

Breach.

deliver back the said gold watch to the said *J. T.* or to pay the sum of 14*l.* 14*s.* to the said *J. T.* for the said gold watch, on or before the first day of *December* then next ensuing; yet the said *J. H.* not regarding his said promise and undertaking, but devising and fraudulently intending to deceive and defraud the said *J. T.* in this behalf, hath not yet delivered back the said watch to the said *J. T.* nor paid him the said 14*l.* 14*s.* nor any part thereof (although the said *J. H.* afterwards, *to wit*, on the first day of *December* in the year aforesaid, and often afterwards at the parish aforesaid in the county aforesaid, was requested by the said *J. T.* so to do) but hath hitherto refused, and still doth refuse, so to do.

On a promissory note drawn by defendant and payable to plaintiff.

And whereas the said *J. H.* on the third day of *June* in the year of our Lord 1767, at the parish aforesaid in the county aforesaid, made his note in writing subscribed with his own hand, commonly called a promissory note, bearing date the same day and year last mentioned, by which note the said *J. H.* promised to pay to the said *J. T.* or his order, the sum of 3*l.* 5*s.* on demand, for value received; by reason whereof, and also by force of the statute in such cases made and provided, the said *J. H.* became liable to pay the said *J. T.* the said 3*l.* 5*s.* according to the tenor and effect of the said note. And being so liable the said *J. H.* in consideration thereof, afterwards, *to wit*, on the day and year last mentioned, at the parish aforesaid in the county aforesaid, undertook, and then and there faithfully promised the said *J. T.* to pay him

him the said 3*l.* 5*s.* according to the tenor and effect of the said note. *And also whereas* the said *J. H.* afterwards, *to wit*, on the 10th day of *January* in the year of our Lord 1767, at the parish aforesaid in the county aforesaid, was indebted to the said *J. T.* in the sum of 20*l.* of lawful money of *Great Britain*, for diverse goods, wares and merchandizes before that time sold and delivered by the said *J. T.* to the said *J. H.* at his request; and being so indebted the said *J. H.* in consideration thereof afterwards, *to wit*, on the day and year last above mentioned, at the parish aforesaid in the county aforesaid, undertook, and then and there faithfully promised the said *J. T.* to pay him the said 20*l.* when he the said *J. H.* should be thereunto requested. *And also whereas* afterwards, *to wit*, on the day and year last above mentioned, at the parish aforesaid in the county aforesaid, in consideration that the said *J. T.* had before that time sold and delivered diverse other goods, wares and merchandizes to the said *J. H.* at his request, he the said *J. H.* undertook, and then and there promised the said *J. T.* to pay him so much money for the said goods, wares and merchandizes last above mentioned, as the same at the time of the sale and delivery thereof were reasonably worth when he the said *J. H.* should be thereunto requested. And the said *J. T.* in fact saith, that the said goods, wares and merchandizes last above mentioned, were at the time of the sale and delivery thereof reasonably worth other 20*l.* of like lawful money, *to wit*, at

Indebitatus
assumpsit for
goods sold and
delivered.

Quantum va-
lebant thereon.

Breach.

the parish aforefaid in the county aforefaid, whereof the faid *J. H.* then and there had notice: *Nevertheless* the faid *J. H.* not regarding his faid three feveral promifes and undertakings laft above mentioned, but devising and fraudulently intending to deceive and defraud the faid *J. T.* in this behalf, hath not yet paid the faid feveral fums of money, in the faid three laft promifes and undertakings mentioned, nor any part thereof, to the faid *J. T.* (although the faid *J. H.* afterwards, *to wit*, upon the fame day and year, and often afterwards, at the parish aforefaid, in the county aforefaid, was requested by the faid *J. T.* fo to do) but hath hitherto refused, and ftill doth refuse to pay him the fame, to the damage of the faid *J. T.* of 40*l.* And thereupon he prayeth relief, &c.

Pledges for profecuting } *John Doe,*
Richard Roe.

No bill to be filed till entered on record.

No bill fhall be filed againft an officer, attorney, clerk or minifter of the court, to be called in court, in order to a forejudger, until the bill be actually entered on record, and a number roll actually put to the bill. *Trin,* 21 *Car. 2.*

Of filing a bill against an attorney, and calling him in court.

This rule is in a great meafure difufed. You ingross the bill on a piece of parchment stamped with a double penny ftamp, which the prothonotary marks as entered, on being paid for the entry, and it is thereby fupposed to be entered, though no number roll is put on the bill; then you carry the bill to *Westminster,*

minister, and give it to one of the criers, who calls the defendant in court, for which you pay him 1 s. After which you give a rule on the bill with the secondary for the defendant to appear, for which you pay 1 s. 4 d. *Note, get it viz. 1 s. for the king's duty, and 4 d. for the stamped, &c.* rule; and then you file the bill in the prothonotary's office, for which you pay 4 d. *Note, paid in court 6 d. for the rule.* And heretofore it was not necessary to give the defendant any other notice of filing such bill against him than the calling him in court as aforesaid by the crier; which, as all attorneys of the court were supposed to be personally present in court during the sitting thereof, was then thought to be sufficient notice. But many attorneys having been struck off the roll on forejudgers for want of other notice; and many living in such remote parts of the kingdom, that it was impossible for them to have notice time enough to give order for their appearance before the rule (which was a four day rule) was expired, this practice is altered; and now,

Where a bill shall be filed against an attorney of the court, no forejudger shall be entered for want of appearance, if the action be laid in *London* or *Middlesex*, and the attorney resides within 20 miles of *London*, until four days after notice in writing of filing such bill be given to such attorney or his agent, or left at his usual place of abode, and a rule given for such appearance as usual; and if such attorney resides above 20 miles from *London*, or the action be in any other county than *London* or *Middlesex*, no forejudger shall

shall be entered till eight days after such notice shall be given in manner as aforesaid, and a rule to appear; the said days to be exclusive of the days of giving such notice. *Hil. 11 Geo. 2.*

Common Pleas:

J. T.

against

J. H. gent. one of the attornies, &c.

*Notice of a bill
being filed.*

Take notice, that a bill was this day filed in the prothonotary's office in the Inner Temple *London*, against you the defendant *J. H.* at the suit of the plaintiff *J. T.* in an action of trespass upon the case on several promises; and unless you appear to the said bill on *Monday* the * twenty-sixth day of *January* instant, you will be forejudged the court.

E. B.

23 *Jan.* 1778.

To *J. H.* deft.

Attorney for the
plt.

Common Pleas.

S. J. against *H. B.*

Take notice, that there is left in the prothonotary's office, in the *Inner Temple, London*, a declaration against you the deft. at

* This is the day given by the secondary's rule which is inclusive; *sed vide regul. Hil. 11 Geo. 2 supra*, which says the days are to be exclusive.

the suit of the plt. S. J. in an action upon the case on several promises for goods sold and delivered, and for the balance of an account which the plaintiff lays to his damage of 100*l.* and unless you plead to the said declaration within four days next after the first day of next *Hilary* term, judgment will be entered against you by default.

To H. B. deft.

J. R. attorney
for the plt.

If the defendant appears, he enters his appearance with the prothonotary. If the defendant does not appear, you enter the bill and a forejudger on the roll, in the following form, beginning with a memorandum, as in the *King's Bench*.

*Of forejudging
an attorney.*

Middlesex, *to wit*, Be it remembered, that on the day of in this same term G. H. came here into court by L. R. his attorney, and exhibited to the justices of our now lord the king of the bench here his bill against J. B. gent. one of the attornies of the court of our said now lord the king of the bench here present here in court in his proper person, in a plea of trespass on the case, the tenor of which said bill followeth in these words; *to wit*, to the justices of our lord the king of the bench. *Middlesex*, *to wit*, G. H. by L. R. his attorney complaineth of J. B. gentleman, &c. (*the whole bill to*) and thereupon he prayeth relief, &c. Pledges for prosecuting

Memorandum.

Forejudger.

secuting, *John Doe* and *Richard Roe*; whereupon the said *J. B.* being solemnly called came not, therefore he standeth forejudged from exercising his office of attorney of this court for his contumacy, &c.

You pay the prothonotary 2 s. for signing the forejudger, and the clerk of the warrants 1 s. 4 d. for striking the defendant off the roll, and then you may proceed against him as against a common person. And so must every other person; for after a forejudger he cannot be proceeded against by bill.

But if the defendant enters his appearance in time with the prothonotary, you deliver him a declaration and proceed as in other cases; but the declaration and issue begin with a memorandum in the form aforesaid, and in both cases you add the pledges to prosecute at the end of the declaration. You must also make all your writs, as *Venire facias*, &c. returnable on a day certain, *prox. post* the general return day.

A writ of privilege for an attorney sued in the palace court.

GEORGE the third by the grace of God, of *Great Britain, France, and Ireland*, king, defender of the faith, &c. To the judges of our court of our palace at *Westminster*, and to every of them, greeting. Whereas as well by reason of our royal dignity as according to the ancient custom of our court of the bench at *Westminster* from time immemorial hitherto used and approved in the same, no attorney of our said court of the bench, being bound by oath to follow his office

office for us and our people, ought, nor for all the time aforesaid hath been accustomed, to be taken, arrested, imprisoned, or against his will drawn or compelled to answer any person before any of our justices or officers, or any other secular judges whatsoever, elsewhere or otherwise than by bill, to be filed against him before our justices of our said court of the bench, in or upon any pleas, complaints or demands which do not particularly concern us (pleas or causes of freehold, felony, and appeals only excepted.) And, whereas we have lately received information of the great complaint of *John Royner* one of the attornies of our said court of the bench, that several ill-disposed persons, notwithstanding our dignity, the custom and privilege aforesaid, do, as we have understood, intend to take, arrest, imprison and disquiet the said *John*, or you have drawn, or do intend by your servants or officers to draw, into pleas or complaints to be levied in our court before you, which do not relate to us, the said *John*, whose constant attendance is required in our said court of the bench, which, should it be permitted, would be in future a very evil example to others, as well as totally take away the jurisdiction, custom, and privilege of our said court of the bench, and tend not only to the manifest detriment, derogation and diminution of our dignity, the jurisdiction of our said court of the bench, and the liberties, privileges, and customs thereof, but also to the great damage of many of our subjects prosecuting and defending suits

suits in our said court of the bench, and to the grievance of the said *John*, and to the great detriment of his clients. Wherefore the said *John* hath implored us to grant him his proper remedy in this behalf, and we being willing that what is just and reasonable should be done for the said *John*, and likewise that the jurisdiction, honor, custom, liberty and privilege of our said court of the bench so immemorially used and approved should be inviolably preserved, do command and firmly enjoin you, and each and every of you, that you and each and every of you do wholly desist from taking, arresting, imprisoning or in any wise molesting the said *John* at the suit of any person, and from proceeding in any plaint or plea whatsoever depending in our said court before you, any or either of you, against the said *John*, by whomsoever levied or to be levied, by whatsoever name the said *John* be therein called (pleas and causes of freehold, felony, and appeals only excepted.) And if you, or any of you, have taken the said *John* before the receipt of this writ against the custom, liberty, and privilege aforesaid, that then you, and each and every of you, immediately discharge the said *John* from that arrest, and that you inform the said parties plaintiffs in the said plaints from us, that they may prosecute their pleas and plaints aforesaid by filing their respective bills therein, against the said *John* before our justices of the said court of the bench, according to the custom thereof from time immemorial, used

I

and

and approved in the same, to obtain justice there, if they shall think it expedient so to do. Witness Sir *William De Grey*, knight, at *Westminster*, the 13th day of *February*, in the 18th year of our reign.

GEORGE the third, &c. To the she- *Another where*
riffs of *London*, greeting. Whereas, accord- *an attorney*
ing to the custom of our court of the bench *was arrested*
at *Westminster* hitherto used and approved of *by Capias ad*
in the same, the attornies of our said court *responden-*
of the bench, whilst they are prosecuting and *dum. Q.*
defending suits and actions therein for their
clients, ought not, nor have they for time
immemorial been used, to be compelled to
answer before us, or any of our justices or
officers, or any other secular judges whatso-
ever, upon any pleas, complaints or demands
which do not particularly belong to us (pleas
of freehold, felony and appeals excepted)
save only before our justices of our said court
of the bench, by bill exhibited in our said
court, and not by original writ. And we
have lately received information by the com-
plaint of *A. B.* one of the attornies of our
said court of the bench, prosecuting, fol-
lowing, and defending suits and actions in
our said court for his clients, that several ill-
disposed persons, intending to disquiet the
said *A. B.* have sued and prosecuted him by
original writ or writs issued out of our high
court of *Chancery*, returnable before our said
justices of the bench, and by writ or writs
of *Capias ad respondendum* issued forth there-
upon, and have caused him the said *A. B.* to
be

be arrested and detained in your custody, by virtue of one or more of the said writs of *Capias ad respondendum*, in suits which do not relate to us; or in pleas of freehold, felony, or appeals; whereby the said *A. B.* is unable to attend his said office as an attorney, upon the said several suits and actions depending in our said court of the bench, which, if it is permitted, will manifestly take away and be in derogation and diminution of the liberties and privileges of the said *A. B.* and to the great detriment of the said *A. B.* and his clients; and because we are willing that the jurisdiction, privileges, and customs, for so long time used and approved of in our said court of the bench, should be inviolably observed, We command you, that you desist from taking the said *A. B.* into your custody upon any of the said writs of *Capias ad respondendum*; and if the said *A. B.* be detained in your custody by any such writ or writs of *Capias ad respondendum*, and for no other cause, that then you supersede and suffer him to go at large, as you will answer the contrary at your peril; and that you inform the party or parties, plaintiff or plaintiffs in the suit or suits, that he, she, or they may prosecute his, her, or their said suits, before our justices of our said court of the bench, by bill or bills to be exhibited to the said justices against the said *A. B.* if he, she, or they think it expedient so to do. Witness, &c.

This writ must be engrossed on a four six-penny stamp piece of parchment, and signed
by

by the clerk of the warrants, which he will do *gratis*; (unless the attorney is in arrear for termages) and also by the prothonotary, *gratis* too; sealing 7 *d.*

Then deliver the writ to the secondary of the court, where the action is brought, whose fee for allowing same is 2*s.* 8*d.* for *Superse-
deas* and searching office 1*s.* 4*d.* If attorney is in custody, the *Superse-
deas* must be served on officer in whose custody he is.

Form of *Superse- deas* to the pa- lace court.

“**T**O all and every the officers of his ma-
jesty’s palace court.

If arrested, discharge, if not, forbear to arrest J. R. gentleman at the suit of B. G. he having this day allowed his writ of privilege, as one of the attornies of his majesty’s court of common bench at *Westminster*; dated the day of *November*, 1777.

R. S.

A certificate of the allowance of the writ of privilege, the secondary will give you on demand.

Form of certificate of the allowance of writ of privilege.

To all, &c. as before.

This is to certify that J. R. gent. hath this day, &c. as in *Superse-
deas*.

When the process for arresting is returned by the officer, that defendand is privileged,

the writ of privilege is spent, and another writ must be allowed if defendant wishes to avail himself of his privilege again, and so *toties quoties*, for it will serve him but in one action.

No attorney to be privileged in any suit, unless it appears on the face of the declaration that he sues for fees, and no privilege, where he is defendant.

An attachment against an attorney or any other, for a contempt, is in this form:

An attachment for a contempt. GEORGE the third, by the grace of God, of Great Britain, France, and Ireland, king, defender of the faith, &c. To the sheriff of Middlesex, greeting. Attach L. J. gentleman, one of the attornies of our court of the bench [*or A. B. any other person*] so that you may have his body before our justices at Westminster on _____ next after _____ to answer us of and upon such things as on our behalf shall be then and there objected against him; and have there this writ. Witness, &c.

This writ is obtained on rule of court, which must be taken to clerk in court or from office, who will thereupon make out attachment, for which he charges 13s. 4d. this writ is taken to sheriff of county, in which party to be attached resides; who will make out warrant for 2s. 6d.

Affidavit of service of a rule with an allocatur of costs, and a demand thereof, on or about such a day is sufficient for an attachment for non-payment of them. 2 *Wils.* 227.

Bill of COSTS on proceedings against
an ATTORNEY.

	Out of pocket			Agent		Attorney			
Warrant and instructions.	0	0	0	0	2	2	0	4	4
Searching of what court defendant admitted.	0	0	0	0	1	8	0	3	4
Drawing bill from 20 at one shilling per folio.	0	0	0	0	10	0	1	0	0
Engrossing at 4d. per folio parchment and duty.	0	1	0	0	4	4	0	7	8
Calling defendant into court.	0	1	0	0	1	0	0	1	0
Attending for that pur- pose.	0	0	0	0	1	8	0	3	4
Rule for appearance and duty.	0	1	11	0	2	8	0	3	6
Entering and filing bill.	0	12	4	0	12	4	0	12	4
Notice of bill filed, copy and service.	0	0	0	0	1	6	0	3	0
Searching for appearance.	0	0	0	0	1	8	0	3	4
Engrossing declaration at 4d. per sheet and duty to deliver.									

N. B. *The rest of the bill runs the same, and the items therein for fees and disbursements, are usual in other suits in this court.*

Of writs of Habeas corpus cum causa.

Writs of Habeas corpus cum causa.

THEY are used for two purposes ; *First*, To remove causes from inferior courts into this court, to be here determined. *Secondly*, To remove the body of a defendant out of any other prison into the prison of the *Fleet*.

As to the first, many abuses having been committed in the obtaining and prosecuting such writs, several laws have been made for remedying the same.

Before the statute of 43 *Eliz. c. 5.* it was usual for a defendant in an action commenced in an inferior court, to suffer such cause to be proceeded in till issue joined, the jury sworn, and evidence given for the plaintiff, before he would deliver into court his writ of *Habeas corpus cum causa*, or other writ which he had before sued out for removing the said cause into this or some other of the courts at *Westminster* ; and this done merely to put the plaintiff to as much expence as possible, and to come at a knowledge of his evidence. But by that statute it is enacted, That no writ of *Habeas corpus*, or other writ for the removing a cause out of any inferior court, shall be received or allowed by the judge or officer to whom the same shall be delivered (but that he may proceed in such cause as if no such writ had been delivered to him), except the writ be delivered

Cause not to be removed by Habeas corpus, unless delivered before the jury sworn.

ed before the jury, which is to try the issue, have appeared, and one of them be sworn to try the cause.

And by the statute 21 Jac. 1. c. 23. no writ of *Habeas corpus*, *Certiorari*, or other writ to remove any action commenced within any city, liberty, &c. shall be allowed by the steward, judge, &c. of such court, unless delivered before issue or demurrer joined in such cause, so as the said issue or demurrer be not joined within six weeks after the arrest or appearance of the defendant to such action or suit.

Nor unless delivered before issue joined.

And if any action commenced in such court of record in any city, liberty, &c. shall be removed by any writ or process, and afterwards be remanded back by writ of *Procedendo*, or other writ, then the said action shall never afterwards be removed or stayed before judgment, by any writ out of any court whatsoever.

If carried back by Procedendo not to be removed again before judgment.

And if in any action or cause not concerning freehold, inheritance, title of lands, lease or rent commenced in any such court of record, it shall appear or be laid in the declaration, that the debt, damages or thing demanded doth not exceed 5*l.* then such action shall not be stayed by any writ whatsoever, other than writ of error or attain.

*Cause not concerning freehold, and not exceeding 5*l.* not to be removed.*

But this act is only to extend to such courts of record in cities, liberties, &c. and for so long time only as there shall be an utter barrister of three years standing, steward, &c. or judge, or recorder of such inferior court, or assistant to such judge of the same

To what courts this extends.

inferior court, as shall not be an utter barrister of that standing, and not of counsel in any action in such inferior court.

The subtilty of ill designing people in time got over, and rendered ineffectual this act. A vexatious defendant sued in an inferior court for a debt under 5*l.* perhaps not 20*s.* would set up a fictitious action against himself for a pretended demand of above 5*l.* and then bring a *Habeas corpus cum causa*, which would take in both actions, and by this contrivance procure the smallest action to be removed into a superior court, whereby a plaintiff, that could not bear the expence of such superior court, has been obliged to submit to the loss of his just demands.

*Inferior courts may proceed in actions not exceeding 5*l.* though there be other actions for above 5*l.**

But by an act made 12 *Geo.* I. c. 29. s. 3. 21 *Geo.* II. c. 3. the judges of such inferior courts, as are described in the statute 21 §. I. may proceed in such actions, &c. as are therein specified, which appear or are laid not to exceed 5*l.* altho' there may be other actions against such defendants wherein the plaintiffs demands shall exceed 5*l.*

Habeas cor. directed to any sheriff (except of Lond. or Mid.) to be returnable on a day certain in term.

A writ of *Habeas corpus cum causa ad faciendum & recipiendum*, directed to any sheriff (other than of *London* or *Middlesex*) must be returnable in court at a day certain in term, and not be made returnable immediately or in the vacation. *Mich.* 1654.

If to the sher. of Lond. or Mid. may be

But such writ of *Habeas corpus* directed to the sheriffs of *London*, or to the sheriff of *Middlesex*, may be granted in term or vacation

tion returnable immediately. *Same rule. Vide* returnable immediately.
postea, fol. 314.

Where a writ of *Habeas corpus* made re- And the sheriff must return such writ the same day.
turnable immediately is directed to any she-
riff, he ought to make his return the same
day that the writ is delivered, and to bring
the body immediately, as required by the
writ. *Same rule.*

If upon the return of the *Habeas corpus*, Prisoner
the prisoner is returned charged with a pro- charged with
cess out of the *King's Bench* or *Exchequer*, process out of this court, may
and with process out of the *Common Pleas*, he be committed,
may be committed with those causes. *Same* tho' charged
rule. with process out of K. B. or Exc.

And if the prisoner upon a *Habeas corpus* out of K. B. or Exc.
cum causa be returned charged with process If charged with process out of this court, returnable at a day to come, may be committed.
out of the *Common Pleas*, though it be re-
turnable at a future day, he may be com-
mitted with this cause. *Same rule.*

All writs of *Habeas corpus* returnable in
court, must be made returnable at a day
certain. *Mich. 1654. Hil. 13, 14 Car. 2.* Return of a H. C. must be at a day certain.

If a person in custody of any sheriff or
gaoler, charged with process issuing out of
the *King's Bench* or *Exchequer*, and not with
any process out of this court, be minded to
be turned over to the prison of the *Fleet*, he
must procure himself to be charged with
some process issuing out of the court of
Common Pleas before he bring his writ of
Habeas corpus, that he may be returned
charged therewith, otherwise he cannot be
turned over. See *Barnes 400.* Of removing a prisoner into the Fleet.

The form of the writ of Habeas corpus cum causa.

*A H. C. to
the sheriff of
Mid. ret. im-
mediately be-
fore a judge.*

GEORGE the third, &c. To the sheriff of *Middlesex*, greeting. We command you, that you have the body of *T. M.* detained in your prison under your custody, as it is said, by whatsoever name he is called in the same, together with the day and cause of the taking and detaining the said *T.* before Sir *William De Grey*, knight, our chief justice [or before Sir *Henry Gould*, knight, one of our justices] of the bench, at his chambers in *Scrjeants Inn* in *Chancery Lane*, immediately after the receipt of this our writ, to do and receive what our said chief justice [or justice] shall then and there consider of him in this behalf; and have there this writ. Witnesses, &c.

If the *Habeas corpus* be returnable before the chief justice, any other judge of the court may commit the defendant thereon to the *Fleet*.

The expences of this writ, allowance, &c. are.

	l.	s.	d.
Stamp duty	0	5	0
Judge signing	0	4	0
Prothonotary signing	0	1	4
Seal	0	0	7
To the sheriff of <i>Middlesex</i> for the allowance	0	4	8
For the return thereof, if but one writ	0	2	4
For every writ more against the defendant	0	2	4
For a warrant to the bailiff to conduct the prisoner before a judge or into court	0	2	4
And if the defendant is in pri- son, then for a warrant to the gaoler to deliver him to the bailiff	0	2	4
To the bailiff for bringing him up	0	10	0
Besides the fees at the judge's chambers, or in court.			

GEORGE the third, &c. To the judges A Hab. corp.
of our court of our palace at *Westminster*, and to the palace
to every of them, greeting. We command court.
you, that you have the body of *J. C.* de-
tained in our prison under your custody, as
it is said, by whatsoever name he may be
called in the same, together with the day
and cause of the taking and detaining the
said *J. C.* before Sir *William De Grey*,
knight, our chief justice of the bench, at his
chambers situate in *Serjeants Inn* in *Chancery*
Lane,

Lane, immediately after the receipt of this writ, to do and receive what our said chief justice shall then and there consider of him in this behalf; and have there this writ. Witness, &c.

	l.	s.	d.
The allowance at the marshal's court for the first cause, is	0	4	8
For every cause after the first	0	1	0
[If bailed] the stamp duty	0	2	0
Judge's clerk taking the bail	0	7	6

Ha. cor. to an inferior court within 5 miles of London may be ret. immediately.

Writs of *Habeas corpus* directed to the inferior courts of London, Westminster, and Southwark, and other courts within five miles of London, may be returnable immediately. Mich. 1654. and Hil. 13 & 14 Car. 2. Vide *antea*, fol. 310, 311.

Bail taken in absence of plt. or his attorney to be de bene esse; and if no exception within 20 days to be filed.

If bail be taken in the absence of the plaintiff or his attorney, the same is to be taken *de bene esse*; and if on notice in writing given to the plaintiff, or his attorney, of the names and additions of the bail, the time when, and before whom put in, no exception be taken within twenty days, then the bail is to be delivered over to be filed.

Same rules.

If no exception, and bail not filed within 4 days after the 20, a *Procedendo*.

And if no exception be taken to bail put in on a *Habeas corpus* before a judge at his chamber, then unless the bail be filed within four days after the expiration of the twenty days, a *Procedendo* may be granted, upon a certificate that the bail is not filed. *Same rules.*

Where

Where bail is taken of a person in custody, the judge's clerk is to deliver the bail to the prothonotary, to be filed if assented to; and for that purpose the prothonotary's fees are to be deposited; but the prisoner is not to be discharged until the bail be assented unto, or the plaintiff over-ruled in open court to accept the same upon examination.

Bail taken of prisoners to be delivered to prothonotary to be filed. But prisoner not to be discharged till bail be assented to, &c.

Same rules.

In all cases where bail was put in in the inferior court, if the cause be removed by *Habeas corpus* into this court, bail must be put in here on the removal, though the debt be under 10 *l.* except the defendant be an heir, executor or administrator, &c.

Bail in all cases of removal where bail below, except.

When the *Habeas corpus* is allowed in the inferior court, and returnable before a judge at his chambers, the plaintiff's attorney must get an order from one of the judge's clerks for a *Procedendo*, unless the defendant put in bail by the time limited by the order, *viz.* in term-time within four days, and in vacation within six days after notice of the rule, a copy of which must be served on the defendant's attorney.

Rule for Procedendo unless bail in 4 days in term, and in 6 days in vacation.

If the plaintiff's attorney dislike the bail, he serves the defendant's attorney with a like order for a *Procedendo*, unless better bail be put in within four days.

Rule for better bail.

If this exception to the bail be in vacation-time, 'tis usual (though I don't see to what purpose) to justify within the four days before a judge at his chambers, for which you pay 2 *s.* and then the bail must justify the first day of the next term in court.

Of justifying.

The

The defendant's attorney must give the like notice to the plaintiff's attorney of the putting in bail, and justifying, as in other cases.

There is no limited time for the plaintiff's getting an order for a *Procedendo* unless bail be put in, and has been done after two terms; but if the defendant had put in bail in time, and the plaintiff had not declared in two terms, the cause had been out of court. *Barnes* 90, 91.

Causes removed from cities and towns where the judges seldom go, to be laid in the county where in, &c

If a cause be removed by *Habeas corpus* out of the courts of *Canterbury, Southampton, Hull, Litchfield* or *Pool*, or other counties where the judges of *Nisi prius* seldom go, if the action be transitory, it must be laid in the county of *Kent, Southampton, York, Stafford* or *Dorset*, or other county where such city or town lies, and the recognizance is to be taken accordingly. *Mich.* 1654.

A Habeas corpus ad satisfaciendum to the warden of the Fleet to bring a prisoner up to be charged in execution.

GEORGE the third, by the grace of God, of *Great Britain, France, and Ireland*, king, defender of the faith, &c. To the warden of our prison of the *Fleet*, greeting. We command you, that you have before our justices at *Westminster*, on *Wednesday* next after three weeks of the *Holy Trinity*, the body of *B. C.* late of *London*, stationer, detained in your prison under your custody, as it is said, by whatsoever name he is called in the same, to satisfy *S. T.* of 30*l.* for his damages which he has sustained, as well by occasion of the not performing certain promises and undertakings lately made by the said *B.* to the said *S.* as for costs and charges by him about

about his suit in that behalf expended, where-
of the said *B.* is convicted; and further to
do and receive what our said court shall then
and there consider of him in this behalf; *Clift's Entr.*
and have there, &c. 371.

You pay.

			<i>l.</i>	<i>s.</i>	<i>d.</i>
At the <i>Fleet</i>	—	—	0	9	4
In court to the secondary	—	—	0	9	0
Criers	—	—	0	2	0
Tiptaff bringing up the prisoner			0	10	0
If you draw up the rule you pay		}	0	2	6
the secondary more	—				
And at the <i>Fleet</i>	—	—	0	2	6

A *Habeas corpus ad satisfaciendum* may
issue to the warden of the *Fleet*, or the keep-
er of any inferior prison of a liberty or fran-
chise, returnable in court at a day certain,
and the number roll of the judgment to be *Number roll*
indorsed upon the writ by the attorney who *to be indorsed.*
sues it out, and such writ shall be a good
cause of detainer. *Mich. 1654.*

If a defendant be brought into court up- *On several*
on a *Habeas corpus ad satisfaciendum*, he can *judgments*
be charged in execution upon that judg- *there must be*
ment only, on which the *Habeas corpus ad* *separate writs*
satisfaciendum issued; and if there be several *of Habeas.*
judgments, on which he is to be charged in *corpus ad sa-*
execution, there be a writ of *Habeas corpus* *tisfaciendum.*
on each judgment.

GEORGE the third, &c. To the *Habeas cor-*
marshal of our *Marshalsea* before us, greet- *pus ad satisfaci-*
ing. *endum di-*

referred to the
marshal of the
King's Bench.

ing. We command you, that you have before our justices at *Westminster*, on *Friday* next after fifteen-days of *Saint Martin*, the body of *J. N. Esq;* in our prison, under your custody detained, as it is said, together with the day and cause of the taking and detaining him, by whatsoever name he is called in the same, to satisfy *L. M.* widow, of 120*l.* which the said *J.* heretofore, to wit, on the 7th day of *October* in the year of our reign before *Sir Robert Eyre*, knt. late chief justice of our court of the bench, at his chambers situate in *Serjeants Inn* in *Chancery Lane, London*, acknowledged to owe to the said *L.* to be levied of his lands and chattels, as by the said recognizance in our court of the bench aforesaid remaining of record plainly appears. And whereupon it is considered in our said court, that the said *L.* have execution against the said *J.* of the said 120*l.* by the default of the said *J.* And whereupon our sheriff of *Middlesex* returned to our justices at *Westminster* from the day of *Saint Michael* in three weeks last past, that the said *J.* has no goods or chattels in his bailiwick, whereof he could cause to be made the said 120*l.* or any part thereof; and further to do and receive what our said court shall then and there consider of him in this behalf; and have there this writ. Witness, &c.

Sci. fa.'

Procedendo
to the palace
court on a
Habeas cor-
pus.

GEORGE the third, &c. To the judges of our court of our palace at *Westminster*, and to each of them, greeting. Whereas we by our writ lately commanded
you,

you, that you shall have before Sir *John Eardly Wilmot*, knt. our chief justice of the bench, at his chamber situate in *Serjeants Inn* in *Chancery Lane, London*, immediately after the receipt of the said writ, the body of *R. W.* detained in our prison under your custody, as it is said, together with the day and cause of the taking and detaining him, by whatsoever name the said *R.* is called, to do and receive what our said chief justice should consider of him in that behalf; yet for certain causes in this behalf specially moving our justices of the bench aforesaid at *Westminster*, We command you, and each of you, that in all suits and complaints against the said *R.* at the suit of *J. W.* in our court before you moved or depending, you proceed with effect according to the law and custom of *England* and the court aforesaid, notwithstanding any writ lately directed to you to the contrary. Witness, &c.

GEORGE the third, &c. To, &c. *The like in another form.*
Whereas, &c. (*reciting the writ of Habeas corpus*): We command you, that in all and singular pleas and complaints in our court before you, against the said *L.* moved or depending, you proceed with effect, notwithstanding our said writ of *Habeas corpus* to the contrary lately thereupon directed to you. Witness, &c.

GEORGE the third, &c. To, &c. *On a writ of Habeas corpus returnable in court.*
Whereas we by our writ lately commanded *Habeas corpus* returnable in court.
you, that you should have before our justices

stices at *Westminster*, on *Wednesday* next after fifteen days of *Saint Martin*, the body of *C. H.* detained in our prison under your custody, as it was said, by whatsoever name he was called, together with the day and cause of the taking and detaining the said *C.* to do and receive what our said justices should consider of him in this behalf; yet for certain causes in this behalf moving our said justices at *Westminster*, We command you, that in all and singular suits and complaints, &c. as before.

As the *Habeas corpus* removes all causes against the defendant in the inferior court, the *Procedendo* carries back all the causes that were removed.

Of PRISONERS.

Where defendant is in custody for want of bail.

Plaintiff before end of next term after return of the writ may declare against such prisoner.

A Man having cause of action against a prisoner was formerly obliged to bring him into court by a *Habeas corpus*, and then declare against him; but by the *Stat. 4 & 5 W. & M.* it is enacted, That if any person be taken or charged in custody at the suit of any other person, upon any writ or writs issuing out of any of the courts of *Westminster*, and imprisoned for want of sureties for his appearance, the plaintiff in such writ may, before the end of next term after such writ shall be returnable, declare against such prisoner in the court out of which such writ or writs shall issue, whereupon such prisoner

soner shall be taken, or charged in custody, and may cause a true copy of the declaration to be delivered unto such prisoner, or to the gaoler or keeper of the prison in whose custody such prisoner shall be, to which declaration the said prisoner shall appear and plead; but if he shall not appear thereto, the plaintiff shall in such case have judgment as if the prisoner had appeared and refused to plead. *And have judgment in default of appearance and plea.*

Where defendant remains in custody of sheriff for want of bail, plaintiff must declare against him in custody of the sheriff. *Barnes 400.*

No copy of a declaration shall be delivered to any prisoner, until after the process upon which such prisoner shall be taken or charged in custody be returnable. *Pasc. 5 W. & M. Declaration not to be delivered to prisoner till after the return of the writ.*

A prisoner in custody on an attachment for a contempt of the court cannot be charged with a declaration without leave of the court; and the charging a defendant with a *Capias ad satisfaciendum*, whilst he was in custody of the sheriff of *Middlesex* on an attachment for a contempt of this court, has been held irregular. *Prisoner in custody for a contempt not to be charged with a declaration or execution without leave.*

No rule shall be given for the defendant in custody to appear and plead to any declaration against him, until an affidavit be filed with the proper secondary of the delivery of the copy of such declaration, and of the time when, and the person to whom the said copy was delivered; and a copy of the said affidavit shall be produced to the pro-

thonotary before judgment signed together with a certificate from the proper officer, that no appearance is entered with him. *Pas. 5 W. & M.*

Declaration delivered before Menssem paschæ, or Crastinum animarum, if defendant appears within 10 days after the end of the respective term, he may imparl to the next term. Unless.

If a copy of a declaration be delivered before *Mensem paschæ*, or *Crastinum animarum*, and affidavit thereof made and filed, and the defendant doth not enter his appearance with the proper officer within ten days after *Easter* or *Michaelmas* term respectively, judgment may be entered against him upon such certificate, if rules have been given; but if he does enter his appearance as aforesaid within ten days after such term, he shall imparl until the next term, unless the action be in *London* or *Middlesex*, and the defendant be in prison within forty miles of the cities of *London* or *Westminster*; and then, though the prisoner doth appear within ten days after the end of the term, he shall plead two days before the essoin-day of the next term; and in default thereof, rules having been given, judgment may be entered against him, as aforesaid. *Same rule.*

If the declaration be delivered on or after Mens. pas. or Crast. anim. or in Hil. or Trin term, and deft. appears 2 days before the essoin-day of the next term, he may imparl to the next term.

If the copy of the declaration be delivered on or after *Mensem paschæ*, in *Easter* term, or *Crastinum animarum* in *Michaelmas* term, or in *Hilary* term, or in *Trinity*, and the plaintiff shall thereupon give a rule to appear and plead, if the defendant enters his appearance two days preceding the essoin-day of the next term, he shall imparl until the next term; but if he shall not appear within

within that time, judgment may be entered against him, as aforesaid. *Same rule.*

If the writ be returnable in one term, and a copy of the declaration be delivered before the esjoin-day of the next term, the plaintiff in such declaration may give a rule to appear and plead; and if the defendant doth not enter his appearance and plead by that time the rules are out, judgment may be entered against him. *Same rule.*

If declaration delivered before esjoin-day of the 2d term, defendant to plead without imparlance.

If the declaration be not entered or left in the office before the end of the next term after the return of the writ or process (by which the defendant shall be taken or charged in custody), and an affidavit made and filed in manner aforesaid before the end of twenty days after such term (*Easter term excepted, and within ten days after Easter term*), the prisoner shall be discharged, upon entering his appearance with the proper officer, by writ of *Superfedeas* made by him, according to the ancient practice of this court. *Same rule.*

If no declaration before the end of the 2d term, and affidavit filed, &c. defendant to be discharged by Superfedeas.

If any gaoler or keeper of any prison, having received a copy of a declaration against any prisoner in his custody, shall suppress the same, or not deliver it forthwith to such prisoner, an attachment shall be entered against him. *Same rule.*

Gaoler concealing a declaration liable to an attachment.

It shall be lawful for any person who shall have cause of action against any prisoner of the *Fleet*, after filing or entering a declaration, to deliver a copy to such defendant in any personal action, or to the turnkey or porter of the *Fleet* prison, and after a rule

Of declaring against a prisoner in the Fleet.

*Eight days
time to plead.*

given to plead, to be out at eight days at most, after delivery of such copy of the declaration, and affidavit made of such delivery, to sign judgment against such defendant, as if he had been charged at the bar of the *Common Pleas*. *Stat. 8 & 9 W. 3. c. 27. §. 13.*

Common Pleas.

E. T.

against

W. W. late of, &c.

} In a plea of
trespass on
the case.

*Affidavit of
the delivery of
a declaration
against a pri-
soner.*

R. R. of, &c. gent. maketh oath, That he this deponent on the 12th day of *February* last, at the lodge of the *Fleet* prison, delivered a declaration in this cause to *W. Manning*, one of the turnkeys of the said prison, a true copy of which declaration is hereunto annexed. And this deponent also saith, that the said *W. Manning* did then acknowledge to this deponent, that the defendant *W. W.* was at that time a prisoner in the said prison of the *Fleet*.

Sworn, &c.

R. R.

*When declara-
tion to be en-
ter'd with pro-
thonotary be-
fore delivered.*

When the defendant is in the *Fleet*, the declaration must be entered with the prothonotary before it be delivered to the defendant, but need not be entered before the delivery when the defendant is in any other prison. But see 8 *Mod.* 227.

*In an action on
a joint bond
where one de-*

In an action of debt against two obligors on a joint bond conditioned for payment of money, one of the defendants was arrested,

and continued in custody for want of bail, the other obligor could not be arrested, and now two terms being near expired, the plaintiff moved the court for time to declare, in regard the defendant in custody would be discharged for want of being declared against this term, and the other defendant could not be outlawed by that time. But the motion was denied. *Fisher v. Tucker & al.* Hil. 2 Geo. 2. *Pract. Reg. C. P.* 327.

defendant could not be arrested, time to declare denied.

If any plaintiff shall declare against any defendant in custody of the warden of the Fleet, or of any sheriff or other officer, by virtue of any process of this court, and shall not further proceed to judgment in three terms after such declaration delivered inclusive of the term in which the declaration shall be delivered, the defendant having appeared, the defendant may be discharged out of custody by *Supersedeas*, to be allowed by one of the justices of this court, if cause shall not be shewn by the plaintiff or his attorney, why such plaintiff had not proceeded before that time to judgment as aforesaid, upon notice to be given to either of them by the defendant's attorney or agent, and oath made of such notice. *Pas. 8 Geo. 1.*

If plaintiff proceed not to judgment in 3 terms inclusive after declaration delivered, defendant to be discharged.

And in case any plaintiff having obtained judgment in this court against any defendant a prisoner, as aforesaid, shall not charge such defendant, so remaining a prisoner, in execution upon the judgment so obtained, within two terms next after such judgment so had and obtained, including the term in which the said judgment shall be signed, such de-

If plaintiff does not charge defendant in execution within 2 terms inclusive after judgment, defendant may be discharged.

defendant so remaining in prison may be discharged out of custody, where he shall be so detained, by *Supersedeas*, to be allowed as aforesaid, unless cause shewn on like notice and oath. *Same rule.*

Defendant surrendering in discharge of his bail before declaration delivered to be declared against within two terms, or discharged.

If any defendant shall render himself, or be rendered to the *Fleet* prison, in discharge of his bail, at the suit of any plaintiff, where no declaration has been delivered, unless the plaintiff shall declare against such defendant within two terms after such render, such defendant may be discharged out of custody, by *Supersedeas* to be allowed by one of the justices of this court, if cause be not shewn to the contrary by the plaintiff, or his attorney, upon notice to either of them given by the defendant's attorney or agent, and affidavit made of such notice. *Same rule.*

Plaintiff not obliged to charge prisoner in execution, second * term after judgment, if he brings writ of error. 2 *Wils.* 380. nor while a treaty subsists between the parties. 3 *Wils.* 455.

If declaration delivered, or judgment had before render, plt. to proceed to judgment in 3 terms after render, and

But where a declaration has been delivered, or judgment had against such defendant so rendering himself, or being rendered, before such render, unless the plaintiff shall proceed to judgment upon such declaration delivered within three terms after such render (the defendant having appeared) and charge

* Plaintiff shall have every day in second term, to charge prisoner. 2 *Wils.* 380.

charge such defendant in execution within two terms after such judgment obtained, the defendant may be discharged in like manner by *Superfedeas*, unless cause shewn upon the like notice and affidavit. *Same rule.*

charge deft. in execution within 2 terms after judgment or deft. to be discharged.

No copy of a declaration delivered at the *Fleet* prison against any prisoner there, shall be sufficient charge to hold such prisoner to bail, or to retain such prisoner in custody for want of bail, unless an affidavit that the plaintiff's cause of action amounts to ten pounds or upwards be first made, and filed in the proper prothonotary's office, and an indorsement made by the said prothonotary or his deputy upon such copy of a declaration, signifying the sum of money specified in such affidavit, for which sum so indorsed bail shall be required, and no more. *Hil. 8 Geo. 2.*

Copy of declaration not sufficient to charge prisoner in custody, unless affidavit be made that cause of action is 10l. or upwards.

If a defendant arrested by process issuing out of the court of *King's Bench*, and in custody for want of bail, remove himself by *Habeas corpus* to the *Fleet* prison, and the plaintiff charges him in the *Fleet* with a copy of a declaration, he is not obliged to make and annex an affidavit as by the above rule is directed, in regard there was an affidavit made of the debt when the plaintiff took out the process upon which the defendant was arrested; but if the declaration comes in as a new charge against a prisoner in custody, at the suit of another plaintiff, there the above rule must be observed. See *Rep. & Cas. of Pract. C. P. 144. Barnes 75. Pract. Reg. C. P. 330.*

The plt. at whose suit the prisoner was arrested need not make such affidavit.

A prisoner discharged for want of prosecution, if afterwards arrested on an action on the judgment, a common appearance shall be taken.

Where a prisoner in the *Fleet*, or other gaol or prison, is discharged, or ordered to be discharged by this court, or any of the justices thereof, by *Superfedeas* for want of prosecution, and such prisoner is afterwards arrested or detained in custody by action of debt brought upon the judgment obtained in the cause, wherein such prisoner was so discharged, or ordered to be discharged, a common appearance shall be accepted for the defendant, in such action of debt upon the judgment. *Hil. 8 Geo. 2. Vide antea.*

Def. discharged for want of proceeding to judgment may be afterwards taken in execution; aliter if discharged for want of being charged in execution.

Where a defendant is discharged out of custody for want of the plaintiff's proceeding to judgment, the plaintiff may afterwards proceed to judgment and take the defendant in execution thereon, and the defendant shall not be discharged; but if the plaintiff has proceeded to judgment, and the defendant be discharged out of custody for want of being charged in execution, the defendant is totally discharged, and cannot afterwards be taken in execution on that judgment. *Barnes 376, 377.*

A prisoner on contempt not entitled to a day rule.

A prisoner charged with an attachment for a contempt, which is a criminal prosecution, is not intitled to a day rule.

Prisoner arrested by process of B. R. removed into the Fleet, how to be proceeded against, or discharge.

See *Barnes 384, 385.*

If a defendant in custody on a *King's Bench* process be committed by this court, or a judge of this court, to the prison of the *Fleet*, before a declaration delivered, the plaintiff cannot declare against him in the *King's Bench*, without removing him to the prison of that court by *Habeas corpus ad respondendum*; but he may declare against him

in

in this court; and for default of declaring in due time; this court may discharge the defendant out of custody. After a declaration delivered, the action must be carried on in that court, in which the plaintiff declared, though the defendant be removed to the prison of another court; and the *Superfedeas*, for default of subsequent proceedings, must issue out of that court in which the plaintiff declared.

Where a defendant was served with copy of process, but before declaration delivered became a prisoner in the *Fleet*, and the plaintiff entered an appearance for him, pursuant to the statute, and left a declaration in the office, and gave him notice of it, the court set aside the proceedings, and held, that the declaration ought to have been delivered at the *Fleet*.

How to proceed when a defendant after being served with copy of process, and before declaration becomes a prisoner.

GEORGE the third, &c. To the sheriff of *L.* greeting. Whereas *S. S.* is detained in our prison under your custody, by virtue of our writ returnable, before our justices at *Westminster*, on, &c. [*the return*] to answer *C. C.* in a plea of trespass, and also in a plea of trespass on the case, to the damage of the said *C.* of 20*l.* And because it sufficiently appears to our said justices at *Westminster*, that the said *S.* hath appeared in our said court, and found sufficient bail to answer the said *C.* in the plea of trespass on the case aforesaid; therefore we command you, that if the said *S.* is detained in our said prison under your custody, by occasion of the said action,

Superfedeas on putting in good bail.

action, and no other, then you permit him to go at large, as you will answer the contrary at your peril. Witness, &c.

The like to a steward of a liberty.

GEORGE the third, &c. To chief steward of the liberty of *Bury St. Edmunds* in the county of *Suffolk*, greeting. Whereas by our writ we commanded our sheriff of *Suffolk*, that he should take *J. L.* gent. if he might be found in his bailiwick, and keep him safely, so that he might have his body before our justices at *Westminster*, at a certain day in the said writ specified, to answer *W. L.* gent. in a plea of trespass, and also in a certain plea of trespass on the case upon promise, to the damage of the said *W.* of 300*l.* and you, by virtue of a certain warrant upon our said writ by the sheriff of the county aforesaid thereupon directed to you, took the said *J.* within the said liberty, and still detain him in our prison under your custody; *Yet* because the said *J.* after the taking aforesaid found sufficient bail before our said justices at *Westminster*, to answer the said *W.* in the pleas aforesaid; therefore we command you, that if the said *J.* by the occasion aforesaid, and no other, is detained in our prison under your custody, then without delay you cause the said *J.* to be discharged out of the said prison, and permit him to go at large. Witness, &c.

Supersedeas on entering a common appearance.

GEORGE the third, &c. To the sheriff of *W.* greeting. Whereas *A. B.* is detained in our prison under your custody, by virtue

virtue of our writ of *Capias* issued out of our court before our justices at *Westminster*, returnable before our said justices, on, &c. [*the return*] to answer *C. D.* in a plea of trespass, and also in a certain plea of trespass on the case upon promise, to the damage of the said *C.* 30*l.* whereby 20*l.* bail was directed to be taken: But because it sufficiently appears to our said justices at *Westminster*, that the said *A.* has appeared by *W. R.* his attorney to answer the said *C.* in the plea aforesaid, we command you, that if the said *A.* be detained in our prison under your custody, by virtue of the said writ, and for no other cause, that then you suffer him to go at large, as you will answer the contrary at your peril. Witness, &c.

GEORGE the third, &c. To the sheriff of the city of *Canterbury*, greeting. Superseedeas for want of prosecution, where the deft. was taken by the late sheriff. Whereas by our writ we commanded our late sheriff of the city of *Canterbury*, that he should take *J. L.* if he should be found in his bailiwick, and keep him safely, so that he might have his body before our justices at *Westminster*, from the day of *St. Michael* in three weeks in the first year of our reign, to answer *J. A.* in plea of trespass, and also for 16*l.* of debt upon demand; and the said *J. L.* by virtue of our said writ was taken, and is now detained in our prison under your custody; Yet because the said *J. A.* hath in no manner hitherto proceeded in the said pleas against the said *J. L.* and the said *J. L.* hath by *L. R.* his attorney appeared in our court

court before our justices at *Westminster*, and is ready to answer the said *J. A.* in the pleas aforesaid, we therefore command you, that if the said *J. L.* by the occasion aforesaid, and no other, is detained in our prison under your custody, then without delay you cause the said *J. L.* to be discharged out of the said prison, and permit him to go at large. Witness, &c.

Superedeas
for want of
declaring in
two causes.

GEORGE the third, &c. To the sheriff of *W.* greeting. Whereas *A. B.* is detained in our prison under your custody, by virtue of our writ of *Capias*, returnable before our justices at *Westminster*, on, &c. [*the return*] to answer *C. D.* in a plea of trespass, and also in a certain plea of trespass on the case upon promise, to the damage of the said *C.* 30 *l.* whereupon bail for 20 *l.* was directed to be taken: And whereas the said *A.* is also detained in our said prison under your custody by virtue of another writ of *Capias*, returnable before our said justices at *Westminster*, on, &c. [*the return*] to answer *E. F.* in a plea of trespass, and also in a certain plea of trespass on the case upon promise, to the damage of the said *E.* of 50 *l.* whereupon bail for 40 *l.* was directed to be taken: But because it sufficiently appeareth to our said justices at *Westminster*, that the said *A.* hath appeared in our court before our said justices by *W. R.* his attorney, to answer as well the said *C.* as the said *E.* in the several pleas aforesaid; and that the said *C.* and *E.* have not, and neither of them hath, proceeded

ceeded to declare against the said *A.* in due time after his commitment, pursuant to the rules of our court of *Common Pleas* at *Westminster*; we therefore command you, that if the said *A.* be detained in our prison under your custody for the causes aforesaid, and no other, that then you immediately discharge him from your said custody, and suffer him to go at large, as you will answer the contrary at your peril. Witness, &c.

GEORGE the third, &c. To the warden of our prison of the *Fleet*, greeting. Whereas *J. G.* in the term of the Holy *Trinity* last past [*if delivered in the vacation, inserted the day*] was charged in our said prison under your custody with a copy of a declaration, at the suit of *T. B.* in an action of debt upon bond for the sum of _____ But because it sufficiently appears to our justices at *Westminster*, that no affidavit that the said plaintiff's cause of action amounted to 10 *l.* or upwards, was first made and filed in the proper prothonotary's office, nor an indorsement made by the said prothonotary or his deputy upon such copy of the declaration, signifying the sum of money which should have been specified in such affidavit, according to the late rule made for that purpose; and because the said *J.* hath appeared by his lawful attorney to answer the said *T.* in the plea aforesaid, we command you, that if the said *J.* be detained in our said prison under your custody, by virtue of the said declaration, and for no other cause, that then you suffer

Superseedeas for want of an affidavit of the debt and indorsement on the back of the declaration wherewith defendant was charged in the Fleet.

suffer him to go at large, as you will answer the contrary at your peril. Witness Sir *William De Grey*, knight, at *Westminster*, the sixth day of *November* in the seventh year of our reign.

Superedeas
for want of
plaintiff's pro-
ceeding to
judgment
within three
terms after
declaration
delivered.

GEORGE the third, &c. To the she-
riff of *S.* greeting. Whereas *A. B.* is de-
tained in our prison under your custody,
by virtue of our writ of *Capias*, returnable
before our justices at *Westminster*, on, &c.
[*the return*] last past, to answer *C. D.* in a
plea of trespass; and also in a certain plea of
debt upon demand for 40*l.* And whereas
the said *A.* afterwards, that is to say, on the
17th day of *May* last past, was charged with
a declaration at the suit of the said *C.* in the
plea aforesaid; but because it appeareth to
our justices at *Westminster*, that the said *A.*
hath appeared in our court of *Common Pleas*,
to answer the said *C.* in the plea of debt
aforesaid, and that the said *C.* hath not pro-
ceeded to judgment against the said *A.* with-
in three terms after the delivery of the said
declaration, as required by the rules of our
said court, we command you, that if the
said *A.* be detained in our prison under your
custody, for the cause aforesaid, and no other,
you permit him to go at large, as you will
answer the contrary at your peril. Witness,
&c.

Superedeas
for not charg-
ing defendand
in execution

GEORGE the third, &c. To the war-
den of our prison of the *Fleet*, greeting.
Whereas *M. D.* on the 21st day of *June*
1766,

1766, rendered herself to our said prison of ^{within two} the *Fleet* before ^{terms after} *esq*; one ^{judgment.} of our justices of our court of the bench in discharge of her bail, at the suit of *U. R.* and *H. C.* for 40*l.* And because the said *U.* and *H.* have not proceeded to charge the said *M.* in execution within two terms next after judgment obtained, according to the rules of our said court of the bench, we therefore command you, that if the said *M.* be detained in your custody for that, and no other cause, that then you suffer her to go at large, as you will answer the contrary at your peril. Witness, &c.

GEORGE the third, &c. To the war- ^{Superedeas} den of our prison of the *Fleet*, greeting. ^{for want of} Whereas it hath been certified to our justices ^{proceeding to} of our court of the bench at *Westminster*, ^{judgment and} that *A. B.* was committed to our said prison ^{execution at the} of the *Fleet* for want of bail, upon our writ ^{suit of several} of *Habeas corpus*, at the suit of *C. D.* in a ^{plaintiffs.} plea of trespass, and also in a certain plea of debt upon demand for 45*l.* And on the 27th of *May* 1765, was charged with a declaration at the suit of *E. F.* in a plea of trespass on the case for 50*l.* And on the 30th day of the same month, was charged with a declaration at the suit of the said *C.* in a plea of debt for 40*l.* And also on the 13th day of *June* then next following was charged with another declaration at the suit of *G. H.* in a plea of trespass on the case for 20*l.* And for that it appeareth to our said justices, that the said *C.* and *E.* or either of them, have not proceeded to charge the said

faid *A.* in execution in due time in the faid causes or either of them, according to the rules and orders of our faid court; and also, for that it appeareth to our faid justices that the faid *G.* hath not in due time proceeded to judgment against the faid *A.* in the faid cause, according to the rules and orders of our faid court; and because the faid *A.* hath appeared in our faid court by his lawful attorney in the several actions aforesaid; therefore, &c.

Bill of COSTS on Proceedings against PRISONERS.

Michaelmas Vacation, 1777.

	Out of Pocke ^t			Agent			Attorney		
	l.	s.	d.	l.	s.	d.	l.	s.	d.
Retainer, attending and taking instructions.	0	0	0	0	2	2	0	4	4
Affidavit of debt.	0	2	7	0	4	1	0	5	7
Capias	0	4	10	0	7	11	0	11	0
Warrant thereon, and messenger	0	0	4	0	0	10	0	1	4
Paid officer for arrest	0	10	6	0	10	6	0	10	6

Easter Term, 1778.

Searching at <i>Fleet</i> prison for <i>Hab. Corp.</i> whereby prisoner was removed, and inspecting the return	0	0	0	0	1	8	0	3	4
Drawing declaration and copy fol. 11	0	0	0	0	5	6	0	11	0
Entring on roll and paid prothonotary	0	6	0	0	8	6	0	11	0
Copy on stamp to deliver to defendant in custody, and duty	0	0	3	0	2	1	0	11	11
Another copy to annex to affidavit	0	0	3	0	2	1	0	3	11
Delivering declaration at <i>Fleet</i> prison	0	0	0	0	1	8	0	3	4

	Out of Pocket			Agent			Attorney		
	<i>l.</i>	<i>s.</i>	<i>d.</i>	<i>l.</i>	<i>s.</i>	<i>d.</i>	<i>l.</i>	<i>s.</i>	<i>d.</i>
Paid turnkey	0	1	0	0	1	0	0	1	0
Affidavit of delivering declaration, duty and oath in vacation	0	3	7	0	5	1	0	6	7
Filing declaration, and affidavit with secon- dary	0	0	0	0	1	8	0	3	4
Term fee	0	0	0	0	2	6	0	5	0
Porters letters and mes- sengers	0	0	0	0	1	0	0	2	0

Trinity Term following.

Rule to plead	0	2	2	0	2	6	0	2	10
Searching for plea	0	0	0	0	1	8	0	3	4
Drawing interlocutory judgment with award of inquiry, fo. 3	0	0	0	0	1	6	0	3	0
Ingrossing, proceedings on paper and duty, fo. 14	0	0	3	0	2	7	0	4	11
Entering same on roll	0	0	0	0	2	4	0	8	4

N. B. The rest of the fees will be the same as on other inquiries in this court, varying according to the length of the proceedings. See bill of costs on proceedings against a member of parliament. *Postea fol.*

COSTS OF SUPERSEDEAS to discharge PRISONER out of CUSTODY.

	Out of pocket			Agent			Attorney		
	<i>l.</i>	<i>s.</i>	<i>d.</i>	<i>l.</i>	<i>s.</i>	<i>d.</i>	<i>l.</i>	<i>s.</i>	<i>d.</i>
Paid for clerk of papers his certificate	0	3	6	0	3	6	0	3	6
Prothonotary's ditto	0	5	0	0	5	0	0	5	0
Three fummonces to shew cause why defen- dant should not be discharged	0	6	0	0	6	0	0	6	0
Copies and service	0	0	0	0	3	0	0	6	0
Attendances	0	0	0	0	5	0	0	10	0
Affidavit of service	0	2	7	0	4	1	0	5	7
Judge's <i>Fiat</i> and order	0	6	0	0	7	0	0	8	0
<i>Supersedeas</i>	0	5	2	0	8	6	0	11	10
Appearance for defen- dant	0	2	6	0	4	2	0	5	10

Proceedings in (a) ejectment.

An action of trespass and ejectment, what it is.

AN action of trespass and ejectment is given to a tenant for term of years, who is ousted of his term, and he may thereby recover the remainder of his term and damages. It is now used as the most common action for trying titles to land in the room of many real actions.

This action is generally grounded on a mere fiction. The person who claims the messuages or lands in dispute, and who is called the lessor of the (*b*) plaintiff, is supposed to have made a lease of the premises to the plaintiff for term of years yet in being; the plaintiff is supposed to have entered by virtue of that lease, and the defendant, who is termed the casual (*c*) ejector (being only a nominal person) is supposed to have

(*a*) Ejectment is a fiction, and in the breast of the court. *Barnes* 180.

(*b*) Name of *nominal* plaintiff happening to be a real person's name, no cause for censuring the attorney; this proceeding being considered as purely fictitious, for he cannot release the action, and that a person in human nature, of the same name of the nominal plaintiff, is not to be taken to be the real plaintiff. *Barnes* 189.

(*c*) Casual ejector cannot bring a writ of error. *Barnes* 189. Attorney ordered to *non pros* such a writ at his own expence, and pay costs. *Barnes* 181.

entered upon the plaintiff and turned him out of possession.

The common method of commencing this action is by delivering a copy of the declaration to the tenant in possession of the premises, with a notice thereunder written to appear and defend his title, or else that the defendant, the casual ejector, will suffer judgment to go by default, and thereby the tenant be put out of possession. *Of commencing this action.*

The tenant in possession may be admitted to defend his title on entering into the common rule, viz. to become defendant in the room of the defendant the casual ejector, receive a declaration, plead the general issue, and at the trial to confess the lease, entry and actual ejectment of the plaintiff. *The tenant in possession may be admitted to defend his title, on entering into the common rule.*

In the Common Pleas.

Trinity (d) term in the seventeenth year of king George the third.

(e) Middlesex, *J. JOHN Doe*, late of the parish of St. George the Martyr, in the county of Middlesex, yeoman, was attached to answer *Richard Roe* of a plea, wherefore with force and arms he entered *Declaration in ejectment of five messuages.*

(d) Judgment refused upon declaration intituled *Trinity Term*, 17 Geo. II. instead of 16 and 17 Geo. II. In country causes, where declarations are of *Trinity*, notice may be good to appear in next *Hilary*, (passing over *Michaelmas*) though not the usual practice. *Barnes 185.*

(e) Rules for judgment for lands in *Denbighshire, Wales.* *Barnes 181.*

into five (*f*) messuages with the appurtenances in the (*g*) parish of *Stebon-Heath*, otherwise *Stepney*, in the county of *Middlesex*, which *Thomas Bland* and *Conrade de Golls* demised (*b*) to the said *Richard* for a term which is not yet expired, and ejected him from his said farm, and other wrongs to him did, to the great damage of the said *Richard*, and against the peace of our sovereign lord the king; and whereupon the said *Richard* by *Joseph Dobyngs* his attorney complaineth, that whereas the said *Thomas* and *Conrade* on the 25th day of *April* in the 6th year of the reign of his said majesty, at the said parish of *Stebon-Heath*, otherwise *Stepney*, in the county aforesaid, had demised to the said *Richard* the said tenements with the appurtenances; to have and to hold the said tenements with the appurtenances to the said *Richard* and his assigns, from the 24th day of *April* aforesaid in the year aforesaid, unto the full end and

(*f*) *One messuage or tenement* are too uncertain words in the declaration; and judgment arrested for that cause. *Barnes* 173.

(*g*) Court held the description of one messuage with the appurtenances, in the parish of *St. John the Baptist*, and *St. Michael*, in the city of *Coventry*, and county of the same city, or one of them, to be totally uncertain, and that one of the parishes could not be rejected as surplusage, that defendant could not know what to defend for, nor sheriff of what to give possession; and for this cause arrested judgment, after verdict for plaintiff. *Barnes* 184.

(*b*) Demise is never amended, in point of time, without consent. *Barnes* 17, 186.