrary to the Agreement of the Parties. The original Debt will remain as before the Warrant of Attorny given. The Motion was denied, and ſaid to be not within the Statute 8 & 9 *W.* 3.

That the firſt Reaſon in this Caſe was contrary to the Doctrine laid down in the ſeveral Authorities in *Moor*, *Co. Littleton*, *Salkeld*, *Shower* and *Perkins*. That this cannot be againſt the Agreement of the Parties, for the Reaſons before given. That the third Reaſon will not hold in the preſent Caſe, for this Judgment was only to be an Indemnity. That if the Plaintiff fails in the preſent Application, he is intirely without Remedy at Law.

The Court took Time to conſider. Afterwards Lord Chief Juſtice declared the Opinion of the Court, That a Rule ſhould be granted; and ſaid, that the Benefit of this Agreement ſurvived to the preſent Plaintiff; and that the Authority in 1 *Shower* 91. was a ſtronger Caſe than the preſent.

Mould

Mould *againſt* Jackman. Trinity 24 & 25 Geo. 2.

PLaintiff moved in the Treaſury, producing the common Affidavit, for Leave to enter Judgment on an old Warrant of Attorny, not expreſſing any Term or Time. Rule made to ſhew Cauſe, and afterwards abſolute, on Affidavit of Service; no Cauſe being offered to the contrary.

Machin *againſt* Delaval. Hil. 26 G. 2.

IT being found by Verdict, on Trial of a feigned Iſſue directed by the Court, That the Warrant of Attorny to enter Judgment was given in Conſequence of an Uſurious Contract; the Court ordered the Judgment to be ſet aſide, and ſaid Warrant of Attorny, and the Bond whereon ſaid Judgment was entered, to be delivered up, and Plaintiff to pay Coſts of Application. *Prime* and *Willes* for Defendant; *Poole* for Plaintiff.

Gladwin *againſt* Scott. Eaſter 26 G. 2.

DEfendant *Henry Scot*, and one *Thomas French* deceaſed, gave a joint Bond to Plaintiff for Payment of 127 *l.* and Intereſt, and a Warrant of Attorny to enter Judgment againſt *me*, not *us*, though executed by two. *Willes* for Plaintiff moved, on the common Affidavit, for Leave to enter Judgment againſt *Scott* the Survivor. He quoted a Caſe *in Banco Regis*, *Todd* againſt *Todd*, where Leave was given to enter Judgment at the Suit of a ſurviving Plaintiff. Rule to ſhew Cauſe; which was afterwards made abſolute, on Affidavits of Service, no Cauſe being ſhewn to the contrary.

N. B. The Caſe quoted is herein before inſerted under this Title, p. 43.

Award, Submiſſion, &c.

Dalling *againſt* Matchett. Mich. 14 Geo. 2.

MATTERS in Difference were, by Conſent of Parties, referred to three Arbitrators, ſo as they, or any two of them, make an Award, *&c.* and an Award having been made by two in Plaintiff's Favour, Defendant moved to ſet it aſide; objecting, that two had not a Juriſdiction without the third; and obtained a Rule to ſhew Cauſe. Upon ſhewing Cauſe it appeared, that the third Arbitrator had ſufficient Notice of the Meetings of the other two, and might have been preſent if he would. *Per Cur'*: 'Tis agreed by both Sides, that if the third had met, two might have made an Award; two have a Juriſdiction, but muſt meet purſuant to Rules of Law. If the third had been preſent, his Reaſons might have altered the Opinion of the other two; he is not therefore to be excluded by Fraud; nor are the two to act, without the third's having an Opportunity to be preſent; but where the third has ſufficient Notice, as in this Caſe, and will not attend, the Meeting of the two is regular, and their Authority ſufficient. The Rule diſcharged. *Skinner* and *Prime* for Plaintiff; *Belfield* and *Urlin* for Defendant.

Kettle *againſt* Grove, Heir, &c. Eaſter 15 Geo. 2.

On Bond. AT the Aſſizes Plaintiff had a Verdict for his Security, and Matters in Difference were referred to Arbitrators by Rule, who made an Award within the Time limited, whereby Defendant was ordered to pay Plaintiff 300 *l.* The Rule of Aſſize was made a Rule of Court. And Plaintiff electing to proceed upon the Verdict, and not by Attachment of Contempt for Non-performance of the Award, moved for Leave to enter Judgment, and take out Execution for the Money awarded; and a Rule was made to ſhew Cauſe, and afterwards abſolute, on Affidavit of Service.

Note; The Court thought this a proper Application; and that Plaintiff had not a Right to enter Judgment without Leave of the Court. *Birch* for Plaintiff.

Tynte *againſt* Every.

ARbitrators awarded Coſts of Suit and of the Reference, to be taxed *per* Prothonotary. The Court ordered Coſts to be taxed to the Time of the Reference, but not after. *Gapper* for Defendant; *Draper* for Plaintiff.

Eaſter

Eaſter 16 Geo. 2.

UPON the Motion of Serjeant *Birch*, the Court made a Rule that *A. B.* a ſubſcribing Witneſs to an Arbitration-Bond, ſhould ſhew Cauſe why he ſhould not make an Affidavit touching the Execution of that Bond; and upon an Affidavit of Service, the Rule was made abſolute.

Note; This is the only Caſe wherein the Court interpoſed in this Manner.

Read *againſt* Garnett, an Attorny. Trin. 17 & 18 Geo. 2.

VERDICT for Plaintiff, for Security. Reference, by Rule, to three of the Jurors; Award in Plaintiff's Favour. Rule obtained by Plaintiff for Defendant to ſhew Cauſe why *Poſtea* ſhould not be delivered to Plaintiff, to take out Execution for the Money awarded. Objection by Defendant, That no Affidavit was produced of the due Execution of the Award, or of a Demand of the Money; which the Court held to be as neceſſary as if the Motion had been for an Attachment for Nonpayment of Money. The Rule was diſcharged. *Skinner* for Plaintiff; *Willes* for Defendant.

Bail, Bail-Bonds, &c.

Otway *againſt* Cokayne. Trin. 13 & 14 Geo. 2.

AFTER Plaintiff had been delayed of Trial, Defendant juſtified Bail, and obtained a Judge's Order to ſtay Proceedings on the Bail-Bond, upon Payment of Coſts, *&c.* and conſenting that the Bail-Bond ſhould ſtand as Plaintiff's Security. Plaintiff recovered Judgment in the Original Action, and then renewed his Proceedings, and declared on the Bail-Bond. Defendant pleaded *Comperuit ad diem*; which Plea the Court ordered to be ſet aſide, and gave Plaintiff Leave to enter Judgment on the Bail-Bond immediately, but ſtayed Execution for a Week. It is always intended, and ought in theſe Caſes to be expreſſed, That Judgment be given, and Execution only ſtayed. *Bootle* for Plaintiff; *Agar* for Defendant.

Kettelby *againſt* Woodcock. 31ſt *October*, In Treaſury, Mich. 14 G. 2.

AGreement in Writing to deliver a certain Quantity of Goods within a certain Time, at the Price of 300 *l.* or in Default thereof, that Defendant would forfeit and pay

pay to Plaintiff 100 *l.* Action brought for the Penalty; and upon the Queſtion of, Bail or No Bail? The Judges were of Opinion that Defendant ought to be held to Bail.

Goſtelow *againſt* Wright.

PLaintiff brought an Action upon the Caſe againſt Defendant, who appeared, and Plaintiff recovered Judgment, and then brought Debt on the Judgment, and held Defendant to Bail, and recovered a ſecond Judgment. After a *Ca. ſa.* returned againſt the Principal, and before the Return of the Writ in an Action of Debt upon the Recognizance againſt the Bail in the ſecond Action, the Court was moved to ſtay Proceedings on the Recognizance, pending a Writ of Error brought to reverſe the firſt Judgment; and upon the Bail's conſenting to give Judgment in the Actions brought againſt them, the Rule obtained to ſtay Proceedings was made abſolute. *Burnett* for the Bail; *Wynne* for Plaintiff.

Carleton *againſt* Wilkinſon.

DEfendant was outlawed by Special Original, and upon reverſing the Outlawry, put in Bail with Condition, as uſual, to appear to a new Original, to be filed within two Terms. Plaintiff proceeded to Judgment, and Defendant brought a Writ of Error; a Motion

Motion was made on Behalf of the Bail, to diſcharge their Recognizance, no Original having been filed within two Terms; and a Rule made to ſhew Cauſe; which was diſcharged: The Bail may plead as they ſhall be adviſed. *Skinner* for Plaintiff; *Agar* for Defendant.

Manning *againſt* Williams.

THIS was an Action brought on a Bottomree-Bond, and the Queſtion was, Bail, or No Bail? Two Affidavits for Bail had been made by Alderman *Willimott*; the firſt was, That the Alderman believed Defendant was indebted to Plaintiff, *&c.* which was held inſufficient. Where the Affidavit is made by a third Perſon, it muſt be poſitive, unleſs in the Caſe of an Executor, *&c.* where Belief is ſufficient. The Alderman, by Leave of the Court, made a ſecond Affidavit, That Defendant was indebted to Plaintiff, *&c.* if the Ship *Suſſex* be not unavoidably loſt: The Ship was agreed to be loſt, and Affidavits were read on both Sides, controverting the Fact, whether the Loſs was unavoidable, or not. *Per Cur':* The ſecond Affidavit of the Alderman is *prima facie* ſufficient; otherwiſe there could be no Bail on Bottomree-Bonds; but the Affidavits *ex parte defendentis* turn the Balance: The Alderman is ſupported by two Perſons, who ſwear the Ship

Ship might have been ſaved; but for the Defendant, eleven Perſons ſwear the Loſs was unavoidable. Rule abſolute for Common Appearance. *Skinner* and *Belfield* for Plaintiff; *Prime* and *Burnett* for Defendant.

Treherne *againſt* Greſſingham. Mich. 15 Geo. 2.

PLaintiff, after having recovered Judgment in Ejectment againſt the Caſual Ejector by Default, brought this Action for meſne Profits, wherein he had obtained a Judge's Order to hold Defendant to Bail; and, by Miſtake, made his *Ac etiam* in Treſpaſs upon the Caſe, inſtead of Treſpaſs only, as it ought to have been. Defendant moved for a Common Appearance; and it was inſiſted on Plaintiff's Behalf, that Defendant having put in Bail before a Judge to the *Ac etiam* in Caſe, was now too late to apply. After ſome Debate, Plaintiff accepted a Common Appearance. It was obſerved (*per Cur'*) that theſe Actions for meſne Profits, (which are grown very faſhionable) tend to create double Expence. Why ſhould not Plaintiff be ready at the Trial of the Ejectment to prove his Damages, which may be recovered in that Action, without bringing a ſecond for meſne Profits. The true Rule as to the Time from which meſne Profits are to be recovered, ſeems to be where Judgment is againſt the Caſual Ejector,

Ejector, from the Time of the Delivery of Declarations to the Tenants in Poſſeſſion, or from the Time of an actual Demand of Poſſeſſion proved, where Judgment is againſt the Tenants in Poſſeſſion (or the Landlord defending in their Stead) from the Ouſter admitted by the Common Conſent Rule; but in neither Caſe from the Demiſe, which may be laid back at Plaintiff's Pleaſure. *Urlin* for Defendant; *Birch* for Plaintiff.

Elton *againſt* Manwaring; Thomas *againſt* The Same. In Monmouthſhire.

Tueſday 3d November, *Skinner* moved to juſtify Bail for Defendant, who was in Cuſtody, upon the uſual Affidavit; and upon an Affidavit of Notice of the Juſtification ſerved on *Saturday* laſt, *Birch* for Plaintiffs objected to the Shortneſs of the Notice, and that Plaintiffs had not ſufficient Time to inquire after the Bail. But *per Cur'*: Two Days Notice of Juſtification is the general Rule in all Caſes, and the Bail muſt be allowed.

Satchwell

Satchwell *againſt* Lawes.

PRoceedings on Bail-Bonds ſtayed for Want of Notice of Exception againſt the Bail put in before a Judge, given in Writing to Defendant's Attorny. An Exception had been entered in the Filacer's Book, and verbal Notice thereof given to Defendant, but this is not ſufficient; 'tis neceſſary not only to enter an Exception in the Bail-Book, but alſo to give Notice in Writing to Defendant's Attorny. *Willes* for Defendant; *Skinner* for Plaintiff.

Newton *againſt* Lewis.

BAIL on an *Ac etiam*, *Capias ad reſpondendum*, and Surrender of the Defendant by his Bail before the Return of the Writ, were held to be irregular, and ſet aſide. *Non eſt inventus* may be returned, and then the Bail goes for nothing. If a *Cepi Corpus* be returned, Defendant, at the Return, is ſuppoſed to be in Cuſtody of the Court, and then, if bailed, to be delivered to his Bail; and there can be no Surrender 'till after that Time. It has been held a Contempt, *in Banco Regis*, for the Bail below to become Bail above, and render the Principal before the Return of the Writ. But although Defendant is to be remedied with Reſpect to his Bail,

Bail, Plaintiff muſt not be prejudiced; the Return of the Writ is now paſſed. Let Defendant be brought into Court by *Habeas Corpus*, and the Bail, being preſent, ſhall have Leave to render him *de novo*; which was done accordingly. *Prime* for Plaintiff; *Wynne* for the Bail.

Rayner *againſt* Brough. Eaſter 15 Geo. 2.

RULE to ſhew Cauſe why a Common Appearance ſhould not be accepted for Defendant, who had been arreſted in the County Palatine of *Durham*; and the Sum ſworn due being under 20*l.* made abſolute. For Plaintiff it was urged, that the Statute 11 & 12 *W.* 3. requiring no Sheriff to hold to Bail in Counties Palatine, on Proceſs out of *Weſtminſter-Hall* under 20*l.* was vertually repealed by the Statute 12 *Geo.* 2. *c.* 29. which requires Bail in all Caſes where Affidavit ſhall be made that the Cauſe of Action amounts to 10*l.* the latter being a general Law, and extending throughout *Great Britain* (*Scotland* only excepted.) *Per Cur'*: Affirmative Words, without Negative, are not ſufficient to repeal a former Law; the Nature of the Caſe, and the Intent of the Legiſlature, are to be conſidered. Both the Statutes have the ſame Title, *viz.* To prevent vexatious Arreſts, and both were made in

in Favour of the Liberty of the Subject; they may ſtand together. In County Palatine 20 *l.* muſt ſtill be ſworn due to require Bail. By a Rule of this Court, *Michaelmas* 1654, Bail is required for 20 *l.* and for no leſs: And though a Practice was introduced in Chief Juſtice *North*'s Time to hold to Bail for 10 *l.* (*Hiſtory of the Common Pleas, fol.* 37.) yet the old Rule remains undiſcharged. *Skinner* for Defendant; *Belfield* for Plaintiff.

Claxton, Aſſignee of the Sheriff, *againſt* Hyde and his Bail.

DEfendant moved, that the Exception againſt the Bail in the Original Action might be ſtruck out, and the Bail recorded, that he might verify his Plea of *Comperuit ad Diem*; inſiſting, that the ſame Bail being put in before a Judge who were Bail to the Sheriff, and Plaintiff having taken an Aſſignment of the Bail-Bond, had thereby waived his Exception, and the Bail above were become abſolute. A Rule was made to ſhew Cauſe. Caſes quoted for Defendant, *Groſvenor* againſt *Soames*, 6 Mo. *Hampſon* againſt *Sower*, *Eaſter* 1729; *Haman* againſt *Bennett*, *Hill.* 12 *Geo.* 2. in *B. R. Hambly* againſt *Dowharty*, Caſes in *C. B.* fol. 61. *Walſh* againſt *Haddock*, *Hil.* 2 *Geo.* 2. Upon ſhewing Cauſe, it was urged for the Plaintiff, that the Practice of this Court is ſettled

ſettled by the Rule of *Trin.* 3 & 4 *Geo.* 2. Unleſs Bail be perfected, (that is juſtified in Court) within four Days after Exception, Plaintiff may proceed on Bail-Bond, by the Rule of *Mich.* 6 *Geo.* 2. Plaintiff may except againſt the Bail above, though the ſame as to the Sheriff; and *Ormond* againſt *Griffith*, *Hil.* 7 *Geo.* 2. is a Caſe in Point. *Notes of Caſes*, *fol.* 51. *Per Cur':* Let the Rule be diſcharged. As the Practice of this Court ſtands at preſent, Plaintiff is regular to proceed upon the Bail-Bond. The Aſſignment doth not admit the Sufficiency of the Bail. The Sheriff may be inſufficient, and then, if Plaintiff cannot proceed on the Bail-Bond, he has no Remedy. *Skinner*, *Willes* and *Draper*, for Defendant; *Prime* and *Agar* for Plaintiff.

Clarke *againſt* Harbin. Hil. 16 G. 2.

MAY 20th 1742, a Writ of *Ha. cor.* returnable *immediatè*, was lodged at the Palace Court, to remove a Plaint from thence into this Court; and nothing further was done till 20th *November* laſt Term, when Plaintiff ſerved Defendant with a Rule to put in Bail. Defendant inſiſted, that Plaintiff ſhould have ſerved ſuch Rule within two Terms after the *Ha. cor.* brought, and was now too late. The Court held, That if Defendant had put in Bail upon his *Ha. cor.*

without ſtaying to be forwarded by a Rule for Bail, and Plaintiff had not declared within two Terms after Bail put in, the Cauſe would have been out of Court, but the Rule for Bail is not limited to any particular Time. Rule to ſhew Cauſe why Proceedings ſhould not be ſtayed, was diſcharged. *Birch* for Plaintiff; *Agar* for Defendant.

Tribe and others, Aſſignees, &c. a Bankrupt's Effects, *againſt* Pratt. Hil. 16 Geo. 2.

ONE of the Plaintiffs, in order to hold Defendant to Bail, made an Affidavit that Defendant was indebted to Plaintiffs 1300 *l.* as appeared by an Account under the Bankrupt's Hand. Defendant objected to this Affidavit, that the Account referred to by it, was not annexed or produced; that as the Bankrupt was living, and under the Power of the Aſſignees, he ought to have made the Affidavit; that Plaintiff who makes Affidavit, does not ſwear he believes the Sum to be due; that this Caſe differs widely from that where Plaintiff is an Executor or Adminiſtrator, who (Teſtator, *&c.* being dead) can only ſwear to Debts as they appear from Securities or Books of Account. The Court thought a poſitive Affidavit of the Debt neceſſary, unleſs it had appeared that the Bankrupt refuſed to make the ſame. And the

Rule was made abſolute for a Common Appearance. *Prime* for Defendant; *Skinner* for Plaintiff.

Seaber *againſt* Powell. Eaſt. 16 Geo. 2.

RULE to ſhew Cauſe why Proceedings on the Bail-Bond ſhould not be ſtayed on Payment of Coſts, diſcharged, Plaintiff having been delayed of Trial, and Defendant and his Bail refuſing to conſent that the Bail-Bond ſhould ſtand for Plaintiff's Security. Defendant inſiſted, that Plaintiff not having declared *de bene eſſe*, had delayed himſelf; but the Writ in the Original Action being returnable laſt Term, that Objection will not hold. Declarations *de bene eſſe* are neceſſary to take the Advantage of the Term, if the Writ be of the firſt or ſecond Return, where Defendant is to plead without Imparlance, but not otherwiſe. *Prime* for Plaintiff; *Agar* for Defendant.

Liſter *againſt* Wainhouſe. Trin. 16 & 17 Geo. 2.

PLaintiff excepted againſt the Bail, and for Want of a Juſtification in Time, proceeded upon the Bail-Bond. A Declaration was delivered in the Original Action, after the Time for putting in Bail expired, as a Declaration *de bene eſſe*. Defendant moved

to

to ſtay Proceedings on the Bail-Bond; inſiſting, that this Declaration muſt be looked upon as delivered in Chief, and conſequently as a Waver of the Exception; and that the Demand of a Plea confirms it. The Court over-ruled the firſt Objection, as to the Declaration, but held the Demand of a Plea to be a Waver of the Exception; 'tis admitting Defendant to be in Court, and in a Condition to plead. Rule abſolute to ſtay Proceedings on the Bail-Bond. *Prime* for Plaintiff; *Bootle* for Defendant. Juſtice *Burnett ſolus in Cur.*

Jackſon *againſt* Knight.

AFTER final Judgment, Defendant put in and juſtified Bail, and obtained a Rule to ſhew Cauſe why a *Superſedeas* ſhould not iſſue to diſcharge him out of Cuſtody. The Court diſcharged the Rule. After final Judgment 'tis too late to put in Bail; the Recognizance of Bail plainly imports that it muſt be entered into before Defendant be condemned in the Action.

Francis *againſt* Taylor. Hil. 17 Geo. 2.

A Bail-Bond taken upon a *Capias ad reſpondendum* ſued out of this Court, was aſſigned by the Sheriff to Plaintiff; and Bail above not being put in within the limited

Time, Plaintiff's Attorny, for the Sake of ſerving the Bail with Proceſs within laſt Term, put the Bail-Bond in Suit in the Court of King's Bench, where his Writ was returnable on the *quarto die poſt* (the laſt general Return in this Court within laſt Term being then expired.) The Court thought this Proceeding unwarrantable. By an old Rule, Attornies of this Court are ordered not to bring Actions in other Courts; and the Act of Parliament directing the Aſſignment of Bail-Bonds, gives the Court, after ſuch Bonds are put in Suit, an equitable Juriſdiction to ſtay Proceedings, and to let a Defendant in to try the Merits of the Original Action, upon reaſonable Terms; which Juriſdiction cannot be exerciſed, unleſs the Original Action, and the Proceedings upon the Bail-Bond, were in the ſame Court. The Rule to ſet aſide the Proceedings upon the Bail-Bond was made abſolute, with Coſts, by Conſent of Plaintiff and his Attorny. *Skinner* for Defendant; *Prime* for Plaintiff and his Attorny.

Malland *againſt* Jenkins.

TO a *Sci. facias* on a Recognizance of Bail on a Writ of Error, not ſetting forth the Condition of the Recognizance, Defendant pleaded *Nul tiel Record*, and Iſſue being joined thereon, Defendant inſiſted, That

That the Record of the Recognizance, with a Condition ſubjoined, was not a Verification of the Recognizance, without Condition ſet forth in the *Scire facias*; That the Condition is Part of the Recognizance itſelf, and doth not operate by Way of Defeazance. Mr. *Warden* (an Aſſiſtant to the Clerk of the Errors) reported, That this *Scire facias* is made out by the Errors, and not by the Plaintiff's Attorny; That he has known the Office ſixteen Years, and the *Scire facias* has always been as in this Caſe, without ſetting forth the Condition of the Recognizance; That the Condition of the Recognizance in Error is not incorporated, as it is in a Recognizance of Bail on a *Capias ad reſpondendum*, but is ſubſcribed by Way of Defeazance. The Court held the *Scire facias* good, and gave Judgment for the Plaintiff on the Iſſue of No ſuch Record. The Recognizance and Condition, in this Caſe, are two diſtinct Records.

Books and Caſes quoted by the Counſel: *Lilly's Ent.* 557. *Officina Brevium* 262, 269, 284. *Perry* againſt *Collins*, *Trin.* 10 & 11 *Geo.* 2. *Croſs* againſt *Porter*, *Mich.* 11 *Geo.* 2. *Agar* for Plaintiff; *Hayward* for Defendant.

Smithſon, Baronet, Aſſignee, &c. *againſt* Thomas Smith, Gent. an Attorny. Eaſter 17 Geo. 2.

William Smith, Gent. Defendant in the Original Action was ſued by the Addition of *Clerk*, and entered into a Bail-Bond by that Addition. Bail above was put in within due Time for *William Smith, Gent.* who was arreſted by the Name and Addition of *William Smith, Clerk*; and Plaintiff having excepted againſt the Bail, they juſtified in Court; Plaintiff declared *de bene eſſe* in the Original Action, and Defendant pleaded in Abatement within Time. Plaintiff took the Plea out of the Office, ſtayed Proceedings near twelve Months, and then filed a Bill as Aſſignee of the Sheriff, againſt *Thomas Smith, Gent.* an Attorny, one of the Bail in the Bail-Bond; inſiſting, that Defendant in the Original Action was eſtopped from pleading in Abatement; that the Bail put in as above, is no Bail for *William Smith, Clerk*; and that Defendant ought to be left to his Plea of *comperuit ad diem.* The Court thought the Application by Motion proper; and that the original Defendant was not eſtopped from pleading in Abatement by the Bail-Bond, which muſt *prout* the Writ. That the Manner he purſued of putting in Bail, is the conſtant regular Method, and the only Way

Way to ſave the Advantage of pleading in Abatement. Rule abſolute to ſtay Proceedings, with Coſts. *Willes* and *Bootle* for Plaintiff; *Prime* for Defendant.

Davies, Executor, *againſt* Leckie. Mich. 18 Geo. 2.

THIS was an Action of Debt brought on a Judgment recovered in the Palace Court. Defendant moved for a Common Appearance; inſiſting, that as Bail was filed in the Action wherein Judgment had been obtained in the Palace Court, no Bail ought to be required in this Action. The Court refuſed to order a Common Appearance, Plaintiff having no Bail in this Court before.

Studwell *againſt* Bunton. Hil. 18 Geo. 2.

DEfendant being a Seaman, in actual Service of the King, was arreſted, and held to Bail in the Palace Court; he removed the Action by *Ha. corpus*, and was diſcharged by this Court on a Common Appearance *ſecundum Stat.* 1 *Geo.* 2. *cap.* 14. the Debt being under 20 *l.* Plaintiff objected, that Defendant had abſented two Days after his Time of Leave given. But the Court held, that the Service continues whilſt De-

fendant's Name remains in the Ship Books. *Draper* for Defendant; *Skinner* for Plaintiff.

Wilcox *againſt* Proſſer and others. Eaſter 18 Geo. 2.

RULE abſolute to quaſh two Writs of *Sci. facias* returned *Nihil* againſt Bail, who had rendered the Principal after Judgment. The *Ca. ſa.* againſt the Principal, and the firſt *Sci. fa.* bearing Teſte on one and the ſame Day, *viz.* 23d *October* laſt. *Willes* for Defendant; *Birch* for Plaintiff.

Paris *againſt* Stroud and his Wife.

PLaintiff made Affidavit for Bail, That Defendants, or one of them, are indebted for Board, Clothes, Jewels, *&c.* provided for the Wife; Defendant the Huſband, an Infant, moved for a Common Appearance. The Court held, that if an Infant marries a Woman of full Age, (as in this Caſe) he is liable to her Debts; but thought Plaintiff's Affidavit not ſufficiently certain. Plaintiff had Leave to make a new Affidavit, and explain what was due before Defendant the Wife was of Age, and what after; and whether the Debt, or any Part, became due before the Marriage, or after. Plaintiff made a new Affidavit accordingly; and the Sum for

for which Bail was to be given was moderated at a Judge's Chamber. *Skinner* and *Willes* for Defendant; *Draper* for Plaintiff.

Nutkins, Executor, *againſt* Wilkin. Hil. 19 Geo. 2.

JUdgment in Action on Bail-Bond, ſigned two Days after Plaintiff's Death, and the Suit thereby abated; Plaintiff gave Defendant Time to plead, and died before that Time expired. Now the Bail-Bond was put in Suit by the Executor of the late Plaintiff deceaſed, and Defendant applied to ſtay Proceedings. The *Capias* in the Original Action was returnable *Tres Mich.* and Plaintiff might have had Judgment in his Life-time, if Defendant had not made Default, by not putting in Bail above. Proceedings ſtayed in the Original Action, and on the Bail-Bond, on Payment of 43 *l.* agreed to be the Debt and Coſts in the Original Action and in this Action. No Coſts in the firſt Action on Bail-Bond, wherein there was no Default by Defendant. *Prime* and *Draper* for Plaintiff; *Hayward* for Defendant.

Lawford *againſt* Gardiner and his Wife. Eaſter 19 Geo. 2.

BOTH Defendants arreſted for a Debt due from the Wife *dum ſola*; Bail above put in for both, and both rendered to the *Fleet* in Diſcharge of Bail. Motion to diſcharge the Wife, detained by meſne Proceſs, not in Execution. If the Wife had been arreſted before the Huſband, ſhe muſt have been diſcharged on common Appearance; after the Huſband is arreſted ſhe cannot be taken into Cuſtody again. Caſe of Liberty. Rule abſolute to diſcharge the Wife by *Superſedeas*, on entering common Appearance. Mr. Juſtice *Burnett contra*. *Birch* for Defendant the Wife; *Leeds* for Plaintiff.

Follett *againſt* Trill and Bowen, Bail for Powell Mich. 20 Geo. 2.

PLaintiff recovered Judgment in the original Action brought in this Court, and laid in the County of *Surry*. Bail had been taken before a Judge, and after Judgment and *Ca. ſa.* returned againſt the Principal, *Non eſt inventus*; *Sci. fa.'s* againſt the Bail on the Recognizance were brought in *Surry*, and after two *Nichils* returned, Execution was awarded, and the Goods of the Bail taken *per Fi. fa.* Objected by the Bail, that the

the *Sci. fa.* ought to have been brought in the County of *Middleſex*, and not elſewhere; the Caption appearing by the Record of the Recognizance to be before the Chief Juſtice and his Brethren, in Court, as the Entry always is of a Bail on *Cepi Corpus* taken before a Judge at his Chambers. Rule to ſhew Cauſe why the Award of Execution and *Fi. fa.* ſhould not be ſet aſide, with Coſts. The Court, after hearing Counſel on both Sides, held the Objection good, and made the Rule abſolute, without Coſts. Where the Caption of the Recognizance appears to be in another County, and is afterwards inrolled in *Middleſex*, (as in ſome other Caſes) the *Sci. fa.* may be in either County; but where the Caption appears by the Record to be in *Middleſex*, the *Sci. fa.* muſt be in *Middleſex* alſo, and not elſewhere. A *Sci. fa.* to revive a Judgment is a Continuance of the Suit, and muſt be brought in that County where the original Action is laid. A *Sci. fa.* againſt Bail is the firſt Proceeding. *Allen* 12. *Mod. Caſes in Law and Equity* 290. *Lutw.* 1282, 1287. *Dalton* againſt *Teaſdale*, in this Court, *Eaſter* 2 *Geo.* 2. 2 *Salk.* 564.

N. B. Several of the Filacers attended, and reported the Practice as the Court held it to be; and that Filacer by whom the Bail-piece is filed, and who enters the Record of the Recognizance on his Roll, makes out the firſt *Sci. fa.* into *Middleſex*, or other proper County, as the Caſe

Caſe requires; the ſecond *Sci. fa.* (when neceſſary) is ſigned by the Prothonotary. *Willes* for Defendant; *Bootle* for Plaintiff.

Fuit tenus Hil. 44 *Eliz. per* 4 *Juſt. q' Sci. fa. ſup. Recogn. p't iſſuer al Vic. del lieu ou le Caption fuit. Et q' n'eſt aſcun neceſſity q' il iſſera al Vic. Midd. ou eſt inrole proviſo q' le Entrie ſoit fait accord't. Vide ſimile ſup. Recogn. capt. coram J. Dyer apud Caſtrum Lincoln. Hil.* 6 *Eliz. Rot.* 1887. *Paſch.* 35 *H.* 6. *Rot.* 37. *C. B. Suff. Recogn.* to pay Money to one, taken by *Pryſot*, C. J. at *St. Edmond's Bury. Offic. Brev. fo.* 17. *& fo.* 316. *Hob.* 195.

Littleton, Executor, *againſt* Hanſon. Mich. 20 Geo. 2.

PLaintiff moved for Leave to take out Execution, no Bail being put in, or Writ of Error brought by Defendant; and the Action being in Debt on Bond, conditioned only for Payment of Money, according to the true Intent and Meaning of an Indenture, and not Performance of Covenants; alſo Rule to ſhew Cauſe. Upon ſhewing Cauſe, *Lucas* againſt *Armſtrong*, *Mich.* 12 *Geo.* 2. was quoted. And the Court held, That by the Statute 3 *Jac. cap.* 8. Bail was required

required. If the Bond had been generally for Performance of Covenants in an Indenture, and the only Covenant in that Indenture for Payment of Money, Bail muſt be given on Writ of Error. Time was given to Defendant to put in Bail. *Hayward* for Plaintiff.

Poor *againſt* Coulthurſt. Hilary 20 Geo. 2.

DEfendant, who had been arreſted by a *Teſtat' Capias* from *London* into *Devonſhire*, returnable the firſt of laſt Term, now perfected Bail, and moved to ſtay Proceedings on the Bail-Bond, on Payment of Coſts; inſiſting, that as no Declaration in the original Action had been delivered *de bene eſſe*, Plaintiff had not loſt a Trial, and therefore the Bail-Bond ought not to ſtand as a Security. The Court held, That as Plaintiff might have tried his Cauſe laſt Term without a Declaration *de bene eſſe*, he has been delayed of Trial. Rule, by Conſent, to ſtay Proceedings on Bail-Bond on Payment of Coſts, Pleading the General Iſſue, and Taking ſhort Notice of Trial at the Sitting after Term; Bail-Bond to ſtand as a Security, and whenever that is the Caſe, it is underſtood that Plaintiff may at Pleaſure ſign Judgments in

in the Actions on the Bail-Bond. *Bootle* for Defendant; *Prime* for Plaintiff.

Peeſton *againſt* Tracy, Eſq; 4th *Febr.*

DEfendant arreſted laſt Term, but no Bail-Bond taken; the Sheriff being called on, returned a *Cepi Corpus*; and being ſerved with a peremptory Rule to bring in the Body, Bail was yeſterday perfected in Court; the Rule to bring in the Body diſcharged.

Note; The Time for bringing in the Body being expired, and Plaintiff intitled to move for an Attachment before the Bail perfected, the Sheriff was ordered to pay the Coſts of the Application againſt him. *Hayward.*

Baſkerville, Eſquire, *againſt* Chaffey. Eaſter 20 Geo. 2.

In Error. OBjected to one of the Bail, that he was a Palace Court Officer; but over-ruled, and the Bail allowed. The Rule of this Court to prevent Sheriffs Officers, and other Perſons concerned in the Execution of Proceſs, from being Bail, extends only to Proceſs of this Court, whereon Defendants having been bailed by the Officers who arreſted them, were greatly impoſed on and abuſed. (*Abſente Capitali Ja-ſtic'.*) *Agar* for Plaintiff in Error; *Hayward* for Defendant in Error.

Caſtell *againſt* Grave, one, &c. on a Bail-Bond. Mich. 21 Geo. 2.

THE Court ordered all Proceedings to be ſtayed; it appearing, that the Defendant in the original Action died before Judgment could have been obtained thereon againſt him. *Bootle* for Defendant; for Plaintiff.

Evening

Evening *againſt* Spoarman. Mich. 22 Geo. 2.

DEfendant was arreſted 26th *May* 1747, and gave a Bail-Bond, but died without putting in Bail above. Plaintiff lay ſtill till twelve Months after the Arreſt, and then took an Aſſignment of and put the Bail-Bond in Suit. The Bail moved to ſtay Proceedings, and obtained a Rule to ſhew Cauſe, which was now diſcharged; it appearing, that if Defendant had put in Bail in Time, he lived long enough for Plaintiff to have proceeded to Trial, and to have had Judgment and Execution in his Life-time. *Poole* for the Bail; *Bootle* for the Plaintiff.

Holland, an Attorny, *againſt* Ereſkine. Same Term.

RULE to ſhew Cauſe why a Common Appearance ſhould not be accepted for Defendant, as a Feme Covert, diſcharged. Where the Marriage is clearly made out, the Court will order a Common Appearance; but in this Caſe, Defendant appears to have acted as a Feme Sole for twelve Years, which makes the Matter doubtful. *Prime* for Defendant; *Bootle* and *Poole* for Plaintiff.

Eaſter

Eaſter 22 Geo. 2.

THE Producing a Duplicate of Defendant's Diſcharge as a Fugitive, held ſufficient; and Affidavits on Plaintiff's Part, to ſhew that Defendant was not abroad beyond the Seas 1ſt *January* 1747, refuſed to be read. This ſhould have been objected at the Seſſions: It may be pleaded, but cannot be entered into on the Queſtion of, Bail or No Bail? Rule made in the Treaſury for a Common Appearance.

Swarbreck *againſt* Wheeler. Mich. 23 Geo. 2.

AFfidavit for Bail made by a third Perſon, That Defendant was indebted to Plaintiff 500 *l.* and upwards, as appears by a ſtated Account, atteſted by the Conſul at *Oporto*. Objected to by Defendant as inſufficient; but the Defect being ſupplied by a ſubſequent Affidavit of Defendant's Acknowledging the ſtated Account, Rule to ſhew Cauſe why a Common Appearance, was diſcharged. *Prime* for Defendant; *Willes* for Plaintiff.

Knight *againſt* Remy.

DEfendant having produced his Certificate as a Bankrupt, allowed and confirmed, moved for a Common Appearance in this Action, which was Debt on Bond for Payment of Mony by Inſtallments, ſome of which were not payable till after the Bankruptcy; and the Queſtion was, Whether this be a Debt diſcharged by the Certificate, or not? After the firſt Default of Payment, the Bond is forfeited, and the Penalty is the Debt in Law. The Court will not enter nicely into the Matter on Bail or No Bail. Rule for Common Appearance. *Prime* for Defendant; *Willes* for Plaintiff.

Fowlis, Eſquire *againſt* Graſvenor. Hilary 23 Geo. 2.

THE *Capias ad reſpondendum* was returnable 15 *Mart.* laſt. 4th *Dec.* Bail was put in before a Judge. 7th *Dec.* Plaintiff excepted againſt the Bail, and 15th *Dec.* put the Bail-Bond in Suit for Want of a Juſtification within four Days after Exception, before a Judge at his Chambers, or Time obtained to perfect Bail; inſiſting, that though the Exception was in Time of Vacation, Defendant ought to have done every Thing in his Power towards perfecting the Bail. The Court

Court held, That a Juſtification before a Judge is no Juſtification, but by Plaintiff's Conſent. That by the General Rule of Court, requiring Bail to be perfected within four Days after Exception, muſt be meant the next four Days in Term. The Bail in this Caſe were juſtified in Court the ſecond Day of this Term. The fair Way would be to give Notice of a Juſtification in Court within four Days after Exception, but 'tis not requiſite, two Days Notice is ſufficient. Rule abſolute to ſtay Proceedings on Bail-Bond, without Coſts. *Prime* for Defendant; *Leeds* for Plaintiff.

Goſwell, one, &c. *againſt* Hunt. Eaſter 23 Geo. 2.

DEfendant having put in Bail before a Judge, Plaintiff gave Notice of an Exception againſt them, (but did not enter his Exception on the Bail-Piece) and for Want of a Juſtification in Court, ſerved the Sheriff with a peremptory Rule to bring in the Defendant's Body within ſix Days, for Want whereof Plaintiff moved for an Attachment againſt him. The Court held, That an Exception in Writing on the Bail-Piece, and Notice thereof to Defendant's Attorny, are both neceſſary; and that for Want of the former, the Bail (which had ſtood more than twenty Days without an

Exception entered) was become abſolute, and ordered Proceedings againſt the Sheriff to be ſtayed. *Willes* for Plaintiff.

Hooper *againſt* Comings.

THE Bail, who reſided in the Country, entered into Recognizance before Mr. Juſtice *Birch* in Town, and being excepted againſt, ſent up an Affidavit of Sufficiency. They were permitted to juſtify by that Affidavit, without attending perſonally. No Oppoſition made on Plaintiff's Part. *Poole* for Defendant.

Price and another *againſt* Street.

PLaintiff ſerved *Cooper*, late Sheriff, with peremptory Rule to bring Defendant's Body into Court within ſix Days; whereupon Defendant put in Bail, and juſtified *de bene eſſe* before a Judge, and for want of an Exception within twenty Days, the Bail became abſolute. Plaintiff inſiſted, that tho' no Exception was taken, yet the Bail ought to have been perfected by Juſtification in Court (which is Bringing in the Body) within the ſix Days limited by the Rule: but the Court held otherwiſe. Rule on late Sheriff to ſhew Cauſe why Attachment, diſcharged. *Bootle* for late Sheriff; *Willes* for Plaintiff.

Baxter

Baxter *againſt* Overton. Hil. 24 Geo. 2.

DEfendant produced a Duplicate of his Diſcharge as an inſolvent Debtor, and after having put in Bail before a Judge, moved in the Treaſury to be diſcharged on entering a Common Appearance; which, upon hearing the Attornies on both Sides, was granted, and the Bail-Piece ordered to be vacated. Defendant being conſidered as in Cuſtody of his Bail, and his Perſon being by the Statute to be diſcharged.

Hutchinſon *againſt* Hardcaſtle. Eaſter 24 Geo. 2.

WRIT returnable laſt *Michaelmas* Term; Bail was taken before a Commiſſioner in the Country; Notice thereof given to Plaintiff's Attorny there, and the Bail-Piece tranſmitted to *London* to Defendant's Agent; he incautiouſly filed it with the Filazer, (who as incautiouſly received it, without firſt being allowed by a Judge. Plaintiff lay by till after laſt Aſſizes, and then took an Aſſignment of, and put the Bail-Bond in Suit. The Court ordered the Filazer to attend a Judge for his *Allocatur*; gave Plaintiff Leave to except againſt the Bail, if he thought fit, and ſtayed Proceed-

ings on the Bail-Bond upon Payment of Coſts. Plaintiff's Council urged, that he had been delayed, and loſt a Trial; but ſuch Delay is through his own Laches; he might have put the Bail-Bond in Suit much earlier than he did. *Prime* and *Willes* for Defendant; *Bootle* for Plaintiff.

Roe, on the Demiſe of Fenwick, and others, *againſt* Pearſon, in Ejectment in Error. Eaſter 24 Geo. 2.

MOtion to ſtay Proceedings by Defendant in Error for Want of better Bail, Plaintiff in Error having entered into a Recognizance, purſuant to the Statute 16 & 17 *Car.* 2. in the Value of two Years meſne Profits only, and double Coſts. Objected, That by the Practice of this Court, the Recognizance ought to be in the Value of two Years and a Half meſne Profits, though in the King's Bench two Years Value is ſufficient. The Statute leaves the Sum to the Diſcretion of the Court, and gives a Writ of Enquiry as to meſne Profits and Damages. The Court thought two Years Value a reaſonable Sum, and ſtayed Proceedings on the Judgment pending the Writ of Error; made a general Rule, that for the future theſe Recognizances ſhall be taken in the Value of two Years Profits and double Coſts. *Bootle* for Defendant; *Poole* for Plaintiff in Error.

Ray

Ray and others *againſt* Huſſey.

RULE made abſolute (on Affidavits of Service, no Cauſe being ſhewn to the contrary) for Leave to enter an *Exonere-tur* on the Recognizance of Bail. Defendant, pending the Action having become a Bankrupt, and obtained his Certificate allowed and confirmed. *Bootle* for Defendant.

N. B. This had been done in the King's Bench; 'tis a new Practice, introduced to diſcharge the Bail in a ſummary Way, without putting them to the Trouble and Charge of ſurrendering the Principal, as formerly; though by the Bankrupt Act 5 *Geo.* 2. Power is given to a Judge to order the Bankrupt, after ſuch Surrender, to be diſcharged.

Wilſon and others *againſt* Lafortune. Trin. 24 & 25 Geo. 2.

PLaintiff, after a *Ca. ſa.* returned againſt the Principal, filed a Bill in an Action of Debt on the Recognizance againſt *Wall*, an Attorny, one of the Bail firſt put in, (though after Exception two other Bail juſtified in Court) and ſued out Proceſs againſt *C. D.* another of the Bail, on whom the Proceſs was ſerved two Days only before the Return, (though four Days are requiſite.)

On Motion of *Bootle* for *Wall* and *C. D.* the Court made a Rule for Plaintiff to ſhew Cauſe why Proceedings againſt *Wall* and *C. D.* ſhould not be ſtayed. On ſhewing Cauſe, the Court held, in anſwer to an Objection of Plaintiff's Counſel, that the Affidavit was properly intitled in this the Original Action. That the proceeding againſt *Wall* as an Attorny, by Bill, of which he complained, was not irregular; but that other Bail having juſtified, he was diſcharged. Rule abſolute to ſtay Proceedings againſt *C. D.* becauſe he was not ſerved with the Writ in time; and againſt *Wall*, becauſe other Bail had juſtified as aforeſaid. And the Court ordered *Wall*'s Name to be ſtruck out of the Bail-Piece, and the Entry of the Recognizance to be amended accordingly, and gave *Wall* his Coſts. *Willes* for Plaintiff.

Norton *againſt* Lutwidge. Mich. 25 Geo. 2.

MOtion by Defendant for a Common Appearance, on producing a Duplicate of his Diſcharge at the Seſſions of the Peace, under the late Statute, as a Fugitive for Debt. Plaintiff objected, that Defendant was an *Iriſhman*, and inſtead of flying from his native Country, fled to *Ireland*, as mentioned in the Duplicate; and that *Ireland* is not within the Words of the Statute, ('Foreign Parts.')

Parts)'. The Court did not think it neceſſary to give an Opinion whether Defendant was within the Statute, or not; or whether, on the Face of the Duplicate, the Seſſions had exceeded their Juriſdiction. The Quarter-Seſſions is to determine as to immediate Liberty, afterwards the Court, or a Judge, are to diſcharge Defendant on producing his Duplicate. Plaintiff may put the Point on Trial, but Defendant muſt not remain *in vinculis* till the Determination. Rule abſolute for a Common Appearance. *Wynne* for Defendant; *Willes* for Plaintiff.

Sanders, Eſquire, late Sheriff, *againſt* Spincks. Mich. 25 Geo. 2.

AN Action was brought in 1748 by *Chetham*, the original Plaintiff, againſt *Sibrell* the original Defendant; ſoon after which *Sibrell* became a Bankrupt, and obtained his Certificate allowed and confirmed: Notwithſtanding which, the Bail-Bond was lately put in Suit, in the Sheriff's Name, againſt *Spincks* the preſent Defendant, one of the Bail, and on his Application a Rule was made to ſhew Cauſe, and afterwards abſolute, to ſtay the Proceedings. *Draper* for Defendant; *Bootle* for Plaintiff.

Mayo

Mayo *againſt* Weaver. Eaſter 25 Geo. 2.

RULE was obtained by Defendant to ſhew Cauſe why Plaintiff ſhould not ſtrike out the Exception entered againſt the Bail, in order that Defendant might render himſelf in their Diſcharge; Defendant inſiſting, that as Plaintiff had not marked his Declaration to be delivered *de bene eſſe*, he had accepted the Bail: But it appearing, that by a Judge's Order ten Days Time had been given Defendant to perfect Bail, Plaintiff to declare without Prejudice, Defendant to rejoin *gratis*, and to take Notice of Trial for the laſt Sitting within laſt *Michaelmas* Term; in Conſequence of which Order Iſſue was joined, the Cauſe entered, made a *Remanet*, and tried at the Sitting after laſt *Michaelmas* Term, when Plaintiff had a Verdict: The Rule was diſcharged. Defendant ſhould have perfected his Bail in time, (which he has not done) and then might have rendered if he had thought fit. *Willes* and *Agar* for Defendant; *Prime* for Plaintiff.

Whitehead,

Whitehead, Adminiſtrator of Reeveley, *againſt* Gale, Bail for Stewart. Hil. 25 Geo. 2.

JUdgment was entered againſt the principal Defendant, at the Suit of Plaintiff's Inteſtate, in *Michaelmas* Term 1741, after a Writ of Enquiry executed in the Vacation preceding. In 1748 the principal Defendant retired to *Bruges* in *Flanders*. In *Hilary* Term 1748 the Judgment was revived by Plaintiff, by one *Scire facias* returned *Nichil habet*; and in *Eaſter* Term following a *Capias ad Satisfaciendum* was returned *Non eſt inventus*; ſoon after which the principal Defendant died abroad; a *Capias ad reſpondendum* on the Recognizance was ſued out againſt *Gale*, one of the Bail, returnable 8 *Hilary* 1750, and he applied to ſtay Proceedings, becauſe by the Inteſtate's and Plaintiff's Delay of proceeding againſt the Bail till after the Death of the Principal, *Gale* was prevented from ſurrendering the Principal Defendant to the *Fleet* in Diſcharge of his Bail, which he would have done, had the Bail been recently proceeded againſt in the Principal's Life-time. After this Matter fully debated by Counſel, and Conſideration had, the Court determined, That they could not relieve the Bail on Motion. A Render

of

of the Principal after a *Capias ad Satisfaciendum* returned, is not a good Plea, and no Inſtance can be ſhewn that any of the Courts of *Weſtminſter* have relieved Bail on Motion, where the Principal died after a *Ca. ſa.* returned. Though by the Rules and Practice of the Court, Indulgence has been given to Bail to render the Principal till the *quarto die poſt* of the firſt *Scire facias*, if returned *Scire feci*; or the *Alias Scire facias*, if returned *Nichil habet*; or the *quarto die poſt* of a *Capias ad reſpondendum* on the Recognizance, ſerved four Days before the Return. Yet this extends only to Caſes where the Principal can be rendered, and not to Caſes where by his Death a Render is become impoſſible. The Recognizance is abſolutely forfeited immediately after a *Ca. ſa.* returned; and if the Principal dies afterwards, before a Render, the Bail are fixed; the deferring of the Render till after the Return of the *Ca. ſa.* is at the Riſque and Peril of the Bail; they ought to render at the Return, tho' where the Principal is to be had, and is rendered afterwards, within the Time allowed by the Practice of the Court, yet the Bail have firſt been guilty of a Default; where the Principal is not to be had, the Bail muſt ſuffer; the Enlargement of the Time is Indulgence only where Plaintiff can be put in the ſame Condition by a Render, as if it had been at the Return of the *Ca. ſa.* but where

a Render cannot be made, the Election of the Bail is over, 'tis not in the Power of the Court to relieve, though Favour of Bail is Favour of Liberty; and 'tis probable this Court may make a general Rule to ſpeed Plaintiffs, that Bail for the future may know when they are diſcharged; *vide Cro. Jac.* 91. *Williams* againſt *Vaughan.* Same Book 165. *Timperly* againſt *Coleman.* 1 *Salk.* 101. 6 *Mod.* 132. *Rule of Court* 1654. 1 *Roll's Abr.* 336. 2 Ld. *Raymond* 1452. *Barry* againſt *Perry.* 1 Sir *Wm. Jones* 29. *Sparrow* againſt *Southgate. Mich.* 1 *Geo.* 2. *King* againſt *Yates.* Rule to ſhew Cauſe why Proceedings ſhould not be ſtayed, diſcharged. *Prime* for Defendant; *Willes* and *Poole* for Plaintiff.

Garth *againſt* Green. Trin. 25 & 26 Geo. 2.

RULE to ſhew Cauſe why Recognizance of Bail ſhould not be diſcharged, Plaintiff not being intitled to Bail by the Courſe of the Court, in this Action of Debt on Judgment, becauſe Bail was given in the Original Action. The Rule was made abſolute, no Cauſe ſhewn to the contrary. *Prime* for Defendant.

Reynoldſon

Reynoldſon *againſt* Blades, (Covenant broken) in the Treaſury. Eaſter 26 Geo. 2.

PLaintiff made an Affidavit, That Defendant entered into an Agreement with him in Writing, and covenanted to pay him 315 *l.* for the Purchaſe of Land; that Plaintiff has been always ready to convey the Eſtate on Payment of the Purchaſe-Money, but Defendant refuſes to pay and to take the Eſtate, whereby Plaintiff ſwears himſelf damnified 40 *l.* Common Appearance ordered. No previous Application to a Judge. Damages uncertain. Old Caſes, *Fleetwood* againſt *Poictier*, *&c.* are not to be followed. Where Damages can be reduced to a Certainty, as in Covenant for Payment of Mony, or where a Tenant covenants with his Landlord to pay a certain Sum for every Acre of Land he plows up, or the like, Plaintiff is intitled to Bail, otherwiſe not, eſpecially without Judge's Order previous. 'Tis not reaſonable that Defendant ſhould be held to Bail for ſuch Damages as Plaintiff fancies he has ſuſtained, and is pleaſed to ſwear to.

Julian

Julian *againſt* Shobrooke, Mich. 27 Geo. 2.

MOtion on Behalf of Defendant's Bail, for Leave to make out a new Bail-piece, the old one, taken before a Commiſſioner in the Country, not being to be found on the Filazer's File, on Affidavit of Mr. *Limbrey*, Defendant's Agent, of its having been allowed and filed in *May* 1751, by his late Clerk deceaſed, as appeared by the Clerk's Account; and, as *Limbrey* believed, Defendant had been ſome Days in Cuſtody of his Bail, but could not be ſurrendered for want of the Bail-piece. Defendant refuſed to conſent to the filing of a new Bail-piece, or the Bail's entering into a new Recognizance, inſiſting that the Bail (who were preſent in Court) had Effects of his in their Hands ſufficient to ſatisfie Plaintiff's Demands; which the Bail (examined on Oath by the Court) having denied, and it appearing that they originally became Bail for Defendant at his Requeſt, the Court gave them Leave to put in Bail *de novo*; which they did, and ſurrendered Defendant to the *Fleet* Priſon in their Diſcharge. *Willes* for the Bail; *Poole* for the Defendant.

Stapleton

Stapleton *againſt* The Baron de Stark. Hilary 27 Geo. 2. 1754.

PLaintiff made an Affidavit for Bail, That Defendant was indebted to her 1000 *l.* and upwards, for Money lent; whereupon Defendant having been arreſted, moved to be diſcharged on entering a Common Appearance, ſhewing the Court by Affidavit, That Defendant had given promiſory Notes for the Plaintiff's whole Demand, ſome of which were become due and payable, and thoſe Notes had been put in Suit in the Court of King's Bench, by Action ſtill pending; that the Reſidue of the Debt for which this Action was brought, is ſecured by Notes not due or payable. Plaintiff's Counſel admitted the Fact, but produced an Affidavit from Plaintiff, ſhewing, that ſhe had good Reaſon to think the Defendant would ſuddenly leave the Kingdom, and therefore ſhe cauſed him to be arreſted for the Reſidue of her Debt for Mony lent, which ſhe was adviſed ſhe might do, though ſhe had Defendant's Note for it, her original Debt for Mony lent not being extinguiſhed, as it might have been had ſhe taken a Bond, or higher Security. The Court thought the Matter improper to be diſcuſſed on this Motion. Rule to ſhew Cauſe why Common Appearance, diſ-

charged. *Willes* and *Draper* for Defendant; *Prime* for Plaintiff.

Whitfield *againſt* Whitfield.

THIS Action was brought (as appeared by Plaintiff's Affidavit) on Defendant's Bond to indemnify Plaintiff againſt Securities which he had entered into for Defendant, but Plaintiff ſwore to no certain Dampnification, nor to his being arreſted on any of theſe Securities, though Actions had been brought thereon againſt him, and he was obliged to abſcond. The Court declared, that to hold to Bail in Actions on Bonds to ſave harmleſs, *&c.* as well as in Actions of Covenant, Plaintiff muſt ſwear poſitively and certainly how, and for how much, he is dampnified; the Court cannot take it by Implication. Rule abſolute for a Common Appearance. *Willes* for Defendant; *Poole* for Plaintiff.

Coſts and Bills of Coſts.

Ecollier *againſt* Dutour. Trin. 13 & 14 Geo. 2.

Johnſon, Defendant's late Attorny, delivered Defendant a Bill of Coſts amounting to 5 *l.* 4 *s.* 2 *d.* and accepted 4 *l.* 14 *s.* 6 *d.* in full Satisfaction; the Bill was afterwards taxed, and upon Taxation, 19 *s.* were taken off, and 4 *l.* 5 *s.* 2 *d.* allowed. Defendant obtained a Rule for *Johnſon* to ſhew Cauſe why he ſhould not pay the Coſts of Taxation, inſiſting, that more than a ſixth Part of his Bill had been diſallowed. But the Court conſidered the Sum accepted by *Johnſon* in full of his Bill, as his Demand, and the Sum of 9 *s.* 4 *d.* which appeared to be the Deduction therefrom not amounting to a ſixth Part, the Rule was diſcharged, upon Repayment of 9 *s.* 4 *d.* overpaid. *Draper* for *Johnſon*; *Urlin* for Defendant.

Downes,

Downes, Adminiſtrator, *againſt* Shaft.

In Trover. THE Converſion was laid to be in the Life-time of Plaintiff's Inteſtate; Defendant had a Verdict, and moved for Coſts, which were denied. *Bootle* for Defendant; *Wynne* for Plaintiff.

Ibbotſon *againſt* Browne. Eaſter 11 Geo. 2.

THIS was an Action of Treſpaſs *Quare Clauſum fregit*; Defendant pleaded a Juſtification, Plaintiff made a new Aſſignment, whereto Defendant pleaded Not guilty; and Plaintiff having recovered a Verdict with Damages under 40 *s.* and the Judge who tried the Cauſe not having certified as required *per* Statute 22 & 23 *Car.* 2. the Queſtion was, Whether Plaintiff ought to have full Coſts, or Not? *Per Cur':* Here is no Special Pleading; the new Aſſignment is only to aſcertain the Place. Plaintiff can have no more Coſts than Damages. *Bootle* for Plaintiff; *Prime* for Defendant.

Creake, Adminiſtratrix, and Creake, Adminiſtrator of Creake, *againſt* Pitcairne, Clerk, in Prohibition. Trin. 13 & 14 Geo. 2.

A Writ of Prohibition having been granted in *Michaelmas* Term 1738, on the Plaintiffs Motion, and Plaintiffs not having proved their Suggeſtion to be true within ſix Months, purſuant to the Statute of 2 & 3 *Edw.* 6. Defendant moved in *Hilary* Term 1739. that a Writ of Conſultation might be awarded for Defendant, Plaintiffs not proving their Suggeſtion to be true within the Time limited by the Statute; and that Plaintiffs might, according to the Direction of ſuch Statute, pay to Defendant double Coſts; and a Rule was granted to ſhew Cauſe. After ſeveral Motions, it was now doubted, whether the Plaintiffs, being Adminiſtrators, ought to pay Coſts: But the Court ſeemed to think that Defendant was intitled of Courſe to a Writ of Conſultation. *Sed Cur' adviſare* as to both Points.

Palmer

Palmer *againſt* Williams, Clerk. Mich. 15 Geo. 2.

DEfendant, after ſeven Years Litigation, obtained a Sentence in the Spiritual Court againſt Plaintiff for Petty Tithes of Gooſeberries and Strawberries, of the Value of 7 *d.* three farthings *per Ann.* Plaintiff applied for a Prohibition; and for the Information of the Court, a feigned Iſſue was directed, to try whether the Plot of Ground where theſe Gooſeberries, *&c.* grew, was Parcel of an ancient Orchard, or not. The Fact being found in Plaintiff's Favour, a Prohibition was granted; and a Queſtion aroſe, Whether Plaintiff ſhould have any, and what Coſts? *Per Cur':* Plaintiff muſt have his Coſts of the feigned Iſſue. As to Coſts of the Spiritual Court, (where Plaintiff has been unjuſtly vexed) they are not in our Power to give. Since the Statute giving Coſts of Suit in Prohibition after Judgment, Coſts commence from the Suggeſtion, which is taken to be the Commencement of the Suit, in lieu of an Original Writ of Prohibition. *Draper* for Plaintiff; *Prime* and *Wynne* for Defendant.

Howard, Executor, *againſt* Radburn. Hil. 15 Geo. 2.

RULE was made abſolute for Judgment of Nonſuit, purſuant to late Act of Parliament. But *per Cur'*: Plaintiff being an Executor, is not ſubject to Coſts; if a Nonſuit had happened at the Aſſizes, Plaintiff would not have been liable to Coſts.

Goodtitle, on the Demiſe of Clewlow and his Wife, *againſt* Lowe and Lowe, in Ejectment; Lowe *againſt* Lowe and another, in Caſe. Trin. 16 Geo. 2.

RULE obtainad on the Motion of *Clewlow*, upon Affidavit of *Lowe*'s Inſolvency, to ſhew Cauſe why the Coſts recovered by *Clewlow*, in one of theſe Actions, ſhould not be ſet off againſt the Coſts recovered by *Lowe* in the other Action. *Waſe*, Attorny for *Lowe*, ſhewed for Cauſe, that the Parties in the two Cauſes were different; and that by this Means *Clewlow*, who was in good Circumſtances, would be diſcharged, and *Waſe* would have no Remedy for his Coſts, *Lowe* being inſolvent. The Rule was diſcharged. *Skinner* for *Waſe*; *Birch* for *Clewlow*

Clewlow. The Court denied to ſet Coſts againſt Coſts. *Ford* againſt *Miles, et econtra, Eaſter* Term 1739.

Honiwill *againſt* Blatchford. (Title *Nonpros, &c.*)

DEfendant moved for Judgment, as in Caſe of Nonſuit, purſuant to the Statute, for Want of Plaintiff's trying the Iſſue according to the Courſe of the Court, after a Treaſury Rule obtained by Defendant againſt Plaintiff for Coſts, for not proceeding to Trial according to Notice, and Coſts taxed thereon. *Per Cur':* Defendant ſhall not take both Remedies, but one only, at his Election; he hath made Choice of the one, and cannot now have the other. No Rule. *Belfield* for Defendant; *Gapper* for Plaintiff.

Thruſtout, on the Demiſe of Jenkinſon, *againſt* Woodyear, Eſq; and his Wife, Hoole, Alliſon and Hardwick, in Ejectment. Hil. 16 Geo. 2.

UPON the Trial, Plaintiff obtained a Verdict againſt all the Defendants except *Hoole*, who was found Not guilty; Plaintiff's Coſts were taxed upon the *Poſtea*, and alſo Defendant *Hoole*'s (at three Pounds.) *Hoole* applied to the Court, and obtained a

Rule to ſhew Cauſe why he ſhould not be allowed a third Part of Defendant's common Coſts, and all his extraordinary Coſts: But upon ſhewing Cauſe, it appearing that the Allowance of Coſts was juſt, and that the Motion was a mere Contrivance to charge Plaintiff's Leſſor with extraordinary Coſts, which were accrewed on Account of all the Defendants, and not on the particular Account of *Hoole* only, though the main Queſtion was determined in Plaintiff's Favour, and though *Hoole* was Tenant to Defendant *Woodyear*, and indempnified by him. The Rule was diſcharged with Coſts. for *Hoole*, for Plaintiff.

Turner *againſt* Horton. Eaſter 16 Geo. 2.

THIS was an Action for ſeveral Sets of ſlanderous Words ſpoken by Defendant of Plaintiff in his Trade of a Baker, (*viz.*) *Turner* will break before *Chriſtmas*; and I will lay a Wager of it; and ſuch like; and laid Special Damage, *viz.* that *Charles Hedges* refuſed to deal with him upon Credit. Plaintiff obtained a Verdict, Damages Two-pence. And the Queſtion was, Whether Plaintiff ſhould have more Coſts than Damages, under the Statute 21 *Jac. cap.* 15. *ſect.* 6? *Per Cur':* Plaintiff can have no more Coſts than Damages; the true Diſtinc-

tion

tion is, that where the Words are actionable in themſelves, without the Special Damage, that is a Caſe within the Act of Parliament, and Plaintiff can have no more Coſts than Damages. But where the Words are not actionable in themſelves, but the Action is maintainable only with Reſpect to the Special Damage, then 'tis a Caſe at large, and out of the Statute; and Plaintiff, if he recovers any Damage, will be entitled to full Coſts. Where the Words are actionable, (as in this Caſe) the Special Damages are to be conſidered merely by way of Aggravation, and no Notice ought to be taken of them in the Verdict, which muſt be generally, Guilty or Not guilty. The Verdict was for Plaintiff on the firſt and fourth Sets of Words only, but that makes no Alteration, the Words, in this Caſe, being all equally actionable, as ſpoken of Plaintiff in the Way of his Trade. Where the Words are not actionable, there the Special Damages are the Jett of the Action; and if the Jury find Defendant Guilty of ſpeaking the Words, and acquit him as to the Special Damages, the Verdict ought to be ſo taken.

Grey,

Grey, Adminiſtrator, *againſt* Lockwood, in Trover. Trin. 16 & 17 Geo. 2.

THE Converſion being in the Time of the Adminiſtrator, the Action might have been maintained by Plaintiff in his own Right; and after Judgment for Defendant, the Court held that Plaintiff muſt pay Coſts.

Broadbent *againſt* Wilks, in Treſpaſs.

THough the Treſpaſs was confeſſed by the Plea, Plaintiff replied, and Iſſue being joined, on the Trial a Verdict was found for Defendant. Afterwards the Court gave Judgment for Plaintiff, notwithſtanding the Verdict, and a Writ of Enquiry of Damages having been executed, the Queſtion was, What Coſts ſhould be allowed Plaintiff on ſiguing final Judgment? The Court directed the Prothonatory to allow Plaintiff all the Coſts in the Cauſe, except the Coſts of the Trial. *Prime* for Plaintiff; *Bootle* for Defendant.

Ogle

Ogle, Executor, *againſt* Moffatt. Mich. 17 Geo. 2.

RULE for Plaintiff to pay Coſts for not proceeding to Trial at laſt *Northumberland* Aſſizes, according to Notice, diſcharged. It appearing that the Cauſe was entered with the Marſhal, that one material Witneſs was ſerved with a *Subpœna*, and could not attend, and another was diſabled by a Fall from his Horſe. Plaintiff hath made no wilful Default; if he had, he muſt have paid Coſts, though he ſues as Executor. *Prime* for Plaintiff; *Bootle* for Defendant.

Holdfaſt, on the Demiſe of Hatterſley, an Infant, *againſt* Jackſon. Trinity 17 & 18 Geo. 2.

AFTER a former Ejectment brought *in Banco Regis*, a Caſe made, Argument thereon, and a Determination in favour of Defendant, and Defendant's Coſts taxed, a new Ejectment was brought in this Court; Defendant obtained a Rule to ſhew Cauſe why Proceedings ſhould not be ſtayed till after Payment of Coſts in the former Ejectment, which was made abſolute. The Courts of *Weſtminſter-Hall* pay the ſame Regard one for another, and conſider a former Ejectment

jectment in another Court as they do a former Ejectment in the ſame Court. *Salk.* 255. *Anonymous. Doe ex dim' Ducheſs of Hamilton* againſt *Hatherley* 14 *Geo.* 2. *in B. R.* The ſame Practice *in Scaccario. Bootle* for Defendant; *Skinner* for Plaintiff.

Milbourn *againſt* Reade. Trin. 17 & 18 Geo. 2.

DEclaration in Treſpaſs, for aſſaulting, beating and wounding Plaintiff, at the Pariſh of (*A.*) and alſo for obſtructing him in getting Coals, and for taking and carrying away Coals of Plaintiff, and ſpoiling other his Coals there, and for breaking and pulling down a Standard and Roller of Plaintiff's, and taking and carrying away other Goods and Chattels of Plaintiff's there. Plea Not guilty. On Trial Defendant found Guilty of all the Premiſſes, except taking and carrying away the Goods and Chattels; Damages 5 *s.* Coſts 5 *s.* and as to taking and carrying away ſaid Goods and Chattels, Not guilty. No Certificate by the Judge that the Aſſault and Battery was ſufficiently proved, or that the Freehold or Title of Land came chiefly in Queſtion, *ſecundum Stat'* 22 & 23 *Car.* 2. *cap.* 9. *ſect.* 136. and for Want thereof, after Prothonotary had taxed Plaintiff full Coſts, Defendant obtained a Rule to ſhew Cauſe why ſaid Taxation ſhould not be ſet aſide; which

which Rule, after hearing Counſel on both Sides, was diſcharged by the Court.

Held, agreeably to the uniform Determinations of the Courts at *Weſtminſter*, almoſt ever ſince ſaid *Stat'* 22 & 23 *Car.* 2. That no Action is comprehended within that Statute but of Treſpaſs *Quare clauſum fregit*, and of Aſſault and Battery; in all other perſonal Actions, a Plaintiff who recovers Damages, though under 40 *s.* (except Actions for ſcandalous Words, which are governed by a particular Law) is intitled to full Coſts by the Statute of *Glouceſter*, without the Aid of a Certificate under ſaid *Stat' Car.* 2. unleſs deprived of that Benefit by a Certificate according to the Statute 43 *Eliz. cap.* 6. *ſect.* 2. Lord Chief Juſtice *Willes* paid no Regard to the Spoliation or Aſportation of Chattels; he quoted *Venn* againſt *Phillips*, *Salk.* 208, *Thompſon* againſt *Berry*, *C. B. Paſch.* 7 *Geo.* 2. Mr. Juſtice *Abney* was of the ſame Opinion. Mr. Juſtice *Burnett* differed in that Reſpect; he apprehended one Part of this Verdict (the Aſſault and Battery) to be within, and the other Part (the Treſpaſs as to the Spoliation of perſonal Chattels) to be out of ſaid *Stat. Car.* 2. but as Plaintiff might have brought ſeparate Actions, and poſſibly have recovered full Coſts in each for the Aſſault and Battery, with a Certificate, and for the Spoliation of Chattels, without a Certificate, he is, by joining both together,

leſs

leſs vexatious to Defendant. Plaintiff is intitled to Coſts in this Action, as he would have been in a ſeparate Action for the Spoliation or Aſportation of Chattels only. In this Caſe, as the Treſpaſs is laid generally at the Pariſh of (*A.*) and not in any particular Cloſe of Plaintiff, the Title of Land could not come in Queſtion. *Lately* againſt *Fry*, *Comyns Rep.* 19, 20. Action for breaking Plaintiff's Cloſe, and cutting and carrying away his Corn there, Defendant found Guilty of breaking the Cloſe, and cutting the Corn, but as to the carrying away Not guilty; Damages under 40 *s.* no Certificate. The Court refuſed to give full Coſts for Want of a Certificate, becauſe the Treſpaſs found was within the Statute; but after ſeveral Debates, the Court inclined to be of Opinion to have given full Coſts, if beſides breaking the Cloſe and cutting the Corn, Defendant had alſo been found Guilty of carrying away the Corn, which would have made that Caſe parallel to the preſent; for then the Jury would have found one Treſpaſs within the Statute, and another Treſpaſs out of the Statute. *Wynne* for Defendant; *Draper* and *Bootle* for Plaintiff.

Mitchell, Widow, *againſt* Younghuſband. Mich. 18 Geo. 2.

ACTION for Words (Special Damage laid, by which Plaintiff loſt her Marriage.) General Verdict for Plaintiff, Damages Two-pence. Rule abſolute, that Plaintiff ſhould have full Coſts, the Words themſelves not being actionable, but only as they are coupled with the Special Damage. *Bootle* for Plaintiff; *Prime* for Defendant.

Waite *againſt* Smales, *ex parte Exec' Def'*. Hil. 18 Geo. 2.

WRIT of Enquiry by Conſent, directed to be executed before a Judge at the Aſſizes, not entered with the Marſhal. After the other Buſineſs done, there was Time to execute this Writ; Plaintiff had given Notice of executing it on a particular Day, during the Aſſizes at *York*; Defendant's Executors applied for Coſts, which were denied. Plaintiff is not in fault. This Caſe is not with the Rule concerning Records of *Niſi prius*. The Judge herein is no more than an Aſſiſtant to the Sheriff, to whom the Writ is directed. The Notice ought to have been general; Notice for a particular Day is void. *Skinner* and *Bootle* for the Executors.

Harper

Harper *againſt* Sherrard. Hilary 20 Geo. 2.

DEfendant having pleaded his Diſcharge under the inſolvent Debtors Act, and having obtained Judgment, was intitled to treble Coſts under the Statute; the Queſtion was, From what Time ſuch Coſts ought to be computed? A Rule by Conſent was entered into, that the Defendant ſhould have treble Coſts from the Time of his Plea. *Draper* for Defendant; *Bootle* for Plaintiff.

Greenhow *againſt* Ilſley and others. Eaſter 21 Geo. 2.

THE Plaintiff declared, that he was poſſeſſed of and in an ancient Meſſuage and divers Acres of Land *cum pertin'*, in *Sandhurſt Com' Berks*, and by Reaſon thereof he had, and of Right ought to have, Common of Paſture for all his commonable Cattle *levant* and *couchant* upon his ſaid Meſſuage and Lands, in a certain Common or Waſte called *Sandhurſt Common*, every Year at all Times of the Year, except upon and from the 10th of *June* until and upon the 10th of *July*, but Defendants, to hinder and deprive him of his ſaid Common of Paſture, cut and dug Turf, (*viz.*) 100 Cart Loads of Turves in twenty Acres of the Soil

Soil of that Common, and took and carried away the Turves there cut and dug, whereby the Plaintiff could not have and enjoy his Common of Paſture in ſo large, ample and beneficial Manner as he ought to have done, but loſt the greateſt Part thereof. He alſo declared in like Manner with Reſpect to Common of Turbary.

Defendants Pleas. The Defendants, by Leave of the Court, plead three Pleas, *viz.* firſt, Not guilty; ſecondly, as to the firſt Count, that *Adam Williamſon*, Eſq; is ſeiſed of the Manor of *Sandhurſt*, in his Demeſne as of Fee, and that Defendants, as his Servants, and by his Command, cut and dug the Turves in the firſt Count mentioned, then growing and being in the *Locus in quo*, as being in the ſeveral Soil and Freehold of the ſaid *Adam Williamſon*, and took and carried away the ſame for the Uſe of the ſaid *Adam Williamſon*; thirdly, the like Plea as to the ſecond Count.

New Aſſignment. As to the ſecond Plea, the Plaintiff, by a new Aſſignment, ſays, that he ought not to be barred from having his Action, becauſe that the 100 Cart Loads of Turves mentioned in the firſt Count, were 100 Cart Loads of Turves cut and dug for Sale, and ſold, taken and carried away, and were other 100 Cart Loads of Turves than the 100 Cart Loads mentioned in the Plea to be cut, dug, taken and carried away for the

Uſe of the ſaid *Adam Williamſon*; and concludes with an Averment; and inaſmuch as the Defendants have not anſwered the cutting, digging and carrying away the Turves newly aſſigned, the Plaintiff prays Judgment, and his Damages; and replies in like Manner to the third Plea.

Plea to the new Aſſignment. As to the Treſpaſſes, *&c.* as to the Turves firſt and ſecondly anew aſſigned to be cut and dug for Sale, and ſold, taken and carried away, the Defendants ſay, that the ſaid *Adam Williamſon* long before the Time when, *&c.* was, and ſtill is, ſeiſed in his Demeſne as of Fee of and in the Manor of *Sandhurſt*, and being ſo ſeiſed before the Time when *&c. viz.* on the 27th *October* 1735, he gave and granted to one *Thomas Solmes*, in his Life-time, Licence and Liberty to cut and dig Turf and Peat for Sale, from and off the ſaid Place called *Sandhurſt Common*, in which, *&c.* and to take and carry away the ſame, and to ſell and diſpoſe thereof, for his own Uſe and Benefit, at his own Will and Pleaſure, to hold the ſaid Licence and Liberty from *Michaelmas* then laſt paſt for 99 Years, in Caſe the ſaid *Thomas Solmes* ſhould ſo long live; by Vertue of which Licence and Liberty the Defendants, after the granting of the ſaid Licence, and during the Life of the ſaid *Thomas*, *viz.* on the 1ſt *May* 1743, and at divers other Days and Times between that

Day

Day and the 24th of *November* in the ſame Year, on which Day the ſaid *Thomas* died, (except within and during the Times above excepted) as Servants of the ſaid *Thomas Solmes*, and by his Command, entered into the ſaid Places, in which, *&c.* in order to cut and dig Turves there, for the Purpoſe aforeſaid, and then and there cut and dug the ſaid Turves firſt anew aſſigned, and alſo the Turves ſecondly anew aſſigned, and took and carried away, and delivered the ſame to and for the Uſe and Benefit of the ſaid *Thomas Solmes*, as it was lawful for them to do; which ſaid Turves were afterwards ſold by the ſaid *Thomas Solmes*, by Virtue of his Grant and Licence aforeſaid; which are the ſame Treſpaſſes, *&c.* above anew aſſigned; and concludes with an Averment.

Demurrer. To this the Plaintiff demurs.

Joinder in Demurrer. And the Defendants join in Demurrer.

On the Demurrer the Plaintiff had Judgment, but on the Trial of the Iſſue joined upon the Not guilty, the Plaintiff was non-ſuited.

Prothonotary *Cooke* having a Doubt as to the Taxation of Coſts for the Plaintiff on the Demurrer, in *Eaſter* Term 21 *Geo.* 2. Plaintiff moved the Court, and obtained a Rule for the Defendants to ſhew Cauſe why Coſts of the two Pleas pleaded by the Defendants, which on a Demurrer joined were

judged inſufficient, ſhould not be given for the Plaintiff; and the Taxation of the Defendants Coſts of the Nonſuit was ordered to be ſtayed till the Court ſhould otherwiſe order.

After hearing Counſel on both Sides, and after a Conſultation with all the Judges, (amongſt whom was ſome Diviſion in Opinion) the Court in *Hilary* Term 22 *Geo.* 2. ordered, that it be referred to the Prothonotary to tax the Plaintiff's Coſts of the Demurrer joined between the Parties, according to the Act of Parliament made in the fourth Year of the Reign of her late Majeſty Queen *Anne*, intituled, *An Act for the Amendment of the Law, and the better Advancement of Juſtice*; and that ſo much as ſhall be thereon allowed, be deducted out of the Sum that ſhall be allowed the Defendants for their Coſts in this Action. *Prime* and *Belfield* for Plaintiff; *Skinner* for the Defendants.

Fyſon *againſt* Cooke and others, in Replevin. Mich. 22 Geo. 2.

DEfendants having obtained an Order to amend their Avowry on Payment of Coſts; *Noyes*, Defendants Agent, after Plaintiff's Death, which he knew not of, paid 5 *l.* 11 *s.* 6 *d.* Coſts, taxed on the Amendment, to *Lloyd*, Plaintiff's Agent. The Judges

Judges in the Treaſury ordered the Money to be repaid.

Malton, who as well, &c. *againſt* Acklam and others, in Prohibition.

AFTER a Verdict for Defendant as to Part, the Queſtion was, Whether he ſhould be allowed Coſts, purſuant to Stat. *Will.* 3. or not? *In Quare Impedit*, if Defendant has Judgment, a Writ is awarded to the Biſhop; in Replevin, a Writ of *Retorn' Habend'*, and Coſts are given to the Avowant in ſome Caſes by *Stat.* 21 *Hen.* 8. in Prohibition by 4 *Jac.* 1. a Conſultation is given, and ſince the Statute *W.* 3. Coſts, *&c.* if Verdict, *&c.* paſs againſt Plaintiff. Rule that Judgment be entered for a Conſultation as to Part, and for Coſts. The *Poſtea* was agreed to be altered, with Reſpect to finding that Plaintiff proceeded in the Spiritual Court after the Writ of Prohibition delivered to him, which is material. *Bootle* for Defendants; *Agar* for Plaintiff.

Poole *againſt* Boulton and others, in Trover. Hil. 22 Geo. 2.

ON the Trial, Plaintiff obtained a Verdict againſt one of the Defendants, but the two others were acquitted. *Prime* moved on Behalf of the two Defendants found Not guilty, for Coſts. Denied. This is an Action of Treſpaſs on the Caſe, and not within the Statute 8 & 9 *W.* 3. giving Coſts to Defendants acquitted in Treſpaſs, *&c.*

Lomax, Eſquire, *againſt* The Biſhop of London, Creſpin, Clerk, and Cooke, Eſquire, in Quare Impedit. Same Term.

THE Biſhop's Plea was, No Claim but as Ordinary; Judgment paſſed againſt Defendant *Cooke* for Non-appearance on a *Diſtringas*. An Iſſue between Plaintiff and Defendant *Creſpin*, on the Right of Preſentation, was tried, and a Verdict found for Plaintiff. Afterwards a Writ of Enquiry was awarded as to Matters (omitted at the Trial) *viz.* firſt, Whether the Vicarage was full? ſecondly, If full, at whoſe Preſentation; and how much Time is elapſed ſince it laſt began to be vacant? and thirdly, The true

true Value of the Vicarage by the Year? By the Inquiſition it was returned, That the Vicarage was full of the Defendant *Daniel Creſpin*, on the Preſentation of the King; that it began to be vacant 26th *June* 1746, on the Death of *John Romney*, Clerk; Value by the Year 120 *l.* *Draper* for Plaintiff moved for Coſts, Damages being given by the Statute of *Weſtminſter* 2. and by the Statute of *Glouceſter*, Coſts in all Caſes where Damages. He quoted *Holl* againſt *Holland*, 3 *Lev.* 35. and *Skinner* 25. Rule was made to ſhew Cauſe, which was afterwards diſcharged. The Statute of *Glouceſter*, 6 *Ed.* 1. relates to Caſes at Common Law and Statutes antecedent. The ſubſequent Statute of *Weſtminſter* 2. 13 *Ed.* 1. creates Damages in *Quare Impedit*, where there were none before at Common Law, (doth not add to Damages that were recoverable before) gives two Years Value, where the Turn is loſt by Laches; if not, and Living full, Half a Year's Value. *Mich.* 10 *James* 1. *Pinfold*'s Caſe, 10 *Coke*, where Damages are created, (none before) no Coſts; where the Damages are additional, Coſts. 1 *Jones*, Sir *Thomas*, 234. *Kelway* 26. *a.* *Skinner* is miſtaken, he refers to two Caſes in *Coke* which don't warrant him. In *Quare Impedit* the King has no Damages, becauſe he is not within the Statute of *Weſtminſter*. *Hob.* 23. If Writ

of Error, Coſts *per Stat. Hen.* 7. no Coſts in any other Inſtance. *Skinner* for Defendant. *Creſpin.*

Jones *againſt* Davies and his Wife, in Treſpaſs and Aſſault. Eaſter 22 Geo. 2.

DEfendants had pleaded to two Aſſaults, *&c.* laid in the Declaration, ſeveral Matters, by Leave of the Court, *viz.* an Accord with Satisfaction by the Huſband; That what the Wife did was in Aid of her Huſband; Not guilty; and *Son Aſſault demeſne.* On Trial the Verdict was on the two firſt mentioned Pleas for the Defendants, Reſidue for Plaintiff, without any Damages; no Certificate from the Judge, that Defendants had probable Cauſe to plead the two laſt mentioned Pleas. The Court thought they had no diſcretionary Power, but are bound by the Statute 4th Qu. *Anne*, as the Judge has not certified. Rule abſolute, that Plaintiff have Coſts occaſioned by the two later Pleas, and that the ſame be deducted out of Coſts allowed Defendants. *Skinner* for Plaintiff; *Belfield* for Defendants.

Moorhouſe

Moorhouſe *againſt* Barham. Hilary 23 Geo. 2.

DEfendant had obtained a Treaſury Rule for Taxation of Plaintiff's Attorny's Bill, at Peril of Coſts. On Plaintiff's Application to the Court to diſcharge the Treaſury Rule, the Court ordered the Bill to be taxed as between Attorny and Client, at Peril of Coſts. *Poole* for Plaintiff; *Bootle* for Defendant.

Cremer *againſt* Dent. Eaſter 24 Geo. 2.

FOUR Iſſues were joined on four ſeveral Pleas in Bar to an Avowry, three of which were found for the Plaintiff, and the fourth for the Defendant. The Judge before whom the Iſſues were tried not having certified, under the Statute 4 Queen *Anne*, That Plaintiff had probable Cauſe to plead the fourth Plea in Bar; Defendant moved for Coſts as to the fourth Plea, and obtained a Rule to ſhew Cauſe. The Judge, after the Motion, and before Cauſe ſhewn, certified in Plaintiff's Favour; whereupon the Rule was diſcharged, and Plaintiff ordered to pay Defendant Coſts of the Application.

N. B.

N. B. The Certificate is not required by the Statute to be made in Court at the Trial. *Prime* for Plaintiff; *Poole* for Defendant.

Yates *againſt* Gun and his Wife. Mich. 25 Geo. 2.

AFTER Iſſue and Demurrer joined, Plaintiff proceeded to try the Iſſue, and recovered a Verdict; afterwards the Demurrer was argued, and the Court gave Judgment thereupon for Defendant. Plaintiff moved for Coſts of the Trial. The Court ordered the Prothonotary to tax Coſts on both Sides, and that Plaintiff's Coſts of the Trial be deducted out of Defendant's Coſts, if Defendant's Coſts exceed Plaintiff's; if Plaintiff's Coſts exceed Defendant's, Defendant to pay Plaintiff's Exceedings. *Poole* for Plaintiff; *Bootle* for Defendant.

Bligh and another, Executors, *againſt* Cope. Mich. 25 Geo. 2.

DEfendant pleaded to Plaintiff's Action his Diſcharge as a Fugitive, under the inſolvent Debtors Act 16th *George* 2. Plaintiffs not content with Judgment and Execution as to future Effects, to have Execution againſt Defendant's Perſon, replied and took Iſſue, that Defendant was not a Fugitive beyond the Seas within the Statute; and on Trial

Trial a Verdict was found for Defendant; whereupon *Prime*, for Defendant, moved for Treble Coſts, purſuant to ſaid Statute; which Statute doth not in Words extend to Executors; the Diſcharge was obtained in 1743, ſubſequent to Teſtator's Death; and Plaintiffs the Executors were ſummoned, and had an Opportunity of controverting the Fact at the Seſſions. The Serjeant inſiſted, That though this Action could not have been ſupported by Plaintiffs in their own Right, without ſuing in the Capacity of Executors, yet as they have made themſelves Principals, by putting in Iſſue a Fact which happened ſince the Teſtator's Death, they have made themſelves liable, and ought to pay the Treble Coſts. A Rule was made to ſhew Cauſe; which was afterwards diſcharged, on hearing *Willes* and *Agar* for the Plaintiffs. The Court held, that the Rule, as to Fugitives and inſolvent Debtors, muſt be the ſame; that if the Executors are liable to any, they are liable to Treble Coſts; but the uniform Conſtruction of Law has conſtantly been, that where an Executor can bring the Action in his own Right, and yet brings it *quatenus* Executor, there, if he fails, he ſhall pay Coſts; but if he could not bring the Action otherwiſe than *quatenus* Executor, though he fails, he ſhall pay no Coſts. Executors have been excuſed from Coſts, becauſe they are obliged to get in the Teſtator's Effects, and cannot be

be ſuppoſed to be quite cogniſant of his Rights; they act *in autre Droit*; the Cauſe of Action aroſe in Teſtator's Life-time; this Act is not diſtinguiſhable from Conſtructions of former Statutes; an Executor is not conſidered as a Plaintiff, but as a Repreſentative. There has been a like Determination in the Court of King's Bench, where the Defendant applied for Double Coſts on the *Mint* Act. *Hitchcox*, Executor, againſt *Gale*, *Mich.* 13 *George* 2.

Tiffin *againſt* Glaſs. Hil. 25 Geo. 2.

THIS was an Action for ſlanderous Words; ſeven Sets were put into the Declaration; the firſt Set as follows, He (Plaintiff) has done ſuch Things as I (Defendant) could hang him for, if the Truth was known; the following Sets were of like Import. 'Twas laid, that Plaintiff was a Blackſmith by Trade, and that *Philip Parker* Senior and *Philip Parker* Junior, two of his Cuſtomers, by Reaſon of publiſhing the Words, had diſcontinued to deal with him as before. Verdict was found for Plaintiff, as to the firſt Set of Words, Damages 1 *s.* as to four other Sets, Defendant was found Not guilty; but as to the remaining two Sets, and the Special Damage, no Finding of the Jury appeared. The Queſtion was, Whether Plaintiff ſhould have Coſts *de incre-*

incremento, or no more Coſts than Damages?

Per Curiam: In *Turner* againſt *Horton*, *Eaſter* 16 *Geo.* 2. all the Caſes relative to this Point were taken into Conſideration. Where Words are of themſelves actionable, the Special Damage makes no Alteration, except by way of Aggravation; where Words are not in themſelves actionable, the Special Damage is the Jet of the Action. Anciently, perhaps, when Words were taken *in mitiori ſenſu*, theſe Words might not be thought actionable; but in later Times it has been otherwiſe adjudged, for Preſervation of the Peace; and becauſe Words are to be legally underſtood as the By-ſtanders, and all the World underſtand them. Theſe Words ſeem rather to be actionable than otherwiſe. The Court cannot preſume that the conſequential Damage was found. Though no Motion has been made in Arreſt of Judgment, yet had it been plain that the Words were not actionable, the Court ought not to give Judgment; but where 'tis not plain, and the Court incline to think the Words actionable, Judgment ought not to be ſtayed. Where, on Trial, Words plainly appear not to be actionable, and no Special Damage interferes, Plaintiff ought to be nonſuited, that Defendant may have Coſts, which in Arreſt of Judgment he cannot have. The Court will not refine on a good Statute 21 *Jac. c.* 16. againſt its obvious Intent. Rule to ſhew Cauſe why Plaintiff

Plaintiff ſhould not be allowed Coſts *de incremento* diſcharged. *Prime* for Plaintiff; *Agar* for Defendant.

Barrowclough *againſt* Webſter and Smith, in Aſſault and Battery. Eaſter 25 Geo. 2.

BOTH Defendants plead Not guilty; and Defendant *Webſter*, by Leave of the Court, pleads alſo *Son Aſſault demeſne*. Verdict for Plaintiff againſt both Defendants on the Not guilty, and for Defendant *Webſter* on the *Son Aſſault*; Damages as to *Smith* 9 *s*. Two Certificates were ſigned on the Record of *Niſi prius* by the Lord Chief Baron, who tried the Cauſe; one, that the Aſſault and Battery was ſufficiently proved; the other, that there was a probable Cauſe for making *Webſter* a Defendant. *Webſter* moved for Coſts on *Stat.* 4 *Ann.* which doth not extend to this Caſe; nor *Stat.* 9 *Will.* 3. as held by the Court. Coſts denied. *Prime* for *Webſter*.

Bright *againſt* Jackſon and others, in Replevin. Trin. 25 & 26 Geo. 2.

PLaintiff had pleaded, by Leave of the Court, two ſeveral Matters in Bar to the Avowry, by way of Preſcription for Right

Right of Common, *&c.* And on one of the Pleas the Fact was found for him; but there being no Certificate from the Judge who tried the Cauſe, that Plaintiff had probable Cauſe to plead the other Plea, Defendants moved for Coſts occaſioned thereby, purſuant to *Stat.* 4 Qu. *Anne.* The Queſtion was, Whether theſe Proceedings are within that Statute or not? The Avowant in Replevin is omitted in the Words of the Statute. Rule to ſhew Cauſe why Plaintiff ſhould not pay Coſts, enlarged. *Prime* for Defendant; *Poole* for Plaintiff.

Gregory *againſt* Dormer. Mich. 26 Geo. 2.

THIS was an Action for ſeveral Treſpaſſes, (*inter al'*) a Treſpaſs in *Stock Orchard* and *Rye Cloſe*, with Cattle, and bruiſing, preſſing and ſpoiling Plaintiff's Apples, (*viz.*) twenty Buſhels of Apples there *found.* The Cauſe had been tried in *Glouceſterſhire* by a Special Jury of Gentlemen, who found for Plaintiff as to the particular Treſpaſs aforeſaid; Reſidue for Defendant. The Queſtion was, Whether Plaintiff ſhould be allowed full Coſts, or not? Court diſcharged Plaintiff's Rule to ſhew Cauſe why he ſhould not have full Coſts. The Apples, for ought that appears by the Declaration, might be growing, though not laid to be

ibidem creſcen', but *ibidem invent'*. The Jury had the Merit of the Cauſe before them; the Action appears to be frivolous, by the ſmall Damages they gave. *Willes* and *Poole* for Defendant; *Draper* and *Hayward* for Plaintiff.

Scoffin *againſt* Robinſon, in Treſpaſs. Eaſter 26 Geo. 2.

PLaintiff, at laſt Aſſizes for *Kent*, recovered a Verdict againſt Defendant; and at the ſame Aſſizes, in an Ejectment, on the Demiſe of *Robinſon* (Defendant in this Action) againſt *Scoffin* (Plaintiff in this Action) Plaintiff recovered a Verdict. *Robinſon* applied to have the Coſts he was intitled to, ſet off and deducted out of the Coſts to be allowed *Scoffin*. Rule for that Purpoſe made abſolute. *Willes* for Defendant; *Poole* for Plaintiff.

Damages.

Donelly *againſt* Baker, in Aſſault and Battery. Mich. 18 Geo. 2.

BOOTLE, for Plaintiff, moved to ſet aſide Inquiſition taken on Writ of Enquiry, for Smallneſs of Damages; the Jury found 8 *l.* only, though Defendant's Cure by a Surgeon was proved to be worth Eighteen Guineas, and though no Witneſs was produced by Defendant to controvert the Fact. The Court refuſed to make any Rule.

Deaf and Dumb Perſons.

Earl of Jerſey and another, *Demandants*, Barnes and another, *Tenants*; Lady Mary O'Bryen, *Vouchee*. Hil. 26 Geo. 2.

THE Vouchee being naturally Deaf and Dumb, Lord Chief Juſtice wrote down a Queſtion, as to her Conſent to ſuffer Recoveries of Eſtates in three different Counties, *Bucks*, *Oxon* and *Berks*. Mr. *Henry Barker* being ſworn, explained the Queſtion to her by Signs, which ſhe anſwered by Signs, and then he depoſed that ſhe underſtood the Queſtion, and was willing the Recoveries ſhould paſs; ſhe alſo under-wrote the Queſtion with theſe Words, (viz.) *Yes, I do know and conſent*; and ſigned her Name *Mary O'Bryen*; whereupon the Recoveries were paſſed at Bar. *Vide Griffin* againſt *Ferrers*, *Eaſter* 6 *Geo.* 1. Sir *G. Cooke*'s Caſes. Several ſimilar have happened, particularly one, as to Service of a Deaf and Dumb Woman, Tenant in Poſſeſſion of Premiſes, with a Declaration in Ejectment, by ſignifying to her the Meaning and Contents of ſuch Declaration, and the Notice ſubſcribed, by Means of

of a Perſon who explained the ſame to her by ſignificant Signs, which ſhe underſtood, as the Perſon explaining made Affidavit; and thereupon the Court made the uſual Rule for Judgment, unleſs the Tenant, &c. appeared. *Goodtitle, on the Demiſe of Weſſell, Eſquire*, againſt *Badtitle*, in Ejectment, *Suſannah Grey*, Tenant. *Hil.* 22 *Geo.* 2. *Willes* for Demandants.

Demurrer, and other Special Arguments.

Dowding, Adminiſtrator, &c. *againſt* Baker & al. Trin. 13 & 14 Geo. 2.

THIS was an Action of Debt upon a Bond; Declaration delivered of *Trinity* Term laſt paſt, with an Imparlance 'till *Michaelmas* Term; Defendant procured a Judge's Order for Time to plead 'till the 15th *December*, and then pleaded *Solvit ad diem* by one of the Defendants. In *Hilary* Term Plaintiff replied, Nonpayment; and Defendant the ſame Term rejoined, entred a Waiver of his Plea, and ſet out Letters Teſtimonial dated 26th *November*, whereby it appeared, that Plaintiff was excommunicated on 23d *November*, and ſo pleads the Excommunication *puis darrein continuance* in *Eaſter* Term following. Plaintiff demurs, and Defendant joins in Demurrer. *Bootle* for Defendant alledged, that Plaintiff in making up the Demurrer Book, had continued the Imparlance 'till the laſt Return of *Michaelmas* Term, which is 25th *November*, tho' the Plea was delivered generally of that Term, and the Imparlance ought to be carried no farther than *Tres Mich.* By the Plaintiff's

Plaintiff's continuing it beyond 23d *November*, an Abſurdity was created, and the Excommunication appeared to be before, and not after the laſt Continuance. *Draper* for Plaintiff inſiſted, that it is Plaintiff's Right to enter Continuances by Imparlance, from the Declaration to Judgment or Iſſue. That Time to plead and an Imparlance are the ſame Thing, and as Defendant in Truth had Time to plead till the 15th *December*, the Imparlance ought to be continued according to the Fact; and of that Opinion were the Court, and ordered the Imparlance to ſtand continued till *Quinden' Martini*.

Shields and another *againſt* Cuthbertſon. Mich. 15 Geo. 2.

DEclaration for Goods ſold and delivered; Defendant pleads in Abatement, and traverſes the Inhabitancy; Plaintiff demurs, and on Argument made two Objections: 1ſt, that the Statute of Additions expreſſes the Word *Converſant*; that *Raſtall*, and all the old Entries, are ſo; indeed ſome modern Entries are *Commorant*, but none *Inhabitant*; and 2dly, That the Plea begins, that Defendant comes and defends the Wrong and Injury when, *&c.* and after a full Defence, Defendant cannot plead in Abatement. The ſecond Objection was over-ruled; but the

firſt held good. A Man may lodge in one Pariſh, and work in another; he is *converſant* where he works. Judgment for Plaintiff, that Defendant anſwer over. *Bootle* for Plaintiff; *Skinner* for Defendant.

Littlehales, an Attorny, *againſt* Boſanquett, by Attachment of Priviledge. Eaſter 15 Geo. 2.

DEfendant demurred to the Declaration, and aſſigned for Cauſe the Want of Pledges. Plaintiff joined in Demurrer, and Defendant moved to withdraw his Demurrer on Payment of Coſts, to pay 10 *l.* into Court upon the common Rule, and plead the General Iſſue; which was ordered, Plaintiff not oppoſing the ſame.

Note; It hath been determined, that Pledges need not be put into the Declaration. Pledges are upon the Writ, and may be found any Time before Judgment. *Manfield un' Cleric'* againſt *Richman*, on Demurrer, and Want of Pledges ſhewn for Cauſe, *Eaſter* 2 *Geo.* 2. *Durrant, one, &c.* againſt *Lynes*, *Trin.* 10 & 11 *Geo.* 2. *Bootle* for Defendant; *Skinner* for Plaintiff.

Sharpe

Sharpe *againſt* Sharpe. Mich. 16 G. 2.

AFTER Joinder in Demurrer, Plaintiff 27th *October* moved for a *Conſilium*, and afterwards delivered the Paper-Book the ſame Day, which was held to be irregular, and the Cauſe ordered to be ſtruck out of the Paper. The regular Practice is to tender the Paper-Book to Defendant's Attorny; if he refuſes to accept and pay for it, Judgment may be ſigned for want thereof; if he accepts and pays for it, then Plaintiff is proper to move for a *Conſilium*, and proceed to Argument. *Skinner* for Defendant; *Agar* for Plaintiff.

Wilſon, an Attorny, *againſt* Finch, an Attorny. Hilary 17 Geo. 2.

PLaintiff declared on a Promiſory Note; Defendant pleaded *Non Aſſumpſit infra ſex annos.* Plaintiff replied, an Attachment of Privilege, bearing Teſte five Terms before the Term of which the Declaration was delivered. Defendant demurred to the Replication, and Plaintiff joined in Demurrer. Upon the Argument, it was objected to the Replication, That no Return of the Attachment of Privilege, General or Special, appears; nor doth it appear that the Writ was delivered to the Sheriff, or returned; and that

the Lapſe of five Terms was bad. The Court held, That an Appearance cures all Errors and Defects in Proceſs; and that the Words in the Declaration (*was attached by Writ of Privilege*) refer to the Return of that Writ, whenever it was; and gave Judgment for Plaintiff. *Draper* for Plaintiff; *Bootle* for Defendant.

Trinity 17 & 18 Geo. 2.

PER Cur': For the Future, in all Demurrer-Books delivered to the Judges, let the Counſels Names be inſerted who ſigned the Pleadings; and let the Number-Roll and Day of Argument be ſet down on the Outſide of each Book.

Gott *againſt* Vavaſor and others, Heir and Deviſees, in Debt on Bond. Hilary 18 Geo. 2.

THE Action was brought on the Statute 3 & 4 *Will. & Mary, ch.* 14. *ſect.* 3 & 4. and on Demurrer the Court gave Judgment for Defendants; it appearing by the Pleadings that the Teſtator's Eſtate was deviſed to Truſtees for the Payment of Debts, and conſequently this was a Caſe out of the Statute.

Stone

Stone *againſt* Rawlinſon and another. Hilary 18 Geo. 2.

ACTION brought on Promiſory Note, payable to *A. B.* or Order, and indorſed to Plaintiff by the Adminiſtrator of *A. B.* Demurrer to the Declaration, and two Cauſes aſſigned: Firſt, That Plaintiff declared without a *Profert in Cur'* of the Letters of Adminiſtration of *A. B.* and ſecondly, That it did not appear by whom the ſame was granted. A third Objection was taken at the Bar, *viz.* That an Executor or Adminiſtrator cannot aſſign a Promiſory Note, ſo as to give an Indorſee an Action in his own Name. The firſt and ſecond Objections were over-ruled; becauſe the Letters of Adminiſtration cannot be ſuppoſed to be in the Cuſtody or Power of Plaintiff, but of the Adminiſtrator himſelf; and on Trial it would be incumbent on Plaintiff to ſhew the Perſon who indorſed the Note to him to be the proper Adminiſtrator of *A. B.*

The third Objection over-ruled, becauſe it has been the conſtant Practice among Merchants, for Executors and Adminiſtrators to indorſe both Promiſory Notes and Bills of Exchange; and the Court will endeavour to adapt the Rules of Law to the Courſe of Trade; and is warranted in this Opinion by the Words of the Statute 3 & 4 *Ann. c.* 9.

ſect. 1. which ſays, that Promiſory Notes are to be indorſed in like Manner as Bills of Exchange. The Equitable Intereſt is converted into a Legal Intereſt, and the whole Intereſt is veſted in the Adminiſtrator, who, before the Statute, might aſſign his Equitable, and ſince, his Legal Intereſt. *Moor* againſt *Manning*, *Mich.* 5 *Geo.* *in C. B.* held, That whoever has the abſolute Property, may aſſign a Note payable to Order. Judgment for Plaintiff. *Prime* for Plaintiff; *Birch* for Defendant.

Brumwell *againſt* Garnett, one, &c. Trin. 18 & 19 Geo. 2.

RULE for a *Conſilium*, made 24th *May*, in laſt *Eaſter* Term, though the Paper-Book was not then delivered, nor afterwards till the 20th of *June* inſtant, held irregular, and the Rule for a *Conſilium* diſcharged this Day, *viz.* *Wedneſday* 26th *June* 1745: But on Motion of Plaintiff's Counſel the ſame Day, the Court made a new Rule for a *Conſilium*, and gave Leave to ſet down the Cauſe for *Friday* next; diſpenſing with the Shortneſs of the Time for the Delivery of Books to the Judges. *Turner* againſt *Horton*, *Trin.* 10 & 11 *Geo.* 2. *Sharpe* againſt *Sharpe*, *Mich.* 16 *Geo.* 2. quoted. *Willes* for Defendant; *Draper* for Plaintiff.

Burgeſs

Burgeſs *againſt* Halding. Trinity 19 & 20 Geo. 2.

ON the Argument of a Point reſerved at *Niſi prius*, the Court held, That in the Caſe of a Tender, the *Placita* is of no Validity. An Original muſt be produced. Judgment ordered to be entered for Defendant. *Willes* for Plaintiff; *Bootle* for Defendant.

Savile *againſt* Wiltſhire and another, Executors. Mich. 20 Geo. 2.

THIS Action was Debt on a Judgment obtained againſt the Teſtator, ſuggeſting the Judgment to have been recovered in *Eſſex*, and the *Venue* was laid in *Eſſex*. Objected, That the *Venue* muſt be in *Middleſex*, and no where elſe. Anſwered, The original Action wherein Judgment was recovered being laid in *Eſſex*, this Action may either be in *Eſſex* or in *Middleſex*, where the Record of the Judgment is; and cited *Hall* againſt *Wingfield*, *Hob.* 95. where a Recognizance was taken at *Serjeants-Inn*, *London*, and recorded in *Middleſex*, the *Scire facias* may be either in *London* or *Middleſex*. *Per Cur':* This Action is not founded partly in *Eſſex* and partly in *Middleſex*, being intirely on the Judgment. The original Action is at an End,

End, *Tranſit in Rem judicatam.* The Court muſt take judicial Notice where the Common Pleas ſit, though not laid in the Declaration to be in *Middleſex.* Mr. Juſtice *Birch* quoted *Muſgrave* againſt *Wharton*, *Yelv.* 218. and *Cro. Jac.* 241. *Comyns's Reports* 305. Declaration held bad on Demurrer, and Judgment for Defendant. *Draper* for Defendant; *Agar* for Plaintiff.

Furnis *againſt* Hallom. Eaſter 22 Geo. 2.

AWARD that Defendant ſhould pay Plaintiff, or Mr. *William Cock* his Attorny, ſuch Coſts as Plaintiff was liable to pay, of an Action in the Peverel Court, and Coſts of an Action at Common Law, between Plaintiff and Defendant and others, held to be uncertain, and not final. Coſts to be taxed by the proper Officer, has been held good. The Authority of Arbitrators may be delegated to a known Officer; or if Coſts are awarded generally, the ſworn Officer may aſcertain the *Quantum. Certum eſt quod certum reddi poteſt.* An Award may be good in Part and bad in Part; but the Objection here goes to the Juſtice of the Whole. Judgment on Demurrer for Defendant. *Bootle* for Defendant; *Poole* for Plaintiff.

Powell

Powell *againſt* Rowles and his Wife. Mich. 25 Geo. 2.

PLaintiff declared in *Middleſex*; Defendant pleaded in Abatement under the Statute of Additions, That he was a Pawnbroker, and not a Yeoman, as called in the Declaration. Plaintiff replies an Original Writ *in placito prædicto* in *Glouceſterſhire*, wherein Defendant is called a Pawn-broker; to which Replication Defendant demurs, and Plaintiff joins in Demurrer. On Argument the Court held, that Continuances of the Original Writ in this Caſe are not neceſſary; but that on an Original in *Glouceſterſhire*, Plaintiff cannot proceed in another County; nor have the Court any Juriſdiction in *Middleſex* under this Original in *Glouceſterſhire*. Defendant may be brought in after *Capias* returned *Non eſt inventus*, by a *Teſtatum* into any other County, but Plaintiff muſt come and proceed according to his Original Writ, and in the ſame County. Judgment *Quod Breve caſſetur*. *Draper* for Defendant; *Poole* for Plaintiff.

Wade

Wade, junior, *againſt* Wadman, Gent. one of the Attornies, Adminiſtrator, &c. Hilary 25 Geo. 2.

DEfendant demurred generally to Plaintiff's Declaration; Plaintiff joined in Demurrer; and on Argument two Objections were made by Defendant's Counſel, firſt, That it was not alledged in the Declaration that Adminiſtration had been granted to Defendant; and ſecondly, that Defendant being ſued as Adminiſtrator, ought, in that Capacity, to have been proſecuted by Original Writ, and not by Bill, as at preſent. The Court over-ruled both Objections. As to the firſt they held, that calling Defendant Adminiſtrator of the Goods and Chattels of the Inteſtate, was ſufficient, without alledging that Adminiſtration had been granted to him. And as to the ſecond, (which is objected as Matter of Abatement, and not ſhewn for Cauſe of Demurrer) the Fault is cured by Defendant's Appearance; 'tis no Objection after Appearance. *Poole* for Defendant; *Agar* for Plaintiff.

Spencer and another, Executors, *againſt* Thomlinſon, one, &c. by Bill. Eaſter 25 Geo. 2.

PLaintiffs concluded their Declaration (*And thereof they bring Suit, &c.*) inſtead of (*pray Remedy, &c.*) Defendant demurred, and ſhewed ſaid Concluſion for Cauſe; Plaintiff joined in Demurrer. On Argument, the Court inclined to think either of theſe Ways of concluding good; but for the ſake of keeping up to the old conſtant Form of *prays Remedy, &c.* propoſed an Amendment, without Payment of Coſts; to which both Sides conſented; and a Rule was made accordingly. *Poole* for Defendant; *Draper* for Plaintiff.

Neſbett

Neſbett *againſt* Farmer. Mich. 27 Geo. 2.

DEfendant, after obtaining a Judge's Order for Time to rejoin, (rejoining iſſuably) demurred to Plaintiff's Replication. Plaintiff moved to ſet aſide the Demurrer, and obtained a Rule to ſhew Cauſe. Whereupon *Draper* for Defendant inſiſted, That as the Replication ſtood, Defendant could not with Safety rejoin iſſuably, but muſt demur, to bring the Merits of his Caſe in Queſtion. The Court held a Demurrer not to be an iſſuable Rejoinder within the Judge's Order; but that whether it was neceſſary or not, might appear. Plaintiff was ordered to join in Demurrer, and the Rule was enlarged till after the Argument. *Poole* for Plaintiff.

Diſcontinuance.

Wignall *againſt* Bouch, in Replevin. Mich. 17 Geo. 2.

AFTER Joinder in Demurrer, Plaintiff obtained a Rule for the Avowant to ſhew Cauſe why he ſhould not diſcontinue, on Payment of Coſts. It was objected for the Avowant, that a Diſcontinuance in Replevin is very different from a *Nonpros*; and that after a Diſcontinuance, a Writ of *Retorn' Habend'* could not be awarded. The Court did not enter into the Conſideration of that Matter, becauſe the Parties entered into a Rule by Conſent to ſtay Proceedings on Payment of the Rent in Arrear, with Coſts. *Wynne* for Plaintiff; *Draper* for Avowant.

Ejectments.

Goodright, on the Demiſe of Rowell, *againſt* Vice, in Ejectment. Trin. 13 & 14 Geo. 2.

DEfendant at the Trial not appearing to confeſs Leaſe, Entry and Ouſter, a Nonſuit happened, and afterwards Plaintiff's Leſſor, inſtead of taking his Remedy for Coſts taxed upon the common Rule, as he ought to have done, entered Judgment againſt the Caſual Ejector, ſued out a *Fi. fa.* againſt Defendant's Goods, and levied his Coſts thereon, acting as ſpecial Bailiff himſelf. An Action was brought by Defendant in the King's Bench for this irregular Levy, againſt Plaintiff's Leſſor and *Kimber* his Attorny; and after Special Pleadings therein, Defendant moved here to ſet aſide the *Fi. fa.* and Court ordered Reſtitution to be made, and Defendant's Coſts to be paid by Plaintiff's Leſſor and *Kimber*. And by Conſent, the Action in the King's Bench to be diſcontinued, without Coſts, and no other Action to be brought. *Wynne* for Defendant; *Huſſey* and *Draper* for Plaintiff.

Bingham

Bingham, on the Demiſe of Lane and others, *againſt* Gregg, in Ejectment. Trinity 14 & 15 Geo. 2.

RULE on the Statute 7th *Geo.* 2. to ſhew Cauſe why Proceedings ſhould not be ſtayed, on Payment of the Mortgage-Mony and Coſts, was made abſolute; Leſſors of the Plaintiff, Aſſignees of the Mortgagee, inſiſted to be paid a Bond and a Simple Contract Debt due to themſelves in their own Right. *Per Cur':* A Bond is no Lien in Equity, unleſs where the Heir comes to redeem. *Prime* for Plaintiff; *Bootle* for Defendant.

Stiles, on the Demiſe of Redhead, *againſt* Oakes, in Ejectment. Eaſt. 15 Geo. 2.

DEfendant, the Landlord, admitted to defend by ſpecial Rule, did not appear at the Trial to confeſs Leaſe, Entry and Ouſter, whereby Plaintiff was nonſuited. Plaintiff produced the *Poſtea*, and moved for Leave to take out Execution againſt the Caſual Ejector, upon the Judgment ſigned by virtue of the ſpecial Rule to defend, which was granted abſolutely. *Agar* for Plaintiff.

Goodtitle *againſt* Thruſtout, in Ejectment, on the Demiſe of Maſſa. Trinity 16 Geo. 2.

JOHN *Cryſtall*, Tenant in Poſſeſſion, upon a *Sunday* acknowledged the Receipt of the Declaration, which before the Eſſoign Day had been delivered to his Daughter, and ſhe acquainted with the Contents. This was held ſufficient Service, and the Common Rule was made for Judgment *Niſi*, *&c.* *Willes* for Plaintiff.

Thruſtout

Thruſtout, on the Demiſe of Dunham an Infant, *againſt* Percivall and others, in Ejectment.

PRIME, for Defendant, moved and obtained a Rule to ſhew Cauſe why Proceedings ſhould not be ſtayed till a good Plaintiff be named, or Security, to be approved by the Prothonotary, be given by the Infant Leſſor, for ſecuring Coſts to Defendant, in Caſe of a Nonſuit or Verdict for Defendant. *Draper* for the Leſſor urged, that though in the King's Bench ſuch Rules have been made, yet the Practice here is otherwiſe, becauſe the Infant is liable to an Attachment for Non-payment of Coſts. He quoted *Throgmorton* againſt *Smith*, *Eaſter* 5 *Geo.* 2. in *B. R.* *Robinſon*, *on the Demiſe of Meager*, againſt *Burton*, *Mich.* 3 *Geo.* 2. in *C. B.* where Attachments for Non-payment of Coſts were granted againſt Infants of very tender Age; and obſerved, that the Infant who is inabled to make a Leaſe in Ejectment, muſt take it with all its Inconveniencies. *Per Cur'*: In all other Suits, an Infant under Years of Diſcretion, cannot be guilty of a Contempt. *Non diuturnitas temporis ſed ſoliditas rationis eſt conſideranda.* Rule abſolute.

Duckworth, on the Demiſe of Tubley and others, *againſt* Tunſtall, in Ejectment. Mich. 16 Geo. 2.

LEſſors of the Plaintiff were both Deviſees and Executors, and in each Capacity Rent was due to them. Defendant moved to ſtay Proceedings, upon Payment of the Rent due to Leſſors of Plaintiff as Deviſees, they not being intitled to bring an Ejectment as Executors. There appeared to be a mutual Debt due to Defendant by ſimple Contract, and Defendant offered to go into the whole Account, taking in both Demands as Deviſees and Executors, having juſt Allowances; which Leſſors of Plaintiff refuſed. The Rule was made abſolute to ſtay Proceedings, on Payment of the Rent due to Leſſors as Deviſees, and Coſts. *Prime* and *Bootle* for Defendant, *Wynne* for Plaintiff.

Goodright, on the Demiſe of Griffin, *againſt* Fawſon, in Ejectment.

THIS Ejectment was brought for one Meſſuage, with the Appurtenances, in the Pariſhes of *St. John the Baptiſt* and *St. Michael*, in the City of *Coventry* and County of the ſame City, or one of them; and after a Verdict for Plaintiff, the Judgment was

was arreſted. The Plaintiff's Excuſe for deſcribing the Pariſh where the Meſſuage ſtood, as above, was, That by a late Act of Parliament the firſt Pariſh was to be divided into two, and the Diviſion was not yet ſettled. The Court held the Deſcriprion to be totally uncertain; and that one of the Pariſhes cannot be rejected as Surpluſage. In Real Actions, and where the Poſſeſſion of Lands is to be recovered, Certainty is always required. In this Caſe, Defendant could not know what to defend for, nor the Sheriff of what to give Poſſeſſion. *Willes* for Defendant; *Draper* for Plaintiff.

Doe, on the Demiſe of Henant, alias Henden, *againſt* Thomas and others, in Ejectment. Hilary 16 Geo. 2.

WIthin the firſt four Days of the Term *Birch* moved for Leave to plead Ancient Demeſne, upon an Affidavit that the Premiſſes in Queſtion were reputed to be Lands in Ancient Demeſne; and a Rule was made to ſhew Cauſe, and afterwards abſolute upon hearing Counſel on both Sides. The Affidavit is ſufficient to ſhew a probable Cauſe to plead this Plea; and any other Plea to the Juriſdiction of the Court may be pleaded in Time, without Motion. *Skinner* for Plaintiff.

Bagſhaw, on the Demiſe of Aſhton, *againſt* Toogood.

K*Etelbey* moved, upon an Affidavit of tendring the Declaration to *Jane Reynolds*, Widow, Tenant in Poſſeſſion, which ſhe refuſing to accept, it was left on the Floor, in her Preſence; and ſhe retiring into a Parlour and ſhutting the Door, the Perſon ſerving read the Subſcription aloud, ſo as ſhe might hear it; which was held ſufficient Service; and the Common Rule for Judgment was made.

Fenn, on the Demiſe of Rickattſon, *againſt* Marriott, Eſquire, and his Wife, in Ejectment. Mich. 17 Geo. 2.

FOR the Future, let Rules for Leave to take out Execution by the Plaintiff againſt the Caſual Ejector, after Verdict againſt the Landlord made Defendant inſtead of the Tenant in Poſſeſſion, purſuant to the late Statute, be abſolute, and not to ſhew Cauſe, *Eyre* for Plaintiff.

Roe

Roe *againſt* Doe, on the Demiſe of Stephenſon, in Ejectment, in Middleſex.

PRIME moved for Judgment, upon an Affidavit of Service of a Declaration intituled *Trinity* Term 17th, inſtead of 16th & 17th *Geo.* 2. and prayed a Rule for Judgment, unleſs the Tenants appeared within four Days after Notice. He quoted *York, on the Demiſe of Chambers*, againſt *Ferris*, where the Declaration was intituled *Trinity* 4th, inſtead of 3d & 4th *Geo.* 2. in *Cornwall*, moved in *Michaelmas* Term 4th; and ſuch a Rule was made: But upon Affidavit of Service thereof, the Court, by a ſecond Rule, inlarged the Time for appearing, till four Days after the next iſſuable Term [*Hilary*], as uſual in Country Cauſes. *Per Cur':* The Declaration in Ejectment is the firſt Proceſs; and there is nothing precedes whereby it can be amended. This ſingle Precedent, without Oppoſition, is not of Weight ſufficient to overturn the general Practice; and the firſt Rule does not ſeem to have been well conſidered. A new Declaration might have been delivered before the Eſſoign Day of *Hilary* Term, and Plaintiff would have been as forward thereby as by his former Declaration; and in Country Cauſes, where

where Declarations are of *Trinity*, the Notice may be good to appear in next *Hilary*, (paſſing over *Michaelmas*) though not the uſual Practice. No Declaration in Ejectment in the King's Bench, or here, can be amended before Appearance; and afterwards in Form only, but not in the Demiſe, or other Matter of Subſtance. The Court can make no Rule in this Caſe.

Roe *againſt* Doe, on the Demiſe of Hyde, in Ejectment. Eaſter 18 Geo. 2.

THE Tenants had the Forenoon of the 29th *April* this Term to appear in; *Foſter*, the Landlord, moved to add himſelf to the Tenants, but no Appearance being entered, Plaintiff on the 30th ſigned Judgment againſt the Caſual Ejector. The Landlord afterwards, without diſcloſing to the Court what had been previouſly done, applied for the Conditional Rule, as a Matter of Courſe, and by Virtue thereof on the 1ſt *May* appeared alone, without the Tenants. *Prime*, for Plaintiff, moved for Leave to take out Execution on the Judgment; and on ſhewing Cauſe, the Judgment appeared to be regular, and the Appearance out of Time. Plaintiff offered to waive his Judgment, if the Landlord, who reſided at *Jamaica*, would give

give Security for Coſts; to which his Counſel not conſenting, the Court made the Rule abſolute, for Leave to take out Execution. *Skinner* and *Draper* for the Landlord.

Goodtitle, on the Demiſe of Symons, Eſq; *againſt* Thruſtout, in Ejectment, Clarke, Eſq; Landlord. Trin. 19 & 20 Geo. 2.

THE Declaration was of *Hilary* Term, ſerved with Notice to appear in *Eaſter* Term laſt, and not moved till this Term, when a Rule was made for Judgment, unleſs the Tenant ſhould appear within ſix Days after Notice. The Landlord prayed for the Conditional Rule, and for Leave to plead Ancient Demeſne, upon an Affidavit that the Premiſes were Ancient Demeſne; and obtained a Rule to ſhew Cauſe. *Per Curiam:* The Landlord, by the late Statute, is to enter into the Common Rule by Conſent; before that Statute, he might have been added a Defendant; and if he had applied in Time, muſt have had Leave to plead Antient Demeſne. He is to be conſidered in all Reſpects in the ſame Caſe as the Tenant in Poſſeſſion, but muſt apply according to the Courſe and Rules of the Court. If the Plaintiff ſhould prevail on this Plea to the Juriſdiction of the Court, the Judgment muſt be, that Defendant

dant ſhall anſwer over. Therefore, if this Plea be not confined to a Time certain, great Delay of Juſtice muſt follow. The Rule diſcharged, as to pleading Ancient Demeſne, becauſe the Application was not made in Time, that is, within the firſt four Days of this Term. *Belfield* for *Clarke*; *Bootle* and *Eyre* for the Leſſor of the Plaintiff.

Deighton, on the Demiſe of Roberts and his Wife, *againſt* Forſter. Trin. 21 Geo. 2.

RULE to ſhew Cauſe why Defendant ſhould not have Leave to plead Ancient Demeſne. Objected, and allowed, That the Motion was not made within the firſt four Days of the Term. The Rule diſcharged. As the Declaration muſt be delivered before the Eſſoign Day, the Party may always apply within the firſt four Days of the Term; and though the Appearance in Ejectment is generally entered afterwards, yet it is always conſidered as an Appearance of the firſt Day of the Term. *Bootle* for Defendant; *Poole* for Plaintiff.

, on the Demiſe of Preſton, *againſt* , in Ejectment. Hil. 21 Geo. 2.

IT appearing, by Affidavit, that one *Geldart*, the Tenant in Poſſeſſion, and his Wife, both abſconded, and could not either of them be ſerved with a Declaration in Ejectment; and that they had left a Woman Servant in the Houſe on the Premiſes, in whoſe Preſence a Declaration was fixed up. The Court made a Rule for the Tenant to ſhew Cauſe why Service of a Declaration on his Servant, at his Houſe, ſhould not be deemed good; and directed the Rule to be ſerved in that Manner.

Short, on the Demiſe of Elmes, *againſt* King. Eaſter 22 Geo. 2

MRS. *Northcot*, the Tenant in Poſſeſſion, a ſingle Woman, abſconded and ſecreted herſelf in the Meſſuage in Queſtion, and could not be perſonally ſerved with a Declaration in Ejectment. Rule to ſhew Cauſe why Service of the Servant, at the Houſe, ſhould not be good. This Rule to be ſerved on the Servant at the Houſe. *Poole* for Plaintiff.

Orion

Orion *againſt* Mee. Mich. 25 Geo. 2.

ORION, Defendant in an Ejectment brought in the Name of *Jacob Mee*, on the joint and ſeveral Demiſes of *Powers* and *Maddiſon*, having obtained a Verdict, and one of the Leſſors being dead, and the other inſolvent, *Orion* brought Debt on the Judgment againſt Plaintiff, and ſerved Proceſs on one *Jacob Mee* of *St. Ives*, *Com' Hunt'*, Yeoman, as Plaintiff; who moved to ſtay Proceedings, being totally ignorant of, and unconcerned in the Matter. On ſhewing Cauſe, Mr. *Huſke*, of *St. Ives*, was alledged to be Attorny for Plaintiff in ſaid Ejectment, wherein he had made Uſe of ſaid *Mee*'s Name. Upon which the Rule was inlarged, and *Huſke* ordered to ſhew Cauſe why he ſhould not pay *Orion*'s Coſts taxed in ſaid Ejectment. *Huſke*'s Affidavit being laid before the Court, it appeared, that not he, but one *Stephenſon*, formerly his Clerk, (to whom he had reſigned his Buſineſs long before ſaid Ejectment brought, and intirely left off Practice) was Plaintiff's Attorny. *Stephenſon* made Affidavit, that he found *Jacob Mee* to be the uſual Name made Uſe of for Plaintiff in Ejectment in *Huske*'s Office; that he uſed it purely as fictitious, and not as the Name of an exiſting or real Perſon. Lord Chief Juſtice was of Opinion, That

though *Stephenſon* might have made a fictitious Plaintiff, yet as he has voluntarily made Uſe of a good Plaintiff, a real Perſon, dwelling in the ſame Town with himſelf, he ought to ſtand in his Place, and pay the Coſts. The three other Judges were of Opinion, That this Proceeding is to be conſidered purely as fictitious, and not real; and that *Jacob Mee* of *St. Ives*, or any other Perſon in human Nature, is not to be taken to be the real Plaintiff. It would be a dangerous Precedent, with Reſpect to Attornies, to make them liable to pay Coſts, whenever a Defendant in Ejectment (Leſſors of Plaintiff being inſolvent) can find out a real Perſon of the ſame Name as the fictitious Plaintiff. Nominal Plaintiff and Caſual Ejector ſtand in the ſame Light. Nominal Plaintiff cannot releaſe the Action; Caſual Ejector cannot bring a Writ of Error. No Impoſition or Miſbehaviour in *Stephenſon* appears. Where Leſſor of Plaintiff is abroad, or an Infant, Court, on Motion, interpoſe, and order a ſufficient Plaintiff to be named, or Security given for Coſts; but this is the ordinary Caſe within the common Courſe of Practice. Rule abſolute to ſtay Proceedings againſt *Mee*; diſcharged as to *Huske*; no Rule upon *Stephenſon*. Wherein Lord Chief Juſtice acquieſced; but ſaid, he thought the Court, for the future, ſhould extend the Rule for making a good Plaintiff, or giving Security

Security for Defendant's Coſts, to other Caſes beſides thoſe before mentioned. *Willes* for Defendant and *Huske*; *Prime* for Plaintiff.

Roe, on the Demiſe of Stone and Wife, *againſt* Doe, in Ejectment. Trinity 26 & 27 Geo. 2.

HAYWARD, on the Behalf of *Stone*, moved, that the Conditional Rule entered into by *Stone*'s Wife, by the Name of *Anne Field*, Widow, might be ſet aſide, upon Affidavits tending to prove the Marriage between *Stone* and her; and obtained a Rule to ſhew Cauſe. Whereupon *Prime* and *Agar*, on the Part of *Anne Field*, produced Affidavits to ſhew a long Cohabitation between her and the late Counſellor *Field* of *Hertfordſhire*, as Huſband and Wife. That he had a Child by her, and deviſed the Eſtate in Queſtion to her, by the Name of his Wife. That *Stone* was married to, and lived with, another Wife. The Court thought the Validity of *Stone*'s pretended Marriage to *Field* a fit Matter to be tried; and (the Tenants in Poſſeſſion having conſented to appear) ſet aſide the Judgment ſigned againſt the Caſual Ejector, for Want of their Appearance; and ordered *Field*, the Landlady, to be added a Defendant to the Tenants; whereby *Stone*, if Plaintiff recovers, will be ſecure as to Coſts.

Error

Error.

Trinity 18 & 19 Geo. 2.

AFTER an Award of Execution againſt Bail on a Recognizance in Error, they brought a Writ of Error as to ſuch Award of Execution. Plaintiff moved for Leave to take out Execution for Want of Bail on the Writ of Error brought by the Bail; and obtained a Rule to ſhew Cauſe; which was diſcharged; no Bail in this Caſe being required. *Prime* for Defendant; *Eyre* for Plaintiff.

Stone *againſt* Rawlinſon, in Error. Mich. 19 Geo. 2.

RULE to ſhew Cauſe why *Nonpros* of a Writ of Error, for Want of tranſcribing the Record, ſhould not be ſet aſide with Coſts. Objected, That no final Judgment is entred, and therefore no Tranſcript could be made. The *Nonpros* ſet aſide, without Coſts. It appeared that the Clerk of the Judgments was paid his Fee, by Plaintiff's Attorny, for entering the final Judgment, which he had neglected to do; but Plaintiff did not pray any Rule againſt him. *Prime* for Plaintiff; *Skinner* and *Agar* for Defendant.

Executions, &c.

Bevan *againſt* Jones. Trinity 13 & 14 Geo. 2.

THE Court were of Opinion, That after Execution executed, though the Judgment be for a Penalty, they have not Juriſdiction at Common Law, or by Statute, to refer to the Prothonotary to examine into the Sum due for Principal, Intereſt and Coſts, and into the *Quantum* levied, and to order Reſtitution of the Overplus, without Conſent, but Defendant muſt ſeek Relief in a Court of Equity. Rule to ſhew Cauſe diſcharged. *Belfield* for Defendant; *Birch* for Plaintiff.

Calcraft *againſt* Swann. Hilary 14 Geo. 2.

DEfendant became a Bankrupt, and after his Certificate allowed, his Goods were taken in Execution. Defendant obtained a Rule on the Statute 5 *Geo.* 2. *ſect.* 7 & 20. to ſhew Cauſe why the *Fi. fa.* ſhould not be ſet aſide, and Reſtitution. *Per Cur':* We are not required by the Statute to proceed in a Summary Way, as to the Goods of a Bankrupt,

Bankrupt, though as to his Perſon we are. If the Defendant did not obtain his Certificate in Time, ſo as to plead it, he may bring an *Audita Querula*. The Rule was diſcharged. *Willes* for Plaintiff; *Skinner* for Defendant.

Pickering *againſt* Landon. Eaſter 14 Geo. 2.

JUdgment was entered in 1736, in *Cooke*'s Office; in 1739 two *Scire facias*'s in *Borrett*'s Office were returned *Nichil*, and the Judgment being revived, a *Fi. fa.* and afterwards a *Venditioni exponas* iſſued out of *Borrett*'s Office; after the Execution thereof, and an Action tried againſt the Sheriff of *Northamptonſhire*, for a falſe Return on the *Venditioni exponas*, Defendant moved, and had a Rule to ſhew Cauſe why the Writs of *Fi. fa.* and *Venditioni exponas* ſhould not be ſet aſide; inſiſting, that they were irregular, and ought to have been in *Cooke*'s Office. It was urged for Plaintiff, that a *Sci. fa.* is as much a new Suit as an Action of Debt, and is not confined to the Office where the Judgment is entered, but may be brought in any other. *Per Cur'*: By an old Rule of this Court in 1654, the whole Proceedings after Appearance ought to be in one and the ſame Office; a *Sci fa.* is not a new Action, but a Continuance of the ſame Suit, and the

Fi. fa. and *Venditioni exponas* are irregular; but the Application to ſet them aſide, ought to be made in due Time. The *Fi. fa.* iſſued ſo long ago as 1739, it is not reaſonable, after what has paſſed, for the Court to interpoſe now. The Rule was diſcharged. *Prime* and *Draper* for Plaintiff; *Skinner* and *Willes* for Defendant.

Meriton *againſt* Stevens. Mich. 15 Geo. 2.

JUdgment was ſigned 28th *October*, and 29th *October*, between five and ſix in the Evening, the Sheriff took Poſſeſſion of Defendant's Goods, by Virtue of a *Fi. fa.* Defendant moved to ſet aſide the *Fi. fa.* a Writ of Error having paſſed the Great Seal in the Morning of the 29th; but it was not pretended to have been allowed by the Clerk of the Errors before the *Fi. fa.* executed. And the Queſtion was, From what Time the Writ of Error is to be deemed a *Superſedeas?* The Court, after Conſideration, determined, That it is not a *Superſdeas* from the Sealing, but from the Delivery to the Clerk of the Errors, according to a Rule of this Court, *Mich.* 28 *Car.* 2. *Wynne* for Defendant; *Skinner* and *Draper* for Plaintiff. This was the Point determined, whereupon the Parties entered into an equitable Rule by Conſent.

Thompſon

Thompſon *againſt* Briſtow. Mich. 16 Geo. 2.

JUdgment was entered 11th & 12th, revived in *Eaſter* Term 13th *Geo.* 2. and Defendant was taken in Execution in *July* 1741, and was then diſcharged by Plaintiff's Conſent; and a written Agreement was entered into by the Parties, that the Judgment ſhould ſtand revived for twelve Months. After more than a Year from the laſt *Ca. ſa.* Plaintiff cauſed Defendant to be again taken in Execution, without Continuance on the Roll; relying upon the written Agreement. The Court held the Agreement to be null and void; and made the Rule abſolute to ſet aſide the laſt *Ca. ſa.* and diſcharge Defendant out of Cuſtody. *Skinner* and *Agar* for Defendant, *Willes* for Plaintiff.

Aſhdowne *againſt* Fiſher. Trinity 16 & 17 Geo. 2.

DEfendant rendered in Diſcharge of Bail, and his Perſon was diſcharged out of Execution by the Court as a Bankrupt, purſuant to the Statute. His Goods were afterwards taken by a *Fi. ſa.* and he applied to have them releaſed, and obtained a Rule to ſhew Cauſe, which was diſcharged. The Court held that the Goods may be taken;

there is no Clauſe in the Statute which extends to the Goods. *Skinner* for Plaintiff; *Bootle* for Defendant.

Eaton *againſt* Southby.

AFTER the Record removed into the King's Bench by Writ of Error, Defendant died; Plaintiff moved for Leave to ſue out of this Court a *Sci. fa.* againſt Defendant's Executors, and obtained a Rule to ſhew Cauſe; which was diſcharged. The Record being removed out of this Court, the Motion is improper here. *Bootle* for Plaintiff; *Belfield* for Defendant.

Martin *againſt* Ridge.

DEfendant obtained a *Superſedeas* for Want of a Declaration, in an Action of Debt on Judgment, and was afterwards taken in Execution by a *Capias ad Satisfac'* iſſued after a Year and Day from the Time of the Judgment, without any *Sci. fa.* to revive. Defendant brought his Action for Falſe Impriſonment, and Plaintiff juſtified under the *Ca. ſa.* Defendant now applied to ſet aſide the *Ca. ſa.* and it appearing that a *Ca. ad reſpond'* only, and not a *Ca. ſa.* had iſſued within the Year, there was nothing to warrant the Continuance of a *Ca. ſa.* on the Roll. And the Rule was made abſolute

to

to ſet aſide the *Ca. ſa.* *Draper* for Plaintiff; *Belfield* for Defendant.

Rownſon and his Wife *againſt* Williamſon. Mich. 17 Geo. 2.

ACTION brought for the Labour of Plaintiff's Wife, done for Defendant during Coverture. Plaintiffs failed in the Action, and the Wife only, without the Huſband, was taken in Execution by *Ca. ſa.* for Coſts. The Court held, That as the Demand did not accrue to the Wife *dum ſola*, ſhe was wrongfully joined a Party in the Action; and that the Wife, who, by Law, is ſuppoſed to have nothing whereout to make Satisfaction, ought not to be detained in Execution. The Rule to diſcharge the Wife was made abſolute. If, in ſuch Caſe, the Wife could be detained, a run-away Huſband would have it in his Power to procure his Wife to be impriſoned. *Bootle* for the Wife; *Prime* for the Defendant.

Pickering and his Wife *againſt* Thomſon, Bail for Miller. Hilary 17 Geo. 2.

JUdgment in *Middleſex* againſt the Principal, *Sci. fa.* againſt the Bail in *Middleſex*, and Award of Execution, *Fi. fa.* in *Middleſex*,

and nothing levied; *poſt ann' & diem* two *Scire facias's* to revive the Award of Execution returned *Nichil* in *London*, and *Fi. fa.* thereon in *London*, and Levy there. Rule abſolute to ſet aſide the *Fi. fa.* in *London*, and for Reſtitution. *Sci. fa.* to revive a Judgment, or Award of Execution, muſt be in that County where Judgment is recovered, or Execution awarded. *Sci. fa.* againſt Bail may be in *Middleſex* (Record of the Recognizance being at *Weſtminſter*) or in the County where the Caption of the Recognizance appears to be on Record, if in any other County except *Middleſex*. *Hayward* for Defendant; *Agar* for Plaintiff.

Farſide, on the Demiſe of Lord Sidney Beauclerk and others, *againſt* Hayley. Trinity 17 & 18 Geo. 2.

AFTER a Verdict for Plaintiff, Motion for Leave to take out Execution on the Judgment againſt the Caſual Ejector, *non obſtante* a Writ of Error brought by Defendant *Hayley*, the Rule to ſhew Cauſe was diſcharged. *Per Cur':* In Caſes where the Landlord is permitted to defend without the Tenant, the Reaſon of Judgment againſt the Caſual Ejector, *per* Statute, is, that under it, after an End of the Suit Plaintiff may obtain Poſſeſſion of the Premiſes ſued for, which

which he could not do by Virtue of a Judgment againſt a Perſon out of Poſſeſſion. But where a Writ of Error is brought, there is not the leaſt Reaſon to give Plaintiff Leave to take Poſſeſſion till after a Determination in Error. *Skinner* for Plaintiff; *Willes* for Defendant.

Burdus *againſt* Satchwell. Hil. 18 G. 2.

AFTER a Writ of Error allowed, Plaintiff brought Action on Judgment, and Bail was juſtified. Afterwards the Writ of Error was nonproſſed for Want of tranſcribing the Record. Plaintiff, without diſcontinuing his Action on the Judgment, took Defendant's Goods in Execution by *Teſtat. Fi. fa.* which was held irregular, and the *Teſtat. Fi. fa.* ſet aſide, and the Goods ordered to be reſtored, with Coſts. Plaintiff will be at Liberty to take out Execution after diſcontinuing his Action on Judgment. *Skinner* and *Draper* for Plaintiff in Error; *Willes* and *Prime* for Defendant in Error. *Obiter per Cur':* No Rule to tranſcribe ought to be given till the Record is brought in. In Caſe of a *Teſtat. Fi. fa.* the Court will not go into a nice Enquiry when the *Fi. fa.* in the Original County to warrant the *Teſtat.* was ſued out; it is ſufficient if the firſt *Fi. fa.* returned be produced.

Sykes

Sykes, on the Demiſe of Oates and others, *againſt* Dawſon, in Ejectment. Hilary 18 Geo. 2.

DAWSON, the Landlord, was made Defendant by Rule, the Tenant in Poſſeſſion not appearing. After Verdict for Plaintiff, Defendant the Landlord brought a Writ of Error, and ſerved Plaintiff's Attorny with a Rule to be preſent at taxing Coſts. Plaintiff ſigned no Judgment on the Verdict, but moved the Court, producing the *Poſtea*, and obtained a Rule of Courſe for Leave to take out Execution againſt the Caſual Ejector. Defendant perceiving this allowed and ſerved Notice of his Writ of Error, and moved to ſtay Proceedings on the Judgment. *Per Cur':* The Writ of Error is no *Superſedeas* before delivered to the Clerk of the Errors to be allowed. *Vide Meriton* againſt *Stephens*, *Mich.* 15 *Geo.* 2. where, ſo far as Execution had gone, it ſtood, and further Proceedings only were ſtayed. In this Caſe the Writ of *Habere fac' poſſeſſion'* was executed. No Rule. *Wynne* and *Bootle* for Defendant.

Smith

Smith and his Wife *againſt* Phripp, one, &c. Mich. 20 Geo. 2.

JUdgment was obtained in *Middleſex*, and Defendant was taken 8th *May* laſt by a *Teſtat. Ca. ſa.* out of *Middleſex* into *Somerſetſhire*. Objected, That no *Ca. ſa.* in *Middleſex* was returned to warrant the *Teſtat'*, as appeared *per* Search in *Eaſter* and *Trinity* Terms laſt; but after the Search a *Ca. ſa.* in *Middleſex* was returned, and entered in the Sheriff's Books. The Court declared, that had the Application been recent, they muſt *ex Debito Juſtitiæ* have taken Notice of it; but as Defendant had ſo long acquieſced, and as poſſibly an Action for an Eſcape might have been brought againſt the Sheriff of *Somerſetſhire*, the Rule to ſhew Cauſe why the *Teſtat. Ca. ſa.* ſhould not be ſet aſide, was diſcharged. *Belfield* for Defendant; *Willes* for Plaintiff.

Turner *againſt* Cowper. Hilary 20 Geo. 2.

AFTER a Rule by Conſent to refer it to the Prothonotary, to inquire into the *Quantum* of the Debt and Value of Goods levied, and before Prothonotary had made his Report, Plaintiff died. Upon the Application of Plaintiff's Executor, who offered

to

to ſtand in Plaintiff's Place, he was made a Party to the Rule; and the Prothonotary was directed to proceed, without the Conſent of Defendant to this Rule. *Prime* and *Draper* for Plaintiff's Executor; *Skinner* and *Willes* for Defendant.

Low *againſt* Beart. Eaſter 20 Geo. 2.

RULE to ſhew Cauſe why *Fi. fa.* ſhould not be ſet aſide, the Judgment being above a Year old, and not revived by *Sci. fa.* nor any Continuances of *Fi. fa.* entered on Record; Plaintiff, before Cauſe ſhewn, entered the Continuances, and produced intervening Writs of *Fi. fa.* to warrant the ſame. Rule diſcharged *ſans* Coſts. *Elegit* may be continued before ſuing out the Writ, *Fi. fa.* or *Ca. ſa.* cannot be continued without ſuing out the Writ. *Prime* for Plaintiff; *Draper* for Defendant.

Stanynought, one, &c. *againſt* and ſeven others. Mich. 21 Geo. 2.

AFTER Judgment in a Joint Action againſt all the Defendants, Plaintiff ſued out a *Fieri facias* againſt the Goods of , one of the Defendants, only. Motion *per Leeds*, for Defendant

to

to ſet aſide the *Fieri facias*, and for Reſtitution. *Skinner* and *Draper*, for Plaintiff, prayed to amend the *Fieri facias* by the Judgment, and quoted *Browne* againſt *Hammond*, *Eaſter* 12 *Geo.* 2. The Parties came into Terms of Agreement between themſelves, without any Determination by the Court; and, by Conſent the Rule was made abſolute, with Coſts.

De Revoſe, Executor, *againſt* Hayman.

DEfendant having brought a Writ of Error, and put in Bail thereon ſoon after, was laſt Term ſerved with a Rule for better Bail, and thereon gave Notice to juſtify at a Judge's Chamber, but did not. The Bail not being juſtified within four Days, Plaintiff took a Certificate thereof from the Clerk of the Errors, and ſued out a *Ca. ſa.* which was held to be regular. Defendant has not Time of Courſe to perfect his Bail till the Term next following, where the Rule is ſerved in Vacation, but ought to juſtify before a Judge; and if Plaintiff be not ſatisfied with that, then Defendant, having done every Thing in his Power, is intitled to Time till the next Term, but not otherwiſe. *Poole* for Defendant; *Skinner* for Plaintiff.

Sweet-

Sweetapple *againſt* Atterbury. Trin. 22 & 23 Geo. 2.

PLaintiff having obtained Judgment in *Middleſex*, ſued out in the firſt Inſtance a *Teſtat. Fi. fa.* into *Warwickſhire*, and took Defendant's Goods in Execution. Defendant moved to ſet aſide the *Teſtat. Fi. fa.* for Want of a *Fi. fa.* returned *Nulla Bona* in *Middleſex* to warrant it. Plaintiff, after the *Teſtat. Fi. fa.* executed as aforeſaid, and Notice of Motion, but before the Motion made, got a *Fi. fa.* in *Middleſex* returned; which the Court held ſufficient, and diſcharged the Rule to ſhew Cauſe. *Wynne* for Defendant; *Draper* for Plaintiff.

Weſt and his Wife *againſt* Hedges. Hilary 24 Geo. 2.

A Bill of Sale held to be a Removal of Goods taken by a *Fi. fa.* and a Year's Rent ordered to be paid the Landlord out of the Mony levied by the Sheriffs of *London*. *Draper* for *Steere* the Landlord; *Prime* for Plaintiff.

Incledon *againſt* Clarke, in Error. Eaſter 25 Geo. 2.

AFTER Writ of Error allowed, and Notice thereof given, Plaintiff in the Judgment executed a *Fi. fa.* for Want of Bail within four Days; Defendant moved to ſet aſide the *Fi. fa.* ſuggeſting that Plaintiff could not regularly take out Execution, till after a Certificate from the Clerk of the Errors that no Bail was put in. The Court diſcharged the Rule. Such Certificates have been frequently taken out of Caution, but are not eſſentially neceſſary. The Statute 16 & 17 *Car.* 2. is poſitive as to Bail within four Days. *Vide* General Rules, *Trinity & Mich.* 28 *Car.* 2. No Bail is yet put in; Bail ought to have been put in before the Motion. A Queſtion aroſe, Whether after Bail perfected the Goods can be reſtored? *Vide* Meriton *againſt* Stevens, *Mich.* 16 *Geo.* 2. Sykes *againſt* Dawſon, *Hil.* 18 *Geo.* 2. Held, that if Defendant's Perſon be taken by a *Ca. ſa.* and Bail in Error afterwards perfected, the Perſon ſhall be diſcharged; but in Caſe of a *Fi. fa.* the Proceedings, ſo far as the Sheriff hath gone, muſt ſtand. *Draper* for Plaintiff; *Willes* for Defendant.

Fine.

Lombe *againſt* Lombe. Trinity 14 & 15 Geo. 2.

INFANT Truſtees, by Order of the Court of Chancery, were to convey by Fine. *Birch* moved, that the Fine might be ordered to paſs, notwithſtanding the Infancy of the Truſtees, who were Daughters of the late Sir *Thomas Lombe*, and one of them the Wife of Sir *Robert Clifton*. The Order in Chancery being read, and the Parcels compared, the Motion was granted. *Scrope* verſus *Dom. Fitzwilliam & Ux. Hilary* 6 *Geo.* (a Caſe in Point) was quoted.

Heathcock, Baronet, *againſt* Hanbury, Eſquire, and his Wife. Mich. 24 Geo. 2.

TWO Fines of Lands in *Northamptonſhire* and *Rutlandſhire*, taken at *Hamburgh* in Foreign Parts, where the Cogniſors reſided, were ordered to paſs by all the four Judges, upon an Affidavit of a Commiſſioner of the due Execution of each Fine, ſworn before a Clerk in Chancery of the City of *Hamburgh*, and authenticated by his Certificate or Atteſtation as a Notary Publick.

Habeas

Habeas Corpus et Procedendo.

Lawndy *againſt* Clarke, in Caſe. Mich. 17 Geo. 2.

DEfendant brought a Writ of *Re. fa. lo.* but took no Care to procure it to be returned and filed within two Terms; Plaintiff afterwards obtained a Certificate from the Filazer that the *Re. fa. lo.* was not filed, and thereupon the Curſitor made out a *Procedendo* as uſual, and Plaintiff proceeded to Trial, and had a Verdict in the Court below. Defendant inſiſted, that the Certificate ought to have been from the Prothonotary, and not the Filazer. In Replevin the *Re. fa. lo.* is filed by the Filazer, but in all other Actions by the Prothonotary; and ſo the Officers reported, and the Court held the Practice to be. The Rule to ſet aſide the *Procedendo* was diſcharged, the Application being too late. Rule to ſhew Cauſe why *Re. fa. lo.* ſhould not be taken off the File, enlarged, but never finally determined. *Draper* for Defendant; *Barnardiſton* for Plaintiff.

Burdus *againſt* Shorter and Satchwell. Mich. 17 Geo. 2.

PLaintiff moved for a *Ha. cor.* to bring two Priſoners in the *Fleet*, both charged in Execution, to the Sittings at *Guildhall*, to teſtify in this Cauſe, upon an Affidavit of their being material Witneſſes; and a Rule was made to ſhew Cauſe why ſuch *Ha. cor.* ſhould not be granted; or why the Witneſſes ſhould not be examined upon Interrogatories, and their Depoſitions read in Evidence at the Trial; and afterwards enlarged to ſhew Cauſe as before, (Plaintiff indempnifying the Warden); but for Want of the Conſent of Defendants and the Warden, the Rule was diſcharged. Sometimes ſuch Writs of *Ha. cor.* have been granted. The ſingle Point of Law is, Whether, under ſuch *Ha. cor.* (the Priſoners being in Execution) the Warden could not defend himſelf againſt an Action for an Eſcape? The laſt Time this Queſtion was before all the Judges, ſeven againſt five were of Opinion, that the *Ha. cor.* would not excuſe the Warden, but he would be liable to anſwer for an Eſcape. *Stiles's Practical Regiſter* 160, 283. *Lord Raymond* 851. granted *ad teſtificand. apud le Old Baily pro Rege*, without Affidavit, *Paſch.* 11 *Ann.* 3 *Keble* 51. The King *againſt* Huggins, at the *Old Baily*, granted *ad teſtificand. pro Rege*,

Geo.

Geo. 2. *Willes* for Plaintiff; *Skinner* for Defendant.

Pettit and others *againſt* Molloy. Mich. 19 Geo. 2.

HA. *cor. ad ſatisfaciend.* in this Cauſe only, three Judgment-Rolls produced in this and two other Cauſes, by Attorny for Plaintiffs, who deſired that Defendant might be charged in Execution in all three. By the Judges in the Treaſury, Defendant can only be charged in that Cauſe wherein the *Ha. cor.* is brought. There muſt be an *Ha. cor.* on every Judgment.

Francia *againſt* Lumbroza de Mattos and his Wife.

ON an Affidavit that *Mordecai Dalmeida*, a Priſoner in the *Fleet* charged in Execution, was a material Witneſs, Defendant moved for an *Ha. cor. ad teſtificand.* to bring him before Lord Chief Juſtice at the Sitting after Term. The Court declared it to be a very doubtful Point, whether ſuch an *Ha. cor.* would be a Juſtification for the Warden in an Action of Eſcape; and therefore did not grant the Writ, but by Conſent a Rule was made, that the Depoſitions of the ſaid *Mordecai Dalmeida*, taken in Chancery,

be read in Evidence on the Trial at Law. *Skinner* for Defendant; *Willes* for Plaintiff.

Ex parte Martin. Eaſter 25 Geo. 2.

SAmuel *Martin*, brought into Court by *Ha. cor.* directed to the Sheriff of *Glouceſterſhire*, prayed to be committed to the *Fleet*, with the Cauſes mentioned in the Return, which were, firſt, a Detainer for Want of Sureties, by a Warrant from a Juſtice of Peace, on an Indictment for leaving a Baſtard Child, whereby a Pariſh became chargeable with it's Maintenance. Secondly, an *Excommunicato capiendo* iſſued out of Chancery, returnable in the King's Bench. And thirdly, with Exchequer Proceſs on a Recognizance forfeited at the Seſſions. The Court remanded the Priſoner, being of Opinion, that as to the two firſt Cauſes of Detainer, they had no Juriſdiction. As to the third, the Court inclined to think, that as it was not an Extent, Defendant might have been committed therewith, abſtractedly conſidered.

Imparlance.

Fitzwilliams *againſt* The Biſhop of Hereford and the Univerſity of Cambridge, in Quare Impedit. Trin. 13 & 14 Geo. 2.

H*ayward* for Defendants moved for an Imparlance, the Declaration having been delivered after the Eſſoign Day, (*viz.* 4 *June*) *Draper* for Plaintiff produced a peremptory Rule to plead, after which there can be no Imparlance. The Rule to ſhew Cauſe was diſcharged; but the Court gave Defendants a Month's Time to plead.

againſt Higham, 12 June, in the Treaſury. Trin. 17 & 18 Geo. 2.

DEfendant appeared to be a Lunatic, by Affidavits of his Wife and Dr. *Monro*, and a Commiſſion of Lunacy was produced under Seal in Chancery, *teſte* 7th inſtant. Imparlance ordered, upon hearing the Attornies on both Sides.

Baker *againſt* Barlow and his Wife. Mich. 18 Geo. 2.

THE Writ was returnable the firſt Return of the Term, and Defendants put in Bail in Time, and Plaintiff declared; but the Declaration not having been delivered with Notice to plead, according to the General Rule, *Paſch.* 3 *Geo.* 2. Defendants moved for an Imparlance. *Per Cur':* This Rule has been taken to extend only to Caſes where Plaintiff appears for Defendant, according to the Statute; but ſo long as the Rule ſubſiſts, in plain and expreſs Words requiring all Declarations on Proceſs returnable the firſt or ſecond Return of any Term, to be delivered with Notice to plead, no Conſtruction can be put upon it, contrary to the Letter, and an Imparlance cannot be denied. Rule abſolute for Imparlance. *Urlin* for Defendants; *Skinner* for Plaintiff.

Cam *againſt* Gardner. Hil. 19 Geo. 2.

WRIT returnable the firſt Return of this Term, in a Bailable Action, Declaration left in the Office without Notice to plead indorſed, but Notice of Declaration and to plead ſerved on Defendant. Defendant moved in the Treaſury for an Imparlance, for Want of Notice indorſed; which

was

was denied, the Notice ſerved on Defendant is ſufficient within the Rule 3 *Geo.* 2.

Turner *againſt* Pigg.

WRIT returnable the firſt Return of this Term, Declaration delivered without Notice to plead indorſed; a Summons taken out for an Imparlance, afterwards Notice to plead given in Time, before the laſt four Days of the Term; held good Notice, and Imparlance denied in the Treaſury, on hearing the Attornies on both Sides.

Note; A Rule to plead muſt be given ſubſequent to the Notice.

Swinley *againſt* Woodhouſe. Mich. 21 Geo. 2.

AFTER the Judgment ſet aſide by Rule of Court, Plaintiff's Agent applied to Defendant's Agent, and deſired Leave to indorſe Notice to plead on the Declaration delivered; which being denied, Plaintiff's Agent gave Notice to plead in Writing. Defendant applied for an Imparlance for Want of Notice to plead indorſed on the Declaration; which was granted. *Vide* General Rules, *Mich. primo*, *Mich. 3tio & Paſch. 3tio Geo.* 2. as to the Delivery of Declarations with Notice to plead; and *Baker* againſt

Barlow & Ux. Mich. 18 *Geo.* 2. *Prime* for Defendant, *Skinner* for Plaintiff.

Cracroft, one, &c. *againſt* Willoughby, one, &c. Hilary 22 Geo. 2.

PLaintiff recovered Judgment by Bill, *Hil.* 19 *Geo.* 2. and in *Trinity* Term laſt (after a Writ of Error brought) had Leave of the Court to file a Bill to warrant the Proceedings of *Mich.* 19 *Geo.* 2. and this Bill, with Minutes of an Imparlance ſubſcribed, was certified by the *Cuſtos Brevium* into the Court of King's Bench; which being a nugatory Act, that Court would take no Notice of it. Afterwards Plaintiff, (Defendant in Error) alledged Diminution, and by *Certiorari* carried up to the King's Bench a Record of the Imparlance. Defendant (Plaintiff in Error) now moved to ſtrike the Imparlance off the Roll. But the Court held, That by Virtue of the Rule for Leave to file a Bill of *Mich.* 19 *Geo.* 2. to warrant the Proceedings, Plaintiff might, as a neceſſary Conſequence, enter the Imparlance on the Roll. Rule by Conſent, to refer to Prothonotary to tax Defendant's Coſts, occaſioned by Plaintiff's not entering Imparlance on the Roll in Time, and Coſts of Application. Defendant to bring Damages, and Coſts recovered, into Court; Coſts to be taxed as above, to be deducted, and Reſidue paid Plaintiff; Satisfaction

faction on Record to be acknowledged at Defendant's Expence. *Agar* and *Bootle* for Plaintiff; *Draper* for Defendant.

Gaſcoigne and his Wife *againſt* Brown. Trinity 24 Geo. 2.

DEfendant having been ſerved with Proceſs returnable the firſt Return of this Term, Plaintiff on the firſt Day of the Term left a Declaration in the Office *de bene eſſe*, and cauſed Notice thereof to be perſonally ſerved on Defendant the ſame Day; but Notice to plead not being indorſed on the Declaration left in the Office, the Queſtion was, Whether ſuch Indorſement was neceſſary, or not? And the Court, on looking into the General Rules *Mich.* 1ſt, *Mich.* 3d and *Eaſter* 3 *Geo.* 2. held, That in this Cauſe it was not neceſſary to indorſe Notice to plead on the Declaration, the Notice ſerved on Defendant is ſufficient; it was the original Courſe. After the Rule of *Mich.* 1ſt, to eſtabliſh the Practice, under the Statute to prevent frivolous and vexatious Arreſts, (directing how Notice is to be ſerved on Defendant where Plaintiff appears for him) Defendant was intitled to imparl, till the Rule of *Mich.* 3d took away the Imparlance. The Rule of *Eaſter* 3d directs nothing about the Notice, only that Declaration

tion ſhall be delivered with Notice. The Declaration is not compleat till Notice; it is a Declaration only from the Time of Notice, which is the ſingle Thing material. Rule to ſhew Cauſe why Imparlance, diſcharged. Two Caſes in the Treaſury had been determined, agreeable to the preſent Rule, before the Caſe in Court. *Swinley* againſt *Woodhouſe*, *Mich.* 21 *Geo.* 2.
for Plaintiff; for Defendant.

Inquiry.

Wallace *againſt* Humes. Trinity 13 & 14 Geo. 2.

AFTER the Execution of a Writ of Inquiry of Damages, final Judgment ſigned, and Execution executed, Defendant moved in *Eaſter* Term 1740 to ſet the ſame aſide, and for Reſtitution of the Mony levied, becauſe the Inquiry was not executed, either before the High Sheriff of *Cambridge-ſhire*, (in which County the Action was laid) or his Under-Sheriff, but before one *George Worrall*, an Attorny, who was deſired by Plaintiff's Attorny to act as a Deputy to the Under-Sheriff for this Purpoſe; and a Rule *Niſi* was granted. Upon ſhewing Cauſe in *Trinity* Term 1740, it was alledged on Plaintiff's Behalf, that it was a common Practice, where Under-Sheriffs live at a great Diſtance from the Parties and their Witneſſes, for ſuch Under-Sheriffs to appoint Deputies for the Execution of Writs of Inquiry, in order to ſave Expence to the Parties. And although it appeared that one *White*, who acted as Under-Sheriff for this County, had given an Authority for the Execution of this Inquiry

quiry before ſome Attorny in *Wiſbech*, where the Parties lived, and that Plaintiff's Attorny had paid him 13 *s.* 4 *d.* for his Fee; yet the Court ſeemed clear of Opinion, that the Inquiry was improperly executed; for a Deputy could not appoint a Deputy. But it appearing, that the Defendant had made a Defence upon the Inquiry; and in Regard that only 9 *s.* Damages were found by the Jury, the Court thought it would be doing Defendant more Service to let the Inquiry, *&c.* ſtand, than to ſet them aſide; therefore they diſcharged the Rule, but declared, that in order to put a Stop to this Practice of Under-Sheriffs making Deputies, they would grant an Attachment againſt any one that ſhould do it for the future. *Prime* for Plaintiff; *Skinner* for Defendant.

Davis *againſt* Skyllins. Eaſter 14 Geo. 2.

RULE to ſhew Cauſe why Inquiry and Inquiſition ſhould not be ſet aſide, as executed before a Perſon deputed by the Under-Sheriff, and acting without proper Authority. It appeared, on ſhewing Cauſe, that the Inquiry was executed before a Deputy appointed by a Deputation under the Seal of the Sheriff's Office, and the Rule was diſcharged, with Coſts. *Bootle* for Plaintiff; *Gapper* for Defendant.

Langley

Langley *againſt* Bothwright, an Attorny. Mich. 15 Geo. 2.

AFTER an Interlocutory Judgment, Plaintiff ſued out a Writ of Inquiry of Damages, and before the Return thereof, altered the ſame, cauſed it to be reſealed, and afterwards proceeded to the Execution thereof, according to regular Notice. Defendant moved to ſet aſide the Inquiry, by Reaſon of this Alteration, and obtained a Rule to ſhew Cauſe; which was diſcharged, the Court being of Opinion, that as the Writ of Inquiry had not been made Uſe of before the Alteration, the Plaintiff had done nothing irregular; and the Complaint being groundleſs, and containing ſome Scandal, the Court gave Plaintiff his Coſts. *Willes* for Defendant; *Prime* and *Bootle* for Plaintiff.

Yate *againſt* Swaine, for Falſe Impriſonment.

A Rule was obtained to ſhew Cauſe why the Writ of Inquiry of Damages, and Inquiſition thereon, ſhould not be ſet aſide. Two Objections were made; one, that the Notice was ſerved upon the Defendant himſelf, and not his Attorny; and the other, that the Time appointed by the Notice for

executing the Writ of Inquiry was between the Hours of ten and five. It was admitted, for Plaintiff, that both Objections were good; but it was inſiſted, that both of them were cured, by one *Ruſſel* an Attorny's attending at the Execution of the Writ of Inquiry, on the Part of Defendant, croſs-examining Plaintiff's Witneſſes, and producing a Witneſs for Defendant. The Damages were 250 *l.* No Special Damages being laid, and it appearing that Plaintiff was confined for no longer Time than 26 Days, and Plaintiff himſelf making no Affidavit about the Damages or Impriſonment, the Court thought the Damages exceſſive, and ordered the Inquiry to be ſet aſide, upon Payment of Coſts, and a new Writ of Inquiry to be executed before a Judge at next Aſſizes. *Willes* and *Wynne* for Defendant; *Skinner* and *Birch* for Plaintiff.

Billers, Knight, and another, *againſt* Bowles. Hilary 18 Geo. 2.

RULE to ſhew Cauſe why Inquiſition taken on Writ of Inquiry of Damages, made abſolute; no Evidence of Plaintiff's Demand having been given to the Sheriff and Jury. Plaintiff urged, that the Demand was by Promiſory Note indorſed ſet forth in the Declaration, which was admitted by not pleading, and the Damages found were only

the Amount of Principal and Intereſt due on ſuch Note. But the Court held, That the Note indorſed ought to have been produced, and the Note and Indorſement proved. *Agar* for Defendant; *Urlin* for Plaintiff.

Penrice, Widow, *againſt* Penrice, by Writ of Dower *unde nihil habet.* Trin. 18 & 19 Geo. 2.

ON the Execution of a Writ of Inquiry, the Jury found for Damages the Value of a Third Part of the Land, from the Time of the Huſband's Death to the Day of the Inquiſition, without any Deduction for Reprizes, *viz.* Land-Tax, Repairs and Chief-Rent, and for Coſts, the Jury gave the Amount of the Attorny's Bill for the Demandant, upon his Evidence that the ſame was a reaſonable Charge, and he expected it from his Client. Damages are given by the Statute of *Merton*, Coſts by the Statute of *Glouceſter*. The Court thought, that the Value of the Third Part of the Profits run ſince the Death of the Huſband, ſhould have been computed only to the Time of awarding the Writ of Inquiry, and not to the Day of the Inquiſition. That an Allowance ought to have been made for Reprizes; the Words of the Writ are (*ultra Repriſas*); and that the Attorny's Bill, to his Client the Demandant, ought

ought not to have been the Meaſure of Coſts. The Inquiſition was ſet aſide, and a new Writ of Inquiry ordered to be executed before a Judge at next Aſſizes, on Payment of Coſts. *Skinner* for Tenant; *Birch* and *Wynne* for Demandant.

Quære, Whether the Jury ſhould not have given Common Coſts, One Shilling, as uſual, and the reſt be taxed and allowed *de incremento per* Prothonotary? But this was not before the Court.

Ellis *againſt* Wall. Trinity 19 & 20 Geo. 2.

INquiſition taken on a Writ of Inquiry of Damages ſet aſide, for Want of Plaintiff's proving a Promiſory Note ſet forth in the Declaration. Plaintiff's Attorny inſiſted, before the Sheriff and Jury, that the Note was admitted by Defendant's ſuffering Judgment, and the Jury found the Sum mentioned in the Note for Damages, without any Proof; which was held unwarrantable. *Agar* for Defendant; *Willes* for Plaintiff.

Sparrow *againſt* Reed, Eſquire, for Damage done to Common Right. Trin. 25 & 26 Geo. 2.

RULE made abſolute for the Execution of Writ of Inquiry of Damages before a Judge at next Aſſizes, though no Affidavit was produced to ſupport the Rule. Juries are returned in a much better Manner at the Aſſizes, than uſually, for Writs of Enquiry. An improper Deputy is often appointed to repreſent the Sheriff, ſometimes Plaintiff's Attorny. Summary Juriſdictions are not to be encouraged. Defendant is in the Rank of Eſquire; he deſires that the Writ may be executed in the Preſence of a Judge; the extraordinary Coſts whereof are like to fall on himſelf. *Willes* for Defendant; *Prime* for Plaintiff.

Inſpection of Court-Rolls and Books.

The Brewers Company *againſt* Benſon. Eaſter 19 Geo. 2.

ACTION brought on By-Laws againſt Defendant, exerciſing the Trade of a Brewer, but no Member of the Company. By-Laws affecting Strangers intereſt them therein. Rule abſolute for Defendant to inſpect the Company's Books, and take Copies. *Skinner* for Defendant; *Willes* for Plaintiff.

Roe *againſt* Aylmar and others, on the Demiſe of Hare, Bart. in Ejectment. Hil. 27 Geo. 2.

THIS Ejectment was brought on the Demiſe of the Lord of a Manor, againſt the Defendant his Tenant, to recover Poſſeſſion of a Copyhold Eſtate, which the Lord inſiſted was forfeited, by Reaſon of the Tenant's not rebuilding a Cottage. Defendant moved for Leave to inſpect and take Copies, at his own Expence, of the Court-Rolls of the Manor; but the Motion was denied, for Want of an Affidavit that a previous

vious Application had been made on Defendant's Part, to the Lord or his Steward, for an Inſpection and Copies, which were denied. Though this is a Diſpute meerly between the Lord and his Copyhold Tenant touching a Forfeiture, yet the ſame previous Application is neceſſary as in other Caſes. The Tenants of a Manor are the only Perſons who have a Right to inſpect the Court-Rolls. The Court always expect an Affidavit to ſhew that the Perſon, on whoſe Behalf the Motion is made, is a Tenant of the Manor, and has applied and been denied, as above-mentioned. *Draper* for Defendant; *Prime* for Leſſor of Plaintiff.

Judgments.

Webb *againſt* Spurrell. Trinity 13 & 14 Geo. 2.

PLaintiff recovered a Verdict, and after the Trial, and before Final Judgment ſigned, died inteſtate. Plaintiff's Adminiſtrator cauſed Final Judgment to be ſigned 19th *October* 1736, which was within two Terms after the Verdict, but the Roll was not brought into the Office, nor entred upon Record; after the two Terms lapſed, Defendant left a Caveat with the Clerk of Eſſoigns, againſt receiving this Roll; and an Action of Debt being brought by Plaintiff's Adminiſtrator on the Judgment, *Draper* for Defendant moved to ſtay the Entry of Judgment, the ſame not having been entred within two Terms, according to the Statute 17 *Car.* 2. *cap.* 8. and obtained a Rule to ſhew Cauſe; which, upon hearing *Prime* for the Plaintiff, was diſcharged, without Coſts on either Side. *Per Cur':* The Practice of not bringing Rolls into the Office within due Time is very inconvenient, and muſt be remedied by a new General Rule. In this Caſe, the ſigning muſt be conſidered as the Entry; the Fee for entring the Final Judg-

Judgment was paid to the Clerk of the Judgments at the Time it was ſigned; the Roll muſt be received and filed *nunc pro tunc*.

Wait, an Attorny, *againſt* Garth.

JUdgment was ſigned of *Hilary* Term 1733, but, by Omiſſion of Plaintiff's Agent, the Roll was not doquetted and carried into the Office till 29 *June* 1737; and the true Day of doquetting was marked upon the Doquet by the Clerk of the Eſſoigns. *Milner*, who pretended to be a Purchaſor of Defendant's Eſtate for a valuable Conſideration, on 19 *Jan.* 1736, without Notice of this Judgment, moved, and had a Rule for Plaintiff to ſhew Cauſe why the Doquet ſhould not be ſet aſide as void by the Statute 4 & 5 *W. & M. cap.* 20. Upon ſhewing Cauſe it appeared, that the Judgment was for a Debt *bona fide*, and that the Roll was accidentally miſlaid, and omitted to be carried in, the true Time of doquetting appeared to be plainly and fairly entred, without Fraud; and an *Elegit* upon this Judgment appeared to be executed in 1735; and that *Milner* had Notice thereof, who ſeemed, upon the Affidavits, to be a colourable Purchaſor to aſſiſt Defendant. *Per Cur'*: The true Time of doquetting not being concealed, and no Fraud appearing on the Part of the Plaintiff, We will not interpoſe; *Milner* may bring his

Ejectment, and take what Advantage he can. It appeared that *Milner* had not made any Search for Judgments againſt Defendant till after his Purchaſe. The Rule was diſcharged. *Prime* and *Bootle* for Plaintiff; *Birch* and *Agar* for *Milner*.

Note; *Milner* having brought his Ejectment before this Motion came on, the Cauſe was tried at *York* at the Summer Aſſizes 1740, before Mr. Juſtice *Parker*; when *Wait*, who was in Poſſeſſion, ſet up the above Judgment, in Oppoſition to *Milner*'s Title; but *Milner* proving, by the Clerk to the Clerk of the Eſſoigns, that the Judgment-Roll was not carried in to the Clerk of the Eſſoigns and doquetted till 29th *June* 1737, and the Purchaſe-Deeds being executed 18th & 19th *January* 1736, the Judge of Aſſizes determined, That the Judgment, by Reaſon of it's not being doquetted antecedent to the Purchaſe-Deeds, was no Bar to *Milner*'s Title: Therefore a Verdict was found for Plaintiff.

Fowler *againſt* Whadcock. Eaſter 14 Geo. 2.

A Rule was obtained by Plaintiff to ſhew Cauſe why Judgment ſhould not be entered *nunc pro tunc*. The Cauſe was tried in *London* at the Sitting after *Trinity* Term 7 & 8 *Geo.* 2. Defendant filed a Bill in Chancery,

Chancery, and got an Injunction, which was diſſolved 19th *May* 1740, and then Search was made among *Higham* the late Aſſociate's Papers, but the *Poſtea* could not be then found. 21ſt *June* 1740 Defendant died. It appeared that the Bill in Chancery was brought in 1733, and the Anſwer did not come in till 1738, and a further Anſwer not till 1739. *Per Cur':* By the Statute 17 *Car.* 2. *cap.* 8. Judgment may be entred within two Terms after the Verdict, and the Death of the Party between the Verdict and Judgment ſhall not be aſſigned for Error; but this Caſe is not within that Statute; and the Delay is purely the Plaintiff's, and not occaſioned by the Court. Let the Rule be diſcharged. *Draper* for *Humphry Whadcock*, Heir and Executor of Defendant; *Bootle* for Plaintiff.

Gardner *againſt* Goodall.

JUdgment was ſigned for Want of paying for the Iſſue-Book, and Defendant had a Rule to ſhew Cauſe why the Judgment ſhould not be ſet aſide. Upon ſhewing Cauſe it appeared, that Plaintiff had charged and demanded for the Iſſue-Book 6 *s.* 8 *d.* more than was due. The Court were clearly of Opinion, that the old Doctrine, that Defendants muſt pay whatever was demanded for

Paper-Books, ought to be exploded; it is ſufficient if they are ready to pay what is due. Let the Judgment be ſet aſide, without Coſts, Defendant taking ſhort Notice of Trial for the third Sitting. *Urlin* for Defendant; *Belfield* for Plaintiff.

Wagſtaffe *againſt* Long, an Attorny. Mich. 15 Geo. 2.

DEfendant, bound by a Judge's Order to plead an iſſuable Plea, pleaded that Plaintiff was an Infant, and ought to ſue by *Prochien Amy*, and not by Attorny. Plaintiff looked upon this Plea as a Nullity, and ſigned Judgment. *Hayward*, for Defendant, moved to ſet the Judgment aſide. But the Court refuſed to make any Rule, being of Opinion that this is a Plea in Abatement, and conſequently null and void. The Judgment is regular, and Plaintiff was not obliged to apply to the Court to ſet aſide the Plea. An iſſuable Plea is a Plea in chief, upon which Plaintiff may take Iſſue.

Longman *againſt* Rogers.

THIS was an Action of Debt on Bond. Defendant craved Oyer and a Copy of the Bond and Condition, and had the ſame, but without the Witneſſes Names, or a Copy of an Agreement ſubſcribed to the Condition.

tion. Plaintiff ſigned Judgment for Want of a Plea, and Defendant moved to ſet the ſame aſide; inſiſting, that he was intitled to a more perfect Copy, with Witneſſes Names, *&c.* The Practice was reported to be, that Defendant was intitled to Oyer of no more than the Bond and Condition, and not the Witneſſes Names, *&c.* But *per Cur':* That Practice is unreaſonable, and muſt be altered. After a *Profert* of a Deed, it is conſidered as in Court, and it may be material for the Party's Defence to inſpect the ſame, and take a Copy of the Whole, with Witneſſes Names, and all Memorandums ſubſcribed or indorſed, which he has a Right to. Anciently the Witneſſes were Parties to the Deed, and were incorporated with the Jury to try the Deed. Let the Judgment be ſet aſide, without Coſts. Let Defendant have a Compleat Oyer, and a Copy of the Deed and Witneſſes, *&c.* and plead an iſſuable Plea. It was objected, that *Milton*, Defendant's Attorny, who ſigned the Notice of Motion, was a Priſoner in the *Fleet*, and conſequently the Notice, *&c.* void. But *per Cur':* The late Act of Parliament diſqualifying Attornies who are Priſoners from practiſing, relates only to proſecuting, and not to defending Suits. *Wynne* for Defendant; *Skinner* for Plaintiff.

Buckle

Buckle *againſt* Lucas, Adminiſtrator.

JUdgment was ſigned as quickly as could be, and ſtrictly regular, but was ſet aſide on Payment of Coſts; and Defendant had Leave to plead two Bonds, and *Plene adminiſtravit præter*. *Draper* for Defendant; *Prime* for Plaintiff.

Hopkins *againſt* Knapp, an Attorny.

THIS was an Action on the Caſe *ſuper Aſſumption'*, and after Iſſue joined on *Nul tiel Record*, Plaintiff's Attorny delivered the Book, and gave Defendant a Day to bring into Court the Record by him averred, (*viz.*) *Monday* next after eight Days of St. *Martin*; and the Record not being brought in that Day, Plaintiff drew up a Rule for Judgment, unleſs Cauſe, on *Wedneſday* next, ſigned Judgment, and executed a Writ of Inquiry of Damages. Defendant objected to the Judgment, that the Rule ſhould have been, unleſs Cauſe within four Days, and not for a ſhorter Time. *Per Cur'*: Where the Judgment is final, the Rule ſhould be, unleſs Cauſe within four Days, that Defendant may have that Time to move in Arreſt of Judgment; but where the Judgment is interlocutory, (as in this Caſe) that Reaſon fails, and there is no Occaſion for a four Days

Days Rule; becauſe Defendant may move in Arreſt of Judgment after the Inquiry executed. Where the Proceeding is by Original, and a general Return Day is given to bring in the Record, the Defendant ought to be called to bring in the Record at the Riſing of the Court that Day; and if he fail, the Rule for Judgment ſhould be, unleſs Cauſe on the Appearance Day of that general Return, and the Record may be brought in on that, or any intervening Day; but here, where the Proceeding is by Bill againſt an Attorny, and the Day given to bring in the Record is a Day certain, the Record cannot be brought in after that Day; but on that Day, at the Riſing of the Court, Defendant ought to be called to bring in the Record; and if he fail, the Court will appoint the Day to be inſerted in the Rule for Judgment *Niſi Cauſa*. The Rule drawn up for Judgment *Niſi* was held good, and the Objection to the Judgment over-ruled.

Defendant objected to the Writ of Inquiry, that it was executed on leſs than fourteen Days Notice, though he lived above forty Miles from *London*; and this Objection being valid, the Inquiry, and Inquiſition taken thereon, were ſet aſide. Defendant's being an Attorny, and ſuppoſed to be preſent in Court, makes no Difference, the Place of his actual Reſidence being at *Abingdon*, above

forty Miles from *London*. *Skinner* for Defendant; *Bootle* for Plaintiff.

Smithſon *againſt* Broughton, an Attorny. Trinity 16 Geo. 2.

UPON an Attendance of the Attornies on both Sides 2d *June*, a Judge's Order was made, by Conſent, for nine Days Time to plead; on 12th *June* Defendant obtained and ſerved a Summons for further Time to plead; and after ſuch Service, which was before Noon, Plaintiff's Agent ſigned Judgment; inſiſting, that the Summons for further Time, taken out after the Expiration of the Time to plead given by the Order, was a Nullity. This Judgment may be ſtrictly regular; but it is quick Practice in Plaintiff's Agent. The Summons was ſerved before he could regularly ſign his Judgment, which he could not do till the Opening of the Prothonotary Office in the Afternoon of the 12th *June*. The Judgment was ordered to be ſet aſide, and Defendant to plead an iſſuable Plea, and take Notice of Trial within Term.

Northern

Northern, Adminiſtrator, *againſt* Oliver.

ON the 1ſt *December* 1741 Plaintiff's Inteſtate died, and on the 6th of ſame *December* Interlocutory Judgment was ſigned of the *Michaelmas* Term preceding; Defendant moved to ſet aſide the Judgment and the ſubſequent Proceeding by *Sci. fa.* thereupon. Upon ſhewing Cauſe, the Court were of Opinion, that the Roll having been filed before the Eſſoign Day of *Hilary* Term, the Judgment is good by Relation, though the Party was dead before the actual Signing, eſpecially as it is only Interlocutory, and no Day of ſigning is required to be ſet to it. *Oades* againſt *Woodward*, *Salk.* 87. And the Rule to ſhew Cauſe why the Judgment, *&c.* ſhould not be ſet aſide, was diſcharged. *Wynne* for Defendant; *Draper* for Plaintiff.

Southerton, an Attorny, *againſt* Greenfield. Mich. 16 Geo. 2.

AFTER a Judge's Order for two Days further Time to plead, Plaintiff, on the third Day before Noon, ſigned Judgment, ten Days before the End of laſt Term. Defendant did not move then, nor till after Delay of Trial in *Middleſex*, and Writ of Inquiry executed. *Per Cur':* The Judge's

Order is an Enlargement of the Time to plead, and Judgment could not be regularly ſigned till the third Day in the Afternoon: But in this Caſe, Defendant's Application comes too late. The Rule to ſhew Cauſe why the Judgment ſhould not be ſet aſide, was diſcharged. *Prime* for Plaintiff; *Draper* for Defendant.

Broadbent *againſt* Wilks.

VERDICT for Defendant on two Iſſues joined upon Not guilty, and a Juſtification. By the Special Plea the Treſpaſs was confeſſed; Judgment was ordered to be entered for the Plaintiff, notwithſtanding the Verdict, the Treſpaſs being confeſſed by the Special Plea. The true Method is, not to ſtay the Entry of Judgment upon the Verdict by Rule, but to enter the Verdict upon Record, and then Judgment for the Plaintiff, *non obſtante Veredicto*. *Prime* and *Agar* for Plaintiff; *Bootle* for Defendant.

Ford and Ford *againſt* Odam. Eaſter 16 Geo. 2.

DEfendant, an Infant, put in a Parol Demurrer, without any Affidavit of the Infancy; Plaintiff looked upon it as a Nullity, and ſigned Judgment. The Court held this to be no Plea, either in Bar or Abatement,

ment, but properly a Demurrer; and that an Affidavit is not requiſite. The Judgment was ſet aſide. Plaintiffs may reply Full Age, if they think fit. *Draper* for Defendant; *Belfield* for Plaintiffs.

Gylbert *againſt* Gylbert, in Debt on Bond; The Same *againſt* The Same, in Caſe.

DEclarations were delivered, and Pleas demanded, in the Country; and Oyer and a Copy of the Bond demanded, and a Copy given there laſt Term; and Judgments being ſigned for Want of Pleas, Defendant moved and obtained a Rule to ſhew Cauſe, why the Proceedings ſhould not be ſet aſide; inſiſting, that the Delivery of the Declarations, *&c.* in the Country were irregular, and ought to have been tranſacted in Town; but the Court held otherwiſe. It is ſettled, that Notice of Trial and of the Execution of a Writ of Inquiry of Damages, may be given in the Country. Every Thing that depends upon Practice may be varied, but not the Law. Defendant's Attorny accepted the Declarations, demanded Oyer of the Bond, and was contented with a Copy in the Country. The Rule was diſcharged. *Skinner* for Defendant; *Belfield* for Plaintiff.

Hall

Hall *againſt* Morſe. Trinity 16 & 17 Geo. 2.

DEfendant died 16th *February*, and Judgment ſigned the 21ſt; Plaintiff revived the Judgment by *Sci. fa.* againſt Defendant's Adminiſtrator, and after two *Nichils* returned, Execution was awarded. The Court held, That all Judgments muſt be taken to be pronounced in Term-Time; and that ſigning Judgment in the Vacation following, though after the Death of the Party, is good; and the Rule to ſhew Cauſe why the Judgment, *&c.* ſhould not be ſet aſide, was diſcharged. *Belfield* for Plaintiff; *Draper* for Defendant's Adminiſtrator. *Harman* againſt *Smith*, 6 *Mod. Oates* againſt *Woodward*, *Salk.* 87. *Northern* againſt *Oliver*, *Trin.* 1742, *in C. B. Fuller* againſt *Jocelyn.* Duke of *Norfolk*'s Caſe, *Fariſley* 39. *Salk.* 401.

The Duke of Leeds *againſt* Vevers, in Debt on Bond. Hil. 17 Geo. 2.

DEfendant was intitled to eight Days to plead, and within that Time, but after the four Days Rule expired, demanded Oyer of the Bond. Plaintiff inſiſted, that the Demand after the Expiration of the Rule to plead, was void, and ſigned Judgment. The

The Court held, that a Demand of Oyer at any Time within eight Days, where by the Courſe of the Court Defendant is intitled to eight Days to plead, is good; and ſet aſide the Judgment. *Bootle* for Defendant; *Skinner* for Plaintiff.

Fawkes *againſt* Atkinſon. Mich. 17 Geo. 2.

DEfendant died 27th *September* 1743, on the 1ſt of *October* then next Judgment was ſigned of the preceding Term, by Virtue of a Warrant of Attorny, and 27th ſame *October* a *Fi. Fa.* was executed. Defendant's Repreſentatives moved to ſet aſide the Judgment and Execution, but the Court made no Rule. The Judgment is well ſigned of the preceding Term, according to the Courſe of the Court, and relates to the Eſſoign Day of that Term, the Day of ſigning is material only with Reſpect to charging Lands, *&c.* *Prime* for Defendant.

Dalrymple *againſt* Colli.

DEfendant, upon his Marriage, executed a Deed dated 20th *Auguſt* 1743, with a Power therein contained to enter Judgment at Plaintiff's Suit for a certain Sum, but without mentioning Term or Time, or whether upon Bond or *Mutuatus*, or otherwiſe.

This Deed was executed as a Security *inter al.* for Defendant's transferring 2000*l.* *South-Sea* Annuities, upon Truſt for his Wife, within ten Days; and Defendant having failed, Plaintiff, after the End of eighteen Days took out a *Fi. fa.* upon the Judgment, which was entered 23d *Auguſt* 1743, on a *Mutuatus.* The Objections were, that the Words of the Power were [*I bind myſelf, &c.*] and the Judgment could be properly entered on an Obligation only, not on a *Mutuatus*, and not till after the Condition broken, and conſequently not till this preſent Term. The Court thought, that as the Power was at large and unconfined, the Judgment was well entered on a *Mutuatus* of the preceding Term, and the *Fi. fa.* not being taken out till after a Breach of the Condition was regular, and conſonant to the Intention of the Parties. The Rule to ſhew Cauſe why the Judgment and *Fi. fa.* ſhould not be ſet aſide was diſcharged. Had the Judgment been entered of the preceding Term upon the Bond, it would have been abſurd upon the Face of it, the Date of the Bond would have appeared; but as it is entered upon a *Mutuatus*, it is not irregular or erroneous. *Skinner*, *Prime*, *Wynne* and *Bootle* for Plaintiff; *Willes* and *Draper* for Defendant.

Wetherall

Wetherall *againſt* Hawes. Trinity 18 & 19 Geo. 2.

ON ſhewing Cauſe againſt a Rule to ſet aſide a Judgment, all the Objections were fully anſwered except one, which was an Irregularity in Service of the Proceſs; and the Court held, that this Objection, according to the ſettled Practice, comes too late after Judgment. The Rule diſcharged. *Bootle* for Defendant; *Prime* for Plaintiff.

Baker *againſt* Barlow and his Wife, Executors. Mich. 19 Geo. 2.

DEfendants pleaded three Pleas by Leave of the Court, on two of which Iſſues were joined; on the third, for Want of a Rejoinder, Plaintiff ſigned Judgment *quod recuperet*, and took out Execution. The Court held, that after Judgment on the third Plea, (which was *Plene Adminiſtravit*) the Iſſues on the two other Pleas muſt be tried before Plaintiff can recover. If Defendant prevails on any of the Pleas, Plaintiff cannot recover. Rule abſolute to ſet aſide Judgment and Execution, with Coſts; Defendants conſenting to bring no Action. *Prime* for Defendants; *Skinner* for Plaintiff.

Goodtitle *againſt* Notitle, on the Demiſe of Brymer and others, in Ejectment. Eaſter 19 Geo. 2.

THE Agent for the Tenants in Poſſeſſion entered their Appearance with the Filazer, entered into the common Rule, and ſent a Note to Plaintiff's Agent, That Defendants pleaded Not guilty. Plaintiff's Agent ſigned Judgment for Want of a Plea in Form. The Counſel for the Tenants ſubmitted to the Court, That according to Words of the Rule for Judgment againſt the Caſual Ejector, unleſs the Tenants appear, a new Declaration againſt the Tenants ſhould in Strictneſs have been delivered, before a Plea in Form could be required. Judgment ſet aſide, without Coſts. *Skinner* and *Willes* for Defendant; *Prime* and *Bootle* for Plaintiff.

Savile *againſt* Wiltſhire.

DEfendant died 20th *April*, on the 21ſt *April* Application was made on Affidavit from *Eſſex*, ſworn 19th *April*, for Leave to enter Judgment on an old Warrant of Attorny; Rule made and Judgment ſigned the 21ſt *April*. Motion by Executors of Defendant to ſet aſide the Judgment, Defendant being dead before the Rule made and Judgment ſigned. Rule to ſhew Cauſe. If it had appeared to the Court that Defendant

was

was dead, Leave had not been given to enter Judgment, but *Quod fieri non debuit factum valet.* Here is no Impoſition on the Court. No Difference between a Warrant of Attorny under or above a Year old, ſave that if under, Judgment may be entered without, if above, not without Leave of the Court. The Judgment when ſigned relates to the Eſſoin Day of the preſent or preceding Term. Caſes are uniform. The Court will adhere to Fictions and Relations when they tend to promote Juſtice. The old Practice is altered by Act of Parliament, as to Lands only, with Reſpect to the Time from which Judgments are to affect Purchaſors. *Fuller* againſt *Jocelin* in *B. R. Mich.* 4 *Geo.* 2. *Chauncy* againſt *Needham*, *Viner*, Title *Judgment*, 17 *Geo.* 2. *B. R.*

Maurice *againſt* Engier. Mich. 20 Geo. 2.

DEfendant obtained a Judge's Order for Time to plead, pleading an iſſuable Plea, rejoining *gratis*, and taking Notice of Trial within Term. Defendant pleaded accordingly, and Plaintiff replied; and then Defendant, inſtead of rejoining, demurred, merely for Delay. Plaintiff not having Time to ſet down the Demurrer to be argued within Term, ſigned Judgment. Defendant moved to ſet aſide the Judgment, and a Rule

was made to ſhew Cauſe. Upon hearing Counſel on both Sides, the Court thought Defendant's Practice a meer Trick, and diſcharged the Rule. By rejoining *gratis* is meant, rejoining without the common four Days Rule to rejoin. *Bootle* for Defendant; *Draper* for Plaintiff.

Randle *againſt* Warr and others. Hilary 20 Geo. 2.

IT appearing to the Court, that Defendants ſet up a fair Defence, which they could not have the Benefit of under the General Iſſue. The Judgment, which was regular, was ſet aſide, on Payment of Coſts, and pleading an iſſuable Plea, without confining Defendants to the General Iſſue; which, for the particular Reaſons offered in this Caſe would ſignify nothing. *Wynne* for Defendants; *Skinner* for Plaintiff.

Swinley *againſt* Woodhouſe, Clerk, in Debt on Bond. Mich. 21 Geo. 2.

DEfendant ſuperſeded the *Exigent*, which was returnable *Tres Mich.* Plaintiff delivered a Declaration, laying his Action in *London*, without Notice to plead indorſed, gave a Rule to plead, and for Want of a Plea within four Days, ſigned Judgment. Defendant objected the Want of Notice to plead

plead indorſed on the Declaration, purſuant to General Rule *Eaſter* 3 *Geo.* 2. relating to all Proceſs returnable the firſt or ſecond Return of any Term. Defendant alſo inſiſted, That as he lived above twenty Miles from *London*, he was intitled to eight Days Time to plead, by General Rule *Mich.* 3 *Geo.* 2.

It was urged for the Plaintiff, That theſe Rules relate to Proceſs of *Capias*, *&c. ad reſpondendum*, and not to an *Exigent*. That after a Defendant had ſtood out the common Proceſs of *Capias*, *Alias* and *Pluries*, and came not in till the Return of the *Exigent*, he was always, by the ancient Courſe of the Court, obliged to take a Declaration, and plead the ſame Term, without Imparlance, or more Time to plead than given by the common Rule. *Vide Praxis utriuſque Banci*, *Bancus Communis*, *fol.* 8. That theſe Rules were intended to forward Plaintiffs in common Caſes, and not to delay them, where Defendants could not be brought into Court on the ordinary Proceſs. The Words of the Rules being general, and extending to all Proceſs returnable the firſt or ſecond Return, without Exception as to an *Exigent*, or any other particular Proceſs, the Court ordered the Judgment to be ſet aſide, without Coſts. *Prime* for Defendants; *Skinner* for Plaintiffs.

Chapman *againſt* Cattern, otherwiſe Catterns.

AFTER Judgment, and Notice of executing a Writ of Inquiry of Damages, Defendant in *November* moved to ſet aſide the Proceedings; objecting, that tho' the Act to prevent vexatious Arreſts expired 1ſt *June* laſt, Plaintiff, by Virtue of an Affidavit of Service of the Proceſs, ſworn before the Filazer's Deputy 19th *October* laſt, had that Day entered an Appearance. That the Affidavit was *coram non Judice*, and the Appearance void. On ſhewing Cauſe by the Plaintiff, it appeared that the Writ was ſerved in laſt *May*, returnable of *Eaſter* Term; that on Service, Defendant paid Part of the Debt and Coſts, and Plaintiff gave him Time to pay the Reſidue; and did not renew the Proceedings till after that Time expired, and Default made. *Per Cur':* The Application might have been made the firſt Day of the Term, it ſeems now to come too late. The Time was inlarged at Defendant's Requeſt, and now he would take Advantage of it. This looks like a Trick to evade Juſtice. The Appearance may be looked on as entred at the Return of the Writ (as recorded) *nunc pro tunc*, the Affidavit is not taken before a Perſon having proper Authority, but it is very late to inquire into that Matter now.

Propoſal

Propoſal to pay the Reſidue of Debt and Coſts, including the Coſts of the Judgment, but not of the Motions, agreed to by Defendant; and thereupon Proceedings ſtayed. *Agar* for Defendant; *Bootle* for Plaintiff.

Ruſſell *againſt* Martin.

CApias returnable 15th *Trinity*, Plaintiff appeared for Defendant 15th *July*, after Statute expired gave Notice of a Declaration, and for Want of a Plea ſigned Judgment, and 10th *November* gave Notice of executing a Writ of Inquiry. 18th *November* Defendant moved to ſet aſide the Proceedings, inſiſting, that the Appearance was a Nullity. The Court thought, that the Application ought to have been made in the firſt Inſtance. By Conſent Judgment ſet aſide, without Coſts, Defendant to appear *nunc pro tunc*, plead an iſſuable Plea, and take Notice of Trial for the Sitting after Term. *Skinner* for Defendant; *Draper* for Plaintiff.

Wilcox *againſt* Sharpe, in Covenant. Mich. 22 Geo. 2.

DEfendant had pleaded three Pleas by Leave of the Court; Plaintiff afterwards got an Order to amend his Declaration, on Payment of Coſts, in the Taxation whereof the

the Coſts of the Pleas were not inſiſted on, or allowed. Plaintiff paid the Coſts taxed, gave a new Rule, and demanded a Plea; whereupon Defendant's Attorny re-delivered the former Pleas, without ſecond Application to Counſel or the Court. Plaintiff ſigned Judgment for Want of new Pleas. After an Amendment of a Declaration, Defendant has Liberty to plead *de novo*, that is, may do ſo if he has Occaſion, or thinks proper, but he is not obliged to vary his firſt Defence. Rule abſolute to ſet aſide the Judgment. *Willes* for Plaintiff; *Bootle* for Defendant.

Hodges *againſt* Charley, Spinſter, Executrix. Eaſter 22 Geo. 2.

JUdgment ſigned for Want of a Rejoinder. Time had been given by Plaintiff's to Defendant's Agent to rejoin till *Wedneſday*; on *Thurſday*, three Days after Rule out, Summons for Time ſerved held to be no Stay of Proceedings. Judgment regular ſet aſide on Payment of Coſts, and rejoining immediately. *Skinner* for Defendant; *Prime* for Plaintiff.

Cooke *againſt* Dethick and another, in Replevin. Eaſter 23 Geo. 2.

THE Plaintiff brought a *Re. fa. lo.* returnable in *Michaelmas* laſt, and a *Pone* returnable 8 *Hilary* laſt, whereon Defendants appeared, and Plaintiff delivered a Declaration 8th *February* laſt, intitled of *Michaelmas* inſtead of *Hilary* Term; and for Want of a Plea ſigned Judgment, and executed a Writ of Inquiry of Damages laſt Vacation, upon two Notices thereof, directed to Defendant *Dethick* and the other Defendant reſpectively, and both left at the Houſe of *Dethick*. Defendant inſiſted, that he was intitled to an Imparlance; but that Queſtion was not entered into. The Court held the Declaration intitled of *Michaelmas* Term to be null and void. Rule abſolute to ſet aſide the Judgment and Inquiry, Coſts to attend Event of Trial. *Poole* for Defendants; *Willes* for Plaintiff.

Turton *againſt* Riſhton. Trinity 24 Geo. 2.

ON an Iſſue of *Nul tiel Record* joined in an Action of Debt on Judgment, wherein Plaintiff had declared for 95 *l.* adjudged to him for Damages, occaſioned by Non-performance of Promiſes and Undertakings,

takings, &c. Plaintiff produced a Record of the Judgment to verify his Declaration, whereupon it was objected by *Prime* for Defendant, that the Record produced contains a Recovery of 95 *l.* Part for Damages, and the Reſidue for Coſts, and the Record alledged is a Recovery for Damages only. But the Objection was over-ruled, and Judgment given for the Plaintiff. The Declaration is in the ſettled conſtant Form of this Court, uſed in ſuch Declarations and in Writs of *Scire facias* to revive Judgments. After the Coſts incorporated with and made Part of the Damages, the Concluſion of the Judgment is, Which ſaid Damages amount in the Whole to 95 *l.* The Form of the King's Bench differs from that of this Court. The Precedents are uniform, and joined to the Reaſon of the Thing, muſt prevail. *Brown's Modus intrandi* 157. *Officina Brevium* 283. *Bootle* for Plaintiff.

Dean *againſt* Unwin, one, &c.

MORE Mony was charged on the Iſſue-Book than due, *viz.* 2 *s.* 4 *d.* for a ſecond Copy of the Declaration, which was of the ſame Term with the Iſſue; and Defendant refuſing to pay for the Iſſue, Plaintiff ſigned Judgment. The Court held it neceſſary that Defendant ſhould tender the Sum due, and for Want of ſuch Tender diſcharged

charged the Rule to ſhew Cauſe why the Judgment ſhould not be ſet aſide. *Poole* for Plaintiff; *Hayward* for Defendant.

Ouldham and another *againſt* Lee. Trinity 24 & 25 Geo. 2.

JUdgment ſigned for Non-payment of Mony due for an Iſſue-Book, tendered at the Houſe of Defendant's Attorny twice, at proper Hours, though not left there, held to be regular, and Rule to ſhew Cauſe why the Judgment ſhould not be ſet aſide diſcharged. *Prime* for Plaintiff; *Willes* for Defendant.

Bickerton *againſt* Lewis.

AFTER an Appearance entred for Defendant by Plaintiff, according to the Statute, the Clerk of Defendant's Agent took the Declaration out of the Office, and the Clerk of Plaintiff's Agent had Notice thereof; and, as the Clerk of Defendant's Agent ſwore, undertook not to ſign Judgment without calling for a Plea; notwithſtanding which, Judgment was ſigned without ſuch Calling. The Clerk of Plaintiff's Agent denied the Undertaking. The Court thought the Judgment not fair, though regular; and made the Rule abſolute for ſetting it aſide, on Payment of Coſts, and pleading the General

neral Iſſue. *Draper* for Defendant; *Prime* for Plaintiff.

Eames *againſt* Jew. Mich. 25 Geo. 2.

OBjection, That no Plea was demanded in Writing. Anſwer, That a Demand of a Plea was indorſed on the Declaration delivered. Held, That ſuch Indorſement is inſufficient. A Plea muſt be demanded in Writing, after Declaration delivered, and Rule to plead given. Rule abſolute to ſet aſide the Judgment, with Coſts. *Willes* for Defendant; *Prime* for Plaintiff.

Hobbs *againſt* Greene. Eaſter 25 Geo. 2.

THIS was an Action of Treſpaſs for breaking and entring Plaintiff's Houſe, and taking and carrying away divers Quantities of China Ware, Earthen Ware and Linen, without ſetting forth the Particulars. Defendant ſuffered Judgment by Default; and after a Writ of Inquiry executed, and one Penny Damages found, Defendant moved in Arreſt of Judgment, and obtained a Rule to ſhew Cauſe; objecting, that though the Writ be ſhort, the Count ſhould explain the Particulars of the Goods. *Playter*'s Caſe 5 *Coke* 34. *Piſces ſuos cepit*, held to be uncertain, neither Number nor Kind being mentioned.

Elphick againſt *Acton*, 1 *Vent.* 114. in Trover *de diverſis Veſtimenti*, bad for Uncertainty. 1 *Vent.* 272, 329. 1 *Inſt.* 383. A. *Doc. Placitand.* 85, 86, 87. On ſhewing Cauſe it was anſwered, on the Part of Plaintiff, that in Treſpaſs or Trover there ſeems to be no Occaſion for great Certainty, becauſe Damages are to be given only for what is proved, as in an *Indebitat. Aſſumpſit*, and this Recovery may be pleaded in Bar to a new Action. *Bourn and Wife* againſt *Matair*, in Replevin, in *B. R.* Lord *Hardwicke* Ch. Juſt. *Hartford* againſt *Jones*, 2 *Salk* 654. *Harriſon* againſt *Botomley*, *Trin.* 2 *Geo.* 1. *Kempton* againſt *Lampſter*, *Trin.* 1 *Geo.* 1. *Raſt.* 509. 1 *Keble*, 184. 1 *Ld. Raymond* 588, *&c.* Rule diſcharged. *Prime* for Defendant; *Poole* for Plaintiff.

Whitehead, Adminiſtrator of Reveley, *againſt.* Gale, Bail for Stewart. Trin. 25 & 26 Geo. 2.

RULE made abſolute to ſet aſide the final Judgment againſt Defendant *Stewart*, and all the ſubſequent Proceedings thereon againſt him and his Bail. Three Objections were made in Points of Irregularity; the firſt to the Judgment, That it was not ſigned till about two Months after the Death of *Reveley* the original Plaintiff; he

he died (as was admitted) in *September* 1747, and the Judgment was ſigned in *November* following. The ſecond, to the Revival of the Judgment *per Whitehead* the Adminiſtrator, which was by one *Scire facias* only, returned *Nichil habet*, (no new Perſon being called in on Defendant's Part.) The third, to the Award of Execution, not doquetted till after Defendant had appeared to the *Sci. fa.* which was returnable *Octabis Purificationis* 1748.

The Court did not think it neceſſary to give any Opinion as to the ſecond and third Objections, but as to the firſt, they held it to be good. The Law abominates Circuity and Expence; though the Judgment be erroneous in Point of Fact, yet it may alſo be deemed irregular, where the Application to ſet it aſide is recent, the Bail ought not to be put to an *Audita Querela*. The Judgment is a Nullity. Plaintiff, at the Time when it was given, could not come to demand it, and his Warrant of Attorny was extinct. *Prime* for Defendant; *Willes* and *Poole* for Plaintiff.

Machin *againſt* Delaval, Eſquire.

MOTION to ſet aſide Judgment, *&c.* entred by Warrant of Attorny, which Warrant Defendant inſiſted was void, as being given in Purſuance of an Uſurious Contract, which

which is not pleadable to a *Scire facias* on the Judgment. Plaintiff's Counſel obſerved, that the pretended Uſury is ſubſequent to the Judgment; and that Uſury for Continuance does not avoid the firſt Security, though a Penalty of treble the Value is given by Action, *&c.* The Court directed an Iſſue to try the controverted Fact, as to the Uſury. *Willes* and *Draper* for Defendant; *Prime* and *Poole* for Plaintiff.

Wood *againſt* Dodgſon. Trinity 26 & 27 Geo. 2.

RULE to ſhew Cauſe why Judgment ſhould not be ſet aſide, diſcharged. The Objections were, that Defendant had never been ſerved with Copy Proceſs, or Notice of Declaration. The Anſwer was, that Copy of the Proceſs had been tendered to Defendant at his Houſe, who refuſing to accept the ſame, it was left there; and that within 16 Days after ſuch Service of Proceſs, Notice of Declaration was left under the Door of ſaid Houſe, which was then empty and ſhut up. The Court thought the ſhutting up of the Houſe a Trick of Defendant's to avoid Proceſs, *&c.* By the General Rule 1 *Geo.* 2. Notice of Declaration is to be left at Defendant's laſt Place of Abode. *Poole* for Defendant; *Wilſon* for Plaintiff.

Bulling *againſt* Rogers. Mich. 27 Geo. 2.

DEfendant had moved in Arreſt of Judgment, and obtained the common Rule, which is, That the Entry of Judgment be ſtayed till the Court be moved on Behalf of the Plaintiff, and ſhall otherwiſe order; of which Motion Defendant is to have Notice.

Draper, for Plaintiff, admitted the Objection made in Point of Law, and prayed that an Entry be made on the Roll as the Adjudication of the Court, *That the Judgment be arreſted*, which was ordered. The Rule leaves the Action pending pleadable in Bar to a new Action; till the Entry prayed be made, Plaintiff cannot bring a Writ of Error, or maintain a new Action. *Poole* for Defendant.

Mony, Goods, &c. brought into Court.

Scarrall *againſt* Horton. Mich. 14 Geo. 2.

DEfendant paid Mony into Court upon the Common Rule, which Plaintiff accepted, and after the Coſts taxed and demanded, moved for an Attachment againſt Defendant for Non-payment. The Court refuſed the Rule; becauſe, as the Words of the Common Rule ſtand at preſent, Defendant is not ordered to pay the Coſts; but granted a Rule upon Defendant to ſhew Cauſe why he ſhould not pay Coſts; and declared, that the Form of the Common Rule ſhould be altered, and made obligatory upon Defendants to pay Coſts. *Agar* for Plaintiff.

N. B. A new Form hath been ſince ſettled accordingly.

Peirce *againſt* Sanders. Eaſter 14 Geo. 2.

THIS was an Action of Debt upon a Bill penal for 2 *l.* 2 *s.* and in the Declaration a Count was added on a *Mutuatus.* Defendant took a Rule from Secondary *Paramor*, as a Rule of Courſe, to pay 2 *l.* 2 *s.* into Court, and pleaded *Solvit ad diem* to the Bill penal, and *Nil debet* to the *Mutuatus.* Plaintiff refuſed to accept the 2 *l.* 2 *s.* went on to Trial, and recovered 2 *l.* 2 *s.* and no more. Whereupon he applied to the Court to ſet aſide the Rule for Payment of Mony into Court; and a Rule to ſhew Cauſe was granted, which, on ſhewing Cauſe, was diſcharged. *Per Cur':* The Rule to bring Mony into Court, in this Caſe, is not ſupported by any Precedent, and is certainly wrong; but Plaintiff ſhould have applied ſooner; after a Verdict in Defendant's Favour he comes too late. *Huſſey* for Plaintiff; *Draper* for Defendant.

Fuller *againſt* Swan. Eaſter 14 Geo. 2.

AFTER the Plaintiff's Death, a Motion was made that his Executor might pay Defendant a Sum of Mony, which the Prothonotary had reported to have been levied

vied by Plaintiff more than was due, and a Rule granted to ſhew Cauſe; but was afterwards diſcharged. *Draper* for the Executors; *Willes* for Defendant.

Royden *againſt* Batty, in Trover. Mich. 15 Geo. 2.

DEfendant obtained a Rule for Plaintiff to ſhew Cauſe why, on Defendant's bringing four new wrought Dimothy Bed-Curtains, Vallance and Baſes, being the Goods ſpecified in the Declaration, into Court, and Payment of Coſts, Proceedings ſhould not be ſtayed; it appeared on the Part of the Plaintiff, that the Curtains had been cut, altered and ſcowred, and thereby leſſened in Value. *Per Cur':* Theſe Sort of Rules are diſcretionary; and in this Caſe it is not reaſonable to oblige Plaintiff to take his Goods again, altered as they appear to be. Let the Rule be diſcharged. *Prime* for Defendant; *Willes* for Plaintiff.

Walnouth *againſt* Houghton. Hilary 15 Geo. 2.

THIS was an Action of Covenant, in which a Breach was aſſigned in a Sum certain (11 *l.*) for not dreſſing Corn. *Agar*, for Defendant, moved to bring 11 *l.* into Court upon the Common Rule; to which

Draper for Plaintiff conſented, admitting that this Breach is aſſigned with equal Certainty as for Non-payment of Rent.

Fiſher *againſt* Kitchingman. Eaſter 16 Geo. 2.

JUdgment was arreſted, and conſequently no Coſts were to be paid on either Side. The Court ordered 20 *l.* brought into Court by Defendant, to be paid out to Plaintiff. *Skinner* and *Bootle* for Plaintiff; *Agar* for Defendant.

Vane *againſt* Mechell. Hilary 17 Geo. 2.

MONY was paid into Court upon the Common Rule, which Plaintiff refuſed to accept, and delivered an Iſſue; but afterwards changed his Mind, and applied to the Court for Leave to take the Mony out of Court, with Coſts to the Time of bringing it in; which was ordered, upon Payment of ſubſequent Coſts to Defendant. *Skinner* for Plaintiff; *Urlin* for Defendant.

Atkins *againſt* Taylor. Hilary 18 Geo. 2.

ACTION of Debt brought on a Bond, conditioned for a Bailiff's Good Behaviour, & *inter alia*, for his paying Mony collected for the Sheriff's Uſe. Defendant obtained a Rule to ſhew Cauſe why he ſhould not have Leave to bring Mony into Court on the Common Rule, as to the Sums collected, and to plead Performance as to the Reſt of the Condition. The Rule was diſcharged, as contrary to the Courſe of the Court. *Prime* for Defendant; *Skinner* for Plaintiff.

Yeoman *againſt* Roſs. Eaſter 19 Geo. 2.

A Rule to pay Mony into Court in an Action of Debt for the Penalty of a Charter-Party, diſcharged, as contrary to the Courſe of the Court. *Vide Atkins* againſt *Taylor*, *Hil.* 18 *Geo.* 2. *Willes* for Plaintiff; *Eyre* for Defendant.

Tidmaſh *againſt* Smith, in Covenant. Trinity 21 Geo. 2.

AFTER a regular Judgment ſet aſide on the uſual Terms of pleading the General Iſſue, *&c.* Defendant applied for Leave to bring Mony into Court on the Common Rule; denied, and Rule to ſhew Cauſe diſcharged. After a regular Judgment, the Court never give Leave to bring in Mony which comes in lieu of a Tender. *Draper* for Defendant; *Agar* for Plaintiff.

Hellier *againſt* Hallett, Widow, Adminiſtratrix, in Caſe, nine Counts. Trinity 21 & 22 Geo. 2.

RULE made abſolute, giving Defendant Leave to pay 5 *l.* 5 *s.* into Court on the Common Rule, with Reſpect to the 7th and 8th Counts; and as to the Reſt, to plead the General Iſſue, the Statute of Limitation, and a Set-off. This is ſimilar to Covenant for Non-payment of Rent, where other Breaches are alſo aſſigned. If Plaintiff takes the Mony out of Court, he muſt have Coſts of the Whole to that Time. *Fawcett* againſt *Rowles*, *Mich.* 21 *Geo.* 2. The Court will not give Defendant Leave to pay Mony into

into Court, and plead as to ſome of the Counts, and demur to the Reſt. *James* againſt *Hoſey*, *Mich.* 2 *Geo.* 2. in Sir *George Cooke*'s printed *Caſes of Practice*. *Prime* for Plaintiff; *Draper* for Defendant.

Green, Executor, *againſt* Beaton, in Covenant. Mich. 22 Geo. 2.

BREACH aſſigned for Non-payment of Rent. Defendant had obtained the Common Rule to pay 79 *l.* 1 *s.* into Court, and afterwards moved to add 1 *l.* 4 *s.* But it appearing that Defendant had pleaded, and that no Mony was yet brought into Court, the Rule was diſcharged. *Draper* for Defendant; *Agar* for Plaintiff.

Wright *againſt* Benington. Hilary 22 Geo. 2.

IN Debt for Penalty of a Bond, conditioned for Performance of Covenants in an Indenture of Leaſe; Breach aſſigned for Non-payment of 10 *l.* for Half a Year's Rent. Motion to bring 10 *l.* into Court on the Common Rule, denied. This has never been done in Debt, though in Covenant it may. By the 8 & 9 *W.* 3. the Judgment in Covenant is to ſtand, and *Sci. fa.* may be ſued out for ſubſequent Breaches; but that Statute does not extend to this Caſe. In Debt

on

on Bond for Payment of Mony by Inſtalments, Mony cannot be brought in on the Common Rule. *Eaſter* 19 *Geo.* 2. *Yeoman* againſt *Roſs and others*, in Debt for the Penalty of a Charter-Party, a Motion to bring Mony into Court denied. On ſuffering Plaintiff to enter Judgment, and Payment of 10*l.* and Coſts, Proceedings ſtayed. *Agar* for Defendant; *Poole* for Plaintiff.

Auſtin *againſt* Roſs, Executor. Hil. 23 Geo. 2.

RULE abſolute, giving Defendant Leave to bring Mony into Court on the Terms of the Common Rule, and plead *Plene Adminiſtravit*, as well as the General Iſſue to the Whole. *Draper* for Defendant; *Wynne* for Plaintiff.

Bate, Aſſignee, *againſt* Crane, in Covenant. Eaſter 24 Geo. 2.

TWO Breaches were aſſigned, one for Non-payment of Rent, the other for not uſing the Land in a Courſe of Good Huſbandry. Defendant laſt Term paid Mony into Court on the Common Rule, as to the firſt Breach, which Plaintiff then refuſing to accept, delivered an Iſſue with Notice of Trial for laſt Aſſizes, and afterwards countermanded ſuch Notice. Defendant this Term ſerved the Common Rule to enter the Iſſue on Record; whereupon Plaintiff applied to the Court, and had Leave to take the Mony out of Court, with Coſts to the Time of bringing it in, he firſt paying ſubſequent Coſts to Defendant out of the Mony in Court, if ſufficient, and if not, Plaintiff to make good the Deficiency, and thereupon Proceedings to ſtay. *Prime* for Plaintiff; *Bootle* for Defendant.

Emes,

Emes, Widow, Executrix, *againſt* Jew. Hilary 25 Geo. 2.

THIS was an Action on the Caſe, on ſeveral Undertakings and Promiſes, the laſt Count for Mony received for Plaintiff's Uſe as Executrix. Defendant moved, and obtained a Rule to ſhew Cauſe why he ſhould not have Leave to pay Mony into Court on the Common Rule, as to the laſt Count, and why, if Plaintiff ſhall not recover more Mony than the Sum paid into Court on that Count, and ſhall not recover any thing on the other Counts, why ſhe ſhould not pay Defendant's Coſts; it appearing that Plaintiff might, as to the fourth Count, have brought the Action in her own Right. On ſhewing Cauſe, a Rule was entred into by Conſent, That Plaintiff do accept the Mony offered, as to the laſt Count, with Coſts hitherto as to it; and that the laſt Count be ſtruck out of the Declaration. *Willes* for Defendant; *Poole* for Plaintiff.

Notice,

Notice and Countermand.

Tilney *againſt* Watſon. Mich. 14 Geo. 2.

AN Inquiſition taken upon a Writ of *Scire fieri inquir'* was ſet aſide, for Want of due Notice of the Execution of the Writ. Plaintiff inſiſted, that Notice was not neceſſary. If the Sheriff returns a *Devaſtavit*, Defendant may traverſe the Return. But *per Cur'*: The ſame Notice is requiſite as of executing a Writ of Inquiry of Damages. *Draper* for Defendant; *Bootle* for Plaintiff.

Stafford *againſt* Thompſon.

THE Commiſſion-Day of the Aſſizes was *Monday*, and Notice of Trial was countermanded on *Saturday* next before, and *Sunday* being the only intervening Day, the Queſtion was, Whether the Notice was regularly countermanded, or not? The Court held the Countermand to be regular, and diſcharged the Rule to ſhew Cauſe why Plaintiff ſhould not pay Defendant Coſts for not proceeding to Trial. *Skinner* for Plaintiff; *Bootle* for Defendant.

Bowler

Bowler *againſt* Jenkin. Hilary 15 Geo. 2.

DEfendant lived above forty Miles from *London*, and Plaintiff proceeded to Trial at a Sitting there, upon ten Days Notice; no Defence was made, and Defendant inſiſting, that he was intitled to fourteen Days Notice of Trial, moved to ſet aſide the Verdict, and had a Rule to ſhew Cauſe, which was made abſolute. By the Act 14 *Geo.* 2. no Cauſe is to be tried in *London* or *Middleſex*, where Defendant reſides above forty Miles from *London* or *Weſtminſter*, unleſs Notice in Writing be given at leaſt ten Days before ſuch intended Trial. Before this Act, fourteen Days Notice was the ſettled Practice; and unleſs neceſſitated, the Court will not be bound by an Act made to take away a Benefit from Defendants. The Practice or Law of the Court cannot be taken away but by Negative Words, *i. e.* There ſhall be no more than ten Days Notice. Fourteen Days Notice, notwithſtanding this Act, ſtill neceſſary. *Hayward* for Defendant; *Agar* for Plaintiff.

Smith *againſt* Lacock. Trinity 16 Geo. 2.

COURT held, Notice of the Execution of the Writ of Inquiry of Damages, given in the Country to the Attorny there, (and not to the Agent who received the Declaration in Town) good and ſufficient Notice, and diſcharged the Rule to ſhew Cauſe why the Inquiſition ſhould not be ſet aſide. *Bootle* for Defendant; *Agar* for Plaintiff.

Taſhburn *againſt* Havelock. Mich. 16 Geo. 2.

NOTICE of Trial on an old Iſſue was given to the Attorny in the Country, and not to the Agent in Town; the Queſtion was, Whether it was good Notice, or not? *Per Cur':* The Notice on this old Iſſue is well given to the Attorny in the Country, for it may be given either to Attorny or Agent; but where Notice of Trial is given on the Iſſue-Book, it muſt be given to the Agent, becauſe the Iſſue can be delivered no where but in Town. Notices of Trial and Countermands, Notices of executing Writs of Inquiry and Countermands, may be given either to the Attorny in the Country, or to the Agent in Town. But of thoſe Things which are to be done only in Town, Notice muſt

muſt be to the Agent; *and all Notices, where the Party hath a known Attorny, muſt be given to that Attorny, or his Agent, and not to the Party himſelf.* There has been no Determination of this Court that Notice of Trial in the Country is bad, though it hath been ſo underſtood. *Mountſteven* againſt *Templar*, *Mich.* 7 *Geo.* 2. Attornies in the Country are to take no Notices but of Trial, Inquiries, and their Countermands. *Eaſter* 6 *Geo.* 2. That Countermand of Notice of Trial may be given either in Town or Country.

Darker *againſt* Edwards. Mich. 16 Geo. 2.

THE *Capias ad reſpond'* bore Teſte 7th *July*, returnable 27th *October*, and was dated 25th *October* 1742. A Copy was ſerved, with Notice to appear on the 27th *October* next; which muſt refer to the Time when ſerved, and conſequently muſt intend *October* 1743. The Notice ſhould have been to appear on the 27th of this inſtant *October*, or *October* 1742, and not *October* next. The Act of Parliament deſigned to make certain the Time for Defendant's Appearance, by the Notice. The Rule to ſtay Proceedings was made abſolute. *Ketelbey* for Defendant; *Agar* for Plaintiff.

Heſter *againſt* Hall.

AFTER Notice of Trial given, and regularly countermanded, Plaintiff obtained a Rule to diſcontinue, upon Payment of Coſts. After the Notice of Trial, and before the Countermand, a Witneſs for Defendant, who reſided in *London*, ſet out for *York* Aſſizes; and the Queſtion was, Whether the Expence of this Witneſs could be allowed Defendant in Coſts? The Court held, that as the Countermand was regular, Coſts for this Witneſs could not be allowed. *Draper* for Defendant; *Willes* for Plaintiff.

Bailey *againſt* Semple. Trinity 16 & 17 Geo. 2.

DEfendant being beyond the Seas, and his Attorny dead, Rule abſolute, that Demand of a Plea in the Office ſhall be ſufficient Notice; upon Affidavit of Service of a Rule to ſhew Cauſe on one of Defendant's Bail, and that the other was not to be found. *Draper* for Plaintiff.

Blackmore *againſt* Smith. Mich. 17 Geo. 2.

AFTER Plea pleaded, Proceedings had ſtayed three Years, and then Plaintiff delivered an Iſſue, and afterwards gave fourteen Days Notice of Trial. The Court made the Rule abſolute to ſet aſide the Verdict, for Want of a Term's Notice of his Intent to proceed, by the Party proceeding purſuant to General Rule, *Eaſter* 13 *George* 2. *Birch* for Plaintiff; *Agar* for Defendant.

Miller *againſt* Parſons. Hilary 17 Geo. 2.

THE Name [*White*] was put on the Bail-piece, as Attorny for Defendant; Plaintiff's Attorny, not being able, upon diligent Inquiry, to find this *White*, left a Declaration in the Office, and gave Notice thereof to Defendant, and for Want of a Plea ſigned Judgment, and gave Notice of executing a Writ of Inquiry to Defendant. On the Part of Defendant it was inſiſted, that the Proceedings were irregular; that Plaintiff's Attorny ought to have found out Defendant's Attorny; or if he could not, that Notice of the Declaration, *&c.* could not be ſerved on Defendant without Leave of the

the Court. And a Rule was made to ſhew Cauſe why the Proceedings ſhould not be ſet aſide, with Coſts. Upon ſhewing Cauſe, the three Prothonotaries reported, and the Court held, the Proceedings to be regular, and the Rule was diſcharged. Where the Party's Attorny cannot be found, Notice may be ſerved on the Party himſelf. Where neither Attorny nor Party can be found, the Court muſt be applied to, and will order Notice, &c. in the Office to be good, unleſs the Bail (if any) ſhew Cauſe to the contrary. *Vide Bailey* againſt *Semple*, *Trin.* 16 & 17 *Geo.* 2. *Gapper* for Plaintiff; *Agar* for Defendant.

Johnſon *againſt* Johnſon and Ouchterlony. Trinity 17 & 18 Geo. 2.

CAPIAS returnable *Cro. Trin.* Dated 18th *May* 1744, and ſerved with Notice to appear 21ſt *May* next [*May* 1745] inſtead of this inſtant *May*. Rule abſolute to ſtay Proceedings. *Skinner* for Plaintiff; *Draper* for Defendant.

Roe, on the Demiſe of Hutchings, *againſt* Dunning and others. Mich. 18 Geo. 2.

RULE to ſhew Cauſe why Judgment as in Caſe of a Nonſuit. Objected by Counſel, for the Leſſor of Plaintiff, that a Term's Notice of Motion ought to have been given; but the Court held otherwiſe. The General Rule of Court extends only to the Party's Intent to proceed, not to Motions to end Proceedings. Rule abſolute. *Huſſey* for Defendant; *Gapper* for Leſſor of Plaintiff.

Reed *againſt* Blanchett. Hilary 19 Geo. 2.

DEfendant moved to amend his Notice, to ſet off a mutual Debt, delivered with his Plea of *Non aſſumpſit*, (by ſtriking out Plaintiff, and inſerting Defendant) which the Court denied. Then Defendant prayed Leave to withdraw his Plea, and plead *Non Aſſumpſit de novo*, with new Notice to ſet off, which was granted. *Skinner* and *Bootle* for Plaintiff; *Prime* for Defendant.

Walker

Walker *againſt* Towne and Lee. Trin. 19 & 20 Geo. 2.

NOTICE of Declaration being left in the Office ſerved on a *Sunday*, Rule to ſhew Cauſe why Defendant ſhould not have an Imparlance, made abſolute. The Court held the Notice on *Sunday* bad, within the Statute *Car.* 2. which ought to have a large Conſtruction in Favour of Religion. Declaration in Ejectment, which is conſidered as Proceſs, cannot be delivered on *Sunday*. Proceſs and Proceeding have been conſtrued, by Chief Juſtice *Holt*, to be the ſame Thing. Anciently all Pleadings were *Ore tenus* at the Bar. Notice of Declaration is the ſame as Delivery. It is no Declaration till Notice. *Wynne* for Defendant; *Bootle* for Plaintiff.

Braithwaite *againſt* Allan. Hilary 20 Geo. 2.

DEfendant objected to the Inſufficiency of Plaintiff's Notice of executing a Writ of Inquiry of Damages, with Reſpect to Uncertainty of Place. The Words of the Notice were at the uſual Place at *Durham*, and obtained a Rule to ſhew Cauſe why the Inquiſition ſhould not be ſet aſide. Upon ſhewing Cauſe it appeared, that for twenty-four Years paſt, and upwards, the Place, *viz.*

the Court-Houſe where Cauſes are tried, and where this Writ was executed, had been the known and eſtabliſhed Place for executing Writs of Inquiry; two Counſel for Defendant attended the Execution of this Writ, and croſs-examined Plaintiff's Witneſſes. The Rule was diſcharged. *Prime* for Defendant; *Willes* for Plaintiff.

Kettle *againſt* Bulſtrode, Clerk of the Juries. Mich. 22 Geo. 2.

A Copy of the Bill filed, with Notice to appear, was left with Mr. *Pritchard*, Defendant's Deputy, after Nine o' Clock in the Evening. Rule abſolute to ſtay the Proceedings. *Poole* for Defendant; *Prime* for Plaintiff.

againſt Ferguſon.

THE Writ was returnable *Tres Mich.* the Notice to appear ſubſcribed to the Copy ſerved was to appear at the Return, being the 20th *October*, without inſerting the Word (next), or (the Year 1748), held defective. Rule abſolute to ſtay Proceedings. *Skinner* for Defendant.

Thomlinſon,

Thomlinſon, Gent. one, &c. *againſt* Gorton. Eaſter 23 Geo. 2.

RULE to ſhew Cauſe why Proceedings ſhould not be ſet aſide, with Coſts. Objected, that Declaration left in the Office was not indorſed to be left *de bene eſſe*. The Queſtion was, Whether Notice of Declaration left *de bene eſſe*, without indorſing the Declaration, was or was not ſufficient? The Secondaries did not agree in their Report of the Practice. One of them thought the Notice ſufficient without the Indorſement. The two others *contra*. Rule abſolute to ſet aſide the Delivery of the Declaration, and ſubſequent Proceedings, *ſans* Coſts. *Draper* for Defendant; *Willes* for Plaintiff.

Naſh *againſt* Harrow. Trinity 24 Geo. 2.

PLaintiff's Attorny gave two Notices of executing Inquiry of Damages, one to Defendant himſelf, a Priſoner in the *Fleet*, the other to the Turnkey; but, by Miſtake, in both Notices the Name *Birt*, inſtead of *Naſh*, was inſerted as Plaintiff; notwithſtanding which, the Inquiry was executed, and final Judgment ſigned. Rule abſolute to ſet aſide Inquiſition and final Judgment, with Coſts. *Prime* for Defendant; *Wynne* for Plaintiff.

Nonpros, Nonſuit, &c.

Wilſon *againſt* Barber. Mich. 14 Geo. 2.

A Demurrer, and ſeveral Iſſues were joined; before the Demurrer argued Plaintiff proceeded to try the Iſſues; as to one of which the Proof lay upon Defendant, and as to the reſt upon Plaintiff. Plaintiff began at the Aſſizes to give Evidence upon the firſt Iſſue, and failing in Proof, was nonſuited. Plaintiff moved to ſet aſide the Nonſuit, which was thought reaſonable, though againſt the Courſe of the Court. The Nonſuit was ſet aſide by Conſent, on Payment of full Coſts. *Draper* and *Willes* for Plaintiff; *Bootle* for Defendant.

Diggs *againſt* Price. Mich. 15 Geo. 2.

DRAPER for Defendant moved, that the Iſſue-Roll might be brought into Court, and for Judgment as in Caſe of Nonſuit, purſuant to the Act of Parliament 14 *Geo.* 2. *Per Cur':* In the firſt place a Rule muſt be given for Plaintiff to enter the Iſſue upon Record, which if he fails to do, Defendant may have a *Nonpros* for Want thereof.

If

If Plaintiff enters the Iſſue, the Roll muſt be produced in Court, and thereupon Defendant may move for a Nonſuit upon the Act of Parliament. Whenever the Court admits the Cauſe ſhewn by Plaintiff ſufficient to diſcharge the Rule to ſhew Cauſe why a Nonſuit, the Court will appoint a future Day for the Trial, in Country Cauſes at the next Aſſizes, in *London* or *Middleſex* at a Sitting at a convenient Diſtance.

Clarke *againſt* Gorrill.

PLaintiff's own Illneſs was held ſufficient to prevent a Nonſuit upon the late Act of Parliament, and was allowed as ſufficient Cauſe, and next Aſſizes appointed for the Trial. After Debate, and the Court's Opinion, *Bootle* objected to Plaintiff's Affidavit, that it was ſworn before his own Attorny. But, *per Cur'*: That Objection comes now too late. *Bootle* for Defendant; *Prime* for Plaintiff.

Dapp *againſt* Woodman. Eaſter 15 Geo. 2.

RULE to ſhew Cauſe why Judgment as in Caſe of Nonſuit, purſuant to the late Statute, diſcharged. Plaintiff ordered to pay Coſts of the Application, and peremptorily to try the Cauſe at the next Sitting.

Sitting. The Court inclined to think they could, if they thought it reaſonable, enlarge the Time afterwards, in Caſe of a Default. *Agar* for Plaintiff; *Wynne* for Defendant.

Vile, Widow, *againſt* Daw and others. Trinity 16 Geo. 2.

ISSUE was joined in *Trinity* Term laſt, but Plaintiff did not proceed to Trial at the then next Aſſizes, and before the laſt, which was the ſecond Aſſizes, Plaintiff married, to wit, 10th *December* 1741. After Notice of Trial given, Defendant moved for Judgment as in Caſe of Nonſuit; and upon ſhewing Cauſe, the Court were of Opinion, that though no Excuſe was ſhewn for Plaintiff's not proceeding to Trial at the firſt Aſſizes, yet Defendants, for that Default, ſhould have applied in *Michaelmas* Term laſt; but are now too late. As to the ſecond Aſſizes, the Excuſe is ſufficient; by the Marriage the Suit is abated *de facto*. The Rule was diſcharged. *Draper* for Plaintiff; *Bootle* for Defendants.

Sutton *againſt* Waddilove, in Replevin. Mich. 16 Geo. 2.

DEfendant, by Leave of the Court, made two Avowries, *viz.* firſt for *Damage feſant*; ſecond for Rent in Arrear. Plaintiff

tiff obtained a Judge's Order for a Week's Time to plead in Bar to the Avowries, pleading iſſuably, and taking Notice of Trial for the Sitting after laſt Term in *Middleſex*; and within Time demurred to the firſt, and pleaded in Bar to the laſt Avowry. Defendant ſigned a *Nonpros*, for Want of Plaintiff's pleading iſſuably to both Avowries, which the Court held to be regular; but upon Payment of Coſts, pleading iſſuably to both Avowries, and taking Notice of Trial within this Term, the *Nonpros* was ſet aſide. *Willes* and *Agar* for Defendant; *Belfield* for Plaintiff.

Guy *againſt* Wilkinſon. Trinity 16 & 17 Geo. 2.

RULE to ſhew Cauſe why Judgment as in Caſe of Nonſuit, diſcharged. Defendant having firſt applied for Coſts for Plaintiff's not proceeding to Trial, has made his Election. The Plaintiff was ordered peremptorily to proceed to Trial at next Aſſizes. *Draper* for Plaintiff; *Bootle* for Defendant.

Milton and another, Aſſignees of a Bankrupt, *againſt* Terrill. Mich. 17 Geo. 2.

PLaintiffs not having proceeded to Trial after Iſſue joined, according to the Courſe of the Court, Defendant had applied for Judgment as in Caſe of Nonſuit, purſuant to the Statute; and Plaintiff having made a reaſonable Excuſe, further Time was allowed by the Court for Trial peremptorily at laſt Aſſizes. Plaintiffs gave no new Notice of Trial, but made Default again, and endeavoured to excuſe the ſecond Default by Affidavit, purporting, that Plaintiffs, the Aſſignees, found a Debt entred in the Bankrupt's Books as due from Defendant, but for Want of the Bankrupt's attending Plaintiffs in Time, as requeſted, according to his Duty, and ſupplying them with Proof of the Debt, and informing them how to anſwer a Set-off inſiſted on by Defendant, Plaintiffs could not proceed to Trial. *Per Cur'*: The Word [peremptory] in the Rule, doth not preclude the Court from a farther Enlargement of the Time, if they think it reaſonable. 'Tis wrong to inſert the Word [peremptory]; the ſecond Excuſe may be better than the firſt. The Statute is founded on Neglect. Suppoſe Plaintiff's Attorny ſhould die

die *Manu Dei*, or Defendant ſhould, by ſome Act of his, hinder the Trial; the Effects of the Bankrupt muſt not be waſted to the Prejudice of his Creditors. No Notice of Trial was given for laſt Aſſizes, Defendant's Attendance was then unneceſſary. The Bankrupt, after obtaining his Certificate, may be a Witneſs. The Time for Trial was further enlarged till next Aſſizes, upon Payment of Coſts of the Application. *Belfield* for Defendant; *Draper* for Plaintiff.

Sugar, qui tam, *againſt* Webſter. Trinity 17 & 18 Geo. 2.

JUdgment as in Caſe of a Nonſuit applied for; and the Queſtion was, Whether an Action *qui tam* was within the Statute, or not? *Per Cur':* A common Informer may be nonſuited. Plaintiff was ordered to pay Coſts of the Application, and peremptorily to proceed to Trial at next Aſſizes. *Willes* for Plaintiff; *Skinner* for Defendant.

Ogle, Eſquire, Executor, *againſt* Moffitt.

DEfendant had applied for and received Coſts, for Plaintiff's not proceeding to Trial at laſt Aſſizes, and now moved for Judgment as in Caſe of Nonſuit, purſuant to the Statute; but having made his Election, and taken Coſts for not proceeding to Trial, he

he cannot have the other Remedy. The Motion was denied. *Bootle* for Defendant; *Prime* for Plaintiff.

Lowe *againſt* Peacock and others. Hilary 18 Geo. 2.

DEfendants obtained a Rule to ſhew Cauſe why Judgment of Nonſuit *ſecundum Stat'*. Plaintiff afterwards had a Rule to ſhew Cauſe why he ſhould not have Leave to diſcontinue, which was enlarged, and both came on together. The Court held the Application for Leave to diſcontinue, after the firſt Motion, wrong, and made the Rule abſolute for a Nonſuit. *Bootle* for Defendant; *Willes* for Plaintiff.

Jones, on the Demiſe of Wyatt, *againſt* Stephenſon, in Ejectment.

TWO of Plaintiff's material Witneſſes were diſabled by Gout, *&c.* from attending the Trial laſt Aſſizes. Excuſe good to prevent Nonſuit. Time given Plaintiff to try at next Aſſizes peremptority, on Payment of Coſts for not proceeding to Trial at laſt Aſſizes only. Where the Excuſe is ſufficient, the Court do not give Coſts of the Application; *aliter* where it is inſufficient. *Prime* for Plaintiff; *Birch* for Defendant.

Pepiatt, one, &c. *againſt* Bell. Eaſter 19 Geo. 2.

JUdgment as in Caſe of Nonſuit moved for, on Affidavit of Notice of Motion only, and Rule to ſhew Cauſe. Objection by Plaintiff's Counſel, that to ſupport the Rule, there ought to have been alſo an Affidavit that the Cauſe was not tried; which Objection was allowed, and the Rule diſcharged.

Hartley, alias Green, *againſt* Atkinſon. Mich. 25 Geo. 2.

MOTION by Plaintiff, and Rule to ſhew Cauſe why a Nonſuit at laſt *Yorkſhire* Aſſizes ſhould not be ſet aſide. Plaintiff at the Trial had offered in Evidence an unſtamped Copy of a Record of Proceedings at the Seſſions of the Peace; to which Defendant's Counſel objecting the Want of Stamps, the Plaintiff's Counſel gave up the Point, and ſubmitted to a Nonſuit; though on looking into the Acts of Parliament ſince, it appears, that no Stamps on ſuch Copy of a Seſſions Record are requiſite. *Per Curiam:* The ſtanding Rule is, that if a Nonſuit be regular, the Parties are out of Court, and it cannot be ſet aſide; if irregular, it is not conſidered as a Nonſuit. Lord Chief Juſtice

not

not quite ſatisfied with this Rule; but till the Judges of all the Courts of *Weſtminſter* agree to alter it, the Rule muſt ſtand. If the Courts were to ſet aſide regular Nonſuits, the Merits of Cauſes and Points of Law would be brought into Queſtion on Motions. *Prime* for Defendant; *Bootle* for Plaintiff.

Beere *againſt* Brooking. Mich. 26 Geo. 2.

ISSUE joined, and Notice of Trial given for laſt Sitting in *London* within laſt Term; but a Miſtake being diſcovered in the Declaration, Plaintiff did not proceed to Trial. Defendant applied for Judgment as in Caſe of a Nonſuit, and obtained a Rule to ſhew Cauſe. On hearing Counſel on both Sides, the Iſſue-Roll not being ſtruck into the Bundle, and the Amendment being ſmall, the Court gave Plaintiff Leave to amend his Declaration, on Payment of Coſts of Application, and for not proceeding to Trial; and appointed a peremptory Day for Trial. *Draper* for Plaintiff; *Willes* for Defendant.

Bentley *againſt* Scott and another, in Replevin. Eaſter 26 Geo. 2.

PRIME, for Defendant, moved for Judgment as in Caſe of Nonſuit. *Poole* for Plaintiff endeavoured to diſtinguiſh this from Common Caſes, becauſe, in Replevin Defendants might, in the firſt Inſtance, have carried down the Record to Trial. *Per Cur':* The Act of Parliament has made no Diſtinction.

Margerum *againſt* Fenton. Trinity 26 & 27 Geo. 2.

NOnpros ſigned for Want of Plaintiff's entring Iſſue, ſet aſide as irregularly ſigned one Day before the Time limited by Rule for entring the Iſſue expired. The Rule runs, " Unleſs Plaintiff within four Days " next after Notice ſhall cauſe the Iſſue to " be entered", which excludes the Day of Notice. The Rule was ſerved *Friday* 22d of *June*, and the Iſſue-Roll brought in *Tueſday* following, on which Day the *Nonpros* was ſigned. *Wilſon* for Defendant; *Willes* for Plaintiff.

Outlawry.

Speed *againſt* Barber. Mich. 15 Geo. 2.

RULE to ſhew Cauſe why Proceedings on the *Exigent poſt Ca. ſa.* ſhould not be ſtayed, was made abſolute. The *Exigent* bore *Teſte* 29th *May* laſt, and after that Day, and before the Return, Defendant became a Priſoner in the *Fleet*, at the Suit of a third Perſon. It was notorious at *Cheſter* that Defendant was become inſolvent, and had aſſigned his Effects for the Benefit of his Creditors. *Steele*, Plaintiff's Agent, was told by *Kent*, Defendant's Agent, that Defendant was in Cuſtody; the *Exigent* was not yet returned, but remained in the Sheriff's Hands. *Per Cur':* The *Exigent* was well ſued out before Defendant's Commitment to the *Fleet*, and no Notice of that Commitment was given to Plaintiff's Agent till after the *Exigent*, but the Outlawry will ſignify nothing, becauſe it may be reverſed by Writ of Error. Let the Rule be abſolute, and Plaintiff may charge Defendant in Execution. 2 *Roll's Abr.* 804. *pl.* 3. where Defendant goes beyond the Seas after the *Teſte* of an *Exigent*, he may be regularly outlawed. *Wynne* for Defendant; *Willes* for Plaintiff.

White

White *againſt* Dunſter.

DEfendant was waived ſpecially on meſne Proceſs as a ſingle Woman, by the Name of *Dunſter*; and after the *Exigent*, and before the Outlawry, ſhe married one *William Priſeley*, *viz.* in *February* 1740; in *Auguſt* 1741 ſhe was taken by the Name of *Dunſter*, by a *Capias Utlagat'*, and a Rule was obtained to ſhew Cauſe why the Outlawry ſhould not be reverſed at the Expence of *William Priſeley*, on his entring a common Appearance for himſelf and his Wife: But the Rule was diſcharged, the Court refuſing to interpoſe, as the Marriage was after the *Exigent*. *Bootle* for Defendant; *Belfield* for Plaintiff.

Heely *againſt* Hewſon. Eaſter 16 Geo. 2.

IT appeared that pending the *Exigent*, Defendant was a Priſoner in the Gaol for the City of *York*; for which Reaſon the Court ordered the Outlawry to be reverſed, without Payment of Coſts to Plaintiff, upon Defendant's entring a common Appearance. *Birch* for Plaintiff; *Bootle* for Defendant.

Farnworth *againſt* Smith. Hilary 18 Geo. 2.

RULE to ſhew Cauſe why Outlawry ſhould not be reverſed, at Plaintiff's Expence. Objected, on the Part of Defendant, That he was a publick viſible Man, and Plaintiff had not endeavoured to arreſt him. That the *Capias*, *Alias* and *Pluries*, were all ſued out at one and the ſame Time. That no Affidavit of the Debt was indorſed on the Writs (though bailable) purſuant to the Statute to prevent vexatious Arreſts. That no Date was put to the Writs, as required by the Statute. The Affidavits as to Defendant's Viſibility were fully anſwered, and his total Abſconding proved. And the Court held, That in caſe of a total Abſconding, no Endeavours to arreſt are neceſſary. That Suing out the *Capias*, *Alias* and *Pluries* together, was regular, and warranted by conſtant Practice. That on Proceſs to the Outlawry, no Affidavit for Bail is required by Statute, or the Courſe of the Court; nor is a Date to ſuch Proceſs uſual. The Rule diſcharged, without Coſts. *Prime* for Plaintiff; *Draper* for Defendant.

Dale,

Dale, Widow, *againſt* Robinſon, Clerk. Mich. 20 Geo. 2.

OBjected by Defendant, who had been outlawed on the Proſecution of the Plaintiff, That he was a publick viſible Man, and that the Return of the Proclamation was bad; it importing, that Proclamations were made as the Sheriff was by the Writ commanded, but not where or according to the Form of the Statute. Defendant's being a publick viſible Man was fully denied; and it was fully proved that he abſconded, and his Living was under Sequeſtration. The Court ſeemed to think the Return of the Proclamation ſufficient. *Fruſtra fit per plura*, &c. but ſaid, Defendant might, as to it, bring a Writ of Error, if ſo adviſed. The Rule to ſhew Cauſe why the Outlawry ſhould not be reverſed at Plaintiff's Expence, was diſcharged. *Skinner* for Defendant; *Willes* for Plaintiff.

Withall *againſt* White.

AFTER the Return of the *Exigent*, but whilſt it remained in the Hands of the Sheriffs of *London*, and before Defendant was returned Outlawed, the Court made a Rule, That a *Superſedeas* to the *Exigent* ſhould be

allowed, on Payment of Coſts. *Vide General Rules*, 17 *Cha.* 2. & 2 *Jac.* 2. *Prime* for Defendant; *Willes* for Plaintiff.

Wiatt *againſt* Parker. Trinity 21 Geo. 2.

DEfendant outlawed, after Judgment moved to ſet aſide the Outlawry for Want of a Proclamation. *Per Cur'*: This is not a fit Matter to be determined in a Summary Way. Defendant may bring a Writ of Error. *Cro. Jac.* 577.

French *againſt* Manby. Mich. 27 Geo. 2.

A Writ of *Allocatur* on the *Exigent* had iſſued (after Judgment and *Ca. ſa.*) returnable on the Morrow of *All Souls* laſt, 3d *November* 1753, whereupon Defendant was returned to be outlawed (*Quinto exactus*) 16th *July* 1753. It appeared, that Plaintiff died 6th *Auguſt* 1753, and that a Commiſſion of Bankrupt iſſued againſt Defendant 21ſt ſame *Auguſt*. Defendant obtained a Rule to ſhew Cauſe why Proceedings ſhould not be ſtayed, which Rule was diſcharged; the Court being of Opinion, That the Writ and Return muſt be filed, notwithſtanding Plaintiff's Death after the Day of Outlawry, but before the Return. Before an actual Aſ-

ſignment

ſignment by Commiſſioners of Bankruptcy, the Crown is not bound; though there is a great Difference between an Extent in Aid *pro Rege*, and an Outlawry for a private Perſon's Debt. Here is no Foundation to tie up Plaintiff's Hands; he may proceed, if ſhall be ſo adviſed. *Prime* for Defendant; *Wilſon* for Plaintiff.

Aſhley, Eſquire, *againſt* Stockwell, Eſquire, and Huſband, Eſquire.

THREE ſeveral Outlawries had been pronounced about a Year ago, and tranſcribed into the *Exchequer*; one againſt both Defendants, a ſecond againſt Defendant *Stockwell*, and a third againſt Defendant *Huſband*; all at Plaintiff's Proſecution. *Penvold* and *Roberts*, authorized by Power of Attorny executed by Defendants, applied on their Behalf, and obtained a Rule to ſhew Cauſe why theſe Outlawries ſhould not be reverſed, at Plaintiff's Expence; Defendants at the Time when the Writs of *Exigent* iſſued and ſtill being in Parts beyond the Seas. On ſhewing Cauſe by Plaintiff it appeared, that Defendants had been abroad three Years, and probably never intended to return to *England*; and it was urged, that as they ſtay abroad longer than their lawful Occaſions

caſions required, ſuch Stay muſt be looked upon to be with a View to defeat Juſtice; and conſequently they were duly outlawed. That if not, they ought to bring their Writ of Error, and ſhould not be relieved in this ſummary Manner by Motion. The Court thought it diſcretionary in them to relieve by Motion, or put the Parties to a Writ of Error, according to the Circumſtances of the Caſe. Courts have gone further of late Years than heretofore, on Motions, as more effectual to expedite Juſtice, ſave Expence, and preſerve Credit and Character. It is difficult to determine, when Defendants Stay abroad to avoid Proceſs ſhall be taken to commence. There is not ſufficient Foundation for the Court to order Plaintiff to reverſe theſe Outlawries at his own Expence. But as they are not ſpecial, but only in Treſpaſs *Quare clauſum fregit*, Defendants have a Right to reverſe them at their own Expence, on entring common Appearances, and Payment of Coſts. Rule made accordingly. Defendants, before the Outlawries were tranſcribed into the *Exchequer*, might have reverſed them, on entring common Appearances and Payment of common Coſts, as far as the *Exigent*; but now, after they are tranſcribed, Coſts muſt be paid to the Time of Reverſal. *Prime* for Defendants; *Willes* for Plaintiff.

Dyer,

Dyer, &c.

Barber, Aſſignee of the Sheriff, *againſt* Satchwell, on a Bail-Bond. Trin. 17 & 18 Geo. 2.

BY a Judge's Order Defendant was allowed two Day's Time to plead, which expired 30th *May*. On the Day following, [31ſt *May*] Oyer of the Bail-Bond was demanded; which Demand, after the Time for Pleading expired, Plaintiff looked upon as a Nullity, and ſigned Judgment; which was held to be regular, and the Rule to ſhew Cauſe why the Judgment ſhould not be ſet aſide, was diſcharged. The Court ſeemed to think [*Capitalis Juſtic' ſolus*] that it was reaſonable Oyer might be demanded any Time before Judgment, but would not overturn the eſtabliſhed Practice. *Skinner* for Defendant, *Willes* for Plaintiff.

The Weavers Company *againſt* Ware. Action on a By-Law. Mich. 18 Geo. 2.

DEfendant prays Oyer, and a Copy of the Letters Patent ſet forth in the Declaration with a *Profert in Cur'*, and Plaintiffs give him Oyer and a Copy, for which Copy Defendant pays, and afterwards doth not make the Oyer Part of his Plea, but pleads the General Iſſue, *Non cul'*; Plaintiffs make up the Iſſue with Oyer; Defendant moves that the Oyer may be ſtruck out of the Iſſue; and upon hearing Counſel on both Sides, the Motion was denied. *Draper:* Giving Oyer is the Act of the Court, and when ſet out, is Part of the Declaration. Letters Patent are a Record, and *Non Conceſſit* pleaded doth not deny the Letters Patent, but the Operation thereof only. Action on Bail-Bond, in the Declaration not laid that the Bond was given to the Sheriff *per Nomen Officii*; Defendant pleads *Non eſt factum*, Plaintiff in his Replication ſets out the Bond by Way of Oyer, to help the Defect in the Declaration. *Per Cur':* Plaintiffs may by Replication pray an Inrolment *in hæc verba*, but cannot make Defendant pray Oyer in his Plea upon Record whether he will or no. Where Oyer is prayed, Plaintiffs have a Right

Right to make the Oyer Part of Defendant's Plea. If no Oyer is prayed, an Inrolment proper. If Oyer prayed, no Inrolment. The Pleadings are ſuppoſed to be *Ore tenus* at the Bar, and a Record is to be made of what is done there. *Bootle* for Defendant; *Draper* for Plaintiff. Caſes cited for Plaintiffs, *Plow.* 491. 20 *H.* 7. 8. *Dyer* 133, 187. *Cro. Jac.* 679. *Stonehouſe* againſt *Read*, 1 *Lut.* 680. *Blewit* againſt *Appleby*, *Co. Lit.* 260. *a. Brook*, Tit. *Record*. *Aliter in Banco Regis*, *Mich.* 19 *Geo.* 2.

Pleadings, and Time to Plead.

Fitzwilliams *againſt* The Biſhop of Hereford and the Univerſity of Cambridge, in Quare Impedit. Trin. 13 & 14 Geo. 2.

HAyward, for Defendants moved for an Imparlance, the Declaration having been delivered after the Eſſoign Day, *viz.* 4th *June*. *Draper*, for Plaintiff, produced a peremptory Rule to plead, after which there can be no Imparlance. The Rule to ſhew Cauſe was diſcharged; but the Court gave Defendants a Month's Time to plead.

Dowding, Adminiſtrator, *againſt* Baker and others.

THIS was an Action of Debt on Bond, Declaration delivered of *Trinity* Term laſt, with an Imparlance till *Michaelmas* Term; in that Term Defendants procured a Judge's Order for Time to plead till the 15th *December*, and then pleaded *Solvit ad diem* by one of the Defendants; in *Hilary* Term Plaintiff replied Nonpayment; and Defendants

dants the ſame Term rejoined, and entred a Waiver of their Plea, and ſet out Letters Teſtimonial, dated 26th *November*, whereby it appeared, that Plaintiff was excommunicated 23d *November*, and ſo plead the Excommunication *puis darrein Continuance*; in *Eaſter* Term following, Plaintiff demurs, and Defendants join in Demurrer. *Bootle* for Defendants alledged, that Plaintiff, in making up the Demurrer-Book, had continued the Imparlance from *Trinity* Term till the laſt Return of *Michaelmas* Term, which is 25th *November*, though the Plea was delivered generally of that Term, and the Imparlance ought to be carried no farther than *Tres Mich.* which is the conſtant Practice. That by Plaintiff's continuing it beyond 23d *November*, an Abſurdity was created, and Defendants would thereby loſe the Benefit of their Defence, for that the Excommunication would then appear to be before, and not after the laſt Continuance. *Draper* for Plaintiff inſiſted, that it is Plaintiff's Right to enter Continuances by Imparlance, from the Declaration to Judgment or Iſſue; that Time to plead, and an Imparlance, are the ſame Thing; and as Defendants, in Truth, had Time to plead till 15th *December*, the Imparlance ought to be continued, according to the Fact; and of that Opinion was the Court, and ordered the Imparlance to be continued till *Tres Mich.* agreeable to the common

common Practice, and from thence till *Quinden' Martini*, agreeable to the Fact.

Harriſon *againſt* Morris and others, in Treſpaſs. Mich. 14 Geo. 2.

A Rule to ſhew Cauſe why Defendant *Roads* ſhould not have Leave to withdraw the General Iſſue, pleaded by Miſtake, and join with the other Defendants in pleading a Special Juſtification, upon Payment of Coſts, was made abſolute, no Delay or Inconvenience being occaſioned to Plaintiff thereby. *Bootle* for Defendant *Roads*; *Prime* for Plaintiff.

Wells *againſt* Trehern, an Attorny.

PER *Cur'*: Claim of Cognizance by the Univerſity of *Oxford* diſallowd as coming too late, after Plea pleaded and Replication tendering an Iſſue. Rule to ſhew Cauſe why Claim of Cognizance ſhould not be allowed was diſcharged.

Dunn *againſt* Hutt, in Trover.
Dunn *againſt* Hutt, in Aſſumpſit.

TWO Declarations by the By delivered 16th *October* next before this Term, (after Declaration in Chief delivered in *Eaſter* Term laſt) were held to be out of Time,

and could not be regularly delivered after the Term in which the Writ was returnable. An Agreement to receive the Declarations by the By was ſworn upon Defendant's Attorny, but he denied it by Affidavit. Rule abſolute to ſtay Proceedings. *Agar* for Defendant; *Ketelby* for Plaintiff.

Lloyd, Aſſignee of the Sheriff, *againſt* Cullum, upon a Bail-Bond.

THE *Capias* in the Original Action was returnable *Menſ. Mich.* and the Bail-Bond aſſigned 17th *November*, and Proceſs ſerved thereupon, returnable *Quinden' Martini*, whereto Defendant appeared; and in laſt Vacation Plaintiff declared generally of *Michaelmas* Term, with an Imparlance till this Term. Defendant demurred, and Plaintiff joined in Demurrer, and delivered the Demurrer-Book made up of this Term. Defendant obtained a Rule to ſhew Cauſe why the Entry of the Declaration ſhould not be made generally of *Michaelmas* Term, as delivered. *Per Cur':* This Rule ſhall be diſcharged, but every Thing ought to be entered according to Truth. Let the Declaration be amended by intitling it in fifteen Days of St. *Martin* in *Michaelmas* Term. Let the Demurrer be withdrawn, and Defendant have four Days to plead *de novo*. *Bootle* for Defendant; *Skinner* for Plaintiff.

Coſens,

Coſens, Attorny, *againſt* Etherington, Executor. Trinity 14 & 15 Geo. 2.

A Rule was made to ſhew Cauſe why Defendant ſhould not plead doubly, *viz.* a ſpecial *Plene Adminiſtravit*, and a Set-off, without an Affidavit; and no Cauſe being ſhewn, the Rule was made abſolute. *Bootle* for Defendant.

Steele and others *againſt* Pindar, in Trover. Mich. 15 Geo. 2.

A Rule to ſhew Cauſe why Defendant ſhould not plead doubly, *viz.* Not guilty, and A General Releaſe from one of the Plaintiffs. The Court have been too nice in the Conſtruction of the Act of Parliament for pleading doubly, which is general, and a remedial Law. Theſe Pleas are not abſolutely contradictory; the Releaſe is general, and not particular, and cannot in this Caſe be given in Evidence under the Not guilty. *Draper* for Defendant; *Bootle* for Plaintiffs.

Garnett,

Garnett, Attorny, *againſt* Harriſon and Freeman, Executors.

RULE to ſhew Cauſe why Defendants ſhould not plead *Non Aſſumpſit*, and *Plene Adminiſtravit*, was made abſolute, without an Affidavit from Defendants that they have fully adminiſtered. Before Lord Chief Juſtice *Eyre*'s Time this Affidavit was not required, and it is not reaſonable to expect it for the future. Pleading doubly is a Privilege Defendants are intitled to by Act of Parliament. The Court give Leave to plead *Non Aſſumpſit*, and *Non Aſſumpſit infra ſex Annos*, without an Affidavit; and that is a Caſe more within the Party's Knowledge than a *Plene Adminiſtravit*. If either of the Pleas are falſe, Coſts are given by the Statute. *Gapper* for Defendants; *Draper* for Plaintiff.

Thornhill *againſt* Tunnard.

RULE to ſhew Cauſe why Defendant ſhould not withdraw his Avowry, and avow Property in a Stranger, was made abſolute. *Birch* and *Draper* for Defendant; *Bootle* for Plaintiff.

Clixby *againſt* Dinas.

DEfendant was ſued by the Name of *Finis Dinas*; he pleaded in Abatement, that his Name was *Phineas*, and not *Finis*; but both the Plea and Affidavit to verify it were intitled, *In a Cauſe between* Clixby, *Plaintiff, and* Finis Dinas, *Defendant.* Rule to ſhew Cauſe why the Plea ſhould not be ſet aſide, was made abſolute. *Bootle* for Plaintiff; *Agar* for Defendant.

Lacy *againſt* Lock, in Treſpaſs. Eaſter 15 Geo. 2.

RULE made abſolute to plead doubly, (*viz.*) Not guilty, and 4 *l.* 4 *s.* paid Plaintiff in Satisfaction for all Treſpaſſes to ſuch a Time. *Draper* for Defendant; *Willes* for Plaintiff.

Fleming, Clerk, *againſt* Betts and Blake, in Treſpaſs, for placing a Stile in Plaintiff's Fence, and cutting down Trees.

RULE diſcharged to ſhew Cauſe why Defendant ſhould not plead doubly, Not guilty, and a Licence. *Draper* for Defendant; *Prime* for Plaintiff.

Goddard

Goddard and Martin *againſt* Ballard and his Wife, Executors. Trinity 16 Geo. 2.

RULE made abſolute to plead doubly, *viz. Ne unques Exec'*, and *Plene Adminiſtravit*; no Cauſe being ſhewn to the contrary.

Salmon *againſt* Aldrich. Hilary 16 Geo. 2.

RULE to ſhew Cauſe why Defendant ſhould not withdraw his Plea of Tender, and plead the General Iſſue, and pay Mony into Court upon the Common Rule, was diſcharged. The Court will permit Defendant to withdraw a Special Plea, and plead the General Iſſue; but after Plea pleaded, cannot give him Leave to bring Mony into Court without Plaintiff's Conſent. *Draper* for Plaintiff; *Agar* for Defendant.

Rutter *againſt* The Biſhop of Hereford and the Univerſity of Cambridge, &c. in Quare Impedit. Eaſter 16 Geo. 2.

RULE to ſhew Cauſe why Defendants ſhould not plead nine different Matters, (denying all the Facts in the Declaration) diſcharged. And the Court refuſed to grant a Commiſſion to examine touching ſecret Truſts for Papiſts, according to the Statute, without the Univerſity's Conſent to plead the Popiſh Act only. *Draper* for Plaintiff; *Hayward* for Defendant.

Hall *againſt* Lane, in Caſe on ſeveral Promiſes.

THE Court gave Defendant Leave to plead Bankruptcy to the firſt Count, and to pay Mony into Court on the Common Rule, and plead the General Iſſue to the other Counts. *Willes* for Plaintiff; *Agar* for Defendant.

Brewer *againſt* Mathews, in Treſpaſs.

DEclaration was delivered ſo late laſt Term that Defendant had not Time to move to plead doubly, but, to prevent Judgment, pleaded *Liberum Tenementum.* Plaintiff replied, and Defendant demurred. Plaintiff applied for Leave to amend the Replication, and Defendant to withdraw his Plea, and plead *Non cul'* and *Liberum Tenementum.* A Rule was made to ſhew Cauſe upon Defendant's Motion, and afterwards diſcharged, the Pleas being contradictory. Where the *Locus in quo* is aſcertained by the Declaration (as in this Caſe) *Liberum Tenementum* is no Plea. It is only neceſſary where the Treſpaſs is laid generally, to put Plaintiff upon making a new Aſſignment. No Affidavit is produced to verify that Defendant's Caſe requires both Pleas for his Defence. *Bootle pro* Plaintiff; *Wynne pro* Defendant.

Rolle, Eſquire, *againſt* Lytton and others, in Treſpaſs.

RULE to ſhew Cauſe why ſome of Defendants ſhould not plead two Matters, *viz. Non cul'*, and That the Premiſſes in Queſtion are the Freehold of Sir *William Courtenay*, Baronet, diſcharged. The Place is aſcertained by the Declaration; and Plain-

tiff may give the ſame Evidence on the General Iſſue as on both Pleas. *Belfield* for Plaintiff; *Draper* for Defendant.

Prinnell *againſt* Preſton, in Treſpaſs, for erecting a Shed in Plaintiff's Cloſe called The Yard.

MOTION, without an Affidavit, to plead Not guilty, and a Licence. Where the Pleas are contradictory, Defendant ſhould make appear by Affidavit that it is neceſſary for his Defence to inſiſt upon both. If the Treſpaſs be by Cattle, the Nature of the Caſe is ſufficient, an Affidavit is not neceſſary, becauſe the Matter may be without the Party's Knowledge. If by the Party himſelf, he muſt move upon Affidavit. The Court have never admitted Not guilty, and a Releaſe of a particular Treſpaſs; tho' they have admitted Not guilty, and a General Releaſe, where an Affidavit was produced.

Burnand *againſt* Burnand. Trinity 16 & 17 Geo. 2.

RULE abſolute to plead *Non cul'*, and *Son Aſſault Demeſne*, (No Cauſe ſhewn) *Prime* for Defendant.

Bayley

Bayley *againſt* Houldſton.

THE Writ was returnable in *Eaſter* Term, and the Declaration, which was delivered the Day before the Eſſoign-Day of this Term, was ſent *per* Poſt to *Shrewſbury* the ſame Day. Defendant's Agent could not have Inſtructions to plead a Tender within the firſt four Days of this Term, but moved as ſoon as he could. Rule to plead a Tender. *Skinner* for Defendant; *Prime* for Plaintiff.

Lawrence *againſt* Playford.

RULE obtained upon Affidavit to ſhew Cauſe why Defendant ſhould not plead three Pleas, *Non cul'*, *Son Aſſault Demeſne*, and *Molliter manus impoſuit*, made abſolute to plead the firſt and laſt, rejecting the ſecond. *Willes pro* Plaintiff; *Prime* for Defendant. The Caſe made by the Affidavit not making it neceſſary for Defendant's Defence to plead the ſecond.

Banks *againſt* Bulcock, Executor. Mich. 17 Geo. 2.

RULE abſolute, upon Affidavit of Service, to plead *Non eſt factum*, and *Ne unques Executor*. *Prime* for Defendant.

Briſtow *againſt* Trappett, in Treſpaſs and Aſſault.

RULE made abſolute to plead doubly, *Nul cul'*, and *Son Aſſault Demeſne*. By Defendant's Affidavit the Aſſault appeared to be juſtifiable. He has a Right to plead the Special Plea, but is under a Doubt whether without it the General Plea will be ſufficient or not. He takes upon himſelf the Proof of a Colateral Matter by adding the Special Plea. If Plaintiff recovers, he will have full Coſts, without a Certificate, though the Damages ſhould be under 40 *s.* *Prime* for Defendant; *Willes* for Plaintiff.

Lannie *againſt* Fieldhouſe, in Treſpaſs, Aſſault and Maim. Hilary 17 Geo. 2.

NOT guilty, *Son Aſſault Demeſne*, and Satisfaction for all Treſpaſſes, not a particular Treſpaſs, allowed to be pleaded; and Rule giving Defendant Leave to plead the ſame, made abſolute. *Skinner* for Defendant; *Hayward* for Plaintiff.

Bingham *againſt* Davis.

RULE was made abſolute, giving Defendant Leave to plead a Tender of Mony of laſt Term, notwithſtanding the General Imparlance. Defendant's Agent, though he appeared in Time, had no Notice of the Declaration till the firſt Day of this Term; and on the 26th *January* he obtain'd a Judge's Summons. *Hayward* for Defendant; *Birch* for Plaintiff.

Bullythorpe *againſt* Turner, in Replevin. Eaſter 17 Geo. 2.

THE Court held, That the particular Place of taking Goods, *&c.* ought to be inſerted in every Declaration in Replevin; and that *Cepit in alio Loco* is to be conſidered as a Plea in Bar, and not in Abatement. No Affidavit is requiſite to be filed therewith, nor is it neceſſary to be pleaded within four Days after the Declaration delivered. *Reſolutio Curiæ.*

The King *againſt* The Archbiſhop of York, in Quare Impedit. Eaſter 18 Geo. 2.

RULE to ſhew Cauſe why Defendant ſhould not have Leave to plead doubly, diſcharged. The Statute 4 *Anne*, *chap.* 16. does not extend to Suits where the King is a Party, unleſs for Debt immediately owing, or Revenue. *Vide* 24th Sect. of the Statute.

Benſon *againſt* Hemming. Trinity 18 & 19 Geo. 2.

PLaintiff's original Demand was 15 *l.* 3 *s.* 9 *d.* Defendant gave Notice to ſet off, but took no Advantage under it; proving on the Trial Payments in Part, which reduced the Debt to 1 *l.* 13 *s.* 9 *d.* and that Sum the Jury gave Plaintiff in Damages. Defendant obtained a Rule to ſhew Cauſe why he he ſhould not have Leave to enter a Suggeſtion on the Roll (purſuant to the Statute 1ſt *William* and *Mary*, ſetting up Courts of Conſcience in *Briſtol* and *Glouceſter* :) That the Parties are both Inhabitants of *Glouceſter*, and the Debt recovered under 40 *s.* Plaintiff's Counſel quoted a Caſe in *B. R. Pitts* againſt *Carpenter*, *Trinity* 16 & 17 *Geo.* 2. where a Croſs Demand of 3 *l.* 2 *s.* had been proved

proved by Way of Set-off, and thereby Plaintiff's Original Debt of 4 *l.* 15 *s.* was reduced to 1 *l.* 13 *s.* 3 *d.* After the Benefit of ſaid Set-off, the Court denied Leave to Defendant to enter Suggeſtion. This Court was of the ſame Opinion as the Court of King's Bench. The Demand in the Caſe quoted was reduced by Defendant's Act; it was not known to Plaintiff, at the Time of bringing his Action, whether Defendant would take Advantage of a Set-off or not. The Inferior Court has no Juriſdiction for a Debt above 40 *s.* But this Caſe differs from that quoted here; no Set-off is uſed, but Payment proved under the *Non Aſſumpſit.* The original Debt, which was the Cauſe of Action, appears to be no more than 1 *l.* 13 *s.* 9 *d.* Defendant's ſubmitting to the Juriſdiction of this Court doth not take away his Remedy; after Verdict, he now comes *primo inſtante.* The Suggeſtion may be traverſed as to Inhabitancy. Rule for Leave to enter Suggeſtion abſolute. The *London* Court of Conſcience, Act 3 *Jac.* 1. *chap.* 15. is a good Statute; and though this Act relating to *Briſtol* and *Glouceſter* be inaccurately penned after a good Precedent, yet the Court is bound by it. *Skinner* for Plaintiff; *Willes* and *Draper* for Defendant.

Thompſon

Thompſon *againſt* Atkinſon, in Covenant broken. Mich. 19 Geo. 2.

JUNE 20th 1745 Defendant obtained a Judge's Order for a Fortnight's Time to plead, pleading an iſſuable Plea, and taking ſhort Notice of Trial. Defendant pleaded a general Performance of Covenants (not ſigned by Counſel), which was held to be no iſſuable Plea, and ſet aſide. Coſts to attend the Event. *Prime* and *Wynne* for Plaintiff; *Skinner* for Defendant.

Smith *againſt* Philips, one, &c. Hilary 19 Geo. 2.

BILL intitled generally of *Michaelmas* Term; Declaration with a Memorandum of the 23d *October*; after which Day, and before 25th *November*, the true Day of filing the Bill, the Defendant had tendered Mony to Plaintiff. *Willes*, for Defendant, moved, after the firſt four Days of this Term, that the 25th *November* might be inſerted in the Memorandum inſtead of 23d *October*, in order that Defendant might plead a Tender. No Rule. Defendant is too late to plead a Tender, after a general Imparlance. He ſhould have applied within the firſt four Days of this Term.

Tayler

Tayler *againſt* Wittall, in Treſpaſs and Aſſault. Trinity 19 & 20 Geo. 2.

RULE made for Leave to plead three Pleas, (*viz.*) *Non Cul'*, *Son Aſſault Demeſne*, and *Molliter Manus impoſuit*. *Belfield* for Defendant; *Wynne* for Plaintiff.

Harman *againſt* Dunn, for Words. Mich. 20 Geo. 2.

RULE made abſolute for Defendant to plead Not guilty, and a Juſtification. *Wynne* for Defendant; *Skinner* for Plaintiff.

Haddock *againſt* Howard. Hilary 20 Geo. 2.

DEfendant, whilſt a Feme ſole, was arreſted in the Palace Court, and a Day or two after the Arreſt married, and then removed the Plaint by *Ha. cor.* into this Court, and pleaded her Coverture in Abatement. Rule to ſhew Cauſe made abſolute to ſet aſide the Plea, upon hearing Counſel on both Sides.

Crabb, Clerk, *againſt* Button, Clerk, Executor.

RULE made abſolute to plead two Pleas, *viz. Ne unques Executor'*, and *Plene Adminiſtravit. Draper:* Defendant is ſued as an Executor *de ſon Tort*, and it is dangerous for him to rely on the firſt Plea; he knows not whether the Act he has done makes him Executor, or not. If he has done Wrong, he has made Satisfaction. *Plene Adminiſtravit* is within his own Knowledge. *Draper* for Defendant; *Wynne* for Plaintiff.

Hariſon *againſt* Speight, Tranſitory Action of Treſpaſs for taking and carrying away Brackens. Eaſter 20 Geo. 2.

LEAVE given Defendant to plead two Pleas, *viz.* Not guilty, and a Juſtification; preſcribing as Owner and Occupier of Defendant's Meſſuage, *&c.* and becauſe Plaintiff wrongfully cut down the Brackens, Defendant took them as belonging to him. This is not ſtronger than Not guilty, and *Liberum Tenementum. Bootle* for Defendant; *Skinner* for Plaintiff.

Smith, one, &c. *againſt* Lodge, for Words. Trinity 21 Geo. 2.

RULE made abſolute for Defendant to plead two Pleas, (*viz.*) Not guilty, and a Juſtification as to the Truth of the Words, which Words imported, That Plaintiff was perjured in an Affidavit he had made. If the Words are true, Defendant may be trapp'd, by imagining that he may give the Truth of the Words in Evidence on the General Iſſue. There are no other Pleas in Actions for Words but theſe two, and if the Rule be denied, the Court muſt determine Actions for Words to be out of the Statute for pleading doubly. *Bootle* for Defendant; *Prime* for Plaintiff.

Penvold *againſt* Thomlinſon, one, &c. By Bill.

DEfendant moved to ſtay Proceedings, the Declaration having been delivered without the uſual Memorandum. The Court gave Plaintiff Leave to amend, by inſerting the Memorandum, on Payment of Coſts. *Bootle* for Defendant; *Prime* for Plaintiff.

Browne

Browne *againſt* Hagan. Eaſt. 21 G. 2.

RULE to ſhew Cauſe why Defendant ſhould not have Leave to plead a Tender of Mony of laſt Term, notwithſtanding the General Imparlance, made abſolute on Payment of Coſts, though the Application was not made within the firſt four Days of this Term, according to the General Practice; it appearing that the Declaration was not delivered till the Day before the Eſſoign Day of this Term; and that Defendant's Agent, who was obliged to write into *Suffolk*, had applied almoſt as ſoon as he poſſibly could. *Belfield* for Plaintiff; *Bootle* for Defendant.

Jones *againſt* Davis and his Wife. Same Term.

DEfendant had pleaded four Pleas, as by Leave of the Court, though he had obtained no Rule for that Purpoſe, but a Judge's Order. Plaintiff moved, that either three of the four Pleas, or the Words [*By Leave of the Court*] might be ſtruck out. The Statute giving the Power of Leave to plead ſeveral Matters to the Court only, the Pleas were held to be improperly pleaded; but the Court gave Defendant Leave to plead the ſame four Pleas *de novo* of this Term, on Payment of Coſts. *Draper* for Defendants; *Belfield* for Plaintiff.

Hill *againſt* Williams, Aſſignee, &c.

DEfendant had pleaded a Tender made 13th *January*; Plaintiff replied an Original teſte 2d *January*. On Defendant's Application, the Court of Chancery had ordered the Teſte of the Special Original ſued out by Plaintiff to be altered from 2d *January* (the common Teſte Day of an Original returnable *Oct. Hil.*) to 16th *January*, the true Day on which the Inſtructions for this Original were left with the Curſitor. As the Original, thus altered, would not anſwer Plaintiff's Purpoſe, the Tender having been made before 16th *January*, he took the Mony brought in with the Plea, out of Court, entered an Acquittal, and gave Defendant Notice that he would proceed no farther, refuſing to pay Defendant's Coſts; whereupon, on Defendant's Motion, a Rule was made for Plaintiff to ſhew Cauſe why the Entry of Acquittal ſhould not be ſet aſide, with Coſts; or why Plaintiff ſhould not pay Defendant the Coſts he had been put to on Account of this Action. On ſhewing Cauſe, the Court held, that after Plaintiff had replied, he ought not to have entered an Acquittal, without Leave of the Court. And with Regard to the Replication, it (as the Original was altered) ought not to ſtand; and

that though Plaintiff may take out of Court the Mony tendered, and make an Entry of Acceptance before Replication, yet ſtill he muſt pay Coſts. The Replication to the Tender is a Refuſal to accept the Mony. Rule to ſet aſide the Entry of Acquittal, and that Plaintiff be at Liberty to withdraw his Replication, on Payment of Coſts of that Replication, and reply *de novo*. *Draper* for Defendant; *Poole* for Plaintiff.

Lamb and his Wife *againſt* Goodenough, Clerk, Executor. Eaſter 21 Geo. 2.

A. R. as Defendant's Attorny had, eleven Years ago, without Defendant's Order or Privity, fraudulently pleaded two Judgments, one on Bond to himſelf, the other on Bond to a Perſon to whom he was Executor, after he knew them ſatisfied, having himſelf received the Mony. On Defendant's Motion a Rule was made for Plaintiff to ſhew Cauſe why theſe Judgments ſhould not be ſtruck out of the Plea, on Payment of Coſts, and *A. R.* was ordered to anſwer the Matters in the Affidavits. On hearing all Parties, a Rule was made by Conſent, That *A. R.* ſhould pay Plaintiff's Coſts *ab initio*; and thereupon Plaintiff ſhould diſcontinue; and that *A. R.* ſhould pay Coſts of the Application to Plaintiffs and Defendant, and that no Action be brought by Defendant againſt *A. R.* for any thing

thing relating to this Cauſe. *Prime* and *Belfield* for Plaintiff; *Skinner* for *A. R. Poole* for Defendant.

Alderſon *againſt* Dodding. Mich. 22 Geo. 2.

RULE to ſhew Cauſe why Defendant ſhould not plead Not guilty, and a Tender, diſcharged. As the Pleas are contradictory, the former denies, the latter admits. *Prime* for Plaintiff; *Bootle* for Defendant.

Roberts, Adminiſtrator, *againſt* Hughes. Eaſter 22 Geo. 2.

DEfendant demurred to an inſufficient Declaration of *Hilary* laſt; Plaintiff thereupon, by Virtue of a Judge's Order, amended his Declaration, on Payment of Coſts; and this Term gave a new Rule to plead. Defendant moved for Leave to plead a Tender as of laſt Term, or that Plaintiff might make his Declaration of this Term. Rule to ſhew Cauſe made abſolute. *Skinner* for Defendant; *Draper* for Plaintiff.

Merefield *againſt* Hulls. Trinity 24 Geo. 2.

RULE made abſolute to plead *Non eſt factum*, and *Dureſs*. Theſe Pleas are not contradictory; one is a General, the other a Special *Non eſt factum*. *Eyre* for Defendant; *Agar* for Plaintiff.

Lacy and Garrick *againſt* Barry, in Covenant. Mich. 24 Geo. 2.

BREACH aſſigned for acting at *Covent-Garden* Theatre, contrary to Articles. Rule abſolute for Leave to plead doubly, *viz.* firſt, That Plaintiffs do not act under Letters Patent, or Licence from Lord Chamberlain; and ſecondly, That Defendant is not qualified to act under ſuch Letters Patent or Licence. Unleſs *primâ facie* the Pleas appear to be frivolous, the Court, on Motion, will not conſider whether they are material or not. Plaintiffs may demur. *Draper* for Defendant; *Willes* and *Poole* for Plaintiffs.

Herbert *againſt* Flower and others, in Trover. Trin. 24 & 25 G. 2.

RULE to ſhew Cauſe why Defendants ſhould not plead doubly, Not guilty, and That Plaintiff became a Bankrupt, and

his Effects were aſſigned, diſcharged. Theſe Pleas are not both neceſſary for the Defence, they amount to an Inverſion of the Action, and pleading Property in Defendant. The latter may be given in Evidence on the former; on *Non Aſſumpſit* every Thing may be given in Evidence but a general Releaſe. *Bootle* for Defendant; *Prime* for Plaintiff.

Whaley *againſt* Harriſon and others, Mich. 25 Geo. 2.

THE Declaration was delivered laſt Vacation, with an Imparlance till the firſt Return of this Term; Defendants, within the firſt four Days of this Term, moved, and had a Rule to ſhew Cauſe why they ſhould not plead three Pleas, (*viz.*) *Non Aſſumpſit*, a Set-off, and a Tender as of laſt Term. Plaintiff's Counſel objected to the laſt Plea, That Defendant had taken out a Judge's Summons for Time to plead, which (though no Order was made thereon) ſhews that they have not been *touts Temps priſt*. But *per Cur'*: The Motion was made in Time. A Tender is no dilatory Plea. The Rule made abſolute. *Agar* for Defendants; *Prime* for Plaintiff.

Bownas *againſt* Wilcock, Widow.

TReſpaſs brought by Tenant againſt Landlady (who had diſtrained for Rent) for breaking and entering Plaintiff's Cloſe and Shop, and taking and carrying away his Farrier's Tools and Goods. The Declaration contained five Counts (fol. 73.) Motion by Defendant to reduce the five Counts into one. Rule to ſhew Cauſe. On Plaintiff's Part an Affidavit was produced, proving ſix different diſtinct Treſpaſſes; but the Court did not conſider theſe as ſimilar to Counts in *Aſſumpſit*. The Treſpaſſes on different Days may be laid in one Count for breaking and entering the Houſe and Shop, on ſuch a Day, *&c.* with a *Continuando*; and another Count may be added for taking away the Goods, *&c.* without laying the Taking to be out of the Houſe and Shop. The Declaration ordered to be reduced into two Counts. *Poole* for Defendant; *Prime* and *Willes* for Plaintiff.

Jackſon *againſt* Warwick and others, in Replevin. Trinity 25 & 26 Geo. 2.

RULE made abſolute, giving Plaintiff Leave to withdraw his Plea in Bar to Defendant's Avowry, and to plead doubly,

viz.

viz. the ſame Plea, with another Plea added, on Payment of Coſts. In the Courſe of this Motion it was ſaid, that the frequent Applications made to the Court to plead *Non Aſſumpſit*, and *Non Aſſumpſit infra ſex Annos*, were unneceſſary; becauſe the latter Plea ſingly would anſwer all Purpoſes, without the former; but this is a Miſtake. Under the former Plea, Coverture, a Releaſe, a Set-off, may be given in Evidence, which under the latter cannot be done. *Poole* for Plaintiff; *Willes* for Defendants.

Pay *againſt* Dearſley. Eaſter 26 Geo. 2.

THE Declaration (fol. 17.) in a Country Cauſe, was delivered 8th *February* laſt, between eight and nine in the Evening, to Defendant's Agent, who had not Time to ſend a Copy by that Poſt to his Client. 16th *February* Defendant pleaded a Tender of Mony, which Plaintiff's Agent inſiſting to be irregular, as not pleaded in Time, Summons was taken out; whereupon Lord Chief Juſtice ordered Proceedings to be ſtayed till ſecond Day of this Term; when *Poole* for Defendant moved to plead a Tender, and a Rule was made to ſhew Cauſe. Now *Willes* for Plaintiff came to ſhew Cauſe, and inſiſted, That where a Declaration is delivered four Days before the End of a Term, on

Proceſs returnable the firſt or ſecond Return of that Term, (in which Caſe Defendant is not intitled to an Imparlance) if Defendant would plead a Tender, he muſt do it within four Days after Declaration delivered, the ſame Time he has to plead in Abatement. The Court did not eſtabliſh this Doctrine; but held, that whatever the ſtrict Rules of Practice may be, yet they may and ought to be diſpenſed with on particular Circumſtances. The Delivery of this Declaration at the laſt Minute looks like a Trick, to deprive Defendant of the Benefit of his Plea, which is not conſidered as dilatory; it is iſſuable, and the Mony pleaded to be tendered is brought into Court with it. Rule abſolute, giving Defendant Leave to plead a Tender.

Pitfield *againſt* Morey. Trinity 26 & 27 Geo. 2.

RULE abſolute to plead a Tender of Mony to the firſt Count, and *Non Aſſumpſit* to the Reſidue, as of the laſt Term; the Declaration not being delivered till the Day before the Eſſoign Day of this Term, Defendant's Agent could not get Inſtructions from the Country in Time, though he might have had an Anſwer, and applied a Day or two ſooner. A Tender is a fair Plea. *Wynne* for Defendant; *Draper* for Plaintiff.

Browne

Browne *againſt* James, in Replevin.

RULE made, giving Defendant Leave to withdraw his former Avowries, *&c.* and plead the ſame again, with two other Pleas added, on Payment of Coſts, (after Iſſues joined twelve Months ago) Plaintiff to be at Liberty to plead in Bar *de novo*, and to proceed to Trial next Aſſizes. *Poole* for Defendant; *Wilſon* for Plaintiff.

Halton *againſt* Holme, one, &c.

RULE to ſhew Cauſe why Defendant ſhould not have Leave to withdraw his Plea, pay 50 *l.* into Court, and plead the General Iſſue, made abſolute; Defendant doing ſo within a Week, and taking ſhort Notice of Trial for next Aſſizes. *Poole* for Defendant; *Willes* for Plaintiff.

Bell *againſt* Croſsthwaite, in Treſpaſs. Mich. 27 Geo. 2.

INterlocutory Judgment regularly ſigned for Want of a Plea, Rule to ſhew Cauſe why ſhould not be ſet aſide on Payment of Coſts, and pleading an iſſuable Plea. On ſhewing Cauſe, *Willes* for Plaintiff urged, that the Action was laid in *Cumberland*, where the Aſſizes are held but once a Year, and Plaintiff had been delayed of a Trial; and that if the Court did ſet aſide a regular Judgment, they would confine Defendant to plead the General Iſſue. But it appearing that the Diſpute was Matter of Title, and that the Plea, through Accident, was not ſettled in Time, the Rule was made abſolute. *Poole* for Defendant.

Priſoners.

Aſh *againſt* Day. Mich. 14 Geo. 2.

THE Declaration was of *Hilary* Term laſt, and Interlocutory Judgment ſigned the ſame Term. A Writ of Inquiry was executed, returnable *Tres Trin'* laſt; but being ſet aſide by the Court, becauſe the ſame was executed before a Perſon not properly deputed by the Sheriff, Defendant applied for a *Superſedeas* for Want of Plaintiff's proceeding to final Judgment within three Terms after the Declaration, and obtained a Rule to ſhew Cauſe, which was made abſolute. *Prime* for Plaintiff; *Willes* for Defendant.

Maddock *againſt* Fletcher.

DEfendant being arreſted by Bill of *Middleſex* at Plaintiff's Suit, and being charged alſo with a *Capias* at another Perſon's Suit in this Court, removed himſelf to the *Fleet* Priſon by *Habeas Corpus* 7th *May* 1740, and Plaintiff not having declared within two Terms, Defendant applied for a *Superſedeas*. Plaintiff objected, that the Motion here was improper, and Defendant ought to apply to the Court of King's Bench, from whence

whence the firſt Proceſs iſſued. But *per Cur'*: Defendant's Application is regular, and agreeable to the conſtant Practice of this Court and the Court of King's Bench. The Removal to the *Fleet* being before a Declaration delivered, Plaintiff muſt declare in this Court, he cannot declare in the Court of King's Bench, (unleſs he removes Defendant by *Habeas Corpus ad reſpondend'*,) and for Want of a Declaration Defendant is to be diſcharged by this Court. Where a Defendant is removed after Declaration delivered, the Action muſt proceed in that Court wherein Plaintiff declares, and Defendant is to be ſuperſeded by that Court for Want of ſubſequent Proſecution, though detained in the Priſon of the other Court. *Prime* for Plaintiff; *Belfield* for Defendant.

Mich. 15 Geo. 2.

ON the Warden of the *Fleet*'s Petition, *inter alia* deſiring Leave to ſhut up the Priſon Gate ſooner than the Time appointed for that Purpoſe, it was prayed, that two Priſoners might be brought into Court on the Day of hearing the Matter, to oppoſe the Petition on Behalf of the Priſoners, (*viz.*) *John George*, detained by meſne Proceſs of this Court, and *James Browne*, detained in Execution out of the Exchequer at the Suit of the King. *Per Cur'*: *George* may

may be brought up by Rule; but *Browne* being held by an Execution from another Court cannot be brought up without an *Habeas Corpus*.

Coates's Caſe. Eaſter 15 Geo. 2.

MAY 6th *Robert Coates* was brought into Court by the Gaoler, by *Habeas Corpus* directed to the Sheriff of the Town of *Newcaſtle upon Tyne*; and by the Return *Coates* appeared to be charged with Proceſs of this Court, and with ſeveral Writs of *Capias* from the Court of Exchequer, at the Suit of the King for 800 *l.* and upwards, as a Smuggler. *Per Cur'*: The *Habeas Corpus* is not returnable till the 12th inſtant. Defendant muſt be then brought into Court again, and in the mean Time may give Notice to the Solicitor of the Cuſtoms. The King may chuſe his own Priſon; Defendant cannot be committed to the *Fleet* without the Conſent of the Crown. *May* 12th, it appearing by Affidavit that Mr. *Metcalfe*, Solicitor of the Cuſtoms, had, by the Direction of the Commiſſioners, ſigned a Conſent, and Serj. *Prime* conſenting *pro Rege*, Defendant was committed to the *Fleet*. *Bootle* for Defendant.

Aſhdowne

Aſhdowne *againſt* Fiſher.

RULE made abſolute to diſcharge Defendant, a Bankrupt, taken in Execution for a Debt accrued before the Bankruptcy. Defendant could not plead his Diſcharge in the firſt Inſtance, becauſe he did not obtain his Certificate till after he was obliged to plead. But it was inſiſted by Plaintiff's Counſel, that he might have pleaded *Poſt darrein Continuance*. Theſe Caſes muſt be conſidered equitably. *Blackwell* againſt *Coates*, 2 *Peere Williams* 70. No Concealment appears.

Judge *againſt* Torr. Trinity 16 Geo. 2.

DEfendant, after Judgment, was rendered to the *Fleet* Priſon in Diſcharge of his Bail in *Hilary* Vacation laſt, and this Term moved in the Treaſury for a *Superſedeas*, for Want of being charged in Execution within two Terms, purſuant to the General Rule 8 *Geo.* inſiſting, that the Render muſt be taken to be of *Hilary* Term; the Words of the Rule are, *within two Terms after ſuch Judgment obtained*; in Caſe of a Render after Judgment, the Words ſhould be, *after ſuch Render*. There muſt be a new Rule to ſettle the Practice in this and other

other Particulars, wherein the old Rule is defective. A Rule was granted to ſhew Cauſe why a *Superſedeas*, which upon Affidavit of Service was made abſolute, no Cauſe being ſhewn by Plaintiff to the contrary.

On Behalf of Greenwood.

DEfendant, a Priſoner in the *Fleet* charged on meſne Proceſs for 402 *l.* 15 *s.* had not given Security to the Warden for the Liberty of the Rules, petitioned the Court, and obtained a Rule for the Warden to ſhew Cauſe why a Day-Rule ſhould not be granted to the Petitioner, and why a Tipſtaff ſhould not take him to *Hounſlow*, to meet and treat with his Creditors, and bring him back the ſame Day. *Skinner* for the Warden obſerved, that no Affidavit was filed to verify the Allegations in the Petition; and that no Inſtance could be ſhewn where the Court gave Leave to carry a Priſoner ſuch a Diſtance from the Priſon as deſired. That one *Collett* had applied to be carried into *Kent*, for the ſame Purpoſe, in Lord Chief Juſtice *Eyre*'s Time, and was denied. The Rule was diſcharged.

Hill *againſt* Wadmore.

DEfendant, an Infant about ſixteen Years of Age, being charged in Execution at Plaintiff's Suit, for 60 *l.* Damages and 30 *l.* Coſts, total 90 *l.* recovered againſt him by Plaintiff, in an Action for driving a Waggon upon Plaintiff, whereby his Arm was broken, petitioned the Court to be diſcharged upon the Lords Act; which was oppoſed by *Wynne* for Plaintiff; who urged, that this is not a Debt within that Act of Parliament, which was made for the Eaſe and Relief of Priſoners willing to ſatisfy their Creditors as far as they are able, and doth not extend to Actions for Torts, Negligences, *&c.* It appeared on the Trial, that though Defendant was called to, and might have ſtopped his Waggon, yet he obſtinately drove on; and Plaintiff was a poor Waterman, having a Wife and ſix Children, three of whom he maintained by his Labour, which he can hardly do ſince his Arm was broken by Plaintiff. *Per Cur':* The Damages and Coſts recovered are become a Debt, and Defendant muſt have the Benefit of the Act of Parliament; but We have Power to moderate the Allowance by Plaintiff. Let the Defendant be remanded, upon Plaintiff's allowing him 6 *d.* a Week.

Tompkins

Tompkins, Attorny, *againſt* Woodley, Mich. 16 Geo. 2. 27th November 1742, in the Treaſury.

PLaintiff delivered a Declaration againſt Defendant, a Priſoner in the County Gaol for *Devon*, before the End of the ſecond Term, *viz.* on *Sunday* 4th *July*, three Days before the End of *Trinity* Term laſt. Defendant inſiſted, that this Delivery (being on a *Sunday*) was void, and applied for a *Superſedeas*; which, upon hearing the Agents on both Sides, the Judges refuſed to grant. Defendant hath not made Affidavit that he did not receive the Declaration, nor had it on the Day after the Delivery. The Act of Parliament touching Arreſts, *&c.* on *Sundays*, 29 *Car.* 2. *cap.* 7. doth not take in this Caſe.

Dalrymple and his Wife *againſt* Baynham. Eaſter 16 Geo. 2.

DEfendant being diſcharged by the Lord's Act, aſſigns his Effects to Plaintiffs. Afterwards he is charged in Execution upon a ſecond Judgment, obtained by the ſame Plaintiffs; and on his Diſcharge, the ſecond Time, the Court directed another Schedule to be made, containing the ſame Effects as the Firſt; taking Notice, that they had been

already aſſigned; and then a ſecond Aſſignment to the ſame Plaintiffs, to make the Effects ſubject to the laſt Execution, in caſe they ſhould be more than ſufficient to ſatisfy the Firſt.

Sandys *againſt* Spivey. Trinity 16 & 17 Geo. 2.

DEfendant brought into Court by the Sheriff of *Middleſex* from *Newgate* (the County Gaol) by *Habeas Corpus ad Satisfaciend'*; and Plaintiff's Counſel moved, that he might be charged at Plaintiff's Suit for 300 *l.* and upwards, recovered by Judgment, (the Roll being in Court) and committed to the *Fleet* Priſon in Execution. The Counſel for the Crown oppoſed the Motion. It appeared that Defendant was charged with Proceſs from the Court of Exchequer by the Crown for 30,000 *l.* for running Goods: That the Proſecution againſt him was commenced in *March* 1742, and the Informations were at Iſſue. That Plaintiff's Debt was by Bond dated in *September*, and a Warrant to enter Judgment thereon in *December* 1742, the Judgment was ſigned, and the *Habeas Corpus ad Satisfaciend'*, the firſt Proceſs at Plaintiff's Suit, iſſued 4th *June* 1743. *Per Cur':* The King and his People are one. The Prerogative of the Crown is incorporated with the Law of the Land. Defendant

is

is not intitled to this *Habeas Corpus*; it is brought by the Plaintiff, and the Conteſt is merely between the King and the Plaintiff. The King, by his Prerogative, hath a Right to ſue in what Court he pleaſes, and to impriſon his Debtor in the Gaol for the County or Liberty where he is arreſted. If this Court ſhould have inadvertently committed Defendant to the *Fleet*, by the Practice of the Court of Exchequer, the Attorny General might have had a new *Habeas Corpus*, and that Court would have ſent Defendant back to *Newgate*. The Priority of Suit is in the Crown; though neither it, nor the Priority of the Debt, but the Choice of the Priſon, is the only preſent Queſtion. The Demand of the Crown is always to be preferred before that of any private Perſon. The Eſcape Warrant Act extends not to the Crown, becauſe before that Act the King had a Right to confine his Debtor where he pleaſed. The Court have no diſcretionary Power in this Caſe. Defendant was remanded. Plaintiff may charge him with a *Ca, ſa.* in Cuſtody of the Sheriff of *Middleſex*. *French*'s Caſe, *Salkeld* 353. *Stiles* 363. Counſel were heard for the Warden of the *Fleet*, who objected againſt receiving a Priſoner charged by the Crown with ſo large a Sum. *Skinner* and *Prime* for the King; *Wynne* and *Hayward* for the Plaintiff; *Birch* and *Willes* for the Warden of the *Fleet*.

Poole *againſt* Cook. Hilary 17 Geo. 2.

DEfendant, a Priſoner, applied to be diſcharged by *Superſedeas*, for Want of being charged in Execution within two Terms after Judgment. Plaintiff excuſed himſelf by the Delivery of a *Capias ad Satiſaciend'* to the Gaoler within due Time. But the Court held that to be inſufficient. The *Capias ad ſatisfaciend'* ought to have been delivered to the Sheriff, and the Sheriff's Warrant to the Gaoler. Rule abſolute for *Superſedeas*. *Hayward* for Defendant; *Willes* for Plaintiff.

Hedley *againſt* Brown. Trinity 17 & 18 Geo. 2.

AFTER a Writ of Inquiry executed, Defendant moved to ſtay the Proceedings; Plaintiff, ſince the Action brought, having been diſcharged by the Inſolvent Debtor's Act, and having aſſigned his Debts and Effects for the Benefit of his Creditors, the Court refuſed to make any Rule; the Action brought before the Diſcharge, muſt proceed. *Prime* for Defendant.

Mich. 18 Geo. 2.

WEAVER, charged in Execution by two ſeveral Creditors, and applying to be diſcharged upon the Lords Act, was oppoſed by both Creditors, and remanded; upon both Creditors giving him a joint Note to allow him 2 *s.* 4 *d. per* Week.

Dawſon and others *againſt* Draper. Mich. 18 Geo. 2.

DEclaration delivered againſt Defendant, a Priſoner in the *Fleet*, in *Hilary* Term laſt, and Rule to plead then given; in *Eaſter* Term following Plaintiffs, without giving a new Rule to plead, ſigned Interlocutory Judgment, and executed a Writ of Inquiry in *Eaſter* Vacation; but the Attorny for Plaintiffs finding himſelf to be irregular, in the Beginning of laſt Term obtained a Rule to quaſh the Writ of Inquiry and Inquiſition, waived his Judgment, and 26th *May* in laſt Term, which Term began 25th *May*, gave a new Rule to plead. *May* 31ſt Defendant pleaded a Sham Plea, and Plaintiff replied, concluding *ad Patriam*; and gave eight Days Notice of Trial, incluſive, for the laſt Sitting within laſt Term. Defendant joined Iſſue; but objected to the Notice of Trial, refuſing to accept ſhort Notice; where-

upon Plaintiff countermanded, and gave new Notice for the Sitting after laſt Term; when Plaintiff obtained a Verdict on a Promiſory Note, without Defence. Defendant now applied for a *Superſedeas*, for Want of Plaintiff's proceeding to Final Judgment, within three Terms after Declaration, incluſive. And the Court was of Opinion, that Defendant was intitled to a *Superſedeas*. Defendant is not to be prejudiced by the Miſtake of Plaintiff's Attorny; which cannot be conſidered in the ſame Light as an accidental Omiſſion was, in the Caſe of *Aſhley* and *Sutton*, *Hill.* 12 *Geo.* 2. Defendant is within the Words of the Rule, which is to be conſtrued in Favour of Liberty. But it appearing, that Defendant was detained in Cuſtody by three other Actions, and being liable to be immediately charged in Execution in this Action, the Court thought it nugatory to grant a *Superſedeas*; and the Rule to ſhew Cauſe why a *Superſedeas* ſhould not be iſſued was diſcharged. *Wynne* for Plaintiff; *Skinner* for Defendant.

Childs *againſt* Prows. Hilary 18 Geo. 2.

WITHIN two Terms after Final Judgment, Plaintiff, inſtead of charging Defendant in Execution, charged him with a Declaration in an Action of Debt on the

the Judgment. The Court held this Declaration vexatious, and no Cauſe againſt a *Superſedeas*; and the Rule to ſhew Cauſe why a *Superſedeas*, was made abſolute. *Gapper* for Defendant; *Wynne* for Plaintiff.

Abdy, Adminiſtrator, *againſt* Hopkins, Widow. Abdy, Aſſignee, &c. *againſt* The Same.

PLaintiff had two different Cauſes of Action againſt Defendant, one as Adminiſtrator, the other as Aſſignee. Defendant was arreſted at Plaintiff's Suit, as Adminiſtrator; but in the Title of the Affidavit for Bail, Adminiſtrator was omitted, though put into the Writ. Defendant remained in Cuſtody for Want of Bail. Plaintiff did not declare as Adminiſtrator, agreeable to his Writ, which was a *Teſtat'* out of *Middleſex* into *Surry*, but made a new Affidavit of his other Demand as Aſſignee, and delivered a Declaration in *Surry* for it, indorſed for Bail. Rule to ſhew Cauſe why *Superſedeas*, in the firſt Cauſe, made abſolute, the Affidavit being a Nullity; but the Arreſt is not void in the ſecond Cauſe. The Rule diſcharged.

Parſons, Widow, *againſt* White. Eaſter 19 Geo. 2.

DEfendant, arreſted by a *Capias* at Plaintiff's Suit, as Executrix of her late Huſband, removed himſelf to the *Fleet*. Plaintiff finding her Action wrong as Executrix, made a new Affidavit for Bail, and charged Defendant with a new Declaration in her own Right. Defendant moved for a Common Appearance and *Superſedeas*; inſiſting, that as his Impriſonment was wrongful *ab origine*, Plaintiff ought not to graft upon it. No Oppreſſion appears, but the Nature of the Demand was miſtaken. If there had been two different Cauſes of Action, the ſecond Declaration would have been a good Charge; but there being but one and the ſame Cauſe of Action, Rule abſolute to ſet aſide Proceedings and Judgment, without Coſts. *Bootle* for Defendant; *Prime* for Plaintiff.

Stannard *againſt* Fleet.

A Peremptory Rule being ſerved on Sheriff of *Suffolk* to bring Defendant's Body into Court, the Sheriff, inſtead of putting in Bail above (as uſual) brought the Defendant in Perſon into Court. The Court committed him to the *Fleet*, charged with the

the Writ of *Capias ad reſpondend'* at the Plaintiff's Suit.

Pryme and others *againſt* Moore. Hilary 20 Geo. 2.

DEfendant, whilſt at large, was ſerved with a Copy of Proceſs, with Notice to appear; but before Declaration became a Priſoner in the *Fleet*. Plaintiff, by Virtue of an Affidavit of Service, entered an Appearance for Defendant, left a Declaration in the Office, and gave Defendant Notice thereof. Defendant moved to ſet aſide the Declaration and ſubſequent Proceedings; inſiſting, that as he was a Priſoner at the Time of the Declaration, it ought to have been delivered to the Turnkey of the *Fleet*. It was urged for the Plaintiff, that as the Proceeding was regularly commenced under the Statute, they had a Right to purſue the Method preſcribed by the Rule of Court to eſtabliſh the Practice thereupon; but Defendant being diſabled from coming abroad to take the Declaration out of the Office, and there having been no Method to charge a Priſoner with a Declaration, but by *Habeas Corpus*, till the Statute of King *William* the Third, the Court thought the Declaration ſhould have been delivered at the *Fleet*, and made the Rule abſolute. *Willes* for Defendant; *Bootle* for Plaintiffs.

Culme

Culme *againſt* Dingle. Trinity 21 Geo. 2.

DEfendant was a Priſoner in the County Gaol for *Devon*, charged by the preſent and other Plaintiffs. Plaintiff diſcontinued his Action, and paid Coſts; and then ſerved a Copy of a common *Capias*, with Notice to appear, on Defendant in Cuſtody; and, on Affidavit thereof, entered an Appearance purſuant to the Statute, left Declaration in the Office, and gave Notice thereof to Defendant; and for Want of a Plea ſigned Judgment, and executed *Fieri facias*.

Defendant obtained a Rule to ſhew Cauſe why the Proceedings ſhould not be ſet aſide; inſiſting, that he ought to have been charged with the Declaration as a Priſoner. But as Plaintiff, ſince the Act to prevent vexatious Arreſts, had no other Way of charging Defendant with a common *Capias* than as above, the Method Plaintiff has taken is regular.

The Notice of the Declaration was dated 28th *January*, to plead within eight Days; and the Judgment ſigned 5th *February*. Objected, That the Judgment was ſigned a Day too ſoon; but over-ruled. The Words of the Notice are not, *from the Day of the Date*, but *from the Date*, which is the Delivery. Rule diſcharged. *Draper* for Defendant;

Gapper

Gapper for Plaintiff. This Caſe differs from *Prime and others* againſt *Moore* laſt *Hilary* Term, where Defendant was arreſted when at large, and became a Priſoner in the *Fleet* before Declaration.

Meredith *againſt* Barry, Eſquire, commonly called Lord Buttevant.

AFTER Defendant was ſuperſedable for Want of Proſecution, Plaintiff applied for Leave to diſcontinue; which was ordered without Prejudice; and after the Diſcontinuance, Defendant was ſuperſeded, but being detained in the *Fleet* by other Cauſes, Plaintiff makes a new Affidavit of his old Debt, (adding another ſmall Demand not bailable) and charged Defendant with a new Declaration indorſed for Bail. The Court determined, That Defendant ought not to be held to Bail for the old Cauſe of Action, as to which he had been ſuperſeded, and ordered him to be diſcharged as to the new Declaration, on entring a common Appearance. *Willes* for Defendant; *Skinner* for Plaintiff.

Leeke *againſt* Leighton, Baronet.

DEfendant, a Priſoner in the *Fleet*, was charged twice in Execution at Plaintiff's Suit, once before and once after 1ſt *January*

January 1747. Defendant moved to pay Principal, Intereſt, and Coſts on the Judgment, whereby he was charged before 1ſt *January*, to prevent Plaintiff's compelling him to deliver up his Eſtate and Effects, purſuant to the inſolvent Debtors Act. The Rule to ſhew Cauſe was made abſolute. *Skinner* and *Willes* for Defendant; *Prime* and *Poole* for Plaintiff.

Watt *againſt* Alanſon. Trinity 22 & 23 Geo. 2.

DEfendant, who was charged in Execution 5th *January* 1748, petitioned the Court the laſt Day of laſt Term, for a Rule to be carried before the Judges at next *Northumberland* Aſſizes, in order to be diſcharged under the Lords Act, and had a Rule to ſhew Cauſe; which was now diſcharged. The Petition came too late; it ſhould have been preferred, as required by the Act, before the End of laſt *Eaſter* Term. *Bootle* for Plaintiff.

White *againſt* Hawkes. Eaſter 23 Geo. 2.

PLaintiff having complained to the Court againſt Mr. *Carter*, his Attorny, for not attending at *Oxford* Aſſizes, to oppoſe Defendant's Diſcharge under the Lords Act; and

and *Carter*, for Anſwer, having made Affidavit that he did attend the *Niſi prius* Court for that Purpoſe, ready to pay Defendant 2 *s.* 4 *d.* and to give him Plaintiff's Note for 2 *s.* 4 *d. per* Week, in Order to keep him in Cuſtody, as directed; but that Defendant was accidentally diſcharged on the Crown Side, without *Carter*'s Knowledge: And before he got out of Cuſtody, or an Order for his Diſcharge was drawn up, Notice was given to *Wiſeman* the Gaoler, that the Diſcharge was obtained by Surprize, and the Order ſtopped by the Judge; a Tender of 2 *s.* 4 *d.* and Plaintiff's Note was made Defendant, who refuſed to accept the ſame, and inſiſting on his Liberty, *Wiſeman* let him go. The Court made a Rule on *Wiſeman* to ſhew Cauſe why an Attachment ſhould not be made againſt him. But the Fact coming out to be, that Defendant had made an Aſſignment of his Effects to Plaintiff, previous to his Diſcharge in the Crown Court, where the Gaoler attended, and heard the Plaintiff called in the uſual Manner; and no Contrivance in Defendant's Favour appearing in the Gaoler, the Court diſcharged the Rule, and left Plaintiff to his Action for an Eſcape; not thinking it proper to puniſh the Gaoler in this ſummary Way, or to aſſiſt him againſt an Action. The Order ſeems requiſite to be drawn up; the Gaoler cannot defend himſelf without it. The Practice has ſometimes

ſometimes been to diſcharge Priſoners of this Sort in the *Niſi prius* Court, and ſometimes in the Crown Court, if the Buſineſs there be firſt finiſhed; but then Notice thereof ſhould be always publickly given in the other Court. The Aſſignment ſhould always be previous to the Diſcharge. Where a Priſoner is not ordered to be diſcharged, but remanded on Plaintiff's undertaking to pay him 2 *s.* 4 *d. per* Week, his Effects ought not at that Time to be aſſigned, (as has been the Practice, in order that after Failure in Payment, Defendant may be intitled to apply to the Court from whence the Execution iſſued, for his Diſcharge there;) but if Plaintiff ſhould fail to pay the weekly Allowance, Defendant may either apply to be brought into Court at the Aſſizes, to be diſcharged there for that Cauſe, and then make an Aſſignment; or to be diſcharged by the Court above, ſhewing an Aſſignment executed, by Affidavit. *Willes* for *Wiſeman*; *Prime* for *Carter*; *Belfield* for Plaintiff.

Parker, one, &c. *againſt* Harvey. Eaſter 23 Geo. 2.

DEfendant, who had been brought into Court at *Lincolnſhire* Aſſizes by Rule, purſuant to the Lords Act, and remanded to Priſon, on Plaintiff's undertaking to allow him 2 *s.* 4 *d. per* Week, applied to this

Court to be diſcharged for Nonpayment of his weekly Allowance. The Undertaking appeared to be dated 1ſt *March* 1749, for Payment of 2 *s.* 4 *d.* on *Monday* in every Week. Plaintiff had not made regular Payments; when four Weeks were due, 2 *s.* 4 *d.* only tendered, after five Weeks due, 7 *s.* only tendred; after the firſt Default, no Tender of the Mony due on *Monday* was made till the *Saturday* following. A Miſtake is not to be taken Advantage of, if the Tender be recent; but in the preſent Caſe, the Omiſſions are not to be diſpenſed with. Rule abſolute to diſcharge Defendant. *Prime* for Defendant; *Willes* for Plaintiff.

Pennington *againſt* Welch. Trinity 24 Geo. 2.

DEfendant being brought into Court, by Virtue of a *Habeas Corpus ad Satisfaciendum* directed to the Warden of the *Fleet*, to be charged in Execution on a Judgment obtained by Plaintiff, inſiſted, That as he had been ſuperſedable for two Years paſt, for Want of Plaintiff's proceeding to Judgment within three Terms after Declaration, he ought not to be charged in Execution. Whereupon the Court remanded him uncharged in Execution, but detained at other Plaintiffs Suits.

Peck

Peck *againſt* Adams.

THE Defendant was arreſted by Writ returnable in *Michaelmas* Term laſt, and remained in Cuſtody after the End of laſt *Hilary* Term; Defendant became ſuperſedable for Want of Plaintiff's declaring againſt him; but not applying for a *Superſedeas*, and ſtaying in Priſon till laſt *Eaſter* Term, Plaintiff then diſcontinued his firſt Action; and after tendring Defendant 6 *s.* 8 *d.* Coſts taxed on the Diſcontinuance, charged Defendant in Cuſtody of the Sheriff of *Hertfordſhire*, with a new Writ for the old Cauſe of Action. Rule abſolute for *Superſedeas*, on entring a common Appearance. Diſcharged as to Coſts. *Bootle* for Defendant; *Wynne* for Plaintiff.

Tracy *againſt* Garmſton and another. Trinity 24 Geo. 2.

DEfendant *Garmſton* was arreſted by Proceſs returnable laſt *Michaelmas* Term; but the other Defendant (who abſconded) could not be taken; and Plaintiff not being in a Capacity to declare in this Joint-Action till the other Defendant was brought into Court, or outlawed, endeavoured to excuſe himſelf for not declaring within two Terms, by alledging that he was proceeding to out-

law

law the other Defendant. Lord Chief Juſtice thought, that Plaintiff ought to be allowed a reaſonable Time to outlaw the other Defendant; but in this Caſe, he has not ſhewn that he uſed all Diligence, as he ought to have done. Rule abſolute to ſuperſede Defendant *Garmſton* for Want of a Declaration. *Hayward* for Defendant; *Willes* for Plaintiff.

Price *againſt* Everett. Mich. 24 G. 2.

DEfendant having been brought into Court in purſuance of the Lords Act, and remanded to the *Fleet* on Plaintiff's undertaking in Writing to allow him 2 *s.* 4 *d.* a Week, was afterwards made a Turnkey of the Priſon Gate, (a Place of Profit.) Plaintiff moved the Court, and obtained a Rule to ſhew Cauſe why the Allowance ſhould not be reduced to 6 *d. per* Week, or ſuch other Sum as the Court ſhould think fit, or Defendant be removed from his Place of Turnkey. On ſhewing Cauſe, the Court thought that Defendant ought not to ſuffer by his good Behaviour, which had merited the Warden's Favour, and preferred him to a Place of Truſt and Profit; and that the weekly Allowance having been once determined at 2 *s.* 4 *d.* cannot be lowered, though at firſt it might have been ſettled at a ſmaller Sum. The Rule was ordered to be diſcharged. *Willes* for Plaintiff; *Agar* for Defendant.

Smith *againſt* Peronet. Hilary 24 Geo. 2.

DEfendant obtained a *Superſedeas* for Want of Proſecution; but having, whilſt in Cuſtody, drawn a Bill of Exchange on a third Perſon, in Plaintiff's Favour, for Part of Plaintiff's Original Debt, which Draught was refuſed to be accepted, Plaintiff, as Defendant was going out of Priſon, cauſed him to be arreſted, and held to Bail, as the Drawer of ſaid Bill. Defendant ſwore, that by Agreement between him and Plaintiff, the Draught, if not accepted, was to be delivered back to Defendant. The Court thought, that by this Draught, which, if accepted and paid, would have *pro tanto* diſcharged Part of the Original Demand, no new Debt was created, ordered a *Superſedeas* to the new Action, on entring a common Appearance. *Willes* for Defendant; *Prime* for Plaintiff.

Gibbs *againſt* Tupigny de Maily. Trinity 24 & 25 Geo. 2.

DEfendant, a Priſoner in the *Fleet*, being ſuperſedable for Want of Plaintiff's proceeding to Judgment within three Terms after Declaration, ſummoned Plaintiff before Mr. Juſtice *Birch*; whereupon Plaintiff (having

ving obtained Judgment after the three Terms were expired) immediately brought a *Habeas Corpus ad Satisfaciendum*, and charged Defendant in Execution. Defendant then applied to the Court, and obtained a Rule to ſhew Cauſe why he ſhould not be ſuperſeded, for Want of Plaintiff's proceeding to Judgment within Time; which Rule was afterwards made abſolute. The Court being of Opinion, that Defendant had been wrongfully detained in Cuſtody from the Time he became ſuperſedable; and that Plaintiff ought not to graft a good Charge on a wrongful Impriſonment. *Prime* for Defendant; *Willes* for Plaintiff.

Linthwaite *againſt* Bigbie and Allardyce. Trinity 25 & 26 Geo. 2.

PLaintiff obtained a Treaſury Rule to ſhew Cauſe why he ſhould not have Time to declare againſt *Allardyce*, who was in Cuſtody, (*Bigbie* abſconding, Plaintiff was proceeding to Outlawry againſt him.) A Caſe quoted from Secondary *Townſend*'s Notes, *Fiſher* againſt *Tucker and another*, *Hilary* 2 *Geo.* 2. where one of Defendants being in Cuſtody, was ſuperſeded in Favour of Liberty, though Plaintiff could not declare till the other Defendant, who abſconded, was brought into Court or outlawed. *Vide Tracy* againſt *Garmſton and another*, *Trin.* 24 *Geo.* 2. where

Lord Chief Juſtice thought, that if Plaintiff proceeds with reaſonable Speed to outlaw the abſconding Defendant, the other Defendant, pending that Proceeding, ought not to be ſuperſeded. Rule abſolute, without Prejudice to Defendant *Allardyce*'s Application for a *Superſedeas*.

Roquett *againſt* Roquett. Trinity 26 & 27 Geo. 2.

DEfendant, an inſolvent Debtor was brought into Court the firſt Time by Rule, in purſuance of the Lords Act, and diſcharged, making an Aſſignment of his Effects. A promiſory Note was offered Defendant for Payment of 2 *s.* 4 *d. per* Week, given by Plaintiff at *Paris*, where he reſided, but no regular Affidavit of Plaintiff's ſigning the Note being produced, ſworn before a Judge or Commiſſioner of this Court, Defendant cannot be compelled to accept it. Plaintiff's Attorny offered his Note for 2 *s.* 4 *d. per* Week; but ſuch Notes have been often refuſed. Plaintiff's Attorny deſired further Time; but as Defendant's Application was made laſt Term, and Plaintiff's Attorny had agreed that Defendant ſhould have the Benefit of the Act this Term, further Time was denied.

Proceſs, Service thereof, Rules, &c.

Walker *againſt* Haryes, an Attorny, per Bill. Mich. 14 Geo. 2.

CA. ſa. returnable at a general Return, *viz. Tres Mich.* and not a Day certain, as it ought to have been, was quaſhed, and Defendant ordered to be diſcharged by *Superſedeas* with Coſts, Defendant conſenting to bring no Action. *Per Cur':* Defendant cannot take Advantage of this Matter by Writ of Error; and if he could, it would be unreaſonable to keep him in Cuſtody till the Determination thereof. *Willes* for Defendant; *Birch* for Plaintiff.

Dixon *againſt* Goodman.

WRIT of Inquiry of Damages was executed before one *Ewens*, verbally appointed by the Coroners of *Norwich*, to whom the Writ was directed. The Objection was, that this Appointment was inſufficient, and ought to have been in Writing, under Hand and Seal. It appeared that Defendant's Attorny attended, challenged a Juryman, croſs examined Plaintiff's Witneſſes,

and did not make the Objection now inſiſted upon, till after Plaintiff had gone through his Evidence. The Court held the verbal Appointment no Authority; but the Objection is waived by making Defence. The Rule to ſhew Cauſe why the Inquiry ſhould not be ſet aſide, was diſcharged. *Urlin* for Defendant, *Prime* for Plaintiff.

Kerry *againſt* Cade.

PLaintiff appeared for Defendant as a Perſon of full Age, by Affidavit purſuant to the Statute, and proceeded to Judgment. Defendant brought a Writ of Error; and it being diſcloſed to Plaintiff that Defendant was an Infant, and intended to aſſign Nonage for Error in Fact, Plaintiff moved, and obtained a Rule for Defendant to ſhew Cauſe why the Appearance in Perſon ſhould not be ſtruck out, and why Defendant ſhould not appear by Guardian, or in Default thereof, why Plaintiff ſhould not do it for him. The Court thought Plaintiff's Application came too late, and diſcharged the Rule. *Birch* for Plaintiff; *Draper* for Defendant.

Grice *againſt* Allen. Eaſter 14 Geo. 2.

DEfendant objected, that the Name of the Plaintiff's Attorny was not ſet upon the Sheriff's Warrant, as required *per Stat.* 2 *G.* 2. for Regulation of Attornies, *&c.* and obtained a Rule to ſhew Cauſe why Proceedings ſhould not be ſtayed. Upon ſhewing Cauſe it appeared, that the Attorny's Name was put on the Writ, though not on the Warrant; and by *Stat.* 12 *George* 2. the Law is altered with Reſpect to the Warrant, though not as to the Writ. The Sheriff, under the later Act, is required to ſet the Attorny's Name upon the Warrant, under a Penalty of 5 *l.* and if it be omitted, the Penalty may be ſued for. The Warrant is the Sheriff's Act, and not the Party's. The Plaintiff's Proceedings ought not to be ſtayed by Reaſon of this, the Sheriff's Omiſſion; but Defendant may take his Remedy for the Penalty. The Rule was diſcharged. *Draper* for Defendant; *Urlin* for Plaintiff. *Per Cur':* The Practice of this Court in ſome Inſtances has been found to be wrong, and muſt be exploded. Where an Act of Parliament requires a Thing to be done generally, (without requiring it to be done by any Officer, *&c.* under a Penalty) and doth not ſay that for Want of the Thing required, a

Writ, *&c.* ſhall be void, it has been ſaid, that ſuch Act is directory only, and not making the Writ, *&c.* void. Proceedings ought not to be ſtayed; but if a Thing required by Rule of Court be omitted, it is conſtantly held to be irregular, and Proceedings are ſtayed: And ſurely an Act of Parliament ſhould have as great Force, at leaſt, as a Rule of Court. It has been held, that a Rule to bring a Priſoner into Court upon the Lords Act, ought to be perſonally ſerved on the Creditor, which is often impracticable, and no ſuch Thing is required by the Act. It has been the Practice, on Complaints againſt Sheriffs Officers, *&c.* for Extortion contrary to the Statute 2 *Geo.* 2. to grant a Rule to ſhew Cauſe why an Attachment on the firſt Application; the Rule ought to be to anſwer the Matters contained in the Petition and Affidavits.

Langley *againſt* The Bailiffs and Burgeſſes of Eaſt-Redford. Hilary 15 Geo. 2.

DEfendants were ſued in their Corporate Capacity by common *Capias ad reſpondend'*, and upon Affidavit of Service, an Appearance was entered by Plaintiff *ſecundum Stat'*; and Plaintiff entered Declaration in the Office, reciting, that Defendants were attached to anſwer, (which cannot be.) Defendants

fendants moved to ſet aſide the *Capias* and Proceedings thereon; objecting, they ought to be ſued by *Pone* and *Diſtringas*. And the Court were of Opinion, that as Defendants are ſued in a Corporate Capacity, the *Capias ad reſpondend'* is null and void; and the Rule to ſhew Cauſe was made abſolute. It was agreed, that had Defendants themſelves appeared, the Objection had been waived. *Bootle* for Defendants; *Skinner* for Plaintiff.

Chapman *againſt* Ryall and others. Trinity 16 Geo. 2.

AFTER Appearance entered by Plaintiff on Affidavit of Service of Proceſs, Motion by Defendants to ſtay Proceedings, no Attorny's Name being ſet upon the Copy of the Proceſs ſerved on *Child*, one of the Defendants, as required *per Stat.* 12 *George*, and Rule to ſhew Cauſe was made abſolute. *Per Cur':* The Statute is compulſory, and for Defects in Notices to appear ſubſcribed to Copies of Proceſs ſerved, nothing is more frequent than to ſtay the Proceedings; and where the Defect is in the Copy of the Proceſs, the Reaſon is the ſame. Though the Writ itſelf be right, yet the Copy ſerved is defective, and Proceedings muſt be ſtayed. There is nothing in *Stat.* 5 *Geo.* 2. *cap.* 22. *ſect.* 5. *Stat.* 12 *Geo.* 2. *cap.* 23. *ſect.* 22. or any other ſubſequent Statute, whereby the Statute

Statute 12 *Geo.* is altered or repealed in this Particular. *Prime* for Defendant; *Agar* for Plaintiff.

Foot *againſt* Hume. Hilary 16 Geo. 2.

THE Proceſs was ſerved on the Return Day at ———, at five o'clock in the Afternoon, with Notice to appear that Day, which was the Return Day, 20th *January*, on which Day the Proclamation for Eſſoigns had been made, and the Judge was gone out of Court before Noon; ſo the Return was expired. ——— moved, and obtained a Rule to ſhew Cauſe why Proceedings ſhould not be ſtayed; which was made abſolute on Affidavit of Service, no Cauſe being ſhewn. The Court declared, That Defendant ought to have a reaſonable Time to appear after Service, which is the plain Intention of the Act of Parliament directing the Notice; and that the Notice ought to be ſerved before the Return Day.

Marquand

Marquand *againſt* The Mayor and Burgeſſes of the Borough of Boſton in Com' Lincoln'. Eaſter 16 Geo. 2.

SPECIAL Original ſued out in *Com' Lincoln'*, and Defendants appeared. Plaintiff declared in *Com' Middleſex*; Defendants appeared; refuſing to accept the Declaration, it was left in the Prothonotary's Office, and taken out and paid for by Defendant's Agent. Plaintiff ſued out a new Original in *Middleſex*. The Court held the Taking the Declaration out of the Office to be a Waiver of the former Proceedings, and diſcharged the Rule to ſhew Cauſe why Proceedings in *Middleſex* ſhould not be ſtayed. Note; An Eſſoign had been caſt and adjourned before Defendant's Appearance; but the Court did not hold that material.

Gentleman *againſt* Bright. Mich. 17 Geo. 2.

RULE for the Bailiff of the Dutchy of *Lancaſter* to return the Sheriff's Mandate on a *Fi. fa.* diſcharged, the Warrant having been directed to Officers of Plaintiff's Nomination, and at his Peril, and not to the Officers

Officers of the Bailiff of the Dutchy. *Prime* for the Bailiff; *Skinner* for Plaintiff.

Mallom *againſt* Gent.

RULE to ſhew Cauſe why a Writ of *Non omittas Capias ad reſpondend'* ſhould not be quaſhed, diſcharged. The Objection to the Writ was, that it recited a Mandate to have been iſſued forth by the Sheriff to the Bailiff of a Liberty, without naming what Liberty, but leaving a Blank for the ſame. The Court held the Objection to be valid, and that the proper Way to take Advantage of the Defect is by Motion; but it appearing that Bail was put in to this Writ before a Judge, the Objection now comes too late. *Skinner* for Plaintiff; *Prime* for Defendant.

Wright *againſt* Obeden.

DEfendant was protected by Baron *Hoffman*, a publick Miniſter, and the Protection was regiſtered in the Sheriff's Office, according to the Act of Parliament. A *Capias ad reſpondend'* was delivered to the Sheriff of *Dorſetſhire*, who durſt not execute it, by Reaſon of the Protection, and the Penalty in the Act. Plaintiff ſerved the Sheriff with a Treaſury Rule to return the Writ, which Rule

Rule was diſcharged by the Court. *Eyre* for Plaintiff; *Draper* for the Sheriff.

Ogier, Qui tam, &c. *againſt* Hayward. Trinity 19 & 20 Geo. 2.

COPY of Original ſerved, with Notice to appear (as Proceſs to arreſt) irregularly. After Plaintiff's Attorny diſcovered his Miſtake, he applied to the Curſitor, who altered the Return of the Original from *Octabis Hilarii* to *Octabis Purificationis*, and reſealed it; then Defendant was ſummoned by the Sheriff, and being returned ſummoned on the Original, and not appearing, a *Pone* iſſued. Upon Application to ſtay Proceedings, the Court made a Rule to ſhew Cauſe; but before they determined the Queſtion, thought a Motion ſhould be firſt made in Chancery, which was done; and Lord Chancellor, on hearing Counſel on both Sides, ordered the Original Writ to be ſuperſeded *quia improvide emanavit*, with Coſts; becauſe having been once executed (by Service of a Copy, with Notice to appear) though improperly, it could never afterwards be made uſe of for any other Purpoſe. Rule made abſolute to ſtay Proceedings, without Coſts. Several Curſitors attended the Court, but did not agree; they reported the Practice differently. *Skinner* and *Bootle* for Defendant

ſendant; *Prime*, *Willes*, *Draper* and *Leeds* for Plaintiff.

Maſon *againſt* Obrien, Eſquire, Earl of Inchiquin in the Kingdom of Ireland, having Privilege of Parliament. Mich. 20 Geo. 2.

SUmmons returnable *Tres Mich. Diſtringas* returnable 31ſt *October*, *Alias Diſtringas* returnable 7th *November*, 40 *s.* Iſſues returned. *Bootle*, for Plaintiff, moved to increaſe Iſſues on the *Pluries Diſtringas* to a good Sum, producing an Affidavit that the Debt was 152 *l.* The Practice here has hitherto been to double the Iſſues returned from Time to Time, and not farther to increaſe the ſame; but the Courts of King's Bench and Exchequer having done more, this Court, conformable to the Practice of the other Courts, ordered Iſſues to be returned on the *Pluries Diſtringas* to 20 *l.*

Gladman *againſt* Bateman.

COmmon *Capias* ſerved on Defendant, an Infant, with Notice to appear by his Attorny, in the Form preſcribed by the Statute; Defendant appeared by his Attorny, and inſiſted, that having appeared agreeable to the Notice ſerved, he had done all that

could be required of him, and refuſed to appear by Guardian. Plaintiff moved, according to the Courſe of the Court, for a Rule, That unleſs Defendant ſhould appear by Guardian within four Days, Plaintiff might have Leave to name a Guardian for him, to appear and defend this Action. Defendant oppoſed the Motion, and his Counſel argued, That the Statutes 12 *Geo.* 2. *c.* 29. and 15 *Geo.* 2. *c.* 27. relating to Service of Proceſs, did not extend to Infants, nor to all Actions not bailable, but only to Actions of Debt and on ſimple Contracts; and that the Plaintiff's Cauſe of Action being for an Aſſault, was out of the Statutes, and Defendant ſhould have been arreſted, as before the Statutes. The Court made the Rule as prayed by Plaintiff, which is the conſtant Practice after an Appearance by Attorny, where Defendant is an Infant. The Form preſcribed by the Statutes cannot be altered. No Notice is taken of the Party's being an Infant, or not in the firſt Proceeding. Infancy is to be pleaded. Rule the ſame now as before the Acts to appear by Guardian; becauſe the Appearance by Attorny would be Error after a Verdict. If otherwiſe, no Action could be brought againſt an Infant. If this Queſtion had been made recently, ſoon after the Statutes, it might have been doubtful whether they extended to all Cauſes of Action not bailable, or not; but all the Courts, ever ſince

ſince the Acts, have taken them ſo to do, and Cuſtom and Practice muſt prevail. The General Rule is, that a defective Appearance muſt be ſet right. *Skinner* for Plaintiff; *Agar* for Defendant.

Wingfield *againſt* Beard, alias Farmer. Trin. 21 Geo. 2.

COPY of Proceſs ſerved in *June*, with Notice to appear at the Return, being the 15th Day of *June*, without inſerting the Word (*next*), or the Year (1747.) Rule abſolute to ſtay Proceedings. *Prime* for Defendant; *Willes* for Plaintiff.

Valentine *againſt* Hawkins. Eaſter 21 Geo. 2.

CURRER, the Father, Plaintiff's Attorny, in Favour of his Son, *Currer* junior, Filazer of *Suffolk*, and in Prejudice of the Filazer of the County of *Kent*, tho' Plaintiff and Defendant both dwelt in *Kent*, where the Cauſe of Action aroſe, and had never any Dealings together in *Suffolk*, ſued out a *Teſtat' Ca'* from *Suffolk* into *Kent*, out of his Son's Office, in the Name of one *Mulliner*, an Attorny, inſtead of a *Capias* in *Kent* from the proper Filazer. The Court held this to be unwarrantable and irregular, and ſet aſide the Proceedings, with Coſts, to

be paid by *Currer* ſenior, to both Parties. *C. Valentine*, a Bailiff, complained of by Defendant, denied the Charge; and as to him the Rule to ſhew Cauſe why an Attachment, was diſcharged. *Skinner* and *Poole* for Plaintiff and the two *Currers*; *Prime* and *Draper* for Defendant; *Wynne* for *C. Valentine* the Bailiff.

Green *againſt* Littleton, Eſquire. Trinity 21 & 22 Geo. 2.

PLaintiff's Debt appeared by Affidavit to be 230 *l.* eighty Shillings Iſſues had been returned on the *Alias Diſtringas*. Rule that the Sheriff of *Middleſex* ſhall return 20 *l.* Iſſues on the *Pluries Diſtringas*. *Draper* for Plaintiff.

Ridley *againſt* Wilſon.

DATE of the Writ omitted; Penalty for the Omiſſion 10 *l.* on the Officer, *per Stat. Wil.* 3. Rule to ſtay Proceedings made abſolute. *Poole* for Defendant; *Skinner* for Plaintiff.

Wortley, Eſquire, *againſt* Pitt, Eſquire. Mich. 22 Geo. 2.

PLaintiff's Debt appeared by Affidavit to be 1950 *l.* Forty Shillings Iſſues had been returned on the firſt *Diſtringas.* Rule that the Sheriff of *Middleſex* ſhall return 20 *l.* Iſſues on the *Alias Diſtringas. Bootle* for Plaintiff.

Holt junior *againſt* Hawkes. Trinity 22 & 23 Geo. 2.

THE *Capias ad reſpondend'* was made returnable before the King's Juſtice, inſtead of Juſtices, at *Weſtminſter*; and there were ſix Days only, inſtead of fifteen, between the *Teſte* and Return. Proceedings ſtayed, with Coſts.

Wortley, Eſquire, *againſt* Pitt, Eſquire.

BOOTLE, for Plaintiff, moved to increaſe the Iſſues on *Pluries Diſtringas,* (Debt ſworn to be 2000 *l.* and upwards), laſt Iſſues 20 *l.* now five Times as much (the uſual Way here) 100 *l.*

Wortley

Wortley, Eſquire *againſt* Pitt, Eſquire. Mich. 23 Geo. 2.

ON *Pluries Diſtringas* Iſſues increaſed from 100 *l.* to 500 *l.* *Bootle* for Plaintiff.

Highmore *againſt* Barlow, in Ejectment. Trinity 24 Geo. 2.

RULE to ſhew Cauſe why the Time for returning a *Certiorari* to the Mayor's Court of *London* ſhould not be enlarged, and the *Certiorari* quaſhed. The Practice appearing to be, that in Ejectment a Writ of *Habeas Corpus* is the proper Proceſs to remove the Plaint (under which the Defendant muſt appear in this Court, and enter into the common Rule, and Plaintiff muſt declare *de novo*) and not a Writ of *Certiorari*, as in Replevin, whereby, after the Record removed, the Parties are to proceed upon it, and not to begin *de novo*. *Fitz. Nat. Brev.* 557. *Letter* L. Rule abſolute to quaſh *Certiorari*, *Habeas Corpus* to be taken out. *Poole* for the Mayor, *&c.* *Bootle* for Plaintiff.

Philmore and others *againſt* Sir William Stanhope.

THE Debt ſworn to be 290 *l.* and upwards. On the *Alias Diſtringas* 4 *l.* Iſſues were returned. The Court ordered, that on the *Pluries Diſtringas* the Sheriff ſhould return Iſſues to 20 *l.* *Draper* for Plaintiff.

Boſwell *againſt* Roberts. Trinity 24 Geo. 2.

OBjections, That no Writ was ſued out, and that the Copy of a pretended Writ was delivered to Defendant, incloſed in a Letter. But it appearing, that the Writ had been ſigned by the Filazer before ſerved, and the Delivery of the Copy made Service by Defendant's opening the Cover and taking out the Copy; there being no Occaſion to ſhew the original Writ at the Time of Service. The Rule to ſhew Cauſe why Proceedings ſhould not be ſtayed was diſcharged. *Prime* for Plaintiff; *Poole* for Defendant.

Philmore and others *againſt* Sir William Stanhope. Mich. 24 Geo. 2.

THE Iſſues returned on the *Pluries Diſtringas* were 20 *l.* Rule that the Sheriff ſhall return 100 *l.* Iſſues on the next *Diſtringas.* Debt ſworn 290 *l.* and upwards. *Draper* for Plaintiffs.

Bax *againſt* Culmer. Hilary 24 Geo. 2.

RULE abſolute to ſtay Proceedings on Proceſs directed to the Sheriff of *Kent*, ſerved at *Haſtings* within the *Cinque Ports*, without Coſts. The Sheriff of *Kent* has no Juriſdiction within the *Cinque Ports*; the Writ ſhould have been a *Teſtatum Capias* directed to the Conſtable of *Dover Caſtle*. *Prime* for Defendant; *Poole* for Plaintiff.

Potter *againſt* Colſworthy. Trinity 25 & 26 Geo. 2.

TReaſury Rule for the late Sheriff of *Devonſhire* to return a Writ of *Capias ad reſpondendum* diſcharged. *Terry*, late Under-Sheriff (as uſual in *Devonſhire*) had intruſted Plaintiff's Attorny with blank Warrants, to be directed to bound Bailiffs only; and he had filled up a Warrant on this Writ,

and directed and delivered it to a bound Bailiff, purſuant to his Truſt. But it appearing that this Writ, though returnable in *Eaſter* Term 1751, was not carried to the Sheriff's Office, or tendered to the Under-Sheriff, till *April* 1752, the Court thought it unreaſonable to oblige the Sheriff to make a Return. *Prime* for the late Sheriff; *Poole* for Plaintiff.

Dixon, one, &c. *againſt* Atkinſon. Eaſter 26 Geo. 2.

POOLE, for Plaintiff, obtained a Rule to ſhew Cauſe why Plaintiff ſhould not have Leave to take out a ſeparate Attachment of Privilege, to warrant his Judgment againſt this Defendant only, *nunc pro tunc*, agreeable to a joint Attachment of Privilege againſt Defendant and others, returnable in *Hilary* 23 *Geo.* 2. wherewith Defendant having been ſerved, and not appearing, Plaintiff had appeared for him, according to the Statute; and after Judgment, Defendant had brought a Writ of Error. *Willes*, for Defendant, ſhewed Cauſe; inſiſting, That an Attachment of Privilege is always conſidered as an Original Writ, is amendable only in Point of Form, by the Inſtructions given for it: That Plaintiff purchaſed a joint, and not a ſeparate Writ, originally by his own Election; and that the Court of Chancery where an Original is bad, will not grant a good Original;

nal; though in ſome Caſes that Court will order an Original where one was ſued out before. Quoted *Chaſe* againſt *Sir John Etheridge*, 2 *Vent.* 130. *Maſſingburn* againſt *Durrant*, 2 *Vent.* 49, *Poole*, for Plaintiff, urged, That as Plaintiff has obtained a regular Judgment for a juſt Debt, unimpeached, it is reaſonable for the Court to interpoſe, in Caſes of Common Proceſs, after Judgment by Default, Plaintiff ſues a Special Original to warrant it. That Attachments of Privilege are not always conſidered as Original Writs, appears by General Rule *Hilary* 11 *Geo.* 2. whereby four Defendants Names (and no more) may be put into one and the ſame Attachment. The Court were of Opinion, That an Attachment of Privilege is, ſtrictly, neither an Original Writ, nor a *Capias*; it anſwers the Purpoſes of both; it warrants the Proceedings, as well as brings the Party into Court. The Rule *Hilary* 11 *Geo.* 2. muſt have conſidered an Attachment of Privilege as meſne Proceſs. There is no Precedent of a new Attachment to warrant a Judgment. If Defendant had appeared, the Court probably would have ordered a new Attachment (if neceſſary); but by the Appearance entred according to the Statute, nothing is helped or admitted. By the Practice of this Court, the old Joint-Attachment ſeems to be good, and ſufficient to warrant Proceedings thereon a-

gainſt Defendants ſeverally, as will be reported to the Court of King's Bench, if they deſire to be informed what is the Practice here. The Rule diſcharged.

Hand, one, &c. *againſt* Groſvenor, one, &c. Plaintiff and Defendant both Attornies of this Court.

RULE to ſhew Cauſe why Proceedings by *Capias* ſhould not be ſet aſide; Defendant objecting that he ought to have been ſued by Bill: But Defendant having appeared to the *Capias* before the Motion, has cured the Miſtake. He may plead his Privilege. The Rule diſcharged.

Prohibition.

Maltom *againſt* Acklom, in Prohibition. Hilary 20 Geo. 2.

PLaintiff had obtained a Rule to ſhew Cauſe why a Writ of Conſultation ſhould not be granted, for Want of Plaintiff's proving his Suggeſtion by two Witneſſes within ſix Months, as required by the Statute; and why Plaintiff ſhould not pay double Coſts. Upon Cauſe ſhewn it appeared, that the Declaration had been, by Rule, ordered to be made agreeable to the Proceedings in the Spiritual Court, and thereupon a Prohibition to iſſue. And the Court being of Opinion that the Time for proving the Suggeſtion ought to be computed from the Time of the Amendment, and not farther back. The ſix Months were not expired, and the Rule was diſcharged. *Bootle* for Defendant; *Agar* for Plaintiff.

Replevin.

Davis *againſt* Prince, in Replevin. Trinity 26 & 27 Geo. 2.

RULE abſolute to ſtay Proceedings, on Payment of 47 *l.* Rent diſtrained for, and Coſts, after Declaration, but before Avowry. *Willes* for Plaintiff; *Prime* for Defendant.

Scire Facias.

Wright *againſt* Treweeke. Mich. 20 Geo. 2.

RULE to ſhew Cauſe why Proceedings on a *Scire facias quare Executio non*, brought by *Spincke*, Executor of the deceaſed Plaintiff, pending a Writ of Error, ſhould not be ſtayed. On ſhewing Cauſe it appeared, That the Record of the Judgment was not tranſcribed into the King's Bench; and the *Scire facias* out of this Court was held to be regular. The Executor may revive, but cannot take out Execution pending the Writ of Error. After a Tranſcript, the *Scire facias quare Executio non* ſhould go out of the Court of King's Bench. Plaintiff in Error, if deſirous to proceed, might (after a Tranſcript) have a *Scire facias ad audiend' Errores* out of the King's Bench againſt the Executor or Adminiſtrator of the Defendant in Error. The Rule diſcharged. *Bootle* for Plaintiff's Executor; *Willes* for Defendant.

Superſedeas.

Roe *againſt* Whitehead. Hilary 17 Geo. 2.

DEfendant, a Priſoner in the *Fleet*, after Judgment brings a Writ of Error, put in Bail thereon, and applied to be diſcharged by *Superſedeas*. Plaintiff's Counſel objected, that if the Writ of Error ſhould be non-proſs'd for Want of tranſcribing the Record, the Bail would not be liable. But the Court held, that though the Record ſhould not be tranſcribed, yet the Bail being bound to proſecute the Writ of Error with Effect, will be liable; and made the Rule for *a Superſedeas* abſolute. *Agar* for Defendant; *Bootle* for Plaintiff.

Grub *againſt* Crick. Hilary 19 Geo. 2.

AFTER a *Superſedeas* ordered for Want of Plaintiff's proceeding to Judgment within three Terms after Declaration; and before Defendant could be diſcharged, the ſame Plaintiff cauſed him to be charged with a new Declaration; which the Court held regular, being for a different Cauſe of Action; and the Rule to ſhew Cauſe why a *Superſe-*

deas

deas, notwithſtanding the Declaration, was diſcharged. *Prime* and *Hayward* for Plaintiff; *Skinner* for Defendant.

Bell *againſt* Simpſon. Trinity 26 & 27 Geo. 2.

DEfendant in Cuſtody for Want of Bail: The *Acetiam* was for 40 *l.* Debt; the Declaration in a Plea that Defendant render to Plaintiff 40 *l.* which, *&c.* The Count ſingle for 22 *l.* Rent, without any additional Count on a *Mutuatus*, or otherwiſe, for the Reſidue of the 40 *l.* Now to prevent a *Superſedeas* (after the ſecond Term from Delivery of Declaration expired) Plaintiff deſired Leave to add a ſecond Count, whereby to make his Declaration good from the Delivery, which is a Favour not to be granted. Matters of Amendment are purely at the Diſcretion of the Court. Had Bail been put in, they would have been diſcharged, and ſo muſt Defendant's Perſon be. A Count cannot be added after the ſecond Term. Rule, That if Plaintiff conſents to a *Superſedeas* within ſix Days after Term, he may amend, otherwiſe not. *Willes* for Plaintiff; *Poole* for Defendant.

Trials, Verdict, &c.

Selman *againſt* Courtney. Trinity 13 & 14 Geo. 2.

THIS was an Action of Treſpaſs *Quare Clauſum fregit.* Defendant pleaded Not Guilty; and upon the Trial before Mr. Baron *Carter* Defendant offered to give in Evidence, that the Place in which, *&c.* was the King's Highway; but the Judge refuſed to admit that Evidence to be given, and Plaintiff recovered a Verdict. Defendant moved for a new Trial, and a Rule to ſhew Cauſe was granted, on Payment of Coſts. Upon ſhewing Cauſe, ſeveral Caſes were cited on both Sides. And it being ſaid, that ſome Judges in the Circuit had been of different Opinions with reſpect to this Point, the Court thought it a Matter of ſo much Conſequence, that it was proper to be conſidered by all the Judges. After a Conſultation, the Chief Juſtice declared it to be the Opinion of a great Majority of the Judges, That an Highway ought not to be given in Evidence under the General Iſſue, but ought to be pleaded ſpecially; and the Rule to ſhew Cauſe was diſcharged. *Skinner* and *Prime* for Plaintiff; *Belfield* and *Urlin* for Defendant.

Caſes cited for Plaintiff, *Watſon* againſt *Sparke*, 1 *Salk.* 287. *Sid.* 106. *Gee* againſt *Chief Juſtice*, 282. *B. Doct' Placitandi* 197. *Coget's* Caſe, 8 *C.* 66. *B.* 1 *Inſt.* 303. *B.* 5 *C.* 805. 6 *Mod.* 66.

For Defendant, *James* againſt *Hayward*, *Cro. Car.* 184. *Morſe* againſt *Bennett*, 9 *G. B. R.* 2 *Ventris* 297. and in *Showers.*

Froſt *againſt* Whadcock, alias Avery and others, on the Demiſe of Avery, in Ejectment. Eaſter 14 Geo. 2.

A Rule to ſhew Cauſe why the Trial ſhould not be at Bar, was founded upon an Affidavit that the Premiſſes in Queſtion were of the yearly Value of 100 *l.* and upwards; and that a ſtrict and careful Examination of the Title would be requiſite. At the Time of ſhewing Cauſe it was alſo alledged on Plaintiff's Behalf, that he had a great Number of Witneſſes to examine; and that the Point to be tried was *Compos vel non* in *William Avery*, at the Time of making his Will, under which the Defendant *Whadcock* claims his Right. And on Behalf of Defendant it appeared, that they had ſome ancient and infirm Witneſſes to examine, who could not travel to *Weſtminſter.*

Per Cur': We are not, according to the Courſe of the Court, bound down by the Value of the Premiſſes in Queſtion, which

is

is ſworn to be 100 *l. per ann.* As to ſtrict Examination, it is neceſſary in all Caſes, and is nothing with Reſpect to a Trial at Bar. Where a long Cauſe is to be tried, a Judge, upon Notice, will take a Day extraordinary at the Aſſizes, where an Examination of a great Number of Witneſſes is moſt proper, and leaſt Expenſive. There is no Nicety in this Point, or Difficulty, ſo as to require the Attention of the whole Court. Ancient Witneſſes grow weaker every Day, and often are not able to travel to *Weſtminſter*. Let the Rule be diſcharged. Plaintiff prayed Leave to examine an old Witneſs before a Judge, upon Interrogatories: But *per Cur':* That cannot be done without Conſent. A Croſs Examination cannot be ſupplied by Depoſitions. If a Trial at Bar was ordered, it could not be till next *Michaelmas* Term; and before that Time the Aſſizes will be held. *Birch* for Plaintiff; *Willes* for Defendants.

Bond *againſt* Palmer.

BELFIELD for Defendant moved for a new Trial, ſuggeſting the Verdict to be againſt Evidence, and relying upon the Judge's Certificate. *Per Cur':* As the Cauſe was tried before a Judge of another Court, an Affidavit of what paſſed at the Trial muſt be produced, as a neceſſary Foundation for this Motion.

Day

Day *againſt* Samſon. Trinity 14 & 15 Geo. 2.

UPON ſhewing Cauſe againſt a Rule for putting off a Trial, it was objected to the Affidavit, *ex parte Defendentis*, that it was made by a third Perſon, and not by the Party himſelf; but this was over-ruled by the Court. There may be many Caſes where a third Perſon can ſwear another to be a material Witneſs, and the Defendant himſelf cannot; as where a Factor ſells Goods for his Principal, and employs a Porter to deliver them; the Factor knows the Porter to be a material Witneſs, but the Principal does not, *&c.* The Court took another Objection to the Affidavit, which run thus: *That* A. B. *and* C. D. *are material Witneſſes for Defendant in this Cauſe, without whoſe Evidence Defendant cannot ſafely proceed to Trial, as Defendant is adviſed, and verily believes.* The Belief ſeems to go through the Whole, as well as to *A. B.* and *C. D.* being material Witneſſes. As to the other neceſſary Part of the Affidavit (that is) that the Party cannot ſafely make Defence without their Teſtimony, though the former Part (that is) *A. B.* and *C. D.* being material Witneſſes, ought to be poſitively ſworn; Belief, as to it, is not ſufficient; but as to the later Part it is. Theſe two Requiſites ought not to be

coupled, but disjoined. The Court inlarged the Rule that the Affidavit might be amended; which being done, a Rule was made to put off the Trial. *Skinner* for Defendant; *Wynne* for Plaintiff.

Tutton *againſt* Andrews.

THE Sheriff on the Execution of a Writ of Inquiry of Damages, admitted improper Evidence to be given by Defendant, whereby the Damages were leſſened; the Court ordered the Inquiſition to be ſet aſide, and gave Plaintiff Leave to execute a new Writ of Inquiry. A Notion has prevailed, that where Damages are exceſſive, a new Trial, *&c.* may be granted, but not where Damages are leſs than they ought to be, tho' there is as much Reaſon for a new Trial, *&c.* in the one Caſe as the other. *Burnett* for Plaintiff; *Gapper* for Defendant.

Hankey, Knight, who as well, &c. *againſt* Smith. Hilary 15 Geo. 2.

RULE to ſhew Cauſe why the *Poſtea* ſhould not be amended, by returning the Verdict on the third inſtead of the firſt Count, according to the finding of the Jury, was made abſolute, upon the Report of Mr. Baron *Carter*, before whom the Cauſe was tried. It was ordered, That the Aſſociate do amend

amend the *Poſtea* in Court; that Defendant have four Days after the Amendment to move in Arreſt of Judgment; and that Plaintiff do pay Defendant Coſts of this Application. *Prime* for Plaintiff; *Bootle* for Defendant.

Croſs *againſt* Skipwith, Baronet. Trinity 16 Geo. 2.

AFTER a Common Jury returned in *Middleſex*, and the Cauſe made a *Remanet* by Conſent; at the Sitting after laſt Term Defendant moved for a Special Jury, offering to take Notice of Trial for the ſecond Sitting within this Term, and obtained a Rule to ſhew Cauſe; which was diſcharged. *Per Cur':* This has been done between Aſſizes and Aſſizes, but we cannot delay the Plaintiff in this Caſe, without Conſent. Death or other Accidents may happen. *Skinner* and *Eyre* for Plaintiff; *Wynne*, *Ketelbey* and *Hayward* for Defendant.

Fiſher *againſt* Kitchingman. Mich. 16 Geo. 2.

UPON a Point reſerved at the Trial by Mr. Juſtice *Burnett*, the Queſtion was, Whether the *Poſtea* in a former Action, produced by the Aſſociate, was ſufficient Evidence to prove that ſuch former Action was tried, and referred, as alledged in the Decla-

ration in this Action; or whether the *Poſtea* ought not to have been returned to the Court, and an Entry made upon Record that a Juror was withdrawn, and a Copy of that Entry given in Evidence? The Court was of Opinion, That according to the Thing alledged, *viz.* that the Cauſe came down to Trial upon an Iſſue joined in this Court, the *Poſtea*, which is a Tranſcript of the Record, and authenticated by the Seal, was ſufficient Evidence; and the Rule to ſhew Cauſe why the Verdict ſhould not be ſet aſide, was diſcharged. *Skinner* and *Bootle* for Plaintiff; *Agar* and *Draper* for Defendant.

Abſolon *againſt* Knight and Barber, in Replevin. Eaſter 16 Geo. 2.

A Vowry for Rent in Arrear, and Iſſue thereon. Plaintiff had given Notice, with his Plea in Bar, to ſet off a mutual Debt againſt the Rent, and offered to give Evidence of it at laſt *Berks* Aſſizes, before Mr. Juſtice *Deniſon*, who refuſed to admit the ſame. The Queſtion was, Whether ſuch Evidence ought to have been received, or not? And the Court were of Opinion, that ſuch Evidence was properly rejected. This Caſe is neither within the Letter nor the Intention of the Statute. The Iſſue is Special and not General. It is not an Action upon a Perſonal Contract. The Rent ſavours of the

the Realty, and the Remedy is by Diſtreſs. Replevin is a mixed Action. The Judgment, if for the Avowant, muſt be a Return of the Cattle. To take the Benefit of the Statute, Plaintiff and Defendant muſt plead properly. In Debt on Bond, Defendant cannot ſet off under *Non eſt factum*, or *Solvit ad diem*; but muſt plead ſpecially. Perhaps by Way of Special Plea to the Avowry, Plaintiff might have pleaded a mutual Debt of more than the Rent. There could not have been a Set-off by Defendants under *Non cepit*; nor can there be for Plaintiff under *Riens in Arrere*. The Rule to ſtay the Entry of Judgment upon the Verdict for the Avowants, was diſcharged. *Belſield* and *Agar* for Plaintiff; *Skinner* for Avowants.

Proctor, Spinſter, *againſt* Bury. Trin. 16 & 17 Geo. 2.

SPECIAL Action on the Caſe, wherein Plaintiff declares, that ſhe being ſingle and unmarried, Defendant, affirming himſelf to be ſingle and unmarried, prevailed upon Plaintiff to marry him, when in Truth he had been before married to another Woman, *A. B.* ſtill living, whereby Plaintiff loſt her Chaſtity, *&c.* And on Trial, Plaintiff recovered 2000 *l.* Damages. Defendant, on Plaintiff's Proſecution, had been convicted o ſBigamy, and burnt in the Hand. *Prime*

and *Wynne* moved in Arreſt of Judgment, inſiſting, that this Crime is made Felony by Statute *Jac.* 1. That the Charge in the Declaration plainly amounts to Felony; and that this Action is merged in the Felony. The Court directed the Entry of Judgment upon the Verdict to be ſtayed till further Order.

Richardſon *againſt* Frank and another. Mich. 17 Geo. 2.

PLaintiff's Goods diſtrained were not replevied, but, by Conſent of the Attornies on both Sides, remained in the Diſtrainer's Hands, and without any Writ of *Re. ja. lo.* or Appearance in this Court. Plaintiff declared; Defendants avowed; and after long Special Pleadings, ſome of which terminated in Iſſues joined, and others in Demurrers; and after Trial of the Iſſues at the Aſſizes, and a Verdict for Plaintiff, the Avowants moved to ſet aſide all the Proceedings; and the Rule for that Purpoſe was made abſolute. The Court held the Agreement to be void, a Fraud upon the Revenue and the Officers, and an Abuſe of the Court and the Bar. That they had no Juriſdiction, and conſequently could not give Judgment. *Draper* and *Bootle* for Avowants; *Willes* for Plaintiff.

Mead

Mead *againſt* Robinſon.

A Point was reſerved at *Niſi prius*; and by Rule, if the Opinion of the Court ſhould be for Plaintiff, the *Poſtea* was to be delivered to him; if for Defendant, Plaintiff was to pay the Coſts of a Nonſuit. The Court declared the Form of the Rule to be wrong; it ought to be, If the Opinion be for Defendant, that the Verdict be entred for him *ex Aſſenſu Juratorum*. This Method of reſerving Points of Law came in lieu of a Special Verdict, and ought to make a final Determination on each Side in all Caſes, except Ejectment, where the Party may begin again at his Pleaſure.

Hart *againſt* Whitlocke.

AFTER the Cauſe called on, and made a *Remanet* by Conſent, Defendant moved to put off the Trial, by Reaſon of the Abſence of a material Witneſs. It appearing this Witneſs being material was a Matter that did not come to Defendant's Knowledge Time enough to move two Days before the laſt Day appointed for Trial, the Rule was made abſolute to put off the Trial. *Skinner* for Defendant; *Willes* for Plaintiff.

Marlow *againſt* Weekes, in Treſpaſs, for aſſaulting, beating and wounding Plaintiff's Mare. Mich. 17 Geo. 2.

AFTER a Verdict for Plaintiff, Defendant moved in Arreſt of Judgment, objecting, that an Action of Aſſault and Battery is not applicable to a dead Thing, or a brute Beaſt, but to one of the Human Species only. The Objection was now overruled, and the Order *Niſi Cauſa* diſcharged. Aſſault upon a Ship (a dead Thing) bad; but for an Injury to a Beaſt, a Writ in Treſpaſs *Vi & Armis* appears in the Regiſter; the Beating and Wounding are found by the Jury. *Draper* for Defendant; *Wynne* for Plaintiff.

Hall *againſt* Douglas, in Treſpaſs and Aſſault. Trinity 17 & 18 Geo. 2.

AFTER a Verdict for Plaintiff, Defendant moved in Arreſt of Judgment; objecting, that the whole Declaration was a meer Recital, and nothing poſitive was averred, the Word [*Whereas*] being inſerted in the Beginning of the Count; and obtained a Rule *Niſi Cauſa*, which was now diſcharged. The Court were of Opinion, that they ought

ought to get over the old Caſes, and not through this Nicety ſet aſide the Verdict, and defeat Juſtice. The Recital of the Original helps, and the Concluſion of the Declaration *whereby*, *from whence*, *by Reaſon whereof* (the true Tranſlation of the Word *unde*), the Plaintiff is endamaged, is an Averment, though not in common Form. Upon a Special Demurrer, the Declaration would be bad, but after Damages found by Reaſon of the Aſſault, which is the Thing done, the Defect is aided. *Draper* for Plaintiff; *Prime* for Deſendant.

Lucas *againſt* Marſh. Mich. 18 Geo. 2.

THIS Action was brought by Plaintiff as Indorſee of a Promiſory Note, and on Trial the Note was produced endorſed by the Drawee, but not ſuperſcribed. And the Queſtion on the Point reſerved was, Whether or no, after the Objection taken, the Indorſement to Plaintiff could be ſupplied in Court. Held *per Cur'*, That the Words, *Pay the Contents*, *&c.* may be put or ſet over the Name endorſed in Court. The Property is transferred by the Endorſement; and where the Endorſement appears to be ſuperſcribed, the Court never inquire when the Superſcription was written. This Determination is in Favour of Juſtice, Honeſty and Trade; and the

the Practice was ſettled *per Pengelly*, Lord *Raymond* and Lord *Hardwick* at *Niſi Prius*. A Releaſe to make a Man a Witneſs (which is a ſtronger Caſe than this) is conſtantly ſuffered to be executed in Court. No Inconvenience will ariſe by this Practice. In Caſe of a Set-off, where an endorſed Note is ſet off by a Defendant againſt a Plaintiff's Demand, it muſt be proved that the Name of the Indorſor was written before the Plea pleaded. Rule that the *Poſtea* be delivered to Plaintiff. *Skinner* for Plaintiff; *Draper* for Defendant.

Norman *againſt* Beaumont, in Treſpaſs and Aſſault, in Norfolk. Mich. 18 Geo. 2.

Richard Geater, ſummoned and returned as a *Niſi prius* Juror, did not attend the Aſſizes; but one *Richard Sheppard*, a Freeholder, who was verbally ſummoned to ſerve as a Juror on the Crown Side, and never had been at the Aſſizes before, did attend both Courts (as he imagined himſelf in Duty bound to do;) when *Richard Geater* was called on the *Niſi prius* Side, *Richard Sheppard* (thinking himſelf called) anſwered, and was ſworn as a Juror. Defendant inſiſted, that the Verdict was null and void, the Trial not having been by twelve, but by eleven Jurors only. Neither Party knew anything of the Miſtake till

till after the Trial. It was urged for Plaintiff, that Defendant ought to have challenged *Sheppard*; that after recording the Verdict, no Averment can be admitted againſt the Record. That *Sheppard*'s Place of Abode was different from that of *Geater*, which would have been good Matter of Challenge. And if Defendant could aver againſt the Record, yet the Defect is cured by the Statute 32 *H.* 8. *c.* 30. The Verdict was for Plaintiff, Damages One Shilling; and Lord Chief Juſtice *Lee*, who tried the Cauſe, had certified, to entitle Plaintiff to Coſts. *Per Cur':* By the Statute 3 *Geo.* 2. all the twelve Jurors ought to be drawn out of the Box, and the Name of *Richard Sheppard* was never put into the Box. The Court are not bound by the Record. Here has been no Trial. This is not Matter of Challenge, nor is the Defect cured by the Statute 32 *H.* 8. The Rule on *Richard Sheppard* to ſhew Cauſe why an Attachment, was diſcharged. The Rule to ſhew Cauſe why the Verdict ſhould not be ſet aſide, was made abſolute. *Prime* for Plaintiff; *Bootle* for Defendant; *Leeds* for *Richard Sheppard*.

Wrey

Wrey *againſt* Thorn. Mich. 18 Geo. 2.

THIS was an Action for breaking and entring Plaintiff's Cloſe, *&c.* Defendant juſtified in Right of a Way. Plaintiff replied *extra Viam*; whereon Iſſue was joined; and a Special Jury and View applied for and granted. The Name of *Henry Luppincott* of *Alverdiſcott*, *in Com' Devon'*, Eſquire, was taken out of the Freeholders Book, and he ſtood as a Juryman, and was returned among the other Jurors, in the Panel annexed to the Writ of *Venire facias*; and was ſummoned, and did attend both on the View and at the Trial. After a Verdict for Plaintiff on the Merits of the Cauſe, Defendant moved to ſet aſide the Verdict, Mr. *Luppincott*'s Chriſtian Name being [*Harry*] and not [*Henry*]; and produced an Affidavit thereof from two Perſons. *Per Cur':* This Affidavit ought not to be received in a Motion for a new Trial. The Record, and all the Jury Proceſs, are uniform. Mr. *Luppincott* is the real Perſon returned and intended to be a Juror, and there is no Pretence that the Verdict is unjuſt. It is commonly underſtood that *Henry* and *Harry* are the ſame Name; or that *Harry* is the ſame Name as *Henry* corruptly ſpelled. The Rule to ſhew Cauſe why the Verdict ſhould not be ſet aſide,

ſide, was diſcharged. *Belſteld* for Plaintiff; *Huſſey* for Defendant.

Roe *againſt* Doe, in Ejectment, on the Demiſe of Cholmondly and his Wife, for a conſiderable Eſtate in Yorkſhire, late Sir Butler Wentworth's, deceaſed. Hil. 18 Geo. 2.

RULE for Tenants in Poſſeſſion to ſhew Cauſe why Iſſue to be joined ſhould not be tried at Bar next Term. Objected on the Part of Lady *Wentworth* the Landlady, Sir *Butler*'s Widow, That a Trial at Bar cannot be moved for by Plaintiff till after Appearance, and the Time to appear will not expire till four Days after this Term. Two Rules of the Court of King's Bench produced, one by Conſent, the other not by Conſent, except as to *Niſi prius* Coſts, where Trials at Bar had been ordered before Appearance. Rule abſolute for Trial at Bar on 8th *May* next. If Plaintiff's Motion had not been received before Appearance, no Trial at Bar could be appointed till next *Michaelmas* Term. Lady *Wentworth*'s Counſel prayed the Conditional Rule, and to defend for Part; which was granted, and ſix Weeks Time to deſcribe the Part defended for. *Prime & al'* for Leſſors of Plaintiff; *Skinner & al'* for Lady *Wentworth.*

Kemp,

Kemp, qui tam, &c. *againſt* The Hundred of Strafford and Tickhill. Eaſter 18 Geo. 2.

AT *Yorkſhire* Aſſizes a Verdict was taken for Defendants, and a Point reſerved by Rule for the Opinion of the Court. The Rule of *Niſi prius* was made a Rule of Court, on the Motion of Plaintiff's Counſel; which Rule the Court diſcharged as new and unprecedented. Whenever a Point is reſerved, the Verdict muſt always be for the Plaintiff. *Bootle* for Defendant; *Prime* for Plaintiff.

Ruſſell *againſt* Ball, in Aſſumption.

DEfendant paid twenty-five Pounds into Court on the Common Rule; Plaintiff refuſed to accept the Mony, proceeded to Trial; and on a full hearing of the Merits, had a Verdict for 25 *l.* the exact Sum paid into Court, (in Conſequence whereof Plaintiff, not having recovered more, was, by the Rule, liable to pay Coſts to Defendant: To avoid which, Plaintiff moved to ſet aſide the Verdict, objecting, that the Cauſe was tried by eleven Jurors only. It appeared that one *John Pearce*, ſummoned on the Jury, did not appear, but his Son of the ſame Name, not qualified, attended the Aſ-

ſizes, and when the Father was drawn and called, anſwered for him, and was ſworn on the Jury. Plaintiff alſo objected to the Smallneſs of Damages found. *Per Cur':* Attaint will not lie againſt Jurors for finding too ſmall Damages. Where a Demand is certain, as by Promiſory Note, the Court will ſet aſide a Verdict for too ſmall Damages, but not where the Damages are uncertain, as in this Caſe, for curing a Wound. But the Verdict by eleven Jurors only is no Verdict; it is null and void. Rule abſolute to ſet aſide the Verdict, without Coſts. *Vide Norman* againſt *Beaumont*, *Mich.* 18 *George* 2. *Belfield* for Plaintiff; *Draper* for Defendant.

Stanynought *againſt* Coſins, one, &c. Hilary 19 Geo. 2.

ACTION of Treſpaſs for meſne Profits, brought by the Nominal Plaintiff, the Leſſee in Ejectment, againſt the Tenant in Poſſeſſion, after Judgment by Default againſt the Caſual Ejector, for Want of the Tenant's Appearance. No Poſſeſſion in Plaintiff proved at the Trial; *Poſtea* ſtayed; and Point reſerved. The Queſtion is, What ought to have been proved? *Per Cur':* The Title need not be proved. The Tenant is ſo far privy to the Suit, he has been ſerved with a Declaration, and is thereby concluded as to the Title, though he does not appear. The Judgment

ment muſt be ſuppoſed to be right; if not, Tenant might move to ſet it aſide. After Action brought for meſne Profits, Tenant not having entred into the Common Rule, is not concluded, either as to his own Poſſeſſion, or as to Plaintiff's being in Poſſeſſion at the Time of the Demiſe, which poſſibly might have been laid eighteen Years back, and a Tenant at Will might have been only three Days in Poſſeſſion. Damages ought to be given for no longer Time than Defendant is proved to be in actual Poſſeſſion. Plaintiff's Poſſeſſion ought alſo to be proved, and from that Time only Damages to be recovered. In Caſe of a Leaſe ſealed on the Land (the old Way) where the Poſſeſſion is vacant, Plaintiff cannot recover for meſne Profits. If Tenant enters into the Rule to confeſs Leaſe, Entry and Ouſter, the Title muſt be proved before the Demiſe laid. Tenant privy and Party is to be bound by what himſelf confeſſes, though in the Rule only, and not at the Trial. Treſpaſs is a poſſeſſory Action, only to be brought by Perſon in Poſſeſſion, and from Time of Poſſeſſion; and though Ejectments are Creatures of the Court, the Action for meſne Profits is like Treſpaſs with a *Continuando*. As Plaintiff did not prove his Poſſeſſion, he ought to have been nonſuited. The *Poſtea* ordered to be delivered to Defendant, *&c. prout*. Rule of Aſſizes, 1 *Syderſin* 239. Where Tenant enters

ters into the Common Rule, and the Action for meſne Profits is brought by the Leſſor in Ejectment, Plaintiff's Poſſeſſion muſt be proved; if by the Leſſee, his Entry and Poſſeſſion is confeſſed, and need not be proved. No other Difference in Action brought by Leſſor or Leſſee, (1 *Salk.* 246. wrong.) Tenant concluded as to Entry, when confeſſed, except an Entry to avoid a Fine. *Skinner* for Plaintiff; *Willes* for Defendant.

Love and Appleton *againſt* Jarrett. Eaſter 19 Geo. 2.

DEfendant had Time to plead by a Judge's Order, rejoining *gratis.* Plaintiff delivered a Paper-Book, containing a bad Replication, and an Iſſue joined by Defendant. Defendant's Agent's Clerk received and paid for the Paper-Book; but his Maſter perceiving the Replication to be bad, returned the Book to Plaintiff's Agent, and gave Notice of the Miſtake, notwithſtanding which Plaintiff went on to Trial, and had a Verdict, without Defence. Rule abſolute to ſet aſide the Verdict, without Coſts. *Skinner* for Plaintiff; *Draper* for Defendant.

Goodtitle, on the Demiſe of Symons, Eſquire, *againſt* Clarke, in Ejectment. Mich. 20 Geo. 2.

AFTER the Merits of the Cauſe had been determined at the Aſſizes by a Special Jury, after a Trial of twenty Hours, Defendant moved to ſet aſide the Verdict, upon Affidavit that Plaintiff's Shewer at a View, purſuant to a Rule of Court previous to the Trial, had miſbehaved himſelf, by telling the Viewers, *This Place is called* Abrahall's Yat, *and this* Conygree-hill; (which were not the Places in Queſtion;) and ſaying, *Theſe Cottages pay Mr.* Symons *5 d. or 6 d. a-Year Rent.* Defendant inſiſting, that nothing more than the Place in Queſtion, which was one ſingle Cottage, ſhould have been ſhewn to the Viewers. Upon hearing Counſel on both Sides, the Court diſcharged the Rule, being of Opinion, That on a View the Shewers may ſhew Marks, Boundaries, *&c.* to enlighten the Viewers; and may ſay to them, Theſe are the Places which on the Trial we ſhall adapt our Evidence to. The Jury could have no Light from looking at the Cottage only. The Queſtion to be tried was, Whether it ſtood within Mr. *Symons*'s Manor, or not? Had an ancient Man been produced to the Viewers, and he had acquainted them

them that he had known the Place many Years, and given an Account of the Boundary, &c. this would have been improper, becauſe it is giving Evidence before the Trial. *Belfield* for Defendant; *Bootle* and *Eyre* for Plaintiff.

Hicks *againſt* Young, in Replevin. Mich. 20 Geo. 2.

PLaintiff did not appear at the Aſſizes, Defendant brought down the Record, and his Counſel inſiſting ſtrongly on a Verdict, Mr. Baron *Reynolds*, before whom the Cauſe was tried, complied, and a Verdict was found for Defendant, though Plaintiff did not appear. Upon Application by Plaintiff to ſet aſide the Verdict, the Court, after hearing the Judge's Report, ordered the *Poſtea* to be amended, and a Nonſuit to be returned inſtead of a Verdict for Defendant; and that Defendant ſhould pay Coſts of the Motion. *Prime* for Plaintiff; *Draper* for Defendant.

Chandler *againſt* The Hundred of Sunning, on the Statute of Hue and Cry. Hilary 22 Geo. 2.

ON a Caſe made on a Point reſerved at the Trial, where a Verdict was found for Plaintiff, ſubject to the Opinion of the

Court, Mr. Juſtice *Abney* and Mr. Juſtice *Birch* delivered their Opinions, That though Plaintiff cannot recover the Value of Bank-Notes of which he was robbed, to the Value of 960 *l.* for Want of a ſufficient Deſcription thereof in his Advertiſement in the *London Gazette*, yet he ought to recover for what is ſufficiently deſcribed, (*viz.*) his Watch and Mony, Value 10 *l.* the Words of the late Act being to be taken diſtributively. Lord Chief Juſtice and Mr. Juſtice *Burnett* were of Opinion, that nothing can be recovered. The Words of the late Act are, That Plaintiff ſhall not maintain his Action, unleſs he deſcribes the Robbers, *&c.* together with the Goods and Effects of which he was robbed; twenty Days before the Advertiſement are given to the Perſon robbed to recollect a particular Deſcription. The Party robbed ought to diſcover, as well as he can, all the Goods he loſt, to give Light to the Hundred to take the Robbers. The Perſon robbed gets nothing by the taking; the Publick indeed are benefitted. A Perſon robbed of a large Sum of Money, probably cannot farther deſcribe it than that it was in Gold and Silver; but perhaps can deſcribe other particular Things then loſt; which he ought to do. The Deſcription of Bank-Notes by Numbers, Dates and Sums (which in this Caſe were omitted) are highly uſeful for Diſcovery. No two have the ſame Marks. If Plaintiff

Plaintiff, at the Time of his Advertiſement, had not known the Numbers, *&c.* but recollected them afterwards, the Action would lie. But on the Trial he acknowledged that he knew them, and they were all particularly entred in his Pocket-Book at the Time of the Advertiſement. The Court being divided, no Judgment could be entred on the Verdict.

Moyſe, Widow, *againſt* Cockſedge. Hilary 22 Geo. 2.

THE Action was Treſpaſs *Vi & Armis* for breaking and entring Plaintiff's Houſe, and taking and carrying away her Goods. Defendant pleaded the General Iſſue, and at the Trial ſhewed, that the Goods were taken as a Diſtreſs for Non-payment of a Poor's Rate (which Plaintiff obſtinately refuſed to pay), and ſold, and after Payment of the Rate, and deducting 1 *s.* for the Expence of the Diſtreſs and Sale, the Overplus was reſtored to Plaintiff. Defendant went through every Requiſite under the Statute 43 *Eliz.* to ſhew the Regularity of the Diſtreſs and Sale, and the Jury were ready to give a Verdict in his Favour; but at the preſſing Inſtance of Defendant's Counſel, a Verdict was given for Plaintiff, Damages 1 *s.* and the following Point reſerved for the Opinion of the Court, (*viz.*) Whether, as no Proviſion

is made by the Statute for retaining the neceſſary Expence of the Diſtreſs and Sale, Defendant could juſtify deducting 1 *s.* for the ſame. Which Point having been argued, the Court, after Conſideration, delivered an unanimous Opinion, That as the Act gives a Right to diſtrain and ſell, all Incidents neceſſary to obtain that Right are included. If the Thing diſtrained cannot be ſold without Expence, ſuch Expence is neceſſary, and given by the Statute. The Jury were to judge of the Reaſonableneſs or Extravagance of the Expence; the Court muſt now take the Expence to be neceſſary and reaſonable. If Defendant could not have juſtified the Expence to be neceſſary, yet an Action of Treſpaſs *Vi & Armis* would not lie for the 1 *s.* retained, but an Action on the Caſe for Mony had and received for Plaintiff's Uſe. The *Poſtea* ordered to be delivered to Defendant. The Rule of *Niſi prius* was drawn up in the old Way, *viz.* That if the Court ſhould be of Opinion for Defendant, the Verdict for Plaintiff be ſet aſide, and Plaintiff pay Coſts of a Nonſuit; which is a bad Form: It ſhould be, That Judgment of Nonſuit be entred; otherwiſe Defendant could have no Remedy in Caſe of Plaintiff's Death. *Prime* for Plaintiff; *Draper* for Defendant.

Woeden

Woeden, on the Demiſe of Long, *againſt* Saunders, Widow, and others, in Ejectment. Eaſter 23 Geo. 2.

THE *Venire facias* was awarded by Miſtake, returnable on the Morrow of the *Aſcenſion*, inſtead of Eight Days of the *Purification*. Defendants, though their Witneſſes attended the Aſſizes, made no Defence at the Trial, but confeſſed Leaſe, Entry and Ouſter, and ſuffered Plaintiff to take a Verdict, relying on the Miſtake in awarding the *Venire*, returnable at a Day ſubſequent to the Aſſizes, till after which Return, and Default by Jurors, there could be no *Niſi prius*. The Jury Proceſs was made returnable at the proper Days. The Court held the Variance material, on the Authority of two Caſes cited by Plaintiff's Counſel, *Baſtard & al'* againſt *Bartlett*, *Trinity* 3 *Geo.* 2. *Dale* againſt *Holmes*, *Mich.* 4 *Geo.* 2. *in B. R.* Verdict ſet aſide on Payment of Coſts. *Prime* for Defendants; *Draper* and *Wynne* for Plaintiff.

Hawys, one, &c. *againſt* Rix. Mich. 24 Geo. 2.

POINT reſerved at the Trial and argued in Court was, Whether the *Placita* in the Record, referring to a Time more than a Month after Plaintiff's Bill of Coſts delivered,

be ſufficient to ſupport his Action for Fees, *&c.* charged in his Bill? Or that, in Order to ſhew the Commencement of the Suit, Plaintiff ought not to have produced his Attachment of Privilege (the Original Writ) or an examined Copy, the Statute 2 *Geo.* 2. requiring ſuch Bill to be delivered a Month before Action brought? The Bill was proved to be delivered 25th *September* 1749; the *Placita* was of *Hilary* Term then next, the Term of which Iſſue was joined. The Court were of Opinion, that Plaintiff ought to make out his Caſe by the beſt Evidence the Nature of the Thing will admit. The *Placita* is not concluſive; the Writ may correſpond with it, and yet bear Teſte the firſt Day of *Michaelmas* Term 1749, which is before the Month expired; nor is the *Placita* the beſt Evidence, becauſe Plaintiff might have had the Writ. Judgment for Defendant *Niſi Cauſa ante Clauſum Termini.* No Cauſe ſhewn. *Willes* for Plaintiff; *Bootle* for Defendant.

Dobſon *againſt* Stevens. Hilary 24 Geo. 2.

WILLES, for Defendant, moved for a Special Jury, as of Courſe; but before the Rule drawn up, the Secondary doubting, prayed the Direction of the Court; and it appearing that Common Jury Proceſs had been awarded, iſſued and returned, and that the

the Cauſe ſtands as a *Remanet* in Lord Chief Juſtice's Paper, the Court refuſed to grant a Special Jury. Though in Country Cauſes, between Aſſizes and Aſſizes, the Practice is otherwiſe. *Wynne* for Plaintiff.

Bartlett *againſt* Spooner. Eaſter 24 Geo. 2.

THIS was an Action of Treſpaſs, to which Defendant, by Leave of the Court, had pleaded three Pleas, *viz.* Not guilty, and two ſeveral Juſtifications. On the Trial, Defendant proved his ſecond Plea to the Satisfaction of the Court, and obtained a Verdict on the firſt and ſecond Iſſues; but as to the third Iſſue, no Proof was gone into, nor any Verdict found relating to it. *Belfield*, for Plaintiff, objected, That the Verdict was incomplete, imperfect and uncertain, nothing being found as to a material Fact put in Iſſue; and therefore, as to the third Iſſue, a *Venire facias de novo* ought to be awarded. On ſhewing Cauſe, *Prime*, for Defendant, obſerved, that by the firſt Plea, (Not guilty) the Whole is put in Iſſue; that by the ſecond Plea, the whole Treſpaſs is covered; and therefore the Verdict is compleat. It is found thereby, That Plaintiff has no Cauſe of Action, and the Judge who tried the Cauſe, did not think it needful to go farther. As Plaintiff has no Cauſe of Action, he

he can have no Damages. Contingent Damages in Caſe of Iſſue and Demurrer, and Iſſue tried before Argument, are not neceſſary to be found at the Trial on Plaintiff's Verdict, but may be afterwards ſupplied, if Judgment for Plaintiff on the Demurrer. *Per Cur':* Here is enough found for the Court to give Judgment upon. No *Venire facias de novo* ought to iſſue. It was not the Buſineſs of Defendant, but of Plaintiff, to have the third Iſſue determined, if he imagined that thereby he might be intitled to Coſts, or any other Advantage. The Rule diſcharged.

N. B. Plaintiff gave no Evidence on the Not guilty.

Britton, who as well, &c. *againſt* Peirce. Mich. 25 Geo. 2.

THIS was an Action brought on the Statute 13 *Eliz.* for ſetting up a fraudulent Judgment, wherein Plaintiff on Trial obtained a Verdict for the Penalty of 45 *l.* beſides which, Corporal Puniſhment, and Impriſonment for ſix Months, are inflicted by the Statute. *Agar*, for Plaintiff, moved, for Leave to compound, purſuant to Statute 18 *Eliz. ch.* 5. But *per Cur':* That Statute extends only to Actions brought by common Informers; this Action is brought by the Party injured. The Defendant is convicted by the Verdict, and after Conviction Leave

is

is never given in any Caſe to compound. No Rule. The Judgment to be entered under the Court's Direction. *Vide Cooke's Entries, fo.* 149.

Jones, on the Demiſe of Rayner, *againſt* Sandys and others, in Ejectment. Hilary 26 Geo. 2.

POINT reſerved at the Trial, Whether a Bond, in the Condition whereof a Mortgage-Demiſe was contained, ſtamped with a treble Sixpenny Stamp, read in Evidence for Plaintiff, ought to have been admitted, or not, for Want of its being ſtamped with two treble Sixpenny Stamps? It being inſiſted on, by Plaintiff's Counſel, that *per Stat.* 12 *Ann. cap.* 9. *ſect.* 21 & 24. every Indenture, Leaſe or Bond, are ſeparately charged, and conſequently this Inſtrument, being both Bond and Leaſe or Demiſe, ought to have paid twice the treble Sixpenny Duty.

The Court thought the Act of Parliament darkly penned. The Revenue Acts are generally framed by the Officers concerned in the ſeveral Branches, without being laid before the Attorny or Solicitor General. The Act is ambiguous. It is ſafeſt to follow a long Series of Conſtruction. This is one Bond, of which there is one Execution. A Feoffment, with a Warrant for Livery of Seiſin, Bargain and Sale, operating as a Covenant to

ſtand

ſtand ſeiſed, or (being inrolled) as Leaſe and Releaſe, Demiſe and Redemiſe, Mortgage with a Covenant to pay the Mony, conſtantly thought to be ſingly charged only, and the Practice has been conſonant. A different Conſtruction of the Act would make great Confuſion in Purchaſe-Deeds and Settlements, often relating to Freehold, Leaſehold and Copyhold Eſtates in one and the ſame Deed. Every Copyhold Surrender, and every Admittance, ſeem to be charged ſeparately, and yet one Stamp of 2 *s.* 3 *d.* has been held ſufficient for both Surrender and Amittance; and ſo is the Practice. The Subject's Property, as well as the King's Revenue, is to be protected. If the Deed in Queſtion be not Evidence, it is the ſame Thing as void: For though the Commiſſioners of the Stamp-Duty may (tempted by a large Sum of Mony) order a Stamp to be added, yet they are not obliged ſo to do. The proper Time for the Objection was when the Bond was offered in Evidence. 2 *Lord Raymond* 1445. Rule, That the *Poſtea* be delivered to Plaintiff, to ſign Judgment. *Prime* for Plaintiff; *Poole* for Defendants.

Smith *againſt* Gregg, in Yorkſhire. Eaſter 26 Geo. 2.

THE Record was offered to be entred at laſt Aſſizes, a little out of Time, and Defendant's Attorny, then preſent, had refuſed

refuſed to conſent that it ſhould be received. On Application by Defendant for Judgment as in Caſe of Nonſuit, the Court refuſed to give Coſts of the Application, but ordered Plaintiff to pay Coſts for not proceeding to Trial, and peremptorily to proceed to Trial at next Aſſizes. *Poole* for Defendant; *Willes* for Plaintiff.

Fitch, qui tam, *againſt* Nunn.

MOTION, *per Draper* for Defendant, for a new Trial, after Verdict for Plaintiff, in an Action upon a Penal Statute, (wherein no Defence was made at the Trial) founded on a Variance between the Iſſue delivered and the Record of *Niſi prius*, the Words following, (*viz.*) *And thereupon the ſaid Plaintiff, by* George Boldero *his Attorny ſaith*,) being omitted in the Iſſue delivered, though put into the Record. This was admitted not to be a material Variance affecting the Merits, and in Civil Actions helped by the Statute of Jeofails, but not in an Action on Penal Statute. In Actions brought by Original Writ, the Method is to recite the Writ, and then to Count; here is nothing but Recital, without any Count. By Stat. 18 *Eliz.* a particular Method is preſcribed to the Proſecutor; he muſt declare in Perſon, or by Attorny. Plaintiff in this Caſe may, poſſibly, be under twenty-one Years

of

of Age, and, if ſo, cannot ſupport this Action, wherein he cannot declare by his *Prochein Amy*.

The Court, after hearing *Prime pro Quer'*, did not incline to think the Variance material, or to favour the Diſtinction made *per Draper*. But as Plaintiff's Agent had made a Blunder, and the Merits had not been tried, ordered a new Trial, and Coſts to attend the Event.

Holland *againſt* Heron. Trinity 26 & 27 Geo. 2.

THE Sheriffs and Coroners of *London* being intereſted in the Queſtion to be tried, *Agar* for Plaintiff moved, that Defendant might ſhew Cauſe why a Special Jury ſhould not be ſtruck and returned by Elizors to be appointed by the Court. *Per Cur':* The Special Jury may be moved for of Courſe, after Elizors appointed. The firſt Rule was to ſhew Cauſe why it ſhould not be referred to Prothonotary *Cooke*, to conſider of two fit Perſons to be Elizors, and to report; which Rule being made abſolute, without Oppoſition; and the Prothonotary having named *John Wakelin* and *Eliſha Biſcoe*, the next Rule was to ſhew Cauſe why they ſhould not be appointed Elizors by the Court; which Rule was alſo made abſolute, without Oppoſition.

Whitehill *againſt* Carr. Mich. 27 Geo. 2.

THIS was an Action for Words, to which Defendant, by Leave of the Court, had pleaded four ſeveral Matters, the fourth Plea an Accord and Satisfaction; Plaintiff's Agent delivered an Iſſue, made up a Record, and proceeded to Trial, after Iſſues joined on the three former Pleas, but without replying, or taking any Notice of the fourth Plea. Defence was made, and Plaintiff obtained a Verdict. Defendant moved for a new Trial. It appeared that ſome Evidence had been given on Defendant's Part to make out his Caſe upon the fourth Plea, which fell ſhort of the Fact pleaded, though that Evidence was declared by Mr. Serjeant *Eyre*, before whom the Cauſe was tried, to be improper. Rule, that Plaintiff do either demur, or reply iſſuably to the fourth Plea. If he demurs, that Proceedings be ſtayed till after Argument; if he replies iſſuably, that a new Trial be had at next Aſſizes; and Coſts of former Trial and Motions attend the Event. *Wynne* and *Wilſon* for Defendant; *Prime* and *Draper* for Plaintiff.

Fitch

Fitch, who as well, &c. *againſt* Nunn.

THIS was an Action brought on one of the Penal Statutes made to preſerve the Game, wherein Defendant obtained a Verdict; Plaintiff moved for a new Trial, and the Judge before whom the Cauſe was tried reported the Verdict to be contrary to Evidence. Notwithſtanding which, the Rule to ſhew Cauſe why a new Trial ſhould not be had, on Payment of Coſts, was diſcharged; becauſe no Inſtance could be ſhewn where in an Action on a Penal Statute, in which a Verdict was found for Defendant, a new Trial had ever been granted. *Willes* and *Agar* for Plaintiff; *Wynne* for Defendant.

Coriſh *againſt* Kennedy.

THE Court upon this Motion (which was to put off a Trial) ſuffered Affidavits to be read, taken before a Vice-Conſul abroad. Such Affidavits are conſtantly received and read at the Counſel-Board. It is not reaſonable to expect that ſuch Sort of Affidavits ſhould be taken before Perſons appointed Commiſſioners. *Poole* for Defendant; *Wynne* for Plaintiff.

Venue and Venire Facias.

Clarke *againſt* Sheppard. Trinity 13 & 14 Geo. 2.

PLaintiff ſued out a *Venire facias*, whereupon the Common Panel was returned, this Writ and Return were filed, and a Writ of *Habeas Corpora Jur'* was iſſued forth. Plaintiff afterwards obtained a Rule for a Special Jury, as a Matter of Courſe; which Rule was diſcharged. After the *Venire facias* and Return filed, the Motion for a Special Jury comes too late. *Belfield* for Defendant; *Skinner* for Plaintiff.

Cook *againſt* Shone and others.

THIS was an Action brought againſt Defendants, Surveyors, *&c.* of *Weſtminſter-Bridge*, for taking away and deſtroying Plaintiff's Timber to the Value of 500 *l.* and by the Act of Parliament for building the ſaid Bridge, Plaintiff is confined to bring his Action within ſix Months, and to lay it in *Middleſex*; by Miſtake of *Gillman*, Plaintiff's former Attorny, who now abſconds, the Action was laid in *London*, inſtead of *Middleſex*, and the Miſtake was not diſcovered

till after Plea pleaded and Iſſue joined; the Fact appeared to be committed on the 22d *Auguſt* 1739, and the Action to be commenced within the ſix Months. Plaintiff now moved for Leave to change the *Venue* from *London* to *Middleſex*; which was ordered, upon Payment of Coſts. If the Amendment could not be made, Plaintiff muſt loſe his Remedy; he is too late to bring a new Action. In an Action upon a Penal Statute, the Court probably would not interpoſe; but in the Caſe of a Remedial Law, the Amendment muſt be made. *Skinner* for Plaintiff; *Prime* for Defendant. 3 *Lev.* 347. *Bearcroft* againſt *The Hundred of Burnham.*

Richardſon *againſt* Walker and others. Trinity 14 & 15 Geo. 2.

A Rule to ſhew Cauſe why the *Venue* ſhould not be changed from *Cumberland* into *Lancaſhire*, was diſcharged. The *Venue* is never changed into a County Palatine. *Bootle* for Plaintiff; *Birch* for Defendant.

Lewis *againſt* Aſkham. Hilary 15 Geo. 2.

A *GAR* moved to change the *Venue* from *Yorkſhire* into the City of *York*. Denied *per Cur'*.

Dennis

Dennis *againſt* Fletcher.

RULE to ſhew Cauſe why the *Venue* ſhould not be changed, was diſcharged, becauſe before the Motion there had been a Judge's Summons for Time to plead, and an Attendance thereon, but no Order was produced. *Per Cur':* It muſt be ſo, as the Practice ſtands at preſent, but ſhall end here. For the future, a Judge's Summons, or Order for Time to plead, ſhall be no Bar to a Motion to change the *Venue*. *Prime* for Plaintiff; *Willes* for Defendant.

Davis *againſt* Jordan. Eaſter 15 Geo. 2.

WILLES, for Defendant, moved to change the *Venue* from *London* into *Kent*, the adjacent County, upon Affidavit that the Cauſe of Action accrued within the City of *Canterbury*. Denied.

Hayward *againſt* Wells. Trin. 16 G. 2.

VENUE changed from *London* into *Berks*, though the Motion for the Rule to ſhew Cauſe was not made till the laſt Day of laſt Term, the Writ was returnable the ſecond Return of that Term, and the Declaration delivered ſo late that Defendant could

not move it ſooner. *Gapper* for Plaintiff; *Draper* for Defendant.

Rickaby *againſt* Wilſon, Eſquire. Mich. 16 Geo. 2.

THIS Action was brought by Plaintiff, an Inn-keeper at *Appleby* in *Weſtmoreland*, againſt Defendant, one of the Knights of that Shire, for a large Demand for Wine, *&c.* provided at the laſt Election. Defendant moved, upon the Common Affidavit, to change the *Venue* from *Yorkſhire* into *Weſtmoreland* (where the Aſſizes are held but once a Year.) It appeared that one of Plaintiff's Witneſſes was going to *Ireland*, and would not return for two Years; and that Plaintiff's Creditors, of whom he had bought Wine, *&c.* were very preſſing upon him. *Per Cur':* Upon theſe Occaſions, the Court acts according to Diſcretion, and the general Rules of Juſtice, and the particular Rules of Practice in Being. The Practice is ſettled, that a *Venue* cannot be changed into *Hull*, *Canterbury*, *&c.* becauſe it is not known when an Aſſizes will be held there; nor into the City of *Worceſter* or *Glouceſter*, out of the County at large; becauſe the Aſſizes for the City and for the County at large, are held at the ſame Place. In *Eaſter* or *Trinity* Term the *Venue* may be changed into a City or County, where the Aſſizes are held but once a-Year,

a-Year, as *Briſtol*, *Cumberland*, *&c.* In *Michaelmas* and *Hilary* Term there is no certain Rule, but the Court ſhould change the *Venue* then, if it can be done without manifeſt Inconvenience. This Action is laid in the next County to that where the Cauſe of Action accrued; had it been laid in *Middleſex*, or any diſtant Country, the Court probably would not have obliged Defendant to bring his Witneſſes (ſome of whom appeared to be aged and infirm) ſo far; but in this Caſe, it would be Injuſtice to deny a Trial at next *Yorkſhire* Aſſizes. The Rule to ſhew Cauſe why the *Venue* ſhould not be changed, was diſcharged. *Prime* and *Willes* for Plaintiff; *Skinner* and *Bootle* for Defendant.

Jeremain *againſt* Ridley, in Treſpaſs, for taking and carrying away Goods, a Tranſitory Action. Eaſter 16 Geo. 2.

RULE made to ſhew Cauſe why the *Venue* ſhould not be changed. *Draper* for Defendant.

The Duke of Bedford *againſt* Bray. Mich. 17 Geo. 2.

RULE to ſhew Cauſe why the *Venue* ſhould not be changed, was diſcharged, the Declaration containing, *inter alia*, a Count on a Promiſory Note; Plaintiff conſenting, at the Peril of a Nonſuit, to give Evidence on the Promiſory Note. *Prime* for Plaintiff; *Skinner* for Defendant.

Bradley *againſt* Adey. Mich 18 Geo. 2.

ACTION of Covenant on Deed for Non-payment of Rent for Lands in *Kent*, laid in *Middleſex*. Motion to change the *Venue* denied. If local Defendant will have Advantage, if tranſitory, the *Venue* cannot be changed, the Action being on a Specialty. *Wynne* for Defendant.

Evereſt *againſt* Sanſum, in Caſe, for a Deceit by warranting an unſound Horſe. Hilary 19 Geo. 2.

DEfendant moved to change the *Venue*, on the Common Affidavit. Plaintiff's Counſel inſiſted, that in Actions for Deceit, Eſcape on meſne Proceſs and Cuſtom of the Realm,

Realm, the *Venue* cannot be changed; and to that Purpoſe quoted 1 *Syderf.* 87. *N°* 3. *Trials per Pais*, (third Edition) *fol.* 90, 91, 92. *Attorny's Practice in the King's Bench*, *fol.* 79. *Hiſtory Com' Pleas*, *fo.* 68. The Court held, that the *Venue* may be changed in all Actions in their Nature tranſitory, except in Caſes of Privilege, Specialty, Promiſory Note or Bill of Exchange. Rule abſolute to change the *Venue*. *Skinner* for Defendant; *Prime* for Plaintiff.

Note; Deceit in Matter of Title to Land is Action on the Caſe. *Vide Fitz-herbert's Natura Brevium.*

Mayor, &c. of the Borough of Leiceſter, *againſt* Green, alias Smith. Special Action on the Caſe. Trinity 19 & 20 Geo. 2.

RULE made abſolute to change the *Venue* from *London* into *Leiceſterſhire*, upon reading the Declaration, without the uſual Affidavit, it appearing, that the Action was brought on a Cuſtom of the Borough of *Leiceſter*, againſt Defendant, for exerciſing the Trade of a Watchmaker within that Borough, not being a Freeman, and not on a Market or Fair Day. *Note*; The Borough of *Leiceſter* is within the County at large. There is a Commiſſion of Gaol-Delivery

every Aſſizes for the Borough, but no Commiſſion of *Niſi prius*. *Willes* for Defendant; *Bootle* for Plaintiff.

Litſon *againſt* Cooke. Action on a Promiſory Note, and other Counts. Hilary 21 Geo. 2.

RULE to ſhew Cauſe why the *Venue* ſhould not be changed, diſcharged, Plaintiff undertaking to give Evidence on the Promiſory Note. *Vide Duke of Bedford* againſt *Bray*, *Mich.* 17 *Geo.* 2. *Agar* for Defendant; *Draper* for Plaintiff.

Herbert *againſt* Flower and others, in Trover. Trin. 24 & 25 Geo. 2.

DEfendants, after a Rule to ſhew Cauſe why the *Venue* ſhould not be changed, and before it was made abſolute, put in their Plea. The Court held, That this Plea by Inadvertence is no Waiver of the Rule; gave Defendants Leave to withdraw the Plea, on Payment of Coſts; and made the Rule abſolute to change the *Venue*. *Bootle* for Defendants; *Prime* for Plaintiff.

A

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F I N I S.

A

SUPPLEMENT

To the SECOND VOLUME of

NOTES of CASES

IN

Points of PRACTICE:

Taken in

The Court of Common Pleas
at Weſtminſter.

Which contains all the CASES ſubſequent to the ſaid SECOND VOLUME to the End of *Hilary* Term 1756.

Publiſhed,
By Leave of the JUDGES of the ſaid Court,
By *HENRY BARNES*,
One of the SECONDARIES.

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Amendments.

Lord Demandant, Biſcoe Tenant, Ayles Eſquire, Vouchee. Trin. 27 & 28 Geo. 2.

RULE abſolute to amend the Recovery, by tranſpoſing the Names of Demandant and Tenant, purſuant to the Deed making a Tenant to the *Præcipe*. *Prime* and *Draper* for Demandant, Tenant and Vouchee; *Wills* for Sir *Thomas Rudge*, the Remainder Man intended to be barr'd. By the Recovery *Biſcoe* had been Demandant and *Lord* Tenant. By the Deed *Lord* was to be Demandant; and *Biſcoe* Tenant.

Law *againſt* Saliſbury one, &c. Mich. 28 Geo. 2.

RULE abſolute to amend Bill filed and Declaration thereon againſt an Attorny,

by ſtriking out the Words [*commenced and*] next before the Word [*proſecuted*] on Payment of Coſts. *Per Cur':* The Bill is in our Power, as an original Writ is in that of the Court of *Chancery*. *Poole* for Defendant; *Prime* for Plaintiff.

Craghill and others *Plaintiffs*; Pattinſon and Wife and Nicholſon and Wife and others *Deforciants*. Mich. 29 Geo. 2.

FINE levied in *Trinity* Term *Anno primo Georgii Regis*, was Ordered to be amended according to the Deed of Uſes, by ſtriking out [*Parochiá*] and inſerting [*Parochiis*] inſtead thereof, and by inſerting [*et Melmerby*]. Motion made on behalf of *John Nicholſon*, who claims Title to a Meſſuage and ſeveral Lands and Hereditaments in *Melmerby* in *Cumberland*, under ſaid Fine and Deed of Uſes, as Nephew and Heir to *John Nicholſon*, one of the Deforciants; oppoſed by *Joſeph Carleton*, who claims Title to ſuch Meſſuage, *&c.* (if not barred by the Fine) as Heir to *Mary* the Wife of ſaid *John Nicholſon* one of the Deforciants.

Thorn-

Thornley *againſt* Hughes. Hil. 29 Geo. 2.

DEfendant by Leave of the Court pleaded two Pleas, Not guilty, and a Special Juſtification. On the former Plea Iſſue was join'd; to the later Plea Plaintiff replied, Defendant demurred to the Replication, and Plaintiff join'd in Demurrer; Plaintiff made up the Iſſue (awarding contingent Damages as uſual) and before Argument of the Demurrer, proceeded to Trial of the Iſſue, and obtain'd a Verdict. Defendant this Term moved for, and obtain'd a Rule to ſhew Cauſe why he ſhould not amend the later Plea on Payment of Coſts. The Court thought that the Application for the Amendment came too late, eſpecially as it appear'd, that, before the Trial *(viz.)* 16 *June* laſt, Defendant had applied for the ſame Amendment, and then had a Rule to ſhew Cauſe, which Rule Defendant's Agent had waived by a Note in Writing ſigned by him directed to Plaintiff's Agent. The laſt Rule to ſhew Cauſe diſcharged. *Poole* for Defendant; *Wynne* for Plaintiff.

Attachment.

Stretch and his Wife *againſt* Wheeler. Eaſt. 27 Geo. 2.

RULE for *Richard James*, to ſhew Cauſe why an Attachment of Contempt againſt him ſhould not iſſue for his not attending as a Witneſs on Defendant's Part at laſt *Surry* Aſſizes, purſuant to *Subpœna* ſerved, and a ſufficient Recompence tendered him, diſcharged. On ſhewing Cauſe it appeared, that, though *Richard James* was reſident at *Lambeth Marſh*, and the Road from thence to *Kingſton* (where the Aſſizes were held) extreamly good, yet he was very weak and infirm, 80 Years old, and afflicted with an Aſthma and Dropſy. His Apothecary attended at *Kingſton* ready to make Oath (as now he did) that *Richard James* could not attend the Aſſizes without Danger of his Life. The granting of Attachments in theſe Caſes is purely at the Diſcretion of the Court; Defendant may come at *Richard James's* Evidence by Application here, to have him examined before a Judge upon Interrogatories, or to the Court of *Chancery*, by Bill to perpetuate his Teſtimony. *Prime* for *Richard James*; *Wynne* for Defendant.

Attor-

Attornies.

Unwyn one, &c. *againſt* Robinſon. Mich. 28 Geo. 2.

BOTH Parties were Attornies of this Court; Plaintiff ſued Defendant by common *Capias*; Defendant moved to ſtay the Proceedings, inſiſting that he ought to have been ſued by Bill, and that the Affidavit to hold him to Bail was intitled, *Unwyn* one, *&c.* againſt *Robinſon* one, *&c.* which is not agreable to the Writ. Defendant had been formerly forejudged, but was reſtored to his Privilege before this Action brought. It appeared that Defendant had obtained a Judge's Order for Time to put in Bail, but that was not deemed a ſufficient Waiver of his Objection to Plaintiff's Method of proceeding againſt him. Rule abſolute to ſtay Proceedings without Coſts. *Poole* for Defendant; *Willes* for Plaintiff.

Bail and Bail Bonds.

Barnard *againſt* Mordaunt, Eſquire. Eaſt. 27 Geo. 2.

DEfendant, a Member of the laſt Parliament, having been arreſted and held to Bail before the Expiration of forty Days *(Privilege claimed by the Commons)* next after the Diſſolution, applied to have the Bail Bond delivered up. In 2 *Lev.* 72. the Privilege is ſaid to be twenty Days before and after Seſſion and Prorogation. According to *Pryn* the Wages to Parliament Men continue no longer than three Days after the Parliament is up. Vide *Pitt's Caſe*, *Comyns* 444. By Conſent Rule abſolute for delivering up Bail Bond, on entring common Appearance. *Prime* for Defendant; *Draper* for Plaintiff.

Lovibond *againſt* Faikney. Trin. 27 & 28 Geo. 2.

DEfendant put in Bail † 25th *May* (two Days before the End of laſt Term;) the

† *See* Vol. 2. p. 82. Fowlis Eſquire, *againſt* Graſvenor, *S. P.* p. 173. De' Revoſe Executor *againſt* Hayman, *contra.*

Day

Day after the Term (28th *May*) Plaintiff excepted againſt the Bail, and for want of Juſtification before a Judge, took an Aſſignment of, and proceeded on the Bail Bond. Defendant 8th *June* (after the Bail Bond aſſigned) gave Notice to juſtify his Bail in Court on the firſt Day of this Term, which he did accordingly, and then applied for Stay of Proceedings on the Bail Bond. Rule abſolute for that Purpoſe without Coſts. *Prime* for Defendant; *Willes* for Plaintiff.

Filewood *againſt* Smith. Mich. 29 Geo. 2.

A Palace-Court Officer offered to juſtify himſelf in Court as one of Defendant's Bail; Plaintiff objected, that no Sheriff's Officer, Bailiff, or other Perſon concerned in the Execution of Proceſs, can be Bail by the general Rule of *Mich.* 6 *Geo.* 2. Defendant anſwered, that, by a Caſe *Baſkerville*, Eſq; againſt *Chaffey*, in Error, *Eaſt.* 20 *Geo.* 2. The Court had determined that ſaid Rule related only to Bailiffs executing Proceſs *of this Court*. The Court exploded the Doctrine of that Caſe, which was determined (as thereby appears) in the Abſence of the Lord Chief Juſtice, and rejected the Bail offered. They held that the Rule extends to all Bailiffs, Officers, and others concerned in the Execution of Proceſs. The Rule was made for

for the Benefit of Plaintiffs, not merely to prevent Impoſitions and Abuſe on Defendants, as in ſaid Caſe mentioned. An antient Rule of this Court *Mich.* 1654. ſays that no Attorny ſhall be Bail, and a Modern Rule *Mich.* 6 *Geo.* 2. ſays that no Attorny of this or any other Court, or any Perſon practiſing as ſuch, ſhall be Bail; the Rule is the ſame with Reſpect to Officers executing the Proceſs of this and all other Courts. *Willes* for Plaintiff; *Davy* for Defendant.

French *againſt* Knowles. Hil. 29 Geo. 2.

DEfendant, after a Judge's Order for Time to put in and perfect Bail, put in Bail, and ſurrendred himſelf to the *Fleet* in Diſcharge of his Bail. Plaintiff's Attorny apprehending the Surrender, without previouſly perfecting Bail by a Juſtification, to be irregular, proceeded upon an Aſſignment of the Bail Bond; but the Court held ſuch Proceeding to be wrong. Before a Surrender Defendant is delivered to his Bail, and ſuppoſed to be in their Cuſtody; by the Surrender the Cuſtody is altered, and Defendant is in Priſon; the Worth and Subſtance of the Bail, who by the Surrender are diſcharged, is totally immaterial. Rule abſolute to ſet aſide the Proceedings on the Bail Bond without Coſts. *Davy* for Defendant; *Willes* for Plaintiff.

Coſts and Bills of Coſts.

Mordecai *againſt* Nutting and others, in Treſpaſs, &c.

[Omitted in Mich. 23 Geo. 2.]

PLaintiff ſues four Defendants, gets a Verdict againſt one, and the other three are acquitted. On an Affidavit that Plaintiff is an itinerant *Jew* and poor, Defendants who were acquitted obtained a Rule to ſhew Cauſe, why their Coſts ſhould not be deducted out of what Prothonotary ſhould allow Plaintiff for Coſts againſt that Defendant who was found guilty. On ſhewing Cauſe the Court declared the Motion to be unprecedented, and diſcharged the Rule. *Prime* for Plaintiff; *Leeds* for Defendant.

Owſton *againſt* O Bryan. Trin. 27 & 28 Geo. 2.

DEfendant paid Mony (about 37 *l.*) into Court on the common Rule; Plaintiff proceeded to Trial, and recovered a larger Sum, and afterwards became a Bankrupt; the Aſſignees of Plaintiff's Effects under the Commiſſion, moved to have the Mony paid out of Court

Court to them; which was oppoſed by Mr. *Ward* Plaintiff's Attorny, who ſubmitted Whether he who had been the Inſtrument of recovering the Verdict, ought not to be firſt paid his Bill of Coſts? Rule to refer *Ward*'s Bill to the Prothonotary to be taxed, *Ward* to allow 7*l.* 4*s.* received by him of Plaintiff in Part, and then to be paid out of the Mony in Court, Reſidue to be paid the Aſſignees. *Prime* for *Ward*; *Poole* for the Aſſignees.

Roberts *againſt* Biggs and others.

RULE made abſolute, That Proceedings on final Judgment ſigned in this Cauſe be ſtayed, and that 17*l.* 11*s.* Damages and Coſts thereby recovered be allowed to Defendant *Biggs*, towards Payment of the larger Sum of Mony recovered in an Action brought by him [*Biggs*] againſt *Roberts*, wherein Defendant [*Roberts*] having been arreſted by one *Richard Bellamy*, *John Bradley* Junior, and *George Smithurſt* (as *Bellamy's* Aſſiſtants) for 41*l.* 2*s.* 0*d.* upon Promiſe, was reſcued by his Wife and one *George Platts* his Brother in Law, and thereby made his Eſcape to his own Houſe; Plaintiff and the Officers purſued but could not retake him, Defendant abſconding, Plaintiff ſued out Proceſs of Outlawry, Defendant appeared to the Exigent, and the Cauſe being at Iſſue was tried

tried at *Nottingham* Spring Aſſizes 1754, wherein Plaintiff recovered for Damages and Coſts 70 *l.* 10 *s.* 0 *d.* *Roberts* brought this Action againſt *Biggs*, *Bellamy* and *Bradley*, in Treſpaſs, for that they (together with *Smithurſt*) broke and entred his Houſe, and diſturbed him and his Family inhabiting therein; which Cauſe being at Iſſue was alſo tried at ſaid Spring Aſſizes, and the Jury gave Plaintiff 1 *s.* Damages. Mr. Juſtice *Birch*, who tried the Cauſe, certifying, that the Treſpaſs was wilful and malicious, Plaintiff *Roberts* became entitled to his Coſts, which Damages and Coſts amounted to 17 *l.* 11 *s.* 0 *d.* *Willes* for Defendants; *Prime* and *Poole* for *Roberts*.

Bright *againſt* Jackſon, in Replevin. Hil. 28 Geo. 2.

THE Avowant applied, under the Stat. 4 *Q. Ann.* for the Amendment of the Law, for Coſts; ſome of the Iſſues joined on ſeveral Pleas in Barr to the Avowry pleaded by Leave of the Court being found for him, and no Certificate by the Judge that ſuch Pleas were material, the Word [*Avowant*] happens to be omitted in the Stat. though the Words [*Defendant, Tenant, and Plaintiff,*] are inſerted; an Avowant is in the Nature of a Defendant, and plainly within the Meaning and Intent of the Statute. Rule abſolute, that Protho-

Prothonotary ſhall tax Avowant's Coſts on the Pleas found for him, and that the ſame be deducted out of Coſts allowed Plaintiff. *Prime* for Avowant; *Willes* and *Poole* for Plaintiff.

Eaſt *againſt* Nonelly, in Replevin.
The ſame Caſe,
Goodright on Demiſe of Larmer *againſt* Searle, in Ejectment.

UPON Affidavit of Death of the Leſſor of Plaintiff, a Rule was made, That Plaintiff's Attorny ſhould ſhew Cauſe why Proceedings ſhould not be ſtayed till ſome Perſon gives Security for Defendant's Coſts, if any ſhall be adjudged to him. The Court, upon hearing Counſel on both Sides, thought Security ought to be given, and thereupon Mr. *Limbrey* Plaintiff's Attorny undertaking for Payment of ſuch Coſts, the Rule was diſcharged. *Hewitt* for Defendant; *Poole* for Plaintiff's Attorney.

Barker Eſquire, and Cooke Eſquire, *againſt* the Biſhop of London, Lomax Eſquire, and Bellamy Clerk. In quare impedit.

A Bill of Coſts delivered by Mr. *Cooling* as Attorny for Defendant *Bellamy*, amounting to 165*l.* 15*s.* having, at the Inſtance of Defendant *Bellamy*, been referred to Mr. Prothonotary *Wegg* to be taxed, and leſs than a ſixth Part, *viz.* 25*l.* 13*s.* 10*d.* having been deducted on Taxation, *Cooling* had moved for Coſts of the Taxation, and the Rule for thoſe Coſts was drawn up abſolutely. Defendant *Bellamy* applied to diſcharge that Rule; and upon hearing Counſel on both Sides, the Court diſcharged the former Rule, as unprecedented; it ſhould have been drawn up to ſhew Cauſe, not abſolutely; but a new Rule was made, Ordering Defendant *Bellamy* to pay *Cooling* Coſts of the Taxation. By *Stat.* 2 *Geo.* 2. if a ſixth Part of an Attorny's Bill be deducted, the Court are not left to their Diſcretion, but are obliged to award Coſts of the Taxation againſt the Attorny; where a ſixth Part is not deducted, the Court are left to their Diſcretion. The Statute is a good Guide, what it directs in one Caſe ſeems to be a right Rule in the other; ever ſince the Statute, Coſts of Taxation have been reciprocally

cally given to the Party charged, and to the Attorny, as a ſixth Part has, or has not, been taken off. *Prime* for Defendant *Bellamy*; *Draper* for *Cooling*.

Lloyd Eſquire, *againſt* Winton, in Replevin. Mich. 29 Geo. 2.

PLaintiff declared for taking and detaining an Ox; Defendant avowed the Taking as a Seizure for a Heriot Cuſtom, (claiming no Right to diſtrain.) After a Nonſuit Mr. Prothonotary *Cooke* had allowed Defendant double Coſts, taking the Caſe to be within the *Stat.* 11 *Geo.* 2. giving Avowants double Coſts; Plaintiff moved that the Prothonotary might review his Taxation. Rule for that Purpoſe made abſolute. The Avowry not being for taking the Ox as a Diſtreſs is out of the Statute; for Heriot Service, Cattle, *&c.* are diſtrainable, for Heriot Cuſtom not. *Poole* for Plaintiff; *Wilſon* for Defendant.

Seed *againſt* Wolfenden, in Prohibition. Hil. 29 Geo. 2.

IT was at Defendant's Inſtance made Part of the Rule, whereby a Writ of Prohibition was granted, That Plaintiff ſhould declare in Prohibition; Defendant afterwards demanded a Declaration, and threatned a *Non Pros*

Pros for want thereof; whereupon Plaintiff's Agent prepared a Declaration; when 'twas ready he was told by Defendant's Agent that he need not deliver it; but as he had been at the Trouble and Expence of preparing a Declaration, Plaintiff's Agent delivered the ſame to Defendant's Agent, and called for a Plea: Defendant pleaded nothing to the Merits, but only that he did not proceed in the ſpiritual Court after the Prohibition, gave a Rule to reply, and demanded a Replication; whereupon Plaintiff applied to the Court, and obtained a Rule for Defendant to ſhew Cauſe why he ſhould not pay Plaintiff's Coſts of the Proceedings in Prohibition; which Rule was now made abſolute. The Court looked upon the Plea to be a ſham nugatory Plea, not being to the Merits of the Cauſe; the Allegation that Defendant has proceeded contrary to the Prohibition, is and muſt be put into every Declaration of this Kind, but whether he has ſo proceeded or no, is totally immaterial. The *Stat.* 8 & 9. *Will.* 3. *Ch.* 10. *Sect.* 3. gives Coſts after Plea or Demurrer, but this is not a Plea within the Statute. *Prime* for Plaintiff; *Poole* for Defendant.

Demurrers, &c.

Pearſon *againſt* Roberts and Groom, in Replevin. Eaſter 28 Geo. 2.

THIS was an Action of Replevin brought by Plaintiff againſt Defendants for their taking a Gelding of Plaintiff's, and detaining him againſt Gages, *&c.*

Whereto Defendants pleaded the general Iſſue; and the Cauſe came on to be tried before Mr. Juſtice *Deniſon* at Lent Aſſiſes for the County of *Bedford*, *March* 17, 1754.

Upon the Trial the Caſe appeared to be, that Defendants were Surveyors of the Highways in and for the Pariſh of *Eaton Bray* in the County of *Bedford* in the Year 1753.

That Plaintiff was in that Year an Inhabitant of ſame Pariſh; and following the Trade or Employment of a Miller and Badger, occupied a Water Corn Mill and ſome Lands within ſaid Pariſh, of the yearly Value of 22 *l.* at and under that Rent only.

That Plaintiff in that Year kept and uſed in ſaid Pariſh two Carts, two Waggons, and ten Horſes, in his Buſineſs of a Miller and

Badger, and in carrying of Goods for hire, and in Huſbandry.

That ſix Days were duly appointed, and due Notice thereof given for the Pariſhioners of ſaid Pariſh to come into the Highways, and do their Duty therein reſpectively, purſuant to the Proviſions of the ſeveral Statutes in that Behalf made.

That purſuant to ſuch Appointment and Notice, Plaintiff duly attended in the Highways with one Wain or Cart, furniſhed after the Cuſtom of the Country, *(viz.)* with three Horſes and two Men, on every of ſaid ſix Days.

But Defendants inſiſting that Plaintiff ought to have done Duty with two Wains or Carts, furniſhed after the Cuſtom of the Country, *(viz.)* with three Horſes and two Men each, made Complaint to two of his Majeſty's Juſtices of the Peace in and for ſaid County of *Bedford* againſt Plaintiff; For that he had attended in ſaid Highways with one Wain or Cart furniſhed after the Cuſtom of the Country, *(viz.)* with three Horſes and two Men only. And upon that Complaint, Plaintiff attending to anſwer for himſelf thereunto, ſaid Juſtices did adjudge Plaintiff to have been guilty of a Neglect of Duty in the Premiſſes, and for his ſaid Offence to have forfeited the Sum of 3 *l.* Sterling *(i. e.)* the Sum of ten Shillings for every of

ſaid ſix Days, ſo as aforeſaid appointed and notified.

And for levying of ſaid Penalty of 3 *l.* ſaid Juſtices iſſued their Warrant in Writing under their Hands and Seals, directed to Defendants, requiring them forthwith to levy ſaid Sum of 3 *l.* by Diſtreſs and Sale of the Goods and Chattels of Plaintiff.

Purſuant to which Warrant Defendants took and impounded, as a Diſtreſs, ſaid Gelding of Plaintiff's, in order to ſell ſame for the Purpoſe in ſaid Warrant mentioned; upon which Plaintiff levied his Plaint in Replevin (wherein ſaid Action was to be determined) without having firſt demanded in Writing the Peruſal or Copy of ſaid Warrant. The Queſtions for the Conſideration of the Court were,

Firſt, Whether Plaintiff was by Law compellable to go with or ſend into the Highways, in *Eaton Bray* aforeſaid, in ſaid Year 1753, more than one Wain or Cart on every of ſaid ſix Days abovementioned?

And if not,

Secondly, Whether Plaintiff, before the Commencement of this Action, ought not to have demanded in Writing a Copy or Peruſal of ſaid Warrant of ſaid Juſtices?

If the Court ſhould be of Opinion, that Plaintiff was not compellable to go with or ſend into the Highways aforeſaid, more than one Wain or Cart, on any of ſaid ſix Days above-

abovementioned; and that it was not neceſſary for Plaintiff to have demanded in Writing a Copy or Peruſal of ſaid Warrant; then Plaintiff was to have the *Poſtea* delivered to him, *&c.* otherwiſe ſaid *Poſtea* was to be delivered to the Defendants, *&c.*

The Court gave Judgment on the firſt Point for Plaintiff, being of Opinion that Plaintiff was not compellable to ſend into the Highways more than one Wain or Cart. He that has a Plough-Land (which by *Stat.* 7 & 8. *Will.* 3. *Ch.* 29. *Sect.* 57. is explained to be 50 *l. per Ann.)* is not obliged to ſend more than one; Plaintiff farmed 22 *l. per Ann.* only. A Caſe in 3 *Keble* 567. had been cited by Defendant's Council between the King and the Inhabitants of *Fulham*, *Mich.* 27 *Car.* 2. and a Copy of the Proceedings were produced, to ſhew that the Court of *King's Bench* had determined in that Caſe, That every Perſon ought to ſend as many Wains or Carts into the Highways, as he keeps Teams; but upon looking into the Proceedings no ſuch Determination appeared to have been made. A Caſe cited by Defendant's Council from Mr. Juſtice *Raymond's* Reports 186, was thought obſcure, and to be no Authority. *Vide* Statutes relating to the Highways. 2 & 3 *Phil. & Mary Ch.* 8. 5 *Eliz. Ch.* 13. 22 *Cha.* 2. *Ch.* 12. 7 & 8 *Will.* 3. *Ch.* 29.

But on the ſecond Point the Court gave Judgment for the Defendants, being of Opinion that Replevin is an Action within the *Stat.* 24 *Geo.* 2. And that before the Commencement of that Action againſt the preſent Defendants the Officers, Plaintiff ought to have demanded in Writing a Copy or Peruſal of the Warrant; for want of which Demand his Action can't be ſupported.

Plaintiff's Council obſerved, That if Replevin is deemed to be an Action within ſaid *Stat.* 24 *Geo.* 2. which, where the Action is intended to be brought againſt the Juſtices of the Peace, requires a Month's previous Notice, great Inconvenience muſt ariſe; becauſe the Cattle diſtrained would probably be ſtarved and die before they could be replevied. To this the Court anſwered, That perhaps a mandatory Writ to the Sheriff, or a Plaint in Replevin in his Court, may not be looked upon as an Action within the ſaid Statute; but the Suit in this Court in Replevin for Damages, is an Action within ſaid Statute. Replevin is called an Action in *Stat.* 9 *Hen.* 8. and a Suit in *Stat.* 17 *Cha.* 2.

The *Poſtea* was ordered to be delivered to Defendants.

Ejectments.

Roe *againſt* Doe on the Demiſe of Fearnley and Tancred.

[Omitted in Hil. 26 Geo. 2.]

ON Affidavit, that the Tenant *Lydia Brooke* Widow abſconded to avoid being ſerved; and alſo that ſhe came into Poſſeſſion ſurreptitiouſly, and of Service of Declaration in Ejectment on *James Brooke* her Son, who is her Servant and manages her Affairs, and lives in her Family; Rule, that ſhe ſhew Cauſe why ſuch Service on her Son and Servant ſhould not be deemed good Service, and leaving a Copy of this Rule at her Houſe good Service, made abſolute; no Cauſe ſhewn.

Doe *againſt* Roe on the Demiſe of Wright.

[Omitted in Trin. 26 & 27 Geo. 2.]

ON Affidavit, that *Mary Oliver* one of the Tenants is a Lunatick, that one Major *Cockburn* lives with, and tranſacts her Buſineſs, and has the ſole Conduct thereof, and

of her Perſon; but would not permit the Deponent to have Acceſs to her with Declaration in Ejectment; whereupon it was delivered to *Cockburn*. Rule, that ſhe and *Cockburn* both ſhew Cauſe why this Service ſhould not be good, and Service of this Rule on him to be deemed good Service thereof. *Willes* for Plaintiff.

Fenn on the Demiſe of Hildyard *againſt* Denn. Eaſter 27 Geo. 2.

DEclaration for an Entirety. Rule obtained by *Arrundall* Tenant in Poſſeſſion to defend for two undivided Thirds only, and that for the Reſidue Plaintiff might take Judgment againſt the caſual Ejector; General Judgment ſigned, and Writ of Poſſeſſion agreeably. No Indorſement of what Part to take Poſſeſſion (as might have been;) Poſſeſſion of the whole Premiſſes taken, and afterwards two Thirds (according to a Partition made by Plaintiff's Leſſor) reſtored; Goods removed from Tenant's Houſe, Part of the Premiſſes, and ſome of them not brought back. The Court thought that a new general Rule ſhould be made to alter the Practice of taking Judgment for the whole Premiſſes, when Part is appeared for; held that the Sheriff did right in taking Poſſeſſion of the whole, purſuant to the Writ.

Rule

Rule to anſwer Matters in Affidavits by Sheriff's Officers diſcharged. Ordered Goods to be reſtored by Affidavit, and Poſſeſſion of two Thirds of Premiſſes; Leſſor of Plaintiff and his Attorny (who had principally conducted the Tranſaction in the Country) to pay the Tenant Coſts of this Application. *Prime* and *Poole* for the Tenant; *Willes* and *Wynne* for Plaintiff's Leſſor, his Attorny and Sheriff's Officers.

Goodtitle on the Demiſe of Gardner *againſt* Badtitle.

THE Plea of *Marſhall* and others Landladies and Tenants in Poſſeſſion, who had appeared with the Filazer and entred into the common Rule, was left in the Prothonotary's Office, entitled with the true Name of the Cauſe, but by Miſtake in the Body of the Plea, the Name of Plaintiff's Leſſor was inſerted (as the Perſon complaining) inſtead of that of the nominal Plaintiff. Plaintiff's Attorny looking upon this Plea as null and void, ſigned Judgment againſt the caſual Ejector, which Judgment was ſet aſide with Coſts as irregular; the Plea is properly entitled and not a *Nullity*. *Willes* for *Marſhall* and others; *Prime* and *Wynne* for Plaintiff's Leſſor.

Fenn

Fenn on the Demiſe of Knights *againſt* Dean. Trin. 27 & 28 Geo. 2.

ON Affidavit, That *John Abbott* Tenant in Poſſeſſion, ſecreted himſelf to prevent his being ſerved with a Declaration in Ejectment, and could not be ſerved, though frequent Endeavours had been uſed; and that the Declaration was delivered to his Daughter who kept his Houſe, (being a Publick Houſe, Part of the Premiſſes in Queſtion) and that ſhe was acquainted with the Contents of the Subſcription, The Court made a Rule for the Tenant to ſhew Cauſe why ſuch former Service ſhould not be deemed good Service, the Rule to be ſerved on the Daughter at the Houſe. This Rule was afterwards diſcharged, becauſe the Affidavit whereupon 'twas made appeared to have been ſworn before Plaintiff's Attorny as a Commiſſioner, but for no other Reaſon; *Prime* for Plaintiff; *Willes* for the Tenant.

Roe on the Demiſe of Agar *againſt* Doe.

THE Declaration was delivered to the Tenant in Poſſeſſion without any Prothonotary's Name ſet thereon. Upon Affidavit of Service, the Court made a Rule for the

the Tenant to ſhew Cauſe, why upon Notice of the Prothonotary's Office Judgment ſhould not be entred againſt the caſual Ejector, unleſs he (the Tenant) appeared within the uſual Time; which Rule on Affidavit of Service was made abſolute. *Willes* for Plaintiff.

Holdfaſt on the Demiſe of Dyſon and his Wife *againſt* Letgoe.

A Declaration, with Notice to appear in this Term, had been ſerved on the Tenant in Poſſeſſion before the Eſſoign Day, but no Prothonotary's Name was ſet thereon. Upon the Motion of Serjeant *Hewitt* for Plaintiff, The Court made a Rule, That unleſs *John Riley* Tenant in Poſſeſſion, upon ſix Days previous Notice of that Rule, and Notice that the Declaration is entred in the Office of Mr. Prothonotary *Wegg*, ſhould appear and plead within four Days next after the End of the next Term (being the iſſuable Term, and this a Country Cauſe) to a new Declaration at the Plaintiff's Suit, and enter into the common Rule for confeſſing Leaſe, Entry and Ouſter, Judgment might be entred againſt the caſual Ejector.

Goodtitle

Goodtitle on the Demiſe of Cooper *againſt* Thruſtout. Hil. 28 Geo. 2.

IN the like Caſe (as next before) in a Country Cauſe, where the Declaration was delivered before the Eſſoign Day with Notice to appear in this Term; upon an Affidavit ſhewing the Service to be good in all Reſpects ſave the Want of Prothonotary's Name, the Court made the like Rule, unleſs *T. M.* and *W. M.* Tenants in Poſſeſſion within ſix Days next after Notice of that Rule, and Notice that the Declaration is ented in the Office of Mr. Prothonotary *Wegg*, ſhould appear, *&c.* Judgment might be entred againſt the caſual Ejector. *Prime* for Plaintiff.

Roe on the Demiſe of Leak Widow, and others, *againſt* Doe. Mich. 29 Geo. 2.

WILLES for *Joſeph Simpſon* and *Mary* his Wife, who claimed Title to Part of the Premiſes (of which Part *Forwenſon* and *Harriſon* were Tenants, and refuſed to appear) applied upon Affidavit of the Fact for Leave to appear for ſaid *Simpſon* and Wife as to ſaid Part. Rule made to ſhew Cauſe; on ſhewing Cauſe it appeared, That the Leſſors of Plaintiff and ſaid *Simpſon* and Wife claimed Title as Deviſees,

viſees, the Leſſors under one Will, and *Simpſon* and Wife under another Will of the ſame Teſtator; and the Queſtion to be decided was, which Will ſhould prevail. The Leſſors of Plaintiff had got the Start of *Simpſon* and Wife; and by bringing their Ejectment firſt (the Tenants refuſing to appear) would get into Poſſeſſion without Defence, unleſs *Simpſon* and Wife were permitted to defend. *Per Cur':* This Motion is founded on the late Act of Parliament, 11 *K. Geo.* 2. The Court have no Juriſdiction to admit any Perſon to defend an Ejectment inſtead of the Tenant, except the Landlord only; And who is Landlord within the Act? Not every Perſon claiming Title; but one who is in ſome Degree of Poſſeſſion, as receiving Rent, *&c.* the Clauſe of Forfeiture by Tenant, if he does not give Notice of Declaration to his Landlord, proves this. *Davy* quoted 2 *Strange* 1241. *Jones* on Demiſe of *Woodward* againſt *Williams*; where a Mortgagee was refuſed to be admitted to defend as Landlord; which Caſe (though not ſo reported) muſt be where the Mortgagee had not got into Poſſeſſion. *Willes* for *Simpſon* and Wife; *Prime* and *Davy* for Leſſors Plaintiff.

Execution.

Betts on the Demiſe of Robſon *againſt* Egerton, in Ejectment. Hil. 28 Geo. 2.

LEWIS *Monſon Watſon*, Eſquire, Defendant's Landlord. Rule to ſhew Cauſe why Writ of *Hab. fac. Poſſ.* ſhould not be ſet aſide, and Poſſeſſion reſtored, *&c.* Plaintiff obtained a Verdict at the Summer Aſſizes in *Kent* 1*ſt July* 1754. Defendant brought a Writ of Error, which was allowed 29 *Oct.* but entred into no Recognizance, nor put in any Bail thereon, Plaintiff not having got Coſts taxed on the final Judgment, (without which the Meaſure or Quantum of the Recognizance could not be fixed) Plaintiff for want of the Recognizance required by the Statute, or Bail within four Days, took out a Writ of *Hab. fac. Poſſ.* and by Virtue thereof, on 4th *November* took Poſſeſſion of the Premiſſes late in Queſtion, which the Court held to be regular. Defendant ſhould have applied to ſtay Execution, and then the Court would have obliged Plaintiff to have procured his Coſts to be taxed; the Writ of Error

Error is no *Superſedeas* without Bail. A Judge would have taken Bail if applied to. The Rule diſcharged. Vide *Stat.* 16 & 17 *Cha.* 2 *c.* 8. 2 *Vent.* 170. *Sikes* on Demiſe of *Oates* and others againſt *Dawſon*. *Hil.* 18 *Geo.* 2. *Vol.* 2. *p.* 170. *Prime* and *Wynne* for Plaintiff; *Willes* and *Poole* for Defendant.

Fines.

Say and Smith and others. Trin. 27 & 28 Geo. 2.

FINE taken before *Prentice* an Attorny, and *Prentice* a Tradeſman, as Commiſſioners. *Prentice* the Attorny died without making Affidavit of the due Acknowledgment of the Fine. One of the Cognizors became a Bankrupt, abſconded, and did not ſurrender within the 42 Days as required *per* Statute. Fine ordered to paſs on Affidavit of the due Acknowledgment by *Prentice* the Tradeſman; (notwithſtanding the generall Rule requiring ſuch Affidavits to be made by Attornies.) *Prime* for a Mortgagee for whoſe Security the Fine was taken.

Barber *Plaintiff*; Henry Nunn and Mary his Wife and others *Deforciants*. Eaſter 28 Geo. 2.

THIS Fine was taken 13th *May* 1754, by *Dedimus poteſtatem*, Writ of Covenant teſted 1ſt Day of *Eaſter* Term 1754, returnable from the Day of *Eaſter* in five Weeks (19 *May*,) 'twas compounded and the Pre-fine paid between the 17th and 20th *May*, and after paſſing the Return, Warrant of Attorny, and *Cuſtos Brevium* Offices, was brought to the King's Silver Office 11th *June*, and the Clerk there then entred the King's Silver or Poſt-Fine in his Book, and on the Writ of Covenant; *Mary Nunn* the Cognizor died 27th *May*. A Caveat to prevent the compleating of this Fine was brought to the King's Silver Office 13th *June* (before the Record made up in Form) on behalf of *John Nunn* eldeſt Son and Heir of the Cognizors. Rule to ſhew Cauſe why that Caveat ſhould not be withdrawn made abſolute. The Court utterly exploded the Notion which prevailed (undoubtedly by Miſtake) in *Harneis* and *Micklethwaite* and his Wife, *Mich.* 6 *Geo.* 2. and *Gregory* againſt *Croucher* and others, *Mich.* 7 *Geo.* 2. (*viz.*) that the King's Silver is the Pre-fine or Fine for Licence to alienate; certainly 'tis not; the King's Silver

is the Poſt-Fine, or Fine for Licence to accord. 2 *Inſt.* 411, 517. *Dyer* 246. The Return of the Writ of Covenant is agreed to be in the Life-Time of *Mary* the Cognizor; and from that Time the Crown has a Right to the Poſt-Fine, which was entred at the King's Silver Office before any Caveat againſt it; the making up the Record in Form is a miniſterial Act, not neceſſary to be done previous to the Caveat; the Entry by the Clerk of the King's Silver as aforeſaid is ſufficient. 2 *Roll. Abr. pl.* 10. in Point. *Poole* for Plaintiff; *Prime* for *John Nunn* Son and Heir, *&c.* Vide *Vol.* 1. 144, 145.

Anthony Liſter Gent. *Plaintiff*; John Liſter and Johanna his Wife *Deforcients*. Trin. 28 Geo. 2.

OF a Moiety of Lands, *&c.* in *Yorkſhire*, Fine levied. *Trin.* 27 *&* 28 *Geo.* 2. Complaint was laid before the Court by *Thomas Cuſt* Gent. one of the Co-heirs of *William Staines* Eſquire, deceaſed, ſupported by many Affidavits, ſetting forth, That *Johanna Liſter* one of the Cognizors, Siſter and the other Co-heir of the ſaid *William Staines*, had for ſome Years paſt been diſordered in her Senſes, and was ſo at the Time when

this Fine was levied; the Court thereupon, 9 *May* in laſt *Eaſter* Term, made a Rule for ſaid *John Liſter* to ſhew Cauſe why the Fine ſhould not be vacated; and for *John Hancock* Gent. one of the Commiſſioners (who with two others took the Fine by *Dedimus poteſtatem*, and who made Affidavit of its due Acknowledgment, and the Capacity, *&c.* of the Cognizors) to anſwer the Matters in the Affidavits. Upon an Enlargement of the Rule, 31 *May* this Term, at the Inſtance of ſaid *John Liſter* and *Hancock*, the Court recommended it to them to produce ſaid *Johanna Liſter* (who reſided in *Yorkſhire)*; and accordingly 18 *June* after the Affidavits, whereupon the Rule was made, and many Affidavits in Anſwer were read, ſhe was brought into Court, and being examined by the Lord Chief Juſtice, appeared to be a Perſon of good Capacity, and very well to underſtand the Intent of this Fine, and the Deed declaring the Uſes thereof; which was in Favour of her Huſband, with whom ſhe had lived many Years, and upon whom ſhe was deſirous to ſettle her Moiety of her ſaid late Brother's Eſtate, and prevent its deſcending to ſaid *T. C.* her Nephew, and Heir at Law. The Court diſcharged the Rule, with Coſts of the Application to be paid by *Cuſt* to ſaid *John Liſter* and *Hancock*; and alſo Expences of ſaid *Johanna*'s Journy to *Weſtminſter* to be paid

paid by *Cuſt* to ſaid *John Liſter*, which Coſts and Expences were to be taxed and aſcertained by Prothonotary. *Prime*, *Willes*, and *Poole* for *Cuſt*; *Eyre*, *Hewitt*, and *Davy* for *John Liſter* and *Hancock*.

Between Fleetwood Eſquire *Plaintiff*; and Guiſippe Calenda and Wife and others *Deforcients*. 27th February 1756.

[Vacation after Hil. 29 Geo. 2.]

LORD Chief Juſtice, aſſiſted by Mr. Juſtice *Clive*, made an Order, That this Fine ſhould paſs as to ſaid *Calenda* and his Wife, two of the Cognizors, conſidering the particular Circumſtances of the Caſe; notwithſtanding the ſame was not ſigned by them. Captain *Peter Mauger* one of the Commiſſioners attended, and made Oath, That this Fine was duly acknowledged before him and another Commiſſioner, by the ſaid *Calenda* and Wife at *Naples* in *Italy*; that theſe Parties were of full Age and good Underſtanding; and that the married Woman was examined apart from her Huſband, and conſented freely. The Fine being taken from theſe Parties beyond Sea, is not within the late Rule requiring an Affidavit, and the Signing of a Fine by the Cognizors is not an

eſſential Part. The former Lord Chief Juſtices of this Court have required the Parties acknowledging Fines before them, to ſign Copies on Paper, which have been kept at the Chief Juſtices Chambers as a Check upon the Parties; the Fine on Parchment delivered out and paſſed through the Offices, was not formerly ſigned by the Cognizors, but at the Foot of the Caption by the Chief Juſtice only.

Inſpection of Court Rolls, Books, &c.

Hobſon Eſquire *againſt* Parker Eſquire and others, in Treſpaſs. Hil. 29 Geo. 2.

DEfendant *Parker* ſet up a preſcriptive Right to Common from *Lammas* to *Candlemas* on the *Locus in quo*, whereon Iſſue was joined before, but not tried at laſt Aſſizes. Plaintiff appeared to be a Freeholder, and Defendant *Parker* to be a Freeholder's Tenant, within Lord *Dartmouth*'s Manor of *Lewiſham*; Defendant *Parker* moved for Leave to inſpect the Court Rolls as to the Uſage

Uſage and Cuſtom of Common Right. On ſhewing Cauſe by Defendant and the Lord of the Manor, it was urged, That though the Tenants of Copyhold or Cuſtomary Manors have a Right to inſpect Court Rolls, which contain their Titles; yet as this is a Freehold Manor, and the Court not in Nature of a Court of Record as a Copyhold, but a common Court Baron, and the Rolls the Lord's private Property; the Freeholders within the Manor are not entitled to inſpect the Rolls, which are the Lord's Title; eſpecially as there's nothing in the Pleadings about the Cuſtom of the Manor. For Defendant *Parker* it was ſaid, That though a Stranger has not, every Tenant has, a Right to inſpect the Lord's Rolls; That no Title appears on the Rolls of a Court Baron; That a Court Baron can preſent and amerce, though not fine. That the Freeholders are Judges of the Court Baron, and have a Right to ſee its legal Proceedings. Rule abſolute upon Mr. *Pickering*, Lord *Dartmouth*'s Steward, for Leave to inſpect, *&c. ut ſupra. Draper* and *Wynne* for Defendant; *Parker*, *Willes*, and *Poole* for Plaintiff and Lord *Dartmouth*.

Baldwyn *againſt* Tudge. Trin. 27 & 28 Geo. 2.

ACTION for an Amerciament at a Court Baron. Rule to ſhew Cauſe, why Defendant a Freehold Tenant ſhould not have Leave to inſpect Court Books, *&c.* generally, made abſolute as to ſuch Entries only as relate to Amerciaments. *Poole* for Defendant, *Prime* for Plaintiff.

The Mayor, Bailiffs, *&c.* of Exeter *againſt* Coleman. Hil. 28 Geo. 2.

IN an Action for Petit Cuſtoms upon Hemp, Flax, and other Merchandize, founded on a preſcriptive Right, Defendant moved for Leave to inſpect the Corporation's Table of Rates and Account Books of Sums received; denied. This would be looking into the Plaintiff's Title, Defendant is a Stranger and no Member of the Corporation. *Poole* for Plaintiffs; *Prime* for Defendant.

Judgments.

Barnard one, &c. *againſt* Irwin. Trin. 28 Geo. 2.

ATtachment of Privilege returnable *Thurſday* next after 15 *Hil.* a Copy whereof was ſerved on Defendant before the Return, and on the Return Day (30 *January*). a Declaration was left in the Office *de bene eſſe*, and Notice to plead ſerved on Defendant; Defendant by the Statute having eight Days to appear after the Return of the Writ (*i. e.* excluſive of the Return Day) ſtayed till 7 *Febrüary* his laſt Day for appearing, and then entred his Appearance, and pleaded a Tender after his Time for Pleading given by ſaid Notice, but before the Rule to plead expired; Plaintiff looked upon this Plea as a Nullity, becauſe pleaded after the *Time for Pleading* expired, and after the *Rule* to plead was out ſigned Judgment. Defendant inſiſted that this Plea ought to be received any Time before his *Time for appearing* expired, or any Time before Plaintiff was entitled to ſign Judgment for want of a Plea. Interlocutory Judgment ſet aſide, Coſts to attend the Event of the Cauſe. *Prime* for Defendant; *Willes* for Plaintiff.

Mony, Goods, &c. brought into Court.

Rogers Aſſignee *againſt* Stanford Aſſignee, in Covenant broken. Eaſt. 27 Geo. 2.

RULE to bring Mony into Court upon the Breach aſſigned for Nonpayment of Rent made laſt *Trinity* Term; Plaintiff afterwards died (*viz.* in *July* laſt) before any Thing further done. *Poole* moved on the Part of *Elizabeth* the Wife of *Armſtead Parker* Eſquire, Plaintiff's Executrix, for Leave to take the Mony out of Court, with Coſts to the Time it was paid in, which Plaintiff in his Life Time was entitled to. *Draper* for Defendant oppoſed the Motion; he objected not to the Mony's being paid out of Court to Plaintiff's Executrix, but to Payment of Coſts; inſiſting that the Action was abated by Plaintiff's Death (as it certainly was); but when it came to be conſidered, That if the Executrix took nothing by this Motion, ſhe and her Huſband would bring a new Action for the ſame Thing; and then Defendant muſt apply to have the Mony now in Court trans-

transferred to a Payment in the new Action, and muſt ſubmit to pay Coſts therein; Defendant's Council waived his Objection, and a Rule was made by Conſent, That the Mony be paid out of Court to Plaintiff's Executrix with ſuch Coſts as Plaintiff would have been entitled to, if he had accepted the Mony at firſt; and that no Action ſhould be brought by the Executrix for the ſame Cauſe for which the former Action was brought by the Teſtator.

Moſs Adminiſtrator *againſt* Hardy. Trin. 27 & 28 Geo. 2.

ACTION on Bond to a Truſtee, to ſecure an Annuity by Inſtalments to Defendant's Wife. Rule abſolute to ſtay Proceedings on Payment of 3 *l.* (the only Inſtalment due) and Coſts. *Prime* for Defendant; *Willes* for Plaintiff.

Davy Baronet *againſt* Martyn Aſſignee, *&c.* in Covenant broken. Hil. 28 Geo. 2.

DEfendant obtained a Rule for Plaintiff to ſhew Cauſe, why he ſhould not have Leave to bring into Court, on the common Rule, 40 *s.* in lieu of each Heriot demanded by Plaintiff; but on ſhewing Cauſe the Co-

venant appeared to be, to render to Plaintiff the beſt live Beaſt for a Heriot, or pay him 40 *s.* in lieu thereof, at Plaintiff's Election. Rule diſcharged. *Prime* for Defendant; *Draper* for Plaintiff.

Wright Executor *againſt* Swayne Eſquire, in Debt on Bond.

UPON the common Motion by Defendant to bring Principal, Intereſt and Coſts into Court, purſuant to the Statute; It was objected by Plaintiff's Council, that Plaintiff being an Executor, this Caſe is not within the Statute. *Bryan* Executor againſt *Holloway*, *Hil.* 6 *Geo.* 2. was quoted to ſhew that ſuch a Notion was once entertained. But *per Cur'*: The Words of the Statute are general and extend to all Actions on Bond, brought by Executors as well as other Perſons. Rule abſolute to bring Principal, Intereſt and Coſts into Court, and thereupon Proceedings to be ſtayed. *Willes* for Defendant; *Prime* for Plaintiff.

Phillips *againſt* Barker. Hil. 29 Geo. 2.

RULE abſolute for Leave to withdraw Plea of general Iſſue, on Payment of Coſts, pay 2*l.* 2*s.* into Court on common Rule,

Rule, and plead the ſame Plea again; Defendant taking Notice of Trial for the Sitting after Term in *Middleſex*. No Delay has been occaſioned to Plaintiff by Defendant's omitting to bring Mony into Court before Plea pleaded. *Poole* for Defendant; *Willes* for Plaintiff.

Nonpros, Nonſuit, &c.

Hamp *againſt* Cuming. Eaſter 27 Geo. 2.

RULE to ſhew Cauſe why Judgment as in Caſe of a Nonſuit diſcharged. Plaintiff had obtained Rules for Special Jury and View, in Purſuance whereof a View was had by four Jurors only; Plaintiff entred his Cauſe for Trial at laſt *Warwick* Aſſiſes, and was ready to proceed, but Defendant refuſing to conſent, the Cauſe could not be tried for want of a View returned by ſix Jurors at leaſt; Plaintiff has affected no Delay, 'twas not his Fault that the View was incompleat. *Prime* for Plaintiff; *Willes* for Defendant.

Notice.

Taylor *againſt* Oxley, in Caſe on Promiſe. Hil. 29 Geo. 2.

JUdgment ſet aſide without Coſts for a Defect in the Notice of Declaration as to the Nature of the Action. The Words of the Notice were [*in an Action upon the Caſe*] generally, without further Addition; the Intent of the general Rule requiring Notice is, that Defendant ſhould know what he was ſued for. Actions on the Caſe on Contracts and for Torts are extreamly various; the Notice ſhould have expreſſed at leaſt on Promiſe, or on ſeveral Undertakings and Promiſes. *Poole* for Defendant; *Willes* for Plaintiff.

Outlawry.

The King *againſt* Manby, on the Proſecution of French (deceaſed.) Eaſt. 27 Geo. 2.

DEfendant was outlawed after Judgment, and taken by a *Capias utlagat'*. Objected by *Prime* for Defendant, That the Judgment of Outlawry appeared to be entred after Plaintiff's Death; and that the *Capias utlagat'* iſſued without a Revival of the Judgment. He quoted *Brownlow's Brevia judicialia*, and the Regiſter of Judicial Writs *fo.* 42 *A. B.* to ſhew Writs of *Scire facias* in ſuch Caſes brought by Plaintiff's Executors. Rule abſolute to ſet aſide *Capias Utlagatum*. *Wilſon* for the late Plaintiffs.

Reilley *againſt* O Connor Eſquire. Mich. 29 Geo. 2.

THE Outlawry commenced and compleated during Defendant's Reſidence in *Ireland*, was ordered to be reverſed at his Expence (without Bail or Appearance). Where the

the Court ſee an unlawful Proceeding they will not put the Party to the Expence of a Writ of Error, but will avoid Circuity and relieve him in a ſummary Way. *Prime* for Defendant; *Willes* for Plaintiff.

Pleadings.

[Omitted in Mich. 28 Geo. 2.]

MOTION in Action on the Caſe to plead *Non aſſumpſit* and Infancy denied, becauſe the later Plea is uſeleſs; Infancy may be given in Evidence on the general Iſſue: In Debt on Bond or other Deed *Non eſt factum* and Infancy have been allowed to be pleaded, becauſe though the Bond, &c. may be Defendant's Deed; yet if he was under Age at the Time of its Execution he is not bound by it.

Fox Executor *againſt* Meen, in Debt on Bond.

MOTION by *Draper* for Defendant for Leave to plead doubly *(viz.) Non eſt factum*, and *Solvit poſt diem*, denied as never yet granted.

Mathews

Mathews *againſt* Statham Executor. Hil. 28 Geo. 2.

RULE abſolute for Leave to plead three Pleas *(viz.) Non aſſumpſit* by the Teſtator, a General *plene adminiſtravit*, and a Special *plene adminiſtravit*; it may be dangerous and inconvenient to rely on the third Plea without the Aid of the ſecond; No Affidavit to verify the *Plene adminiſtravit* has been required of late. *Poole* for Defendant; *Wynne* for Plaintiff.

Milner *againſt* Wilſon, in Treſpaſs Aſſault and Battery. Trin. 28 Geo. 2.

RULE made abſolute to plead Not guilty, and a Licence; a Licence to beat a Man is very extraordinary, but Leave to plead theſe Pleas has been granted in other Caſes. *Poole* for Defendant; *Willes* for Plaintiff.

Whitby

Whitby *againſt* Chapman, in Replevin. Mich. 29 Geo. 2.

RULE to ſhew Cauſe why Defendant ſhould not reply ſeveral Matters to a Plea in Bar to an Avowry diſcharged. No Inſtance can be ſhewn of ſeveral Matters replied ſince *Statute* 4 & 5 *Q. Ann.* ſeveral Matters may with Leave of the Court be pleaded to a Declaration in a common Caſe; and in Treſpaſs to a new Aſſignment, that being in the Nature of a New Declaration; and alſo in Replevin in Bar to an Avowry or Cognizance, ſetting out the Right to ſeiſe or diſtrain, which is to be controverted; but though the Words of the Statute are to plead as many Matters, *&c.* and Replications, Rejoinders, *&c.* are properly Pleadings; yet the Courts of *Weſtminſter* have never carried their Leave further than as before-mentioned. *Draper* for Plaintiff; he quoted *Poltro* againſt *Self* in *B. R. Hil.* 17 *Geo.* 2. where the Court refuſed Leave to reply doubly to a Plea of Tender. *Prime* for Defendant.

Priſoners.

Keeling *againſt* Elliott. Trin. 28 Geo. 2.

PLaintiff brought his Action originally in the Court of the Town and County of *Kingſton* upon *Hull*, and held Defendant to Bail by Affidavit; Plaintiff afterwards removed the Proceedings into this Court by *Certiorari*; Defendant who remained in Priſon for want of Bail applied to be diſcharged on entring a common Appearance. The Court were of Opinion, That the *Certiorari* having been brought by Plaintiff to remove his own Action he has loſt his Bail; the Practice is the ſame in civil as in criminal Caſes. Where Defendant brings a *Certiorari* to remove an Indictment into the *King's Bench*, the Bail is continued; but where the *Certiorari* is brought by the Proſecutor, the Bail is diſcharged. *Cro. James* 363. *Beſton* and *Buller*. 2 *Lord Raymond* 837. *Criſp* againſt *Smith*; the *Certiorari* is admitted to be regular, but by it Plaintiff has relinquiſhed the Bail in the inferior Court, he has loſt Bail by his own Act. Defendant ought to be protected againſt Vexation, and from being harraſſed. Rule for a

common Appearance, and *Superſedeas* made abſolute, by the Opinion of three Judges; Lord Chief Juſtice not concurring. He compared it to a Diſcontinuance; a Plaintiff may by ſettled Practice after holding a Defendant to Bail diſcontinue his Action, begin *de novo*, and hold Defendant to Bail again; Plaintiff's being liable to Payment of Coſts on a Diſcontinuance, does not materially vary the Caſe. *Poole* for Defendant; *Draper* for Plaintiff.

Atkinſon and Wilſon *againſt* Freeburrow. Mich. 29 Geo. 2.

AFTER *Cepi Corpus* returned, a peremptory Rule was ſerved on the Sheriff of *Nottinghamſhire*, to bring into Court the Body of Defendant within ſix Days; the Sheriff moved to diſcharge ſaid Rule, upon the Under-Sheriff's Affidavit ſworn the 11th Day of *June* 1755, that Defendant was in the Sheriff's Cuſtody charged with a *Capias ad reſpondend'* at Plaintiff's Suit; Plaintiff produced an Affidavit in Anſwer to the Under-Sheriff's, ſhewing that Defendant was ſeen at large at *Newark* (ten Miles from the County Gaol at *Nottingham,)* on 16 *April* 1755. It was urged for the Sheriff, that Defendant has now been ſuperſeded for want of a Declaration within two Terms: The Court laid the

Eſcape

Eſcape and *Superſedeas* out of the Caſe. Where a Sheriff takes a Bail Bond, by the Rule to bring in the Body is meant perfecting Bail above; but where a Defendant remains in Cuſtody for want of Bail, Plaintiff muſt declare againſt him in Cuſtody of the Sheriff; or if he would remove him to the *Fleet* Priſon, he muſt do it by *Habeas Corpus ad reſpondend'*. The Court never expect a Sheriff to bring the Defendant's Body into Court by Virtue of the common Rule. *Vide Morſe* againſt *Warren*, *Mich.* 11 *Geo.* 2. *Vol.* 1 *p.* 284. *Poole* for Plaintiff; *Prime* for the Sheriff of *Nottinghamſhire*.

Webb *againſt* Dorwell. Hil. 29 Geo. 2.

PLaintiff not having declared againſt Defendant, a Priſoner before the End of *Trinity* laſt (which was the ſecond Term,) Defendant 28 *October* laſt took out a Judge's Summons for a *Superſedeas*; Plaintiff's Agent as uſual had Time to write to his Client, and not being able to ſhew Cauſe againſt it, on 11 *November* laſt in the Evening, a *Superſedeas* was ordered, which could not be ſealed that Night, but on the 13th was ſent *per* Poſt into the Country. Plaintiff after the Summons ſerved, *viz.* firſt *November*, charged Defendant in Cuſtody with a Declaration,

and on the 13th ſigned Judgment, ſent down a *Teſtat. Capias ad ſatisfaciendum*, and charged Defendant in Execution. The Court held Plaintiff's Proceedings ſubſequent to the Time of Defendant's being ſuperſedable, and having applied for a *Superſedeas*, to be irregular. Rule abſolute to ſet aſide the Judgment and *Teſtat. Capias ad ſatisfaciend.* and for Defendant's Diſcharge with Coſts, Defendant conſenting to bring no Action. *Poole* for Defendant; *Hewit* for Plaintiff.

Proceſs.

Hanbury and Wife *againſt* Cowper one, *&c.* by Bill. Mich. 29 Geo. 2.

RULE abſolute to ſet aſide *Fieri facias*, and the Execution thereof, without Coſts; the Writ was irregular in two Particulars; Firſt, in the Return, which was general 15 *Martin'* inſtead of a Day certain, and Secondly, it commanded the Sheriff to have the Mony when levied at the Return in Court, to be rendred to Plaintiff the Huſband only, and not to the Huſband and Wife, though both were Plaintiffs. Plaintiffs produced

duced a Judgment by Confeſſion to warrant the *Fieri facias*, but it was faulty, the Recovery being by the Plaintiff the Huſband only. The Court ordered the Judgment to be rectified agreeable to Defendant's Confeſſion; and that Defendant ſhould bring no Action. *Prime* for Defendant; *Poole* for Plaintiffs.

Aſhley the Younger *againſt* Mackarley and another. Hil. 29 Geo. 2.

COPY of Proceſs ſerved on the Return Day at 3 o'Clock in the Afternoon, Rule abſolute to ſtay Proceedings. *Vide Foot* againſt *Hume*, *Hil.* 16 *Geo.* 2. *Vol.* 2. *p.* 330. *Davy* for Defendants; *Prime* for Plaintiff.

Trials, Verdicts, &c.

Laſſiter *againſt* Harvey. Bull *againſt* the ſame. Trin. 27 & 28 Geo. 2.

AFTER Verdicts obtained by Plaintiffs, the Records of *Niſi prius* and Writs of *Hab. Corpora Jurat'*, were accidentally loſt by Mr. *Jacomb* late Aſſociate of the Home Circuit; Rule for Defendant and *Jacomb* to ſhew Cauſe, why new Records and Writs ſhould not be made out agreeable to the old, and Verdicts returned according to the finding of the Jury, made abſolute on Affidavit of Service, no Cauſe being ſhewn to the contrary. *Wynne* for Plaintiffs.

Armſtrong

Armſtrong on the Demiſe of Neve and another *againſt* Woolſey and others, in Ejectment. Hil. 28 Geo. 2.

THE Point or Queſtion reſerved at the Trial, for the Opinion of the Court was, To whoſe Uſe a Fine with Proclamations levied without any Declaration of Uſes ſhould operate? Held *per Cur'*, That where no Uſe is declared, there is no Conſideration; the Fine muſt reſult to the ancient Uſe; it ſufficiently appears in this Caſe, that the ancient Uſe was in the Cognizor. The *Poſtea* ordered to be delivered to the Plaintiff. *Godbolt* 180. *Vaughan* 43. 2 *Cooke* 58. *Beckwith's Caſe*. *Shephard's Touchſtone of common Aſſurances*, *page* 501. *Wynne* for Plaintiffs; *Poole* for Defendants.

Pendock on the Demiſe of Mackinder *againſt* Mackinder and others, in Ejectment.

(VERDICT for Plaintiff as to a fourth Part of the Premiſſes, ſubject to the Opinion of the Court.) Point reſerved at the Trial and twice argued was, Whether a Perſon convicted of Petit Larceny, and who had

undergone the Puniſhment of Whipping, was, or was not a Competent Witneſs to a Will, whereby the Premiſſes in Queſtion were deviſed? The Court held the Perſon convicted not to be a competent Witneſs; Petit Larceny is Felony, 'tis a Crime equal to grand Larceny, if not worſe, becauſe the Temptation is leſs to ſteal little than much, it ſprings from an evil Mind. The *Poſtea* ordered to be delivered to Plaintiff.

Anonimous.

RULE for a View on the Face of the Declaration (which was for obſtructing a Water Courſe) denied; 'tis never granted without an Affidavit in any Caſe, except an Action of Waſte.

Brookes on Demiſe of Mence *againſt* Baldwyn, in Ejectment. Trin. 28 Geo. 2.

UPON Motion for a new Trial, Mr. Baron *Adams*, before whom the Cauſe was tried, reported to the Court, That the Verdict (which was a general Verdict for Plaintiff,) was good in Part and bad in Part, agreeable to Evidence as to Lands in Poſſeſſion of one of Defendant's Tenants, contrary to Evidence as to Lands in Poſſeſſion of another Tenant, 12 *Mod.* 271. *Salk.* 648.

2 *Salk.*

3 *Salk.* 362. were quoted to ſhew that where a Verdict is good in Part it muſt ſtand. Rule that Plaintiff ſhall take Poſſeſſion of that Part of the Premiſſes only, as to which the Judge reported in Favour of the Verdict. *Martyn* for Defendant; *Poole* for Plaintiff.

Welch *againſt* Richards Clerk. Hil. 29 Geo. 2.

THIS was an Action of Treſpaſs on the Caſe brought by Plaintiff againſt Defendant for a malicious Proſecution, and Impriſonment of Plaintiff; and Plaintiff thinking it neceſſary not only to have the Inſpection, and a Copy of Defendant's Information, which was taken in Writing by *Buckland Nutcombe Blewett* Eſquire, a Juſtice of the Peace for *Somerſetſhire*, touching Plaintiff's marking a Sheep, with a felonious Intent to ſteal the ſame, being the Property of Defendant, but alſo to have the Original, and alſo the Warrant granted by ſaid Juſtice on ſuch Information, and in Conſequence whereof Plaintiff was apprehended and impriſoned, produced at the Aſſizes on the Trial of this Cauſe, applied to the Court on an Affidavit of the Fact as to Demand and Refuſal; and obtained a Rule for the Juſtice to ſhew Cauſe, why Plaintiff his Council or Attorny ſhould not have Leave to inſpect ſaid Information, and

and to take a Copy thereof at Plaintiff's Expence; and why the Juſtice ſhould not produce ſuch Information, in order that the ſame might be given in Evidence on the Trial of this Cauſe, at next Aſſizes for ſaid County; and alſo for *Richard Darch* the Conſtable, who executed the Warrant, to ſhew Cauſe, why he ſhould not produce the Warrant, which was granted by ſaid Juſtice for apprehending Plaintiff, in order that ſuch Warrant might be given in Evidence on ſaid Trial. Note; The Plaintiff having had a Copy of the Warrant delivered him by the Conſtable, a Copy thereof was not now moved for.

On ſhewing Cauſe it was inſiſted, that it was going too far, to order the Juſtice and the Conſtable to produce the Information and Warrant (becauſe that implied a perſonal Attendance); and that Copies were ſufficient. On the other ſide it was inſiſted, that in a Caſe of this Nature, Originals muſt neceſſarily be produced on the Trial, and for that Purpoſe the Caſe of *The King* againſt *Smith* in Sir *John Strange's Reports*, Vol. 1. p. 126, was cited.

The Court ordered, That Plaintiff his Council or Attorny have Leave to inſpect the Information, and to take a Copy thereof at Plaintiff's Expence; and that the Juſtice ſhould produce or cauſe to be produced the ſaid

ſaid original Information, in order that the ſame might be given in Evidence on the Trial of this Cauſe at next Aſſizes for ſaid County; and that the Conſtable ſhould produce or cauſe to be produced the original Warrant, in order that the ſame might be given in Evidence on ſaid Trial. *Poole* for Plaintiff; *Davy* for *Blewett* Eſquire.

Venue.

Hunter *againſt* Gray; Smith *againſt* Gray. Trin. 28 Geo. 2.

RULES to ſhew Cauſe, why the Venue ſhould not be changed from *London* into *Eſſex*, diſcharged; Defendant by a Judge's Order for Time to plead, having conſented to rejoin *gratis*, and take Notice of Trial at the Sitting after this Term in *London*; though the having obtained an Order for Time to plead, generally ſpeaking, is no Hindrance to the Changing of a Venue; yet if Defendant will conſent to take Notice of Trial in the County where the Action is originally laid, that Conſent ſhall bind him; had the Judge been informed of the Defendant's Intention to move to change the Venue, he would have

made his Order without Prejudice to ſuch Motion. *Draper* for Defendant; *Davy* for Plaintiff.

Davies Widow *againſt* Parry Eſquire, late Sheriff of Monmouthſhire, for an Eſcape. Hil. 29 Geo. 2.

PLaintiff ſhewed for Cauſe againſt the common Rule for changing the Venue from *Middleſex* into *Monmouthſhire* unleſs Cauſe, That Mr. *Catchmayd* who was Under-Sheriff to Defendant, is now Under-Sheriff, and ought not to have any Concern in returning the Jury Proceſs. Rule abſolute to change the Venue, but by Conſent the Jury Proceſs to be directed to and returned by the Coroners. *Hayward* for Defendant; *Wilſon* for Plaintiff.

THE

THE

TABLE

OF

PRINCIPAL MATTERS.

Affidavit. See Ejectment 5. Fines and Recoveries 1.

Amendment.

1. RECOVERY amended by tranſpoſing the Names of Demandant and Tenant, purſuant to the Deed making the Tenant to the *Præcipe.* 3
2. Bill againſt an Attorny and Declaration thereon, amended by ſtriking out Words. 3
3. Plea refuſed to be amended, though the Application was before Argument; Defendant having likewiſe pleaded another Plea in which Iſſue was joined, Trial had, and Verdict for Plaintiff. 5
4. Fine amended by Deed of Uſes, adding a Vill. 4

Attach-

Attachment.

1. Rule to ſhew Cauſe why an Attachment ſhould not iſſue againſt one for not attending at Aſſizes as a Witneſs, diſcharged, it appearing he was very old and infirm. 6

Attornies.

1. Plaintiff an Attorny ſued Defendant an Attorny by *Capias*; Proceedings ſtayed, and Defendant's obtaining Time by Judge's Order to put in Bail, held no Waiver of his Objection. 7

Bail and Bail Bonds. See Attornies 1. Priſoners 1, 2.

1. RULE abſolute by Conſent, for delivering up the Bail Bond on entring a common Appearance; Defendant a Member of the laſt Parliament having been arreſted before the Expiration of 40 Days after the Diſſolution. 8

2. Plaintiff excepted to Bail the Day after *Eaſter* Term, and for want of Juſtification before a Judge, took Aſſignment of, and proceeded on Bail Bond; Defendant juſtified the Bail in Court the firſt Day of next Term, and moved to ſtay Proceedings; which was ordered without Coſts. 8, 9.

3. A Palace Court Officer not admitted to be Bail, and Perſons concerned in executing the Proceſs of all other Courts, as well as this, held to be within the Rule of Court. 9, 10

4. Defendant after a Judge's Order for Time put in Bail, and ſurrendred himſelf in Diſcharge of them, held regular, and Plaintiff's Proceedings on the Bail Bond ſet aſide. 10

Bankrupts. See **Coſts** 2.

Bills againſt Attornies. See **Amendment** 2.

Certiorari. See **Priſoner** 1.

Coſts. See **Ejectment** 3, 4.

1. IN Treſpaſs againſt four Defendants, Verdict againſt one only, the reſt acquitted; Motion by them, on Affidavit that Plaintiff was poor, *&c.* to have their Coſts deducted out of what Prothonotary ſhould allow Plaintiff againſt the other Defendant, denied. 11

2. Mony paid into Court ordered to be paid to the Aſſignees of Plaintiff, who was become a Bankrupt, they paying his Attorny's Bill to be taxed by Prothonotary. 11, 12

3. In

3. In two Actions between the ſame Parties, Proceedings on the final Judgment, in that wherein the leaſt Damages were recovered, ſtayed, and the Damages and Coſts allowed the Defendant towards Payment of the larger Sum recovered by him in the other Action. 12, 13

4. Avowant though not named in the *Stat.* of 4 *Ann.* held to be within the Meaning and Intent of that Statute; and allowed Coſts on the Pleas found for him, to be deducted out of Coſts allowed Plaintiff. 13, 14

5. On Affidavit of Death of Leſſor of Plaintiff, Rule that Proceedings ſhould ſtay till Security given for Defendant's Coſts. 14

6. The Rule for Coſts of Taxation of an Attorny's Bill, ſhould not in the firſt Inſtance be abſolute, but to ſhew Cauſe. 15, 16

7. Since the Statute of 2 *Geo.* 2. *c.* Coſts of Taxation have been reciprocally given to the Party charged, and to the Attorny, as a ſixth Part has or has not been taken off. *Ibid.*

8. Double Coſts not allowed on a Nonſuit in Replevin, where Plaintiff declared for taking and detaining an Ox, and Defendant avowed the Taking as a Seizure for a Heriot Cuſtom, claiming no Right to diſtrain. 16

Aliter

Aliter had it been for Heriot Service, for which Cattle, *&c.* are diſtrainable. *Ibid.*

9. Rule for Coſts in Prohibition, Defendant having forced Plaintiff to deliver a Declaration, and then pleaded only that he did not proceed in Spiritual Court after the Prohibition, which Court held to be a ſham nugatory Plea, not being to the Merits, and ſuch a Plea as would not intitle Plaintiff to Coſts under *Stat.* 8 & 9 *Will.* 3. *c.* 10. *ſ.* 3. 16, 17

Declaration. See **Notice** 1.

Demurrer. See **Highways** 1. **Replevin.**

Ejectment. See **Coſts** 5. **Execution** 1. **Trials, &c.** 5.

1. ON Affidavit of Tenant's abſconding, and of Service of Declaration on her Son who is her Servant; Rule to ſhew Cauſe why ſuch Service ſhould not be good Service, and leaving a Copy of this Rule at her Houſe good Service of it. 23

2. On Affidavit of Tenant's being Lunatick, and of Service of Declaration on the Perſon who had the Cuſtody of her, Rule for her and him to ſhew Cauſe why this Service ſhould not be good, *&c.* 23, 24

3. Rule for Leſſor of Plaintiff and his Attorny to pay the Tenant Coſts of the Application, and reſtore his Goods, by Affidavit,

they having taken Poſſeſſion of the whole Premiſſes, and removed the Goods when he had obtained a Rule to defend for two Thirds. 24, 25

4. Judgment which was ſigned againſt the caſual Ejector, for a Miſtake of inſerting in the Body of the Plea, the Name of Plaintiff's Leſſor inſtead of that of nominal Plaintiff, ſet aſide with Coſts. 25

5. Rule to make Service of Declaration in Ejectment good, ſet aſide becauſe the Affidavit on which it was grounded was ſworn before Plaintiff's Attorny as a Commiſſioner. 26

6. Declaration having been ſerved without Prothonotary's Name on it, Rule for Judgment unleſs Tenant appeared within uſual Time upon Notice. 26, 27

7. Another Rule in the like Caſe. 27, 28

8. On Motion for Landlord to defend, held *per Cur.* That 'tis not every Perſon claiming Title, who is Landlord within the *Stat.* 11 *Geo.* 2. *c.* 19. but one who is in ſome Degree of Poſſeſſion as receiving Rent, *&c.* 28, 29

Execution. See Process 1.

1. In Ejectment after Verdict, though Writ of Error allowed, if no Recognizance be entered into nor Bail put in, Plaintiff is regular in taking out *Hab. fac. Poſſ.* and taking Poſſeſſion. 30, 31

Executors and Administrators. See **Mony into Court** 2, 5.

Fines and Recoveries. See **Amendment** 1, 4.

1. FINE taken before an Attorny and a Tradesman, the Attorny died without making Affidavit of the due Acknowledgment, the Fine ordered to pass on the Affidavit of the Tradesman. 31
2. A Caveat comes too late after the Return of the Writ of Covenant and Entry of Post-fine at the King's Silver Office. 32, 33

The King's Silver is the Post-fine or Fine for Licence to accord. *Ibid.*

3. Rule to shew Cause why a Fine should not be vacated on Suggestion, that one of the Cognizors was disordered in her Senses, discharged, on her being produced and examined in Court, and appearing of good Capacity. 33, 34, 35
4. Fine taken in *Italy* allowed to pass though not signed by the Cognizors, one of the Commissioners attending, and making Oath that it was duly acknowledged before him and another, *&c.* 35, 36

Heriots. See **Costs** 8. **Mony into Court** 4.

Highways. See **Demurrer.**

1. A Person occupying only one Ploughland in a Parish not compellable to

ſend into the Highways more than one Wain or Cart, though he keeps more. 18, 19, 20, 21, 22.

Inſpection of Court Rolls and Books.

1. RULE for a Freehold Tenant of a Manor to have Leave to inſpect the Court Rolls. 37
2. The ſame Rule with Reſtriction to particular Entries. 38
3. Leave to inſpect Corporation Books denied to one who was no Member of the Corporation. 38

Judgments.

1. Judgment ſigned for Want of a Plea, ſet aſide, Defendant having pleaded (though after the Rule for pleading was out) and entered Appearance on the laſt Day for appearing. 39

Mony into Court. See Coſts 2.

1. RULE to withdraw Plea of general iſſue, and pay Money into Court, pleading the ſame Plea again, *&c.* 42, 43
2. Rule by Conſent for Payment of Mony brought into Court, to Executrix of Plaintiff, together with ſuch Coſts, as Plaintiff would have been intitled to if he had accepted it. 40

3. Mony paid into Court in Action on a Bond to ſecure an Annuity. 41
4. Rule for paying Money denied in Covenant, it appearing Defendant was to render to Plaintiff the beſt live Beaſt for a Heriot or 40 *s.* at Plaintiff's Election. 41, 42
5. Rule to bring in Principal, Intereſt and Coſts in Action on Bond, though Plaintiff was an Executor. 42, 43

Nonpros and Nonſuit.

1. RULE to ſhew Cauſe why Judgment as in Caſe of a Nonſuit diſcharged, Plaintiff having entered his Cauſe, and being ready to proceed, but the View which was directed was returned by four Jurors only, *&c.* 43

Notice.

1. Judgment ſet aſide for a Defect in the Notice of Declaration as to the Nature of the Action. 44

Outlawry.

1. *CAPIAS utlagat'* iſſued after Plaintiff's Death without Revival by *Sci. fac.* ſet aſide. 45
2. Outlawry commenced and proſecuted during Defendant's Reſidence in *Ireland*, reverſed without Bail or Appearance. 45, 46

Pleadings.

1. RULE to reply ſeveral Matters denied, Courts have never conſtrued Statute of 4 & 5 *Ann.* to extend to other Pleadings than Pleas. 48

Double Pleas allowed.

1. *Non aſſumpſit* by the Teſtator, a general *Plene adminiſtravit* and a Special *Plene adminiſtravit.* 47
2. In Treſpaſs, Aſſault and Battery, Not guilty and Licence. 47

Double Pleas not allowed.

1. *Non aſſumpſit* and Infancy. 46
2. *Non eſt factum* and *Solvit poſt Diem. Ibid.*

Priſoners.

1. Defendant Priſoner for want of Bail to Action brought in inferior Court diſcharged on a common Appearance, Plaintiff having removed his Action here by *Certiorari.* 49, 50
2. What is meant by the common Rule againſt the Sheriff where he takes a Bail Bond. 50, 51
What where Defendant remains in Cuſtody for want of Bail. *Ibid.*
3. Declaration, Judgment and Execution againſt a Priſoner ſet aſide as irregular, being all ſubſequent to the Time of Defendant's being ſuperſedable and his having applied for a *Superſedeas.* 51, 52

Privilege.

Privilege. See **Bail** 1.

Process.

1. *Fieri facias* and Execution againſt an Attorny ſet aſide without Coſts, for Irregularity in the Writ. 352, 353.
2. Proceeding ſtaid Proceſs being ſerved on the Return Day. 53

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Record. See **Trials**, &c. 1.

Replevin. See **Coſts** 4, 8. **Highways** 1.

Sheriff, Sheriffs Officers. See **Bail** 3.

Superſedeas. See **Priſoner** 3.

Trials, Verdicts, &c.

1. AFTER Verdicts, Records of *Niſi prius* and Writs of *Hab. Corpora Jurat'*, being loſt by Aſſociate, Rule for new ones to be made out and returned. 54
2. Held that a Fine levied without any Declaration of Uſes, muſt reſult to the ancient Uſe. 55
3. Held that a Perſon convicted of Petit Larceny and whipped, was not a competent Witneſs to a Will. 55, 56
4. Rule for a View never granted without Affidavit, except in Action of Waſte. 56
5. On Motion for a new Trial in Ejectment, the Judge reporting Verdict to be agreeable to Evidence in Part and contrary in Part, Rule

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6. Rule for Plaintiff to have Leave to inſpect Information, and for Juſtice of Peace to produce it, and Conſtable produce Warrant on Trial. 57, 58, 59

Venue and Venire facias.

1. VENUE refuſed to be changed from *London* into *Eſſex*, Defendant by a Judge's Order for Time to plead having conſented to rejoin *gratis*, and take Notice of Trial in *London*. 59, 60

2. Venue changed from *Middleſex* to *Monmouthſhire*, in Action againſt the late Sheriff, the Jury Proceſs to be returned by the Coroners, the Under-Sheriff having been Under-Sheriff to Defendant. 60

View. See Trials, &c. 4.

Witneſs. See Attachment 1. Trials, &c. 3.

FINIS.