signed, and held regular. But where the defendant has pleaded by his country attorney, the issue may be tendered to the country attorney, and if not paid for by him, judgment may be signed. *Except.*

Every attorney shall enter his warrant of attorney in every suit upon record in court, on pain of 10*l.* and further punishment by imprisonment, at the discretion of the court. *Stat.* 32 *H.* 8. *c.* 30. §. 2. made perpetual. 2 *&* 3 *E.* 6. *c.* 32. and *vide stat.* 18 *Eliz. c.* 14. § 3. *Attorney to enter his warrant on record.*

Warrants of attorney are to be filed of the term wherein any exigent is awarded, demurrer or issue joined, or judgment entered, which shall first happen, and to be filed upon or before the essoin-day of every *Trinity-Term*, and within one-and-twenty days after the end of every other term. *Hil.* 14, 15. *Car.* 2. *When to be filed.*

Every plaintiff's attorney who shall prosecute any cause to issue, shall, upon the delivery of the copy of such issue, receive of the defendant's attorney the fee for filing his warrant therein; and in case the defendant's attorney shall refuse to pay for the same, the plaintiff's attorney may sign his judgment in like case, as if the defendant's attorney had refused to pay for the copy of the issue, or the entry of his plea; and the plaintiff's attorney shall file as well the defendant's as the plaintiff's warrant of attorney. *Hil.* 2, 3. *Jac.* 2. *Deft.'s attorney, on receiving the issue, to pay the plt's attorney the fee for filing his warrant, otherwise judgment.*

The plaintiff's attorney in any action or suit shall file his warrant of attorney with the *Plt.'s attorney to file his*

warrant the term he declares, and the deft.'s attorney the term he appears.

proper officer the ſame term he declares, and the attorney for the defendant ſhall file his warrant of attorney, as aforeſaid, the ſame term he appears, under the penalties inflicted upon attornies by any former law, for default of filing their warrants of attorney. *Stat.* 4 & 5 *Annæ. c.* 16.

No judgment (except, &c.) to be ſigned before the judgment paper be ſtamped by the clerk of the warrants.

Great inconveniencies having happened by attornies neglecting to file their warrants of attorney, by which judgments have been reverſed, and plaintiffs loſt their debts; it was ordered therefore that no judgments whatſoever (except final judgment upon *poſteas*, writs of inquiry, and *Non pros'*) ſhall be ſigned by any of the prothonotaries, unleſs the ſtamp of the clerk of the warrants be impreſſed on the paper, whereon ſuch judgment is to be ſigned, whereby it may appear the warrants of attorney are duly filed. *Mich.* 5 *Geo.* 2.

The plaintiff's attorney, on delivering a copy of the declaration to the defendant's attorney, charges 8 *d.* for filing the defendant's warrant of attorney, and which he generally files at the ſame time he files the plaintiff's warrant, and on the ſame piece of parchment.

Theſe warrants are to be wrote on parchment in the following form:

Hilary *Term in the ſeventeenth year of the reign of* George *the third.*

Middleſex, *E.* *F.* putteth in his place *R. C.* his attorney againſt *A. B.* late of, *&c.* yeoman, in a plea of treſpaſs on the caſe [*or otherwiſe, as the action is.*] *Plaintiff's warrant of attorney.*

Middleſex, *A.* *B.* late of, *&c.* yeoman, putteth in his place *N. F.* his attorney, againſt *E. F.* in the plea aforeſaid. *Defendant's warrant of attorney.*

If the defendant be deſcribed in the pleadings with an *Alias dict.* or the plaintiff or defendant be an executor or adminiſtrator, he muſt be named in the warrant of attorney in the ſame manner exactly as in the pleadings.

The nature of the action muſt be expreſſed in the warrant, according as the caſe ſhall be; as thus: In a plea of debt. In a plea of treſpaſs. In a plea of treſpaſs on the caſe. In a plea of treſpaſs and ejectment of farm. In a plea of treſpaſs and aſſault. In a plea of treſpaſs, aſſault and impriſonment.

On the back of the iſſue you give notice of trial, thus:

Mr. *T. V.*

Take notice of trial in this cauſe for the ſitting after this preſent *Michaelmas-term*, at *Guildhall, London.* *Notice of trial.*

Your humble ſervant,

Jan. 5th 1778. L. R. *attorney for the plaintiff.*

Eight days in London *or* Middlesex.

If the trial is to be in *London* or *Middlesex*, (and the defendant dwells within 40 miles of *London*) there must be eight days notice thereof given exclusive of the day whereon the notice is given. *Mich.* 1654.

When 14 *days in* London *or* Middlesex.

If the defendant lives above forty miles from *London*, there must be fourteen days notice of such trial to be had in *London* or *Middlesex*, exclusive of the day of the notice. *Same rule.*

Eight days in the country.

Of trials in the country there must be eight days notice given exclusive of the day of notice. *Same rule.* But altered as follows.

When ten days notice of trial.

No cause whatsoever shall be tried at *Nisi prius* before any judge or justice of assize or *Nisi prius*, or at the sittings in *London* or *Westminster*, where the defendant resides above forty miles from the said city respectively, unless notice of trial in writing has been given at least ten days before such intended trial. *Stat.* 14 *Geo.* 2. *c.* 17. §. 4.

This act does not alter the above rule, for 14 *days notice of trial in* London *or* Middlesex, *where the defendant lives above* 40 *miles from* London.

Defendant lived about 40 miles from *London*, and plaintiff proceeded to trial at sittings there, upon *ten* days notice; no defence was made, and defendant insisting, that he was intitled to 14 days notice of trial, moved to set aside the verdict, and had a rule to shew cause, which was made absolute. Before this act, 14 days notice were the settled practice, and, unless obliged, court will not be bound by an act made to take away a benefit from defendant; the practice or law of the court cannot be taken away but by negative words, viz. that there shall be no

more than ten days; 14 days notice notwithstanding this act, are ſtill neceſſary. *Barnes* 305.

And in caſe any perſon ſhall have given ſuch notice of trial as aforeſaid, and ſhall not afterwards duly countermand the ſame in writing at leaſt ſix days before ſuch intended trial, ſuch party ſhall be obliged to pay unto the party to whom ſuch notice of trial ſhall have been given as aforeſaid, the like coſts and charges as if ſuch notice of trial had not been countermanded. *Same ſtat.* §. 5. *And ſix days notice of countermand.*

Notice of trial on an old iſſue may be given to the attorney in the country, for it may be given either to the attorney or the 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 in notices of executing writs of inquiry and countermands may be given either to the attorney in the country, or to the agent in town; but of thoſe things which are done only in town, notice, muſt be given to the agent; and all notices, where the party hath a known attorney, muſt be given to that attorney or his agent, and not to the party himſelf. *Notice of trial when to be given to attorney or agent.* *Of notices in general.*

In all caſes where there have been no proceedings for four terms, excluſive of the term in which the laſt proceeding was had, the party who deſires to proceed again, ſhall give a term's notice to the other of ſuch proceeding; ſuch notice ſhall be given before the *A term's notice where no proceeding for four terms exclusive.* *To be given before the eſ-*

soin day of the term. eſſoin-day of the fifth or other ſubſequent term; a judge's ſummons, if no order be made thereupon, ſhall not be deemed a proceeding; but a notice of trial, though afterwards countermanded, ſhall be deemed a proceeding within this rule. *Paſch.* 13 *Geo.* 2.

What deemed a proceeding.

Heretofore, where the plaintiff in pleading concluded *ad patriam* (to the country) he could not give notice of trial till the defendant had joined iſſue, which he was not obliged to do till a four-day-rule for that purpoſe was expired. But now in all caſes where the plaintiff concludes *ad patriam*, the defendant's attorney muſt accept notice of trial on the back of ſuch pleadings, whether the ſame be delivered to the defendant's attorney or agent, or left in the office; and ſuch notice ſhall be as effectual as if iſſue had been joined. *Trin.* 2 *Geo.* 1.

Where the plaintiff concludes ad patriam, *the defendant to accept notice of trial on the back of the pleading.*

And if don't join in iſſue, to accept of notice of inquiry from the time of the notice of trial.

Where the plaintiff concludes *ad patriam*, and gives notice of trial on the back of the pleadings (purſuant to laſt rule) if the defendant does not join iſſue before the rule is out, then after judgment obtained the defendant's attorney ſhall be obliged to accept of notice of executing a writ of inquiry from the time that the notice of trial was given on the back of the pleadings. *Hil.* 6 *Geo.* 1.

Notice of trial not to be given to the defendant if his attorney be known.

Notice of trial, or of executing a writ of inquiry, given to a defendant when his attorney is known, is not good notice; but when his attorney is not known, then the notice may be given to the defendant. See *Barnes* 300. See *id.* 306, 307.

Where

Where the plaintiff may give a ſhort notice of trial, as where the defendant has had time given him to plead on taking ſhort notice of trial, the plaintiff muſt give him as much notice as he can; two days at leaſt. *Barnes* 301.

Where the plt. may give ſhort notice, he muſt give as much as he can.

If the plaintiff ought to give 14 days notice of trial, if he was to proceed to trial, and the defendant intends to have the cauſe tried by proviſo, he muſt give the ſame notice of trial as the plaintiff ſhould have done. *Barnes* 299.

For trial by proviſo def. muſt give the ſame notice as plaintiff ſhould have done.

The next thing to be done is to enter the iſſue, and prepare the *Niſi prius* record for trial, which muſt be ingroſſed on a piece of parchment ſtamped with a double half-crown ſtamp, which you muſt do in this manner:

Of making up the Niſi prius *record.*

In the Common Pleas.

Pleas at Weſtminſter, *before Sir* William De Grey, *knight, and his companions, juſtices of our lord the king of the bench, of* Eaſter *Term in the ſeventeenth year of the reign of our ſovereign* George *the third, by the grace of God, of* Great Britain, France, *and* Ireland, *king, defender of the faith,* &c.

Roll.

Middleſex, *to wit,* C. L. late of, &c. gentleman, was attached to anſwer *R. R.* of a plea of treſpaſs, on the caſe; and where-

upon the ſaid *R. R.* by *J. S.* his attorney complaineth, that whereas, *&c.* (*to the end of the iſſue and award of the* Venire.)

Note; In the *Common Pleas* the *Placita* is wrote but once, except on the death or change of a chief juſtice, or on an old record, in which caſe you write a ſecond *Placita*; then you write the *Jurata* in this manner.

Middleſex, *to wit*, THE jury between *R. R.* plaintiff, and *C. L.* late of, *&c.* gentleman, in a plea of * treſpaſs on the caſe, are reſpited here until on the morrow of the Holy *Trinity* (the return of the *Habeas corpora juratorum*, and which ſhould be the next return after the day of trial) unleſs Sir *Eardely Wilmot*, knight, the king's chief juſtice of the bench, here aſſigned by form of the ſtatute in that caſe made and provided, ſhall come before, on *Tueſday*, the day of [*the day of the ſittings*] at *Weſtminſter*, in the great hall of pleas, there, commonly called *Weſtminſter-hall*, in the ſaid county of *Middleſex* (if in *London*, ſay, at the *Guildhall* of the city of *London* aforeſaid) for default of the jurors, becauſe none came: Therefore let the ſheriff have the bodies of the ſeveral perſons mentioned in the panel annexed to the writ of *Habeas corpora juratorum*. And be it known

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* In replevin ſay, taking and unjuſtly detaining the cattle of the ſaid *R.*

that

that the juſtices here in court in this ſame term delivered a writ thereupon to the deputy of the ſheriff of the county aforeſaid, to be executed in form of law, *&c.*

If the trial is to be had at the aſſizes, the form of the *Jurata* is as follows:

Lincoln, *to wit*, THE jury between *R. R.* plaintiff, and *C. L.* late of, *&c.* gentleman, in a plea of treſpaſs on the caſe, is reſpited here until on the morrow of *All Souls*, unleſs our lord the king's juſtices, aſſigned to take the aſſizes in the county aforeſaid by form of the ſtatute in that caſe made and provided, ſhall come before on (*the day the aſſizes are to be held*) at (*the place where they are to be held*) in the county aforeſaid, for default of the jurors, becauſe none came: Therefore, *&c.* (*as before.*) *For the aſſizes.*

When the *Niſi prius* record is prepared, you are to carry it, and the roll whereon you have entered the iſſue, to the proper prothonotary, who on being paid for the entry will mark both the record and roll; then you go to the clerk of the treaſury, who will examine and ſee that the *Jurata* is rightly entered, and ſign and ſeal the record.

No record of *Niſi prius* is to be ſigned before the iſſue be entered upon the roll. *Mich.* 1654. *Paſ.* 5 *W. & M.* *No record of Ni. Pri. to be ſigned before iſſue entered.*

And all iſſues are to be entered of the term they are joined. *Paſ.* 5 *W. & M. Hil.* 11 *Geo.* 1. *Iſſues to be entered the ſame term they are joined.*

Every

In what manner records of Niſi prius *are to be ingroſſed.*

Every record of *Niſi prius* is to be ingroſſed in a fair legible character, and ſo entered on the roll; the beginning of every pleading to begin with a new line, and the firſt word in a greater character than the reſt; and in all actions that have divers narrs, [*i. e.* counts] notice thereof muſt be given by figures in the margin of ſuch record of *Niſi prius*; and all records of *Niſi prius* that ſhall be ingroſſed in this court are to be of the exact breadth of the rolls of the court, and no broader or leſſer. *Trin.* 29 *Car.* 2.

Within what time they muſt be made up for the aſſizes.

Records of *Niſi prius* for trials at the aſſizes ſhall be ſigned by the reſpective prothonotaries, and ſigned and ſealed by the clerk of the treaſury within the ſpace of three weeks next after the end of every *Hilary* term, and of every *Trinity* term, and not afterwards unleſs by ſpecial order. *Trin.* 29 *Car.* 2.

No record of Niſi prius *to be ſealed, unleſs ſigned by the clerk of the warrants.*

The clerk of the treaſury ſhall not ſign or ſeal any record of *Niſi prius*, unleſs the ſame ſhall be firſt ſigned or ſtamped by the clerk of the warrants. *Hil.* 2, 3 *Jac.* 2.

Attendance will be given for ſealing records of *Niſi prius*, in this court, *viz.*

For *London* and *Middleſex* at the treaſury office, in *Weſtminſter-hall*, during the term, and the ſettings for *Middleſex*, from the ſitting to the riſing of the court;

For *London* after the ſittings for *Middleſex* are over, at the lord chief juſtice chambers, in *Serjeants Inn*, from 5 to 7 o'clock, in the afternoon during the ſittings in *London*.

For

For the aſſizes, at the *L. C.* juſtice's chambers from 10 to 12 o'clock in a forenoon, and from 5 to 7 in an afternoon, as uſual, during the time of the aſſizes. By notice fixed up in the common pleas office, tempore *Wilmot* Ch. J.

As no continuances are neceſſary to be inſerted in the record of *Ni. Pri.* if defendant dies after iſſue joined, and before the day of *Ni. Pri.* ſuggeſtion thereof, and award of *Ven. Fa.* entered on the roll after trial, ſufficient. *Barnes* 469.

No record or writ of *Ni Pri.* is received at any ſitting after Term in * *Middleſex*, unleſs delivered to, and entered with the marſhal within two days after the laſt day of every term. Rule of *E.* 2 *Geo.* 3. *C. B.* *Barnes* 494.

The form of a Venire facias.

Venire facias.

GEORGE the third, by the grace of God, of *Great Britain*, *France*, and *Ireland*, king, defender of the faith, &c. To the ſheriff of *Eſſex*, greeting. We command you, that you cauſe to come before our juſtices at *Weſtminſter*, on the morrow of the *Purification* of the bleſſed *Mary*, twelve free and lawful men of the body of your coun-

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* Nor in *London*, unleſs entered the day before the day, to which the ſitting is adjourned. Same rule. *Barnes* ib,

	s.	d.
Duty	2	0
Signing	1	4
Seal	0	7
	3	11

ty, each of whom has ten pounds of lands, tenements or rents by the year at leaſt, by whom the truth of the matter may be better known, and who are in no ways of kin, either to *R. K.* the plaintiff, or to *J. W.* late of, &c. or to *W. S.* late of, &c. [*if the defendant be declared againſt with an* Alias dict', *or as an executor or an adminiſtrator, he muſt be here deſcribed as in the pleadings*] to make a certain jury of the county between the parties aforeſaid, in a plea of taking and unjuſtly detaining cattle [*as the action is*] becauſe as well the ſaid *J. W.* and *W. S.* (*the party who firſt takes the iſſue,*) as the ſaid *R. R.* between whom the matter in variance is, have put themſelves upon that jury; and have there the names of the jurors and this writ. Witneſs Sir *William De Grey*, knight, at *Weſtminſter*, the 23d day of *January* in the ſeventh year of our reign.

Dickins.

Inſert the cauſe of action in the *Venire* as the caſe ſhall be, thus:

Debt. In a plea of debt.

Caſe. In a plea of treſpaſs on the caſe.

Aſſault. In a plea of treſpaſs and aſſault.

Aſſault and impriſonment. In a plea of treſpaſs, aſſault and impriſonment.

Ejectment. In a plea of treſpaſs and ejectment of farm.

Covenant. In a plea of breach of covenant.

Replevin. In a plea of taking and unjuſtly detaining cattle.

Detinue. In a plea of detaining goods, or writings.

If

If the defendant carries down the cauſe to be tried by proviſo, the writ runs thus:

And have here the names of the jurors and this writ; provided always, that if two writs ſhall thereupon come to you, that you only return one of them to our ſaid juſtices at *Weſtminſter*, at the time aforeſaid. *By proviſo.*

You carry this writ to the prothonotary to be ſigned, for which you pay him 1 *s.* 4 *d.* and then to the ſeal office to be ſealed, for which you pay 7 *d.*

When you have this writ returned by the ſheriff, you carry it to the clerk of the jury, and he will make out a writ of *Habeas corpora juratorum*, which you carry to the ſheriff, and he alſo returns.

The form of the Habeas corpora juratorum.

Habeas corpora. Officina brev. 140.

GEORGE the third, by the grace of God, of *Great Britain*, *France*, and *Ireland*, king, defender of the faith, &c. To the ſheriff of *E.* greeting. We command you, that you have before our juſtices at *Weſtminſter*, from the day of *Eaſter* in 15 days [*the day in bank the next return after the trial*] or before our juſtices aſſigned to take the aſſizes in your county, by force of the ſtatute in that caſe provided, if they ſhall come before, on the day of [*the day the aſſizes are held*] at [*the place where*] in your county, the bodies of the ſeveral perſons

	s.	*d.*
Fi Ven.	0	4
Ha. Co.	1	8
Duty	2	0
Seal	0	7
	4	7

ſons named in the panel annexed to this writ, jurors ſummoned in our court before our juſtices at *Weſtminſter*, between *R. K.* plaintiff, and *J. W.* late of, *&c.* and *W. S.* late of, *&c.* of a plea of taking and unjuſtly detaining cattle, [*as the action is*] to make that jury; and have there this writ. Witneſs Sir *William De Grey*, knight, at *Weſtminſter*, the day of in the year of our reign.

Harriſon.

The form of the Subpœna ad teſtificandum.

Subpœna ad teſtificandum.

s. d.
Duty 2 0
Signing 1 0
Seal 0 7
3 7

GEORGE the third, by the grace of God, of *Great Britain*, *France*, and *Ireland*, king, defender of the faith, *&c.* To *A. B. C. D. E. F.* and *G. H.* greeting. We command, and firmly injoin you and each of you, that laying all other matters aſide, and notwithſtanding any excuſe, you be in your proper perſons before our juſtices at the aſſizes to be held, at [*the place where the aſſizes are to be held*] in the county of *S.* on [*the day when*] next enſuing, to teſtify and ſpeak the truth in a certain matter of controverſy pending undetermined in our court before our juſtices at *Weſtminſter* between *A. B.* plaintiff, and *C. D.* late of *E.* in the ſaid county of *S.* gentleman, defendant, in a plea of treſpaſs; [*as the action is*] and this you are not to omit, nor is any one of you to omit, under

under the penalty on each of you of one hundred pounds. Witneſs Sir *William De Grey*, knight, at *Weſtminſter*, the day of in the year of our reign.

Cooke.

If the trial be to be had in *London*, you ſay thus,—That, *&c.* you be before Sir *John Eardley Wilmot*, knight, our chief juſtice of the bench at *Guildhall*, *London*, on [*the day of ſittings*] to teſtify, *&c.*

If in *Middleſex* thus; before Sir *John Eardley Wilmot*, knight, our chief juſtice of the bench at *Weſtminſter*, in the great hall of pleas there, called *Weſtminſter-hall*, to teſtify, *&c.*

This *Subpœna* you carry to the proper prothonotary to be ſigned, for which you pay 1 *s.* and to the ſeal-office to be ſealed, for which you pay 7*d.* and then you make out tickets for each of the witneſſes in the following form:

Mr. *R. B.*

By virtue of a writ of *Subpœna* to you directed, and herewith ſhewn unto you, you are commanded perſonally to be and appear before his majeſty's juſtices of aſſize [*or the chief juſtice as before directed, according as the caſe is*] at [*the place*] on the day of by of the clock in the noon of the ſame day, to teſtify the truth, according to your knowledge, in a certain cauſe now depending, and Subpœna *ticket.*

there

there to be tried between *A. B.* plaintiff, and *C. D.* late of in the county of gentleman, defendant, in a plea of trespass [*as the action is*] on the part of the plaintiff [*or the defendant, if at his instance subpœna'd*] and hereof you are not to fail, upon pain of one hundred pounds. Dated the day of in the year of our Lord 1778, and in the year of the reign of our sovereign lord *George* the third, king of *Great Britain*, &c.

J. R. attorney.

Cause to be entered with marshal. Formerly four days before the day of trial.

Before you go to trial you must enter your cause with the judge's marshal.

Causes to be tried in *London* or *Middlesex* ought to be entered in the marshal's book four days before the day of trial. *Mich.* 1654.

Now two.

But notwithstanding this rule, and though there is none other to the contrary, two days at this time are reckoned sufficient.

Records to be brought in before the sittings after term.

Ne recipiatur shall be allowed to be entered for the sittings at *Nisi prius* after every term, unless the records of *Nisi prius* and the writs be made up and brought into court on or before the days and sittings respectively. *Hil.* 8 *Geo.* 1.

On circuit writ and record to be entered together.

In every cause to be tried in the circuits, the writ and record shall be entered together, and no record shall be received without the writ. *Trin.* 10 & 11 *Geo.* 2.

On circuit in what time record to be

No writ and record of *Nisi prius* shall be received at the assizes in any county in *England*,

land, unleſs they ſhall be delivered to, and entered with the marſhal, before the firſt ſitting of the court after the commiſſion-day, except in the counties of *York* and *Norfolk*; and there the writs and records ſhall be delivered to, and entered with the marſhal before the firſt ſitting of the court, on the ſecond day after the commiſſion-day, otherwiſe they ſhall not be received. *Hil.* 14 *Geo.* 2. *brought and entered.*

Every cauſe ſhall be tried in the order in which it is ſo entered, without any preference or delay, unleſs it ſhall be made out to the ſatisfaction of the judge in open court, that it is impracticable or inconvenient ſo to do, who thereupon may make ſuch order for the trial of the cauſe, ſo put off, as to him ſhall ſeem juſt. *Same rule.* *Cauſes to be tried in the order entered.*

A liſt of the cauſes, when ſo entered as aforeſaid, ſhall be made by the marſhal, and forthwith fixed up in ſome public place in the *Niſi prius* court, there to remain during the whole time of the aſſizes. *Same rule.* *Liſt of cauſes to be made and hung up.*

If the cauſe be to be tried in *London* or *Middleſex*, you pay, for entering the cauſe with the marſhal, 13 *s.* 9 *d. viz.* the chief juſtice 10 *s.* 9 *d.* Marſhal 2 *s.* Aſſociate 1 *s.* *Entring fee in* London *or* Middleſex.

If the trial be at the aſſizes, the fee for entering the cauſe is but 11 *s.* 8 *d. viz.* the judge 6 *s.* 8 *d.* Clerk of aſſize 2 *s.* Marſhal 2 *s.* Cryer 1 *s.* *At the aſſizes.*

If the plaintiff gives notice of trial for the aſſizes, and don't bring the trial on, he can't go down to trial again without new notice, unleſs by conſent or rule of court. *If plt. don't go to trial at aſſizes, muſt give new notice.*

In London *or* Middlesex *may give new notice, before the day of sitting, for the next sitting.*

But in *London* or *Middlesex*, if the plaintiff gives notice of trial for one sitting, and be not provided to proceed, he may give notice before that sitting, that he will try it at the next sitting. *Mich.* 1654.

Plt. can continue his notice but once.

The plaintiff cannot continue his notice of trial a second time, *i. e.* he can give short notice of trial but once; but if the full time be given by the notice of continuance the word *continue* will not vitiate the notice. See *Barnes* 301. *Rich. Pract. Reg.* 394. *Co. Cas.* 146.

Can't countermand and continue in the same notice.

The plaintiff gave notice of trial for the first sitting within term, then gave notice that he countermanded the notice of trial for the first sitting, and continued it for the second; the defendant made no defence at the trial, and the plaintiff had a verdict. But on a motion the court said the plaintiff could not countermand and continue in the same notice, and set the verdict aside. *Smith* v. *Hough*, *Hil.* 11 *Geo.* 2. *Barnes* 301. *Pract. Reg. C. P.* 394. *Rep. and Cas. of Pract. C. P.* 146.

If plt. don't proceed to trial according to notice, nor countermand, he shall pay costs.

In case the plaintiff gives notice of trial, and don't go to trial accordingly, the defendant upon motion shall have his costs of attendance, to be taxed by the prothonotary, unless the plaintiff countermand his notice in convenient time, or shew cause to be allowed by the court in excuse of such costs. *Mich.* 1654.

Both p't. and def. giving notice of trial, and neither proceeding to trial, each paid costs.

The defendant gave notice of trial by proviso, and the plaintiff also gave notice of trial; neither went on to trial, or countermanded, and both got rules for costs for not going on to trial; the prothonotary doubted whether both

both were intitled to coſts, and the judges were of opinion, that as both ſides gave notice of trial, and neither proceeded to trial, each ſide was intitled to coſts. *Reading* v. *Grafton*, *M.* 13 *Geo.* 1. *Pract. Reg.* 405.

Countermand at the aſſizes.

No countermand of trial at the aſſizes ſhall be good unleſs notice be given two days before the commiſſion-day. *Mich.* 5 *Geo.* 1. The commiſſion-day on a *Monday*, a countermand on the *Saturday* held to be regular. See *Barnes* 305.

In London *and* Middleſex.

And in *London* or *Middleſex* the countermand muſt be two days before the ſitting for which notice was given. See *Barnes* 298. *Antea, fol.*

Counterm. after record made a Remanet.

Notice of trial may be countermanded after the record is made a (*a*) *Remanet.*

Coſts of a former aſſizes, when a cauſe is made a *Remanet*, not allowed, unleſs by conſent of parties expreſſed in a rule or order entered into for that purpoſe. *Barnes* 150, 153.

Where cauſe goes off by conſent on withdrawing a juror, and reference to arbitrators, and no award being made, cauſe is again brought on to trial; the coſts of the firſt, ſhall attend the event of the ſecond trial, as well in this caſe as that of a *Remanet.* Rule of *H.* term, 8 *Geo.* III.

(*a*) That is to ſay, *remains* untried without any fault of the parties, and is therefore on the front of the paper of cauſes for the next ſitting. *Rayn.* Read on *ſtat.* 2 *Geo.* II. chap. 23, 4*to. p.* 127, in notes.

Coſts for the future are to be allowed when a cauſe goes off, and *remains* to be tried, for want of jurors. 2 *Wilſ.* 366.

When on default of the plaintiff's going to trial the court ſhall give judgment of nonſuit.

Where iſſue is or ſhall be joined, and the plaintiff hath neglected or ſhall neglect to bring ſuch iſſue on to be tried, according to the courſe and practice of the court, it ſhall be lawful for the judges at (*b*) any time after ſuch neglect, upon motion made in open court (due notice having been given thereof) to give the like judgment for the defendant as in caſes of nonſuit, unleſs the judges ſhall upon juſt cauſe and reaſonable terms allow any further time or times for the trial of ſuch iſſue. And if the plaintiff ſhall (*c*) neglect to try ſuch iſſue within the time or times ſo allowed; then and in every ſuch caſe the judges ſhall proceed to give ſuch judgment as aforeſaid. *Stat.* 14 *Geo.* 2. *c.* 17. *ſ.* 1.

Of obtaining judgment, as in caſe of a nonſuit, for not proceeding to trial, in due time.

If plaintiff doth not proceed to try his cauſe in due time, defendant is intitled to judgment as in caſe of a nonſuit, by virtue of the above ſtatute; in order to obtain which, a rule muſt in the firſt place be given for plaintiff to enter the iſſue on record, (which is a four day rule, excluſive of the day of ſervice) if he fails in this, defendant may

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(*b*) The court was of opinion, that defendant ought to apply for judgment on this act, the very next term after default; *Barnes* 314. See *Id.* 318. but I conceive as the act is general, *any time after ſuch neglect*, no court of juſtice can limit the time of application.

(*c*) This ſtatute is founded on neglect. *Barnes* 315.

have

have the like judgment, as in caſe of a (*d*) nonſuit.

When the roll is brought in, either in purſuance of a rule or without, it will be neceſſary to give the officer (*e*) of the court, in whoſe cuſtody the roll or record is, notice to produce the ſame; notice alſo muſt be given of the (*f*) motion, and there muſt be an affidavit of the ſtate of the proceedings, of plaintiff's default in trying the (*g*) cauſe; and alſo of the ſervice of the notice of motion; upon reading of which affidavits, and of the entry of the iſſue on record (*h*); court will make a rule for plaintiff to ſhew cauſe, why the like judgment ſhould not be given for the defendant, as in the caſe of a nonſuit; which, upon no ſufficient cauſe being ſhewn, will be ordered accordingly.

(*d*) *Barnes* 313.

(*e*) Viz. The clerk of the jurats, or the under clerk of the Treaſury, Mr. *George Stubbs*, who reſides near Old Palace Yard *Weſtminſter*, and is Treaſury-keeper, and as he lives ſo near the repoſitory of the rolls of this court, the ſame being under the *Exchequer*, on the right hand, as you enter *Weſtminſter* Hall Gate, from Old Palace Yard, you may meet with him or his clerk almoſt any hour in term time.

(*f*) But not a terms notice in any caſe. *Barnes* 308.

(*g*) Objection, by plaintiff's council, that, in order to ſupport a motion on this act, there ought to have been an affidavit, *that the cauſe was not tried*; and it was allowed, and rule *Niſi* diſcharged. *Barnes* 316 This affidavit muſt not be ſworn before plaintiff's attorney. *Barnes* 313.

(*h*) *Barnes* 313.

Cauſes held ſufficient, by the court, to prevent a nonſuit on this act of parliament.

1. Plaintiff's own illneſs. *Barnes* 313.

2. That plaintiff's attorney died by the hand of God. *Barnes* 315.

3. That defendant, by ſome act of his, hindered the trial of the cauſe. *Barnes* 315, 498. See *Id.* 443.

4. Plaintiff's marriage, for thereby the ſuit is abated *de facto*. *Barnes* 314.

5. Plaintiff's witneſſes being diſabled with the gout. *Barnes* 316.

When a further time is granted, the court appoints a time for the trial, as at the next aſſizes, or at ſome ſitting in *London* or *Middleſex*, according as where the action is to be tried. *Barnes* 313. If the defendant applies for coſts for not going to trial, purſuant to notice, he has made his election, and cannot move for judgment, as in caſe of a nonſuit. *Barnes* 131, 314, 315, 316. Though further time for going to trial hath been given, yet upon reaſonable cauſe it may ſtill be enlarged, notwithſtanding the word (*i*) *peremptory* in the rule. Such judgment may be given in an action *Qui tam*, *&c.* or replevin. *Barnes* 315, 316, 318. Where the excuſe for not proceeding to trial, according to the rules of the court, is a ſufficient excuſe, the court, on

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(*i*) The word *peremptory* in the rule doth not preclude the court from a further enlargement of the time, if they think it reaſonable; it is wrong to inſert the word *peremptory*, for the ſecond excuſe may be better than the firſt. *Barnes* 315.

giving

giving further time, will not make the plaintiff pay the coſts of the application, but only the coſts for not proceeding to trial. *Barnes* 316, 317, 318.

For trial at ſittings after term, no Ne recipiatur *till after proclamation.*

You cannot, on notice of trial for the ſittings after term, enter a *Ne recipiatur* till after proclamation made for bringing the records in.

Motion to put off a trial when.

Motion to put off a trial, for that a material witneſs is out of the way, and cannot be had at the trial, muſt be made at leaſt two days before the day for which the notice of trial was given. *Rep. & Caſ. of Pract. C. P.* 93, 105, 150. *Pract. Reg. C. P.* 399, 400. *Barnes* 437, 440, 442, 444.

Not to be granted if the witneſs was in the way when notice of trial given.

But if it appears that this witneſs, who is ſworn to be a material witneſs, went out of town or abroad beyond ſea after the notice of trial was given, the court will not put off the trial for it; the defendant might have ſubpœna'd him in time. *Barnes* 437.

Party applying for a ſpecial jury to pay the whole expence; and not allowed more than for a common jury.

The perſon, or party, who ſhall apply for a ſpecial jury, ſhall not only bear and pay the fees for ſtriking ſuch jury, but ſhall alſo pay and diſcharge all the expences occaſioned by the trial of the cauſe by ſuch ſpecial jury; and ſhall not have any farther or other allowance for the ſame, upon taxations of coſts, than ſuch perſon or party would be intitled unto, in caſe the cauſe had been tried by a common jury; unleſs the judge, before whom the cauſe is tried, ſhall, immediately after the trial, certify in open court under his hand, upon the back of the record, that the

Unleſs, &c.

ſame was a cauſe proper to be tried by a ſpecial jury. *Stat.* 24 *Geo.* 2. *c.* 18.

What allowance to ſuch jury for ſerving.

No perſon who ſhall ſerve upon a ſpecial jury, or be returned, ſhall be allowed or take for ſuch ſerving on any ſuch jury, more than the judge who tries the cauſe ſhall think juſt and reaſonable, not exceeding 1 *l.* 1 *s.* except in cauſes wherein a view hath been directed. *Same ſtat.*

Venire *on a penal ſtat. to be* de corpore com'.

Every *Venire* for the trial of any iſſue in any action or information, upon any penal ſtatute, ſhall be awarded of the body of the proper county where ſuch iſſue is triable. *Same ſtat.*

On trials at bar, plt.'s attorney to give notice of the day to chief prothonotary.

On trials at bar, which are to be moved for, the plaintiff's attorney muſt before the eſſoin-day of the term, in which the cauſe is appointed to be tried, give notice to the chief prothonotary or his ſecondary, of the day on which ſuch cauſe is to be tried, that the ſame may be put down in the court-book; and in caſe of neglect, and without motion and ſpecial direction of the court, ſuch cauſe ſhall not be tried that term. *Hil.* 9 *Ann.*

On trials at bar, judges to have copies of the iſſues 4 days before trial.

On trials at bar, the lord chief juſtice and the other judges are to have copies of the iſſues in ſuch cauſes delivered to them four days before the time appointed for trial. *Mich.* 3 *Geo.* 2.

Clerks of aſſize and aſſociate to return Poſtea's.

Every clerk of aſſize, and the aſſociate to the lord chief juſtice, ſhall make returns of *Poſtea's* upon records iſſuing out of this court, whereupon any proceedings have been by virtue of any writ of *Niſi prius*, *Diſtringas*, or *Habeas corpora juratorum*, and cauſe the ſame

to

to be delivered to the respective prothonotaries, upon the *Quarto die post* of the return of the writ of *Nisi prius* in bank, under the penalty of 20 *l.* And, that all excuses may be taken away, the respective clerks of assize and associate at the trial shall take the fees due to them respectively for the return of every such *postea*. *Pasch.* 2 *Jac.* 2.

After the trial is over, and the record is returned with the *postea* ingrossed, you get the *postea* stamped with a double half-crown stamp, and apply to the prothonotary to tax your costs, and then deliver the record and *postea* to the clerk of the judgments, who continues the same on the roll, and awards judgment.

Postea *to be left with clerk of the judgments.*

Where final judgment shall be signed upon a *postea*, the *postea* shall immediately be left with the clerk of the judgments of the prothonotary, and shall not afterwards be taken out of the office without leave of the court. *Trin.* 13 *Geo.* 2.

Of special verdicts.

In case a special verdict be found, the plaintiff's attorney must enter the proceedings to the end of the special verdict on record, and deliver it to the secondary in court, and get a serjeant to move for a *Concilium*, or day for argument, then draw up the rule, and serve it on the defendant's attorney.

Paper-books on special verdicts or demurrers how to be delivered.

In causes entered in the court-book for argument at the bar on special verdicts or demurrers, the attornies concerned in the cause shall deliver true copies of the record to the respective justices of the court, by the space of one week at least next before the day appointed

pointed for ſuch argument; namely, the attorney for the plaintiff, one copy thereof to the lord chief juſtice, and another to the ſenior judge; and the attorney for the defendant like copies to each of the other two juſtices. *Paſch.* 27 *Car.* 2.

No argument till books delivered.

No arguments by counſel on either ſide ſhall be heard at the bar, until books be delivered to all the judges. *Same rule.*

If either neglect, the other ſide may deliver all the books.

In caſe the attorney of either party ſhall not deliver books as he ought; then if the attorney on the other ſide, for expediting his client's cauſe, will deliver books to all the judges three days at the leaſt before the argument, counſel ſhall be heard on his client's behalf, at the day appointed, and the attorney delivering books as aforeſaid ſhall be reimburſed the charges of delivering the two books, which ought to have been delivered by the attorney of the adverſe party, which charges the ſaid attorney ſhall be bound to pay upon the demand thereof. *Same rule.*

And be reimburſed by the attorney making default.

If not paid before judgment, to be allowed in coſts.

If the charges of delivering the ſaid two books ſhall not be paid before judgment ſhall be given in the cauſe, the charges of delivering the ſaid books ſhall be allowed upon taxing coſts, and in that caſe the attorney ſhall not be compelled to pay the ſaid coſts; but if no coſts are to be taxed in the caſe, then the attorney making default in delivering of the books as aforeſaid, ſhall be compelled to pay the charges of the copies ſo delivered by the attorney of the adverſe party, by attachment or otherwiſe, as the court ſhall think fit. *Same rule, vide poſtea.*

If no coſts, attachment againſt attorney making default.

A motion in arreſt of judgment muſt be made within the firſt four days, *i. e.* before, or on the appearance day of the return of the *Habeas corpora juratorum*. *Barnes* 445.

Motion in arreſt of judgment, when.

If the motion be on the laſt day of term, the party, who moves an arreſt of judgment, muſt produce an affidavit, that he has given notice of his motion to the other ſide.

Notice, if on the laſt day of term.

After a motion in arreſt of judgment the party can't move to ſet aſide the verdict, unleſs it be upon a matter diſcloſed after the motion in arreſt of judgment, and the motion to ſet aſide the verdict be made before judgment pronounced. See *Barnes* 441, 443.

Not after motion to ſet aſide verdict; unleſs, &c.

Verdicts have been frequently ſet aſide for exceſſive damages, but never for ſmallneſs of damages; but ſee *Barnes* 448, 455.

Verdict ſet aſide for exceſſive damages.

A motion for a new trial can't be made after the appearance-day of the return of the *Habeas corpora juratorum*, unleſs the foundation of the motion be ſome matter diſcovered afterwards.

Motion for new trial,

Where the iſſue lay on the defendant, as *Solvit ad diem*, *Son aſſault*, &c. and the defendant's witneſſes have been examined, the court ſeldom grants a new trial.

Seldom, when iſſue lay on defendant.

In ejectment, where a verdict is for the defendant, it is not uſual to grant a new trial, becauſe the plaintiff may bring a new ejectment, and no other diſadvantage happens to him; but where the verdict is for the plaintiff, a new trial is often granted; for then the conſequence of not granting a new trial is the alteration of the poſſeſſion of the premiſſes. See *Barnes* 440.

Seldom in ejectment, if verdict pro D. *aliter if* pro Q.

When

When final judgment is obtained, the party is to proceed to execution; of which see hereafter.

As we spoke of issues triable by juries, we shall say something of issues triable by the judges, or by record, as on demurrers, and pleas of *Nul tiel record*.

Of demurrers.

General demurrer to a declaration.

AND the said *W.* by *A. R.* his attorney cometh and defendeth the force and injury, when, &c. and saith, that the said declaration in form aforesaid made and declared, and the matter therein contained, are not sufficient in the law for the said *S.* to have or maintain his said action against him the said *W.* and that he the said *W.* hath no need, nor is he obliged by the law of the land to answer the said declaration in manner and form aforesaid made and declared: And this he is ready to verify: Wherefore for want of a sufficient declaration in this behalf, the said *W.* prayeth judgment, and that the said *S.* may be barred from having his said action against him the said *W.* &c.

Joinder.

And the said *S.* inasmuch as he hath above declared sufficient matter in the law to have and maintain his said action against the said *W.* which he is ready to verify; which said matter the said *W.* hath not denied, or given any answer thereto, but intirely refuseth to admit the verifying the same; the said *S.* prayeth judgment, and his damages by occasion

caſion of the premiſſes to be adjudged to him, *&c.*

And becauſe the juſtices here will adviſe themſelves of and upon the premiſſes before they give their judgment thereon, day is given to the ſaid parties here from the day of St. *Martin* in fifteen days to hear their judgment, for that the ſaid juſtices here are not yet adviſed thereof, *&c.* Concilium.

And the ſaid *R. D.* by *T. C.* his attorney cometh and defendeth the force and injury, when, *&c.* and craveth oyer of the ſaid writ of our lord the king of privilege; and it is read to him in theſe words, *to wit*, *George* the ſecond, *&c.* [ſetting forth the whole writ *in hæc verba.*] Witneſs Sir *Robert Eyre*, knight, at *Weſtminſter*, the third day of *July*, *&c.* which being read and heard, the ſaid *W.* prayeth judgment of the ſaid writ and declaration aforeſaid of him the ſaid *W.* becauſe he ſaith, that the ſaid writ, and the declaration thereupon aforeſaid, in manner and form aforeſaid made and declared, and the matter in them contained, are not ſufficient in the law for the ſaid *W.* to have and maintain his action aforeſaid againſt him the ſaid *R.* to which ſaid writ and declaration in manner and form aforeſaid made and declared he had no need, nor is he by the law of the land held or obliged, in any manner to anſwer; And this he is ready to verify; wherefore, and for want of a ſufficient writ and declaration in this behalf, the ſaid *R.* prayeth judgment, and that the ſaid *W.* from his action aforeſaid may be debarred, *&c.* and for cauſes of demurrer

3 Lev. 130. *Special demurrer to a writ and declaration, at the ſuit of any attorney.* *Oyer of the writ.*

murrer in law in this behalf he the ſaid *R.* according to the form of the ſtatute in ſuch like caſes made and provided, ſheweth to the court theſe following; that is to ſay, for this, that it appeareth to this court, that the ſame writ of our ſaid lord the king of privilege was had and ſued out upon the third day of *July* in the eighth year of the reign of our ſaid lord the king, which day of ſuing out thereof was before the day on which the ſaid *W.* has in his ſaid declaration thereupon alledged and declared, that the ſaid treſpaſſes, aſſaults, batteries, woundings and impriſonments, charged upon him the ſaid *R.* in and by the ſaid declaration, were done and committed; and alſo for this, that between the writ and declaration are diverſe variances; and alſo for this, that the ſaid declaration in form aforeſaid made and declared is in itſelf repugnant, inſenſible, contradictory, and wanteth form, and ſo forth; and hereupon the ſaid *R. D.* demandeth the aforeſaid *W. O.* to join in demurrer with him the ſaid *R.* And hereupon a day is given by the court of our ſaid lord the king of the bench here, to the ſaid *W.* before his majeſty's juſtices at *Weſtminſter*, until next after to join in the demurrer in law with the ſaid *R.* And the ſaid *W.* at the ſame day being ſolemnly required came not, neither is his writ of our ſaid lord the king of privilege aforeſaid againſt the ſaid *R.* further proſecuted, but he made default: Therefore it is conſidered, that the ſaid *W.* take nothing by his ſaid writ, but that he and his pledges to proſecute, to wit, *J. D.* and *R. R.*

Writ teſted before the cauſe of action.

Variance, &c.

Day for plaintiff to join in demurrer.

Plaintiff makes default.

Judgment againſt the plaintiff.

R. R. be thereof in mercy, *&c.* and that the ſaid *R.* do go thereof without day, *&c.* And further it is conſidered by the court here, that the ſaid *R.* recover againſt the ſaid *W.* 3*l.* 16*s.* 8*d.* for his expences and coſts by him about his defence in this part ſuſtained, to the ſaid *R.* by the court here, according to the form of the ſtatute in ſuch caſe lately made and provided, adjudged, *&c.* and that the ſaid *R.* have his execution for the ſame, *&c.*

And the ſaid *C.* ſaith, that the aforeſaid plea of the ſaid *F.* above pleaded in bar, is not ſufficient in law to bar him the ſaid *C.* from his ſaid action againſt the ſaid *F.* and that he the ſaid *C.* hath no need, nor is bound by the law of the land, to anſwer to the ſaid plea in manner and form aforeſaid pleaded; and this he is ready to verify: Wherefore for default of a ſufficient plea in this behalf the ſaid *C.* prayeth his ſaid debt, together with his damages by occaſion of detaining that debt, to be adjudged to him, *&c.* *General demurrer to a plea.*

And the ſaid *F* for that he hath above alledged ſufficient matter in law to bar the ſaid *C.* from having his ſaid action againſt him the ſaid *F.* which he is ready to verify, which ſaid matter the ſaid *C.* hath not denied, nor any ways anſwered thereunto, but wholly refuſeth to admit the verification thereof, prayeth judgment, and that the ſaid *C.* may be barred from having his ſaid action, *&c.* And becauſe the juſtices, *&c.* *Joinder.*

And the ſaid *J. S.* and *M.* by *C. B.* their attorney, come and defend the force and injury, *Demurrer to declaration for not alledging*

that administration was granted to defendant.

injury, when, &c. and pray judgment of the ſaid declaration: Becauſe they ſay, that the ſaid declaration and the matter therein contained are not ſufficient in law to maintain the action of the ſaid *D.* againſt them the ſaid *J. S.* and *M.* to which ſaid declaration the ſaid *J. S.* and *M.* have no need, nor are they obliged by the law of the land to anſwer; and this they are ready to verify: Wherefore for want of a ſufficient declaration in this caſe, the ſaid *J. S.* and *M.* pray judgment of the ſaid declaration, and that the ſame may be quaſhed, &c. And the ſaid *J. S.* and *M.* according to the ſtatute ſhew the cauſes of demurrer following, *to wit*, that it is not alledged in the ſaid declaration how, or by whom letters of adminiſtration were granted; nor is it alledged that adminiſtration was ever granted to the ſaid *J. S.* and *M.* And alſo that the ſaid declaration is uncertain and wanteth form.

Special demurrer to a plea of Nil debet *to a bail bond.*

And the ſaid *E. H.* ſaith, that the ſaid plea of him the ſaid *F. S.* in manner and form aforeſaid above pleaded, and the matter therein contained, are not ſufficient in law to bar the ſaid *E.* from having his ſaid action againſt him the ſaid *F.* and that he the ſaid *E.* hath no need, nor is he obliged by the law of the land to anſwer the ſaid plea of him the ſaid *F.* in manner and form aforeſaid above pleaded; and this he is ready to verify: Wherefore for want of a ſufficient plea in this behalf the ſaid *E.* prayeth judgment, and that his ſaid debt, together with his damages by reaſon of the detaining of that debt, may be adjudged to him,

him, &c. And for causes of demurrer in Law in this behalf, the said *E.* according to the form of the statute in such cases made and provided, sheweth to the court here these causes following; (that is to say) for this, that the said *F. S.* hath not by his said plea particularly denied nor confessed the said deed in the said declaration alledged; and also for this, that the said *F.* is estopped by the said deed to say, that he doth not owe the money in the said deed mentioned, and ought to have shewn by his plea how he is discharged from the same. *Causes of demurrer.*

And the said *F. S.* saith, that the said plea by him the said *F.* in manner and form aforesaid pleaded, and the matter therein contained, are good and sufficient in the law to bar the said *E.* from having his said action against him the said *F.* which said plea, and the matter therein contained, he the said *F.* is ready to verify; and because the said *E.* to the said plea hath not answered, nor the same hitherto in any manner gainsaid, he the said *F.* doth pray judgment, and that the said *E.* may be barred from having against him the said *F.* his action aforesaid, &c. *Joinder.*

Judic. pro Q.

And the said *A.* saith, that the said plea of the said *J.* above by replying pleaded, and the matter therein contained, are not sufficient in the law for the said *J.* to have and maintain his said action against him the said *A.* and that he hath no need, nor is he obliged by the law of the land to answer to the said plea in manner and form aforesaid pleaded; and *Demurrer to a replication.*

this he is ready to verify: Wherefore for defect of a ſufficient plea in this behalf the ſaid *A.* prayeth judgment, and that the ſaid *J.* may be barred from having his ſaid action againſt him the ſaid *A.* &c.

Joinder. And the ſaid *J.* for that he has above by replying alledged ſufficient matter in the law, for him the ſaid *J.* to have and maintain his ſaid action againſt the ſaid *A.* which the ſaid *J.* is ready to verify; which matter the ſaid *A.* doth not deny, nor any ways anſwer thereto, but intirely refuſeth to admit the verifying thereof; the ſaid *J.* as before prayeth judgment, and his ſaid debt, together with his damages by occaſion of detaining that debt, to be adjudged to him, *&c.* And becauſe, *&c.*

Demurrer to a rejoinder. And the ſaid *J.* ſaith, that the ſaid plea of the ſaid *M.* above by rejoining pleaded, and the matter therein contained, are not ſufficient in the law to bar the ſaid *J.* from having his ſaid action againſt the ſaid *T.* and that he hath not need, nor is obliged by the law of the land to anſwer to the ſaid plea in manner and form aforeſaid pleaded; and this he is ready to verify: Wherefore the ſaid *J.* as before, prayeth judgment, and his ſaid debt, together with his damages by occaſion of the detaining that debt, to be adjudged to him, *&c.*

Joinder. And the ſaid *T.* for that the matter aforeſaid by him above by rejoining alledged (which he is ready to verify) is ſufficient in the law to bar the ſaid *J* from having his ſaid action againſt him the ſaid *T.* which ſaid mat-

ters

ter the said *J.* hath not denied, nor any ways answered thereto, but intirely refuseth to admit the verifying the same, prayeth judgment, and that the same *J.* may be barred from having his said action against him, *&c.* 3 Lev. 187.

Of going to argument on demurrer.

When demurrer is joined, the plaintiff's attorney makes up the demurrer book, and delivers a copy of it on treble penny paper to the defendant's attorney, who must pay him for it after the rate of *4 d. per* sheet, besides the duty, and also for entering his pleadings and warrant of attorney; then the plaintiff's attorney enters the whole proceedings on the roll, and having delivered it to the secondary gets a serjeant to move for a *Concilium*, or day for arguing the demurrer, and the secondary draws up a rule accordingly, which must be served on the defendant's attorney, and the demurrer put down in the book for argument. It will be irregular to move for a *Concilium* before the paper book is delivered to defendant's attorney; and for this irregularity, court ordered cause to be struck out of paper. *Barnes* 163.

As to delivering the paper books, *vide antea* fol. *Rule, Pas.* 27 *Car.* 2.

As to delivering the paper books.

The plaintiff's attorney shall deliver all the demurrer books to the lord chief justice and the rest of the judges, and the defendant's attorney shall pay the plaintiff's attorney for two of the said books two days at least before the day appointed for arguing such demurrer

and the defendant ſhall not be heard by his counſel when the cauſe comes on to be argued, unleſs the ſaid two books be accordingly paid for. *Mich.* 6 *Geo.* 2.

Where in caſes of demurrer deft.'s attorney obliged to accept notice of inquiry.

Where the defendant demurs to the declaration, his attorney ſhall be obliged to accept of notice of executing the writ of inquiry on the back of the joinder in demurrer; and where the defendant pleads ſuch a dilatory plea that the plaintiff is obliged to demur, the defendant's attorney ſhall be obliged to accept of notice of executing a writ of inquiry on the back of ſuch demurrer. *Trin.* 10 *Geo.* 1.

In judges books counſels names, number roll, and day of argument to be ſet down.

Per Curiam: 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. *Trin.* 17 & 18 *Geo.* 2. *Barnes* 164.

Proceedings on iſſues upon Nul tiel record.

Declaration in debt on a judgment.

London, *to wit*, R. *D.* late of *London*, carpenter, was ſummoned to anſwer unto *L. P.* of a plea, that he render to him 62*l.* of lawful money of *Great Britain*, which he oweth him and unjuſtly detaineth, *&c.* and whereupon the ſaid *L.* by *J. C.* his attorney ſaith, that whereas the ſaid *L.* heretofore, that is to ſay, in *Eaſter* term in the fourth year

year of the reign of his preſent majeſty king *George* the ſecond, in his ſaid majeſty's court, before Sir *Robert Eyre*, knight, and his brethren, then his majeſty's juſtices of the bench here, at *Weſtminſter* in the county of *Middleſex*, by the conſideration of the ſaid court recovered againſt the ſaid *R.* 62*l.* which were adjudged to the ſaid *L.* in the ſaid court for his damages which he had ſuſtained, as well by occaſion of the not performing certain promiſes and undertakings to the ſaid *L.* by the ſaid *R.* then lately made, as for his coſts and charges by him about his ſuit in that behalf expended, whereof the ſaid *R.* is convicted, as by the record and proceedings thereof now remaining in his majeſty's ſaid court here more fully and at large appeareth, which ſaid judgment ſtill remaineth in its full ſtrength, force and effect, not reverſed, vacated, annulled, diſcharged or ſatisfied; and the ſaid *L.* hath as yet obtained no ſatisfaction of the aforeſaid judgment, whereby an action hath accrued to the ſaid *L.* to demand and have of the ſaid *R.* the ſaid 62*l.* yet the ſaid *R.* although often requeſted, hath not rendered the ſaid 62*l.* or any part thereof to the ſaid *L.* but to render the ſame to him hitherto hath denied, and ſtill doth wholly deny, to the damage of the ſaid *L.* 20*l.* And thereof he bringeth ſuit, *&c.*

And the ſaid *R.* by *W. W.* his attorney cometh and defendeth the force and injury, when, *&c.* and ſaith, that the ſaid *L.* ought not to have his ſaid action againſt him, becauſe he ſaith, that there is not any ſuch re- *Plea* Nul tiel record.

cord of recovery of damages aforeſaid againſt him the ſaid *R.* in his ſaid majeſty's court, before Sir *Robert Eyre*, knt. and his brethren, his majeſty's juſtices of the common bench, as the ſaid *L.* in his declaration hath alledged; and this he is ready to verify: Therefore he prayeth judgment, if the ſaid *L.* ought to have his ſaid action thereof againſt him, *&c.*

Replication. And the ſaid *L.* ſaith, that he by any thing before alledged ought not to be barred from having his aforeſaid action maintained againſt the ſaid *R.* becauſe he ſaith, that there is ſuch a record of recovery againſt him the ſaid *R.* in his ſaid majeſty's court of common bench here remaining, as by the ſaid declaration is above alledged; and this he is ready to verify by the ſaid record, and he prayeth, that the ſaid record may be inſpected and ſeen by the juſtices here, *&c.* And becauſe the ſaid *L.* hath not the ſaid record now ready here in court, it is ſaid by the ſaid court here to the ſaid *L.* that he have the ſaid record here on . The ſame day is given to the ſaid *R.* here, *&c.*

Rule for judgment on bringing record into court. On bringing the record into court on the day given, the ſecondary of courſe draws up a rule for judgment *Niſi cauſa* within four days, and at the expiration of that time the ſecondary certifies at the foot of the rule that no cauſe hath been ſhewn, after which judgment may be ſigned.

Judgment. The clerk of the judgments enters up the judgment.

The

The plaintiff muſt bring in the record at the day he has given himſelf, or the court will not receive it.

And the aforeſaid *J.* by *J. D.* his attorney cometh and defendeth the force and injury, when, *&c.* and ſaith, that the ſaid *T.* ought not to have or maintain his ſaid action againſt him, becauſe he ſaith, that after making the ſeveral promiſes and aſſumptions in the ſaid declaration mentioned, and before the day of obtaining the original writ of the ſaid *T. to wit*, in the term of St. *Michael* in the preſent——year of the reign of the now king before Sir *Robert Eyre*, knight, and his companions, juſtices of our ſaid lord the king of the bench at *Weſtminſter*, by bill, without the writ of the ſame king, and by the conſideration of the ſaid court, recovered againſt the ſame *J.* 60*l.* for his damages which he had ſuſtained as well by reaſon of the not performing the ſeveral promiſes and aſſumptions in the ſaid declaration above mentioned, as for his coſts and charges by him in his ſaid ſuit in that behalf laid out and expended, as by the record and proceſs thereof in the ſaid court of our ſaid lord the king of the bench at *Weſtminſter* fully appeareth. And the ſaid *J.* averreth, that the promiſes and aſſumptions in the ſaid record mentioned, and the promiſes and aſſumptions in the ſaid declaration above mentioned, are the ſame promiſes and aſſumptions, and not other or different; and this the ſaid *J.* is ready to verify: Whereupon he prayeth judgment, if the ſaid *T.* ought

Recovery in a former action pleaded in bar.

ought to have or maintain his ſaid action againſt him, *&c.*

Replication, **Nul tiel record.**

And the aforeſaid *T.* ſaith, that he by any thing alledged by the ſaid *J.* in the above pleading ought not to be precluded from having his action aforeſaid againſt the ſaid *J.* becauſe he ſaith, that there is not any ſuch record of the ſaid recovery againſt the ſaid *J.* at the ſuit of the ſaid *T.* as he the ſaid *J.* above in pleading hath alledged; and this he is ready to verify: Whereupon he prayeth judgment, and that his ſaid damages may be adjudged to him, *&c.*

Rejoinder.

And the aforeſaid *J.* ſaith, that there is a record of the ſaid judgment as the ſaid *J.* above in pleading hath alledged; and this he is ready to verify by the ſaid record, and prayeth, that the ſaid record may be ſeen and inſpected by the juſtices here. And becauſe the ſaid record is not now had here, it is commanded the ſaid *J.* that he have here the ſaid record in (*the day*) at his peril. The ſame day is given as well to the ſaid *T.* as to the ſaid *J.* here, *&c.* At which day come here as well the ſaid *T.* as the ſaid *J.* by their ſaid attornies, and the ſaid *J.* hath not here the ſaid record, but maketh default; whereby it ſufficiently appeareth to the ſaid juſtices here, that there is not any ſuch record of the ſaid recovery, as the ſaid *J.* hath above alledged; Wherefore, *&c.* (*Judgment.*)

Day given to produce the record.

Def. fails in producing the record.

Q. If there was not here a complete iſſue upon the replication, and the rejoinder unneceſſary.

And

And the ſaid *T.* by *F. K.* his attorney cometh and defendeth the force and injury, when, &c. and ſaith, that the ſaid *J.* ought not to have his aforeſaid action againſt him the ſaid *T.* thereon, becauſe he ſaith, that one *C. T.* heretofore (that is to ſay) in *Eaſter* term in the fifth year of the reign of his preſent majeſty, by an original writ impleaded the ſaid *J.* by the name of *J. H.* late of *London*, gent. in the court of the ſaid now king, before the king himſelf (the ſaid court then and ſtill being at *Weſtminſter* in the county of *Middleſex*) in a plea of treſpaſs; and the ſaid *J.* becauſe he did not appear in his ſaid majeſty's court before the ſaid king, to anſwer unto the ſaid *C.* in the aforeſaid plea, according to the law and cuſtom of this realm, was put in exigent to be outlawed in *London*; and for that reaſon afterwards, *to wit*, on *Monday* next before the feaſt of the purification of the bleſſed virgin *Mary* in the ſixth year of the reign of his preſent majeſty, in the ſaid court of our ſaid lord the now king before the ſaid king himſelf, was outlawed in due form of law at the ſuit of the ſaid *C.* in the ſaid plea, and ſtill remaineth outlawed, as by the record and proceedings thereof in his ſaid majeſty's court, before the king himſelf at *Weſtminſter* aforeſaid returned, and now there remaining, may more fully appear; and this he is ready to verify by the ſaid record: Wherefore he prayeth judgment, whether the ſaid *J.* ought to have his ſaid action therefore againſt him.

That the plt. is outlawed in another court.

And

Replication, Nul tiel record.

And the ſaid *J.* ſaith, that he, by any thing by the ſaid *T.* in his plea above alledged, ought not to be barred from having his ſaid action againſt him, becauſe he ſaith, that there is not any ſuch record of outlawry in his ſaid majeſty's court before the king himſelf, as the ſaid *T.* by his ſaid plea hath alledged; and this he is ready to verify in ſuch manner as the court ſhall award. And the ſaid *T.* is commanded that he have the ſaid record here on the morrow of the aſcenſion of our Lord at his peril; and the ſame day is given to the ſaid *J.* here, *&c.* At which day here come as well the ſaid *J.* as the ſaid *T.* by their attornies aforeſaid; and the ſaid *T.* hath not here the ſaid record, but maketh default thereof: Wherefore, *&c.*

Day given to produce the record.

Deft. makes default.

Notice of inquiry on iſſue of Nul tiel record.

Upon an iſſue of *Nul tiel record*, notice of executing a writ of inquiry may be given upon the iſſue-book, as well as upon a joinder in demurrer. *Long* againſt *Lingwood*, *Hil.* 8 *Geo.* 2. *Barnes* 249. *Pract. Reg. C. P.* 443.

When a four day rule on iſſue of Nul tiel record *is neceſſary.*

Where the judgment upon an iſſue of *Nul tiel record* is final, the rule ſhould be, unleſs cauſe within four days, that the defendant may have that time to move in arreſt of judgment; but where the judgment is interlocutory, that reaſon fails, and a two day rule hath been held ſufficient, becauſe the 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 on that day, and if he

Difference where proceedings by original, and by bill.

he fail, the rule for judgment ſhould be, unleſs cauſe on the appearance day of that return, and the record may be brought in on that day or any other intervening day. But where the proceedings are by bill againſt an attorney, 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, the 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.*

Rule to ſhew cauſe why defendant ſhould not *reply* to ſeveral matters to a plea in bar to an avowry, diſcharged; becauſe no inſtance can be ſhewn of ſeveral matters replied ſince *ſtat.* 4 *An. chap.* 16. for 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 afore-mentioned. *Barnes* 364.

Of judgments by default.

Of entering judgment by default.

IF the defendant does not plead by the time limited by the rules of the court (for which ſee before, *fol.* *&c.*) the plaintiff may ſign his judgment with the prothonotary, in whoſe office the proceedings are entered. In debt the judgment is final, and ſigned on a double half-crown ſtamp; but in treſpaſs, treſpaſs on the caſe, *&c.* the firſt judgment is only interlocutory, and not final, till

till the inquiry is returned, when you get the inquisition stamped with a double half-crown stamp, and then the prothonotary taxes your costs *de incremento*, which is called signing the final judgment.

In entering your judgment you leave about an inch margin, and begin about ten inches from the top of the roll, the declaration thus:

Judgment in debt.

London, *to wit.* C. *D.* late of *London*, merchant, was attached to answer *A. B.* in a plea of trespass on the case; and whereupon, *&c. (to the end of the declaration)* And thereof he bringeth suit, *&c.*

Then beginning a new line, you enter the judgment in the following manner:

By Nil dicit.

And the said *C. D.* by *C. H.* his attorney cometh and defendeth the force and injury, when, *&c.* and saith nothing in bar or preclusion of the action of the said *A. B.* by which the said *A. B.* remaineth thereupon undefended against the said *C.* Therefore it is considered that the said *A.* recover against the said *C.* his said debt, and his damages by occasion

Judgment signed 5 May 1767.

Day of signing judgment to be set down.

By the statute 29 *Car. 2. c. 3. s.* 14. perpetuated by 1 *Jac. 2. c.* 17. *s.* 5. Any judge or officer of any of the courts at *Westminster*, who shall sign any judgment, shall at the time of signing it (without fee) set down the day and year of his so doing upon the paper-book, docket or record, which day and year shall be set down on the margin of the roll of the record where such judgment shall be entered.

caſion

caſion of the detaining the ſaid debt to 53 *s.* by the court here adjudged to the ſaid *A. B.* by his aſſent. And the ſaid *C.* in mercy, *&c.* *Mercy.*

And the ſaid *B.* by *C. D.* his attorney cometh and defendeth the force and injury, when, *&c.* and ſaith, that he cannot deny the action of the ſaid *E.* nor but that he oweth to the ſaid *E.* the ſaid 10 *l.* in manner and form as the ſaid *E.* hath above declared againſt him: It is therefore conſidered that the ſaid *E.* recover againſt the ſaid *B.* his ſaid debt, and his damages by occaſion of the detaining that debt to 53 *s.* by the court here adjudged to the ſaid *E.* by his aſſent; and the ſaid *B.* in mercy, *&c.* Cognovit actionem *in debt.* *Judgment ſigned* day *of* 1767.

And the ſaid *T.* by *L. R.* his attorney cometh and defendeth the force and injury, when, *&c.* and ſaith, that he cannot deny but that the ſaid writing obligatory is the deed of him the ſaid *T.* nor but that he oweth to the ſaid *W.* the ſaid 10 *l.* in manner and form as the ſaid *W.* hath above declared againſt him: It is therefore conſidered, *&c. as before.* Cognovit actionem *in debt on a bond.*

And the ſaid *L.* by *T. S.* his attorney cometh and defendeth the force and injury, when, *&c.* and the ſame attorney ſaith, that he is not informed by the ſaid *L.* of any anſwer to be given for the ſaid *L.* to the ſaid *R.* in the plaint aforeſaid; and he ſaith nothing elſe thereupon; by which the ſaid *R.* remaineth thereupon undefended againſt the ſaid *L.* It is therefore conſidered, *&c.* *Judgment by* Non ſum informatus.

And the ſaid *C. D.* by *E. T.* his attorney cometh and defendeth the force and injury, when, Nil dicit *in caſe.*

when, &c. and ſaith nothing in bar or preclusion of the action of the ſaid *G.* by which the ſaid *G.* remaineth thereupon undefended againſt the ſaid *C.* For which the ſaid *E.* ought to recover againſt the ſaid *C.* his damages by occaſion of the premiſſes. But becauſe it is not known what damages the ſaid *G.* hath ſuſtained by occaſion of the premiſſes, therefore it is commanded to the ſheriff, that by the oath of good and lawful men of the county aforeſaid he diligently inquire what damages the ſaid *G.* hath ſuſtained as well by occaſion of the premiſſes, as for his coſts and charges by him about his ſuit in this behalf expended; and that the inquiſition which he ſhall thereupon make he make appear to the juſtices of our lord the king at *Weſtminſter*, on the morrow of the holy *Trinity*, under his ſeal, and the ſeals of them by whoſe oath he ſhall make the ſaid inquiſition. As to continuance *vide* 2 *Danv. Abr.* 153. *pl.* 7. *Yel.* 97. *Noy* 120. *Cro. Eliz.* 144, 774. 11 *Co.* 6. *b. Rol. Rep.* 30, 31. *Cro. Eliz.* 75. *Sid.* 16.

Inquiry awarded.

If the action be in caſe *Sur aſſumpſit*, inſtead of ſaying [*by occaſion of the premiſſes*] ſay [*by occaſion of the not performing the promiſes and undertakings aforeſaid.*]

In treſpaſs ſay, [*by occaſion of the treſpaſs aforeſaid.*]

If in treſpaſs and aſſault, ſay [*by occaſion of the treſpaſs and aſſault aforeſaid.*]

If in treſpaſs, aſſault and impriſonment, ſay [*by occaſion of the treſpaſs, aſſault and impriſonment aforeſaid.*]

In

In covenant ſay [*by occaſion of breaking the ſaid covenant.*]

If the defendant, after having pleaded *per minas* or *per dures*, and iſſue taken thereon, is willing to confeſs the action, the entry of ſuch confeſſion is to be in this manner.

At which day here cometh as well the ſaid *A.* as the ſaid *B.* by their attornies aforeſaid, and thereupon the ſaid *B.* relinquiſhing his averment aforeſaid above by him pretended ſaith, that he cannot deny the action of the ſaid *A.* thereupon, nor but that he at the time of making the ſaid writing was of his own right at large, and made the ſaid writing to the ſaid *A.* of his mere and free will, and not for fear of threatnings, as he the ſaid *A.* hath above alledged: Therefore it is conſidered, *&c. as before.* Relicta veriſicatione.

If the defendant confeſs the action after *Non eſt factum* pleaded, and iſſue joined, the entry is thus:

At which day here cometh as well the ſaid *R.* as the ſaid *S.* by their attornies aforeſaid, and hereupon the ſaid *S.* relinquiſhing his averment aforeſaid above by him pretended, ſaith, that he cannot deny the ſaid action of the ſaid *R.* nor but that the ſaid writing is the deed of him the ſaid *S.* nor but that he oweth the ſaid *R.* the ſaid 100 *l.* in manner and form as the ſaid *R.* above complaineth againſt him: Therefore it is conſidered, *&c.* *The like after* Non eſt factum *pleaded.*

And the ſaid *B. C.* by *D. E.* his attorney cometh and defendeth the force and injury, when, *&c.* and the ſame attorney ſaith, that he is not informed by the ſaid *B.* of any anſwer Non ſum informatus *in caſe.*

ſwer for the ſaid *B.* to be given to the ſaid *E.* in the plaint aforeſaid; for which the ſaid *E.* ought to recover his damages by occaſion of the premiſſes againſt the ſaid *B.* But becauſe it is unknown what damages the ſaid *E.* hath ſuſtained by occaſion of the premiſſes, it is commanded to the ſheriff, that by the oath of twelve good and lawful men of his bailiwic he diligently inquire what damages the ſaid *E.* hath ſuſtained as well by occaſion of the premiſſes, as for his coſts and charges by him about his ſuit in this behalf expended; and that the inquiſition which he ſhall thereupon take he make appear to the juſtices of our lord the king at *Weſtminſter*, in five weeks from the day of *Eaſter*, under his ſeal, and the ſeals of, *&c.*

Inquiry awarded.

The clerk of the judgments enters up the final judgment. See his duty under the head of the officers of the court, *fol.* 17.

No warrant to confeſs a judgment to be taken of a priſoner, unleſs an attorney on his behalf be preſent.

No bailiff or ſheriff's officer ſhall preſume to exact or take from any perſon, being in his cuſtody, any warrant to acknowledge a judgment but in the preſence of an attorney for the defendant, which attorney ſhall then ſubſcribe his name thereunto; which ſaid warrant ſhall be produced when the ſaid judgment ſhall be acknowledged. *Hil.* 14, 15. *Car.* 2.

No attorney ſhall enter or acknowledge, or cauſe to be entered or acknowledged, any judgment by colour of any warrant gotten from any defendant being under arreſt, otherwiſe than is aforeſaid. *Same rule.*

But

But if the defendant be an attorney, or practiſes as ſuch, 'tis ſufficient, though no attorney on his behalf be preſent. *Rep. and Caſ. of Pract. C. P.* 94. *Barnes* 37.

Aliter if defendant be an attorney.

It is not neceſſary that a warrant of attorney to confeſs a judgment in this court given by a perſon in cuſtody, be executed in the preſence of an attorney of this court; if it be in the preſence of an attorney of the court of *King's Bench* it is ſufficient. *Barnes* 44.

Warrant to confeſs a judgment in the preſence of an attorney of B. R. *is ſufficient.*

Every warrant of attorney for confeſſing a judgment in this court ſhall be read over by the perſon who is to execute the ſame, or by ſome other perſon to him before the execution thereof; and if judgment ſhall be entered up upon any ſuch warrant of attorney which ſhall not be ſo read over as aforeſaid, ſuch judgment upon any motion may be ſet aſide as irregular. *Trin.* 14, 15 *Geo.* 2.

Warrant of attorney to confeſs a judgment to be read by or to the party.

If judgment on a warrant of attorney be not entered up within a year, the plaintiff muſt apply to the court for leave to enter up the judgment, making an affidavit of the due execution of the warrant, that the debt is unſatisfied, and the defendant living. *Rep. and Caſ. of Pract. C. P.* 69. *Barnes* 270.

On warrant of a year ſtanding judgment can't be entered without leave of the court.

If a warrant of attorney 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 of due execution of the warrant, that the debt is unpaid and the parties living, is ſuffi-

When by a treaſury rule a judgment may be entered on an old warrant of attorney.

cient for an abſolute rule. But if the warrant be above twenty years old, the rule muſt be to ſhew cauſe, and ſerved on defendant. *Barnes* 41, 47. *Rep. and Caſ. of Pract. C. P.* 146.

Leave granted to enter judgment on an old warrant of attorney in *Mich.* term, on affidavit, that defendant was living in *Ireland*, on 18 *Sept.* preceding, as a reaſonable length of time for diſtance. *Barnes* 53, 54.

Of a ſpecial original to ſupport the judgment.

If the plaintiff has judgment, and it be not upon a verdict, his attorney muſt make out a *Præcipe* for a ſpecial original returnable on the firſt return of that term, in which the judgment (or interlocutory judgment in caſe of a writ of inquiry) is entered.

The form of a Præcipe *for a ſpecial original in caſe.*

Præcipe *for a ſpecial original.*

Middleſex, *to wit.* THE *L. B.* ſhall give you ſecurity to proſecute his ſuit, then put by ſureties and ſafe pledges *C. M.* late of *Weſtminſter* in the county of *Middleſex*, eſq; that he be before our juſtices at *Weſtminſter* on the morrow of *All Souls*, to ſhew,

Indebitatus aſſumpſit *for the uſe of horſes, coach, &c. and attendance of ſervants.*

That whereas the ſaid *C.* on the 25th day of *September* in the year of our Lord 1766, at *Weſtminſter* in the ſaid county of *Middleſex*, was indebted to the ſaid *L.* in the ſum of 200 *l.* of lawful money of *Great Britain*, for the hire of divers horſes, mares and geldings of him the ſaid *L.* and for the labour and attendance of diverſe of his ſervants, and alſo

for