7. Verdict not to be set aside tho' some of the jury left the rest for some time; but this is a misbehaviour in the jury, and fineable. So tho' they eat and drank at either party's expence. *M.* 9 *Geo.* 2. *Lord St. John* v. *Abbot*, 1 *Barnes's Notes* 324.

8. Action of trespass, verdict for defendant, on a bad justification confessing the trespass, set aside, and judgment entered for the plaintiff. *E.* 10 *Geo.* 2. *Craven* v. *Henley*, *Pract. Reg. in C. P.* 240.

Vide Stat. 3 *Geo.* 2.

9. Verdict set aside, twenty-four jurors being returned on the *venire* and twenty-eight on the *habeas corpora*. *T.* 11 & 12 *Geo.* 2. *Penrice* v. *Jackson*, *Rep. and Cas. of Pract. in C. P.* 150.—*Pract. Reg. in C. P.* 416. S. C.—1 *Barnes's Notes* 347. S. C.

10. No motion shall be received in arrest of judgment, or to set aside a verdict after the first four days in term, unless where the foundation of the motion be a fact not disclosed to the party till after that time, &c. *Per Cur.* *Willis, an attorney*, v. *Bennet*, *M.* 11 *Geo.* 2. *Pract. Reg. in C. P.* 432. 1 *Barnes's Notes* 328.

11. Verdict being right in part cannot be set aside tho' contrary to evidence. *E.* 8 *Geo.* 2. *Williams* v. *Jones and another*, 1 *Barnes's Notes* 9. *Ibid.* 317. *Huddlestone* v. *Brigstock & al'*, *M.* 7 *Geo.* 2. S. P. tho' judge certified the verdict as to one of the issues to be contrary to evidence.

12. Verdict upon the issue of *riens per descent*, that lands came by descent sufficient to answer debt and damages, but did not set out the value of lands descended, under the *Stat. W.* 3. yet verdict held good. *M.* 12 *Geo.* 2. *Matthews* v. *Lee*, 1 *Barnes's Notes* 329.

13. The

13. The words, *and the ſaid plaintiff likewiſe*, after iſſue tendered by defendant were omitted in the iſſue delivered, but inſerted in the record of *niſi prius*. Motion to ſet aſide the verdict, and rule to ſhew cauſe. But it appearing that defendant's counſel at the trial had objected to the evidence given by plaintiff in point of law, (which is making defence) though he did not croſs examine, the rule was diſcharged. *E.* 12 *Geo.* 2. *Graves* v. *Cliff*, 1 *Barnes's Notes* 331.

14. Verdict ſet aſide, one perſon having anſwered to another's name, and been ſworn as a juror. *M.* 18 *Geo.* 2. *Norman* v. *Beaumont, in treſpaſs and aſſault*, 2 *Barnes's Notes* 362. *Ibid.* 336.

15. Motion to ſet aſide the verdict, becauſe one of the jurors chriſtian name was *Harry*, and not *Henry*, as in the panel, but denied. *M.* 18 *Geo.* 2. *Wrey* v. *Thorn*, 2 *Barnes's Notes* 364.

16. Verdict ſet aſide with coſts, plaintiff's replication being bad, and he having proceeded to trial, after notice given him of it by defendant, who made no defence. *E.* 19 *Geo.* 2. *Love and Appleton* v. *Jarret*, 2 *Barnes's Notes* 369.

17. Verdict ſet aſide on payment of coſts, the *venire* being returnable at a day ſubſequent to the aſſizes. *E.* 23 *Geo.* 2. *Woeden, on the demiſe of Love*, v. *Saunders, Widow, and others, in ejectment*, 2 *Barnes's Notes* 375.

Point reſerved.

1. Whenever a point is reſerved for the opinion of the court, the verdict muſt always be for the plaintiff. *E.* 18 *Geo.* 2. *Kemp qui tam, &c.* v. *The hundred of Strafford and Tichill*, 2 *Barnes's Notes* 366.

2. Point

2. Point reserved at trial, whether a bond, in the condition whereof a mortgage demise was contained, stamped with a treble 6 *d.* stamp, read in evidence for the plaintiff, ought to have been admitted for want of two treble 6 *d.* stamps. Held rightly admitted. 2 *Barnes's Notes* 379.

Several issues. Where several issues joined, if enough is found for the court to give judgment upon, no *venire facias de novo* ought to issue. *E.* 24 *Geo.* 2. *Bartlett* v. *Spooner*, 2 *Barnes's Notes* 337.

Verdict for security. Verdict given for the plaintiff at the assizes for security only, plaintiff must not enter up judgment without leave of the court. *T.* 13 *Geo.* 2. *Smith* v. *Smith*, *Pract. Reg. in C. P.* 245.

New trial.

M. 11 *Geo.* 2. *in Willis, an attorney,* v. *Bennett, Cur'* declared that hereafter no motion in arrest of judgment, or for a new trial, should be received after the first four days from the return of the *ha. corp. Pract. Reg. in C. P.* 410.—Motion for a new trial must be made within the first four days of the term. *E.* 13 *Geo.* 2. *Reynolds* v. *Simonds*, *Ibid.* 1 *Barnes's Notes* 332. S. C.

1. A Motion for a new trial cannot be made after the appearance day of the return of the *habeas corpora juratorum*, unless the foundation of the motion be some matter afterwards discovered.

2. 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.

3. Where a verdict finds intire damages where damages are principal, and part not actionable, though judgment be arrested, yet by rule of court a *ven. fa. de novo* may issue as upon an ill verdict, and upon the new trial

trial the party may sever his damages. *Rule* 1654. *f.* 24.

4. A new trial cannot be granted without costs. *Per tot' Cur'. M.* 2 *Geo.* 2. *in the case of Brochburst* v. *Copson, Pract. Reg. in C. P.* 408.

5. Verdict set aside and a new trial granted upon payment of costs, upon an affidavit of eleven of the jury, wherein it was sworn that they had agreed on a verdict for the plaintiff, and 5 *s.* damages, but by mistake the foreman gave a verdict for defendant. *M.* 5 *Geo.* 2. *Baker* v. *Miles, Rep. and Cas. of Pract. in C. P.* 66.

6. In slander but 1 *s.* damages given, plaintiff moved for a new trial, but denied. *T.* 7 & 8 *Geo.* 2. *Groves* v. *Heath, Ibid.* 104. *Pract. Reg. in C. P.* 431. S. C.

7. New trial denied, tho' judge certified that the damages (50 *l.*) were excessive, it appearing that the action was for a very malicious prosecution, and that plaintiff had been imprisoned and tried for felony. *M.* 7 *Geo.* 2. *Anon.* 1 *Barnes's Notes* 318.

8. In ejectment verdict for plaintiff's lessor, new trial denied on affidavit of material witnesses absenting themselves. But judge certifying that the strength of the evidence was with the defendant, a new trial was granted him upon payment of costs. *M.* 8 *Geo.* 2. *Letgoe, upon the demise of Wheeler,* v. *Pitt,* 1 *Barnes's Notes* 322. *Pract. Reg. in C. P.* 408. S. C.

9. Where matter of title is in dispute, and defendant obtains a verdict, a new trial is always denied, unless the revenue is concerned. *M.* 8 *Geo.* 2. *Baker, on the demise of Brown,* v. *Petcher,* 1 *Barnes's Notes* 323.

10. Verdict for plaintiff, on motion for new trial court divided, plaintiff may sign final judg-

judgment. *Hil.* 10 *Geo.* 2. *Cartlidge* v. *Eyles*, *Bart. Ibid.* 327.

11. After motion in arrest of judgment, it is too late to move for a new trial. *M.* 12 *Geo.* 1. *Anon. Pract. Reg. in C. P.* 241.

12. Plaintiff moved to set aside a nonsuit at the assizes, and for a new trial; but *Cur'* would not grant it, because by the plaintiffs becoming nonsuit they were out of court, it was said that the King's Bench had denied the same motion this term, and for the same reason. *M.* 13 *Geo.* 2. *Talbot and others* v. *Pyot*, *Pract. Reg. in C. P.* 411.

13. Motion for a new trial; rule to shew cause; held that an highway ought not to be given in evidence under the general issue, but to be pleaded specially, *per* the opinion of a great majority of the judges, and rule to shew cause was discharged. *T.* 13 & 14 *Geo.* 2. *Selman* v. *Courtney*, 2 *Barnes's Notes* 350.

14. Defendant moved for a new trial, suggesting the verdict to be against evidence, and relying upon the judge's certificate. *Per Cur'*: As the cause was tried before a judge of another court, an affidavit of what passed at the trial must be produced as a necessary foundation for this motion. *E.* 14 *Geo.* 2. *Bond* v. *Palmer*, 2 *Barnes's Notes* 352.

15. A new trial may be granted as well where damages are less, as where greater than they ought to be, for there is as much reason for a new trial in the one case as the other, and a writ of inquiry was set aside for *smallness* of damages. *Tutton* v. *Andrew*, *T.* 14 & 15 *Geo.* 2. 2 *Barnes's Notes* 354. *Ibid.* 367. *in Russel* v. *Ball*, *E.* 18 *Geo.* 2. *Cur'* said that where a demand is certain, as by promissory note, they will set aside a ver-

a verdict for too small damages, but not where the damages are uncertain, as for curing a wound.

16. The words, "*and thereupon the said plaintiff by* George Baldero *his attorney saith*," were omitted in the issue delivered, tho' put into the record. Verdict for plaintiff without a defence. Motion by defendant for a new trial. *Cur'* did not incline to think the variance material, but as plaintiff's attorney had made a blunder, and the merits had not been tried, *Cur'* ordered a new trial, and costs to attend the event. *E.* 26 *Geo.* 2. *Fitch qui tam* v. *Nunn*, 2 *Barnes's Notes* 381.

17. New trial never granted in actions on a penal statute where verdict is found for defendant. *Per Cur.' M.* 27 *Geo.* 2. *Fitch qui tam* v. *Nunn*, *Ibid.* 384.

Final judgment upon a postea.

NO rule for final judgment is to be given, but you stay the same time as in *B. R.* after which (if defendant does not move in arrest of judgment) stamp your *postea* with a double 2 *s.* 6 *d.* stamp, upon which the prothonotary, (in whose office the pleadings are) will sign judgment, and tax the costs. Defendant may have a treasury rule to be present at taxing costs, a copy of which you delivered to the plaintiff's attorney, and then he must give you notice in writing of the day and hour costs are to be taxed.

Immediately after judgment is signed, and costs taxed, deliver *postea* to clerk of the judgments of the prothonotary, which is not afterwards to be taken out of the office without leave of the court. *Rule T.* 13 *Geo.* 2.

Note;

Note; final judgments on *posteas* and writs of inquiry are entered by the clerk of the judgments, but judgments by default, *&c.* are entered by the attorney on a common roll delivered to him by the clerk of the judgments.

NOTES.

1. Judgment of above a year standing must be revived by *sci. fa.* tho' the plaintiff delayed by an injunction out of *Chancery*; for *per Cur'*: Plaintiff might have revived by *sci. fa.* without breach of the injunction. *Hil.* 6 *Geo.* 2. *Simpson* v. *Grey et al,' Pract. Reg. in C. P.* 377.

2. First judgment was signed against executrix after a verdict *post Mortem defendentis secundum statutum.* The second judgment was an action upon the first judgment, where plaintiff recovered *de bonis testatoris.* The third suggesting a *devastavit* was a judgment *de bonis propriis*; and the fourth was in an action brought upon the third judgment, wherein defendant was held to bail. *Cur'* held all proceedings to be regular. *Hil.* 8 *Geo.* 2. *Belwood* v. *Chambers, executrix,* 1 *Barnes's Notes* 174.

3. Plaintiff's attorney, after writ of error brought, artfully delayed signing his final judgment till the writ of error was spent, and then brought an action upon the judgment. *Cur'* ordered proceedings in the action upon the judgment to be staid, and a new writ of error to be brought at plaintiff's attorney's expence. *E.* 8 *Geo.* 2. *Arden* v. *Lamley, Ibid.* 177.

4. Motion

4. Motion for leave to enter a judgment *nunc pro tunc*, defendant dying whilst the court took time to consider on a motion in arrest of judgment. Rule for defendant's executor to shew cause made absolute, for *per Cur'* the party must not suffer by the court's taking time to consider. *M.* 11 *Geo.* 2. *Craven* v. *Hanley*, *Rep. and Caf. of Pract. in C. P.* 143. 1 *Barnes's Notes* 186. S. C.

Crisp et al' v. *The Mayor of Berwick*, 1 *Sid.* 162.—*Paulet* (*or Baller*) v. *Delander*, *T.* 1 *Geo.* 1. *in B. R.*—*Taylor* v. *Matthews*, *Hil.* 2 *Geo.* 2. *in B. R.*—*The Queen* v. *The inhabitants of Hornesey*, *Hil.* 11 *Ann. B. R.* Judgment entered 35 years after the party's death. *Vide Rep. and Caf. of Pract. in C. P.* 143-4. 1 *Barnes's Notes* 186.

5. Final judgments to be entered up immediately. Plaintiff's representative must enter final judgment within two terms after plaintiff's death. *E.* 12 *Geo.* 2. *Webb administrator, &c.* *Spurrell*, 1 *Barnes's Notes* 192.—*Rep. and Caf. of Pract. in C. P.* 156. S. C.

Stat. 18 *Car.* 2. c. 8.

6. After a writ of error is brought, it is too late to move to set aside judgment, though the writ of error be not allowed. *M.* 12 *Geo.* 1. *Anon. Pract. Reg. in C. P.* 241.

7. In deceit for suffering a recovery of lands of ancient demesne, on defendant's confessing the action, and the King's remitting damages, judgment granted. *Vide* 1 *Barnes's Notes* 191.

8. Motion to enter satisfaction on the record of judgment *nunc pro tunc*, plaintiff being dead, after executing a warrant of attorney to acknowledge satisfaction, and his administrator become lunatick, as appeared by the affidavit of a physician, who attended her. *Cur'* made a rule upon the late Duke's trustees to shew cause, which on affidavit of service was made absolute. *Hil.* 12 *Geo.* 2. *Darlow* v. *The late Duke of Wharton*, 1 *Barnes's Notes* 191.

9. When

9. When a verdict is given as a security only; judgment should not be entered without leave of the court. *T.* 13 *Geo.* 2. *Smith and others* v. *Smith*, *Pract. Reg. in C. P.* 245.

10. Verdict for plaintiff, defendant had obtained an injunction which was not dissolved till *May* last. The associate being dead, the *postea* could not be found till 10th *May* last; leave to enter judgment *nunc pro tunc* denied, for plaintiff might have signed judgment without breach of the injunction. *Hil.* 14 *Geo.* 2. *Fowler* v. *Whadcock*, *Pract. Reg. in C. P.* 243.

11. Judgment ordered to be entered for plaintiff notwithstanding the verdict against him, the plea having confessed the trespass. *M.* 16 *Geo.* 2. *Broadbent* v. *Wilkes*, 2 *Barnes's Notes* 206.

12. Defendant died 16 *Feb.* judgment signed the 21st; plaintiff revived the judgment by *sci. fa.* against defendant's administrator, and after two *nichils* returned, execution was awarded; *Cur'* held that all judgments must be taken to be pronounced in term time, and that signing judgment in the vacation following, tho' after the death of the party, is good, and the rule to shew cause why the judgment, &c. should not be set aside, was discharged. *T.* 16 & 17 *Geo.* 2. *Hall* v. *Morse*, 2 *Barnes's Notes* 208.— *Ibid.* 209. Defendant died 27 *Sept.* 1743. on 1st *Oct.* then next judgment was signed of the preceding term, by virtue of a warrant of attorney, and 27th same *October*, a *fieri facias* was executed. Defendant's representative moved to set aside the judgment and execution, but *Cur'* made no rule. The judgment is well signed of the preceding term, and relates to the essoin-day of that term, the day of signing is material only with respect to charging lands, &c. *M.*

17 *Geo.* 2.

17 *Geo.* 2. *Fawkes* v. *Alkinſon*, 2 *Barnes's Notes* 209. *Vide Ibid.* 205, 212.

13. Where defendants plead ſeveral pleas, and there is judgment for plaintiff on one, the other pleas muſt be tried before plaintiff can recover. If defendant prevails on any of the pleas, plaintiff cannot recover. *M.* 19 *Geo.* 2. *Baker* v. *Barlow and wife, executors*, 2 *Barnes's Notes* 211.

14. Judgment and all ſubſequent proceedings againſt bail ſet aſide, it not having been ſigned till about two months after the death of the original plaintiff. 2 *Barnes Notes* 223.

15. Where a judgment is erroneous in fact, if it may alſo be deemed irregular, and the application to ſet it aſide be recent, bail ought not to be put to *audita querela. Ibid.* 224.

In two actions between the ſame parties, proceedings on the *firſt* judgment, in that wherein the leaſt damages were *recovered*, ſtayed, and the damages and coſts allowed the defendant towards payment of the larger ſum recovered by him in the other action. *T.* 27 & 28 *Geo.* 2. *Roberts* v. *Biggs and others, Supplement to* 2 *vol. Barnes's Notes* 12.

Demurrers.

OF going to argument.] When the demurrer is joined, plaintiff's attorney makes up the demurrer-book, and delivers a copy of it (wrote copy wiſe) on treble penny ſtampt paper, (allowing 72 words to the ſheet) to defendant's attorney, who muſt pay him 4 *d. per* ſheet preſently for the ſame, beſides the duty, and alſo for

entering his pleadings and warrant of attorney, or in default thereof, plaintiff may sign judgment, but if he pays for the same, then plaintiff's attorney enters the whole proceedings on the roll, delivers it to the secondary, in whose office it is in, and gets a serjeant to move on it for a *concilium*, (*i. e.* a day for arguing the demurrer) and the secondary draws up a rule accordingly, which must be served on defendant's attorney, and the demurrer put down in the book for argument.

No cause to be put in the book to be argued after the last day of arguments (*a*), without motion and order. *Rule* [illegible] *T. 12 Geo. 1.*

(*a*) No argument on the four last and four first days of the term.

Of delivering the paper books.] Copies of demurrers to be delivered to the judges one week at least before the day appointed for the argument. *Rule E.* 27 *Car.* 2.—No argument till all the books be delivered. *Same rule.*

Plaintiff's attorney shall deliver all the demurrer books to the Ld. Ch. Just. and the rest of the judges (*a*), and 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. *Rule M.* 6 *Geo.* 2.

(*a*) On delivering each book you pay to the judge's clerk 2*s.*—These books need not be wrote on stamps.

In judges books, counsels names, number roll, and day of argument to be set down on the outside of each book. *Per Cur.' T.* 17 & 18 *Geo.* 2. *Vide* 2 *Barnes's Notes* 136.

NOTES.

NOTES.

1. In *quare impedit*, where judgment is given for the defendant upon a demurrer, he ſhall have coſts. *Per tot' curiam. T.* 11 *Ann. Anon. Rep. and Caſ. of Pract. in C. P.* 4.

2. In *formedon* in remainder, where the judgment is given for tenant on demurrer, he ſhall have no coſts. *Hil.* 10 *Geo.* 1. *Miller, Serjeant at law,* v. *Seagrave and wife, Rep. and Caſ. of Pract. in C. P.* 25.

3. Plaintiff may ſign judgment for refuſing to pay for a copy of an iſſue, or demurrer book, except where defendant is a priſoner, and no attorney is concerned for him. *T.* 13 *Geo.* 1. *Lawſon* v. *Hambleton, Rep. and Caſ. of Pract. C. P.* 35.

4. Defendant ſhall not pay money into court on one promiſe and demur, to another. *M.* 2 *Geo.* 2. *James* v. *Goſey, Rep. and Caſ. of Pract. in C. P.* 48.

5. Motion to ſet aſide judgments ſigned for want of paying for the demurrer books. Defendant inſiſted that plaintiff had made it a *concilium* before the books were tendered. *Cur'* ſaid that this was no excuſe to defendants for not paying for the books, for plaintiffs might make the demurrer a *concilium* again, the other being a miſtake ;

Plaintiff demurred, defendant delivered a joinder in demurrer to plaintiff's attorney, who moved for a *concilium*, and then delivered the demurrer to defendant's attorney. *Cur'* held the ſetting down the demurrer in the paper to be *irregular*. *T.* 10 & 11 *Geo.* 2. *Butler* v. *Haughton, Pract. Reg. in C. P.* 154. But ſame term in *Durrant* v. *Lynes*, it was held quite otherwiſe in full court, with this difference, that the plaintiff had joined in demurrer in this caſe, and the reaſon of the judgment was, that if the defendant had full four days notice of the *concilium* before the argument, it was ſufficient, and no ways material for the defendant to know the preciſe time when the *concilium* was moved for. *Ibid.* 154.—After joinder in demurrer, plaintiff moved for a *concilium*, and afterwards delivered the paper book the ſame day, which was held to be *irregular*, and the cauſe ordered to be ſtruck

struck out of the paper.

mistake; and held the judgments to be regular. *E.* 5 *Geo.* 2. *Wilson et al'* v. *Spencer*, *Same* v. *Smith*, *Rep. and Cas. of Pract. in C. P.* 72.

The regular practice is to tender the paper-book to defendant's attorney; if he refuses to accept and pay for it, judgment may be signed for want thereof; if he accepts and pays for it, then plaintiff is proper to move for a *concilium*, and proceed to argument. *M.* 16 *Geo.* 2. *Sharpe* v. *Sharpe*, 2 *Barnes's Notes* 135.—Rule for a *concilium* made 24 *May* in last *Easter* term, though the paper book was not then delivered, nor afterwards till the 20th *June* instant, held irregular, and the rule for a *concilium* discharged Wednesday 26th *June*. But on plaintiff's motion the same day, *Cur'* made a new rule for a *concilium*, and gave leave to set down the cause for Friday next, dispensing with the shortness of the time for the delivery of books to the judges. *T.* 18 & 19 *Geo.* 2. *Brumwell* v. *Garnett*, *one &c.* *Ibid.* 138.

6. Demurrer to be entered on the roll the term it is joined of. 1 *Barnes's Notes* 232.

7. Demurrer delivered after the rule was out, plaintiff cannot sign judgment without an order of court; agreed *per tot' Cur.* *E.* 7 *Geo.* 2. *Bellamy* v. *Herring and others*, *Pract. Reg. in C. P.* 153.

8. After [replication or] demurrer to a plea of *non assumpsit infra sex annos*, defendant cannot deliver the general issue. *Rep. and Cas. of Pract. in C. P.* 114. 1 *Barnes's Notes* 238.

9. After time given to rejoin issuably, the party may demur; the reason of giving time is, that the party may consider whether he will demur or not. *Hil.* 8 *Geo.* 2. *Matthews* v. *Wheat*, *Rep. and Cas. of Pract. in C. P.* 111.

10. Defendant demurred for that memorandum of bill sets not forth in what plea. Argued for plaintiff that the bill is set out *in hæc verba*, and shews it. Judgment for the plaintiff. *T.* 7 & 8 *Geo.* 2. *Adkin* v. *Worthington*, *an attorney*, 1 *Barnes's Notes* 237.—*Ibid.* 239. *Nicholson* v.

Con-

Conſtable, an attorney. *E.* 8 *Geo.* 2. S. P.—*Ibid.* 244. *E.* 9 *Geo.* 2. *Sydebotham* v. *Frith, an attorney*, S. P.

11. Defendant applying in a reaſonable time, and paying coſts, may withdraw his demurrer, and plead the general iſſue. *M.* 10 *Geo.* 2. *Sherlock, executor*, v. *Temple, Rep. and Caſ. of Pract. in C. P.* 135. 1 *Barnes's Notes* 246.

12. In debt on the anceſtor's bond leave to withdraw a demurrer, and plead iſſuably on payment of coſts after plaintiff had loſt a trial, being in caſe of an heir who had pleaded *riens per deſcent*, and by miſtake of his counſel had demurred to plaintiff's replication, and judgment would be given for plaintiff on the demurrer, which would be to recover his whole debt againſt defendant, tho' he had very little aſſets deſcended to him, and defendant was willing to ſatisfy plaintiff's demands as far as aſſets had deſcended to him, which might be tried on the iſſue of *riens per deſcent.* *E.* 10 *Geo.* 2. *Hunt* v. *Puckmore, Rep. and Caſ. of Pract. in C. P.* 141. 1 *Barnes's Notes* 108. S. C.—*Note*; the general practice is, that after a trial loſt, the court will not permit a demurrer to be withdrawn. *Ibid.*—Leave to withdraw a demurrer, and plead the general iſſue, denied, the plaintiff having by defendant's demurring loſt a trial at the aſſizes, though defendant offered to pay coſts. *E.* 6 *Geo.* 2. *Sutton* v. *Laycon, Pract. Reg. in C. P.* 153.—But the caſe of *Hunt* v. *Puckmore* being ſo particular a caſe, and the circumſtances therein ſo hard on the defendant, it was more reaſonable to give leave to withdraw the demurrer, than to ſuffer a manifeſt injuſtice to fall on the heir at law. *Vide Rep. and Caſ. of Pract. in C. P.* 141. *Note* to ſaid caſe of *Hunt, &c.* above.

13. In causes in the paper on points reserved, plaintiff's counsel is to begin the argument. 1 *Barnes's Notes* 109.

14. Plaintiff declared on a recognizance of bail without setting forth the condition; defendant cannot demur *generally*. The recognizance in the declaration does not appear to be conditional, but absolute; if conditional, defendant might have pleaded *nul tiel record*. *M.* 11 *Geo.* 2. *Crosse* v. *Porter*, 1 *Barnes's Notes* 249.

15. Motion to set aside a *concilium* because plaintiff had not delivered a joinder in demurrer under counsel's hand, tho' it was actually signed by counsel, and the book accepted and paid for by defendant. *Cur'*: There is no necessity to deliver a joinder in demurrer separate from the paper book. Rule to shew cause discharged with costs. *M.* 12 *Geo.* 2. *Langton* v. *Tuckwell*, *Pract. Reg. in C. P.* 155.

1 *Barnes's Notes* 109. S. C. says, it appeared that defendant's attorney had accepted and paid for the paper book in *June* last, and that the joinder was at that time actually signed by counsel; that no objection was made till the day before the time appointed this term for argument. Rule discharged with costs.

16. Demurrer after issue in fact joined; set aside. *M.* 13 *Geo.* 2. *Calvarac and wife* v. *Pinhero*, *Pract. Reg. in C. P.* 156.

17. Declaration of *Trin.* imparlance to *M.* defendant obtains time to plead till 15 *Dec.* plaintiff has a right to continue imparlance on the roll according to the fact. 2 *Barnes's Notes* 132.

18. Plea in abatement traversing the inhabitancy held bad on demurrer.—Not bad tho' beginning with "comes and defends the wrong "and injury when, &c." 2 *Barnes's Notes* 133.

19. Leave

19. Leave to withdraw demurrer on payment of coſts, to pay 10 *l.* in court upon the common rule, and plead the general iſſue. 2 *Barnes's Notes* 133.

20. Declaration on a promiſſory note; defendant pleaded *non aſſumpſit infra ſex annos.* Plaintif replied an attachment of privilege, bearing *teſte* five terms before the term of which the declaration was delivered to defendant. Demurrer to the replication, for that no return *general* or ſpecial appeared, nor that the writ was delivered to the ſheriff or returned, and that the lapſe of five years was bad. Held that an appearance cures all *errors* and *defects* in proceſs, and that the words in the declaration, "was attached by "writ of privilege," refer to the return of that writ whenever it was. Judgment for plaintiff. *Hil.* 17 *Geo.* 2. *Wilſon, an attorney,* v. *Finch, an attorney,* 2 *Barnes's Notes* 135.

21. Action on the *Stat.* 3 & 4 *W.* & *M. c.* 14. *ſ.* 3 & 4. and on demurrer, *Cur'* gave judgment for defendants, it appearing by the pleadings that the teſtator's eſtate was deviſed to truſtees for the payment of debts, and conſequently this was a caſe out of the ſtatute. *Hil.* 18 *Geo.* 2. *Gott* v. *Vavaſor and others, heir and deviſees, in debt on bond,* 2 *Barnes's* 136.

22. *Cur'* held a demurrer to plaintiff's replication not to be an iſſuable rejoinder within a judge's order for time to rejoin, rejoining iſſuably.—But defendant inſiſting that as the replication ſtood he could not ſafely rejoin iſſuably, but muſt demur to bring the merits of his caſe in queſtion, whether the demurrer was neceſſary or not; plaintiff was ordered to join in demurrer, and the rule to ſhew cauſe why demurrer ſhould not be ſet aſide, was enlarged till after

the argument. *M.* 27 *Geo.* 2. *Nesbett* v. *Farmer*, 2 *Barnes's Notes* 144.

23. Defendant obtained a judges's order for time to plead, pleading issuably, rejoining *gratis*, and taking short notice of trial within term, defendant pleaded accordingly, plaintiff replied, and defendant instead of rejoining demurred, *merely for delay*. Plaintiff not having time to set down the cause to be argued within term signed judgment, and held *regular*; *Cur'* thinking defendant's practice a meer trick.—By rejoining *gratis* is meant rejoining without the common four day rule to rejoin. *M.* 20 *Geo.* 2. *Maurice* v. *Engier*, 2 *Barnes's Notes* 213.

General demurrer to a declaration.

AND the said——by——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——to have or maintain his said action against him the said——and that he the said——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—prayeth judgment; and that the said——may be barred from having his said action against him the said——*&c.*

Joinder

Joinder in demurrer.

AND the ſaid—(the plaintiff) in as much as he hath above declared ſufficient matter in the law to have and maintain his ſaid action againſt the ſaid—which he is ready to verify, which ſaid matter the ſaid—hath not denied, or given any anſwer thereto, but intirely refuſeth to admit the verifying the ſame, the ſaid—prayeth judgment, and his damages by occaſion of the premiſſes to be adjudged to him, *&c.*

Concilium.

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, *&c.* to hear their judgment, for that the ſaid juſtices here are not yet adviſed thereof, *&c.*

Demurrer to a rejoinder.

AND the ſaid—ſaith that the ſaid plea of the ſaid—above by rejoining pleaded, and the matter therein contained, are not ſufficient in the law to bar the ſaid—from having his ſaid action againſt the ſaid—and that he hath not need, nor is obliged by the law of the land to anſwer the ſaid plea in manner and form aforeſaid pleaded; and this he is ready to verify: Wherefore the ſaid—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

Joinder.

AND the said——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——from having his said action against him the said—which said matter the said——hath not denied, nor any ways answered thereto, but intirely refuseth to admit the verifying the same, prayeth judgment, and that the said——may be barred from having his said action against him, &c.

Demurrer to a replication.

AND the said——saith that the said plea of the said——above by replying pleaded, and the matter therein contained, are not sufficient in the law for the said——to have and maintain his said action against him the said— and that he the said——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 this he is ready to verify: Wherefore for defect of a sufficient plea in this behalf the said——prayeth judgment; and that the said ——may be barred from having his said action against him the said——&c.

Joinder.

AND the said——for that he has above by replying alledged sufficient matter in the law for him the said——to have and maintain his said action against the said——which the

the ſaid——is ready to verify, which matter the ſaid——doth not deny, nor any ways anſwer thereto, but intirely refuſed to admit the verifying thereof, the ſaid——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.*

Special demurrer to a writ and declaration at the ſuit of an attorney.

Oyer of the writ.

AND the ſaid——by——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 John Willes* Knt. at *Weſtminſter* the —day of—*&c.* which being read and heard the ſaid——prayeth judgment of the ſaid writ and declaration aforeſaid of him the ſaid——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——to have and maintain his action aforeſaid againſt him the ſaid——to which ſaid writ and declaration in manner and form made and declared he hath 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 for want of a ſufficient writ and declaration in this behalf the ſaid——prayeth judgment, and that the ſaid——from his action aforeſaid may be debarred, *&c.* and for cauſes demurrer in law in this behalf he the ſaid

——accord-

——according to the form of the statute in such like case 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——day of——in the——year of the reign of our said Lord the King, which day of suing out thereof was before the day on which the said——has in his declaration thereupon alledged and declared, that the said trespasses, assaults, batteries, woundings and imprisonments charged upon him the said——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 wanted form, and so forth; and hereupon the said——demandeth the aforesaid——to join in demurrer with him the said——and hereupon a day is given by the court of our Lord the King of the bench here to the said——before his Majesty's justices at *Westminster* until——next after——to join in the demurrer in law with the said——and the said——at the same day being solemnly required, came not, neither is the writ of our said Lord the king of privilege aforesaid against the said—further prosecuted, but he the said—made default; Therefore it is considered that the said—take nothing by his said writ, but that he and his pledges to prosecute, to wit, *John Doe* and *Richard Roe*, be thereof in mercy, &c. that the said——do go thereof without day, &c. And further it is considered by the court here, that the said——recover against the said——pounds for his expences and costs

Writ tested before the cause of action.

Day for plaintiff to join in demurrer.

Makes default.

Judgment in demurrer against the plaintiff.

cofts by him about his defence in this part fuf-tained, to the faid——by the court here, ac-cording to the form of the ftatute in fuch cafe lately made and provided, adjudged, &c. and that the faid——have his execution for the fame, &c.

General demurrer to a plea.

AND the faid——faith that the aforefaid plea of the faid——above pleaded in bar is not fufficient in law to bar him the faid—— from his faid action againft the faid——and that the faid——hath no need, nor is bound by the law of the land to anfwer to the faid plea in manner and form aforefaid pleaded; and this he is ready to verify: Wherefore for default of a fufficient plea in this behalf the faid——pray-eth his faid debt, together with his damages by occafion of the detaining that debt, to be adjudged to him, &c.

Joinder.

AND the faid——for that he hath above alledged fufficient matter in law to bar the faid——from having his faid action againft him the faid——which he is ready to verify, which faid matter the faid——hath not denied, nor any ways anfwered thereunto, but wholly refufed to admit the verification thereof, prayeth judg-ment, and that the faid——may be barred from having his faid action, &c. And becaufe the juftices, &c.

Special

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

AND the ſaid——ſaith that the ſaid plea of him the ſaid——in manner and form aforeſaid above pleaded, and the matter therein contained, are not ſufficient in law to bar the ſaid—from having his ſaid action againſt him the ſaid——and that he the ſaid——hath no need; nor is he obliged by the law of the land to anſwer the ſaid plea of him the ſaid——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——prayed judgment, and that his ſaid debt, together with his damages by reaſon of the detaining that debt, may be adjudged to him, *&c.* And for cauſes of demurring in law in this behalf the ſaid—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——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——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.

Joinder.

AND the ſaid——ſaith that the ſaid plea by him the ſaid——in manner and form aforeſaid pleaded, and the matter therein contained, are good and ſufficient in the law to bar the

the ſaid——from having his ſaid action againſt him the ſaid——which ſaid plea, and the matter therein contained, he the ſaid——is ready to verify; and becauſe the ſaid——to the ſaid plea hath not anſwered, nor the ſame hitherto in any manner gainſaid, he the ſaid——doth pray judgment; and that the ſaid——may be barred from having againſt him the ſaid——his action aforeſaid, &c.

Demurrer to a declaration for not alledging that adminiſtration was granted to defendant.

AND the ſaid *C. D.* and *E.* by——their attorney come and defend the force and 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——againſt them the ſaid *C. D.* and *E.* to which ſaid declaration the ſaid *C. D.* and *E.* 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 *C. D.* and *E.* pray judgment of the ſaid declaration, and that the ſame may be quaſhed, &c. And the ſaid *C. D.* and *E.* 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 *C. D.* and *E.* And alſo that the ſaid declaration is uncertain and wanteth form.

Nul

Nul tiel record.

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.--The plaintiff must bring in the record at the day he has given himself, or the court will not receive it.--*Note*; the clerk of the judgments enters up the judgment.

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. *Hil.* 8 *Geo.* 2. *Long* v. *Lingwood*, *Pract. Reg. in C. P.* 443.

When a four days rule on issue of *nul tiel record* is necessary.] *Vide* tit. *Issue*, *p.*

Difference where the proceedings are by original and by bill.] *Vide* tit. *Issue*, *p.*

N O T E S.

1. On a replication of *nul tiel record* in the same court, there is a compleat issue, and no need of a rule to rejoin. *Vide Issue p.*

2. On a replication of *nul tiel record* the plain-

plaintiff may deliver iſſue, and need not give rule to rejoin. *Vide* tit. *Iſſue, p.*

3. On *nul tiel record*, it muſt be brought in on the day plaintiff hath given himſelf to produce it. *Vide* tit. *Iſſue, p.*

Proceedings and iſſue upon nul tiel record.

Declaration in a debt on a judgment

London; to wit. A. B. late of *London*, joiner, was ſummoned to anſwer unto *C. D.* of a plea that he rendered to him—pounds of lawful money of *Great Britain*; which he oweth him, and unjuſtly detaineth, *&c.* and whereupon the ſaid *C.* by—his attorney, ſaith; that whereas the ſaid *C.* heretofore, that is to ſay, in—term in the ——year of the reign of his preſent Majeſty King *George* the ſecond, in his ſaid Majeſty's court, before *Sir*————Knt. and his brethren; then his Majeſty's juſtices of the bench at *Weſtminſter*, in the county of *Middleſex*, by the conſideration of the ſaid court recovered againſt the ſaid *A.*——pounds which were adjudged to the ſaid *C.* 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 *C.* by the ſaid *A.* then lately made, as for his coſts and charges by him about his ſuit in that behalf expended, whereof the ſaid *A.* 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 ſatis-

fied, and the said *C.* hath as yet obtained no satisfaction of the aforesaid judgment; whereby an action hath accrued to the said *C.* to demand and have of the said *A.* the said——pounds; yet the said *A.* altho' often requested, hath not rendered the said —— pounds, or any part thereof, to the said *C.* but to render the same to him hitherto hath denied, and still doth wholly deny, to the damage of the said *C.*——pounds; and therefore he bringeth suit, &c.

Plea nul tiel record.

AND the said *A.* by——his attorney cometh and defendeth the force and injury when, &c. and saith, That the said *C.* ought not to have his action against him, because he saith there is not any such record of recovery of damages aforesaid against him the said *A.* in his said Majesty's court before *Sir*————Knt. and his brethren, his Majesty's justices of the common bench, as the said *C.* in his declaration hath alledged; and this he is ready to verify: Therefore he prayeth judgment, if the said *C.* ought to have his said action thereof against him, &c.

Replication.

AND the said *C.* saith, That he by any thing before alledged ought not to be barred from having his aforesaid action maintained against the said *A.* because he saith that there is such a record of a recovery against him the said *A.* in his said Majesty's court of common bench here remaining, as by the said declaration is above

bove 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 *C.* hath not the said record now ready here in court, it is said by the said court here to the said *C.* that he have the said record here on——The same day is given to the said *A.* here, *&c.*

Judgment by default or confession.

Judgments without trial are by *nil dicit*, *non sum informatus*, and *cogn' actionem.*

MAKE an *incipitur* of the declaration on a treble 1 *d.* stamp if the judgment be *interlocutory* (*a*), or on a double half crown stamp if it be *final* (*b*). And an *incipitur* on the roll.—Make out warrants of attorney. File them with the clerk of the warrants, pay in *debt*, *trespass*, and *detinue*, 4 *d.* each, in other actions 8 *d.* each, and he (the clerk of the warrants) will mark the judgment paper, then carry it with the draught of the declaration, to the proper prothonotary who will sign judgment.——Judgments by default, *&c.* are entered by the attorney. *Vide p.*——. *Note*; by the rule of *T.* 29 *Car.* 2. judgments by confession were not to be signed unless brought to the prothonotary within twenty days after *Trin. Mich.* or *Hil.* terms or before the first day of *Trinity*, but now judgments are signed any time in the *vacation.*

(*a*) In *trespass*, *trespass on the case*, &c. the first judgment is only *interlocutory*, and not *final* till the writ of inquiry is returned.

(*b*) In *debt* the first judgment is *final.*

NOTES.

1. Upon a judgment by warrant of attorney there is no need of an original, if the plaintiff have a release of errors. *Instr. Clericalis, Pt.* 1. *p.* 378.

Rep. and Caf. of Pract. in C. P. 128. Carter, an attorney, v. Smith, Hil. 9 Geo. 2. Judgment and execution on a warrant of attorney thereon, taken of a prifoner, fet afide, and reftitution ordered, no attorney for defendant being prefent.—*Note*; in this cafe the defendant was held to be in cuftody, tho' the officer left the defendant for fome time whilft the plaintiff got the warrant of attorney from the defendant. *Ib.*—Attorney's clerk prefent on behalf of his mafter at execution of warrant of attorney not fufficient, defendant being then in cuftody. Judgment and execution fet afide, and prothonotary to fettle fatisfaction as to the goods fold, which could not be reftored in fpecie. *M. 13 Geo. 2. Barnes v. Ward, 1 Barnes's Notes 38.—Rep. and Caf. of Pract. in C. P. 158.*

2. Warrants of attorney to confefs judgment not to be taken from a perfon in cuftody, but in the prefence of his attorney, which attorney fhall then fubfcribe his name thereunto, and faid warrant to be produced when the judgment fhall be acknowledged. *Rule Hil. 14 & 15 Car. 2.*

3. No attorney fhall enter, or acknowledge, or caufe to be entered or acknowledged, any judgment by colour of any warrant gotten from any defendant being under arreft, otherwife than as is aforefaid. *Same rule.*

4. But if the defendant himfelf be an attorney, or practices as fuch, it is fufficient, tho' no attorney on his behalf be prefent. *M. 7 Geo. 2. Walton v. Stanton, Rep. and Caf. of Pract. in C. P. 94.—1 Barnes's Notes 28.* S. C.

5. It is not neceffary that a warrant of attorney to confefs a judgment in this court, given by a perfon in cuftody, be executed in the prefence of an attorney of this court, if it be in the prefence of an attorney of the King's Bench, it is fufficient. *M. 20 Geo. 2. Vilmott v. Barry, Efq; commonly Lord Buttevant. Maguire v. The fame, 2 Barnes's Notes 36.*

6. Every warrant of attorney for confeffing a judgment in this court, fhall be read over by the perfon who is to execute the fame, or by fome other perfon, to him before the execution there-

thereof, and if judgment ſhall be entered upon any ſuch warrant of attorney which ſhall not be ſo read over as aforeſaid, ſuch judgment upon motion may be ſet aſide as irregular. *Rule T.* 13 & 14 *Geo.* 2.

7. If judgment on a warrant of attorney be not entered up within a year from the date of the warrant (*a*), 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. *Vide Rep. and Caſ. of Pract. in C. P.* 69. *Kiping* v. *Janſon*, *Hil.* 5 *Geo.* 2.

(*a*) If a warrant of attorney be *under* a year old, it may be entered up without leave of the court, if above a year old, not without leave. *Per Cur. Hil.* 19 *Geo.* 2. 2 *Barnes's Notes* 213.

8. *Nov.* 16th 1750. Declared by all the judges in the Treaſury Chamber, that 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 of attorney be under twenty years old, the common affidavit of the due execution of the warrant, that the debt is unpaid, and the parties living, is ſufficient for an abſolute rule. 2 *Barnes's Notes* 41.

9. But if the warrant of attorney has been executed twenty years or upwards, *Cur'* will not grant an abſolute rule to enter judgment on the uſual affidavit, but the rule will be to ſhew cauſe, and ſerved on defendant. *Rep. and Caſ. of Pract. in C. P.* 146.—1 *Barnes's Notes* 37. *M.* 12 *Geo.* 2. *Hayme* v. *Hayme*, S. P.—2 *Barnes's Notes* 42. ſo declared by the judges in the Treaſury Chamber, *Nov.* 16th 1750.

10. Motion for leave to enter judgment on a warrant of attorney after a year. It was sworn that defendant was living in *Jamaica*, and in good health, and had been conversed with by the deponent the 13th *Sept.* last, and that the deponent sailed from thence the 17th of that month, and arrived in *London* the 15th of *Jan.* following. Leave granted, plaintiff having applied as soon as he well could. *Hil.* 11 *Geo.* 2. *Roundel* v. *Powell*, *Rep. and Cas. of Pract. in C. P.* 145. 1 *Barnes's Notes* 188.

11. On motion to enter up judgment on an old warrant of attorney: Plaintiff being a lunatick, did not swear the money unpaid, but another did, who had received the interest upon the bond for three years, ever since plaintiff was lunatick. Judgment to be entered up. *Hil.* 12 *Geo.* 2. *Coppendale* v. *Sunderland*, 1 *Barnes's Notes* 37.

12. Motion in Treasury for leave to enter judgment on an old warrant of attorney, not expressing any term or time, and granted; no cause being shewn to the contrary. *T.* 24 & 25 *Geo.* 2. *Mould* v. *Jackman*, 2 *Barnes's Notes* 51.

Defendant died before judgment was signed, but after the first day of the term in which it was signed, and held good,

13. Judgment by confession entered after the defendant's death, set aside, because defendant's death was a revocation of his authority, and for that he could not have an opportunity of controverting the validity of the warrant of attorney to confess judgment. *Hil.* 11 *Ann. Seyliard*

because all judgments are from the first day of the term of which they are signed *. *Hil.* 3 *Geo.* 1. *Rogers* v. *Bretton*, *Ibid.* 11.—Judgment on warrant of attorney signed the day after defendant's death, refused to be set aside. *E.* 19 *Geo.* 2. *Savile* v. *Wiltshire*, 2 *Barnes's Notes* 212.

* Judgments when signed relate to the essoin day of present or preceding term.—The practice is altered by act of parliament as to lands only, with respect to the time from which judgments are to affect purchasers. *Vide* 2 *Barnes's Notes* 213.

liard v. *Cafsburne*, *Rep. and Caf. of Pract. in C. P.* 6.

14. Defendant gave a warrant of attorney to enter judgment at the fuit of plaintiff *John Still* and *Sufanna Still* deceafed. The judges in the Treafury gave leave to enter judgment at the furviving plaintiff's fuit, upon his affidavit of the due execution of the warrant of attorney, and that the debt was unpaid, and the defendant alive. *M.* 11 *Geo.* 2. *Still* v. *Still*, 1 *Barnes's Notes* 35.—But in *Laycock, who furvived, Kitching* v. *Garforth*, *E.* 21 *Geo.* 2. the like motion was denied, *Per Cur.'* 2 *Barnes's Notes* 38. But afterwards granted in *B. R.* and *C. P. Ibid.* 43, 52.

15. At the foot of the iffue judgment was entered for plaintiff by *cognovit actionem relicta verificatione pli'ti*, by virtue of a warrant of attorney, which afterwards, on an iffue directed by this court to try the validity thereof, was found to be a forgery. Judgment fet afide, and a *vacatur hoc judic'* was entered on the margin of the roll. *Hil.* 6 *Geo.* 2. *Gibfon* v. *The bifhop of Bath and Wells and Bond*, in *quare impedit*, 1 *Barnes's Notes* 159.

16. It being found by verdict, on trial of a feigned iffue directed by the court, that the warrant of attorney to enter judgment was given in confequence of an ufurious contract, *Cur'* ordered the judgment to be fet afide, and faid warrant of attorney and bond, whereon faid judgment was entered, to be delivered up and plaintiff to pay cofts of application. *Hil.* 26 *Geo.* 2. *Machin* v. *Delaval*, 2 *Barnes's Notes* 51.

17. Leave to enter up judgment at the fuit of an executor on a warrant of attorney; the words whereof extended to enter judgment at the fuit of teftator, his heirs, executors, or adminiftrators.

tors. *E.* 20 *Geo.* 2. *Coles, executor,* v. *Holden,* 2 *Barnes's Notes* 36.—A warrant of attorney was given to a *feme sole,* and she having married before the judgment entered, *Cur'* gave leave to enter judgment at the suit of the husband and wife. *Salk.*

Judgment in debt by nil dicit.

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 thus.)

And the said *C. D.* by——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 debt and his damages by occasion 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.*

(*a*) Judgment signed 6th *June* 1759.

(*a*) By the *Stat.* 29 *Car.* 2. *c.* 3. *f.* 14. 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.

By cognovit actionem *in debt.*

AND the said *B.* by *C. S.* his attorney cometh and defendeth the force and injury when, *&c.*

&c. and saith that he cannot deny the action of the said *A.* nor but that he oweth to the said *A.* the said——pounds in manner and form as the said *A.* hath above declared against him; it is therefore considered that the said *A.* 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 *A.* by his assent, and the said *B.* in mercy, &c.

Judgment by cognovit actionem *in debt on a bond.*

AND the said *C.* by *J. M.* 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 *C.* nor but that he oweth to the said *B.* the said—pounds, in manner and form as the said *B.* hath declared against him; it is therefore considered, &c.

Judgment by non sum informatus.

AND the said *B.* by———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 to be given for the said *B.* to the said *A.* in the plaint aforesaid, and he saith nothing else thereupon, by which the said *A.* remaineth thereupon undefended against the said *B.* it is therefore considered, &c.

Judg-

Judgment by nil dicit *in case.*

AND the said *C. D.* by———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.* by which the said *A.* remaineth thereupon undefended against the said *C.* for which the said *A.* ought to recover against the said *C.* his damages by occasion of the premisses: But because it is unknown what damages the said *A.* 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 *A.* 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, *&c.* (*the return*) under his seal and the seals of them by whose oath he shall make the said inquisition.

Award of inquiry.

If the action he in case *sur assumpsit*, instead of saying, *by occasion of the premisses*, say, *by occasion of the not performing the promisses and undertakings aforesaid.*

If 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.*

If 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 as follows.

Relicta verificatione, *and* cognovit actionem *after* per minas *pleaded.*

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 own mere and free will, and not for fear of threatening, as he the ſaid *A.* hath above alledged; Therefore it is conſidered, &c. *as before.*

The like after non eſt factum *pleaded.*

AT which day here cometh as well the ſaid *A.* as the ſaid *B.* by their attornies aforeſaid, and hereupon the ſaid *B.* relinquiſhing his averment aforeſaid above by him pretended ſaith, that he cannot deny the ſaid action of the ſaid *A.* nor but that the ſaid writing is the deed of him the ſaid *B.* nor but that he oweth the ſaid *B.* the ſaid ——— pounds, in manner and form as the ſaid *B.* above complaineth againſt him; Therefore it is conſidered, &c.

Non

Non sum informatus *in case.*

AND the said *B. C.* by——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 for the said *B.* to be given to the said *A.* in the plaint aforesaid, for which the said *A.* ought to recover his damages by occasion of the premisses against the said *B.* But because it is unknown what damages the said *A.* 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 Bailiwick, he diligently inquire what damages the said *A.* 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, *&c.* under his seal and the seals of, *&c.*

Of a special original to support a judgment without a trial.

SUING it out.] Make a *præcipe* returnable on the first return of that term, in which the final judgment if in debt, or interlocutory judgment in case of a writ of inquiry, is entered: Carry it to the cursitor of the county in which the action is laid, on or before the essoin-day of the subsequent term, pursuant to the following order.

No

No cursitor shall make, or permit to be made, within his respective office, and division, any original writs whatsoever of any return past, unless he shall receive the instructions for making thereof within the term wherein the said writs are to be returnable, or at farthest, *on* or *before* the essoin-day of the next *succeeding* term, without special warrant from the *Lord Chancellor*, or *Lord Keeper*, or Master of the rolls for the time being. *Vide* Lord Clarendon's *orders in Chancery.*

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

Middlesex, to wit. IF *A. B.* shall give you security to prosecute his suit, then put by sureties and safe pledges *C. D.* late of *Westminster* in the county of *Middlesex*, gent. that he be before our justices at *Westminster*, on, &c. to shew that whereas the said *C.* on the—day of —in the year of our Lord 1758 at *Westminster* in the said county of *Middlesex*, was indebted to the said *A.* in the sum of, &c. [here set forth the whole declaration] to the damage of the said *A.* of— –pounds, as he saith,

R. S. Ret. &c.

Of the returning and filing the original.] After the *proper* cursitor has made out the *original*, plaintiff's attorney returns it himself thus:

Pledges to prosecute { *John Doe* and *Richard Roe*.

The

The within named *A. B.* hath nothing within my Bailiwick whereby he can be *attached* (*a*).

(*a*) Vide p. for the difference between *attached* and *summoned*.

The answer of
C. D. Esq; } Sheriff.
E. F. Esq; }

Afterwards plaintiff's attorney files the original with the *Custos Brevium*.

Note; He must file a warrant of attorney for the plaintiff, and one for the defendant, if he appeared by attorney.

Fine to the King on a special original.] If the debt demanded, or damages laid exceed 40 *l.* the plaintiff pays a fine to the King in the following proportions:

	l.	*s.*	*d.*
From 40 pounds to 100 marks,	0	6	8
From 100 marks to 100 pounds,	0	10	0
From 100 pounds to 200 marks,	0	13	4
From 133 *l.* 6 *s.* 8 *d.* to 166 *l.* 13 *s.* 4 *d.*	0	16	8
From 166 *l.* 13 *s.* 4 *d.* to 200 *l.*	1	00	0
And for every 100 marks more,	0	6	8
And for every 100 *l.* more,	0	10	0

Writ of inquiry of damages.

NOtice of executing writ of inquiry.] After interlocutory judgment is signed, you may give notice of executing a writ of inquiry immediately

If the writ of inquiry is to be executed in *London* or *Middlesex*, and defendant lives *within* 40 miles from *London*, eight days notice must be

be given *exclusive* of the day whereon the notice is given. *Rule M.* 1654. *s.* 21. But,

If defendant lives *above* 40 miles from *London*, and the writ of inquiry is to be executed in *London* or *Middlesex*, then fourteen days notice exclusive, *&c.* must be given. *Same rule and sect.*

And if the writ of inquiry is to be executed in the country, eight days notice exclusive, *&c.* must be given. *Same rule and sect.*

Note; Although defendant be an attorney of the *C. P.* the above rule must be regarded.—Inquiry set aside for want of fourteen days notice tho' defendant an attorney, he living 40 miles from *London*. Defendant being an attorney and therefore supposed to be present in court, makes no difference, the place of his actual residence being *above* 40 miles from *London*. *M.* 15 *Geo.* 2. *Hopkins* v. *Knapp, an attorney*, 2 *Barnes's Notes* 202-3.

In what cases notice of executing a writ of inquiry of damages may be given before you have signed interlocutory judgment.] In all cases where plaintiff concludes *ad patriam*, and gives notice of trial on the back of his pleading pursuant to the rule of *T.* 2 *Geo.* 1. if the defendant does not join issue on such pleading before the rule is out, in every such case after judgment obtained, defendant's attorney shall accept notice of executing a writ of inquiry from the time that notice of trial was given on the back of such pleading. *Rule Hil.* 6 *Geo.* 1.

And where defendant demurs to plaintiff's declaration, the defendant's attorney shall be obliged to accept notice of executing a writ of inquiry on the back of the joinder in demurrer.—

And

And where defendant pleads such a dilatory plea that plaintiff is obliged to demurr to, defendant's attorney shall accept of notice of executing writ of inquiry on the back of such demurrer. *Rule T.* 10 *Geo.* 1.

Upon an issue of *nul tiel record*, notice of executing a writ of inquiry of damages may be given upon the issue-book as well as upon a joinder in demurrer. So determined by the court; *Hil.* 8 *Geo. Long* v. *Lingwood*, *Pract. Reg. in C. P.* 443. 1 *Barnes's Notes* 176. S. C. says, plaintiff replied to a plea of a record of a former recovery of the same debt, *quod non habetur aliquod tale recordum*, and gave notice upon the back of the replication to execute a writ of inquiry of damages, in case judgment went for him upon the issue of *nul tiel record*, and held regular.

Where notice of inquiry may be given to defendant, *&c.*] Where plaintiff has appeared for defendant *secund. stat.* left a declaration in the office, giving him proper notice thereof, and signed judgment for want of a plea, he may give notice of executing a writ of inquiry either by delivering the notice in writing to defendant, or leaving the same at his last or most usual place of abode, which shall be sufficient notice to such defendant. *Vide Rule M.* 1 *Geo.* 2.

Notice of inquiry must be delivered to defendant where the attorney is not known or not to be met with; *per Cur. Hil.* 4 *Geo.* 2. *Higgins* v. *Stuart*, *Rep. and Cas. of Pract. in C. P.* 62. *Pract. Reg. in C. P.* 275. S. C.—or at least left at defendant's house, and not in the office. *Hil.* 5 *Geo.* 2. *White* v. *Edwards*, *Pract. Reg. in C. P.* 126.

No

Notice of inquiry muſt be given to the attorney, and not to the defendant, after defendant has appeared by attorney. *M.* 10 *Geo.* 2. *Lee* v. *Bradford*, 1 *Barnes's Notes* 219.

Where a term's notice is neceſſary.] If there have been no proceedings *(a)* for twelve months after judgment, there muſt be a term's notice given of executing a writ of inquiry of damages, and ſuch notice muſt be given before the eſſoin-day of the fifth or other ſubſequent term; that a judge's ſummons being made thereupon ſhall be deemed a proceeding, *vide Rule E.* 13 *Geo.* 2. —*Note*; before the making of this rule it had been held that a term's notice muſt be given, as well of the execution of writs of inquiry as *in all other caſes (b)* of notices where there have not been any proceedings within a year. *Vide the caſe of Paul* v. *Gledhill*, *Hil.* 7 *Geo.* 2. *Rep. and Caſ. of Pract. C. P.* 97.—1 *Barnes's Notes* 209. S. C. ſays, that in all caſes where proceedings have been ſtaid above twelve months, whether as to pleadings or notices, a whole term's notice muſt be given. *Pract. Reg. in C. P.* 444. S. C. ſays, it was adjudged upon conſideration, that a term's notice of the execution of a writ of inquiry muſt be given where there has been no proceeding for a year after judgment; and refers to the above rule.——

(a) Notice is looked upon as a proceeding.

(b) The words of the rule, 13 *Geo.* 2. are, *in all caſes*, where, &c.

Notice of executing writ of inquiry.

Common Pleas. *A. B.* against *C. D.*

SIR,

TAKE notice, that a writ of inquiry of damages will be executed in this cause on— the—day of—instant at 11 (*a*) of the clock in the forenoon of the same day, [or between the hours of--and - in the forenoon, &c.] at the *Court House* at *Westminster Hall* (*b*).

Yours, &c.

To Mr. *T. F.* attorney for defendant.

J. U. attorney for the plaintiff.

Dated—day of—1758.

(*a*) Good, if the writ be executed before twelve. *M.* 10 *Geo.* 2. *Lal* v. *Denny*, *Pract. Reg. in C. P.* 446. 1 *Barnes's Notes* 221. S. C.

(*b*) Notice of executing an inquiry at *Westminster* bad, the words *Court House* and *Hall* being omitted, for the notice is uncertain without these words. *Ergo* writ of inquiry set aside. *M.* 9 *Geo.* 2. *Kinch* v. *Haime*, *Pract. Reg. in C. P.* 447.

Notice of executing a writ of inquiry can be continued but once, and such notice must be served two days before the execution of the writ. *M.* 8 *Geo.* 2. *Price* v. *Bambridge*, an attorney, 1 *Barnes's Notes* 213.

Short notice of executing writ of inquiry.] Where plaintiff may give short notice of executing a writ of inquiry, he should give at least two days notice. *Per Cur.' Hil.* 11 *Geo.* 2. *Butler* v. *Johnson*, *Pract. Reg. in C. P.* 445.— 1 *Barnes's Notes* 220.

NOTES.

1. Notices of inquiries and countermands thereof are to be in writing. *E.* 11 *Anne*, *Anon. Rep. and Cas. of Pract. in C. P.* 3.

2. Notice ought to be given of executing a writ of inquiry of damages in dower. *Vide Rep. and Cas. of Pract. in C. P.* 14.—*Pract. Reg. in C. P.* 159.

3. Where

3. Where there are two defendants, and the plaintiff appears for them *secund. stat.* notice of inquiry must be given to both, and for want thereof inquiry set aside. *M. 7 Geo. 2. Kingdom v. Herne* [or *Horn*] *and Frost, Rep. and Cas. of Pract. in C. P.* 94.—1 *Barnes's Notes* 208. S. C. says, it was an action against defendants upon a joint promissory note; appearance entered by plaintiff according to the statute, and notice of *declaration* given to one defendant only, and held to be bad, and proceedings staid. *Pract. Reg. in C. P.* 443. S. C. says, notice of inquiry in a joint action ought to be given to both defendants.

Stat. 12 Geo. 1. c. 29. 5 Geo. 2. c. 27. Rule M. 1 Geo. 2.

4. Notice of executing a writ of inquiry "at "eleven of the clock in the forenoon, or as soon "after as the sheriff can attend," bad for incertainty. *E. 7 Geo. 2. Hannaford v. Holman, Rep. and Cas. of Pract. in C. P.* 99.—*Pract. Reg. in C. P.* 134. S. C.—1 *Barnes's Notes* 210. S. C.

5. Notice of inquiry was given for a particular day, but no hour was mentioned, bad, tho' sworn that defendant said he would make no defence. *M. 7 Geo. 2. Longstaff v. Lamb*, 1 *Barnes's Notes* 207.

6. Notice of executing inquiry at the sheriff's office in *Northampton*, bad, for incertainty; it should have been at such a place, being the sheriff's office. *Hil. 8 Geo. 2. Squire, the elder, v. Almond, Rep. and Cas. of Pract. in C. P.* 113. —*Pract. Reg. in C. P.* 446. S. C. says, it should have been at such a place in *Northampton*, —1 *Barnes's Notes* 214. S. C. says, the notice should have expressed at what sign or whose house the sheriff's office was kept, and that *Cur'* set aside inquiry and inquisition.——Notice of executing a writ of inquiry at the sign

of

of the *Three tuns* in *Brookstreet*, *Middlesex*, held bad for incertainty, for it does not say what *Brookstreet*, if it had said *Brookstreet*, *Holborn*, it would have been good. *T.* 10 *Geo.* 2. *Le Marque* v. *Newman*, *Rep. and Cas. of Pract. in C. P.* 133. *Pract. Reg. in C. P.* 447. S. C. 1 *Barnes's Notes* 218. S. C. says, inquiry and inquisition were set aside.——Notice of executing inquiry at the *Moot Hall* in the castle of *Garth*, without saying in what county, insufficient, and inquiry set aside. *M.* 11 *Geo.* 2. *Lowes* v. *Smith*, *in Northumberland*, 1 *Barnes's Notes* 219.——Notice of, *&c.* at the sign of the *Bell*, without mentioning any town, insufficient. *E.* 11 *Geo.* 2. *Hollis* v. *Westbury*, *Ibid.* 221.

7. Notice of executing a writ of inquiry between the hours of ten and two, is bad, it should not have exceeded two hours. *Hil.* 8 *Geo* 2. *Squire* v. *Almond*, *Rep. and Cas. of Pract. in C. P.* 113.—*Pract. Reg. in C. P.* 446. S. C. and point.—1 *Barnes's Notes* 214. S. C. and P. —*Foster* v. *Smales*, *E.* 7 *Geo.* 2. S. P. *Vide Pract. Reg. in C. P.* 445.—Notice of inquiry to be confined within the compass of two hours at most; *per Cur.' T.* 7 *&* 8 *Geo.* 2. *Robinson* v. *Philips*, *Ibid.* 1 *Barnes's Notes* 213. S. C.

8. Same notice necessary of executing *scire fieri* inquiry, as of an inquiry of damages. *M.* 14 *Geo.* 2. *Tilney* v. *Watson*, 2 *Barnes's Notes* 237.

9. Notice of inquiry of damages given in the country to the attorney there, and not to the agent who received the declaration in town, good. *T.* 16 *Geo.* 2. *Smith* v. *Lacock*, 2 *Barnes's Notes* 239.

10. Irregularity in the notice for executing a writ of inquiry is cured by the defendant's making

king a defence on executing the writ. *Hil.* 20 *Geo.* 2. *Braithwaite* v. *Allen, an attorney*, 2 *Barnes's Notes* 245.

11. Notice of executing inquiry, miftaking plaintiff's name, (i. e. *Bird* inftead of *Nafh*) bad, and inquifition and final judgment fet afide with cofts. *T.* 24 *Geo.* 2. *Nafh* v. *Harrow*, 2 *Barnes's Notes* 247.

Of making out writ of inquiry and executing it.] Write writ of inquiry on a treble 6 *d.* ftampt piece of parchment; get it figned by the prothonotary, pay him according to the length, fealing 7 *d.* indorfe the place and hour you have given notice for the execution of the writ. Then carry the writ to the fheriff two days before you intend to execute it, and he will return a jury (*a*). In *London* pay 1 *l.* 7 *s.* 4 *d.* and for every witnefs fworn 4 *d.*—In *Middlefex* and moft other counties you pay 1 *l.* 10 *s.* 6 *d.* and two or three days after the execution, call at the fheriff's office for the return.

(*a*) No challenge can be made to a jury impanelled on a writ of inquiry. *Inftr. Clericalis, Pt.* 1. *p.* 558.

NOTES.

Verbal deputation for executing writ of inquiry infufficient, it fhould be in writing under hand and feal.

1. Writ of inquiry directed to the coroners of *Norwich* was executed by *H.* clerk to the coroners, and their known deputy, but only by verbal appointment without a deputation under hand and feal from the coroners, inquiry refufed to be fet afide, defendant having made defence; but *Cur'* feemed inclinable to fet it afide for want of a proper authority in *H.* *M.* 14 *Geo.* 2. *Dixon* v. *Goodman and others*, *Pract. Reg. in C. P.* 451.—2 *Barnes's Notes* 325. *Cur'* held the verbal appointment no authority, but that the

the objection was waived by defendant's having made defence.

2. Held that a writ of inquiry executed before an under sheriff's deputy was improperly executed, for a deputy cannot appoint a deputy; and *Cur'* declared, that in order to put a stop to the practice of under sheriffs making deputies, they would grant an attachment against any one that should do it for the future. *T.* 13 *&* 14 *Geo.* 2. *Wallace* v. *Humes*, 2 *Barnes's Notes* 187.—Inquiry executed before a deputy appointed by a deputation under the seal of the sheriffs office good, and rule to shew cause why inquiry, *&c.* should not be set aside, discharged with costs. *E.* 14 *Geo.* 2. *Davis* v. *Skyllins*, *Ibid.* 188.

3. Writ of inquiry may be executed on the return-day before the rising of the court. *Rep. and Cas. of Pract. in C. P.* 84.

Of executing a writ of inquiry before a judge of assize.] Notice of executing a writ of inquiry before a judge at the assizes, ought to be for the assizes *generally*, and not for any *particular* day; and such writ need not be entered with the marshal, it not being within the rule concerning records of *nisi prius*.

N O T E S.

1. Writ of inquiry by consent, directed to be executed before a judge at the assizes, not entered with the marshal. After the other business done, there was time to execute this writ, plaintiff had given notice of executing it on a *particular* day during the assizes at *York*; defendant's executor applied for costs, which was denied. Plain

Plaintiff is not in fault. This case is not within the rule concerning records of *nisi prius*. The judge herein is no more than an assistant to the sheriff, to whom the writ is directed; the notice ought to have been general; notice for a particular day is void. *Hil.* 18 *Geo.* 2. *Waite* v. *Smales, ex parte execu. def.* 2 *Barnes's Notes* 111.

2. Rule made absolute for executing of a writ of inquiry before a judge at the next assizes, tho' no affidavit was produced to support the rule. Juries are returned in a much better manner at the assizes, than usually, for writs of inquiry. An improper deputy is often appointed to represent the sheriff, sometimes plaintiff's attorney. *Summary* jurisdictions are not to be encouraged. Defendant is in the rank of esq; he desires that the writ may be executed in the presence of a judge, the extraordinary costs whereof are like to fall on himself. *T.* 25 & 26 *Geo.* 2. *Sparrow* v. *Reed, Esq; for damage done to Common Right.* 2 *Barnes's Notes* 193.

Subpœna, &c.] If your witnesses will not *voluntarily* attend at the execution of the writ of inquiry, make out a *subpœna* to testify as before directed. *Vide p.*

Signing final judgment on inquisitions, &c.] When the writ of inquiry is returned, the inquisition must be stampt with a double 2 *s.* 6 *d.* stamp. Then carry it to the proper prothonotary, who will tax costs, and sign final judgment. Then deliver the writ and inquisition to the clerk of the judgments (*a*) to enter up final judg-

(*a*) On signing final judgments on inquisitions upon writs of inquiry, the inquisition shall be immediately left with the clerk of the judgments of the respective prothonotary, and shall not afterwards be taken out of the office without leave of the court. *Rules, T.* 29 *Car.* 2. *T.* 13 *Geo.* 2.

judgment on the roll. After final judgment is signed by the prothonotary, you may immediately make out what execution you please.

Note; in this court you give no rule for final judgment on the return of the writ, as in *B. R.* but you stay four days after the return before you sign final judgment.

Inquiry not executed, *&c.*] Where notice is given of a writ of inquiry, and not countermanded in time, the defendant shall be intitled to costs from the plaintiff for not executing such writ of inquiry in the same manner, as a defendant by the course of the court is now intitled to costs from a plaintiff who does not proceed to trial of an issue joined after notice given. *Rule T.* 13 *Geo.* 2.

Additional notes concerning writs of inquiry.

Notes, *&c.* must be proved.

1. Action on a promissory note indorsed, and Judgment by default. On executing inquiry the note indorsed must be produced, and the note and indorsement proved; defendant's not pleading is not a sufficient admission of them. *Hil.* 18 *Geo.* 2. *Billers and others* v. *Bowles*, 2 *Barnes's Notes* 190.

2. If the action be on a promissory note [or bill of exchange] the letting judgment go by default is not such on admittance of the note [or bill] as to render the proof of them unnecessary, but they must be produced on executing the writ of inquiry, and proved. *Vide* 2 *Barnes's Notes* 192. *Ellis* v. *Wall*, *T.* 19 *&* 20 *Geo.* 2. as to an action on a *promissory* note, where the court held that the note indorsed ought to have been produced, and the note and indorsement proved.

3 On

Interest on a note given by jury.

1. On the execution of a writ of inquiry the jury may give full interest on a note from the time the money was lent. *Hil.* 1 *Geo.* 2. *Cotton, Esq*; v. *Hormonden, Rep. and Cas. of Pract. in C. P.* 42.

2. On a note payable a month after date, the jury ought to give interest from the expiration of the month until the commencement of the suit, and not until the execution of the inquiry. *T.* 2 *Geo.* 2. *Randolph* v. *Reginder*, *Rep. and Cas. of Pract. in C. P.* 45.—*Pract. Reg. in C. P.* 357. S. C. says, *Cur'* declared that the jury should only compute interest from the time the note was payable to the time of the return of the writ.

3. On a writ of inquiry no interest to be allowed on ballance of account, for *Cur'* were of opinion that interest could not be allowed in any case except upon promissory notes and bills of exchange. *M.* 7 *Geo.* 2. *Pinock* v. *Willett, administrator*, 1 *Barnes's Notes* 151.

Setting aside inquiry.

1. Inquiry set aside because plaintiff an administrator was admitted a witness, (and was the only witness) tho' defendant's attorney attended the execution of the writ, &c. and *Cur'* said the under sheriff ought to pay the costs, but that was not pressed. *M.* 7 *Geo.* 2. *Maddox* v. *Jones Pract. Reg in C. P.* 450.

2. Action on a promissory note; defendant pleaded *non assumpsit*, and *non assumpsit infra sex annos*; plaintiff took issue upon the *non assumpsit*, and replied an original as to the *non assumpsit infra sex annos*, and thereupon issue was joined upon *nul tiel record*. Plaintiff upon the last issue obtained judgment, and executed a writ of inquiry. Inquisition set aside, for the inquiry