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

3d July 1754.

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

NOTES OF CASES IN Points of PRACTICE:

Taken in

The Court of Common Pleas at Weſtminſter.

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

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

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

In TWO VOLUMES.

VOL. I.

In the SAVOY:
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Actions Real.

Eaſterby *againſt* Eaſterby. Mich. 7 G. 2.

In Dower. AN Iſſue was joined between the ſaid Parties upon *Ne unques accouple en loyal Matrimonie*, and a Writ awarded to the Biſhop; he returned the Evidence before him to prove the Marriage, which appeared ſufficient, but did not poſitively return that the Parties were lawfully married. *Wright* for the Plaintiff moved for Judgment upon this Return; but the Court refuſed it, and told the Serjeant he might move again if he thought fit, giving Notice of the Motion, that the other Side might have an Opportunity of diſputing the Sufficiency of the Return.

Note; The Return was afterwards amended, and the Fact certified inſtead of the Evidence; and Plaintiff had Judgment.

Freeman and his Wife, *Demandants*; Cantham and others, *Tenants*. Eaſt. 8 Geo. 2.

In Dower. WRIGHT moved to ſet aſide the *Grand Cape*, Proclamation not having been made fourteen Days before the Return of the Summons, according to the Statute 31 *Eliz. cap.* 3. *ſect.* 2. the Summons was returnable *Craſt. Animar.* and Proclamation made *October* 27, which was but ſix Days before the Return: The Court made a Rule to ſhew Cauſe, which was afterwards made abſolute, no Cauſe being ſhewn.

King *againſt* The Biſhop of Carliſle and the Maſter and Scholars of the Univerſity of Cambridge. Trin. 11 & 12 Geo. 2.

In Quare Impedit. WYNNE for Defendants moved, That the Plaintiff *King* claiming a Right of Patronage might be examined upon Oath touching ſecret Truſts for Papiſts, purſuant to Stat. 12 *Ann. cap.* 14. and a Commiſſion for ſuch Examination was ordered to iſſue, directed to the three Prothonotaries, or any two of them.

Amend-

Amendments.

Hampſon *againſt* Chamberlain. Mich. 6 Geo. 2.

A Motion was made to amend the Entry upon Record, according to the Writs of *Sci. Fac.* and *Certiorari*, and the Returns thereof after Iſſue joined upon *Nul tiel Record.* The Court held that Amendments ought to be made by Common Law, without an Act of Parliament, where there is any thing to amend by; and therefore ordered the Entry upon Record to be amended, and made agreeable to the Writs of *Sci. Fac.* and *Certiorari*, and the Returns thereof, upon Payment of Coſts, the Entry being made imperfectly by Miſpriſion of the Clerk.

Clarke *againſt* Cotton, an Attorny.

A Bill was filed in this Cauſe againſt the Defendant as an Attorny of the Court; and the Bill by Miſtake of the Plaintiff's Attorny did conclude *& inde producit ſectam, &c.* inſtead of *& inde petit Remedium, &c.* Upon Motion in the Treaſury the Judges were pleaſed to order the Bill to be amended by ſtriking out the

Words *producit ſectam*, and inſerting inſtead thereof the Words *petit Remedium*, upon Payment of Coſts to be taxed, *Niſi cauſa*; and the Rule was afterwards made abſolute upon an Affidavit of Service. This Caſe is like that where the Curſitor may amend an Original by his Inſtructions, even in Subſtance; and in mere Form the Court will ſuffer him to amend his own Miſtake. The Inſtructions here given to the Plaintiff's Attorny were to file a Bill, which he hath not done; he hath made it a Declaration by this wrong Concluſion, and not a Bill, according to his Inſtructions.

Cooper, an Attorny, *againſt* Younges. Hill. 6 Geo. 2.

MOtion was made to amend the Continuance on the Roll by ſtriking out a General Return, and making it a Day certain; the Action being at the Suit of an Attorny, the Court at firſt made ſome Difficulty in granting the Rule for an Amendment, it being after Judgment upon a Demurrer; but upon Conſideration, Continuances being meręly the Acts of the Court, the Amendment was ordered.

Hale

Hale *againſt* Breedon. Trin. 6 & 7 Geo. 2.

THE *Placita* in the Record of *Niſi Prius* was of *Eaſter* Term laſt, the Declaration was in *Latin* of *Hilary*, entered with an *Alias prout patet*; the Plea was without Imparlance of the ſame Term in *Engliſh*. *Chapple* and *Eyre* moved in Arreſt of Judgment, and obtained a Rule *Niſi*, which was afterwards diſcharged upon *Darnall*'s ſhewing for Cauſe, that the Imparlance was entered upon the Plea-Roll, and that the Record of *Niſi prius* was amendable thereby.

Welland, an Attorny, *againſt* Pitts. Mich. 7 Geo. 2.

THE Bail-piece was ordered to be amended by making the Recital of the Writ of Attachment of Privilege agreeable to the Writ itſelf, *viz.* inſerting the Return thereof, which was omitted in the Bail-piece, and in other Particulars. *Eyre* for Plaintiff; *Urlin* for Defendant.

Note; A Rule to bring in the Body had been ſerved upon the Sheriffs of *London*; and Plaintiff inſiſted upon Coſts on the Amendment of the Bail-Piece, but was told by the Court he muſt proceed upon

his Rule againſt the Sheriff for Coſts, if he was entitled to any; it was not proper to aſk for Coſts upon this Motion.

The Bail, immediately after the Amendment of the Bail-piece, juſtified themſelves in Court, notwithſtanding which Plaintiff afterwards moved for an Attachment againſt the Sheriffs for not bringing in the Body; which was granted upon Affidavit made of Perſonal Service of the Rule upon the High Sheriffs (no Cauſe being ſhewn.)

Stweetland *againſt* Beezley and Browne. Hill. 7 Geo. 2.

A *Sci. Fac.* againſt Bail, and all the Proceedings thereupon were ordered to be amended by the Record in the original Action, by inſerting the Word *Merchant* inſtead of *Mercer*, being the Defendant's Addition, after Iſſue joined upon *Non tiel Record*. *Chapple* for Plaintiff; *Eyre* for Defendants.

Browne *againſt* Shipman.

UPON a common *Clauſum fregit*, Plaintiff declared againſt Defendant as Adminiſtrator, and he pleaded that Adminiſtration was never committed to him; Plaintiff's Attorny moved in the *Treaſury*, that Plaintiff might amend his Declaration upon

upon Payment of Coſts, by declaring againſt Defendant as Executor, which, upon hearing Defendant's Attorny, was ordered.

Sharp *againſt* Starye. Eaſter 7 Geo. 2.

THIS was an Action of Debt upon a Recognizance of Bail, to which the Defendant pleaded Payment; the Plaintiff replied Non-payment, and concluded with an Averment, inſtead of *to the Country*, whereto Defendant demurred generally; and the Queſtion upon the Argument was, Whether this was helped by the Statute for the Amendment of the Law 4 & 5 *Annæ*; the Court gave Judgment for the Plaintiff, *Niſi*; but the Plaintiff afterwards, upon adviſing with his Counſel, moved to amend upon Payment of Coſts. *Birch* for Defendant; *Skinner* for Plaintiff.

Waldo *againſt* Harriſon, an Attorny.

BAYNES moved to amend the Writ of *Habeas Corpora Jurator'* after Trial, returnable on *Wedneſday* next after eight Days of the Purification, inſtead of *Wedneſday* in fifteen Days of *Eaſter*: Court made a Rule to ſhew Cauſe, which was afterwards made abſolute upon hearing Counſel on both Sides. *Chapple* and *Skinner* for Defendant.

Waldo *againſt* Harriſon. Trin. 7 & 8 Geo. 2.

THE Writ of *Habeas Corpora Jurator'* being wrong in the Day of *Niſi prius*, had been ordered to be amended; and *Baynes* afterwards moved to amend the *Jurata* in the Record of *Niſi prius*: The Court after Conſideration were of Opinion, that as the Writ was amendable by the Statute 5 *Geo.* and was amended, and the Day of *Niſi prius* thereby rightly appointed, the *Jurata*, which is not an Award of the Court, but only to annex the Proceedings, and is wrong by Miſpriſion of the Clerk, ought to be amended and made agreeable to the Writ; and the Amendment was ordered.

Taylor *againſt* Bramble. Mich. 8 Geo. 2.

PLaintiff obtained a Rule to ſhew Cauſe why his Declaration ſhould not be amended on giving an Imparlance; upon ſhewing Cauſe, it appeared that Defendant had demurred and given a Rule to join in Demurrer, and therefore Plaintiff muſt pay Coſts, and cannot amend on giving an Imparlance. Rule abſolute on Payment of Coſts.

Williams *againſt* Jones and another. Eaſter 8 Geo. 2.

THIS Cauſe was tried at *Niſi prius* before the Lord Chief Juſtice, and a Verdict taken by Miſtake of the Aſſociate for the Defendant *Jones*, inſtead of finding him Not Guilty; as to the other Defendant, a Verdict was found for the Plaintiff, Damages 200 *l.* Plaintiff moved that the Return of the *Poſtea*, as to *Jones*, might be amended, which was ordered on hearing Counſel on both Sides. The Return of the *Poſtea* is the Act of the Chief Juſtice, and muſt be made as it ought to be: It was urged by Defendant's Counſel, that the Verdict as to the other Defendant, was contrary to Evidence; but be that ſo or not, the Verdict being right in Part cannot be ſet aſide. *Darnall* and *Wright* for Defendants; *Eyre* for Plaintiff.

Southam *againſt* Jennings. Mich. 9 Geo. 2.

THIS was a *Teſtat' Capias* from *London* into *Oxfordſhire*, and Bail put in thereon with the Filazer of *London*: Plaintiff by Miſtake declared in *Oxfordſhire*, and afterwards moved in the *Treaſury* to amend by declaring in *London*, according to his

his Writ, which was ordered upon Payment of Coſts, though after Plea pleaded.

Deacon *againſt* Vivian. Eaſter 9 Geo. 2.

In the Treaſury. A Judgment by *Non Inform'* was ſigned *Dec.* 22, by Virtue of a Warrant of Attorney, dated *Oct.* 31, in *Michaelmas* Term laſt, and the Roll was filed generally of ſaid *Michaelmas* Term. A Writ of Error was brought, and afterwards Plaintiff's Attorny moved to amend the Record according to the Fact, by inſerting at the Top of the Roll from the Day of St. *Martin* in fifteen Days, in the 9th Year, *&c.* to prevent the Judgment's having Relation to the Eſſoin-Day of the firſt Return, which would have vitiated it, the Day laid in the Declaration on a *Mutuatus* being *Oct.* 31. (the Date of the Warrant of Attorny;) and upon hearing the Attornies on both Sides the Amendment was ordered.

Cartwright *againſt* Gardiner.

SKINNER moved for the Plaintiff to amend the Iſſue-Roll by ſtriking out the Award of the *Venire facias* by *Decem tales*, and awarding the common *Venire facias*; this was oppoſed by *Hawkins* for Defendant;

Defendant; and there being nothing to amend by, the Court did not make any Rule.

Coates *againſt* Midgley. Trin. 10 Geo. 2.

In Prohibition. THE Declaration was ordered to be amended by a Judge; but the Amendment not being warranted by the Suggeſtion, or the Acts of the Spiritual Court, the Order was diſcharged. *Chapple* for Defendant; *Eyre* for Plaintiff.

Foſter *againſt* Blackwell. Eaſter 10 Geo. 2.

PARKER moved to amend the Judgment-Roll, by ſtriking out that the Plaintiff ought to recover, and inſerting that the Plaintiff do recover, after a Writ of Error brought, *& in nullo eſt erratʼ* pleaded, which was ordered on Payment of Coſts, provided Defendant do not farther proſecute his Writ of Error; but if he proceeds in Error, without Coſts. *Parker* for Plaintiff; *Chapple* for Defendant.

Scrape *againſt* Rhodes. Trin. 10 & 11 Geo. 2.

On Special Verdict in Ejectment. THE Matter in Law had been argued, and the Court having taken Time to conſider, *Skinner* for Plaintiff moved to enlarge the Demiſe, which was near expiring; but *Eyre* for Defendant not conſenting, the Court declared they had no Power to enlarge the Demiſe without Conſent.

Lee *againſt* Daniel. Hill. 11 Geo. 2.

BELFIELD moved to amend the Declaration after the Plea-Roll filed: *Draper* objected that the Motion ought to be to amend the Roll, and not the Declaration; that the Amendments prayed being very long, could not be made without defacing the Roll, which ought not to be ſuffered. *Belfield* replied, that a *Vacatur* might be marked on the Roll filed, or it might be taken off the File, and a new Roll of the ſame Number be filed in its Place; but *per Cur'* that Practice is not warrantable, and the Amendments prayed being ſuch as would greatly deface the Roll, the Motion was denied.

Harry

Harry *againſt* Bant.

BELFIELD moved for Leave to amend the Avowry by altering the Sum due for Rent, which was miſcomputed: *Draper* oppoſed the Motion, Demurrer being joined, and the Cauſe in the Paper for Argument. *Per Cur':* Defendant muſt amend on Payment of Coſts.

Jeane *againſt* Langton, late Sheriff of Somerſetſhire.

DEfendant moved for Leave to amend his Return of *Re' fa' lo'* filed in *Mich.* Term 1735, by adding Pledges. In the Replevin Cauſe, Judgment went for Defendant in the Plaint for want of Plaintiff's declaring in this Court, and a *Retorn' habend'* was iſſued, and an *Elongat'* returned thereon: And now this Action was brought againſt the Sheriff for not taking Pledges: Defendant pleads he took Replevin Bond, whereto Plaintiff demurs. *Per Cur':* The Pledges ought to be recorded in the Court below, no Affidavit is produced of that Fact, here is nothing to amend by. Rule to ſhew Cauſe for Amendment diſcharged. *Eyre* and *Draper* for Plaintiff; *Belfield* for Defendant.

Farmer

Farmer *againſt* Burton. Eaſt. 11 Geo. 2.

AFTER Argument upon Demurrer, Plaintiff moved to amend the Declaration; which was granted, the Merits of the Cauſe not coming in Queſtion upon the Argument, but only the Form of Pleading. *Parker* for Plaintiff; *Girdler* and *Hayward* for Defendant.

Woodman *againſt* Inwen. Trin. 11 & 12 Geo. 2.

AFTER Argument upon Demurrer, and a Rule for a farther Argument, Defendant moved to amend the Avowry by inſerting three neceſſary Requiſites to juſtify his Diſtreſs; but the Amendment was denied, the former Argument having been upon the Merits, and there not being ſufficient Matter ſet out in the Avowry to amend by. *Urlin* and *Parker* for Defendant; *Eyre* and *Draper* for Plaintiff.

King, Executor, *againſt* The Biſhop of Carliſle, the Univerſity of Cambridge, Lamb and Gibſon. Mich. 12 Geo. 2.

In *Quare Impedit.* BOOTLE moved to amend the Original Writ and Declaration, by making the Plaintiff

tiff a Co-Adminiſtrator inſtead of Executor; he urged the Reaſonableneſs of the Amendment from the Neceſſity of the Thing; if the Original cannot be amended, ſix Months being paſſed, a Lapſe will incur. He cited *Cro. Eliz.* 119. *Rooksby*'s Caſe. *Cro. Car.* 74. *Turner* againſt *Palmer*. 4 *Lev.* 12. 3 *Lev.* 347. *Fitzgibbon* 193. *The Ducheſs of Marlborough* againſt *Wigmore*; *Merrick* againſt *The Hundred of Oſſulſton*, *Paſch.* and *Trin.* 10 *Geo.* 2. in *B. R.* The Court made a Rule to ſhew Cauſe; *Skinner* and *Wynne* ſhewed Cauſe, and inſiſted, that all the Caſes cited for the Amendment were of Miſpriſions where the Officer has miſtaken his Inſtructions, and upon Affidavit and Examination of the Officer *ore tenus* in Court, Amendments have been made. *Skinner* cited *Turner* againſt *Peck*, *Mich.* 4 *Geo.* 2. in *B. R.* *Per Cur':* The Doctrine of Amendment of Original Writs (which is not by Common Law, but *per Stat.* 8 *Hen.* 6.) is ſettled in the Books; 1*ſt*, No Amendment of an Original Writ can be made, unleſs for Neſcience or Miſpriſion of the Clerk. 2*dly*, there muſt be ſomething to amend by: In this Caſe both theſe Requiſites are wanting. The Court will take Care that the Suitor ſhall not ſuffer by the Officer's Error; but had the Miſtake been the Attorny's, the Party muſt be put to his Remedy againſt him: The Court could

not

not amend it. Here the Writ is agreeable to the Inſtructions, ſo there is nothing to amend by. The Rule was diſcharged.

The King *againſt* Hartop, late Sheriff of Leiceſterſhire.

AN Attachment of Contempt having iſſued againſt Defendant for not returning a Writ, he was examined upon Interrogatories; and *Belfield* moved for Defendant for Leave to amend his Examination upon the fourth Interrogatory, Defendant having by Miſtake therein referred to his own Affidavit inſtead of an Affidavit made by other Perſons. *Agar* oppoſed the Motion, and prayed that the Proſecutor might amend a Miſtake in the Title of the Interrogatories. *Per Cur':* Let the Title of the Interrogatories be amended, and let Defendant be re-examined on the fourth Interrogatory; the Amendment of the Interrogatories was to entitle them between *The King* and *Hartop*, inſtead of the Original Cauſe, wherein the Writ was not returned.

Browne *againſt* Hammond. Eaſter 12 Geo. 2.

AFTER Writ of *Capias ad ſatisfaciend'* executed, *Agar* moved to amend the Writ by the Record of the Judgment, making

making Defendant's Name *Edmund* inſtead of *Edward*, and obtained a Rule to ſhew Cauſe, which on Affidavit of Service was made abſolute.

Maſon *againſt* Littlehales, Attorny.

By Bill. THE Court gave Leave to amend the Declaration by ſtriking out the Words (*brings Suit*) and inſerting (*prays Relief*) upon Payment of Coſts, though the Court ſeemed to think the Amendment unneceſſary. *Bootle* for Plaintiff; *Hayward* for Defendant.

Arreſt.

Johannet *againſt* Lloyd. Hill. 12 Geo. 2.

DEfendant being arreſted in returning from Attendance on the Court to juſtify his Bail, was ordered to be diſcharged. *Wynne* for Defendant.

Attachment.

Hanſlow and Wife *againſt* Roberts and others. Mich. 7 Geo. 2.

A Motion was made by *Chapple* for an Attachment againſt *Conſtable* for acting as an Attorny without being ſworn: The Court denied to make any Rule, a Penalty of 50 *l.* being laid upon Defendant by Act of Parliament.

Barton *againſt* Baynes.

D*Arnall* moved to make a Rule abſolute for an Attachment againſt one *Bridgwater*, an Attorny, for not delivering to his Client Indentures of a Fine, *&c.* purſuant to Mr. Juſtice *Forteſcue*'s Order, (which had been made a Rule of Court.) *Per Cur'*: No Demand of the Writings appears ſince the Judge's Order made a Rule of Court; and therefore take a Rule that a Demand of the Writings left at the Chambers of *Bridgwater* (who concealed himſelf) ſhall be a good Demand.

Gage

Gage *againſt* Gough. Eaſter 7 Geo. 2.

MOved by *Baynes* for an Attachment againſt a Witneſs ſerved with a *Subpœna*, that did not bring a Will with him to the Trial, which he had Notice to produce. *Per Cur'*: As there was no Rule upon the Regiſter (the Witneſs) to produce the Will at the Trial, no Rule can be made on this Motion.

Miller *againſt* Vicaridge. Trin. 7 & 8 Geo. 2.

A Rule was made for an Attachment againſt the Sheriff of *Middleſex* for not returning a *Capias ad Reſpondendum*; whereupon the Sheriff cauſed Bail to be put in, and juſtified in Court, and moved to diſcharge the Rule for an Attachment upon Payment of Coſts; the Court made a Rule to ſhew Cauſe, which was afterwards diſcharged upon hearing Council on both Sides; it appearing that the Parties had been before Mr. Juſtice *Forteſcue*, who had made an Order by Conſent, that Proceedings ſhould be ſtayed on Payment of Debt and Coſts to be taxed, and that the Plaintiff had been delayed two Terms; and the Council for the Sheriff refuſing to conſent to go before the Prothonotary on the

Foot of the Judge's Order, the Court were of Opinion that the Rule for an Attachment ought to ſtand. *Corbet* for Plaintiff; *Chapple* for the Sheriff.

Hammond *againſt* Woolmer.

CAUSE tried at *Niſi prius*; Verdict for Plaintiff, ſubject to the Opinion of the Chief Juſtice, who ordered the Cauſe to be put in the Paper, and if Judgment for Defendant, Coſts of a Nonſuit; on the Argument, Judgment *per Cur'* for Defendant, before which Defendant died; moved by his Executor for an Attachment for Non-payment of Coſts. Shew Cauſe.

Gale *againſt* Chapman. Mich. 8 Geo. 2.

A Rule was made in *Hilary*, ſixth of his preſent Majeſty, for an Attachment againſt the Plaintiff, unleſs he ſhould pay a Sum of Mony upon Notice of the Rule. The Mony not being paid upon Service, *Goſwell*, Defendant's Attorny, without farther Application to the Court to make the Rule abſolute, took out an Attachment againſt Plaintiff. *Skinner*, on Defendant's Behalf, moved for an Attachment againſt *Goſwell* for ſuing out the Attachment againſt Plaintiff irregularly. A Rule was made

made to ſhew Cauſe; but upon ſhewing Cauſe, though the Attachment againſt Plaintiff was irregularly iſſued, yet it appeared to be only a mere Miſtake in Judgment, and that no Miſchief was intended; and further, that it was meant as a Service to Defendant, *Goſwell*'s Client, who now makes the Complaint. The Rule was diſcharged. *Comyns* for *Goſwell.*

Parr *againſt* Soames. Hill. 8 Geo. 2.

THomas *Hilton*, one of the Jury-men, attended in Perſon, according to a former Rule of Court, but had made no Affidavit in Anſwer to the Charge againſt him. *Per Cur'*: He cannot be examined *viva voce*; therefore let there be a Rule to ſhew Cauſe why an Attachment ſhould not iſſue againſt him.

Cooper *againſt* Sayer. Eaſter 8 Geo. 2.

WYNNE moved for an Attachment againſt one *Hodſon*, for acting as Plaintiff's Attorney after he was forejudged. The Court made a Rule to ſhew Cauſe, which was afterwards made abſolute, no Cauſe being ſhewn.

Walton *againſt* Maſon.

A Rule was made that *A. B.* late Sheriff of the County of *York*, upon Notice of the Rule to him or his Under-Sheriff given, ſhould pay a Sum of Mony to Plaintiff; and upon an Affidavit of Service of the Rule upon *Bowes*, the Under-Sheriff, an Attachment was granted: *Eyre* moved to diſcharge the Rule which was drawn up for an Attachment againſt the Under-Sheriff. *Per Cur':* The Rule is wrong, though the Under-Sheriff was ſerved with the firſt Rule, this Rule muſt be for an Attachment againſt the Sheriff: And for the future, let the Form of all Rules upon Sheriffs be, that the Sheriff ſhall do the Act required, upon Notice to his Under-Sheriff, as *in Banco Regis*.

Cave *againſt* Price. Trin. 8 & 9 Geo. 2.

WRIGHT moved for an Attachment againſt the Sheriff of *Middleſex* for not returning a Writ of *Capias ad reſpondendum*, upon Affidavit of Service of the Rule on the Under-Sheriff: *Per Cur'*, be it ſo, the Attachment muſt be againſt the Sheriff, and the Service is proper upon the Under-Sheriff.

Arne

Arne *againſt* Neeler. Mich. 9 Geo. 2.

THE Court granted a Rule for an Attachment againſt the Sheriff of *Middleſex*, for not returning a Writ purſuant to a peremptory Rule, upon an Affidavit of Service of ſuch Rule on *Benſon*, who was ſworn to act as Under-Sheriff, and not to be Under-Sheriff. *Eyre* for Plaintiff.

Ware, an Attorney, *againſt* Racket. Hill. 9 Geo. 2.

PLaintiff ſued out an Attachment of Privilege, and indorſed it for Bail without filing any Affidavit of his Debt to warrant ſuch Indorſement. Defendant complained of this to the Court, who made a Rule upon Plaintiff to ſhew Cauſe why an Attachment of Contempt ſhould not iſſue againſt him: It appeared, upon ſhewing Cauſe, that an Affidavit of the Debt was actually made before the Writ ſued out, but by Miſtake was not filed. The Court diſcharged the Rule for an Attachment, and ordered Plaintiff to pay Coſts, Defendant conſenting to bring no Action. *Belfield* for Defendant; *Chapple* and *Glyde* for Plaintiff.

The King *againſt* Harries.

THE Attachment of Contempt was returnable the Day before the Term; *Chapple* moved to quaſh it, objecting that it ought to be returnable at a Day certain in full Term, and cannot properly be made returnable on any other Day: Where the Proceeding is by Original, the Party may appear on the Eſſoin-Day, or any of the three Days next following; but this Proceſs muſt be returnable on a Day certain; and no Inſtance can be ſhewn in the *King's Bench* or *Common Pleas*, where ſuch a Writ was returnable at a Day intervening the Eſſoin-Day and the firſt Day of the Term. *Wright* for the Proſecutor urged, That all Judgments relate to the Eſſoin-Day; and this is a judicial Writ; the Court is never adjorned on the Eſſoin-Day, but commences then and continues to the *Quarto die poſt*. The Writ was ordered to be quaſhed.

Webſter, an Attorny, *againſt* Holme. Mich. 10 Geo. 2.

AN Attachment of Contempt was ordered againſt Plaintiff for inſerting Defendant's Name in a Writ of Privilege, after it came to Plaintiff's Hands under Seal of the Court. This is ſuch a Miſbehaviour in an Attorny as the Court muſt puniſh, without putting the Party injured to prefer an Indictment for Forgery. *Eyre* for Defendant; *Chapple* for Plaintiff.

Townſend *againſt* Baker.

DEfendant's Goods, which had been taken in Execution, were, by Rule of Court made on hearing Counſel on both Sides, ordered to be reſtored; Defendant afterwards, upon Affidavit that the Goods were not reſtored purſuant to the Rule, moved for an Attachment of Contempt, which was granted abſolutely without Affidavit of Service of the former Rule, which being made by Conſent, Plaintiff muſt take Notice of, and comply with at his Peril. *Chapple* for Defendant; *Eyre* for Plaintiff.

Langdell *againſt* Sutton. Hill. 10 Geo. 2.

AN Attachment was ordered againſt the Jurors for determining their Verdict by huſtling Half-pence in a Hat; one of them had diſcovered the Matter, and ſworn it; the Eleven others denied it upon Oath; but it was proved that four of them had confeſſed it. *Eyre* moved, that Proceedings on Attachment might be ſtaid on Payment of Coſts to both Parties, without the Attendance of the Jurors in Court, who lived in *Yorkſhire*; and alledged, that only one of the Jurors attended in a like Caſe of *Parr* and *Soames*. *Per Cur'*: Let the Jurors all attend to be publickly admoniſhed, that the Country may take Warning. *Chapple* for Defendant.

Shipway *againſt* Clarke. Mich. 11 G. 2.

DEfendant petitioned againſt Sheriff's Officers for Extortion, *&c.* praying Relief according to Statute 2 *Geo.* 2. and the Court made a Rule for the Bailiffs to ſhew Cauſe why an Attachment ſhould not be iſſued againſt them, and not to anſwer the Matters complained of; the former having been the Method conſtantly uſed here, and the later againſt the Courſe of the Court. *Belfield* for Defendant.

Maurice, Eſq; *againſt* Griffith. Hill. 12 Geo. 2.

MOtion for an Attachment againſt the Sheriff of *Merionethſhire* for not returning *Teſt' Ca. Sa.* Shew Cauſe. *Skinner.*

Macleed *againſt* Marſden. Trin. 13 G. 2.

THE Queſtion was, Whether a Rule to bring in Defendant's Body after *Cepi Corpus* returned by the Sheriff of *Cheſhire*, ought to be diſcharged or not? It being ſuggeſted on Behalf of the Sheriff that Defendant was in Cuſtody, and had remained in Gaol ever ſince the Arreſt; but the Fact appeared otherwiſe, Defendant had been ſuffered to eſcape. *Per Cur':* Had the Sheriff ſhewn Defendant to be in actual Cuſtody, the Rule ought to be diſcharged; but as there is an Eſcape, the Rule ſhould be obeyed, otherwiſe an Attachment muſt be granted. By Conſent, Debt and Coſts to be paid in a Month, with five Pounds for Coſts of the Motions. *Prime* and *Hayward* for Sheriff; *Eyre* for Plaintiff.

Huffe *againſt* Fowke.

AGAR for Plaintiff moved for an Attachment againſt Mrs. *Wright* for not attending as a Witneſs at the Sitting after laſt Term in *Middleſex*, ſhe having been regularly ſerved with a *Subpœna*. The Court denied to make any Rule; 'tis never granted here: Plaintiff may bring his Action upon Stat. 5 *Eliz. cap.* 9. *ſect.* 12.

Attornies, Warrants of Attorny, &c.

Clarke, an Attorny, *againſt* Stone. Eaſter 6 Geo. 2.

For Fees, *&c.* THE Court, upon reading the Acts of Parliament relating to Attornies and Solicitors, 3 *Jac.* 1. and 2 *Geo.* 2. made a Rule that Plaintiff ſhould ſhew Cauſe why all Proceedings ſhould not be ſtayed till he delivered Defendant a Bill of Coſts.

Walton *againſt* Stanton. Mich. 7 G. 2.

DEfendant, after having been two Years in Cuſtody in Execution at Plaintiff's Suit, moved to be diſcharged upon Pretence that

that this Warrant of Attorny to confeſs Judgment was executed at a Time when no Attorny was preſent, and obtained a Rule, *Niſi.* Plaintiff ſhewed for Cauſe that Defendant *Stanton* himſelf practiſed as an Attorny. Rule diſcharged. *Darnall* for Plaintiff; *Comyns* for Defendant. *Per Capital' Juſtic', aliter*, Where Plaintiff is an Attorny, he would then be more likely to impoſe upon Defendant.

Hill. 7 Geo. 2.

SEymour *Richmond*, an Attorny of this Court, having been elected a Bailiff of *Abingdon* in *Berkſhire*, obtained a Writ of Privilege to excuſe him from ſerving that Office. *Baynes* moved on Behalf of the Corporation, that the Writ of Privilege might be ſet aſide upon Affidavits that *Richmond* was a Member of the Corporation, and had ſerved ſeveral Offices there; and had taken an Oath to conform to the Orders of the Corporation. *Per Cur':* This is not a proper Manner of diſputing the Validity of the Writ; the Court will not adviſe the Corporation how they are to act with regard to paying Obedience to it, they muſt act at their Peril. No Rule.

Collins *againſt* Griffin. Trin. 7 & 8 Geo. 2.

COURT was moved againſt *Phelps*, Defendant's Attorny, for not acquainting Defendant that he had received Notice of Trial, whereby Plaintiff obtained a Verdict without Defence. It appeared upon ſhewing Cauſe, that this Omiſſion was entirely owing to the Neglect of Mr. *Buckle*, Agent for *Phelps*: But the Court held that to be no Defence for *Phelps*, he is anſwerable to his Client, his Agent to him; the Party in this Caſe ought not to be put to his Action, but the Matter ſhould be determined in a Summary Way. Let an Attachment go againſt *Phelps*.

Mich. 8 Geo. 2. November 13.

MR. *Thomas Allen*, an Attorny of the *King's Bench*, applied in the *Treaſury* to be admitted an Attorny of this Court without Stamps; but upon looking into the Act of Parliament, wherein no Proviſion is made for an Attorny of one Court to be admitted an Attorny of another without Duty, though there is a Proviſion for Solicitors of one Court of Equity to be admitted in other Courts of Equity, and for Attornies

to

to be admitted Solicitors without Duty, the Judges refuſed to admit him without Payment of the Duty.

Biſhop, Executrix, *againſt* Huggins. Hill. 8 Geo. 2.

PLaintiff's Teſtator recovered an interlocutory Judgment againſt Defendant, and died before the Execution of a Writ of Inquiry. The Judgment was revived by Plaintiff as Executrix, and a Writ of Inquiry was executed before Lord Chief Juſtice at Sittings; when Defendant agreed to pay Plaintiff 420 *l.* for Damages and Coſts: This Sum was paid into the Hands of Mr. *Boſon*, Plaintiff's Attorny, who alſo had been concerned for Teſtator in this and other Cauſes. *Boſon* paid Plaintiff 220 *l.* and kept the remaining 200 *l.* giving Plaintiff a Note to account for the Surplus, if any ſhould appear, after Payment of his Bills of Coſts. Plaintiff afterwards employed another Attorny, and applied to the Court againſt *Boſon*, that he might pay the 200 *l.* to her, deducting only ſuch Coſts as were due from her ſince the Time of her Huſband's Death, when ſhe became Plaintiff, and employed *Boſon*, and obtained a Rule to ſhew Cauſe, which was diſcharged on hearing Counſel on both Sides; the Court being of Opinion that they

they ought not to interpoſe in this Caſe; but Plaintiff may bring her Action againſt *Boſon*, if ſhe thinks fit. *Eyre* for Plaintiff; *Chapple* and *Skinner* for *Boſon*.

Hill. 9 Geo. 2.

ONE *Barnes*, an Attorny in *Cumberland*, had Orders from a Defendant to plead for him; and he ſent Directions to Mr. *Eadnell*, his Agent, ſo to do; but *Eadnell* neglecting to plead, Judgment paſſed againſt Defendant by Default. Defendant moved againſt *Barnes*, and a Rule was made upon him to ſhew Cauſe why he ſhould not make Defendant Satisfaction, he being anſwerable for his Agent's Default. Upon ſhewing Cauſe, it appeared there was a juſt Debt due to Plaintiff of 44 *l.* and the Coſts, (had a Plea been pleaded,) would have been greatly increaſed, ſo that Defendant is benefited, and not prejudiced by ſuffering Judgment to go by Default. If Defendant could have made a juſt Defence, and no Debt had been due, in caſe of a groſs and wilful Neglect, the Court would have puniſhed the Attorny; but there's no Reaſon for it in this Caſe. Rule diſcharged. *Chapple* for Defendant; *Birch* for *Barnes*.

Roe

Roe *againſt* Doe. Mich. 10 Geo. 2.

In Ejectment on the Demiſe of Cooke. A Motion was made on Behalf of the Tenant in Poſſeſſion againſt *Davis*, an Attorny, for appearing and pleading for him without Authority. It appeared that the Tenant in Poſſeſſion was Tenant at Will to Infants, by Order of whoſe Guardian *Davis* had appeared and pleaded for the Tenant, and offered the Tenant Security to indempnify him. But *per Cur'*, a Defence cannot be made for the Tenant without his Conſent: Let the Appearance and Plea be withdrawn. *Gapper* for Tenant; *Draper* for Leſſor of Plaintiff.

Mr. L.'s *Caſe*. Hill. 10 Geo. 2.

L. Had ſerved an Apprenticeſhip to *G.* a Scrivener in the City, and alſo a ſworn Attorny of this Court. By the Tenor of the Articles *G.* covenanted to inſtruct *L.* in the Art and Myſtery of a Scrivener; and it appearing that *G.* during the Term of five Years ſpecified in the Articles, had never practiſed as an Attorny, but acted as a Scrivener only. Application was made to Lord Chief Juſtice, and in the *Treaſury*, that *L.* might be ſworn an Attorny, which was refuſed, he not having

ving ſerved as Clerk to an Attorny; but as Apprentice to a Scrivener.

N. B. There was formerly the ſame Determination in the Caſe of a young Man who had ſerved Mr. *Metcalfe*, an Attorny and Scrivener in *Wood-ſtreet*; *Metcalfe*, during the Term of five Years ſpecified in the Indentures of Apprenticeſhip, practiſed in both Capacities; but the Covenant in the Articles being to inſtruct the Apprentice in the Art of a Scrivener only, the Judges refuſed to admit him as an Attorny.

Sibthorpe *againſt* Adams. Trin. 10 G. 2.

BOOTLE moved for Leave to enter Judgment on an old Warrant of Attorny upon an Affidavit ſworn by Plaintiff, who lived in *Ireland*, before a Commiſſioner of the *Common Pleas* there, of the due Execution of the Warrant of Attorny, that the Defendant was living, and the Debt unpaid: He produced alſo an Affidavit that the Plaintiff lived in *Ireland*; but the Court refuſed to ſuffer the Plaintiff's Affidavit (ſworn as aforeſaid) to be read.

Langley

Langley *againſt* Stapleton. Trin. 10 & 11 Geo. 2.

THE Plaintiff moved for Leave to change her Attorny, and to appoint Mr. *Umfrevile* inſtead of Mr. *Forreſt*: And a Rule being made to ſhew Cauſe, *Forreſt* made it appear that he had been at great Expence and Trouble, and had done his Client good Service; wherefore the Court thought it unreaſonable that another Attorny ſhould be appointed till *Forreſt*'s Bill of Coſts was ſettled and paid; and diſcharged the Rule. *Skinner* for Plaintiff; *Eyre* for *Forreſt*.

Still *againſt* Still. Mich. 11 Geo. 2.

DEfendant gave a Warrant of Attorny to enter Judgment at the Suit of Plaintiff *John Still* and one *Suſanna Still*, deceaſed. The Judges in the *Treaſury* gave Leave to enter Judgment at the ſurviving Plaintiff's Suit, upon his Affidavit of the due Execution of the Warrant of Attorny, and that the Debt was unpaid, and the Defendant alive.

Farrill *againſt* Head. Trin. 11 & 12 Geo. 2.

DEfendant being ſued as an Attorny by Bill, pleads in Abatement that he is not an Attorny. Plaintiff moved to ſet aſide the Plea, and had a Rule to ſhew Cauſe; but it appearing on ſhewing Cauſe by Certificate from the Clerk of the Warrant that the Defendant was forejudged five Years ago, and that Forejudger ſtill remains in Force, the Rule was diſcharged. *Per Cur':* Defendant is totally deprived of Privilege, pending a Forejudger. Plaintiff may reply as he pleaſes, and traverſe the Fact, which is triable by the Record, or demur if he thinks the Plea bad. The Plea is ſworn to be true, and ſeems not to be frivolous.

Butler *againſt* Pincent.

H*Aywarď*, for Plaintiff, moved for an Attachment againſt *Phelps* for acting as an Attorny, and pleading pending a Forejudger, and a Rule was made to ſhew Cauſe. The Day before Cauſe was ſhewn, *Phelps* applied to Mr. J. *Forteſcue Aland*, and obtained an Order (without Summons) to be reſtored to his Privilege (without Payment of Coſts) upon entring a common Appearance

pearance at the Party's Suit by whom he was forejudged: And it not appearing that *Phelps* had any Notice of this old dormant Forejudger obtained ſeven Years ago, the Rule was diſcharged. *Eyre* for *Phelps*.

Hayme *againſt* Hayme. Mich. 12 G. 2.

DRAPER moved on the uſual Affidavit (of Warrants being duly executed, and Parties living) to enter Judgment on a Warrant of Attorny thirteen Years old, and obtained an abſolute Rule. *Per Cur'*: Where the Warrant is twenty Years old, or upwards, the Rule muſt be to ſhew Cauſe.

Hillier *againſt* James.

RULE to ſhew Cauſe why Plaintiff's Bill of Coſts ſhould not be taxed. Diſcharged, the whole Demand appearing to be for conveyancing Buſineſs; and Plaintiff muſt recover upon a *Quantum meruit*. *Comyns* for Plaintiff; *Draper* for Defendant.

Coppendale *againſt* Sunderland. Hill. 12 Geo. 2.

MOTION by *Agar* to enter up Judgment on an old Warrant of Attorny: Plaintiff being a Lunatick did not

ſwear the Mony unpaid; but another did, who had received the Intereſt upon the Bond for three Years, ever ſince Plaintiff was Lunatick. *Cur':* Let Judgment be entred up.

Barnes *againſt* Ward. Mich. 13 Geo. 2.

RULE to ſhew Cauſe why Judgment and *Fieri Facias* ſhould not be ſet aſide, and Reſtitution, no Attorny being preſent at the Execution of the Warrant to enter Judgment whilſt Defendant was in Cuſtody. It appeared that one *Everſden* who had ſerved a Clerkſhip, (and was ſworn an Attorny ſoon after the Execution of the Warrant, and before the firſt Motion made) was preſent; but this was held inſufficient, and the Rule made abſolute; and Prothonotary directed to ſettle Satisfaction as to the Goods ſold, which could not be reſtored in Specie. *Prime* for Plaintiff; *Agar* for Defendant.

Award, Submiſſion, &c.

Aſpley *againſt* Croſley. Eaſter 7 Geo. 2.

DARNALL moved, that Defendant might be diſcharged out of Cuſtody at Plaintiff's Suit. Upon the Trial of this Cauſe a Juror was withdrawn by Conſent, and all Matters in Difference between the ſaid Parties were referred to Arbitrators, who made an Award, whereby Defendant was ordered to pay a Sum of Mony to Plaintiff at a future Day; Defendant's Council inſiſted, that Plaintiff's only Remedy is now upon the Award, and if there had been any Bail in the Cauſe, it would have been loſt, and therefore Defendant ought to be diſcharged out of Cuſtody. But the Court were of Opinion, that the Award is not a final, concluſive, abſolute Determination, but is liable to Exceptions, and no Proviſion being made by the Rule for Defendant's Diſcharge before Performance of the Award; and the Arbitrators not having ordered Defendant to be diſcharged, their Intention ſeemed to be, that all Things ſhould remain *in ſtatu quo* till Performance of the Award. No Rule.

Rawling *againſt* Wood. Eaſter 8 G. 2.

A Parol Award held good, and an Attachment granted for Non-payment of Mony purſuant thereto. *Chapple* for Plaintiff; *Wynne* for Defendant.

Rudd *and* Coe. Trin. 8 & 9 Geo. 2.

SKINNER moved on Behalf of *Rudd*, that a Submiſſion between the Parties contained in the Condition of Arbitration Bonds might be made a Rule of Court, and produced the Bond executed by *Coe*. *Per Cur'*: Be it ſo, *Coe*'s Conſent is ſhewn by the Bond executed by him, and the Motion is made on Behalf of *Rudd*.

Carter *againſt* Manſbridge. Eaſter 9 G. 2.

WRIGHT moved to make a Submiſſion between the Parties a Rule of Court purſuant to the Statute 9 & 10 *Will.* 3. *Toller* objected, that the Agreement to make the Submiſſion a Rule of Court was no Part of the Condition of the Bond, but was thereunder written, and not ſigned; but it appearing by Affidavit that the Subſcription was made before the Execution of the Bond, it was taken by the Court to be Part of the Submiſſion, as an Indorſement

by

by Way of Defeazance is Part of the Deed; and the Submiſſion was made a Rule of Court.

Dubois *againſt* Medlycott. Eaſter 10 Geo. 2.

CHAPPLE moved to make a Rule to ſhew Cauſe abſolute for an Attachment againſt Defendant for Non-performance of an Award. *Eyre* for Defendant offered to object to the Award in Point of Law; but the Submiſſion made a Rule of Court, being by Bond, *per* Statute 9 & 10 *Will.* 3. no Objection to the Award can be made after the firſt Term, and comes now too late. Rule abſolute.

Gatliffe *againſt* Dunn. Eaſter 11 G. 2.

RULE of *Niſi prius* to refer, an Award made, and Motion for an Attachment for Non-performance. *Eyre* and *Urlin* for Attachment; *Comyns* and *Wright* againſt it, who inſiſted, that the Arbitrators had not purſued their Authority, becauſe the Submiſſion confined the Award to be made in Writing indented, and the Award produced was not indented. *Cur':* It is a perfect immaterial Objection, and juſt the ſame as if the Submiſſion had ſaid the Award ſhould be made on gilt Paper; let an Attachment go.

Harriſon

Harriſon *againſt* Oliver.

MOTION *per Eyre* for Attachment for Nonpayment of Mony awarded under a Reference *per Regulam Cur'*. *Bootle* for Defendant ſhewed for Cauſe, that the Arbitrator, being by the Rule confined to ſtate Plaintiff's Demand only, was debarred from the Conſideration of Defendant's Demand on Plaintiff: That Defendant having brought his Action againſt Plaintiff, Plaintiff had pleaded the General Iſſue, and given Notice to ſet off his Demand under the Award. *Per Cur':* It appears that Demand of the Mony awarded was made, and Defendant in Contempt *June* 10. The Notice to ſet off was not till *June* 24. If Defendant pays the Mony, it cannot be ſet off. Plaintiff refuſing to conſent to a Reference to Prothonotary, Rule was made abſolute for Attachment, but ordered to ſtay a Month in the Officer's Hands.

Stephenſon *againſt* Browning. Eaſter 12 Geo. 2.

WRIGHT came to ſhew Cauſe againſt an Attachment for Nonperformance of an Award, and objected, *Firſt*, That though the Award be proved

executed, it does not appear when. *Secondly*, That the Coſts ordered to be paid by Plaintiff were taxed by Prothonotary *Thomſon*, who is not named in the Award. And *Thirdly*, That no Releaſe is awarded. *Eyre* for Defendant anſwered, that as there is no Affidavit to induce Suſpicion, the Execution of the Award is ſufficiently proved, that reaſonable Coſts of Suit are awarded to be paid, and though the Prothonotary be not named, he is the proper Perſon to tax thoſe Coſts; and that all Actions are by the Award directed to ceaſe, which is an effectual Releaſe. The Court thought the Objections ſufficiently anſwered, and would have made the Rule abſolute. But by Conſent Plaintiff was ordered to pay 40 *l.* 3 *s.* being the Coſts taxed, within two Months. It was ſaid by the Court, that where the Objections ariſe upon the Face of the Award, they may be made at any Time; but where the Party complains of Corruption or ill Practice, he muſt do it within the ſecond Term.

Note; It was obſerved by Lord Chief Juſtice, that though the Coſts are awarded to be paid *January* 1. it appears they were not taxed till *January* 30.

Bail and Bail-Bonds, and Surrenders in Diſcharge of Bail.

Faget *againſt* Vanthiennen, Mich. 6 Geo. 2.

RECognizance of Bail was ordered to be amended by making it in an Action of Treſpaſs and Aſſault *ad dampnum* 2000 *l.* inſtead of 200 *l. ſuper aſſumptionem.* Two Actions were depending between the Parties, and Bail was put in to the Action *ſuper aſſumptionem* before the Bail now amended was put in, which was intended to be in the Action of Aſſault, but by Miſtake of the Filazar was taken in the other Action, contrary to the Inſtructions given.

Wiſe *againſt* Lawrence and others. Hill. 6 Geo. 2.

DEfendants were taken on a *Capias in Withernam* after an *Elongata* returned on a *Pluries*; a *Capias* and *Alias* to warrant the *Pluries* appeared to be filed with the Filazar, but not returned; for want of which a Motion was made to diſcharge the Defendants,

Defendants, and the Court granted a Rule to ſhew Cauſe; but afterwards upon ſhewing Cauſe, it appearing to be the conſtant Practice to ſue out the *Capias*, *Alias* and *Pluries* all at the ſame Time, the Rule was diſcharged; and thereupon Defendants moved to be bailed, and were told by the Court, the Plaintiff muſt firſt declare, and the Defendants plead *Non ceper*; which being done, the Defendants were admitted to Bail. The Bail were bound in the Penalty of 200 *l.* each upon their Goods, *&c.* to be levied to the Uſe of the Plaintiff and *S.* his Wife, upon Condition that the Defendants ſhall appear *de die in diem* in this Court; and if Judgment be given againſt the Defendants, that the ſaid Defendants render their Bodies in *Withernam* to remain in Cuſtody until they render *S.* the Wife of the Plaintiff, and permit her to go at large.

Haward *againſt* Nalder.

MOTION was made that a common Appearance might be accepted in this Cauſe for Defendant, the Affidavit to hold him to Bail having been ſworn before Plaintiff's Attorny as a Commiſſioner; and a Rule to ſhew Cauſe was obtained, but was afterwards diſcharged; it having been hitherto the conſtant Practice for Plaintiff's Attorny

Attorny to take the Affidavit to hold to Bail, Practiſers apprehending that no Action being commenced at the Time of ſwearing ſuch Affidavits, they are not within the ſame Rule as Affidavits ſworn before the Plaintiff's Attorny in Cauſes depending. It was ſaid by the Court, that this Matter would be conſidered by all the Judges at their Meeting to ſettle the Practice, upon ſome Doubts that have ariſen upon the Conſtruction of the late Acts of Parliament.

Atterbury *againſt* Ward. Eaſter 6 G. 2.

In Debt upon a Recognizance of Bail. A Rule *Niſi* for Judgment for the Plaintiff upon an Iſſue of *Nul tiel Record* was diſcharged, the Record of the Recognizance produced by the Plaintiff being conditional, and the Recognizance ſet forth in the Declaration without any Condition.

Steward *againſt* Biſhop.

ONE Perſon became Bail for Defendant before a Judge, and ſurrendered him to the *Fleet* Priſon. Plaintiff after the Render proceeded to ſerve the Sheriff with a Rule to bring in the Body. And upon a Motion to ſtay the Proceedings againſt the Sheriff,

Sheriff, a Queſtion aroſe whether one Perſon only being Bail, the Render was effectual or not; and the Court held the Render inſufficient; and refuſed to ſtay Proceedings againſt the Sheriff, but afterwards two Bail were put in and juſtified in Court; and thereupon Proceedings againſt the Sheriff were ſtaid on Payment of Coſts. Plaintiff inſiſted that he had been delayed of a Trial, and that the Bail ought to be bound for the Debt, and were too late to render; but the Court were of a contrary Opinion, Plaintiff having proceeded againſt the Sheriff as above-mentioned, and not upon the Bail-Bond.

Hadderweek *againſt* Catmur. Mich. 7 Geo. 2.

DEfendant was held to Bail by Lord Chief Juſtice's Order, upon Affidavits of a criminal Converſation with Plaintiff's Wife. Defendant afterwards applied to Lord Chief Juſtice, upon Affidavits of himſelf and Plaintiff's Wife, that Plaintiff having been long beyond Seas, and the Wife having had Advice of his Death, received Defendant's Addreſſes, and married him as her ſecond Huſband. Lord Chief Juſtice ordered Defendant to apply to the Court, and upon reading Affidavits and hearing Council on both Sides, the Chief Juſtice was of Opinion

Opinion that the Order for Bail ought to be diſcharged, nothing criminal appearing in the Defendant; and in Caſes of this Kind which differ from Actions brought upon Contracts, no Bail is required, unleſs by the Special Order of a Judge, which Defendant hath a Right to apply to the Court to diſcharge, if not well founded. *Forteſcue* and *Reeve* thought that entering into the Foundation of the Order was examining the Merits of the Cauſe; and therefore improper before the Trial. Defendant was held to Bail, and had four Days Time to put in the ſame (*abſente Denton*).

Heath *againſt* Aſtley.

THE Original Action was brought againſt Defendant in *Michaelmas* Term laſt, and for Want of Bail above, the Bail-Bond was aſſigned in *February* following; afterwards Defendant died, and the Bail moved to ſtay Proceedings againſt them, the Plaintiff not having obtained Judgment upon the Bail-Bond; the Court on hearing Council on both Sides, ordered the Proceedings to be ſtaid upon Payment of Coſts, being of Opinion that the Matter was never carried farther than the Bail-Bond ſtanding as a Security for what ſhould be recovered upon a Trial; and if that had been the Caſe, and Defendant had died

before the Trial, the Suit would have been at an End; the Plaintiff might have proceeded more ſpeedily; and if any Inconvenience happens to him, it is through his own Laches. *Chapple* for Plaintiff; *Hawkins* for Defendant.

Davenport *againſt* Wall.

THE ſame Queſtion determined in the ſame Manner; the *Capias* in the Original Action was returnable on the firſt Return of *Eaſter* Term laſt. Defendant died before *Trinity* Term. *Per Cur':* Plaintiff might have had Judgment and *Ca. Sa.* of *Eaſter* Term laſt, if he had proceeded as he might have done. *Chapple* for Defendant; *Eyre* for Plaintiff.

Wingfield *againſt* Goodridge.

BAIL was taken in Town before a Judge, and the Bail, who lived in the Country about ten Miles diſtant from *London*, returned Home, and being afterwards excepted againſt, ſent an Affidavit of their Sufficiency: Whereupon *Eyre* moved to juſtify in Court. *Wright* objected, that the Bail being taken before a Judge in Town, they cannot juſtify by Affidavit, but muſt appear perſonally in Court. Court held the Objection good, but gave Defendant a

Week to perfect his Bail, to give them an Opportunity to come to Town to juſtify.

Whalley *againſt* Martin.

DEfendant ſuperſeded three Years ſince, and arreſted again for the ſame Debt; moved to be diſcharged upon entring a common Appearance; but it appearing that one *Williams*, formerly Plaintiff's Attorny, had, after leaving a Declaration in the Office, deſerted the Cauſe, and abſconded, whereby Defendant obtained a *Superſedeas* by Surprize without Plaintiff's Knowledge, Defendant was held to Bail.

Martin *againſt* Price and others. Hil. 7 Geo. 2.

EYRE moved to ſtay Proceedings againſt the Bail in an Action of Debt brought upon the Recognizance, the Writ not having been ſerved four Days before the Return. Court made a Rule to ſhew Cauſe, which was afterwards made abſolute.

Ormond

Ormond, Aſſignee of the Sheriff, *againſt* Griffith.

DEfendant put in the ſame Bail before a Judge in due Time as were Bail to the Sheriff. Plaintiff excepted againſt the Bail, and for Want of Addition or Juſtification took an Aſſignment of the Bail-Bond, and proceeded thereupon. Defendant moved the Court to ſtay the Proceedings upon the Bail-Bond, alledging that Plaintiff by accepting an Aſſignment thereof had admitted the Bail to be good; but the Court, upon hearing Council on both Sides, refuſed to ſtay the Proceedings, the Plaintiff by a late Rule of Court made in *Michaelmas* Term 6 *Geo.* 2. being at Liberty to except againſt the Bail above, although it be the ſame Bail that was taken by the Sheriff. *Chapple* for Defendant; *Eyre* for Plaintiff.

Garnett *againſt* Heaviſide.

DEfendant moved for ten Days Time to put in Bail, and that upon putting in good Bail, Payment of Coſts, Pleading the general Iſſue, and taking Notice of Trial within Term, Proceedings on the Bail-Bond might be ſtaid. The Court made a Rule to ſhew Cauſe, which was afterwards made abſolute upon hearing Council

on both Sides: The Caſe was, that the Plaintiff had ſued out a *Teſtat'* Attachment of Privilege from *Middleſex* into *Yorkſhire*, and Bail was taken as in a Country Cauſe, and filed with the Filazer of *Yorkſhire* by Miſtake; and in order to give Defendant an Opportunity to rectify that Miſtake, the Rule was made.

Birch, Executor, *againſt* Douglaſs. Hil. 7 Geo. 2.

PLaintiff's Teſtator had executed a Letter of Licence to Defendant for five Years, which were not expired at the Time. Defendant was arreſted and held to Bail at Plaintiff's Suit. *Baynes* moved that Defendant might be diſcharged upon entring a common Appearance; but the Court denied the Motion, being of Opinion that entring into the Queſtion about the Letter of Licence (which could not amount to more than a Releaſe) was entring into the Merits of the Cauſe.

Low *againſt* Ravell. Eaſter 7 Geo. 2.

THE Defendant was ſurrendered by his Bail to the *King's Bench* Priſon inſtead of the *Fleet* by Miſtake; he was afterwards ſurrendered rightly, and the Bail moved to ſtay Proceedings upon the Bail-Bond

Bond: A Rule was made to ſhew Cauſe, which was afterwards diſcharged upon hearing Council on both Sides, the Plaintiff having been delayed of a Trial. *Eyre* for Defendant; *Hawkins* for Plaintiff.

Merrett *againſt* Montfort.

CA. *Sa.* againſt the Principal whereupon to found a Proceeding againſt the Bail left with the Sheriff *February* 6, returnable *February* 9, held to be a Day too ſoon, and Proceedings againſt the Bail ſtaid. *Corbet* for Defendant; *Comyns* for Plaintiff.

Waddington, Sheriff Co. Hunt, *againſt* Fitch.

IN an Action upon a Bail-Bond taken on an Attachment out of the Court of Chancery, Defendant craved *Oyer*, and pleaded the Statute 23 *Hen.* 6. That the Bond was taken for Eaſe and Favour, *&c.* to which Plaintiff demurred, and Defendant joined in Demurrer. After Argument, Judgment was given for Defendant. *Eyre* for Defendant; *Chapple* for Plaintiff. *Cooke, lib.* 4. *fol.* 76. *Dyer, fol.* 119. The Condition of this Bond appeared to be for Defendant's Appearance before the King in his High Court of Chancery, at the Return of the Writ, to anſwer the King, as alſo all ſuch other Matters as

ſhould be then and there laid to his Charge; and further to perform and abide ſuch Order as that Court ſhould direct in this Reſpect: which is the common Form, where the Attachment iſſues for want of Appearance or Anſwer; ſo that if Plaintiff, inſtead of demurring, had replied a Bill filed in Chancery, Proceſs of *Subpœna*, *&c.* and that the Attachment iſſued for want of Appearance or Anſwer, agreeable to the Fact, probably he might have maintained his Action. *Vide* the Caſe following.

Debt on Bail-Bond for the Appearance of one *Mugg coram Juſtic'*, *&c. apud Weſtm'*, *&c. ad reſpondend' dicto Domino Regi de & ſuper hijs quæ eidem* Mugg *adtunc & ibidem objicientur*, *& ulterius ad faciend' & recipiend' quod Cur' dicti Domini Regis de eo Cons' in hac parte.*

On pleading the Statute 23 *H.* 6. *quod fuit Capt' pro Eaſiamento*, *&c.* And on a general Demurrer after Argument *Trin.* 2 *Geo.* 1. and *Hil.* 3 *Geo.* 1. in *Mich.* 4 *Geo.* 1. the Court gave Judgment that the Bond was void.

And differed this Caſe from an Attachment in Proceſs out of Chancery, (which was ſtrongly urged by the Plaintiff's Council) for that is no more than a Proceſs to compel the Party to appear and anſwer, *&c.*

And this Judgment was given *Mich.* 4 *Geo.* 2. *C. B. Field, Vic'* v. *Watford*, one of the Obligors with *Mugg*, the Principal in the Obligation.

Cook

Cook and others *againſt* Sankey. Trin. 7 & 8 Geo. 2.

DARNALL moved, that a common Appearance might be accepted for Defendant, and produced a Copy of the Plaintiff's Affidavit made to hold the Defendant to Bail; whereby the Action appeared to be for entring Plaintiff's Ground, and taking away and ſpoiling his Hop-Poles, and treading down his Hop-Plants to the Damage of 20 *l.* *Darnall* inſiſted, that Plaintiff cannot be his own Judge of the Damages either in Treſpaſs or in a Special Action upon the Caſe; and Defendant ought not to be held to Bail without a Judge's Order. *Per Cur'.*: The Plaintiff is the proper Perſon to ſwear to his Damages, by the Act of Parliament. No Rule.

Aucher *againſt* Hamilton.

THE Judges in the Treaſury refuſed to order a Bail-piece to be filed, twenty Days being lapſed ſince the Caption, the Words of the general Rule being, that ſuch Bail-pieces ſhall not be filed without Leave of the Court. Court was afterwards moved upon Mr. *Newſome*'s (Defendant's Agent) Affidavit, that he received the Bail-

piece in due Time, but that it was omitted to be filed by his Clerk's Neglect. Court ordered the Bail-piece to be received and filed.

Maſon *againſt* Bruce.

DEfendant ſurrendred in Diſcharge of his Bail the laſt Day of laſt Term, (being the *quarto die poſt* of the Return of an Action of Debt upon the Recognizance) at Mr. Juſtice *Denton*'s Chambers, after the riſing of the Court. The Filazar made a general Entry of the Surrender upon Record as done in Court. The Plaintiff moved, that the Roll might be taken off the File; and a Rule to ſhew Cauſe was made, which was afterwards made abſolute, upon hearing Council on both Sides; the Surrender not being *ſedente Curia* was too late. *Chapple* for Plaintiff; *Hawkins* for Defendant.

Newman *againſt* Butterworth. Hil. 8 Geo. 2.

DEfendant moved to ſtay Proceedings againſt his Bail, pending a Writ of Error. Plaintiff inſiſted, that the Bail ought to give Judgment, and that Execution only ſhould ſtay. But *per Cur'*, the Bail ought not to be precluded from ſurrendring the Principal; and therefore let all Proceedings

ings be ſtaid pending the Writ of Error. *Comyns* for Defendant; *Skinner* for Plaintiff.

Againſt Ewer.

H *Awkins* moved to ſtay Proceedings in an Action upon the Recognizance againſt the Bail, the principal Defendant having been ſurrendered to the *Fleet*, and afterwards charged in Execution there by Plaintiff. *Wright* for Plaintiff objected, that Defendant had pleaded; and Plaintiff demurred; that therefore Defendant's proper Method was to procure an Amendment of his Plea; but the Court held, that Plaintiff could not proceed againſt the Bail after charging the Principal in Execution. Defendant ſhould not have pleaded, but moved the Court ſooner. Let Proceedings be ſtaid upon Payment of Coſts *ex aſſenſu.*

Cremer *againſt* Bulman.

BAIL was put in, and an Exception taken thereto. Defendant within the Time for perfecting the Bail gave Notice to add and juſtify in Court, but inſtead thereof did ſo at a Judge's Chamber, and was ſurrendered to the *Fleet*, which was held inſufficient, the Bail not being perfect-

ed,

ed, and the Rule to ſhew Cauſe why Proceedings on the Bail-Bond ſhould not be ſtaid was diſcharged upon hearing Council on both Sides. *Skinner* for Plaintiff; *Wright* for Defendant.

Fleetwood *againſt* Poictier. Eaſter 8 Geo. 2.

THIS was an Action of Covenant brought by Plaintiff Patentee of *Drury-Lane* Playhouſe againſt Defendant for not performing Dances upon the Stage according to Articles, whereby Plaintiff ſwore himſelf dampnified 100 *l.* Defendant moved in the Treaſury for a common Appearance, but did not obtain a Rule, the Plaintiff having ſworn to a certain Damage.

Harriman *againſt* Clegg.

AFfidavit of Juſtification by Bail, that they were ſeverally worth the Sum wherein they were bound by their Recognizances, after all their *Juſt* Debts paid and ſatisfied, held to be inſufficient, not being in common Form; the Word *Juſt* ought to be omitted.

Blick *againſt* Halpenn and his Wife.

THE Huſband abſconded, and could not be taken; but the Wife was arreſted by meſne Proceſs; and moved in the *Treaſury* that a common Appearance might be accepted for her, which was ordered on hearing the Attornies on both Sides: The Reaſon is, that if the Wife was to be held to Bail, it would be in the Power of the Huſband to ſet up a ſham Action againſt her, and keep her in continual Impriſonment; otherwiſe, if the Huſband and Wife had been both taken, in that Caſe both ſhall be held till Bail be given for both: The Reaſon is, that otherwiſe a Woman might marry a Priſoner, and thereby being free from Impriſonment herſelf, defraud her Creditors. *Roll's Abr.* 583. *Smith* and *Storey*. 1 *Syd.* 393. *Cro. Car.* 118. *Trin.* 9 *W.* 3. *Clarkſon* againſt *Watkinſon* and Wife, in *B. R.*

Clarke *againſt* Baker.

PRoceedings were ſtayed in an Action of Debt brought upon a Recognizance of Bail, pending a Writ of Error, without Defendant's giving Judgment; becauſe thereby Defendant would be precluded from a Surrender,

Surrender, which is not reaſonable. *Chapple* for Plaintiff; *Comyns* for Defendant.

Knight *againſt* Winter, Bail for Smothergil.

THE Principal was rendered in Diſcharge of his Bail in due Time; and Notice thereof was given to Plaintiff's Attorny. The *Reddidit ſe* was marked in the Judge's Book, and ſigned by the Judge; but was not marked or ſigned upon the Bail-piece itſelf, which was upon an *Habeas Corpus*, and had been delivered out by the Judge's Clerk to Plaintiff's Attorny, to be filed, who did not file it, but proceeded to Judgment againſt the Bail for want of a *Reddidit ſe* being marked upon the Bail-piece. *Wright* and *Hawkins* moved for Defendant to ſet aſide the Judgment againſt the Bail, and that the Bail-piece might be filed, and the *Reddidit ſe* entered thereupon, agreeable to the Fact; and upon hearing *Eyre* and *Urlin* for Plaintiff, the Court was of Opinion that the Practice of Plaintiff's Attorny in taking away the Bail-piece from the Judge's Chamber was unwarrantable, and ſet aſide the Judgment, with Coſts (Defendant having done every Thing in his Power to make the Render effectual) Defendant conſenting to bring no Action, and ordered the Bail-

piece

piece to be filed, and the *Reddidit ſe* entered.

Young *againſt* Wood.

SKINNER moved to ſtrike out of the Bail-piece one of the Bail, another (who was ready to juſtify) being added in his ſtead. *Belfield* objected that no Affidavit was produced that the Perſon prayed to be ſtruck out, was a material Witneſs in the Cauſe, which Affidavit the Court thought neceſſary, and rejected the Motion; whereupon *Skinner* prayed that the Bail added might be ſtruck out, which was granted.

Cantrel, Adminiſtrator, *againſt* Graham.

THIS was an Action brought upon a Leaſe dated in 1727, for two Years Rent due ſince the Year 1733, when Defendant became a Bankrupt. Defendant moved for a common Appearance, and produced his Certificate, allowed, confirmed and enrolled. Upon hearing Council on both Sides, neither the Poſſeſſion nor the legal Intereſt of the Eſtate being in the Defendant, a common Appearance was ordered to be accepted. *Skinner* for Defendant; *Hawkins* for Plaintiff.

Lord

Lord Molineux *againſt* Charles.

THE Queſtion was, Whether Defendant could be held to Bail for 10 *l.* in a County Palatine, the Statute 11 & 12 of *W.* 3. *cap.* 9. requiring 20 *l.* to be due; and the Act to prevent vexatious Arreſts extending every where but into *Scotland*, and requiring Bail for 10 *l.* Court took Time to conſider of it. (It hath been held in the *Exchequer*, that to hold to Bail in a County Palatine 20 *l.* muſt be ſworn due, as alledged at the Bar.)

Ling *againſt* Woodyer. Hil. 9 Geo. 2.

THE Court ordered the Hour of the Day, or true Time of the Defendant's Surrender, to be entered by the Filazar, in order that it might appear whether the Surrender was made before or after the Riſing of the Court. *Maſon* againſt *Bruce*, *Trin.* 7 & 8 *Geo.* 2. *Hawkins* for Plaintiff; *Corbet* for Defendant.

Huckle *againſt* Ambroſe. Trin. 10 G. 2.

DEfendant was brought by *Clendon*, one of his Bail, to Mr. Juſtice *Denton*'s Chamber and ſurrendered, and the *Reddidit ſe* ſigned by the Judge; whereupon *Clendon*

Clendon fraudulently departed and refuſed to pay the Fees. *Price*, the Tipſtaff, looking upon this to be a Trick, and that the Surrender was not compleat without Payment of the Fees, refuſed to take Charge of the Defendant, who went away at large: *Price*, upon Affidavit of this Matter, applied to the Court to vacate the Surrender, and *Clendon* was ordered to ſhew Cauſe; and upon ſhewing Cauſe, the Fact appearing to be as ſtated by *Price*'s Affidavit, the Court was of Opinion that the Entry of the *Reddidit ſe* upon the Bail-piece is only an Eſcrol, and a Warrant to the Filazar to enter the Surrender upon Record; as it was *Clendon*'s Duty to pay the Fees, and he refuſed, the Surrender is no Surrender, but ineffectual, and ought not to be recorded; and the Entry upon the Bail-piece being obtained by Fraud and Impoſition, was ordered to be ſtruck out. *Vide Fariſley* 77. 2 *Keble* 2. *Chapple* for *Price*; *Wright* for *Clendon*.

Willoughby, Adminiſtrator of Lady Jenkins, *againſt* Rhodes.

On a Bail-Bond. THE Proceedings were ordered to be ſtayed on Payment of Coſts; it appearing that Lady *Jenkins*, the Plaintiff in the original Action, died before Judgment could be recovered

covered therein. *Chapple* for Defendant; *Eyre* for Plaintiff.

Bett *againſt* Goodman and another.

UPON an Affidavit that Defendants were indebted to Plaintiff generally 13 *l.* *Capias ad reſpondendum* was indorſed in like manner to hold them to Bail; the *Ac etiam* was againſt them ſeverally, and they were arreſted and ſeverally held to Bail: And Plaintiff having proceeded againſt the Sheriff by Rule to bring in the Bodies, *Wright* moved for Defendants for a common Appearance, and to ſtay Proceedings againſt the Sheriff, inſiſting that as the Affidavit was of a joint Demand, and the Indorſement agreeable thereto, there was no Affidavit to warrant Bail in ſeparate Actions. *Eyre* urged *pro Quer'*, That the Act of Parliament requiring an Affidavit of the Cauſe of Action doth not require it to be very particular; an Affidavit that Defendants are generally indebted, is ſufficient to hold them to Bail jointly or ſeverally, as Plaintiff chooſes to proceed; but the Court being of Opinion that the Affidavit was not ſufficient to hold Defendants to Bail ſeverally, *Eyre* cloſed with a Propoſal made by *Wright*, to accept 13 *l.* for the Debt and Coſts in the joint Action.

Weyman

Weyman *againſt* Weyman. Mich. 10 Geo. 2.

AN Action of Debt was brought upon a Judgment after a Writ of Error, and Bail put in thereupon; but no Bail was given in the original Action: And the Queſtion was, Whether Bail being put in upon the Writ of Error, Defendant ought to be held to Bail in the Action on the Judgment: It was urged for Defendant, that according to the Courſe of the Court, where Bail is given in the original Action, no Bail is required in the Action on the Judgment; and the Bail in Error who are bound for Debt and Coſts, and cannot ſurrender the Principal, are a better Security than Bail in the original Action. *Per Cur':* No Inſtance can be ſhewn where Bail put in on a Writ of Error has been held ſufficient to excuſe Bail in an Action of Debt on Judgment. Defendant was held to Bail. *Eyre* for Defendant; *Chapple* for Plaintiff. It was ſaid by *Chapple*, who quoted *Cooper* and *Price*, *Syd.* 294. *Hickman* and *Corbet*, 2 *Keb.* 53, & 70. that in Caſe the Writ of Error ſhould be *non-pros'd* for want of tranſcribing the Record, the Bail would not be liable; but the Law is otherwiſe; and the Bail being bound to proſecute the Writ

of Error with Effect, are liable in Caſe of a *Non-pros.*

Shaw, Bart. *againſt* Hawkins.

THIS was an Action of Debt on Bond, wherein Defendant was held to Bail on Plaintiff's Affidavit. Defendant moved for a Common Appearance, and that Plaintiff might produce the Bond to the Court, upon an Affidavit that Defendant had great Reaſon to believe that the whole Sum due was paid by one of his Co-obligors, which would appear by Indorſements made on the ſaid Bond when produced. Plaintiff in Anſwer, made Affidavit, that 100*l.* and upwards remained due to him on the Bond, after all juſt Allowances; that he had ſeen the Bond, which was uncancelled and in full Force ſome few Months before, but had miſlaid it; and being ſeverely afflicted with the Gout could not ſearch among his Papers himſelf; ſo that it could not be produced. It was urged for Plaintiff, that no Declaration being yet delivered, Defendant is not intitled to *Oyer* of the Bond; but after a Declaration, with a *Profert in Cur'*, he may demand *Oyer*. The Court held, That as the Matter of Bail is diſcretionary, and as the Meaſure of the Sum for which Bail ought to be given, is with Certainty to be had only from the Bond itſelf, the Bond ought

ought to be produced, and for want of producing it a Common Appearance was ordered. *Wynne* for Defendant; *Chapple* for Plaintiff.

Spincks *againſt* Bird.

PLaintiff declared in an Action of Debt upon Bond: Defendant craved *Oyer*, and the Condition appeared to be for Performance of Covenants. Defendant, after *Oyer*, inſtead of Pleading, enters *Nil dicit*, in order that *Oyer* of the Condition appearing upon Record, he might bring a Writ of Error without Bail. The Court, upon hearing Council on both Sides, ſet aſide this Entry, and gave Plaintiff Leave to enter Judgment by Default: And the Queſtion now was, Whether the Condition of the Bond not appearing on Record, Bail ought to be required on the Writ of Error or not? And the Court held, that the Matter of Bail is properly examinable by Affidavit; and the Bond being conditioned for Performance of Covenants, Bail ought not to be required on the Writ of Error. *Parker* for Defendant; *Chapple* for Plaintiff.

Debalfe *againſt* Mackenſie. Hil. 10 Geo. 2.

PLaintiff had made Affidavit that Defendant was indebted to him a large Sum of Money ordered to be paid by a Sentence of the Bailiff of *Meudon* in *France*, as a Compenſation for not making good a Charge againſt Plaintiff for Bigamy. Defendant had appealed to the Parliament of *Paris*; and it appeared by the Acts of that Court, that the Sentence of the Bailiff of *Meudon* was annulled (not upon the Merits, but according to the Cuſtom of the Superior Court, who, on an Appeal from an inferior Juriſdiction, conſtantly annul the former Sentence, and proceed as in an original Suit); and the Queſtion was, Whether Defendant ought to be held to Bail or not? Lord Chief Juſtice, *Denton*, and *Comyns*, were of Opinion, that as the Sentence of the Bailiff of *Meudon* appeared to be annulled, and not in Force, it was not neceſſary for the Court to conſider whether this Sentence, when in Being would have been a ſufficient Cauſe of Action to hold Defendant to Bail; but looked on the Sentence as diſcharged and made void; and therefore ordered a common Appearance to be accepted. Mr. Juſtice *Forteſcue* was of Opinion Defendant ought to be held

held to Bail. *Eyre* and *Wynne* for Defendant; *Chapple* for Plaintiff.

Harris *againſt* Roberts. Eaſter 10 Geo. 2.

IN an Action of Debt on Bond, atteſted by one Witneſs only, Plaintiff had been nonſuited on *Non eſt factum* pleaded, the Witneſs not making ſufficient Proof of the Execution of the Bond. Plaintiff brought a new Action on the ſame Bond: Defendant moved for a Common Appearance, and obtained a Rule to ſhew Cauſe, which was diſcharged on hearing Council on both Sides. *Note*; Defendant did not in his Affidavit deny the Execution of the Bond. *Eyre* and *Wynne* for Defendant; *Chapple* for Plaintiff quoted *Chambers* againſt *Robinſon*, *Mich.* 1 *Geo.* 2. in *C. B.*

Gregory *againſt* Gurdon.

AFTER an Exception againſt the Bail put in before a Judge, Defendant added Bail; but did not juſtify in Court purſuant to the Rule for perfecting Bail in four Days. Plaintiff proceeded on the Bail-Bond without excepting againſt the additional Bail; and the Proceeding was held regular. *Hayward* for Defendant; *Chapple* for Plaintiff.

Parrot, Adminiſtrator, *againſt* Smith.

PLaintiff makes Affidavit that Defendant is indebted to him, as Adminiſtrator, 40 *l.* by Promiſſory Note given by Defendant to Plaintiff's Inteſtate, as Plaintiff believes, and as appears by Note in Plaintiff's Cuſtody, to which he refers. The Parties had attended Mr. Juſtice *Forteſcue*, who was of Opinion that this Affidavit did not contain ſufficient Certainty of the Cauſe of Action, and ordered a Common Appearance. *Parker* moved to diſcharge the Order; urging that the Affidavit was ſufficient to ſhew a probable Cauſe of Action, (which is all that in this Caſe is requiſite) and is as ſtrong as an Adminiſtrator can poſſibly make. *Per Cur:* Let the Judge be re-attended.

Birch, Attorny, *againſt* Graves.

DEfendant being arreſted at Plaintiff's Suit in an Action for Fees, *&c.* entered into a Bail-Bond with Sureties, which for want of Bail above was aſſigned, and Actions brought thereon; wherein Plaintiff declared. Defendant pleaded *Non eſt factum*, and after Verdicts for Plaintiff at laſt Aſſizes, *Chapple* moved for Leave to file Bail in the original Action, on Payment of Coſts, and conſenting that Plaintiff might take Judgment

ment on the Bail-Bond to ſtand as a Security for what he ſhould recover; and produced an Affidavit from Defendant that he never, in his own ſeparate Capacity, employed Plaintiff as his Attorny; and that he had a good Defence in this Action. A Rule was made to ſhew Cauſe, which was afterwards made abſolute. *Chapple* for Defendant; *Eyre* and *Wright* for Plaintiff.

Goodtitle *againſt* Bennington. Trin. 10 & 11 Geo. 2.

In Ejectment. A Writ of Error being brought, and the Bail thereon offering to juſtify in Court, it was objected by *Agar* for Defendant in Error, that the Recognizance was irregular; for that the Party, Plaintiff in Error, ought himſelf to be bound, as required by Stat. 16 & 17 *Car.* 2. *Eyre* anſwered, That by that Statute the Recognizance of the Party himſelf alone is ſufficient; and ſince he hath not taken Advantage thereof, but hath found Sureties, Defendant in Error has a larger, and probably better Security than by Law he is intitled to. The Practice was reported to be various; ſometimes the Party himſelf was ſingly bound, and at other Times Sureties engaged for him. The Bail juſtifying in Court were allowed. Plaintiff may ſue out Execution at his Peril.

Sampſon *againſt* Warren. Mich. 11 G. 2.

PLaintiff, having made Affidavit of his Debt *in Banco Regis*, cauſed Defendant to be arreſted by *Latitat* indorſed for Bail. Defendant removed himſelf to the *Fleet* by *Habeas Corpus* charged with this *Latitat*, and Plaintiff declared againſt him there without making a ſecond Affidavit. Defendant moved to be diſcharged on entring a common Appearance, inſiſting that, in order to hold him to Bail regularly, Plaintiff ought to have made Affidavit of his Debt in this Court, and procured it to be indorſed on the Declaration according to the Rule *Mich.* 8 *Geo.* 2. a Rule was made to ſhew Cauſe, which was diſcharged, the Court being of Opinion, that the Rule of Court extends only to Caſes where a Declaration is the firſt Proceeding, and not to this Caſe. *Burnett* and *Draper* for Defendant; *Eyre* for Plaintiff.

Hanſley *againſt* Page. Hil. 11 Geo. 2.

K*Ettleby* moved to ſet aſide *Fi. Fa.* againſt the Bail, Defendant having ſurrendered himſelf in their Diſcharge. It appeared by the Affidavit, that the ſecond *Sci. Fa.* was returnable *Cro. Mart. Nov.* 12. and that Defendant ſurrendered himſelf *November* 15. the Appearance-Day of the Return. *Per Cur':*

Cur': The Affidavit is defective; it doth not appear that the Defendant ſurrendered (*ſedente Curiâ*) on the Appearance-Day of the Return of the ſecond *Sci. Fa.* which if he did not, the Surrender is out of Time. No Rule.

Waſs *againſt* Cornett *and* Malpas.

THIS was an Action brought againſt Defendants on a Recognizance as Bail, Defendants moved to ſtay the Proceedings for want of fifteen Days between the Teſte and Return of the *Capias ad reſpondendum*, and not aided by Statute, a Rule was made to ſhew Cauſe, why Proceedings ſhould not be ſtaid. On ſhewing Cauſe, Plaintiff inſiſted, that this being a Matter of Error, and not of Irregularity, the Motion was improper. *Per Cur:* The Rule ſhould have been to ſhew Cauſe why the Writ ſhould not be quaſhed. Defendant cannot have *Oyer* of the *Capias*, and therefore cannot take any Advantage by Pleading. Plaintiff choſe to begin *de novo*, and a Rule by Conſent was made to quaſh the Writ. *Draper* for Defendant; *Wright* for Plaintiff.

Ruſſel *againſt* Gately. Eaſter 11 G. 2.

MR. Juſtice *Comyns* had ordered Bail for 200 *l.* in an Action for a malicious Proſecution for Forgery upon Plaintiff's Affidavit. Defendant moved for a common Appearance; and it appearing that Plaintiff was not acquitted of the Indictment upon the Merits, but upon a Flaw, and no Precedent being produced of an Order for Bail in ſuch an Action as this (though for falſe Impriſonment there was) the Rule to ſhew Cauſe why a common Appearance was made abſolute. *Eyre*, *Parker* and *Hayward* for Defendant; *Wright* and *Wynne* for Plaintiff.

Calveraq and his Wife *againſt* De Miranda.

IN an Action of Treſpaſs and Aſſault to the Damage of 500 *l.* Mr. Juſtice *Forteſcue* had ordered Bail for 140 *l.* and the Defendant being preſent at the Time the Recognizance of Bail was taken, his Bail were bound jointly and ſeverally in 140 *l.* Plaintiff recovered a Verdict for 300 *l.* and the Bail moved to ſtay Proceedings againſt them both on their Payment of 140 *l.* and upon ſhewing Cauſe the Court were of Opinion, that as the Damages in the Writ were laid 500 *l.* here is no Fraud upon the Bail, the Recognizance is ſeparate

as

as well as joint, and in its Nature a Judgment, the Award of the Court thereupon is, that Plaintiff have Execution; therefore ſo far as the Penalty of each Recognizance will go, it is juſt and equitable the ſame be applied towards Satisfaction of the Condemnation-Money, for Payment whereof, and not of any particular Sum, the Condition is. The Practice of the King's Bench had been mentioned, but the Proceeding there by Bill, where Bail is taken without any particular penal Sum, differs widely from the Form of Proceedings here, and muſt be governed by the *Ac etiam Bille*, otherwiſe Bail might be defrauded. *Bootle* and *Burnett* for Bail; *Eyre* and *Hayward* for Plaintiff.

Lane *againſt* Jones. Firſt Friday in Term.

WILLIS an Attorny, being committed laſt Term by the Court for a Contempt, applied this Term to be diſcharged upon Bail. *Eyre* for *Willis*; *Skinner* and *Wright* for *Jones* the Proſecutor. This Commitment was for a Crime of moſt heinous Nature, ſcandalous to the whole Profeſſion. *Willis* hath done nothing towards clearing himſelf ſince his Commitment, tho' Proſecutor exhibited Interrogatories againſt him the firſt Day of this Term. *Cur':* This

was a grievous Crime, his Confinement will be Part of his Puniſhment: It is too early to apply yet, he may apply again the later End of the Term. No Rule. He did apply the later End of the Term, and was admitted to Bail.

Paradice, Aſſignee, *againſt* Holiday. Mich. 12 Geo. 2.

MOTION to ſet aſide Proceedings on Bail-Bond aſſigned and put in Suit *Oct.* 31. laſt returnable *tres Mich.* and being a Country Cauſe, Defendant had eight Days after the Appearance-Day excluſive to put in Bail, and the Bail-Bond could not regularly be put in Suit till *November* 1. *Gapper* for Plaintiff inſiſted that the Bail-Bond might be aſſigned at any Time, though it could not be *put in Suit*, which are the Words of the Act of Parliament and General Rule of Court. *Per Cur':* There is no Occaſion to decide this Matter at preſent here, the Bail-Bond is put in Suit too early; the *Capias* on the Bail-Bond aſſigned appears to be ſued out *October* 31. The Proceedings were ſet aſide. *Agar* for Defendant.

Luſh-

Luſhington *and* Doe on the Demiſe of Godfrey.

In Ejectment in Error. BAIL was put in by Plaintiff in Error, but he himſelf was not bound as required by the Statute of 16 & 17 *Car.* 2. *Draper* moved for Leave to take out Execution, and obtained a Rule to ſhew Cauſe. *Wright* for Plaintiff in Error urged, that it is become conſtant Practice to give Bail by Sureties, and more for the Advantage of Defendant in Error. *Per Cur':* Before the Statute 16 & 17 *Car.* 2. no Bail was required in Dower, Ejectment, &c. *Per Stat.* 3 *Jac.* 1. Bail was required in Debt only. *Stat.* of *Car.* extends to all Perſonal Actions after Verdict, and requires Sureties; in Dower, real or mixed Actions (Ejectment is a mixed Action) after Verdict requires Party to be bound, and that ſufficient. This is a leſs Security, than by Bail who juſtify, the Party is bound by the Judgment. Bail in Error cannot be put in before a Commiſſioner in the Country. Method of the Statute cannot be followed without Inconvenience; a better Method where the Party lives at a great Diſtance from *London* is ſubſtituted, and has been the Practice ever ſince the Statute. The Rule diſcharged.

Woods

Woods *againſt* Armſtrong.

SKINNER moved for Bail upon a Writ of Error in an Action of Debt upon Bond, conditioned for Payment of 300 *l.* mentioned in a Surrender of a Copyhold by Way of Mortgage, and not for Performance of Covenants, wherein Judgment had paſſed by Default. *Per Cur':* There muſt be Bail. This Caſe is out of the Statute 16 & 17 *Car.* 2. but within the Statute 3 *Jac.* 1.

Nichols *againſt* Dallyhunty.

AFFIDAVIT to hold to Bail, made by Plaintiff's Wife, who being convicted of Pocket-picking was tranſported; and afterwards being convicted of returning from Tranſportation, received Judgment of Death. Theſe Matters appearing from Record, ſhe was looked upon as an infamous Perſon, and no Credit given to her Affidavit. Plaintiff offered to produce ſupplemental Affidavits to prove that Defendant had confeſſed the Debt, and that he intended to fly into *Ireland:* But *Per Cur'*, this Woman cannot be a Witneſs in any Caſe; and as there is not a ſufficient Affidavit to found the Proceſs, that Defect cannot be now ſupplied. Rule abſolute for Common

Common Appearance. *Eyre* for Plaintiff; *Hayward* for Defendant.

Simpſon *againſt* Aſhburne.

RULE to ſhew Cauſe why Proceedings on Bail-Bond ſhould not be ſet aſide. Bail above was put in, and being excepted againſt laſt Vacation, the Bail juſtified at a Judge's Chamber in due Time; but Plaintiff being diſſatisfied therewith, Notice was given to juſtify in Court on the firſt Day of this Term; the Bail was not juſtified 'till *October* 28, and in the Interim the Bail-Bond was put in Suit. The Court made a Queſtion, Whether in ſuch Caſe Defendant has the firſt Day of the Term only, or the firſt four Days of the Term to juſtify in Court; but the Practice appearing to be unſettled in that Particular, the Point was not determin'd; and the Juſtification here not being within the firſt four Days, the Bail-Bond was held to be regularly put in Suit, but Proceedings thereon ſtayed on Payment of Coſts.

Le Writ *againſt* Tolcher.

PLaintiff made Affidavit that Defendant had ſeized and detained his Ship to his Damage; and a *Capias ad reſpondendum* was thereupon indorſed for Bail, without a Judge's

Judge's Order. Rule for common Appearance and *Superſedeas* was made abſolute; the Damages in this Caſe are uncertain, and Plaintiff was not entitled to Bail without a Judge's Order. In *Debt*, *Aſſumpſit*, *Trover*, Covenant by *Ac etiam*, Bail is of courſe. In *Treſpaſs*, *Detinue*, and ſpecial Action on the Caſe, or of Covenant, at Diſcretion: For Words no Bail, unleſs Slander of Title. *Eyre* and *Wright* for Defendant; *Wynne* for Plaintiff.

Champion *againſt* Townſhend.

MOVED by *Wright* to diſcharge Proceedings againſt Sheriff upon Circumſtances, *viz.* the Bail to the Sheriff good, when Defendant arreſted the 4th of *Auguſt* laſt; and the Sheriff was obliged to take Bail under the Statute of *Hen.* 6. but the Bail ſince were become inſufficient. Denied, but enlarged the ſix Days Rule to bring in the Body three Days further.

Henley *againſt* Anderſon.

RULE for *Vic' Midd'* to bring in the Body within ſix Days, which the Sheriff did not. Plaintiff moved for Attachment, and the Court made Rule to ſhew Cauſe. The Sheriff ſhew'd for Cauſe, that Bail was put in and juſtified, and produced the Rule

Rule of their having juſtified: But it appearing that they had not juſtified before the Plaintiff's Application to the Court for Attachment, the Court ordered, That on Payment of Coſts the Rule ſhould be diſcharged. *Eyre* for the Sheriff; *Urlin* for Plaintiff.

Whittingham *againſt* Coghlan. Hil. 12 Geo. 2.

THIS was an Action brought for 50 *l.* Penalty, given by Act of Parliament for Defendant's practiſing as an Attorny, not being duly admitted; wherein Defendant was held to Bail. Rule to ſhew Cauſe why common Appearance, and *Superſedeas* abſolute. This is for a Fine or Amerciament, and is in the Nature of a *Qui tam*. *Eyre* for Plaintiff; *Hayward* for Defendant.

Lloyd *againſt* Painter.

RULE to ſhew Cauſe why Proceedings on Bail-Bond ſhould not be ſtayed, made abſolute on Payment of Coſts, accepting Declaration in the original Action, pleading the General Iſſue, and taking Notice of Trial within Term, and the Bail-Bond to ſtand for Security, Plaintiff having been delayed of Trial. It was objected for Defendant, that Plaintiff had delayed himſelf; he

might have declared *de bene eſſe*; but *per Cur'*, There is no Neceſſity for ſo doing.

Huggins *againſt* Bambridge.

A *Capias ad reſpondendum* indorſed for Bail being iſſued: Defendant, before the Return of the Writ, and before he was arreſted, put in Bail before a Judge, and gave Notice thereof to Plaintiff's Attorny. Plaintiff regarded not the Notice, but cauſed Defendant to be arreſted; and he being in Cuſtody moved for a *Superſedeas*, and had a Rule to ſhew Cauſe: It appearing that Plaintiff had not excepted againſt the Bail within twenty Days after Notice thereof, the Court was of Opinion that the Bail ought to ſtand, and the Rule was made abſolute. *Eyre* for Plaintiff; *Skinner* for Defendant.

Liſle *againſt* Jenyns.

DEfendant, having borrowed 500*l.* of Plaintiff, gave her a Mortgage for Security, which Mortgage was accidentally burnt. Defendant had paid 100*l.* in Part; and in *April* 1738. was prevailed upon to give Plaintiff a new Bond for the remaining Principal and Intereſt; whereon an Indorſement was made, ſign'd by Plaintiff, acknowledging the new Bond to be for the old Debt. Defendant, after having obtained his Diſcharge from

from the Seſſions as a Fugitive for Debt, was arreſted on this new Bond, and applied for a common Appearance, and had a Rule to ſhew Cauſe, which was made abſolute. The Juriſdiction at the Seſſions is final, no Appeal lies from it. *Per Cur'*: This Debt appears to be contracted, incurred and occaſioned before the Day for that Purpoſe mentioned in the Statute, which Statute extends to 500 *l.* Debt, beſides Intereſt and Coſts. *Skinner* for Plaintiff; *Eyre* and *Wright* for Defendant.

Deriſley, Attorny, *againſt* Deland. Eaſt. 12 Geo. 2.

WRIGHT for Defendant moved to ſtay Proceedings againſt the Bail in Actions of Debt brought on the Recognizance, pending the Writ of Error, and obtained a Rule to ſhew Cauſe: *Eyre* for Plaintiff urged, That the Bail ought to give Judgment, and Execution only ſhould be ſtayed. But the Court held otherwiſe in the Caſe of Bail, who, by giving Judgment would be precluded for ſurrendering the Principal. He then urged, that a *Ca. Sa.* againſt the Principal had been returned, and the Bail were too late to ſurrender: But this is not ſo, the Bail may ſurrender the Principal before or on the Appearance-day of the Return of the Action on the Recognizance, where Plaintiff proceeds that Way. If the

Proceeding againſt them be by *Sci. Fa.* before or on the Appearance-day of the Return of the firſt *Sci. Fa.* ſitting the Court, in Caſe of a *Scire Feci* returned, or the Appearance-day of the Return of the ſecond *Sci. Fa.* ſitting the Court, in Caſe of two *Nichils* return'd. Rule abſolute.

Darch *againſt* Parry.

Debt on Bond. AFFIDAVIT to hold to Bail, made by Plaintiff's Attorny, that there is a Bond, that Money appears due; and Defendant a Year and Half ago owned the Debt, and offered to compound. Motion *per Skinner* for Defendant for common Appearance. Shew Cauſe. The firſt Part of the Affidavit was held defective, but the latter proving the Acknowledgment of the Debt, ſufficient to hold to Bail. Rule diſcharged. *Eyre* for Plaintiff.

Teale *againſt* Cheſhire.

DEclared by the Court, that after this Term the Defendant ſhall give Notice of juſtifying Bail two Days before Day of Juſtification; and that they will not indulge the Defendant with any further Time, it being an Artifice to defeat the Rule for obliging Defendant to perfect Bail in four Days after Exception taken, and is plainly getting two Days.

Deriſley

Deriſley *againſt* Deland.

Ca. Sa. iſſued againſt the Principal, and was lodg'd with the Sheriff for a *Non eſt invent'* in order to proceed againſt the Bail. After *Ca. Sa.* lodg'd, Defendant brought a Writ of Error; and after the Writ was ſpent, Plaintiff got a Return of the *Ca. Sa.* and proceeded againſt the Bail, which Proceeding was diſcharged; the Court holding that the *Ca. Sa.* being returnable at a Time when the Writ of Error was depending, was not a regular Foundation for a Proceeding againſt the Bail. *Eyre* for Defendant; *Wright* for Plaintiff.

Huggins *againſt* Bambridge. Eaſter 13 Geo. 2.

DEfendant hearing that a *Capias ad reſpondendum* was ſued out againſt him, put in Bail at a Judge's Chamber before any Arreſt, and before the return of the Writ, and gave Notice thereof to Plaintiff's Attorny. Plaintiff not being ſatisfied with the Bail, cauſed Defendant to be arreſted, who applied to the Court, and obtained a Rule to ſhew Cauſe why an Attachment ſhould not be iſſued againſt Plaintiff, and againſt *Duell* the Sheriff's Officer, who arreſted Defendant, and *Gurney* his Follower. Upon ſhewing

Cauſe, the Prothonotaries and Secondaries all reported, and the Court was of Opinion, that Bail before a Judge cannot regularly be put in before an Arreſt without Plaintiff's Conſent. If Plaintiff diſlikes ſuch Bail, he may cauſe Defendant to be arreſted; he has no other Remedy, the Sheriff being unconcerned, and no Bail-Bond taken. If ſuch voluntary Bail were ſufficient to prevent an Arreſt, Defendant might put in ſham Bail, and thereby elude the Writ, and the Proceſs muſt be loſt. Bail may be put in before the Return of a Writ after an Arreſt, but never before an Arreſt without Conſent. The Rule was diſcharged. *Skinner*, *Wynne* and *Agar* for Defendant; *Burnett* and *Bootle* for Plaintiff.

Ward, an Attorny, *againſt* Alderton.

BAIL being juſtified in Court, *Prime* for Defendant moved after the laſt Sitting within Term to ſtay Proceedings on Bail-Bond upon Payment of Coſts. *Agar* for Plaintiff inſiſted, that the Action being laid in *Middleſex*, and the Writ returnable the firſt Return, Plaintiff had been delayed of Trial, and the Bail-Bond ought to ſtand as a Security; but it appearing that no Declaration in the original Action had been delivered *de bene eſſe*, or otherwiſe, Plaintiff has delayed himſelf, and the Rule muſt be made abſolute.

Calveraq

Calveraq and his Wife *againſt* Pinhero, in Debt on Recognizance as Bail for Miranda, in a Joint Action for an Aſſault againſt Miranda and two others. The Pleadings were as follow, viz. Mich. 13 Geo. 2.

PLaintiffs ſet out the Recognizance as in a ſeparate Action againſt *Miranda*, with Condition, that if Judgment ſhould be given for them againſt *Miranda*, he ſhould pay the Condemnation-Mony, or ſurrender, *&c.* and for Breach aſſigned, that although Plaintiffs recovered Judgment againſt ſaid *Miranda* and the other two Defendants; yet Defendant *Miranda* did not pay the Condemnation-Money, or ſurrender, *&c.* Defendant pleads *Nul tiel Record* of the Judgment againſt *Miranda*, taking no Notice of the other Defendants. Plaintiffs reply, that there is a Record of the Judgment againſt *Miranda* and the other Defendants, as ſet forth by the Declaration, and deliver the Iſſue, giving themſelves a Day to produce the Record. Defendants Attorny's Clerk received this Iſſue in his Maſter's Abſence; the Maſter next Day returned it, and delivered a Demurrer to the Replication. *Wright* and *Draper pro Quer'* urged that this Demurrer is irregular after Iſſue joined upon *Nul tiel Record*. The

Plaintiffs, though they did not bring the Record into Court at the Day given in the Iſſue-Book laſt Term, are intitled to have a new Day aſſigned by the Court; and a Rule was made to ſhew Cauſe why the Demurrer ſhould not be ſet aſide; why Defendants Attorny ſhould not receive the Iſſue by him returned; and why Plaintiffs ſhould not be at Liberty to verify the Record, and a Day be appointed for that Purpoſe. *Eyre* came to ſhew Cauſe for Defendants, and argued that no Iſſue is joined; that one Record is averred by Plaintiffs, and another denied by Defendants. *Per Cur':* The Queſtion is not whether Iſſue be rightly or legally joined, the Plaintiffs cannot take upon them to judge of that Matter: Here is an Iſſue joined; and a Demurrer cannot be received after Iſſue joined; if no proper Iſſue be joined, Defendant may take Advantage thereof in Arreſt of Judgment. The Plaintiffs may continue the Day for bringing in the Record by them averred. Rule abſolute.

Hugh Hunt *againſt* Hudſon and others.

MOTION in the *Treaſury* for Bail in an Action for meſne Profits, after a Recovery in Ejectment, upon the Leſſor of the Plaintiff's Affidavit that the meſne Profits amounted to 89*l.* Bail ordered for 80*l.* This is a Cauſe of Action which is bailable,

bailable, or not, at the Diſcretion of the Court or a Judge.

Compoſition.

Bland *againſt* Featherſtone. Mich. 10 Geo. 2.

ACTION on the Statute of Uſury. Defendant pleaded. Motion *per Draper* for Leave for the Proſecutor to compound on the Statute 18 *Eliz.* which Compoſition without Leave is penal. *Bootle* conſented for Defendant; and a Rule was made purſuant to the Motion.

Coſts and Bills of Coſts.

Hurſt *againſt* Dixon. Mich. 6 G. 2.

THE Queſtion was, Whether a ſixth Part of Mr. *Staveley*'s (Plaintiff's Attorny's) Bill of Coſts not being taken off upon Taxation, he ſhould not have his Coſts of Taxation? The Bill amounted to 75*l.* 15*s.* 7*d.* and the Deductions were 7*l.* 3*s.* 10*d.* The Court ordered Plaintiff to pay *Staveley*'s Coſts of Taxation.

Zouch *againſt* Bell. Hill. 6 Geo. 2. (Vide Rule Trin. 13 Geo. 2.)

A Rule *niſi* for Coſts, for not proceeding to execute a Writ of Inquiry of Damages according to Notice, diſcharged as a Thing that never had been done.

Bangs, Executor, *againſt* Bangs.

ACTION brought by Plaintiff for Monies received by Defendant to the Uſe of Plaintiff, as Executor, and upon the Trial Plaintiff was nonſuited; and the Queſtion was, Whether the Plaintiff, being an Executor, ſhould pay Coſts. *Per Cur':* The Plaintiff ſhall pay Coſts, becauſe he might have brought the Action in his own Right. *Medley* againſt *York*, *Mich.* 6 *Ann.* in *B. R.* in Point cited by Mr. Juſtice *Denton.*

Lee, Executor, *againſt* Knight. Mich. 7 Geo. 2.

AN Action brought upon a Bill of Fees for Buſineſs done by the Plaintiff's Teſtator. Defendant moved by *Glyde* to tax the Bill upon bringing the Mony into Court. Denied *per Cur'* in the Caſe of an Executor.

Chriſtmas, an Attorny, *againſt* Chaſe.

A Rule *niſi* was obtained to tax Plaintiff's Bill of Coſts, and upon an Affidavit of Mr. *Benn*, who had been Plaintiff's Agent, that Plaintiff was dead, the Rule was diſcharged. *Birch* for *Benn*; *Hawkins* for Defendant.

Goodright *againſt* Holton. Hil. 7 G. 2.

In Ejectment. COSTS in this Cauſe, taxed upon the Common Rule by Conſent, were ordered to be paid by Defendant to the Repreſentative of Leſſor of Plaintiff, who died after the Trial.

Arnold *againſt* Tompſon. Eaſt. 7 G. 2.

THIS was an Action of Treſpaſs for entring Plaintiff's Cloſe, and driving and chaſing his Sheep. The Queſtion was, Whether after Judgment, the Damages being under 40 *s.* the Plaintiff ſhould have full Coſts. *Per Cur':* In Caſe of an *Aſportavit*, or if any Injury be done to a perſonal Chattel, the Plaintiff muſt have full Coſts. *Wynne* for Plaintiff; *Chapple* for Defendant.

Britton *againſt* Dickerſon.

DEmand of Coſts to be paid muſt be at the ſame time the Rule is ſerved.

Carruthers *againſt* Lamb. Mich. 8 G. 2.

THIS was an Action of Treſpaſs and Aſſault, and for tearing Plaintiff's Clothes. A general Verdict was found for Plaintiff, Damages under 40*s.* and no Certificate; the Judges in the Treaſury (Sir *George Cooke* doubting) were of Opinion that Plaintiff ought to have full Coſts.

Allen and others *againſt* Maxey.

DEfendant pleaded in Abatement. Plaintiff confeſſed the Plea to be true, and entered a *Nil capiat per Breve.* The Judges in the Treaſury upon hearing the Attornies on both Sides, held that Plaintiff in this Caſe ſhould not pay Coſts. *Salk.* 194. *Garland* againſt *Extend*, *Mich.* 2 *Annæ.* *Thomas* againſt *Lloyd*, 10 *Gul.* 3. in *B. R.*

Hammond *againſt* Woolmer. Hil. 8 Geo. 2.

A Point of Law reſerved at the Trial was heard and determined by the Court in Favour of Defendant, who afterwards died; and the Queſtion was, Whether Plaintiff ought to pay Coſts to Defendant's Executor by Virtue of the Rule by Conſent, made at *Niſi prius*, and ſince a Rule of Court; and the Court, upon hearing Counſel on both Sides, were of Opinion, that as the Duty did ariſe in Defendant's Life-time, the Coſts muſt be paid to his Executor. *Goodright* againſt *Holton*, *Hill.* 7 *G.* 2. was quoted. *Skinner* for Defendant's Executor; *Eyre* for Plaintiff.

Tomlinſon *againſt* White *and* Pomeroy. Eaſter 8 Geo. 2.

THIS was an Action of Treſpaſs for breaking and entring Plaintiff's Houſe, and breaking his Cellar-door. The Jury upon Trial found for Plaintiff, as to Breaking the Door, Damages 6 *d.* Reſidue for Defendants. And the Queſtion was, Whether Plaintiff ſhould have full Coſts, or no more Coſts than Damages. The Court were of Opinion, that Plaintiff ought to have no more Coſts than Damages. The Door was fixed to the Houſe,

and no perſonal Chattel. *Dixie* againſt *Somerfield*, *Hill.* 6 *G.* 2. *Ullithorne* againſt *Kirkhouſe*, *Eaſter* 2 *G.* 2. *Chapple* for Defendants; *Eyre* for Plaintiff.

Ray, an Attorny, *againſt* Jackſon.

UPON a Motion in Arreſt of Judgment the Court was of Opinion, that by the Statute of 6 *Geo.* 2. to explain the Statute of 4 *Geo.* 2. for putting all Proceedings, Pleadings, *&c.* into the *Engliſh* Tongue, Abbreviations in an Attorny's Bill, ſuch as *fo.* for *folio*, *Mr.* for *Maſter*, *pd.* for *paid*, *&c.* are helped after a Verdict. *Comyns* and *Wright* for Plaintiff; *Chapple* for Defendant.

Goodright *againſt* Tregurtha and another. Trin. 8 & 9 Geo. 2.

In Ejectment. UPON the Trial, one of the Defendants confeſſed Leaſe, Entry and Ouſter, and a Verdict was found againſt him for one Third of the Tenements in Queſtion: The other Defendant did not confeſs; and againſt him *Belfield* moved for Coſts, which in this Caſe Plaintiff could not have upon the common Rule by Conſent. The Court made a Rule to ſhew Cauſe, which was afterwards made abſolute, no Cauſe being ſhewn.

Hayes

Hayes *againſt* Thornton. Eaſter 9 G. 2.

A Rule being obtained by Defendant for Coſts againſt Plaintiff, and the ſame not being paid before Defendant's Death, were demanded of Plaintiff by Virtue of a Letter of Attorny from *Thornton*, Defendant's Adminiſtratrix, which Matter appearing by Affidavit, and that the Letters of Adminiſtration and Power of Attorny were ſhewn to Plaintiff at the Time of the Demand, Court made a Rule for an Attachment againſt Plaintiff for Non-payment of theſe Coſts, upon *Belfield*'s Motion.

Aſhton, an Attorny, *againſt* Molineux. Trin. 10 G. 2.

A Rule was obtained for Plaintiff to ſhew Cauſe why his Bill of Coſts for Buſineſs done in *Doncaſter-Court*, *Yorkſhire*, (for Recovery whereof this Action was brought) ſhould not be referred to Prothonotary to be taxed: Upon ſhewing Cauſe it appeared that all the Buſineſs was done in *Doncaſter-Court*, and the Bill had been taxed by the proper Officer there. The late Act of Parliament directs Bills to be taxed in that Court where the major Part of the Buſineſs charged is done; and therefore the Rule was diſcharged. *Agar* for Plaintiff; *Wynne* for Defendant.

Chapple

Chapple and another, Executors of Gough an Attorny, *againſt* Chapman.

THE Plaintiffs had delivered a Bill of Law Buſineſs, done by their Teſtator. Defendant moved to tax it upon bringing the Mony into Court; *ſed negatur*; 'tis conſtantly denied here. *Prime* for Defendant; *Eyre* for Plaintiffs.

Jeffs *againſt* Slater. (Vide Rule Trin. 13 Geo. 2.)

AGAR moved for Coſts for not proceeding to execute a Writ of Inquiry according to Notice; the Notice not being countermanded. Denied.

Harper, an Attorny, *againſt* Leech.

AGAR moved to ſtay Proceedings in this Action, which was brought for Recovery of a Bill of Coſts before the Expiration of a Month after the Delivery thereof. *Hawkins* for Plaintiff urged, that this Matter may be pleaded, or taken Advantage of at the Trial, and therefore Proceedings ought not to be ſtayed on Motion. No Rule.

Bracher

Bracher *againſt* Cotton. Hil. 10 Geo. 2.

AT *Niſi prius* a Juror was withdrawn by Conſent, and Matters in Difference referred to Arbitrators, who awarded Coſts to be taxed: And the Queſtion was, Whether or no Prothonotary ought to allow Coſts of the Reference. Held *per Cur'*, That theſe Coſts ought not to be allowed. *Chapple* for Defendant; *Eyre* for Plaintiff.

Eyles, Bart. *againſt* Smart.

PLaintiff had moved for a Special Jury, according to the late Act of Parliament; and having obtained a Verdict, the Queſtion was, with what Coſts Defendant ought to be charged on that Account. Held *per Cur'*, That the Charge of ſtriking the Special Jury muſt not be allowed; but all other Expences relating to the Special Jury, ſo far as reaſonable, muſt be allowed. *Comyns* and *Wright* for Plaintiff; *Wynne* for Defendant.

Jeynes qui tam, *againſt* Stephenſon. Eaſter 10 Geo. 2.

THIS was an Action on Penal Stat. 5 *Eliz.* againſt Defendant, for exerciſing the Trade of a *Glover*, not having ſerved an Apprenticeſhip; and on the Trial the Jury

found a Verdict for the Defendant. Coſts were taxed on the *Poſtea*, and levied on Plaintiff. by *Ca. Sa.* *Eyre* moved for Plaintiff to ſet aſide the *Ca. Sa.* and for Reſtitution, urging, That as in this Action, if Plaintiff had recovered he would not have been intitled to Coſts; ſo, though the Verdict be againſt him, he is not liable to pay Coſts; and a Rule was made to ſhew Cauſe, which was diſcharged. Plaintiff is a common Informer, and not the Party grieved, and is liable to Coſts *infra* Stat. 18 *Eliz. cap.* 5. *ſect* 3. 1 *Ander.* 116. *Sav.* 50, 51. 1 *Salk.* 30. *Kirkham* againſt *Wheeler*. *Parker* and *Draper* for Defendant.

Ibbotſon *againſt* Browne. Eaſt. 11 G. 2.

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

Clarke,

Clarke, an Attorny, *againſt* Taylor.

DEfendant moved, that Plaintiff's Bill of Coſts whereon this Action was brought might be taxed after Judgment by Default, and a Writ of Inquiry executed; but *per Cur'*, The Damages are now aſcertained, Defendant applies too late, might have come any Time before. *Glyde* for Defendant; *Chapple* for Plaintiff.

Noble *againſt* Lancaſter.

THIS was an Action of Trover, whereto Defendant pleaded *Non aſſumpſit*; and Iſſue being joined, the Cauſe was tried, and a Verdict found for the Plaintiff; but the Iſſue being immaterial, the Judgment was arreſted, and a Repleader awarded; a Rule to replead was afterwards given by the Plaintiff, and for want of Defendant's repleading Judgment was ſigned by Default, and a Writ of Inquiry executed. The Queſtion was, Whether the Prothonotary, in taxing Coſts on ſigning the final Judgment, ſhould allow Plaintiff the Coſts of the immaterial Pleading and Trial, *&c. Et per Cur'*, No Coſts were given at the Time of the Repleader granted, and there can be none now; both Parties have been in Fault, the immaterial Pleading is void, and neither Party can have

Costs for it. 2 *Ventr.* 196. *Walker* against *Brooke*, *Trin.* 8 *Gul.* 3. *Belfield* for Defendant; *Eyre* for Plaintiff.

Wickham *against* Walker. Mich. 11 Geo. 2.

DEfendant, an inferior Tradesman, hunts in Company with a Person qualified, who kills a Hare, and Defendant being sued on Statute — *Ann.* Plaintiff obtained a Verdict, and a Point reserved, Whether Defendant was liable to Costs, was argued. The Court was of Opinion, that Defendant being found by the Jury to be an inferior Tradesman (a *Clothier* and Alehouse-keeper) is within the Statute which was made to prevent such People from mispending their Time: Defendant's Trade is as much neglected when he hunts with a qualified Person, as without. *Per Holt:* Every Tradesman not qualified, is an inferior Tradesman, and tho' qualified, he cannot hunt in any Person's Ground but his own. Defendant must pay Costs. *Eyre* for Plaintiff; *Agar* for Defendant.

Lazarus *against* Pritchard. Hil. 11 Geo. 2.

In Trover. A Rule to shew Cause why Proceedings should not be stayed till after Payment of Costs allowed Defendant

Defendant in a former Action for the ſame Thing, was diſcharged as unprecedented: The Court never make ſuch Rule in any Caſe, except Ejectment. *Skinner* for Plaintiff.

Boſeville, Attorny, *againſt*———. Trin. 11 & 12 Geo. 2.

PLaintiff's Bill of Coſts was referred to Sir *George Cooke* upon Defendant's undertaking to pay; and after the Taxation Plaintiff proceeded to Judgment, which was ſet aſide by the Court for want of Plaintiff's filing an Affidavit made uſe of before Sir *George*, to augment his Allowance of Coſts, according to the late Rule of Court. *Hil.* 11 *Geo.* 2. ——— for Defendant; ——— for Plaintiff.

Shindler *againſt* Roberts. Eaſt. 12 G. 2.

ON Penal Statute for acting as Commiſſioner of the Land-Tax, not being qualified: After Trial, and Caſe reſerved, *Skinner* moved that Plaintiff's Attorny might deliver to Defendant an Account in Writing of Plaintiff's Place of Abode, *&c.* The Court thought the Motion came very late; but upon Defendant's Affidavit that he did not know what was the Cauſe of Action 'till *February* laſt, when he was

ſerved in the Country with Notice of the Declaration ſo late, that he could not apply laſt Term, a Rule was granted to ſhew Cauſe, and on hearing *Prime* for Plaintiff, who objected that this Motion ought to be before Plea, and that a Special Jury had been moved for by Defendant, Rule was made abſolute. *Skinner* afterwards moved that Plaintiff might give Security for Coſts in Caſe Judgment ſhould go againſt him; but was denied: Plaintiff is a viſible Perſon, and has a Right by Law to bring the Action.

Cowper *againſt* Milburn. Trin. 13 G. 2.

BIRCH for Defendant moved, That Mr. *Canning*, Defendant's late Attorny, might deliver a Bill of Coſts, and that the ſame might be referred to the Prothonotary to be taxed. *Per Cur'*: Theſe are diſtinct Motions: Let *Canning* ſhew Cauſe why he ſhould not deliver Defendant a Bill; and that being done Defendant may apply for a Taxation, which he cannot regularly do before a Bill delivered.

Horsfall *againſt* Greenwood and three others.

IN *Hilary* Vacation laſt Defendants pleaded four Special Pleas; and afterwards, the ſame Vacation, before Replications delivered, withdrew their Special Pleas, and pleaded the General Iſſue, inſiſting that by the Courſe of the Court they had a Right ſo to do, without Payment of Coſts. *Bootle*, for Plaintiff, moved for Coſts: *Draper* for Defendant, oppoſed the Motion. *Per Cur'*: No Rule can be made upon this Motion; the Practice is ſettled. Defendant may, by the Courſe of the Court, withdraw a Special Plea and plead the General Iſſue the ſame Term, before Replication delivered, without Coſts. In this Caſe Plaintiff had adviſed with Council upon the Pleas, and Replications were prepared, but not delivered. *Robinſon* againſt *Simonds*, *Mich.* 5 *Geo.* 2. *Martindale* againſt *Galloway*, *Hill.* 7 *Geo.* 2.

Creeke and another, Adminiſtrators, *againſt* Pitcairne, Clerk.

In Prohibition. PLaintiffs were nonſuited at the Aſſizes upon an Iſſue of *Modus*, or no *Modus*: Defendant moved for Coſts, and had a Rule to ſhew

Cauſe, which Rule was diſcharged; the Demand for Tithes having accrued in the Lifetime of the Inteſtate, and being a Demand for which Plaintiffs could not ſue in their own Right. *Prime* for Defendant; *Bootle* for Plaintiff.

Horsfall *againſt* Greenwood and others. Mich. 13 Geo. 2.

DEfendants having withdrawn Special Pleas, and pleaded General Iſſue the ſame Term, without Coſts; *per curs' Cur'*, Plaintiff, after having obtained a Verdict, applied to the Court to have the Coſts of the Special Pleas allowed upon the Taxation of Coſts on the *Poſtea*; inſiſting, that though he could not have theſe Coſts upon the Amendment, yet they ought to attend the Event of the Cauſe. The Court refuſed to order the Allowance of theſe Coſts, no Precedent being ſhewn where ſuch Coſts had ever been allowed. *Bootle* for Plaintiff; *Agar* for Defendant.

Slaughter, by Mundy, his next Friend, *againſt* Talbot.

COSTS being allowed, and taxed to Defendant, were demanded of *Mundy*, Plaintiff's next Friend, who refuſed to pay; and Defendant moved for an Attachment againſt

againſt *Mundy* for Non-payment. Shew Cauſe. *Per Cur'*, the Rule abſolute: By the uniform Practice of all the Courts the *Prochein Amie* is liable to Coſts. *Inglefield* againſt *Round*, *Hill.* 1726. *Skinner* for Defendant; *Eyre* for *Mundy.*

Dovor *againſt* Robinſon. Eaſter 13 G. 2.

THIS was an Action for ſcandalous Words. Defendant juſtified, and Plaintiff recovered a Verdict for Damages under 40 *s.* Plaintiff procured full Coſts to be taxed, and Defendant being taken in Execution, moved to be diſcharged, *&c.* The Court declared, that by the Statute Plaintiff can have no more Coſts than Damages. Not guilty pleaded, or a Juſtification, makes no Difference (ſpecial Damage not being proved); and ordered the *Ca. Sa.* to be ſet aſide, and Reſtitution and Coſts, and by Conſent no Action to be brought. *Agar* for Defendant; *Prime* for Plaintiff.

Damages.

Burton *againſt* Baynes. Mich. 7 Geo. 2.

THIS was an Action for an Aſſault, Battery, and Mayhem, which was tried at the laſt Aſſizes for the County of *Lincoln*, and Plaintiff obtained a Verdict for 11*l.* 14*s.* Damages. Plaintiff, who by the Aſſault had almoſt loſt the Sight of one of his Eyes, thought the Damages too ſmall, and moved the Court that they might be increaſed upon View of the Party; and a Rule was made to ſhew Cauſe; and upon View of the Party, and the Examination of *John Moor*, a *Surgeon*, *ore tenus* in open Court, and hearing Council on both Sides, the Damages were increaſed by the Court from 11*l.* 14*s.* to 50*l.*

Southeby *againſt* Day and others. Hil. 7 Geo. 2.

THIS was an Action of Treſpaſs for cutting down and carrying away twenty Trees of Plaintiff's. As to twelve of the Trees Defendants juſtified for Eſtovers; and as to the remaining eight pleaded Not guilty, and two ſeparate Iſſues were joined thereupon. At the Trial the Merits were fully

fully determined as to the Iſſue joined upon the Juſtification for Eſtovers; but Plaintiff gave no Evidence upon the Not guilty, and no Notice being taken thereof, the Jury found a Verdict for Plaintiff generally, and gave 5*s.* Damages, but omitted to acquit Defendants on the Not guilty; whereupon Defendants moved to ſet aſide the Verdict, and obtained a Rule to ſhew Cauſe, which was afterwards diſcharged on hearing Council on both Sides. The Verdict appearing to be juſt, and the Damages moderate, the Court would not overturn the Verdict; but left Plaintiff to enter up his Judgment as he ſhould be adviſed. *Baynes* for Defendants; *Chapple* for Plaintiff.

Demurrer and other Special Arguments.

Browne *againſt* Kidney. Eaſt. 8 Geo. 2.

A Feoffment paſſes, or at leaſt extinguiſhes all collateral Rights, and a Right to a Way is extinguiſhed by it. Held *per Cur'* on Demurrer.

Hunt *againſt* Puckmore. Eaſt. 10 G. 2.

PLaintiff declared againſt Defendant as Heir, in Debt, on the Anceſtor's Bond. Defendant pleaded *Riens per Deſcent.* Plaintiff replied Aſſets. Defendant demurred to the Replication, and Plaintiff joined in Demurrer, and the Cauſe was ſet down to be argued. *Hawkins* for Defendant moved for Leave to withdraw the Demurrer, and rejoin iſſuably on Payment of Coſts, and obtained a Rule to ſhew Cauſe. Plaintiff on ſhewing Cauſe inſiſted, that by the Demurrer he had been delayed an Aſſizes, and Defendant now came too late to withdraw his Demurrer, unleſs he would give Judgment for Plaintiff's Security. *Hawkins* urged a Diffidence of his own Opinion as to the Validity of the Pleadings, and was fearful to venture the Argument, becauſe, if Judgment had paſſed againſt his Client on Demurrer, the Debt muſt be paid out of Defendant's own Goods; if on Verdict out of Aſſets. The Court made the Rule abſolute. Mr. Juſtice *Denton* contra. *Wright* for Plaintiff.

Corderoy

Corderoy *againſt* Reynoldſon. Mich. 11 G. 2.

IN Cauſes in the Paper on Points reſerved, Plaintiff's Council is to begin the Argument. *Hawkins* for Plaintiff; *Draper* for Defendant.

Langton *againſt* Tuckwell. Mich. 12 Geo. 2.

GIRDLER moved to ſet aſide the Rule for a *Conſilium*, no Joinder in Demurrer having been delivered under Council's Hand. On ſhewing Cauſe it appeared that Defendant's Attorny had accepted and paid for the Paper Book wherein Plaintiff had joined in Demurrer ſo long ago as *June* laſt, and that the Joinder was at that Time actually ſigned by Council. No Objection was made till the Day before the Time appointed this Term for Argument. *Skinner* for Plaintiff. Rule diſcharged with Coſts.

Diſcontinuance.

Hale, Adminiſtrator, *againſt* Norton. Mich. 6 Geo. 2.

PER *Cur'* : Plaintiff though an Adminiſtrator cannot diſcontinue without Payment of Coſts.

Pym *againſt* Warren.

PLaintiff moved to diſcontinue upon Payment of Coſts after Judgment given on Demurrer for the Plaintiff (but not entered upon Record) and a Writ of Error brought, and Bail put in thereupon. The Court refuſed to make a Rule to diſcontinue without Payment of Coſts on the Writ of Error.

Heber, an Attorny, *againſt* Biſhop. Mich. 7 Geo. 2.

PLaintiff obtained a Rule to diſcontinue on Payment of Coſts. Defendant moved to diſcharge the Rule upon an Affidavit that he had been a ſecond Time arreſted for the ſame Cauſe of Action before the Rule to diſcontinue was obtained. The Court refuſed to make any Rule. Plaintiff may

may diſcontinue at any Time. *Wright* for Defendant.

Mellor *againſt* Hutchinſon.

THIS was in Replevin; the Avowant had juſtified under a Diſtreſs for Rent. Plaintiff demurred to the Avowry, and upon arguing the Demurrer, Court gave Judgment for the Avowant. *Eyre* afterwards moved for Plaintiff to diſcontinue; but Court denied the Motion. The Queſtion determined upon Demurrer being upon the Conſtruction of the Act of Parliament, which is the Merits of the Cauſe. *Skinner* for Defendant.

Vanfleet *againſt* Croſs. Hil. 7 Geo. 2.

PLaintiff had obtained a Rule to diſcontinue (which was drawn up in the following Manner, (*viz.*) that Plaintiff *ſhall* diſcontinue, and *ſhall* pay Coſts, *&c.*) Upon an Affidavit that Defendant being indebted to Plaintiff, a Writ was iſſued againſt him; but Defendant having paid the Mony before the Arreſt, the Sheriff's Officer to whom the Warrant was delivered was countermanded from proceeding, notwithſtanding which he arreſted Defendant, who thereupon brought an Action for falſe Impriſonment in the Court of King's Bench.

The

The Coſts upon the Rule had been paid, but the Diſcontinuance was not entered upon Record. The Court thought the Rule not drawn up in common Form, which is, that the Plaintiff *have Leave* or *be at Liberty* to diſcontinue; and therefore diſcharged the Rule. The Action brought in the King's Bench appeared to be vexatious, and Plaintiff, by diſcharging his Rule to diſcontinue, had an Opportunity of pleading the Action in this Court ſtill depending, or juſtifying under the *Capias*, as he ſhould be adviſed.

Hook, Adminiſtrator, *againſt* Hayward. Eaſter 13 Geo. 2.

A *Sci. Fa.* was ſued out by Plaintiff to revive a Judgment recovered by Plaintiff's Inteſtate. Defendant craved Oyer of the Letters of Adminiſtration, which being defective, Plaintiff drop'd the Proceeding on *Sci. Fa.* and having procured ſufficient Letters of Adminiſtration, brought an Action of Debt on the Judgment in the Court of King's Bench. Defendant pleaded the Writ of *Sci. Fa.* pending in this Court in Abatement, and Plaintiff replied a Diſcontinuance (entred without Leave of the Court). Defendant moved to ſet aſide the Diſcontinuance, and the Queſtion was, Whether or no Plaintiff could diſcontinue without Leave of the Court? The Practice was variouſly

riouſly reported, and it not appearing whether the Roll whereupon the Diſcontinuance was entred was brought in before or after the Plea in the King's Bench, the Rule to ſhew Cauſe why the Diſcontinuance ſhould not be ſet aſide was diſcharged, Plaintiff conſenting to pay Coſts of the Plea in Abatement, and that Defendant ſhould be at Liberty to plead *de novo*. *Prime* for Plaintiff; *Agar* for Defendant.

Ejectments.

Kirwood *againſt* Backhouſe. Mich. 6 Geo. 2.

In Ejectment. THE Wife of the Tenant in Poſſeſſion on a Perſon's knocking at the Door of the Houſe in order to ſerve the Declaration, opened a Wicket in the Door and looked through it, and was then acquainted with the Contents of the Declaration, and the *Engliſh* Subſcription was read to her, and immediately after, and before the Delaration could be tendered to her, ſhe ſhut the Wicket: Whereupon the Declaration was fixed upon the Door (as by Affidavit appeared); and it was ſworn that the Tenant in Poſſeſſion afterwards acknowledged the Receipt of the

Declaration on the Day it was tendered to his Wife and fixed upon the Door. The Service was held inſufficient, becauſe the Tenant's Acknowledgment that he received the Declaration is not enough; an actual Delivery, or Tender and Refuſal, ought either to be proved or confeſſed.

Negative *againſt* Poſitive.

Ex dim' Parſons. PER *Cur'*: An Ejectment on a vacant Poſſeſſion in *London* or *Middleſex* on the new Act of Parliament may be moved at any Time in Term, and is not within the old Rule concerning Motions in Ejectment. *Trin.* 32 *Car.* 2. which relates only to Declarations in Ejectment ſerved upon Tenants in Poſſeſſion.

Balderidge *againſt* Paterſon. Trin. 6 & 7 Geo. 2.

Ex dim' Hudſpeth. WYNNE moved that the Landlords, *viz. Roger Preſton*, *Jane Preſton* Widow, and *James Goodwill*, might be made Defendants without the Tenant in Poſſeſſion, who refuſed to appear. Denied *per Cur'*; but the common Rule was made to add the Landlords to the Tenants in Poſſeſſion.

Peace-

Peaceable *againſt* Troubleſome. Mich. 7 Geo. 2.

In Ejectment. THE *Engliſh* Notice at the Foot of the Declaration was ſubſcribed by the nominal Plaintiff inſtead of the caſual Ejector, which the Court held bad, and diſcharged the Rule for Judgment. Same Caſe in *B. R. Hil.* 2 *G.* 2. *Barker* againſt *Mereſield. Baynes* for Plaintiff; *Hawkins* for Defendant.

Roe, on the Demiſe of Bird, *againſt* Doe.

In Ejectment. THE Declaration in this Cauſe was delivered to Tenant in Poſſeſſion after the Eſſoin-Day, to wit, *October* 26. within Term, and upon Affidavit of ſuch Service *Chapple* moved for Judgment, alledging that the Declaration being delivered before *Cras' Animar'* was well delivered, ſo as to intitle the Plaintiff to his Judgment this Term. *Skinner* for the Tenant oppoſed the Motion, and inſiſted, that all Declarations in Ejectment muſt be delivered before the Eſſoin-Day, otherwiſe Plaintiff cannot have Judgment till the ſubſequent Term; and ſo the Court held, Declaration in Ejectment being the firſt Proceſs; in other Caſes a Writ precedes the Declaration.

Smalley *againſt* Neale. Hil. 7 G. 2.

In Ejectment. THE Tenant, who was an unmarried Man, abſconded, and left a Servant in his Houſe, to recover the Poſſeſſion whereof this Ejectment was brought. *Chapple* moved for Judgment upon an Affidavit, that a Copy of the Declaration was ſerved upon the Servant, and another Copy was affixed on the Street-Door, which the Court held to be ſufficient Service within the late Act of Parliament, and made a Rule accordingly.

Birkbeck *againſt* Hughes.

SKINNER moved for Judgment againſt the Caſual Ejector. The Affidavit ſet out, that Deponent did ſerve *A. B.* Tenant in Poſſeſſion, or *C.* his Wife. *Per Cur':* It is not certain as to either. No Rule.

Right *againſt* Wrong. Eaſter 7 Geo. 2.

In Ejectment ex dim' Streak. WYNNE moved, that the Tenant in Poſſeſſion might ſhew Cauſe, why he ſhould not appear and defend the Title, his Landlord having tendered him an Indempnity. Court refuſed to make that Rule, but enlarged the Time to appear.

Makepeace *againſt* Hopwood.

In Ejectment. SKINNER moved in Arreſt of Judgment, the Words in the Declaration being *one Meſſuage or Tenement*, which is too uncertain; Tenement is all a Man holds, and after Judgment the Sheriff cannot tell of what to deliver Poſſeſſion. The common Rule was made to ſtay Judgment till Cauſe ſhewn, and afterwards upon hearing *Darnal* for Plaintiff, the Judgment was arreſted.

Halſal *againſt* Wedgwood.

In Ejectment ex dim' Lord Leigh. HAWKINS moved for Judgment upon an Affidavit that *Wightman* the Tenant in Poſſeſſion refuſed to accept the Declaration when tendered to him: That he was acquainted with the Contents; that he brought a Gun, and ſwore he would ſhoot the Perſon who tendered the Declaration, if he did not get off his Land: Whereupon the Declaration was laid down on the Ground in the Preſence of *Wightman* and his Man, whom *Wightman* ordered not to take it up. The Court were of Opinion that theſe Circumſtances amounted to good Service, and made a Rule for Judgment. *Per Cur'*: It is the ſame Thing as a continual Claim, where

the Party comes as near the Land as he can to make his Claim for fear of his Life. The Caſe of *Kirwood* and *Backhouſe* in *Mich.* 6. is not like this Caſe. There the Declaration was never tendered; here Tender and Refuſal are proved.

Ellis *againſt* Knowles, on the Demiſe of Lord Falconbridge.

In Ejectment. DARNAL moved for Judgment againſt the Caſual Ejector, as to ſome of the Defendants who were acquitted at the Trial by reaſon of their not confeſſing Leaſe, Entry and Ouſter, as appeared by an Indorſement on the *Poſtea* (Plaintiff obtained a Verdict againſt the other Defendants who did confeſs;) he quoted 13 *Gul.* 3. *per Holt* in the Home-Circuit, and mentioned a *Devonſhire* Cauſe in the King's Bench, but not the Parties Names nor the Term. Court made a Rule to ſhew Cauſe, which was afterwards made abſolute.

Harding *againſt* Greenſmith, on the Demiſe of Baker. Trin. 7 & 8 Geo. 2.

In Ejectment. THE Affidavit of Service of Declaration was as follows, *viz.* That Deponent did ſerve the Wives of *A.* and *B.* who, or one of them, are Tenants in Poſſeſſion, *&c.* The Court refuſed

refuſed to make a Rule for Judgment. The Affidavit is defective.

Thredder *againſt* Travis. Mich. 8 G. 2.

In Ejectment, Poſſeſſion vacant. CHAPPLE moved for Judgment in *London*, where the Notice to appear was not on the firſt Day, but in the Beginning of *Michaelmas* Term. The Court made a Rule for Judgment, unleſs ſome Perſon claiming Title appeared within four Days.

Jones, upon Demiſe of Thomas, *againſt* Hengeſt.

In Ejectment. RULE was made to ſhew Cauſe why a *Non-pros* for not confeſſing Leaſe, Entry, and Ouſter ſhould not be ſet aſide, there being a material Variance between the Iſſue and the Record, Defendant therefore did not confeſs. *Per Cur':* Confeſſion would not have been a Defence, Defendant might have afterwards moved to ſet aſide the Verdict for the Variance, the *Non-pros* is regular; but let it be ſet aſide upon Payment of Coſts. *Chapple* for Leſſor of Plaintiff; *Eyre* for Defendant. *Gulliver* againſt *Appleyard*, *Mich.* 4 *Geo.* 2. quoted.

Scrape *againſt* Hunt. Hil. 8 Geo. 2.

In Ejectment. THE Declaration was delivered to the Daughter of Tenant in Poſſeſſion, and ſhe was acquainted with the Contents; the Tenant afterwards acknowledged the Receipt of it. Held ſufficient Service.

Goodright, on the Demiſe of the Duke of Montague, *againſt* Wrong.

GLYDE moved, That Mr. *Pigot*, who claimed Title, might be made Defendant inſtead of the late Tenant, who had quitted the Poſſeſſion. Denied.

Roe *againſt* Doe.

Ex dim' Jefferyes *and others in Ejectment.* THE Declaration was left with the Father of the Tenant in Poſſeſſion with the uſual Subſcription, and he was acquainted with the Contents; after which and before the Eſſoin-Day the Tenant acknowledged the Receipt of it. Held ſufficient Service. *Belfield.*

Goodright

Goodright *againſt* Moore. Eaſt. 8 G. 2.

Ex dim' Tonkyn. MOTION to ſtay Proceedings on Payment of Mortgage-Mony and Coſts, purſuant to Statute 7 *Geo.* 2. *Belfield* for Plaintiff ſhewed Cauſe, and produced an Affidavit that the Mortgagee had been at great Expence in neceſſary Repairs of Part of the Tenements in his Poſſeſſion, (the Ejectment was brought for the Reſidue) and therefore prayed that the Prothonotary might be directed to make Allowance for ſuch Repairs. *Per Cur':* The Rule muſt follow the Words of the Statute. The Prothonotary will make juſt Deductions and Allowances.

Grimſtone *againſt* Burges and others, on the Demiſe of Lord Gower and others.

MOTION to conſolidate ſixteen Ejectments in one after ſixteen ſeveral Iſſues joined in *Hilary* Term laſt. It was urged for Plaintiff, that Iſſues were delivered and paid for ſo long ago as *Mar.* 12. laſt, but the Court held that it was neceſſary for Defendants to pay for the Iſſues, to prevent Judgment, and ordered the Ejectments to be conſolidated.

N. B.

N. B. Each Declaration contained a large Number of Meſſuages, and they were Word for Word the ſame. Had each been for one Meſſuage only, the Plaintiff might have tried them ſeparately. *Skinner* and *Eyre* for Defendant; *Wright* for Plaintiff.

Ex parte Beauchamp *and* Burt. Trin. 10 Geo. 2.

CHAPPLE moved, that theſe Perſons who claimed Title to ſome Lands and Tenements *in Com' Midd'* (the Poſſeſſion whereof was vacant) might be informed by Mr. *Baniſter* (Attorny for a Perſon who was carrying on a Proceeding in Ejectment in the old Way, under a Leaſe ſealed upon the Premiſſes) of the Names of the Parties in that Ejectment, in order that *Beauchamp* and *Burt* might appear and defend the Title. It was urged by *Eyre* for *Baniſter*, that in all Caſes of vacant Poſſeſſion, unleſs ſuch as are within the late Act of Parliament concerning Landlords and Tenants by Leaſe, with a Clauſe of Re-entry, no Inſtance can be ſhewn where any Perſon claiming Title hath been let in to defend, but he that can firſt ſeal a Leaſe upon the Premiſſes, muſt obtain Poſſeſſion, and any other Perſon claiming Title may eject him if he can; and by the Courſe of the Court no Defence can be made in theſe Caſes but by the Defendant in the

Eject-

Ejectment, who is a real Ejector. The Court took Time to conſider of this Matter, but never made any Rule. The Practice hath conſtantly been as ſtated by *Eyre*. *Chapple* produced two old Rules of Court concerning Ejectments, *Trin.* 22 *Car.* 2. and *Hil.* 1659. and cited *Stiles*'s Reports 368.

Felton *againſt* Aſh.

MR. Juſtice *Forteſcue* had made an Order purſuant to the late Act of Parliament to ſtay Mortgagees Proceeding in Ejectment upon bringing Principal, Intereſt and Coſts into Court, and a Rule was made to make the Order a Rule of Court *niſi cauſa*; but it afterwards appearing to the Court that Notice had been given by the Mortgagee to the Mortgagor that he inſiſted upon Payment of two Bonds, which were a Lien upon the Eſtate, the Caſe was adjudged to be out of the Act of Parliament, and the Rule *Niſi* was diſcharged.

Roe *againſt* Doe, on the Demiſe of Fitzherbert.

SKINNER had obtained a Rule for the Infant Leſſor of the Plaintiff to ſhew Cauſe why he ſhould not give Security for Payment of Coſts in Caſe he failed in the Suit, which was diſcharged on hearing. *Hawkins* for the Plaintiff.

Doe

Doe *againſt* Roe, on the Demiſe of Dry.

In Ejectment. URLIN moved for Judgment againſt the Caſual Ejector, upon an Affidavit that the Declaration was tendered to the Wife of the Tenant in Poſſeſſion, who refuſed to open the Door of the Houſe, but looked out at a Parlour Window, and was acquainted with the Contents, and the Subſcription was read to her; after which, ſhe refuſing to accept the Declaration, it was put in at the Window to her. The Service was held ſufficient.

Roe, on Demiſe of Jones, *againſt* Doe. Eaſter 11 G. 2.

In Ejectment. SPARK, an Attorny, entered into the common Rule by Conſent, and left it in the Prothonotary's Office; after which Judgment was ſigned againſt the Caſual Ejector. A Rule was made to ſhew Cauſe why the Judgment ſhould not be ſet aſide; but no Appearance being entered with the Filazer for the Tenants in Poſſeſſion, and the common Rule not being marked by the Filazer, as it ought to have been before left in the Prothonotary's Office; and *Spark* having entered into the

the common Rule for *Page*, one of the Tenants, without his Conſent; the Rule to ſhew Cauſe was diſcharged with Coſts. *Eyre* and *Prime* for Tenants; *Skinner* for Plaintiff.

Goodright, on the Demiſe of Ruſſell, *againſt* Noright. Trin. 11 & 12 G. 2.

In Ejectment. THE Judgment irregularly obtained was ſet aſide, and Poſſeſſion ordered to be reſtored; but the Leſſor of the Plaintiff (who held the Poſſeſſion) abſconding, the Rule was ineffectual. *Eyre* moved, on Behalf of the late Tenants in Poſſeſſion, for a Writ of Reſtitution, which was ordered.

Hobſon, on the Demiſe of Bigland, *againſt* Dobſon. Mich. 12 Geo. 2.

In Ejectment. WYNNE moved for the Landlord to defend, upon Statute 11 *Geo.* 2. The Court objected that this Motion could not properly be made 'till after Judgment ſign'd againſt the Caſual Ejector; and that Affidavit ought to be produced of the Tenant's Refuſal or Neglect to appear. *Wynne* anſwered, That immediately after Judgment ſigned againſt the Caſual Ejector, Plaintiff might take Poſſeſſion. The Court held the Affidavit neceſſary,

ceſſary, and therefore made no Rule; but declared that the Intent of ſigning Judgment againſt the Caſual Ejector, was only that the Plaintiff, after having tried his Cauſe againſt the Landlord, (the Tenant not being a Party) might have the Benefit of his Verdict, and take Poſſeſſion under the Judgment, which under ſuch Verdict he could not. It ſeems reaſonable (upon a proper Affidavit) to grant a Rule to ſhew Cauſe, before Judgment againſt the Caſual Ejector can be ſigned, to prevent the ill Conſequence of taking Poſſeſſion immediately after.

Roe, on Demiſe of Gohard, *againſt* Doe.

EYRE moved upon Statute 11 *Geo.* 2. that the Landlord might be added Defendant to *C. D.* one of his Tenants, who did appear to defend for the Tenements in his Poſſeſſion; and that as to the Reſidue of the Tenements in Poſſeſſion of *T. M.* another Tenant, who refuſed to appear (as *per* Affidavit) the Landlord might appear and defend ſingly, and a Rule was made accordingly; and that Plaintiff might ſign Judgment againſt the Caſual Ejector, as to the Tenements in Poſſeſſion of *T. M.* but that the Writ of *Habere facias poſſeſſionem* be ſtayed 'till farther Order.

Plumb

Plumb *againſt* Savage and his Wife, on Demiſe of Byam. Trin. 13 Geo. 2.

In Ejectment. RULE for Leſſor of Plaintiff, and Mr. *Peacock* his Attorny, why not an Attachment for prevailing upon Tenant in Poſſeſſion, by undue Practices, to deliver Poſſeſſion of the Premiſſes (which Defendants claimed as Tenant's Landlords) pending the Suit; and after Rule obtained by Defendants to be at Liberty to defend their Title, purſuant to the late Act of Parliament (the Tenant refuſing to appear) and entring into the common Conſent Rule; Rule diſcharged, it being no Contempt of the Court, but a Fraud, which ought to be prevented, and is not remedied by the late Act. Ejectment is a Fiction, and in the Breaſt of the Court. Tenants ſhould be bound not to change the Poſſeſſion. *Skinner* and *Prime* for Plaintiff's Leſſor and *Peacock*; *Agar* for Defendants.

Benn *againſt* Denn, on the Demiſe of Mortimer and his Wife.

In Ejectment. A Former Ejectment had been brought on the Demiſe of the ſame Leſſors, wherein Defendants had a Verdict, and obtained an Attachment

tachment againſt *Robert Mortimer*, one of the Leſſors, for Non-payment of Coſts; whereupon he was arreſted and detained in Cuſtody. And now *Bootle* moved for Defendant to ſtay Proceedings in this Ejectment 'till the Coſts of the former were paid: But *per Cur'*, The Leſſor of the Plaintiff being in Cuſtody upon ſaid Attachment for Coſts, which is in the Nature of a *Ca. Sa.* there is no Reaſon to grant the Rule.

Farmer *againſt* Thruſtout, on the Demiſe of Miles.

In Ejectment. THE Declaration was tendered to the Wife of the Tenant in Poſſeſſion upon the Premiſſes. She was acquainted with the Contents thereof, and of the Subſcription, through a Window, which ſhe refuſed to open, or receive the Declaration; and thereupon the Declaration was left upon the out-ſide Ledge of the Window. The Perſon who tendered the Declaration ſwore, that he heard the Woman's Voice diſtinctly through the Window; and was well aſſured ſhe heard what he ſaid by the Anſwers ſhe gave him. The Service was held ſufficient, and the common Rule for Judgment was made. *Prime* for Plaintiff.

Fenn *againſt* Denn,

In Ejectment for Lands in Denbighſhire, Wales.

BIRCH moved for Judgment. A Rule made.

Tupper *againſt* Doe, on the Demiſe of Mercer *and* Woollett.

In Ejectment. A Declaration in Ejectment ſerved on the Churchwardens and Overſeers of a Pariſh, who rented a Houſe for harbouring ſome of the Pariſh Poor, and did not otherwiſe occupy the Houſe than by placing the Poor in it. Deemed ſufficient Service, and a Rule made for Judgment. *Agar* for Plaintiff.

Roe *againſt* Doe, on the Demiſe of Humphreys.

In Ejectment. THE Tenant in Poſſeſſion not appearing at the Trial to confeſs Leaſe, Entry and Ouſter, Judgment was entred againſt the Caſual Ejector. *Adney* an Attorny brought a Writ of Error in the Name of the Caſual Ejector, which he was ordered to *nonpros* at his own Expence, and pay Coſts, but was excuſed from farther Cenſure, it appearing that he had been informed by ſome of the Curſitors

Clerks, that ſuch a Writ of Error might be brought. *Wynne* for the Leſſor of the Plaintiff. *Urlin* for *Adney*.

Evidence.

Parrot *againſt* Benn. Mich. 8 Geo. 2.

THE Court held, that a Condemnation upon a Foreign Attachment in *London*, which appeared on the Record to be ſubſequent to this Action brought, could not be given in Evidence againſt Plaintiff at the Trial.

Smith *againſt* Richardſon. Mich. 11 Geo. 2.

THIS was an Action for ſcandalous Words, importing that Plaintiff was a Thief, and had robb'd Defendant of his Beer. Plaintiff was Beer Butler of a College at *Oxford*, and laid Special Damage. Defendant, at the Trial, offered to prove the Truth of the Words in Mitigation of Damages: And Mr. Baron *Forteſcue*, who tried the Cauſe, refuſed to admit ſuch Evidence, but reſerved the Point. The twelve Judges met, and eight were of Opinion, that where the Words amount to Treaſon or Felony, Defendant, on the General Iſſue, ought not

to

to be admitted to prove the the Truth of the Words; and the *Poſtea* was ordered to be delivered to Plaintiff.

Vide Title Trials, &c.

Executions, Execution of Proceſs, &c.

Warwick *againſt* Figg. Mich. 6 G. 2.

EXECUTION was taken out after a Writ of Error allowed, and Bail put in thereupon: And the Queſtion was, Whether ſuch Execution was regularly iſſued or not? It was urged for Plaintiff, that the Writ of Error being returnable *tres Trin'* was ſpent before the final Judgment ſigned, which was not 'till the 30th of *June* after the End of *Trinity* Term, and that therefore the Execution was regular. On the other Side it was alledged, That by the Writ of Error the Record was tranſcribed into the *King's Bench*; that the Writ of Error was not ſpent; that the final Judgment ſigned in *Trinity* Vacation relates to the firſt Day of *Trinity* Term, and that therefore the Writ of Error is a *Superſedeas* to it, and the Execution in Queſtion bears Teſt the laſt Day of *Trinity* Term: If Plaintiff had ſtayed 'till *Michaelmas* Term following before he

had ſigned final Judgment, as in the Caſe of *Joy* and *Fanſhaw*, he might have had ſome Colour to take out Execution (though that is a Practice not to be encouraged); the Court were of that Opinion, and ordered the Execution to be ſet aſide, and Reſtitution and Coſts; and ordered an Attachment *Niſi*, againſt *Wreathocke*, Plaintiff's Attorny, to ſtand over him 'till he ſees Reſtitution made, and Coſts paid.

Oates *againſt* Foreſt.

JUdgment was obtained *in Com' Midd'*, and a *Fi. Fa.* iſſued in that County, and returned *Nulla bona*; and thereupon a *Fi. Fa.* was iſſued in *London*, but was not made a *Teſtat' Fi. Fa.* And the Court being moved to ſet aſide the *Fi. Fa.* in *London*, for want of its being made a *Teſtat'*, refuſed ſo to do, being of Opinion that the Award of the *Teſtat' Fi. Fa.* upon the Roll was ſufficient to warrant a *Fi. Fa.* into *London*, and that it need not be made a *Teſtatum*.

Sympſon *againſt* Gray and his Wife, and another. Hil. 6 Geo. 2.

JUdgment of *Michaelmas* Term 1731, ſigned *Nov.* 13. *Fi. Fa.* bore Teſt *November* 28 in *Michaelmas* Term following. Defendant moved to ſet aſide the *Fi. Fa.*

Fa. as irregular, the Judgment not being revived by *Sci. Fa.* and the *Fi. Fa.* not being iſſued within the Year: Plaintiff inſiſted that the *Fi. Fa.* being iſſued within the fourth Term from the Time of ſigning Judgment, it was regular, and produced an Affidavit that Execution had been ſome Time ſtaid by an Injunction out of *Chancery.* Court held the Injunction to be quite out of the Caſe, and that the Year is to be computed from the Day of ſigning Judgment, and therefore ſet aſide the *Fi. Fa.*

Cooke *againſt* Horrock. Eaſt. 6 Geo. 2.

A Motion was made to ſet aſide an Execution iſſued after a Writ of Error allowed, and Notice thereof given to Plaintiff's Attorny: It appeared that an interlocutory Judgment was ſigned, and a Writ of Inquiry executed in *Michaelmas* Term laſt, and a Writ of Error was then allowed, and Notice given; but the final Judgment was not ſigned 'till after the Beginning of *Hilary* Term laſt. The Court held the Execution to be regular, the interlocutory Judgment not being removable by the Writ of Error; and the final Judgment being ſigned of a ſubſequent Term, was not removed, and therefore refuſed to make any Rule.

Dakeyne *againſt* Thornhill.

A Queſtion aroſe, Whether the Plaintiff could levy Poundage and other neceſſary Charges, beſides the Coſts taxed, out of a Penalty? And the Court held he might; if the Defendant ſhould think himſelf aggrieved, the Court, upon Application would refer the Matter to the Prothonotary, to inquire whether the Plaintiff hath levied more than he ought to have done, or not.

White *againſt* Morgan.

A Writ of Error was brought, returnable on the Eſſoin-Day of *Hilary* Term; the final Judgment was ſigned of the ſame Term, 26th of *January*; and Plaintiff took out Execution, apprehending the Judgment not to be removed by the Writ of Error. *Chapple* moved to ſet aſide the Execution, and inſiſted that the Judgment relates to the Eſſoin-Day, and is a Judgment from that Day; and the Court will not make a Fraction of the Day, ſo conſequently the Record is removed by the Writ of Error. *Hawkins*, for Plaintiff, inſiſted that the Judgment muſt be given before the Return of the Writ of Error; and if given upon the Return-Day of the Writ of

of Error, is not removed by that Writ. The Court held the Record well removed, and ſet aſide the Execution, with Coſts: By Conſent no Action to be brought.

Snape and others, Aſſignees, *againſt* Hancock. Trin. 6 & 7 Geo. 2.

PER *Cur'*: Plaintiff cannot ſue out *Ca. Sa.* and *Fi. Fa.* againſt Defendant at the ſame time, and take out the Sheriff's Warrants thereon: This was not the main Queſtion, but was incidentally ſaid. *Per Cur:* Plaintiff, in this Caſe, had executed both *Ca. Sa.* and *Fi. Fa.* and both were ſet aſide as irregular.

Gale *againſt* Hooker. Hil. 7 Geo. 2.

A Writ of falſe Judgment was delivered to the Under-Sheriff; but no Mony was tendered or paid for the Return; for want whereof the Sheriff took no Notice of it, and executed a Writ *de Executione Judicii.* Upon hearing Council on both Sides, the Sheriff's Proceeding was held to be regular. *Per Cur'*: The Defendant, if he thinks fit, may ſtill proceed upon his Writ of Falſe Judgment. *Glyde* for Defendant; *Chapple* for Plaintiff.

Hann *againſt* Capell.

A Motion was made to have Rent paid to the Landlord out of the Mony levied in Execution in this Cauſe. It appeared, upon ſhewing Cauſe, that the Sheriff's Warrant on the Execution, after it was ſealed, had been altered, and a new Bailiff's Name inſerted. *Per Cur':* The Warrant being altered, no Goods are taken in Execution thereby; but let the Bailiff and the Attorny, who were privy to the Alteration, ſhew Cauſe why an Attachment ſhould not be iſſued againſt them. *Belfield* for the Sheriff; *Skinner* for the Landlord.

Dutton *againſt* Pitt, Eſq; Eaſt. 7 G. 2.

THE Defendant being brought up by *Habeas Corpus* from the *King's Bench* Priſon, in order to be charged in Execution at the Plaintiff's Suit: Moved by *Darnal* to be remanded, upon an Affidavit that he was a Member of the laſt Parliament, and continued ſo to the End of the Seſſions; it appearing by the Return of the *Habeas Corpus*, that the Defendant was taken by Proceſs out of the Court of *King's Bench* ſince the End of the laſt Seſſion of Parliament, and was not charged with any Proceſs here, the Court did not think it proper that he ſhould

ſhould be charged in Execution upon the Judgment, but remanded him in order that he might move the Court of *King's Bench* to be diſcharged from the Actions there; becauſe if the firſt taking and Detainer were illegal, he ought not to be charged in Execution here.

Patrick *againſt* Pettis.

THE Queſtion was, Whether the Landlord's Rent ſhould be paid out of the Monies levied in Execution upon the Defendant's Goods, who was a Bankrupt; and thereupon another Queſtion aroſe, Whether or no, if the Defendant was a Bankrupt before the Levy, the Goods were liable to Payment of the Rent. The Court thought it a proper Matter to be determined by a Jury, whether the Defendant was a Bankrupt, or not, at the Time of the Levy, and directed an Iſſue to be tried accordingly. *Wright* for the Landlord; *Baynes* for the Aſſignees.

Pigot *againſt* Charlewood. Trin. 7 & 8 Geo. 2.

DEfendant taken in Execution when he was attending the Execution of a Writ of Enquiry as Attorny for his Client, moved to be diſcharged. *Urlin* ſhewed Cauſe. *Cur'* diſcharged him.

Maule

Maule *againſt* Grubb.

FORREST having attended Prothonotary to tax Coſts for not proceeding to Trial, on his Return home was arreſted on a *Ca. Sa.* out of the *King's Bench. Cur'* ſaid they could not diſcharge him from the *King's Bench* Proceſs; but on producing an Affidavit of Notice, ordered the Officer and Plaintiff to ſhew Cauſe why they arreſted him, and why the Goods pledged with them for his Enlargement ſhould not be reſtored. *Comyns* for *Forreſt*; on ſhewing Cauſe, it appeared that the Goods were ſold voluntarily by *Forreſt* to the Plaintiff. Rule diſcharged. *Birch* for Plaintiff.

Bond *againſt* Jacob and others. Trin. 8 & 9 Geo. 2.

CHAPPLE moved to ſet aſide a Writ of *Teſtatum Fieri Facias* iſſued immediately after Judgment, and before a *Fi. Fa.* returned and filed to warrant it; and the Court made a Rule to ſhew Cauſe, *Eyre* for Plaintiff ſhewed Cauſe, and produced a *Fi. Fa.* returned in the proper County; and thereupon the Rule was diſcharged.

Cram-

Cramborne *againſt* Quennel. Hil. 9 Geo. 2.

PLaintiff moved to be at Liberty to take out Execution, the Writ of Error brought by Defendant being become ineffectual by the Death of the late Lord Chief Juſtice of this Court. *Per Cur':* Let Defendant ſhew Cauſe. There were ſeveral other Motions of the ſame Kind this Term; and it was held by the Court, that where the Writ of Error is not returned by the Chief Juſtice, it becomes ineffectual; but Plaintiff cannot take out Execution without Leave of the Court. 1 *Syd.* 168. *Allen* againſt *Shaw.*

Olorenſhaw *againſt* Stanyforth.

HELD, upon hearing Council on both Sides, that the Writ of Error not being returned, and ſigned by the Chief Juſtice, becomes ineffectual by his Death; and the Rule to ſhew Cauſe why Plaintiff ſhould not have Leave to take out Execution was made abſolute. *Dyer* 173. *Wright* for Plaintiff; *Birch* for Defendant.

Hayes *againſt* Thornton.

THE Writ of Error being become ineffectual by the Death of the Chief Juſtice, the Return not being ſigned by him, and conſequently the Record not removed, Plaintiff took out Execution without Leave of the Court, which was held to be irregular: The Court muſt be moved for Leave before Execution can regularly be taken out. *Giggeer's* Caſe. *Salk.* 264. *Brown* againſt *Randall, Hil.* 1 *Geo.* 1.

Humphreys *againſt* Daniel. Eaſter 9 Geo. 2.

PLaintiff recovered Judgment; Defendant brought a Writ of Error, and pending that Writ Plaintiff brought an Action of Debt on the Judgment, and after Judgment therein levied Execution: And the Queſtion was, Whether Plaintiff could do this without Leave of the Court. *Per Cur':* Defendant might have moved the Court to ſtay Proceedings in the Action on the Judgment, pending the Writ of Error, which is always granted; but having made no ſuch Application Plaintiff is regular. *Corbet* for Defendant; *Chapple* for Plaintiff.

Fiſher

Fiſher *againſt* Carruthers, Bail for D.

PLaintiff having recovered Judgment in the Original Action for 26 *l.* levied 13 *l.* on the Goods of Defendant, one of the Bail, with Intent to levy the remaining 13 *l.* on the Goods of *B.* the other Bail; but the Effects of *B.* amounting to no more than 6 *l.* Plaintiff had Reſort back again to the Goods of Defendant, and by a ſecond Execution levied 7 *l.* more, being the Reſidue of the 26 *l.* recovered. This was held to be irregular. Plaintiff cannot levy by Parcels without Defendant's Requeſt and Conſent; he might have levied the whole upon Defendant at firſt (who it appeared had then Goods ſufficient to anſwer). The Rule to ſhew Cauſe why the ſecond *Fi. Fa.* againſt Defendant ſhould not be ſet aſide, and Reſtitution, was made abſolute. *Wynne* for Defendant; *Belfield* for Plaintiff.

Maſon *againſt* Simmonds and Eleven others.

JOINT Action againſt ſeveral Defendants; Damages 20 *l.* againſt Four of them on Trial, and 5 *s.* againſt one Defendant who had let Judgment go by Default. Writ of Error

Error brought by the Four in the Name of the one who was not obliged to find Bail becauſe it was by Default. Motion by *Agar* for Leave to take out Execution againſt the Four, notwithſtanding ſuch Writ of Error. *Cur'*: Shew Cauſe. Rule made abſolute *Trinity* next on Affidavit of Service.

Richard *againſt* Davis. Trin. 11 & 12 Geo. 2.

MOTION by *Skinner* to ſet aſide Execution upon a Judgment in this Court; on which Judgment an Action of Debt was brought in the Mayor's Court of the City of *Worceſter*, and Defendant was arreſted in the ſaid Mayor's Court, and afterwards Plaintiff took out Execution in this Court. Rule to ſhew Cauſe why Plaintiff ſhould not make his Election.

Berriman *againſt* Gilbert and his Wife. Eaſter 12 Geo. 2.

THE Debt was contracted by the Woman while ſole, and Plaintiff having recovered Judgment, both Huſband and Wife were taken in Execution. *Eyre* moved to diſcharge the Wife, and cited *Miles* againſt *Williams*, *Trin.* 12 *An. in B. R.* where it was ſaid *arguendo*, though it was not the Point in Queſtion, that the Wife

cannot be taken in Execution; but the Court held otherwiſe, and diſcharged the Rule. On Meſn Proceſs the Woman might perhaps have been diſcharged on a common Appearance; but no Inſtance can be ſhewn where ſhe has been diſcharged from an Execution. *Wright* for Plaintiff.

Robinſon *againſt* Tuckwell. Mich. 13 Geo. 2.

THE ſame Caſe as *Humphreys* againſt *Daniel*, *Eaſter* 9 *Geo.* 2. and the ſame Determination. *Eyre* for Defendant; *Wright* for Plaintiff.

Clarkſon *againſt* Phyſick.

AFTER Judgment in an Action of Debt on a former Judgment, and *Ca. Sa.* delivered to the Sheriff, Defendant moved to ſtay Execution pending a Writ of Error brought to reverſe the former Judgment. Shew Cauſe. *Per Cur':* The Motion comes too late; it ought to be before Judgment in the later Action. Rule diſcharged. *Comyns* for Defendant; *Eyre* for Plaintiff.

Fine.

Harneis *againſt* Mickletĥwaite and his Wife. Mich. 6 Geo. 2.

THE Fine was ſtopped at the King's Silver Office by *Caveat* entered by Order of Mr. Juſtice *Price*, upon an Affidavit of the Death of the married Woman, one of the Cognizors, and Application was made to the Court that the Fine might paſs, notwithſtanding ſuch *Caveat*. It appeared that the Wife died the Day after the Caption, and after the *Teſte*, but before the Return of the Writ of Covenant. It was inſiſted that the King's Silver was not paid before the Death of the Wife, and therefore the Fine ought not to paſs. On the other Side it was urged, that Fines are common Aſſurances, and the Acknowledgment makes the Fine compleat, that the King's Silver is the Fine *pro licentia alienandi*, which is the Pre-fine paid at the Alienation-Office, and for which a Receipt was indorſed on the Writ of Covenant, and is not Part of the Poſt-fine, which is never collected till after the Fine be compleated; and the Court after Conſideration were of that Opinion, and ordered the Fine to paſs.

Cotton

Cotton *and* Tyrrell, Bar. Quer'; and Baylie *and* Ryder, Deforc'.

THE Fine was ſtopped at the King's Silver Office for want of an Affidavit that the Parties were living, a Year having lapſed ſince the Caption thereof; and *Ryder*, one of the Conuzors, being dead, Application was made to the Judges in the Treaſury that he might be ſtruck out, and that the Fine might paſs as to *Baylie*, the other Conuzor. The Judges denied that Motion, but made a Rule that *Baylie*, the ſurviving Conuzor, ſhould ſhew Cauſe why the Fine ſhould not paſs (generally as to all Parties); and upon Affidavit of Service the Rule was made abſolute.

Between Gregory, Conuzee, *and* Croucher and others, Conuzors. Mich. 7 Geo. 2.

A Fine between the ſaid Parties was ſtopped at the King's Silver Office for want of the uſual Affidavit, a Year being lapſed ſince the Date of the Caption. The Court upon inſpecting the Writ of Covenant and Conuzance made a Rule upon the Clerk of the King's Silver Office, to ſhew Cauſe why the Fine ſhould not paſs; and upon hearing Council for the Conuzee and the

Clerk of the ſaid Office, and it appearing that all the Parties were alive at the Time when the King's Silver was paid, the Fine was ordered to paſs. It was ſaid *per Cur'*, That all the Affidavit which ought to be required at the King's Silver Office ſhould be, that the Parties were alive at the Time the King's Silver was paid, whichis the Pre-fine.

Dean *and* Tidmarſh. Eaſt. 8 G. 2.

A Fine acknowledged in *South Carolina* ſworn to before the Chief Juſtice, there to be duly acknowledged and atteſted by a Notary Publick. By Judges in the Treaſury, It cannot paſs without Oath of the due Acknowledgment before one of the Juſtices of this Court.

Forſter *againſt* Pollington and Wife, and others. The ſame and another *againſt* Brooke and Wife.

TWO Fines of Lands in the Iſland of *Antegoa* were ordered to be amended upon hearing Council for the Conuzee and the Heirs at Law of the Conuzors, who had brought Writs of Error to reverſe the Fines; the Lands were deſcribed in the Writs, *&c. in Inſula de Antegoa in America in Partibus tranſmarinis, viz. in Parochia* Sanctæ Mariæ Iſlington *in Com'* Midd'. The Amendment was

was by ſtriking out the Words *in America in Partibus tranſmarinis*. Articles of Agreement between the Parties to the Fines to convey and aſſure Lands in the Iſland of *Antegoa* were read; and *per Cur'* the Repugnancy inſerted meerly through want of Skill, and which would vitiate the Fines, muſt be rejected, and the Fines made effectual, that is, in common Form; if they be then inſufficient, Advantage may be taken thereof. *Chapple* for the Conuzee; *Eyre* and *Wright* for the Heirs at Law.

Lazenby *and* Knight.

THE Chirographer refuſed to make out the Indentures of this Fine which was double, a Fine *ſur Cognizance de Droit come ceo, &c.* and a Fine *ſur conceſſit* in one and the ſame Concord; and upon Motion that the Fine might paſs, it was urged by *Wright*, that a Fine is a real Agreement, and ought to be conſidered in the Nature of a Conveyance, and the Party may have it in what Manner he pleaſes at his Peril; but *per Cur'*, this Sort of double Fine is unprecedented. If the Plaintiff will be ſatisfied to let that Part of the Fine which is *ſur conceſſit* be ſtruck out, and that the Fine do paſs as a Fine *ſur Cognizance de Droit come ceo, &c.* only, he ſhall have a Rule for that Purpoſe; to which *Wright* agreed.

Habeas Corpus & Procedendo.

Wyatt *againſt* Markham. Trin. 7 & 8 Geo. 2.

MOVED for a *Procedendo* to *Boſton Burrough* Court; *Habeas Corpus* to remove the Cauſe being brought after interlocutory Judgment in the inferior Court. *Cur'* thought it too late after Judgment, and made the Rule for *Procedendo* abſolute. *Wright* for Plaintiff; *Baynes* for Defendant. 43 *Eliz. c.* 5. 21 *Jac. c.* 23.

Hewit *againſt* Powell. Mich. 8 G. 2.

October 29. DEfendant was brought to the Bar by *Habeas Corpus* returnable in one Month from the Day of St. *Michael*, to be committed to the *Fleet*, and the Court committed him, though the Day of the Return was paſt.

Hornbuckle *againſt* Eaton.

A *Habeas Corpus* to the Town-Court of *Nottingham* was delivered to the proper Officer in open Court on the firſt of *May*

May laſt, to remove a Plaint from that Court before Trial, notwithſtanding which the Court below went on to Trial. Defendant moved for an Attachment againſt the Sheriff of *Nottingham* for proceeding to Trial after the *Habeas Corpus* delivered as aforeſaid, and a Rule was made to ſhew Cauſe; but upon ſhewing Cauſe, it appearing that Iſſue was joined *April* 27. before the *Habeas Corpus* delivered, the Court below were warranted by the Act of Parliament to proceed. The Rule was diſcharged. *Birch* for Sheriff; *Chapple* for Defendant.

Imparlance.

Threlkeld *againſt* Goodfellow.

DEfendant cannot plead in Abatement after a General Imparlance without obtaining a Special Imparlance precedent to the Time of Pleading, which muſt be within the four Days given by the Rule to plead.

Bond, and others, *againſt* Jope. Trin. 6 & 7 Geo. 2.

DEclaration was delivered againſt Defendant, a Priſoner, on the laſt Day ſave one of *Eaſter* Term. A Queſtion did

ariſe, Whether Defendant ſhould have an Imparlance till *Craſ. Trin.* or muſt plead two Days before the Eſſoin-Day of *Trinity* Term? Upon looking into the old Rule touching the Delivery of Declarations to Priſoners by the Judges in the Treaſury, they were of Opinion that Defendant muſt plead two Days before the Eſſoin-Day according to that Rule.

Sibſon *againſt* Nivin. Hil. 10 Geo. 2.

THIS was an Action for defamatory Words, importing that Plaintiff was guilty of the Murder of *A. B.* Defendant moved for an Imparlance till next Term, on Affidavit that a Proſecution was now carrying on againſt Plaintiff for this Murder (committed on the High Seas) in the Court of Admiralty, and he would probably be tried for the Fact before next Term. A Rule was made to ſhew Cauſe, which was made abſolute. Imparlances are in the Diſcretion of the Court, and it may be of ill Conſequence to enter into Evidence concerning this Murder in the Action for Words before the Trial for the Fact. *Burnett* for Defendant; *Wright* for Plaintiff.

Inquiry.

Townſhend *againſt* Pool. Mich. 7 G. 2.

THIS was an Action of Covenant, and three Breaches were aſſigned, one whereof was confeſſed, and the other two controverted, and a *Venire facias* was awarded to try the Iſſues joined between the Parties, and to aſſeſs the Plaintiff's Damages; as to the Breach confeſſed, upon the Trial, Plaintiff obtained a Verdict; but Damages were neglected to be aſſeſſed as to the Breach confeſſed, which was for Nonpayment of Rent. *Chapple* and *Skinner* moved for a Writ of Inquiry to aſſeſs the Damages upon the Breach confeſſed. The Court granted a Rule *Niſi*, which was afterwards made abſolute.

Pinock *againſt* Willett, Adminiſtrator.

ACTION upon the Caſe for Goods ſold and delivered. Upon the Execution of the Writ of Inquiry, Jury allowed Plaintiff 6 *l.* 5 *s.* Intereſt for the Balance of the Account due to him. Defendant moved to ſet aſide the Inquiſition; and Court were of Opinion that Intereſt could not be allowed in any Caſe, except upon Promiſſory Notes and Bills of Exchange, and that the Inquiſition ought to be ſet aſide. But by Conſent

the 6 *l.* 5 *s.* Part of the Damages, were ordered to be remitted by Plaintiff, to ſave the Expence of a new Inquiry. *Belfield* for Plaintiff; *Chapple* for Defendant.

Pryor *againſt* the Earl of Iſlay, Executor of the Earl of Suffolk. Hil. 7 Geo. 2.

THIS was an Action upon the Caſe on a Promiſſory Note, to which Defendant, with Leave of the Court, had pleaded doubly, *viz. Non aſſ. & Non aſſ. infra ſex annos.* Plaintiff took Iſſue upon the *Non. aſſ.* and replied an Original as to the *Non aſſ. infra ſex annos*; and thereupon Iſſue was joined upon *Nul tiel Record.* Plaintiff upon the laſt Iſſue obtained Judgment; and thereupon proceeded to execute a Writ of Inquiry of Damages without Trial of the firſt Iſſue. Defendant moved to ſet aſide the Writ of Inquiry; and the Court, upon hearing Council on both Sides, ordered the Writ of Inquiry and Inquiſition taken thereon to be ſet aſide. *Baynes* for Defendant; *Chapple* and *Comyns* for Plaintiff.

Mac Carty *againſt* Parminter. Trin. 7 & 8 Geo. 2.

PLaintiff obtained Judgment upon arguing a Demurrer in an Action upon the Caſe, and proceeded to execute a Writ of Inquiry without getting Judgment ſigned by the Prothonotary; which the Court held to be irregular, and ſet aſide the Writ of Inquiry. *Birch* for Defendant; *Chapple* for Plaintiff.

Chiſvers *againſt* Lambert *and* Weſtley nuper Vic' Midd'. Mich. 8 Geo. 2.

SKINNER moved for Defendants to ſet aſide the Inquiſition taken before the Coroner upon a Writ of Inquiry for Exceſſiveneſs of Damages, which were 50 *l.* This was an Action brought for a falſe Return of a *Reſcous*, whereby the preſent Plaintiff, one *Cripple*, and others, were returned Reſcuors; and it appeared that *Cripple* having brought his Action againſt Defendants for the falſe Return, had recovered 20 *l.* Damages. The Court made a Rule; whereupon *Eyre* ſhewed Cauſe, and produced Affidavits, that Plaintiff, who kept a Tavern at *Twickenham*, was taken up by a Writ of *Reſcous* founded upon the ſaid Return, and carried to *Newgate*, where he was ſometime impriſoned and put

put to very great Expences; and the Council for Defendants attended before the Coroner at the Execution of the Writ of Inquiry. Court diſcharged the Rule.

Burges *againſt* Nightingale. Mich. 10 Geo. 2.

A Writ of Inquiry was executed, and Plaintiff moved to quaſh the Inquiſition, by reaſon of the Smallneſs of Damages; which was denied. *Prime* for Plaintiff; *Wright* for Defendant. Where the Jury find any Damages, the Inquiſition muſt ſtand. *Aliter*, had they found no Damages.

Elmes *againſt* Tomlinſon, Attorny. Mich. 12 Geo. 2.

RULE to ſhew Cauſe why Writ of Inquiry, returnable on a general Return (and not at a Day certain, as it ſhould have been, the Proceeding being by Bill) ſhould not be ſet aſide, diſcharged, becauſe this is Matter of Error, appearing upon the Record, and not of Irregularity; and whether it is helped, or no, by the Statutes of *Jeofails*, is not now the Queſtion. *Bootle* for Defendant; *Draper* for Plaintiff.

Ketle

Ketle *againſt* Bromſall. Eaſt. 12 G. 2.

PLaintiff had given Notice of executing a Writ of Inquiry at *St. Albans*, *Com' Hertf'*, and both Parties attended with Council and Witneſſes on *May* 2. 1739. But when the Under-Sheriff was about to execute the Writ, he perceived it to be returnable laſt Term, and would not proceed. Defendant moved for Coſts upon Affidavit of great Expence, and had a Rule to ſhew Cauſe. Upon ſhewing Cauſe it was urged for Plaintiff, that this Court had never yet given Coſts for not proceeding to execute Writs of Inquiry according to Notice. And this is a meer Miſtake, Plaintiff was diſappointed as well as Defendant. *Per Cur'*: Though there has been hitherto no Rule for Coſts in this Court, yet Notices of Inquiry ſtand upon the ſame Reaſon as Notices of Trial, and the Court of King's Bench grant Coſts in both Caſes; and were this a common Caſe, Coſts could not be granted; but it appearing that the Inquiry was returnable long before the Day appointed for the Execution thereof, Let the Plaintiff pay Coſts; it is not reaſonable the Defendant ſhould ſuffer by the Miſtake of Plaintiff's Attorny, and let a general Rule be drawn up, that Coſts be paid for the future where Inquiries are not executed purſuant to Notice. *Eyre* for Defendant; *Agar* for Plaintiff.

Bunting

Bunting *againſt* Teaſdaile. Trin. 13 Geo. 2.

PLaintiff executed a Writ of Inquiry; whereupon the Jury found no Damages; and Plaintiff executed a ſecond Writ of Inquiry without quaſhing the firſt: And on the ſecond the Jury found an Half-penny Damages. Defendant moved to ſet aſide the Execution of the ſecond Writ, and had a Rule to ſhew Cauſe, which Rule was made abſolute; the Court being of Opinion that the ſecond Writ was irregularly iſſued, the firſt pending, and not returned. *Eyre* for Defendant; *Bootle* for Plaintiff.

Inſpection of Court Rolls, &c.

Richards, Qui tam, &c. *againſt* Pattinſon. Trin. 10 Geo. 2.

THIS was an Action brought upon the Statute 9 *Annæ*, againſt Defendant, Deputy Poſt-Maſter of *Carliſle*, for the Penalty of 500*l.* for his perſuading a Perſon to vote at the laſt Election of Members to ſerve in Parliament. Defendant moved for Inſpection of the Corporation Books. *Per Cur'*: Defendant is laid to be an Elector, and having a Right to vote, he is intitled to

to inſpect the Books by the Act of Parliament: To this Purpoſe the Books are publick, and therefore let Defendant have the Inſpection of that Part of the Corporation-Books where the Names of the Freemen are inrolled, and Copies at his own Expence. *Eyre* and *Bootle* for Defendant; *Chapple* and *Wright* for Plaintiff.

Smith *againſt* Huggins. Trin. 11 & 12 Geo. 2.

DEfendant moved for Leave to inſpect the Books of the Conic Lamp-Office, and had a Rule to ſhew Cauſe, which was diſcharged. *Per Cur'*: The Proprietors of theſe Lamps are not a Corporation, their Books are not publick, nor do they appear to be Truſtees for Defendant. *Wright* for Defendant; *Eyre* for Plaintiff.

Judgments.

Theedam *againſt* Jackſon. Mich. 6 Geo. 2.

FOUR Queſtions did ariſe; the firſt, Whether for want of Payment for the Copy of an Indenture ſet out in the Declaration (whereof the Defendant had craved *Oyer*) Plaintiff could ſign Judgment?

The

The ſecond, Whether Plaintiff having been ſtaid by a Special Injunction out of *Chancery* (whereby he was reſtrained from ſigning Judgment) near twelve Months after Rule to plead given, can, after ſuch Injunction diſſolved, ſign Judgment, without giving a new Rule to plead.

The third, Whether no Appearance being actually entered, *Forreſt* the Defendant's Attorny's undertaking to appear, be ſufficient to ſupport the Judgment?

The fourth, What Time Defendant had to plead after *Oyer* of the ſaid Indenture given? The three firſt Points were determined in Favour of Plaintiff; but upon the fourth, the Court held that Defendant had the ſame Time to plead after the Declaration was verified by *Oyer*, as he had at the Time *Oyer* was demanded; and thereupon the Judgment was ſet aſide, it having been ſigned the next Day after *Oyer* given, and the *Oyer* having been demanded two Days before the Rule for pleading was out.

Martyn, Qui tam, *againſt* Skinner.

THE Defendant's Attorny left a Note at the Houſe of Plaintiff's Attorny on a double Penny Stamp, in this Manner, (*viz.*) I plead *Nil debet*, Yours, *&c.* and the Plaintiff's Attorny, without ſending Notice to Defendant's Attorny, that he

expected a Plea in Form, ſigned Judgment; and upon a Motion to ſet the Judgment aſide, it was held to be regular, and the Note aforeſaid to be no Plea. Pleas delivered to Attornies muſt be drawn up in the ſame Manner as to be left in the Office.

Moore *againſt* Hodgſon.

MOTION to ſet aſide Judgment ſigned for not paying for the Iſſue, Plaintiff's Attorny in Town calling on Defendant's Agent there for a Plea. It appeared, upon ſhewing Cauſe, that Defendant had pleaded by his Country Attorny; thereupon the Plaintiff's Attorny in the Country tendered the Iſſue, which Defendant's Attorny refuſed to pay for; and Plaintiff's Attorny ſent to his Agent in Town to ſign Judgment; which was held good, Defendant's Attorny having undertook to be the Agent by pleading in the Country.

Gibſon *againſt* the Biſhop of Bath and Wells, and Bond. Hil. 6 Geo. 2.

In Quare Impedit. ISSUE was joined between the Parties in *Hil.* 4 *Geo.* 2. and afterwards Judgment was entered at the Foot of the Iſſue for Plaintiff by *Cognovit Actionem* (*relicta verificatione pl'iti*) by Virtue of a Warrant of Attorny for that

that Purpoſe, pretended to be executed by Defendant *Bond*, the Validity of which Warrant of Attorney being conteſted, an Iſſue was directed by the Court to try whether the ſame was duly executed by *Bond* or not; and upon Trial the Jury found it to be a Forgery; whereupon the Court ordered the Judgment entered as aforeſaid, by Virtue of ſaid Warrant of Attorny, to be ſet aſide. Defendants moved that ſaid Judgment entered upon Record, ſubſequent to the Iſſue joined, might be ſtruck out of the Roll, in order that Defendants might make up the Record for Trial by Proviſo: The Court denied to make any Rule, but declared that the ſaid Judgment might be vacated in proper Manner, by Virtue of the former Rule for ſetting it aſide; and a *Vacatur hoc Judic'* was accordingly entered on the Margent of the Roll.

Fray *againſt* Smith.

MOTION to arreſt Judgment for a Defect in the Award of the *Venire*, which was in *Engliſh*, and followed the old *Latin* Form (Twelve and ſo forth) for *Duodecim*, *&c.* and ſo on. Upon ſhewing Cauſe, the Court were of Opinion that the *Venire* was awarded well, the Intent of the Parliament being to tranſlate no more into *Engliſh* than was before in *Latin*; but being told

told the ſame Queſtion was depending in the Court of *King's Bench*, the Court enlarged the Rule 'till next Term.

Scott *againſt* Ferrall, in Covenant, Damages laid 20*l.* Eaſter 6 Geo. 2.

PLaintiff, upon the Trial, proved Damages to the Amount of 13*l.* Defendant ſet off a mutual Debt of 5*l.* 4*s.* and Plaintiff obtained a Verdict for 7*l.* 16*s.* The Proceedings were in *Latin*, and the Damages being under 10*l.* the Court had made a Rule to ſtay the Entry of final Judgment, *Quouſq; &c.* which was diſcharged, the Court being of Opinion that the Cauſe of Action muſt be the Plaintiff's Demand, and not the finding of the Jury.

Rivers, and others, *againſt* Plumlee.

A Summons for Time to plead was ſerved upon Mr. *Lyte*, Plaintiff's Attorny, who attended at the Time appointed by the Summons, and ſtaid an Hour; but Mr. *Jones*, Defendant's Attorny, did not attend; whereupon Mr. *Lyte*, Plaintiff's Attorny, ſigned Judgment, which was ſet aſide by the Court as irregular, for want of diſcharging the Summons.

Church *againſt* Jaſon. Trin. 6 & 7 Geo. 2.

ACTION of Debt upon Bond; the *Alias Dict'* was in the Declaration put in *Latin*, as in the Bond. *Chapple* moved in Arreſt of Judgment upon the late Act of Parliament, that all Proceedings at Law ſhould be in *Engliſh*, and obtained a Rule *Niſi*. Afterwards *Eyre* ſhewed Cauſe, and the Court were of Opinion that the *Alias Dict'*, if ſet out at all, muſt be ſet out in the ſame Language as in the Deed, and would otherwiſe be erroneous, and diſcharged the Rule.

Panter *againſt* Coppin.

CORBET moved to ſet aſide the Judgment ſigned for want of a Plea, upon an Affidavit of the Delivery of a Plea to Plaintiff's Attorny in due Time, which was a Plea of an Outlawry againſt Plaintiff, in the *King's Bench* pleaded in Bar; but not *ſub pede Sigilli*. *Chapple* defended the Motion; and inſiſted, that the Outlawry not being pleaded *ſub pede Sigilli*, Plaintiff was not bound to accept it, and therefore might regularly ſign Judgment, cited 1 *Salk.* 217. *Carthew* 220. The Court ordered it to be moved again; and *Corbet*, when the Motion

tion came on the ſecond Time, argued that the Plea being pleaded in Bar, and not as a Dilatory, differs it from the Caſes quoted by *Chapple*. *Corbet* quoted *Coke's Inſt.* 128. 1 *Lutw.* 40. 2 *Mod.* *Atkins* and *Bayle*. *Chapple* replied, That Lord Chief Juſtice *Holt's* Words in *Carthew* and *Salkeld* go both to Pleas in Bar and Abatement, where the Outlawry is in another Court. *Per Cur'*: Sir *W. Willypoles's* Caſe in *Cro. Car. Robinſon* 213. 2 *Vent.* 282. quoted. Plea in Bar not dilatory, Plaintiff cannot take upon him to judge of the Plea in Bar, he ſhould apply to the Court, or demur. Rule made to ſet aſide the Judgment.

Farrance *againſt* Brignall, in debito ſuper Obligationem.

BAYNES moved to ſet aſide the Judgment upon an Affidavit of a Demand of *Oyer* of the Bond the 29th of *May* (being the ſame Day whereon a Plea was demanded) and of the Service of Mr. Juſtice *Forteſcue's* Summons the ſame Day for *Oyer*, and Time to plead. *Darnal* for Plaintiff oppoſed the Motion, and produced an Affidavit that *Oyer* was not demanded, nor Summons ſerved 'till after the Rule for Pleading was out. Court refuſed to make any Rule.

Matthews and Wife, Adminiſtratrix, *againſt* Stone.

THE Writ was returnable in. *Hilary* Term, and a Declaration left in the Office the ſame Term; and afterwards an Appearance entered by Plaintiff, according to the Act of Parliament; but no Notice of the Declaration was given 'till the 12th of *April* for Defendant to plead within the firſt four Days of this Term. *Chapple* moved to ſet aſide the Judgment, the Declaration having been left in the Office before the Appearance entered; and a Rule *Niſi* was granted. *Belfield* afterwards ſhewed Cauſe, and Court diſcharged the Rule, the Declaration being a Declaration well delivered only from the Time of the Notice; but Court made another Rule to ſet aſide the Judgment upon Payment of Coſts, pleading an iſſuable Plea, and taking ſhort Notice of Trial.

Morſe, an Attorny, *againſt* Farnham,

THE Attachment of Privilege was returnable on *Friday* next after the Morrow of the *Holy Trinity*, with Notice for Defendant to appear on the 25th of *May*. Appearance was entered by Plaintiff *June* 1, and Judgment afterwards ſigned. Defendant moved to ſet aſide the Judgment, the Appearance

ance being entered by Plaintiff one Day, if not two Days before the Time for Defendant's appearing was expired; and a Rule *Niſi* was granted on *Corbet*'s Motion. *Hawkins* and *Darnal* afterwards ſhewed Cauſe, and inſiſted that the Cauſe of Action was above 10 *l.* (*viz.*) 13 *l.* and upwards; and therefore this was not a Proceeding upon the laſt Act of Parliament, but upon the Act 12 *Geo.* 1. whereupon Defendant has but four Days to appear. Court were of Opinion, that no Sum being mentioned in the Writ, it ſtands at large, and the Appearance by Plaintiff was irregularly entered; but it appearing that Defendant had afterwards Notice of the Declaration being left in the Office, he ſhould have applied before Judgment, and was too late after Judgment; and therefore the Rule was diſcharged.

Glaſcock *againſt* Martin. Mich. 7 G. 2.

THE Iſſue Book was left in the Office, and Notice thereof left under the Chamber-Door of Mr. *Field*, Defendant's Attorny, the ſame Day, by Mr. *Cole*, Plaintiff's Attorny, who could not that Day find *Field*, but next Day found him at his Chambers, and gave him Notice that the Iſſue Book was left in the Office; and demanded the Mony due for the ſame, which *Field* refuſed to pay, inſiſting that the Iſſue Book

ought to be brought to him; whereupon *Cole* ſigned Judgment. The Court, upon hearing Council on both Sides, and the Report of Prothonotaries, *Cooke* and *Thomſon*, held, that Defendants Attornies muſt pay for Iſſue Books at their Peril; and if they are not to be found, Iſſue Books may be left in the Office, and diſcharged the Rule obtained to ſet aſide the Judgment *Niſi*; but let Defendant in, to try the Merits, and ſet aſide the Judgment upon Payment of Coſts, pleading the General Iſſue, and taking ſhort Notice of Trial.

Welland, and Attorny, *againſt* Rock. Mich. 7 Geo. 2.

DEfendant moved to ſtay Proceedings in an Action brought for Fees, no Bill of Fees having been delivered, and obtained a Rule *Niſi*; but upon ſhewing Cauſe, the Court were of Opinion that they could not conſider the Matter as an Irregularity becauſe it is illegal, and againſt an Act of Parliament; but ſet aſide the Judgment and Inquiry upon Payment of Coſts, bringing the Mony into Court, pleading the General Iſſue, and taking ſhort Notice of Trial.

Taylor *againſt* Slocomb.

A Rule to plead was given in *Trinity* Term laſt; and Defendant obtained Time, by Mr. Juſtice *Reeve*'s Order, to plead 'till the firſt Day of this Term; and for want of a Plea the Plaintiff ſigned Judgment of this Term, without giving a new Rule to plead; which Court held to be regular, the Rule to plead given laſt Term being enlarged, by the Judge's Order, to the firſt Day of this Term. *Chapple* for Plaintiff; *Urlin* for Defendant.

Lazenby *againſt* Bradley.

THE Writ was returnable the firſt Return of this Term; whereto Defendant appeared by his Attorny, and Plaintiff declared in *Yorkſhire*, gave a Rule to plead, and after demanding a Plea, ſigned Judgment for want thereof in four Days; Defendant moved to ſet aſide the Judgment: And the Queſtion before the Court was, Whether in this Caſe the Defendant ſhould have four or eight Days to plead? And the Court held, that purſuant to the Rule of Court made in *Michaelmas* Term, the third of his preſent Majeſty, in all Caſes upon Writs returnable the firſt or ſecond Return of any Term, if the Plaintiff doth not declare in *London* or

Middleſex, or the Defendant lives above twenty Miles from *London*, the Defendant hath eight Days time to plead, and therefore ſet aſide the Judgment.

Robinſon *againſt* Sparrow.

WARD, Plaintiff's Attorny, tendered the Iſſue Book to the Clerk of *Horne*, Defendant's Attorny, and demanded Payment for entring Defendant's Appearance: *Horne*'s Clerk offered to pay the reſt of the Mony demanded, but refuſed to pay for entring the Appearance; whereupon *Ward* ſigned Judgment, and Defendant moved to ſet the ſame aſide. *Per Cur'*: Defendants Attornies muſt pay the Mony charged upon the Iſſue Book, which Plaintiffs Attornies are to receive at their Peril, and therefore Judgment was held to be regular; but the Merits not having been tried was ſet aſide upon Payment of Coſts, pleading the General Iſſue, and taking ſhort Notice of Trial.

Blaxland, an Attorny, *againſt* Burges, Widow.

DEclaration filed *November* 3, Notice and Rule to plead given the ſame Day. *November* 12, a Releaſe pleaded, with a *Profert in Cur'*, and the ſame Day *Oyer* was demanded

demanded by the Plaintiff in Writing. *Nov.* 14, in the Afternoon, Judgment ſigned for want of *Oyer*. Queſtion, Whether Plaintiff could ſign his Judgment, Defendant not having given *Oyer* according to Demand? *Nov.* 26, 1733, Upon this Point all the Judges were of Opinion, that in Caſe Defendant pleads with a *Profert*, and *Oyer* be demanded, and not given in a reaſonable Time, Plaintiff may ſign his Judgment without applying to the Court to ſet aſide the Plea, it being eſteemed as no Plea 'till verified by *Oyer*.

Charlton *againſt* Hankey and another. Hil. 7 Geo. 2.

THE *Capias* was returnable 27th *October* laſt, and Judgment ſigned *November* 7th following. *Chapple* moved to ſet aſide Judgment as ſigned the 12th Day after Return of the Writ, which was one Day too ſoon, Defendant having, by the late Act of Parliament, eight Days to appear after the Return of the Writ, and by the Practice of the Court four Days afterwards to plead: And the Court made a Rule to ſhew Cauſe; whereupon *Darnall* ſhewed for Cauſe, that the Declaration was left in the Office *de bene eſſe* (purſuant to the Rule of Court made in *Michaelmas* Term 3 K. *G.* 2.) on the third *November* and Notice thereof

that

that Day ſerved on Defendant, and a Rule to plead given the ſame Day; and on 7th *November*, Defendant not having appeared, Plaintiff, upon the uſual Affidavit, entered an Appearance for him; and afterwards, the ſame Day, ſigned Judgment, which the Court held to be regular, and diſcharged the former Rule.

Boſanquet *againſt* Rondeau.

THE Writ was returnable in eight Days of St. *Hilary*, *Jan.* 20, and Declaration filed in the Office *de bene eſſe*, *January* 23, and Notice given Defendant that Day, and a Rule to plead given, which was out on *Saturday* 26th of *January*. On *Monday* Morning 28th, Plaintiff entered Defendant's Appearance, and in the Afternoon ſigned Judgment. The Court, upon hearing Council on both Sides, were of Opinion, That by the late Act of Parliament the Defendant hath eight Days to appear after the Return of the Writ, (*viz.*) excluſive of the Return-Day, and therefore ſet aſide the Judgment, the Appearance being entered, and Judgment ſigned one Day too ſoon. *Darnal* for Plaintiff; *Chapple* for Defendant.

Coulſon

Coulſon *againſt* Turnbull and others.

JUdgment was ſigned againſt all the Defendants in a joint Action, though one of them never had Notice either of the Writ or Declaration. *Wynne* and *Wright* moved to ſet aſide the Judgment, and a Rule was made *Niſi*; whereupon *Eyre* ſhewed for Cauſe that a Writ of Inquiry was executed, and therefore the Motion came too late: But *per Cur'*, the Judgment can never be good as to that Defendant who was not ſerved; and therefore the Judgment being joint muſt be ſet aſide as to all.

Amey *and* Garlick. Eaſter 7 Geo. 2.

THIS Action was brought againſt the Defendant as an unmarried Woman: She and her Huſband plead in the following Manner, *to wit*, And *S. H.* and *A.* his Wife, late the ſaid *A. Garlick*, and introduce the Plea with the Marriage, and then ſay that the ſaid *A. Non Aſſumpſit*. Plaintiff ſigned Judgment as if there had been no Plea in the Cauſe, which was ſet aſide upon hearing Council on both Sides. *Chapple* for Plaintiff; *Belfield* for Defendant.

Sedgley

Sedgley *againſt* Weſtbrooke. Trin. 7 & 8 Geo. 2.

THIS was an Action of Debt upon a Judgment. Defendant moved to ſtay the Proceedings pending a Writ of Error, which the Court ordered upon giving Judgment in this Action. A Rule of Court of King's Bench was produced, whereby Proceedings were ſtaid without giving Judgment pending the Writ of Error; but *per Cur'*, the Practice is otherwiſe here.

Camp, Qui tam, &c. *againſt* Gale.

DEfendant moved in Arreſt of Judgment the laſt Day of the Term, but had no Affidavit of Notice of the Motion. The Court made the common Rule to ſtay the Entry of final Judgment till Cauſe ſhewn, but declared, that for the future they would never make a Rule to ſtay upon a Motion in Arreſt of Judgment the laſt Day of a Term without Notice. *Chapple* for Defendant.

Smith *againſt* Randall. Mich. 8 G. 2.

Upon an Iſſue of Nul tiel Record. THIS was an Action upon a Bail-Bond. Defendant pleaded *Comperuit ad diem:* Whereupon this Iſſue was joined, and this (*Novem-*

(*November* 4.) being the Day given for Defendant to bring the Record of the Appearance into Court, he did produce a Record of Bail and Surrender thereupon; but one Perſon only being Bail, it was looked upon as no Bail, and Plaintiff had Judgment. *Hawkins* for Defendant; *Baynes* for Plaintiff.

Paul *againſt* Southouſe.

DEclaration delivered at the Houſe of Defendant's Attorny between 11 and 12 o' Clock at Night held irregular. All Tranſactions of this Sort muſt be before * 8 at Night, as held in *Cooke* againſt *Ibbetſon*, *Trin.* 5 & 6 *Geo.* 2. But it appearing that a Plea was demanded *October* 26. and that Defendant did not move the Court till *Nov.* 7. although Judgment was ſigned *October* 28. Defendant hath not complained in the firſt Inſtance as he ought, and therefore the Rule to ſhew Cauſe why the Judgment ſhould not be ſet aſide was diſcharged. *Belfield* for Plaintiff; *Urlin* for Defendant.

Grey *againſt* Saunders. Hill. 8 Geo. 2.

THE Writ was returnable *tres Mich.* and an Appearance entred by the Plaintiff. The Declaration was left in the Office *November* 9. and Rule to plead then

* *Note*; The Hour was afterwards made 9.

given, Notice of the Declaration filed was ſerved on Defendant *November* 11. Defendant moved laſt Term to ſet aſide the Judgment, and obtained a Rule to ſhew Cauſe, which was made abſolute upon hearing Council on both Sides. The Declaration not being delivered *de bene eſſe* was only well delivered from the Time of Notice, and before that Time no Rule to plead could be given. *Chapple* for Defendant; *Eyre* for Plaintiff.

Belwood *againſt* Chambers, Executrix.

FOUR Judgments had been ſigned againſt the Defendant, who had complained againſt Plaintiff, and Mr. *Rowning* her Attorny, for a vexatious Proceeding in multiplying Suits, and had obtained a Rule for Plaintiff and *Rowning* to ſhew Cauſe why two of the Judgments ſhould not be ſet aſide with Coſts; and upon ſhewing Cauſe, it appeared that the firſt Judgment was after a Verdict ſigned *poſt mortem Defendentis ſecundum Statutum*; the ſecond was an Action of Debt upon the firſt Judgment, wherein Plaintiff recovered *de Bonis Teſtatoris*; the third ſuggeſting a *Devaſtavit*, was a Judgment *de Bonis propriis*; the fourth was in an Action brought upon the third Judgment, wherein Defendant was held to Bail; wherefore it was inſiſted by Plaintiff, that the whole

whole Proceeding was perfectly regular, and that the third Judgment, which was the firſt whereupon Plaintiff could bring an Action of Debt to hold to Bail, was the firſt compleat Judgment. Defendant had brought a Writ of Error; whereupon the ſecond Judgment was affirmed in the Court of King's Bench, and lay by till after the fourth Judgment before ſhe made any Complaint of Irregularity or Vexation, without ever offering any Satisfaction for Plaintiff's Demand. For Defendant it was urged, that a *Devaſtavit* might have been ſuggeſted on the firſt Judgment, and that Multiplying ſo many Suits was vexatious and oppreſſive; and a Caſe was quoted, *Cooper* againſt *Draper*, *Trin.* 5 *Geo.* where the Court had ordered an Attachment againſt Mr. *Welland* the Attorny for loading the Defendant with Action upon Action of Debt upon Judgment. Court were of Opinion, that no Irregularity appeared in the Plaintiff, and that the Proceedings are warranted by Law, if there is any Hardſhip upon Defendant, it is occaſioned by her own ſtanding out, and therefore diſcharged the Rule. *Chapple* for Plaintiff and *Rowning*; *Eyre* for Defendant.

Long

Long *againſt* Lingood.

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*. Defendant moved to ſet aſide the Inquiry for want of due Notice, and inſiſted that this Caſe is not within the Letter of any of the Rules of Court obliging Defendants to take ſhort Notice. A Rule was made to ſhew Cauſe, which was afterwards diſcharged upon hearing Council on both Sides. If this Caſe be not within the Letter of the Rules, it is within their Intention, and is warranted by the conſtant Practice of the Court. *Eyre* for Plaintiff; *Wright* for Defendant.

Warren *againſt* Lapdon. Eaſter 8 G. 2.

In Treſpaſs. THE Plaintiff declared *Quare cum.* *Belfield* moved in Arreſt of Judgment, but no Rule was made, the Court being of Opinion, that though the *cum* in the Count, if it ſtood alone, might be bad, yet the Recital of the Original which goes before helps it. *Clarke* againſt *Lucas*, *Mich.* 2 *Geo.* 2. ſame Caſe, which

which was removed into the King's Bench by Writ of Error, and remains there undetermined.

Jones *againſt* Wilkinſon.

THE Appearance was regularly entred by Plaintiff, and before Judgment Defendant employs an Attorny, and gives Notice thereof to Plaintiff's Attorny. The Queſtion was, Whether it was neceſſary to demand a Plea of Defendant's Attorny before Plaintiff could ſign Judgment, and the Court was of Opinion, that the Appearance being entred by Plaintiff, he ought to go on upon the Act of Parliament, and it is not neceſſary in that Caſe, that a Plea ſhould be demanded. *Darnal* for Defendant; *Comyns* for Plaintiff.

Arden *againſt* Lamley.

PLaintiff's Attorny, after Writ of Error brought, artfully delayed ſigning his final Judgment till the Writ of Error was ſpent, and then brought an Action of Debt upon the Judgment. The Court ordered Proceedings in the Action upon the Judgment to be ſtaid, and a new Writ of Error to be brought at Plaintiff's Attorny's Expence.

Maſon, on the Demiſe of Kendale, *againſt* Hodgſon.

In Ejectment in Com' Staff'. THE Declaration was delivered to the Tenant in Poſſeſſion in *Trinity* Vacation laſt, with Notice to appear in *Hilary* Term then next. The Tenant in *Michaelmas* Term laſt entered an Appearance by his Attorny, but did nothing farther, and four Days after *Hilary* Term the Plaintiff finding no Appearance entered of *Hilary* Term, and no common Rule being entred into or Plea pleaded, ſigned Judgment againſt the Caſual Ejector. The Tenant moved to ſet aſide the Judgment, and on hearing Council on both Sides, the Court was of Opinion that the Judgment was regular, the Appearance ſhould have been entered of the Term mentioned in the Notice; but as the Title had not been tried, the Judgment was ſet aſide upon Payment of Coſts, entering the Appearance of the proper Term, and entering into the common Rule by Conſent. *Birch* for Defendant; *Skinner* for Plaintiff.

Atterbury *againſt* Troward. Trin. 8 & 9 Geo. 2.

A Plea in Abatement pleaded within four Days after the Declaration delivered, without taking the Declaration out of the Office, or paying for the Appearance which was entered by Plaintiff according to the Statute. The Plea was held to be pleaded regularly, and Judgment ſigned for want of a Plea was ſet aſide. *Belfield* for Defendant; *Chapple* for Plaintiff.

Taylor *againſt* Lawſon.

PLEA delivered in the Country held to be bad, though with Notice to ſet off a mutual Debt, which Notice muſt neceſſarily be proved at the Aſſizes by the Perſon that delivered it, with the Plea; but the Plea being delivered the firſt Day of laſt Term, and the Country Attornies both living in the ſame Town, the Judgment was ſet aſide, and Coſts were ordered to attend the Event of the Trial. *Eyre* for Plaintiff; *Chapple* for Defendant.

Haſelfoot *againſt* Duke. Mich. 9 G. 2.

BY Agreement of the Country Attornies the Iſſue was to be delivered in the Country; but being tendered in Town, and not paid for by the Agent, Judgment was ſigned, which was held to be regular, the Agreement being void. *Wright* for Plaintiff; *Eyre* for Defendant. *Vide Elwood* againſt *Elwood, Trin.* 6 & 7 *Geo.* 2.

Craven *againſt* Aiſlabie. The ſame *againſt* Anderton.

A Motion was made to ſet aſide the Judgments in theſe Cauſes, and the Irregularity complained of was, that the Rules to plead were given before Notices of the Declarations being left in the Office were ſerved upon Defendants, the Appearances having been entered by Plaintiff, and the Proceeding upon the Act of Parliament. It appeared that Plaintiff's Attorny finding his Miſtake waived his Judgments, ſtruck out the old, and gave new Rules to plead, and after they were expired, ſigned Judgments again; and the Queſtion was, Whether he could do ſo without Leave of the Court. *Per Cur':* It is only one Entry upon Record in each Cauſe, and the former Judgments appear by the Prothonotary's Book

to

to be ſigned by Miſtake, and the latter are regular. *Eyre* for Plaintiff; *Skinner* for Defendant.

Bray *againſt* Booth.

DEFENDANT pleaded a Tender, but brought no Mony into Court; gave a Rule to reply, and for want of a Replication ſigned a *Non-pros.* Plaintiff looked upon the Plea as a Nullity, the Mony not being brought into Court, and ſigned Judgment after the *Non-pros* obtained, and now moved to ſet aſide the *Non-pros.* Defendant moved to ſet aſide the Judgment, inſiſting that Plaintiff could not regularly ſign Judgment till the *Non-pros* was ſet aſide; and of that Opinion was Sir *George Cooke*, but the two other Prothonotaries reported the Practice contrary; and the Court was of Opinion that the *Non-pros* not being rightly obtained, Plaintiff might proceed in the ſame Manner as he might have done in caſe ſuch *Non-pros* was not ſigned; and conſequently the Judgment is regular, and muſt ſtand; and the *Non-pros* being irregular muſt be ſet aſide. *Glyde* for Defendant; *Wright* for Plaintiff.

Lane *againſt* Smith. Mich. 10 Geo. 2.

AFTER Defendant had procured Time to plead by a Judge's Order, pleading an iſſuable Plea, he pleaded a Tender as to Part, and *Non aſſumpſit* as to the Reſidue. Plaintiff looked upon the Plea as a Nullity, and ſigned Judgment. It was urged that Plaintiff had taken the Plea out of the Office, which was an Acceptance of it; but *per Cur'*, the Plea is a Nullity, and Judgment is regular. *Skinner* for Defendant; *Agar* for Plaintiff.

Whitehead *againſt* Shaw. The ſame *againſt* Whitfield.

A Judge's Summons for Time to plead was taken out and ſerved after the Rule for pleading expired, notwithſtanding which Plaintiff's Attorny ſigned Judgment, which was held to be regular. A Judge's Summons regularly obtained is a Stay of Proceedings till diſcharged, or other Order made thereupon; but it is an Abuſe upon the Judge to apply for his Summons after Rule to plead expired, when no Summons ought to be granted; and therefore this Summons unduly obtained is no Stay of Proceedings. *Wright* for Plaintiff; *Bootle* for Defendant.

Leaver

Leaver *againſt* Whitcher. Hil. 10 G. 2.

PLaintiff having regularly ſigned Judgment, Defendant obtained a Rule to ſet it aſide on Payment of Coſts, pleading an iſſuable Plea, *&c.* Defendant afterwards pleaded the Statute of Limitation, and Plaintiff moved to ſet the Plea aſide. A Rule was granted to ſhew Cauſe, and made abſolute. The Court never give Leave to plead this Plea after a regular Judgment ſigned. Defendant muſt be bound to plead the General Iſſue, unleſs in caſe of a fair and honeſt Defence, where a Juſtification is abſolutely neceſſary. *Hawkins* and *Wright* for Plaintiff; *Draper* for Defendant.

Rolt *againſt* Way. Eaſter 10 Geo. 2.

PLaintiff's Attorny ſent a Copy of the Iſſue to the Chambers of Defendant's Attorny in *Clifford's Inn*, on a *Friday*, when Defendant's Attorny and his Clerk were in *Southwark* attending the *Marſhal's Court*. The Porter of the Inn was left in the Chambers, to whom the Iſſue-Book was tendered, and the Mony charged thereon demanded, and he not paying the ſame, Judgment was ſigned, which was held regular, but was ſet aſide on Payment of Coſts, *&c.* Attornies muſt leave proper Perſons at their Cham-

bers to do their Buſineſs in their Abſence. *Skinner* for Defendant; *Comyns* for Plaintiff.

Fen, on the Demiſe of Sawell, *againſt* Jolly and others.

In Ejectment. DEfendants appeared, pleaded and entered into the common Rule by Conſent, but their Attorny neglecting to pay for the Iſſue-Book, Judgment was ſigned againſt *Den* the Caſual Ejector. This Judgment was ſet aſide as irregular. Plaintiff might have ſigned Judgment againſt Defendants, who had appeared, for Non-payment of the Mony for the Iſſue-Book, but not againſt the Caſual Ejector. *Chapple* and *Urlin* for Defendant; *Prime* for Plaintiff.

Ottiwell *againſt* D'Aeth. Trin. 10 & 11 Geo. 2.

AFTER Rule to plead expired, Defendant obtained and ſerved a Judge's Summons for Time to plead. Plaintiff's Attorny, notwithſtanding the Summons, ſigned Judgment. Defendant moved to ſet aſide the Judgment, and on ſhewing Cauſe the Court held the Judgment to be regular. A Summons for Time after Rule to plead expired is not a *Superſedeas* or Stay of Proceedings. The Judge was impoſed upon, he would

would not have granted the Summons, had he known the Rule was out. The Judgment is regular, but was ſet aſide on Payment of Coſts, pleading the General Iſſue, and taking ſhort Notice of Trial. *Price* for Defendant; *Belfield* for Plaintiff.

Simpſon *againſt* Daffield, Adminiſtrator, on Bond, Mich. 11 G. 2.

DEclaration was delivered with Blanks, and Rule to plead given *October* 24. The 26th Blanks were filled up, and Defendant at the ſame Time demanded Oyer of the Bond. The 27th at Eight in the Evening Oyer was given, and Plea demanded, and 28th Judgment was ſigned, which was held irregular, and ſet aſide. Defendant ought to have the ſame Time to plead after Oyer given as remained unexpired of the Rule to plead at the Time of Oyer demanded. *Agar* for Defendant; *Skinner* for Plaintiff.

Lovell *againſt* Dyer.

DEfendant before laſt Aſſizes obtained a Judge's Order for Time to plead, pleading an iſſuable Plea, and taking ſhort Notice of Trial, but did not plead to Iſſue, and for want thereof Plaintiff ſigned Judgment. Defendant moved to ſet aſide the Judgment, pleading

pleading to Iſſue, and paying Coſts, and obtained a Rule to ſhew Cauſe, which was diſcharged, Plaintiff having loſt the Benefit of laſt Aſſizes. *Draper* for Plaintiff; *Gapper* for Defendant.

Craven *againſt* Hanley.

THIS was an Action of Treſpaſs, whereto Defendant pleaded a bad Juſtification. Plaintiff took Iſſue, and Defendant obtained a Verdict. Plaintiff moved in Arreſt of Judgment, and the Court heard Council on both Sides ſeveral Times, and took Time to conſider, and in *Eaſter* Term laſt made a Rule to ſtay the Entry of Judgment on Defendant's Verdict, and that Plaintiff ſhould have Leave to ſign Judgment, the Treſpaſs being confeſſed by the Plea. Pending the Conſideration of the Court, Defendant died, and laſt Term Plaintiff obtained a Rule for Defendant's Executor to ſhew Cauſe why he ſhould not enter Judgment *nunc pro tunc*, which Rule was made abſolute. It was urged for Defendant's Executor, that Plaintiff hath delayed himſelf. He was to blame in joining an immaterial Iſſue; but *per Cur'*, the Party muſt not ſuffer by the Court's taking Time to conſider. *Eyre* for Plaintiff; *Parker* for Executor of Defendant. *Baller* againſt *Delander*, *Trin.* 1 *Geo. in B. R. Taylor* againſt *Mathews*, *Hil.* 2 *Geo. in B. R.*

Browne

Browne *againſt* Godfrey.

DEfendant's Attorny took out a Summons from Mr. Juſtice *Forteſcue* for Time to plead in the Beginning of *Trinity* Vacation laſt, and attended thereon. Plaintiff's Attorny did not attend, and before the Summons was renewed or diſcharged ſigned Judgment. Defendant's Attorny offered to plead iſſuably, and take Notice of Trial Time enough for Plaintiff to have tried his Cauſe at laſt Aſſizes; but Plaintiff refuſed to accept the Plea, and inſiſted on his Judgment. *Per Cur':* The Judgment ſigned without diſcharging the Summons is irregular, and muſt be ſet aſide. *Eyre* for Defendant; *Parker* for Plaintiff.

Grimes *againſt* Cleaver.

HELD *per Cur'*, that though Judgment be irregular, Defendant cannot move to ſet it aſide, unleſs the Motion be made two Days before the Day appointed for the Execution of the Writ of Inquiry of Damages, (according to the Report of Prothonotary *Thomſon*, who quoted *Smith* againſt *Jenks*, *Hil.* 5 *Geo.* 2.) the Irregularity complain'd of being a Defect in the Notice of Declaration ſerved on Defendant, after Appearance enter'd by Plaintiff according to the Statute.

If the Irregularity be in the Notice ſubſcribed to the Copy of Proceſs, the Motion muſt be made before Judgment ſigned; if in the Notice of Declaration, two Days before the Time appointed for the Execution of the Writ of Inquiry.

Prudhoe *againſt* Armſtrong. Hil. 11 Geo. 2.

DEfendant prevailed to ſet aſide a regular Judgment on Payment of Coſts; and preſſed to be let in to plead a Special Juſtification; but Plaintiff having been delayed an Aſſizes, the Court confin'd Defendant to plead the General Iſſue.

Roundell *againſt* Powell.

BOOTLE moved for Leave to enter Judgment upon an old Warrant of Attorny, on Affidavit that Defendant, who reſided at *Jamaica*, was living and in good Health, and had been ſeen and convers'd with there by the Perſon who made the Affidavit on 13th *September* laſt. He ſailed from *Jamaica* very ſoon afterwards, and arrived at *London* 15th *January* following. Motion was granted.

Wallace

Wallace *againſt* Willington.

STILLINGFLEET, Agent for *Worrall*, Plaintiff's Attorny, gave *Wilmot*, Defendant's Agent, Time to plead; after which *Worrall* comes to Town himſelf, calls upon *Wilmot* for a Plea, and for want thereof ſigns Judgment before the Time given by *Stillingfleet* was expired. This Judgment was held irregular, and ſet aſide; all Matters of this Sort are to be tranſacted by the Agents in Town, and not by Country Attornies. *Bootle* for Defendant; *Birch* for Plaintiff.

Stafford *againſt* Little.

THIS was an Action upon the Caſe on a Promiſſory Note, whereto Defendant pleaded *Nil debet*; Plaintiff looked on the Plea as a Nullity, and ſigned Judgment for want of a Plea; which the Court held to be regular.

Evans *againſt* Tillam.

CApias ret' Octab' Hilar'. Declaration left in the Office *January* 23, and Rule to plead given; the 30th Plaintiff entered Appearance by Affidavit, and 31ſt ſigned Judgment. The Objection to the Regularity of the Judgment was, that no Indorſement

was

was made on the Copy of the Declaration left in the Office, ſignifying that it was left conditionally, or *de bene eſſe*. Judgment ſet aſide without Coſts.

Oſborne *againſt* Haddock. Eaſter 11 Geo. 2.

MOTION made by *Skinner* againſt Judgment for Plaintiff upon the Iſſue of *Nul tiel Record*. The Caſe was, Plaintiff had miſtaken *Commorancy* in his Declaration: Defendant had pleaded in Abatement, and annexed Affidavit of the Truth of his Plea. Plaintiff brought a new Action, and Defendant pleaded the former Action depending, upon which Plaintiff of his own Head, without Leave of the Court, entered a *Nil capiat per breve*. The Officers were aſked their Opinions, who all agreed it to be conſtant Practice, and the Court allowed it: But then another Queſtion aroſe, Whether Plaintiff could have made ſuch an Entry in Caſe the firſt Plea had not been in Abatement, *Borrett* and *Thomſon* ſaid it was confined to Abatement; but *Cooke* thought it might be in all Caſes. The Court ſaid it was impoſſible to be ſo, and held it confined to Abatement. *Skinner* and *Agar* for Defendant; *Draper* for Plaintiff.

The

The King *againſt* Firebrace, Bart. and others, in Deceit, for ſuffering a Common Recovery of Lands in Havering atte-bower Com' Eſſex, being Ancient Demeſne, whereof the King is now ſeiſed. Mich. 12 Geo. 2.

DEfendants confeſs the Action, and the King's Attorny remits the Damages, and prays Judgment, as appears by the Record now read. *Comyns* moved *ex parte Regis* for Judgment, and the Court gave Judgment *Niſi Cauſa*; and no Cauſe being ſhewn, Judgment was entered. The ſame Caſe *Mich.* 3 *Geo.* 2. *The King* againſt *Comyns.*

Darlow *againſt* the late Duke of Wharton. Hil. 12 Geo. 2.

MOTION by *Agar* to enter Satisfaction on the Record of Judgment in Plaintiff's Name, *nunc pro tunc*, Plaintiff being dead, after executing a Warrant of Attorny to acknowledge Satisfaction, and his Adminiſtrator become Lunatick, as appear'd by the Affidavit of a Phyſician, who attended her. The Court made a Rule upon the late Duke's Truſtees

Truſtees to ſhew Cauſe, which on Affidavit of Service was made abſolute.

The King *againſt* Willis.

DEfendant was reported to have fully anſwered ſome of the Interrogatories, and to be in Contempt as to others; and being brought into Court to receive Judgment, the Queſtion was, Whether all the Affidavits in a Cauſe, *Lane* againſt *Jones*, containing the whole Charge againſt Defendant, ought to be now read, or only ſuch of them as relate to that Part of the Charge, which Defendant, on his Examination, hath fully anſwered. The three Prothonotaries reported, that Defendant being in Contempt, his Examination goes for nothing, and Affidavits containing the whole Charge were read.

Webb, Adminiſtrator of Ruſſell, *againſt* Spurrell. Eaſter 12 Geo. 2.

THIS was an Action of Debt on Judgment, and *Nul tiel Record* pleaded. The Caſe was, Action between *Ruſſel* againſt *Spurrell* tried *Trin.* 10 *Geo.* 2. 1736. and final Judgment ſigned on the *Poſtea* that Vacation, *viz. October* 19, when the *Poſtea* was taken away by Plaintiff's Attorny, and not brought back to the Office to have the Judg-

Judgment entered 'till a few Days before the Motion. It appeared by Affidavit, that *Ruſſel* died in *Auguſt* 1736. And *Draper* for Defendant moved upon Stat. 18 *Car.* 2. *cap.* 8. to ſtay the Entry of Judgment, Plaintiff's Repreſentative being bound by the ſaid Statute to enter it within two Terms after Plaintiff's Death, and this Judgment is not entered yet. Rule obtained to ſhew Cauſe. *Prime* for Plaintiff urged, that the Fee to the Clerk of the Judgments for entring Judgment was paid at the Time of Signing, and the Party may have the Entry made at any Time; that the Judgment muſt be look'd upon as actually entered from the Time of Signing. The Rule enlarged. *Per Cur'*: This Practice may be of dangerous Conſequence. Purchaſers, *&c.* ſhould not be put to ſearch Prothonotaries Books for Minutes of Judgments ſigned, it ought to be ſufficient for them to have Recourſe to the Record. Let a General Rule be drawn up, that after the firſt Day of next Term all *Poſteas* and Inquiſitions, whereon final Judgments are ſigned, be left with the Prothonotaries in order that the Judgments may be immediately entered.

Turner *againſt* Williams.

DEfendant pleaded by an Attorny of another Court, and Plaintiff looking upon the Plea as a Nullity, ſign'd Judgment, which was held to be regular; and the Rule to ſhew Cauſe why the Judgment ſhould not be ſet aſide was diſcharged. *Belfield* for Plaintiff; *Hayward* for Defendant.

Wentworth, Bart. *againſt* Huſtler, Widow. Trin. 13 Geo. 2.

In Waſte. PLaintiff gave a common Rule to plead, and at the Expiration thereof, without giving a peremptory Rule, ſign'd Judgment. Defendant mov'd to ſet the Judgment aſide, inſiſting that a peremptory Rule ought to have been given as in a Real Action; and of this Opinion were the Court. The Place waſted, as well as Damages, being to be recovered in the Action by the Statute of *Glouc'*, *cap.* 5. In Mix'd Actions a peremptory Rule is neceſſary, as well as in Real Actions (except Replevin) and the Judgment was ſet aſide without Coſts. *Draper* for Tenant; *Skinner* for Demandant.

Cruſe

Cruſe *againſt* Williams, Adminiſtrator. Hil. 13 Geo. 2.

A Regular Judgment was ſet aſide upon Payment of Coſts, (Plaintiff not having been delayed of a Trial) and pleading *Plene adminiſtravit*, which (Defendant being an Adminiſtrator) was deemed as the General Iſſue. *Huſſey* for Defendant; *Belfield* for Plaintiff.

Curd *againſt* Eaſtmead.

In Ejectment. CAUSE tried at *Summer* Aſſizes, 1739, in *Kent*, *Oct.* 27 *ult.* Defendant allowed a Writ of Error, and ſerved Plaintiff's Attorny with Notice of the Allowance. Writ of Error returnable 15 *Martini*. Judgment not ſigned till after the Return, *viz.* *Dec.* 26. and then Plaintiff takes Poſſeſſion. The Writ of *Habere facias poſſeſſionem* was held to be irregular, and was ſet aſide, and Poſſeſſion ordered to be reſtored. Plaintiff's Attorny ordered to pay Coſts, and by Conſent no Action to be brought; the Judgment being of *Michaelmas* Term is affected by the Writ of Error. *Eyre* for Plaintiff; *Agar* for Defendant.

Jurisdiction.

Matthews *againſt* Holtam. Mich. 6 Geo. 2.

THIS was an Action of Debt brought for 20*s.* for a Year's Rent: The Damages were laid 100*s.* A Motion was made to ſtay the Proceedings, becauſe the Action was beneath the Jurisdiction of the Court; but the Court refuſed to make any Rule, the Damages being laid as before-mentioned.

Downes *againſt* Nichols. Mich. 12 Geo. 2.

BIRCH moved to ſtay Proceedings, for that Plaintiff's Demand was only 6*s.* 6*d.* which by Affidavit appear'd, but did not produce Declaration. *Cur':* No Rule, becauſe we never try the *Quantum* of Plaintiff's Demand by Affidavit.

Mony, Goods, &c. brought into Court.

Anonymous. Mich. 6 Geo. 2.

PER *Cur'*: Mony may be paid into Court upon the common Rule after Rule to plead is out, at any Time before Plea pleaded.

Knapton *againſt* Drew.

MOTION was made upon an Affidavit that Defendant was dead; that 10*l.* formerly paid into Court upon the common Rule, might be paid out to his Executors. Denied *per Cur'*.

Bryan, Executor, *againſt* Holloway. Hil. 6 Geo. 2.

UPON the common Motion to bring Principal, Intereſt and Coſts into Court, and refer to Prothonotary, the Court refuſed to grant the Rule, Plaintiff being an Executor; but ſaid, Plaintiff might be willing to accept the Debt and Coſts, and therefore they would grant a Rule to ſhew Cauſe.

Dixon *againſt* Allen. Trin. 7 & 8 G. 2.

DEfendant moved to pay 3*l.* into Court in Debt for Rent, and plead *Nil debet*. *Per Cur'*: Be it ſo, 'tis common Practice. *Hawkins.*

Satterthwaite, and his Wife Adminiſtratrix, *againſt* Watford. Hil. 8 Geo. 2.

SKINNER moved to diſcharge a Rule to pay Mony into Court, which was drawn up in common Form, without diſtinguiſhing that Plaintiffs ſued as Adminiſtrators; and the Motion was granted.

Savage *againſt* Francklyn.

DEfendant brought Mony into Court upon the common Rule (Plaintiff refuſing to accept the ſame) and pleaded the General Iſſue. Plaintiff joined and delivered the Iſſue Book, with Notice of Trial: Plaintiff did not proceed farther, but moved to have the Mony out of Court, with Coſts to the Time of bringing the Mony into Court, which was ordered upon Plaintiff's Payment of Coſts to Defendant ſubſequent to the Time of bringing the Mony into Court.

Anony-

Anonymous.

MONY was paid into Court by Defendant upon the common Rule: Plaintiff proceeded to Trial, and recovered a ſmaller Sum than that paid into Court. Moved in the *Treaſury*, that Defendant might have the Mony out of Court towards his Coſts, and ordered, upon hearing the Attornies on both Sides.

Crockay *againſt* Martin. Eaſter 9 G. 2.

A Sum of Mony having been paid into Court by Defendant upon the common Rule; and Plaintiff dying before Trial, Defendant moved to have the Mony paid back to him; but the Court were of Opinion that the Mony being paid into Court for Plaintiff's Uſe, ought not to be paid back to Defendant. Vide *Knapton* againſt *Drew. Mich.* 6 *Geo.* 2. The Court have not yet gone ſo far as to order Payment to Plaintiff's Executor, but it ſeems reaſonable if the Executor be willing to accept the Mony paid into Court; and after Trial 'tis plain Executor is intitled to the Mony paid into Court, though a ſmaller Sum be recovered; had Plaintiff lived, and refuſed to accept the Sum paid into Court, and been nonſuited upon the Trial, yet Defendant could not

have the Mony back out of Court, Plaintiff being intitled thereto in all Events, as determined in *Lane* and *Wilkinſon* in the *Treaſury*. *Mich.* 1 *Geo.* 2.

Cooke *againſt* Holgate. Trin. 10 G. 2.

In Trover. DRAPER moved for Defendant to bring the Goods ſpecified in the Declaration into Court; but the Goods being ponderous the Motion was denied. *Per Cur':* Let the Plaintiff ſhew Cauſe why he ſhould not conſent to accept the Goods and Coſts.

Straphon *againſt* Thompſon. Hil. 11 Geo. 2.

A Rule to pay 1*l.* 11*s.* 6*d.* into Court was diſcharged, the Mony not having been paid in till after Plea pleaded. *Skinner* for Plaintiff; *Eyre* for Defendant.

Burgeſs *againſt* Pollamounter. Mich. 12 Geo. 2.

BELFIELD moved to ſet aſide regular Judgment on Payment of Coſts, pleading General Iſſue, *&c.* and aſked for Leave to pay Mony into Court on the common Rule. Denied. *Per Cur':* Mony cannot be ſo brought in after regular Judgment.

White

White *againſt* Daman.

In Debt for Rent. RULE to ſhew Cauſe why Defendant ſhould not bring Mony into Court upon the common Rule, and plead *Nil debet* made abſolute. *Belfield* for Plaintiff; *Draper* for Defendant. The ſame Caſe *Dixon* againſt *Allen*, *Trin.* 7 & 8 *Geo.* 2. *Note*; The Practice is the ſame in Covenant for Non-payment of Rent.

Davies *againſt* Manſell, Bart. Hil. 13 Geo. 2.

DEfendant paid Mony into Court upon the common Rule, which Plaintiff refuſed to accept, and delivered an Iſſue with Notice of Trial. Plaintiff afterwards declined proceeding to Trial, and moved that he might have the Mony with Coſts to the Time of the Rule for Payment into Court, conſenting to allow Defendant ſubſequent Coſts, and obtained a Rule to ſhew Cauſe, which was made abſolute on hearing Council on both Sides. *Prime* for Plaintiff; *Hayward* for Defendant. Vide *Savage* againſt *Franklin*, *Hil.* 8 *Geo.* 2.

Swan *againſt* Freeman.

DEfendant laſt Term paid 2 *l.* 12 *s.* into Court upon the common Rule, which Plaintiff refuſed to accept, and joined Iſſue. This Term Defendant applies to increaſe the Sum, and obtains a Rule to ſhew Cauſe why the common Rule ſhould not be altered, and the Sum made 7 *l.* 12 *s.* inſtead of 2 *l.* 12 *s.* The Rule to ſhew Cauſe was diſcharged. 'Tis a Subterfuge to try if Plaintiff will accept a ſmaller Sum than due, and if not, to pay more Mony into Court, which cannot be done after Iſſue joined. *Bootle* for Plaintiff; *Agar* for Defendant.

Mutual Debts.

Brown *againſt* Holyoak. Eaſt. 7 G. 2.

THIS was an Action of Debt for Rent upon a Parol Leaſe: Defendant had by his Plea ſet off a Debt by Simple Contract; to which Plaintiff demurr'd. *Per Cur':* A Debt of an inferior Nature cannot be ſet off againſt a ſuperior Demand*. Judgment for the Plaintiff. Debt for Rent is equal to an Action upon a Bond. *Eyre* for Plaintiff; *Chapple* for Defendant.

Gowe

* The Law is ſince altered by Act of Parliament.

Gower and his Wife *againſt* Hunt. Mich. 8 Geo. 2.

THIS was an Action of Covenant brought upon Indenture for Non-payment of Rent. Defendant pleaded *Non eſt factum*, and gave Notice upon his Plea to ſet off ſeveral Sums due to him upon Covenants in the ſame Deed for ſpurring up Land at a certain Sum *per* Acre: The Queſtion was, Whether upon this Plea Defendant could give in Evidence his Demand, by Virtue of the late Act of Parliament. Mr. Juſtice *Denton*, who tried the Cauſe at the laſt Aſſizes for *Suffolk*, being of Opinion he could not upon this Iſſue. It was urged for Defendant, that his Debt is a certain Demand, for which he might have brought an Action of Debt, and that the Debts are mutual, of the ſame Nature and Degree, and both Debts ariſe upon the ſame Contract, that the Plea is a General Iſſue, and that thereupon a Bond might have been ſet off againſt a Bond; and therefore this is a Caſe within the Nature and Meaning of the Act. On the other Side, it was inſiſted, that Defendant's Plea is intirely inconſiſtent; he denies the Deed, and at the ſame Time makes a Demand under it; he might have pleaded a General Iſſue without denying the Deed, or might have pleaded the Matter ſpecially. Court, upon Motions

to

to plead double, never give Leave to plead contradictory Matters. *Cur' aaviſ'.*

Gower and his Wife *againſt* Hunt. Eaſter 8 Geo. 2.

PER *Cur':* The Evidence offered to be given by Defendant, ought to have been received at the Trial, being to ſet off a certain Debt of equal Degree with the Plaintiff's Demand; the General Iſſue muſt be underſtood to be any General Iſſue. A new Trial was ordered. *Vide* this Caſe in *Michaelmas* Term laſt.

Notice and Countermand.

Bartholomew, Un' &c. *againſt* Goulding. Mich. 6 Geo. 2.

PLaintiff having appeared for Defendant purſuant to the late Act of Parliament, left a Declaration in the Office in *Eaſter* Term, and in *Trinity* Term gave Notice thereof to Defendant, and for want of a Plea ſigned Judgment. Defendant applied to the Court within *Trinity* Term to ſet aſide the Judgment, the Nature of the Action being omitted in the Notice, and on hearing Council on both Sides, the Judgment was ſet aſide.

In

In *Michaelmas* Term following Plaintiff gave new Notice of the Declaration, and ſigned a ſecond Judgment. The Defendant applied again to the Court to ſet that Judgment aſide, inſiſting that the Declaration was well delivered from the Time of ſerving the ſecond Notice only, and that the Writ being returnable in *Eaſter* Term laſt, the Declaration was delivered too late, and the Plaintiff muſt begin again; and the Court were of that Opinion, and ordered the ſecond Judgment to be ſet aſide.

Geale *againſt* Chapman. Eaſter 6 G. 2.

THE Proceedings had ſtaid for Twelve Months, and Plaintiff afterwards, *viz.* on the Day before the firſt Day of laſt Term, gave Notice of Trial for the laſt Aſſizes. Defendant moved to ſet aſide the Verdict for want of a Term's Notice, and obtained a Rule *Niſi*, which was afterwards made abſolute by the Court on hearing Council on both Sides, becauſe the Notice not being given before the Eſſoin-Day of laſt Term was inſufficient.

Alſop *againſt* Bagott.

A Queſtion aroſe upon the late Act of Parliament touching Notice to be given upon the Copy of Proceſs, Whether the Day

to

to be expreſſed in the Notice muſt be the Eſſoin-Day or the Appearance-Day. In this Caſe Notice was given for the Appearance-Day, which the Court held to be good. This Motion was after Judgment; but the Merits not having been tried, a Rule was made to ſhew Cauſe why the Judgment ſhould not be ſet aſide upon Payment of Coſts, but no Cauſe was ever ſhewn. (*Aliter poſtea.*)

Boyes *againſt* Twiſt, and others. Trin. 6 & 7 Geo. 2.

NOTICE of Trial for the laſt Sitting within *Eaſter* Term was continued till the Sitting after that Term, and afterwards continued till the firſt Sitting within this Term. Defendant urged, that the Notice could not be regularly continued a ſecond Time, and having made no Defence, moved for a new Trial, and obtained a Rule *Niſi.* Upon ſhewing Cauſe, Court was of Opinion that Plaintiff cannot continue his Notice ſecond Time, that is, he ſhall give ſhort Notice but once; but this Notice is objected to only becauſe it is a Continuance, the full Time is given by it; and had the Word *continue* been out, Defendant agrees the Notice would be good; that Word ſhall not vitiate the Notice, the full Time being given, eſpecially as it is ſworn by *Jones* (Plaintiff's Attorny) that *Townſend* (Defendant's Attorny) requeſt-

requeſted him after laſt Term to continue the Notice till this Term. Rule diſcharged, but by Conſent Verdict was ſet aſide upon Payment of Coſts, giving Judgment in Debt, and taking Notice of Trial within Term. *Chapple* and *Comyns* for Plaintiff; *Eyre* for Defendant.

Alſop *againſt* Nichols.

A Queſtion did ariſe, Whether the Day to be inſerted in the *Engliſh* Notice to appear upon Proceſs purſuant to the late Act of Parliament, ſhould be the Eſſoin-Day of the Return, or the *quarto die poſt*. Court held that it muſt be the Eſſoin-Day, which in this Court is the Return-Day, and not the *quarto die poſt*, which is only a Day of Grace. *Hawkins* cited ſeveral Caſes to this Purpoſe. *Dyer* 269. *pl.* 21. *Co. Litt.* 135. *Finch* 427. *Carth.* 172. 3 *Syderfin* 229. *Salk.* 626. *pl.* 8. *Harvey* and *Broad*, *pl.* 9. *Davis* and *Salter*.

Langſtaffe *againſt* Lamb. Mich. 7 G. 2.

NOTICE of the Execution of a Writ of Inquiry of Damages was given for a particular Day, but no Hour was mentioned. Defendant moved to ſet it aſide, and obtained a Rule *Niſi*. Plaintiff, on ſhewing Cauſe, ſwore that Defendant after the Notice

tice given had declared he would make no Defence. Court was of Opinion, that this was not ſufficient to make the Notice good, and therefore ſet aſide the Inquiry, but without Coſts.

Kingdon *againſt* Horn and Froſt.

THIS Action was brought againſt Defendants upon a joint promiſſory Note. Appearance was entred by Plaintiff upon the Act of Parliament, and Notice of the Declaration given to one of the Defendants only. *Per Cur':* Held to be bad, and Proceedings ſtaid. *Glyde* for Defendants; *Wright* for Plaintiff.

Jenner *againſt* Oatridge. Hil. 7 Geo. 2.

BAYNES moved to ſtay the Proceedings, the Writ being returnable in eight Days from St. *Hilary*, and the Notice being to appear on *Sunday January* 20. *Per Cur': The Sunday is the true Day of the Return*, and therefore it is as it ought to be.

Anonymous.

A Motion was made in the Treaſury to amend a Notice to ſet off a Debt according to the late Act of Parliament, but the Judges declared it could not be done.

Notices of this Kind are in this reſpect like Notices of Trial, *&c.* which never were amended by the Court.

Green *againſt* Watkins.

UPON hearing Council on both Sides, and after taking Time to conſider, the Court were of Opinion that a Notice to appear on *Monday January* 21. as the Return-Day of *Oct. Hil.* was bad; it ought to have been to appear on the 20th, which, although *it be Sunday, is the true Day of the Return. Girdler* for Plaintiff; *Glyde* for Defendant.

Jenner *againſt* Williamſon.

SAME Determination. *Eyre* for Defendant; *Corbett* for Plaintiff.

Paul *againſt* Gledhill.

JUdgment was ſigned in *Eaſter* Term the 4th of his preſent Majeſty, and a Writ of Enquiry of Damage executed laſt *Michaelmas* Vacation on eight Days Notice. *Birch* for Defendant moved to ſet it aſide for want of a Term's Notice; Plaintiff having lain ſtill above 12 Months; and upon hearing *Chapple* and *Eyre* for the Plaintiff, the Court ſet aſide the Writ of Inquiry for

want of due Notice. In all Caſes where Proceedings have ſtaid above 12 Months, whether as to Pleadings or Notices, a whole Term's Notice muſt be given.

Hannaford *againſt* Holman. Eaſter 7 Geo. 2.

NOTICE of the Declaration being left in the Office was without Date, and Notice of the Execution of the Writ of Inquiry was at Ten in the Forenoon, or as ſoon after as the Sheriff could attend. The Court, upon hearing Council on both Sides, held both Notices bad, and therefore ſet aſide the Judgment and Inquiry. *Chapple* for Plaintiff; *Eyre* for Defendant.

Lloyd *againſt* Beeſton.

THE Writ was returnable *quinden' Paſchæ* ſerved with Notice to appear on *April* 28. which was *Sunday*. *Chapple* moved to ſtay Proceedings; but *per Cur'*, the Day in the Notice is the true Day of Return. No Rule.

Foſter *againſt* Smales.

THE Notice of the Time of executing the Inquiry was between Ten and Two, which the Court thought too uncertain,

tain, and made a Rule to ſhew Cauſe why the Inquiry ſhould not be ſet aſide. *Urlin.*

Williams *againſt* Jones.

THIS was an Action of Aſſault and Battery, to which Defendant had pleaded *ſon Aſſault Demeſne*; whereto Plaintiff replied *De Injuria ſua propria*, and Iſſue was joined in *Michaelmas* Term laſt. Plaintiff gave Notice of Trial for the Sitting after *Michaelmas* Term, and countermanded, and again for the ſecond Sitting within *Hilary* Term, and countermanded; whereupon Defendant gave a Rule to enter the Iſſue, and tried the Cauſe by Proviſo the Sitting after *Hilary* Term, and the Plaintiff not appearing at the Trial was nonſuited. Plaintiff moved to ſet aſide the Nonſuit as irregular, ſuggeſting that Defendant could not regularly try the Cauſe by Proviſo till *Eaſter* Term; but that being ruled againſt him, he prayed the Nonſuit might be ſet aſide upon Payment of Coſts; but the Proof being upon the Defendant, and his Witneſſes having been examined at the Trial, Court refuſed to make any Rule.

Jemmett *againſt* Voyer. Trin. 7 & 8 Geo. 2.

PRoceſs was ſerved *May* 14. and Declaration delivered *June* 8. Defendant moved to ſtay the Proceedings, the true Day of Return, which was *quinque Paſchæ May* 19. not being inſerted in the Notice, but the Day after. The Queſtion was, Whether Defendant was too late to move to ſtay the Proceedings. Court were of Opinion, that as he came before interlocutory Judgment ſigned, he came in due Time, and made a Rule to ſtay Proceedings. *Birch* for Defendant; *Baynes* for Plaintiff.

Dixon *againſt* Fenner.

IN an Action of Debt upon a Bond, Defendant pleads Payment. Plaintiff replies, and tenders an Iſſue. Defendant demurs. *Chapple* moved after the laſt Paper-Day to put the Cauſe into the Paper to be argued, and obtained a Rule. Upon the Day of Argument *Birch* objected, that the Cauſe was irregularly ſet down, and the Plaintiff had given Notice of Trial for the Sitting after Term. Court diſcharged the Rule for ſetting down the Cauſe on Payment of Coſts; Defendant conſenting that the Plaintiff might proceed to Trial accord-

according to Notice at the Sitting after Term.

Robinſon *againſt* Philips.

THE Queſtion was, Whether Notice of executing the Inquiry between Eleven and Two was good. *Cur'*: We have held it to be confined within two Hours at moſt, and therefore the Notice is irregular. Shew Cauſe.

Gorman *againſt* Boyle. Mich. 8 G. 2.

EIGHT Days Notice of Trial was held to be bad, and the Verdict obtained by Plaintiff without Defence was ſet aſide, the Place of Defendant's Abode being in *Ireland.*

Price *againſt* Bambridge, an Attorny.

NOTICE of the Execution of the Writ of Inquiry was twice continued. Court held the ſecond Continuance bad. A Notice can be continued but once. The firſt Continuance was alſo bad, not being ſerved till within an Hour before the Time appointed for the Execution of the Writ of Inquiry; it ſhould have been ſerved two Days before. *Chapple* for Defendant; *Skinner* for Plaintiff.

Squire *againſt* Almond. Hil. 8 G. 2.

NOTICE was given to execute a Writ of Inquiry of Damages at the Sheriff's Office in *Northampton* between the Hours of Ten and Two. Upon hearing Council on both Sides, the Court was of Opinion that the Notice was bad both as to Place and Time. It ſhould have been expreſſed at what Sign, or whoſe Houſe the Sheriff's Office was kept, and the Time is too extenſive, which ought to be confined to two Hours. The Writ of Inquiry and Inquiſition taken thereupon were ſet aſide. *Skinner* for Defendant; *Eyre* for Plaintiff.

Jacob *againſt* Marſh. Eaſt. 8 G. 2.

PROPER Notice of Trial was given and countermanded. A ſecond Notice of Trial was given, but therein the Name of the Cauſe was omitted. The ſecond Notice was afterwards continued, and the Name of the Cauſe inſerted in the Continuance; and thereupon the Cauſe was tried. The Court was of Opinion, that the ſecond Notice being bad, could not be help'd by the Continuance, and ſet aſide the Verdict.

Chanklin

Chanklin *againſt* J'Anſon.

CHAPPLE for Defendant obtained a Rule to ſhew Cauſe why Proceedings ſhould not be ſtaid, upon an Affidavit that the Proceſs ſerved was returnable on one Day, and the Notice to appear was at another; but the Copy of the Proceſs with Notice ſerved was not annexed to the Affidavit. *Darnal* for Plaintiff inſiſted, that whenever Defendant will take Advantage of ſuch Miſtake, he muſt produce the Copy ſerved, and ſwear he was ſerved with no other; and of that Opinion was the Court, and diſcharged the Rule.

Clapham and others.

PROCESS was againſt one *Clapham*, and the Notice was directed to *Cliſham*, which was held irregular, and the Proceedings were ſtaid. *Belfield* for Defendant; *Eyre* for Plaintiff.

Goodright, on the Demiſe of Hawkey, *againſt* Hoblyn. Trin. 8 & 9 Geo. 2.

THIS Action was laid in *Cornwall*. Notice of Trial was given in Town and countermanded in the Country three Days before the Commiſſion-Day of the

Aſſizes. The Queſtion was, Whether this was a good Countermand to prevent Coſts for not proceeding to Trial, Defendant having ſent a Witneſs from *London*, who was got as far as *Exeter* before he heard of the Countermand. *Per Cur'*: Notice of Trial cannot be given in the Country, but may be well countermanded there; and though by that Practice Defendant is put to an Inconvenience in this Caſe, yet the Inconveniencies which muſt neceſſarily accrue from the contrary Practice would be much greater. The Countermand would have been good if given but two Days before the Commiſſion-Day. *Eyre* for Plaintiff; *Belfield* for Defendant.

Taylor *againſt* Sherman.

HELD *per Cur'*, that in a Notice of a Declaration being left in the Office it is not ſufficient to ſay that the Plaintiff declares upon a Note of Hand; the Nature of the Action muſt be expreſſed, as Debt, Caſe, *&c.* *Belfield* for Defendant; *Eyre* for Plaintiff.

Swaile,

Swaile, an Attorny, *againſt* Leaver, in Middleſex. Mich. 9 Geo. 2.

THE Defendant lived above 40 Miles from *London*. Plaintiff gave fourteen Days Notice of Trial, and countermanded the ſame; afterwards Defendant tried the Cauſe by Proviſo upon eight Days Notice, and Plaintiff not appearing was nonſuited. *Wynne* and *Eyre* for Plaintiff moved to ſet aſide the Nonſuit, the Notice of Trial by Proviſo being irregular; and upon hearing *Wright* for the Defendant the *Non-pros* was ſet aſide, Defendant being obliged to give the ſame Notice of Trial as required from Plaintiff. It was at firſt doubted whether the Plaintiff not appearing at the Trial was not abſolutely out of Court, and could not complain of the Nonſuit; but it was held that the Notice being ill, muſt be looked upon as no Notice at all, and conſequently he could not appear at the Trial, and the Inconvenience would be great if a Nonſuit obtained without any Notice could not be complained of. It was obſerved by *Eyre*, that though at *Niſi prius* Plaintiff be out of Court, he hath a Day in Bank here, *viz.* the Return of the Writ of *Habeas Corpora Jurator'*.

Le Mark *againſt* Newnham. Trin. 10 Geo. 2.

NOTICE was given of the Execution of a Writ of Inquiry of Damages at the *Three Tons* in *Brookſtreet*, without ſaying in *Holborn*, or elſewhere, though there are three Streets of that Name in *Com' Midd'*. *Wright* moved to ſet aſide the Inquiry for this Defect in the Notice. It was urged by *Eyre* for Plaintiff, that the *Three Tons* in *Brookſtreet*, where the Sheriff of *Middleſex* conſtantly executes Writs of Inquiry in Vacation Time, is a well-known Place to every Practiſer; but *per Cur'*, the Notice is not ſo certain as it ought to be, the Inquiry and Inquiſition thereupon taken muſt be ſet aſide. *Wright* for Defendant, who cited *Squire* againſt *Almond*, *Hil.* 8 *Geo.* 2.

Edwards *againſt* Edwards.

NOTICE of a Declaration left in the Office in an Action upon a promiſſory Note (without ſaying in Treſpaſs on the Caſe) held inſufficient Notice. *Bootle* for Defendant; *Chapple* for Plaintiff.

Lee *againſt* Bradford. Mich. 10 G. 2.

DEfendant appeared by his Attorny, and after Judgment Plaintiff gave Notice of the Execution of a Writ of Inquiry to Defendant himſelf (and not to his Attorny) which was held bad Notice, and the Writ of Inquiry and Inquiſition taken thereupon were ordered to be ſet aſide. *Agar* for Defendant; *Wynne* for Plaintiff.

Lowes *againſt* Smith, in Northumberland. Mich. 11 Geo. 2.

NOTICE of executing Writ of Inquiry of Damages at the *Moot-Hall* in the *Caſtle-Garth*, without ſaying in what County, was held inſufficient, and the Inquiry ſet aſide. *Agar* for Defendant; *Prime* for Plaintiff.

Atwood *againſt* Meredith, Executor.

COPY of a Special *Capias* to Plaintiff's Damages 40*l.* was ſerved on Defendant without Notice to appear, and Appearance was entred by Plaintiff on Affidavit of Service. Defendant moved to ſtay the Proceedings for want of Notice, and the Court was of Opinion that the Statute of 12 *Geo.* and 5 *Geo.* 2. ought to be conſidered as one and the

the ſame Law; and in all Caſes where Proceſs is ſerved, let the Damages be above 10*l.* or under, Notice to appear muſt be given. *Wright* for Plaintiff; *Draper* for Defendant.

Smith *againſt* Hoff. Hil. 11 Geo. 2.

PLaintiff's Attorny gave Notice as follows: *I hereby countermand my Notice of Trial given for the ſecond Sitting within this Term, and continue the ſame till the third Sitting*, &c. Defendant made no Defence, and moved to ſet aſide the Verdict. *Per Cur'*: After a Notice is countermanded it cannot be continued; the Verdict muſt be ſet aſide.

Butler *againſt* Johnſon.

DEfendant had obtained a Judge's Order for Time to plead, pleading iſſuably and taking Notice of Trial within Term, or if he ſhould not plead, taking the like Notice of executing Writ of Inquiry. The Time for pleading expired *February* 5. when Defendant not pleading, Plaintiff ſigned Judgment, and *February* 7. gave Notice to execute Inquiry on the 8th. Defendant moved to ſet aſide the Inquiry for Inſufficiency of Notice, urging that Plaintiff ought to give as much Notice as he could. *Per Cur'*: Plaintiff might have given Notice on the 6th; ſhort

ſhort Notice ſhould be at leaſt as much as is ſufficient to countermand a Notice, *viz.* two Days. Let the Inquiry be ſet aſide without Coſts. *Skinner* for Plaintiff; *Wright* for Defendant.

Hollis *againſt* Weſtbury. Eaſt. 11 G. 2.

PLaintiff gave Notice of the Execution of a Writ of Inquiry of Damages at the Sign of the *Bell*, without making Mention of any Town; which Notice was held inſufficient, and the Inquiry ſet aſide. *Agar* for Defendant; *Eyre* for Plaintiff.

Laſt *againſt* Denny. Mich. 12 G. 2.

MOTION to ſet aſide Inquiry for Irregularity, Notice being given to execute it at 11 o' Clock, without naming any other Hour. *Cur'* held it regular, provided it was executed before 12; which appearing by Affidavit, Court diſcharged the Rule to ſhew Cauſe. *Skinner* for Defendant; *Prime* for Plaintiff.

Chriſtophory *againſt* Otto. Hil. 12 Geo. 2.

WRIT returnable *Oct. Hil.* Declaration left in the Office *de bene eſſe* the firſt Day of the Term. Defendant's Attorny put in

in Bail in Time; whereupon Plaintiff's Attorny demanded a Plea, and for want thereof ſigned Judgment. Defendant moved to ſet aſide the Judgment, inſiſting that his Attorny ought to have had Notice of the Declaration, and obtained a Rule to ſhew Cauſe, which was diſcharged. The Declaration is well delivered *de bene eſſe*, and Notice is not neceſſary. *Eyre* for Plaintiff; *Draper* for Defendant.

Panchand *againſt* Woolley.

RULE to ſhew Cauſe why the Judgment ſhould not be ſet aſide, diſcharged. The Objection was, that the Writ was not ſhewn at the Time of Service of the Copy. *Per Cur'*: It is not neceſſary. *Vide* Acts to prevent vexatious Arreſts, 12 *Geo.* & 5 *Geo.* 2. *Agar* for Plaintiff; *Draper* for Defendant.

Braty *againſt* Baldock. Eaſter 12 G. 2.

PLaintiff declared *de bene eſſe*, and gave Notice to plead in four Days, though Defendant by the Rules of the Court was intitled to eight Days Time to plead. Plaintiff ſtaid till after the eight Days expired before he ſigned Judgment; but the Notice being bad, the Rule to ſhew Cauſe why the Judgment ſhould not be ſet aſide was made abſolute.

abſolute. *Skinner* for Defendant; *Wright* for Plaintiff.

Gregory *againſt* Reeves. Trin. 13 G. 2.

IT being doubtful whether *Sunday* ſhould be reckoned as one Day in Notice to juſtify Bail, it was determined *per Cur'*, that for the future *Sunday* ſhall not be counted one (it not being a proper Day to inquire after Bail upon) but two Days Notice muſt be given, of which *Sunday* ſhall not be one. Upon Motion by *Comyns* for Defendant to juſtify Bail, Notice ſerved *Saturday June* 23. to juſtify Bail *Monday* the 25th. The Notice being inſufficient, the Bail were not ſuffered to juſtify.

Mackintoſh *againſt* Melo. Mich. 13 Geo. 2.

WRIT returnable the firſt Return of the Term. Declaration left in the Office *de bene eſſe* the firſt Day of the Term (*October* 23.) and Rule to plead given that Day. Notice the ſame Day ſerved upon Defendant to plead within the firſt four Days of *Michaelmas* Term. Plaintiff ſtaid till the Time for appearing was out, and then entered an Appearance by Affidavit, and ſigned Judgment. Defendant moved to ſet aſide Judgment, objecting to the

the Notice of Declaration, that it ought to have been to plead within four Days after Declaration delivered according to the Rules of *Michaelmas* and *Eaſter*, 3 *Geo.* 2. and not within the firſt four Days of the Term. Rule to ſhew Cauſe diſcharged. *Per Cur'*: Though the Words of the General Rules of Court aforeſaid do ſeem to exclude the Day of the Delivery of the Declaration, yet the Conſtruction muſt be agreeable to the Rule to plead, which is always incluſive; and the Plaintiff having ſtaid 'till the Time for appearing was out, he might regularly enter Appearance by Affidavit, and ſign Judgment. Vide *Charlton* and *Hankey*, *Hil.* 7 *Geo.* 2. *Agar* for Defendant; *Eyre* for Plaintiff.

Pritchard *againſt* Lewis. Hil. 13 G. 2.

WRIT returnable in *Eaſter* Term laſt. Plaintiff entered Appearance according to the Statute, and left Declaration in the Office, but reſted all *Trinity* and *Michaelmas* Terms; and before the Eſſoin-Day of this Term gave Defendant Notice of Declaration. The Declaration was deem'd well delivered only from the Time of Notice, and conſequently came too late. Defendant was then out of Court. Rule abſolute to ſtay Proceedings. *Hayward* for Plaintiff; *Bootle* for Defendant.

Coates

Coates *againſt* Hammond.

ISSUE was joined in *Hilary* Term, 12 *Geo.* 2. and Notice of Trial given 8th *February* 1738, for the then next *Yorkſhire* Aſſizes, which Notice was countermanded, and 26th *January* 1739, in *Hilary* Term 13 *Geo.* 2. Plaintiff gave new Notice, and proceeded to Trial at laſt Aſſizes. Defendant moved to ſet aſide the Verdict, inſiſting that the laſt Notice of Trial ought to have been given before the Eſſoin-Day of *Hilary* Term. Upon ſhewing Cauſe, the Practice appeared to be doubtful, and the Court ordered the Verdict to be ſet aſide, and Coſts to attend the Event of the Suit. *Bootle* for Defendant; *Burnett* for Plaintiff.

Note; A new General Rule was made upon this Occaſion to regulate the Practice for the future.

Non-pros, Nonſuit, &c.

Ellwood *againſt* Ellwood. Trin. 6 & 7 Geo. 2.

A Motion was made to ſet aſide a *Non-pros* ſigned for want of a Declaration, which had been demanded of Plaintiff's Attorny in the Country, and not of the Agent

in Town. It was, upon ſhewing Cauſe, ſworn that Plaintiff's Attorny in the Country agreed the Demand of him ſhould be regular. *Per Cur'*: Let the *Non-pros* be ſet aſide; no Agreement of Country Attornies can vary the Practice of the Court; all Tranſactions of this Kind muſt be in Town.

Love *againſt* Day. Mich. 7 Geo. 2.

IN *debitatus Aſſumpſit* brought againſt a Stakeholder for Mony had and received for Plaintiff's Uſe. The Judge of Aſſize, who tried the Cauſe was of Opinion that the Action would not lie, therefore nonſuited the Plaintiff upon the opening his Caſe, without hearing any Evidence. Plaintiff upon Affidavits of this Matter, moved the Court to ſet aſide the Nonſuit; but the Court refuſed to make any Rule. It was alledged from the Bar, that the Court of *King's Bench* had made a Rule in the like Caſe, but no ſuch was produced.

Coſta *againſt* Miſſaubin, Adminiſtrator, during the Minority of an Infant Executor. Mich. 8 Geo. 2.

THIS was an Action of Debt brought upon a *Non-pros*, in an Action wherein Defendant's Teſtator was Plaintiff, and he died after the Nonſuit, and before the

Day in Bank. *Eyre* moved to ſet aſide the *Non-pros* and ſtay Proceedings, and obtained a Rule to ſhew Cauſe; and upon ſhewing Cauſe, Court were of Opinion that this is a Matter of Error, and ought not to be conſidered as an Irregularity; (the Nonſuit is not helped by the Statute, which extends only to Verdicts) and therefore diſcharged the Rule. 1 *Salk.* 8. *Bawler* againſt *Delander* in *B. R.* 1 *Geo.* *Chapple* and *Eyre* for Defendant; *Skinner* for Plaintiff.

Billing *againſt* Billing. Trin. 10 & 11 Geo. 2.

A *Non-pros* for want of a Declaration was ſigned in Prothonotary *Borrett*'s Office, which was ſet aſide as irregular; Mr. *Laremore*, Plaintiff's Attorny, being a Practiſer in *Cooke*'s Office. The Rule to declare muſt always be given in that Prothonotary's Office where Plaintiff's Attorny is entered; though a Declaration be duly demanded, that is not ſufficient to ſupport the *Non-pros*, unleſs the Rule be given in the proper Office. *Bootle* for Plaintiff; *Chapple* for Defendant.

Outlawry.

Oſborne *againſt* Carter. Eaſt. 6 Geo. 2.

DEfendant taken on a *Capias utlagat'* on a *Sunday*, moved to be diſcharged, the Taking being contrary to the Statute 29 *C.* 2. The Court held the Taking bad; but refuſed to grant an Attachment, and put the Defendant to take the Remedy given by the Statute.

North *againſt* Chambers. Mich. 7 G. 2.

BAYNES moved for Defendant, that Plaintiff might reverſe an Outlawry at his own Expence, upon Affidavits that Defendant, at the Time he was returned outlawed, and long before and after, was abroad in Parts beyond the Seas. Denied *per Cur'*, becauſe this is Error, and not proper to be conſidered as an Irregularity.

Peach *againſt* Wadland. Mich. 11 G. 2.

PLaintiff having commenced a Proceeding to Outlawry againſt Defendant, Defendant gave Notice to Plaintiff that he had appeared, and obtained a *Superſedeas* to the Exigent.

Exigent. Plaintiff ſearched at the *Compter*, and no *Superſedeas* being allowed there, Defendant was returned outlawed, who moved to ſet aſide the Outlawry. On ſhewing Cauſe, Defendant alledged he had entered an Appearance with the Exigenter; but that appeared to be unneceſſary, and a novel Impoſition by the Exigenter, whoſe Appearance Book is two Years old only. The Court held, that the *Superſedeas* is in itſelf an Appearance, if delivered to the Sheriff before the Return of the Exigent; but that not having been done in this Caſe, Defendant is regularly outlawed; and the Rule to ſhew Cauſe why the Outlawry ſhould not be reverſed at Plaintiff's Expence, was diſcharged. *Eyre* and *Agar* for Plaintiff; *Draper* for Defendant. Vide *Watſon*'s printed Rules, *fol.* 69 and 78.

Blunt *againſt* Beale. Eaſt. 11 Geo. 2.

PRICE moved, That Plaintiff might reverſe an Outlawry at his own Expence, Defendant being in Parts beyond the Seas at the Time he was outlawed. *Per Cur'*: Defendant may take Advantage of this by Writ of Error, 'tis not Matter of Irregularity. No Rule.

Bennett *againſt* Sydenham. The ſame againſt Skinner. Mich. 12 Geo. 2.

BAKER, Attorny for Plaintiff. Motion by *Eyre* and *Draper* for Defendant to reverſe Outlawries on common *Clauſum fregit* at Plaintiff's Expence, on Affidavits of Defendant's publick Appearance and Dealings, ſworn by themſelves only. *Per Draper*, Act to prevent vexatious Arreſts directs Proceſs to be ſerved where no Affidavit is made of the Debt; and an Outlawry can only be ſupported by Proceſs to arreſt. It appears, that Plaintiff's Demand on Defendant *Sydenham* is no more than 15*s.* 6*d.* and on Defendant *Skinner* 1*l.* 5*s.* *Wright* for Plaintiff urged, That where Defendants cannot be come at to be perſonally ſerved with Proceſs, Plaintiff has no Remedy but an Outlawry. *Per Cur'*: Let the Rule be enlarged 'till next Term, that *Baker*, Plaintiff's Attorny, may in the mean Time make Satisfaction to the Parties.

Holman *againſt* Braſier. Hil. 12 G. 2

RULE to ſhew Cauſe why Outlawry ſhould not be reverſed at Plaintiff's Expence. It appeared, that two Writs had been ſued out and Defendant could not be arreſted: He lived on the Confines of *Surry* and

and *Kent*, and when *Surry* Bailiff came to arreſt him, jumped over a Hedge into *Kent* and put Bailiff to Defiance. *Per Cur'*: Though Defendant is ſworn to appear publickly, yet 'tis plain he kept out of the Way to prevent being arreſted. Rule diſcharged. But by Conſent Debt and Coſts to be paid out of the Mony in Sheriff's Hand, and Overplus repaid to Defendant. *Draper* for Plaintiff; *Bootle* for Defendant.

Pauper.

Eaſter 8 Geo. 2.

A Poor Man, Defendant in a Suit brought in this Court, applied in the *Treaſury* to be admitted to defend *in forma Pauperis*, but was denied: The Statute for admitting *Paupers* extends to Plaintiffs only, and not to Defendants. 11 *Hen.* 7. *cap.* 12.

Pleadings, and Time to plead.

Gibſon *againſt* Cole. Hil. 6 Geo. 2.

A Rule to plead double, (*viz.*) *Non Aſſumpſit*, and a General Releaſe diſcharged, becauſe theſe Pleas are contradictory.

Cortizos *againſt* Munoz. Trin. 6 & 7 Geo. 2.

DEmurrer was joined in *Michaelmas* Term laſt, argued in *Hilary*, and Judgment given for Plaintiff. Defendant brought a Writ of Error, intending to aſſign for Error the Want of an Original: Whereupon Plaintiff entered the Demurrer and Judgment on a Roll of *Hilary*, having obtained an Original of that Term, though he had none of *Michaelmas*. Defendant moved that the Demurrer might be entered of *Michaelmas* Term; and upon hearing Council on both Sides, it appearing that the Demurrer was joined of that Term, the Court ordered it to be entered accordingly, purſuant to a general Rule of Court formerly made upon Complaint of the Clerk of the *Treaſury*, that all Iſſues ſhall be entered of the ſame Term

Term wherein they are joined. *Baynes* for Defendant; *Chapple* for Plaintiff.

Halſey *againſt* Feltham.

THIS was an Action of Treſpaſs for entring Plaintiff's Cloſe, and pulling down a Were. Defendant moved to plead double, (*viz.*) *Liberum tenementum*, and a Juſtification of pulling down the Were as a Nuſance, and a Rule *Niſi* was obtained; but was afterwards, on hearing Council on both Sides, diſcharged by the Court, the Matters prayed to be pleaded being inconſiſtent. *Baynes* for Defendant; *Chapple* for Plaintiff.

King *againſt* Boſwell. Mich. 7 Geo. 2.

DEfendant obtained a Rule *Niſi* to plead double, *Non Aſſumpſit* and *Non Aſſumpſit infra ſex annos.* Plaintiff ſhewed for Cauſe, that the Rule to plead was expired before the Motion to plead double was made; but Court held that Defendant was proper to move to plead double any Time before Judgment ſigned. *Birch* for Plaintiff; *Comyns* for Defendant.

Hartley *againſt* Varley. Hil. 7 Geo. 2.

SKINNER moved for *Oyer* of the Bond whereon this Action was brought, upon an Affidavit that it was not for Delay, but in order to plead Payment agreeable to the Fact; but the Court refuſed to make any Rule, *Oyer* not having been demanded in proper Time, (*viz.*) before the Rule for pleading expired.

Durſley *againſt* Cole.

THIS was an Action brought againſt an Inn-keeper for detaining two Horſes of Plaintiff's. *Eyre* moved to plead double, (*viz.*) Not guilty, and an Accord and Satisfaction, which he would have compared to *Non Aſſumpſit* and *Non Aſſumpſit infra ſex annos*. *Hawkins* oppoſed the Motion. The Court denied to make any Rule, the Matters prayed to be pleaded being contradictory.

Martindale *againſt* Galloway, Executor, &c.

DARNALL moved for Defendant that he might have Leave to withdraw his Plea of Judgments, and Bonds pleaded in Bar, and plead *Plene adminiſtravit*, which, upon

upon hearing *Chapple* for Plaintiff, was granted by the Court.

Reeves *againſt* Probart.

URLIN moved that Defendant might have Leave to withdraw his Plea of Tender, and plead the General Iſſue upon Payment of Coſts. The Court denied the Motion, becauſe this Alteration of the Plea would put Plaintiff to an Inconvenience, the Money pleaded to be tendered being brought into Court.

Hughes *againſt* Pellett, Adminiſtrator, Eaſter 7 Geo. 2.

DEfendant had obtained an Order for Time to plead, pleading an iſſuable Plea, *&c.* and afterwards pleaded in Bar to the Plaintiff's Action (which was upon Simple Contract) a Judgment confeſſed upon a Bond ſince the Order for Time to plead made. Plaintiff moved to ſet aſide the Plea; but the Court, upon hearing Council on both Sides, were of Opinion, that as there was no particular Reſtraint in the Order, and as the Bond (whereupon the Judgment was confeſſed) might have been pleaded in Bar to this Action, the Plea muſt ſtand. *Baynes* for Defendant; *Chapple* for Plaintiff.

Poole

Poole *againſt* Broadfield.

DEfendant pleads Bankruptcy, and concludes with an Averment, and not to the Country; to which Plaintiff demurred. Court held the Plea bad, and gave Judgment for Plaintiff. *Chapple* for Plaintiff.

Humfreys *againſt* Ward. Trin. 7 & 8 Geo. 2.

COURT were of Opinion, that a Plea in Abatement, after the Rule for Pleading is out, is a Nullity, and Plaintiff may ſign his Judgment. *Hawkins* for Plaintiff; *Baynes* for Defendant.

Smith *againſt* Roe.

In Ejectment. DEclaration of *Eaſter* Term to appear in *Trinity*. *Skinner* moved to be at Liberty to plead Antient Demeſne. A Rule was made to ſhew Cauſe; upon ſhewing Cauſe it was inſiſted for Plaintiff, that the Plea being to the Juriſdiction of the Court, is a Dilatory, and ought to have been pleaded within the firſt four Days of this Term; and of that Opinion were the Court, and diſcharged the Rule. Sir *George Cooke* quoted two Caſes in Point, determined in this Court, *Holdfaſt* againſt

againſt *Carlton*, *Hil.* 1 *Geo.* 2. and *Bingham* againſt *Barker*, *Trin.* 2 *Geo.* 2.

Adkin *againſt* Worthington, an Attorny.

EYRE for Defendant demurred, and ſhewed for Cauſe, that in the Memorandum it is not ſaid, Whether the Bill was in a Plea of Debt or Caſe, or in what Plea. *Chapple* for Plaintiff argued, that the Bill is ſet out *in hæc verba*, and ſhews itſelf. Judgment for Plaintiff.

Benn *againſt* Geary.

A Rule was made for Plaintiff to ſhew Cauſe why Defendant ſhould not plead double, (*viz.*) *Non Aſſumpſit* and *Non Aſſumpſit infra ſex annos.* Plaintiff, on ſhewing Cauſe, produced an Affidavit that Defendant had not appeared, and conſequently not being in Court was not proper to make the Motion. Rule diſcharged. *Chapple* for Plaintiff; *Birch* for Defendant.

Heathfield *againſt* Allen. Mich. 8 G. 2.

SKINNER for Defendant moved to plead double, *Non Aſſumpſit* and *Plene adminiſtravit*, which was denied by the Court, no Affidavit being produced that Defendant had fully adminiſtred.

The

The Burgeſſes of Wiſbich *againſt* Frier.

URLIN moved for Defendant to plead double, *Solvit ad diem* and *Riens per Deſcent*. *Skinner*, for Plaintiff, objected, that an Affidavit of the Fact as to *Riens per Deſcent* ought to be produced from the Heir, as from an Executor or Adminiſtrator in a *Plene adminiſtravit*, and the Objection was held good. No Rule.

Peirſon *againſt* Ives. Hil. 8 Geo. 2.

DEfendant pleaded *Non Aſſumpſit infra ſex annos*, and Plaintiff demurred to the Plea: The Matters in Queſtion being Actions between Merchant and Merchant; and Defendant thereupon moved to add to his former Plea a general *Non Aſſumpſit*, upon Payment of Coſts; but this was denied.

Burnand *againſt* Standing.

In Formedon. DEfendant pleaded Never Tenant of the Freehold in Abatement, and Plaintiff refuſed to accept the Plea; whereupon Defendant applied to the Court, and upon hearing Council on both Sides the Plea was ordered to be received. It cannot be pleaded otherwiſe than in Abatement. *Baynes* for Defendant; *Darnall* for Plaintiff.

Nicholſon

Nicholſon *againſt* Conſtable, Attorny. Eaſter 8 Geo. 2.

PLaintiff declared with a Memorandum upon a Bill, but omitted in the Memorandum the Words (*in a Plea of Treſpaſs upon the Caſe.*) Defendant demurred, and ſhewed this Omiſſion ſpecially for Cauſe. *Per Cur'*: The Plea appears by the Bill, which is ſet forth *verbatim* in the Declaration. Judgment for Plaintiff. *Comyns* for Plaintiff; *Glyde* for Defendant. *Adkin* againſt *Worthington*, Attorny. *Trin.* 7 & 8 *Geo.* 2.

Jarratt *againſt* Robinſon.

HAWKINS moved to plead double, (*viz.*) *Non Aſſumpſit*, and ſeveral Matters ſet off againſt Plaintiff's Demand, which was denied *per Cur'*, as contradictory. The General Iſſue muſt be pleaded, with Notice to ſet off, purſuant to the Statute.

Marſhall *againſt* Lawrence. Trin. 8 & 9 Geo. 2.

SKINNER moved to plead double, *Nil debet* and *Nil habuit in tenementis.* Refuſed. *Per Cur':* The later may be given in Evidence upon the former.

Jury

Jury *againſt* Woodhouſe and others, Executors.

UPON the Trial of a Cauſe at *Niſi Prius*, in *Middleſex*, againſt the Defendants, at another Plaintiff's Suit, the Lord Chief Juſtice held a Leaſehold Eſtate (tho' not ſold) Aſſets in Defendant's Hands, *ad valorem*; and thereupon by Conſent Proceedings were ordered to ſtay in the former Action 'till the Eſtate could be ſold. *Chapple* now moved that Plaintiff might perfect his Judgment in the former Action, and that Defendant might have four Days Time to plead that Judgment in Bar to this Action. *Darnall*, for Plaintiff, oppoſed the Motion; and it appearing that Defendants had obtained the Chief Juſtice's Order for four Days Time to plead, which were expired, pleading to Iſſue, and taking Notice of Trial within Term, the Court refuſed to grant any Rule.

Handaſyd *againſt* Wilſon. Mich. 9 Geo. 2.

DEfendant pleaded to the *Sci. Fa.* upon his Recognizance of Bail, Payment by the Principal; to which Plaintiff replied Non-payment, and tendered an Iſſue; whereupon Defendant demurred, and Plaintiff joined in Demurrer,

Demurrer, moved for *Concilium*, and ſet down the Cauſe in the Paper to be argued. Defendant afterwards moved to withdraw his Plea, and plead *Nul tiel Record* of the Recognizance, which was denied by the Court on hearing Council on both Sides. *Skinner* for Defendant; *Chapple* for Plaintiff.

Raine *againſt* Spencer.

DEfendant pleaded Coverture as the Wife of *John Thomſon*, in this Manner, (*viz.*) *And the aforeſaid* Sarah Spencer, *&c.* Her Affidavit was in the ſame Stile, but ſigned *Sarah Thompſon*: The Plea was ſet aſide. *Chapple* for Plaintiff; *Skinner* for Defendant.

Napper *againſt* Biddle.

THE Declaration was of *Michaelmas* Term laſt, and Defendant pleaded in Abatement the fourth Day within *Hilary* Term then next, without a Special Imparlance. Plaintiff demurred to the Plea, and Defendant joined in Demurrer; whereupon Plaintiff made up the Book with a General Imparlance, and the Cauſe was ſet down in the Paper to be argued. *Chapple* moved for Defendant, that the General Imparlance might be ſtruck out of the Paper Book; inſiſting that the firſt four Days of

Hilary Term were *ex gratia*, and that Defendant might then plead as of *Michaelmas* Term before. The Motion was oppoſed by *Belfield*, and no Rule was made; the Court declaring that in this Caſe Defendant could not plead in Abatement without procuring Special Imparlance.

Macdonald *againſt* Gunter. Hil. 9 G. 2.

Forreſt (Plaintiff's Attorny) delivered a very long Declaration for entering Plaintiff's Houſe, and taking and carrying away his Goods. *Forreſt* had in every Count repeated the Particulars contained in an Inventory of Defendant's Goods taken at the Time they were diſtrained for Rent, on account of which Diſtreſs this Action was brought, with ſome ſmall Variation in the Deſcription of the Goods, and laying the Treſpaſſes on different Days. Court, upon hearing Council on both Sides, (it appearing that the Action was brought for one and the ſame Treſpaſs,) ordered two of the Counts to be ſtruck out, and *Forreſt* to pay Coſts. *Wright* for Defendant; *Comyns* for Plaintiff and *Forreſt*.

Hutchins

Hutchins *againſt* Lillyman.

DEFENDANT's Attorny not being to be found, the Declaration was delivered to Defendant himſelf, and for want of a Plea Plaintiff ſigned Judgment. The Declaration was held to be irregularly delivered; but by Conſent Matters in Difference were referred to the Prothonotary.

Newberry *againſt* Strudwick. Eaſter 9 Geo. 2.

ACTION of Debt brought on Judgment. Defendant pleads that Plaintiff had recovered a Judgment in *B. R.* To this Plaintiff replies *Nul tiel Record*, and delivers the Iſſue with a Day given in it for Defendant to bring in the Record at his Peril. Defendant inſiſts that the Replication of *Nul tiel Record* ſhould not be delivered in the Iſſue-Book, and Day given to bring in the Record, but that Plaintiff ſhould give him the Replication by itſelf in Form, and give a Rule to rejoin, therefore moved that Plaintiff ſhould take back the Iſſue delivered, and deliver a Replication in Form, and alſo repay the Mony he took for the Iſſue. Rule to ſhew Cauſe. Upon ſhewing Cauſe, the Court were of Opinion that a Rejoinder in this Caſe is totally unneceſſary after a com-

pleat Iſſue joined, and the Delivery of the Iſſue was right. Rule diſcharged. There is no Difference between a Record of this Court pleaded and a Record of another Court; the Iſſue is compleat upon the Replication without the Rejoinder. Where Defendant avers the Record, and Plaintiff gives him a Day to bring it in, the Concluſion of the Replication is as follows, *viz. Et hoc parat' eſt verificare qualitercunque, &c. Et dictum eſt præfat' Def' quod habeat Record' ill' hic in Octab. Pur' Beatæ Mariæ ſub periculo ſuo, &c. Idem dies dat' eſt præfat' quer' hic, &c.* Where the Plaintiff avers the Record, the Concluſion of the Replication is thus, *viz. and prays that that Record may be ſeen and inſpected by the Juſtices here*, &c. And becauſe the ſaid Plaintiff hath not now that Record ready here in Court, he is directed that he have that Record here in eight Days of *St. Martin.* The ſame Day is given to the ſaid Defendant here, *&c. Belfield* for Plaintiff; *Corbet* for Defendant.

Sydebotham *againſt* Frith, Attorny.

THE ſame Caſe and the ſame Determination as in *Adkin* againſt *Worthington*, *Trin.* 7 & 8 *Geo.* 2. *Comyns* for Plaintiff; *Belfield* for Defendant.

Stibbs

Stibbs *againſt* Neeves. Trin. 10 G. 2.

In Treſpaſs. BOOTLE moved for Defendant for Leave to plead doubly, *viz. Non cul'* and *Liberum tenementum* of the Liberty of *St. Catherine*'s, and obtained a Rule to ſhew Cauſe, which was afterwards made abſolute upon an Affidavit of Service, no Cauſe being ſhewn.

Peaſe *againſt* Badtitle.

In Ejectment. WYNNE moved after the firſt four Days of Term to plead Antient Demeſne, which was denied. It is a Plea to the Juriſdiction of the Court, and ought to be moved within the firſt four Days of the Term.

Reeks and Wife *againſt* Robins.

DEfendant being ſerved with Proceſs at the Suit of *Reeks* appeared, and a Declaration was delivered; a Declaration was alſo delivered by the By at the Suit of *Reeks* and Wife. Defendant applied to have the Proceedings ſtaid on the Declaration by the By, there being no Proceſs to warrant it; for though by the Practice of the Court Plaintiff might the ſame Term the Proceſs is returnable declare againſt Defendant as often as

he would at his own Suit, yet he cannot declare by the By joined with his Wife or any other Perſon, and there is greater Reaſon for it ſince the Statute to prevent vexatious Arreſts, which requires Proceſs to be ſerved. The Proceedings in the Declaration by the By ſtay'd. *Chapple* for Defendant; *Eyre* for Plaintiff.

Davenhill *againſt* Barritt. Mich. 10 Geo. 2.

AFTER Defendant had obtained a Judge's Order for Time to plead, pleading an iſſuable Plea, he pleaded a Tender; which Plea was ſet aſide as a Plea that could not be pleaded after Time to plead obtained. *Birch* for Plaintiff; *Eyre* for Defendant.

Sherlock *againſt* Templer.

DEfendant had demurred generally, and now moved for Leave to withdraw the Demurrer, and plead the General Iſſue. It was objected by Plaintiff, that by this Means he had been delayed of a Trial at laſt Aſſizes; but it appearing that the Parties had been before a Judge, and that Defendant had offered to withdraw his Demurrer, and plead the General Iſſue, time enough for Plaintiff to have tried his Cauſe at laſt Aſſizes, the Motion was granted. *Chapple* for Defendant; *Eyre* for Plaintiff.

Bird

Bird *againſt* Spincks.

In Replevin. THE Court gave Leave to plead doubly, *viz.* that Plaintiff in Replevin had not Property, and a Juſtification as a Diſtreſs for Rent. *Chapple* for Defendant; *Parker* for Plaintiff.

Leighton *againſt* Leighton.

AFTER a Judge's Order for Time to plead, pleading an iſſuable Plea, Defendant moved to plead double Matter, and the Queſtion was, Whether a Rule for that Purpoſe ought to be granted or not? The Court took Time to conſider, and after conferring with the Judges of the other Courts, gave Defendant Leave to plead doubly, pleading iſſuable Pleas, and taking ſhort Notice of Trial. *Wright* for Defendant; *Hayward* for Plaintiff.

Shelly *againſt* Wright. Hil. 10 G. 2.

IN the Margent of the Declaration ſtood the Word *Middleſex*, and Defendant's Addition was *late of Weſtminſter*, without ſaying in the County aforeſaid. Defendant pleaded in Abatement, that it did not appear by the Declaration at what Place he was commorant. Plaintiff moved to ſet aſide

the Plea, and obtained a Rule to ſhew Cauſe, which was diſcharged. It is not uſual to ſet aſide ſuch Pleas upon Motion. Plaintiff may demur if he thinks fit, as determined between *Norris* and *Friend*, *Hil.* 4 *G.* 2. *Skinner* for Plaintiff; *Hawkins* for Defendant.

Nevil *againſt* Fiſher.

DEfendant had pleaded *Non aſſumpſit infra ſex annos*, and moved to add to that Plea *Non aſſumpſit* generally, which was denied. After Defendant hath pleaded a ſingle Plea, he cannot have Leave to plead doubly. *Skinner.*

Barnett *againſt* Greaves.

In Treſpaſs. KEttlebey moved to plead doubly, Not guilty, and a Juſtification, which was denied as contradictory.

Buck *againſt* Warren, Attorny, in Caſe. Eaſter 10 Geo. 2.

On Promiſe. DEfendant paid 10 *l.* into Court on the common Rule, and afterwards obtained a Rule to plead double, *Non aſſumpſit* and *Non aſſumpſit infra ſex annos.* Plaintiff moved to ſet aſide the double Plea with Coſts, and had a Rule

Rule to ſhew Cauſe, which was made abſolute. Plaintiff by the Rule to pay Mony into Court is confined to plead the General Iſſue, and no other Plea. The Motion afterwards to plead double is an Impoſition on the Court. *Chapple* for Plaintiff; *Gapper* for Defendant.

Croſſe *againſt* Porter. Mich. 11 Geo. 2.

PLaintiff declared on a Recognizance of Bail without ſetting forth the Condition. Defendant demurred generally. Court gave Judgment for Plaintiff. The Recognizance in the Declaration does not appear to be conditional, but abſolute; if conditional, Defendant might have pleaded *Nul tiel Record*. *Draper* for Plaintiff; *Comyns* for Defendant.

Church *againſt* Fendall. Eaſter 11 Geo. 2.

MOVED by *Agar* to plead two Juſtifications, *viz.* Damage-feaſant, and under a Demiſe from Defendant to Plaintiff. Chief Juſtice ſaid he thought them inconſiſtent; but as Defendant had obtained a Rule to ſhew Cauſe, and Plaintiff did not oppoſe it, the Rule muſt be abſolute.

Ford *againſt* Burnham. Trin. 11 & 12 Geo. 2.

DEfendant pleaded a Tender *ante diem impetracon' brevis Original'*. Plaintiff in his Replication ſet forth an Original purchaſed before the Time of the Tender pleaded. *Wynne* moved for Defendant for Oyer of the Original, but the Motion was denied. The Court never make any Rules for Oyer of Originals, which are Matters of Record.

Baynes *againſt* Lutwidge.

THE Court gave Defendant Leave to plead doubly, *viz.* a Diſtreſs for Damage-feaſant, and for Rent in Arrear. This is not ſtronger than Not guilty, and *Liberum Tenementum*, *Solvit ad diem*, and a mutual Debt, which have been granted. *Bootle* for Defendant; *Draper* for Plaintiff.

Weſt *againſt* Nichols. Mich. 6 Geo. 2.

A *Clauſum fregit* was iſſued in *Engliſh*, and Plaintiff declared in *Latin*. A Motion was made to ſtay the Proceedings, but denied, becauſe the Declaration in *Latin* is to be taken as a Declaration by the By.

Lunn

Lunn *againſt* Smith.

THE Writ was returnable *Craſ. Trin.* and Bail filed in *Hilary* Term following. The Sheriff was amerced, and did not clear his Contempts till *Trinity* Term following, when Plaintiff tendered a Declaration, but Defendant refuſed to accept it; whereupon Plaintiff left it in the Office, and ſigned Judgment. The Queſtion was, What Time the Plaintiff had to declare? And it was held by the Court, that he had two Terms to declare after Defendant was in Court; but this Declaration, not being delivered till the third Term after Bail put in, was too late, and the Judgment was ſet aſide.

Androvin *againſt* Baſſen, Bail for Miller. Hil. 6 Geo. 2.

THIS was an Action of Debt upon a Recognizance of Bail, wherein the Plaintiff had declared in the ſhort Manner now practiſed, without ſetting out the Condition of the Recognizance. Mr. Juſtice *Price* had made an Order for an Imparlance upon a Defect in the Notice given to Defendant of the Declaration being left in the Office, *&c.* Plaintiff moved to diſcharge the Order. Defendant on ſhewing Cauſe produced a Rule whereby the *Ca. Sa.*

againſt the Principal was ſet aſide, and alledged that no *Ca. Sa.* had been ſince returned, and the Record of the Recognizance not being filed, and Defendant not being intitled to Oyer thereof could not plead the Want of a *Ca. Sa.* againſt the Principal, if that Matter is pleadable to ſuch ſhort Declaration. The Court declared no Opinion, but ſeemed inclinable to think that the Condition of the Recognizance doth not operate by Defeazance, but is Part of the Recognizance itſelf, and that Plaintiff ought to ſet out the Condition in his Declaration, and ordered the Plaintiff to file the Record of the Recognizance, but gave him Liberty to withdraw his former Declaration, and declare *de novo* if he thought fit.

Catlin *againſt* Elliott, Hunt *and* Drew. Hil. 7 Geo. 2.

UPON hearing Council on both Sides, three Declarations in Aſſault, Battery and falſe Impriſonment were ordered to be reduced into one, appearing upon the Face of the Declaration to be all for one and the ſame Fact, and in each of the three Plaintiff declaring againſt one of the Defendants for an Aſſault, *&c. ſimul cum* the other two. *Hawkins* for Defendants; *Birch* for Plaintiff.

Harper

Harper, an Attorny, *againſt* Woodhouſe and others.

THREE Declarations for one and the ſame Battery being ordered to be reduced into one, Plaintiff's Council prayed Coſts, but was denied. *Eyre* for Defendant; *Skinner* for Plaintiff.

Jeffs *againſt* Jones. Eaſter 7 Geo. 2.

TWO Actions were brought againſt the Defendant, one for an Aſſault and Battery, and the other in Treſpaſs, for taking away Plaintiff's Goods. Defendant moved that the two Declarations might be reduced into one, being for one and the ſame Treſpaſs. Rule made to ſhew Cauſe, which was afterwards diſcharged upon hearing Council on both Sides. Where there may be ſeveral Pleas, Actions ought not to be joined. *Chapple* for Plaintiff; *Hawkins* for Defendant.

Fotherby *againſt* Lloyd. Mich. 8 G. 2.

COURT held that a Declaration *de bene eſſe* may be delivered at any Time before the Expiration of the Time limited for appearing or putting in Bail, but never afterwards. This was a *Teſtatum* from *London* to *Briſtol* returnable *tres Mich.* and a Declaration

tion was delivered *de bene eſſe October* 31. which was the laſt Day Defendant had by the Rules of Court to put in Bail. *Chapple* for Plaintiff; *Eyre* for Defendant.

Burnett *againſt* Kendall. Mich. 12 G. 2.

MOTION to ſet aſide Plea in Abatement, which came in two Days after Declaration left at *King*'s (Defendant's Attorny's) Chambers, under the Door, which was not found there till *November* 1. The Agent (Mr. *Buck*) had appeared by *King* the Country Attorny, and Plaintiff had given no Notice to *Buck* the Agent of Declaration being filed or left. *Cur':* Whether the Plea came regularly in or not is the only Queſtion, and the Declaration not being delivered, nor any Notice to *Buck* of its being filed, Let the Rule for ſetting aſide the Plea be diſcharged with Coſts, it being tricking Practice to put the Declaration under the Country Attorny's Chamber Door. *Skinner* for Defendant; *Urlin* for Plaintiff.

King *againſt* Nichols. Hil. 12 Geo. 2.

RULE to ſhew Cauſe why Defendant ſhould not have Leave to plead a Tender as of laſt Term, notwithſtanding the general Imparlance given by Plaintiff. Objected by Plaintiff's Attorny, that Defendant

dant ought to have applied on the firſt Day of the Term. *Per Cur'*: He comes Time enough within the firſt four Days. Rule abſolute in the Treaſury, *January* 27.

Jones *againſt* Body. Draper for Defendant; Comyns for Plaintiff. Eaſter 12 Geo. 2.

RULE made abſolute to plead double, *Non Aſſumpſit*, and Defendant's Diſcharge under the Inſolvent Debtors Act. 10 *Geo.* 2.

A Rule this Term, *Liſle* againſt *Jenyns*, had been made to ſhew Cauſe, and abſolute on Affidavit of Service (no Cauſe being ſhewn) to plead *Non eſt factum*, and Defendant's Diſcharge under ſaid Act.

Potts *againſt* Creſwell, Attorny.

DEfendant moved that Plaintiff might inſert the true Day of filing Bill, (*viz. February* 3. laſt) in the *Memorandum* at the Head of his Declaration, and that Defendant might have Leave to plead a Tender of laſt Term, the Declaration not having been delivered till after the Term. The Rule to ſhew Cauſe was made abſolute on hearing Council on both Sides. *Draper* for Defendant; *Agar* for Plaintiff.

Calveraq

Calveraq *againſt* Pinhero. Trin. 13 Geo. 2.

Upon an Iſſue of Nul tiel Record. PLaintiff delivered the Book, and gave himſelf a Day to bring in the Record, *viz. tres Trin. July* 8. but did not bring in the Record on that Day. *July* 9. Plaintiff offered the Record, and moved it might be read, which was refuſed by the Court, it not being brought in on the Day Plaintiff had given himſelf to produce it. *Wright* and *Hayward* for Plaintiff; *Burnett* for Defendant.

Uſher, and others, *againſt* Edmunds. Mich. 13 Geo. 2.

MOTION by *Skinner* to withdraw his Plea of the General Iſſue, and plead the ſame *de novo*, and pay Mony into Court. Defendant's Attorny happening to die before Payment of Mony into Court as ordered by Defendant; and his Clerk having delivered the Plea by Miſtake; Rule to ſhew Cauſe. *Agar* ſhew'd Cauſe. *Cur':* The Rules of the Court are againſt the Motion; but in the Accident of Death the Rules muſt be diſpenſed with. Rule abſolute.

Lumley *againſt* Foſter.

ATTORNY ſwears to the Truth of Plea in Abatement: And the Queſtion was, Whether Defendant ſhould not have made Oath himſelf. *Per Cur':* Probable Cauſe is ſhewn, which is all required by the Statute. Rule to ſhew Cauſe why the Plea ſhould not be ſet aſide, diſcharged. *Prime* for Plaintiff; *Draper* for Defendant.

Wood *againſt* Grace, an Attorny.

THIS was an Action for a Surgeon's Attendance, Medicines, *&c.* wherein Plaintiff's Attorny delivered a Declaration of nine Counts. Defendant obtained a Rule to ſhew Cauſe why the Declaration ſhould not be reduced to three Counts. Upon ſhewing Cauſe, the Court ordered four Counts to be ſtruck out; and the remaining five to ſtand, *viz. Indebitatus Aſſumpſit* and *Quantum meruit*, for Work and Labour; the like for Goods ſold and delivered, and an *Indebitatus Aſſumpſit* for Mony laid out for Defendant's Uſe, which will be ſufficient to take in Plaintiff's whole Demand. *Ketelbey* for Defendant; *Agar* for Plaintiff.

Turner *againſt* Bean.

AFTER a *Certiorari* returned, whereby the Proceedings in an inferior Court of Record were removed into this Court, the Queſtion was, Whether or no Plaintiff ſhould declare *de novo*, it appearing by the Return that the Parties were at Iſſue in the Court below. Held that Plaintiff muſt declare *de novo*. *Prime* for Plaintiff; *Bootle* for Defendant.

Priſoners.

Wagſtaffe *againſt* Darby. Mich. 6 Geo. 2.

A Motion was made to diſcharge a Priſoner in the *Fleet*, detained by a *Capias utlagat'*, (Plaintiff being dead.) Upon Affidavit of the Death of Plaintiff, and ſearching the proper Offices at *Doctors Commons*, and finding no Adminiſtration granted, or Will proved, a Rule was made to ſhew Cauſe, which was afterwards made abſolute.

Poulter *againſt* Greenwood.

UPON a Point reſerved by Lord Chief Juſtice at *Niſi prius*, in an Action brought againſt the Sheriff of *Lancaſhire* for an Eſcape, it was held *per Cur'*, that an Aſſignment of Priſoners by an Under-Sheriff to the ſucceeding High-Sheriff (tho' not by Indenture) is a good Aſſignment.

Beech *againſt* Paxton, Widow. Eaſter 6 Geo. 2.

DEfendant, who had petitioned to be diſcharged purſuant to the Lords Act, was ordered to remain in the Cuſtody of the Warden of the *Fleet Priſon* upon Plaintiff's giving a Note to pay her 2 *s.* 4 *d.* *per* Week every *Monday*. Plaintiff once made Default of Payment on the Day, and Defendant applied to the Court to be diſcharged; but it appearing that the Mony was tendered to Defendant the Day following, Defendant was remanded to Priſon.

Wheatley *againſt* Parker. Trin. 6 & 7 Geo. 2

DEfendant, a *Quaker*, brought up to Court to be diſcharged upon the Lords Act; but refuſing to take the Oath by the

Act required, was remanded to Priſon. *Note*; This altered ſince by Act of Parliament.

Baker *againſt* Holmer.

DEfendant petitioned upon the Lords Act, and it appeared that he was charged in Execution for 103 *l.* 10*s.* Debt, beſides Coſts. It was alledged by the Petition that 42 *l.* 5*s.* Part of the Debt, was paid. Court denied to make any Order.

Greenſal *againſt* Cooper.

A Priſoner, charged in Execution in the *Marſhal's Court*, petitioned that Court to be diſcharged upon the Lords Act, and was detained there upon Plaintiff's undertaking to pay his 2*s.* 4*d.* *per* Week. Defendant afterwards removed himſelf by *Habeas Corpus* to the *Fleet*, and moved to be diſcharged for Nonpayment of the 2 *s.* 4*d.* *per* Week. Court made a Rule to ſhew Cauſe; but afterwards, upon hearing Council on both Sides, the Rule was diſcharged, Court being of Opinion that Defendant had loſt the Benefit of the Act by removing himſelf, and could only petition and be diſcharged by that Court out of which the Execution iſſued. *Darnall* for Defendant; *Baynes* for Plaintiff.

Palmby

Palmby *againſt* Maſters.

DEfendant, a Bankrupt, was rendered in Diſcharge of his Bail after Judgment, and now moved to be diſcharged purſuant to the Bankrupt Act. Plaintiff objected that the Words of the Act extend only to Perſons charged in Execution, or by Virtue of Judgments. The Judgment appeared to be for a Debt due before the Bankruptcy, and was entered in *Hilary* Term laſt; the Render was in the Beginning of *April*, and the Bankrupt's Certificate was confirmed the 18th of *April*. *Chapple* for Defendant urged, that the Words of the Act extend to Bankrupts detained in Cuſtody for Debts due before they became Bankrupts, which Debts are diſcharged by the Act, let them be detained how they will, in Execution or otherwiſe, they are to be diſcharged. Court, after taking Time to conſider, ordered Defendant to be diſcharged.

Peachey *againſt* Bowes, Spinſter.

DEfendant being a Priſoner in the *Fleet* at Plaintiff's Suit, brought a Writ of Error, and thereupon Judgment was reverſed, and a *Superſedeas* iſſued to diſcharge her out of Cuſtody; but before ſhe could get the *Superſedeas* allowed, Plaintiff charg-

ed her with a new Declaration; whereupon ſhe moved to be diſcharged: And the Court, upon hearing Council on both Sides, were of Opinion, that Defendant being detained a Priſoner at Plaintiff's Suit only, and not at any other Perſon's, could not be regularly charged with the ſecond Declaration after the Reverſal of the firſt Judgment, whereon Defendant had been wrongfully detained, and therefore ordered Defendant to be diſcharged, notwithſtanding the ſecond Declaration. *Comyns* for Defendant; *Eyre* for Plaintiff.

Shaw, Bart. *againſt* Gimbert. Mich. 7 Geo. 2.

DEfendant, an inſolvent Priſoner, moved to be diſcharged for Plaintiff's not paying the Weekly Allowance of 2 *s.* 4 *d.* according to the Act of Parliament. Plaintiff ought to have paid the Mony on *Tueſday*, and neglected it; but on *Friday* following his Agent tendered the Mony to Defendant, who refuſed to accept it. *Per Cur'*: No wilful Default appears in the Plaintiff; let Defendant be remanded.

Robins *againſt* Wigley.

THE Defendant being a Priſoner in the *Fleet* was brought to the Bar by *Habeas Corpus*, in order to be charged in Execution at Plaintiff's Suit. *Baynes* for Defendant objected, that Plaintiff, not having charged Defendant in Execution within three Terms after Judgment obtained, was now too late, Defendant being intitled to a *Superſedeas*; and ſo the Court held, and the Priſoner was remanded. (*Aliter poſtea.*) Plaintiff may proceed at his Peril.

Baker *againſt* Holmer.

DEfendant, who was charged in Execution at the Plaintiff's Suit for 103*l.* 10*s.* Debt, beſides Coſts, made an Affidavit that 42*l.* 5*s.* Part of the Debt, was paid; and thereupon *Hawkins* moved that Plaintiff might endorſe upon the *Habeas Corpus* by Virtue whereof the Defendant was charged in Execution, the Sum remaining due, in order that upon Plaintiff's own ſhewing the Sum might appear to be under 100*l.* whereby Defendant would be enabled to take the Benefit of the Lords Act. The Court made a Rule to ſhew Cauſe, which was afterwards made abſolute upon hearing *Belfield* for Plaintiff.

Note; Plaintiff afterwards indorſed 103*l.* 10*s.* upon the *Habeas Corpus* as his Debt; and the Court, upon a ſubſequent Application, refuſed to enter farther into the Conſideration of what was really due.

Toms *againſt* Hammond.

DEfendant moved to be diſcharged upon the Act of Parliament as a Domeſtick or menial Servant (which were the Words of his Affidavit) of Baron *Hopman*, Envoy from the Duke of *Mecklenbourgh*, and obtained a Rule *Niſi*. Plaintiff ſhewed for Cauſe, that Defendant had an Annuity of 200*l.* a Year, and that he was a Juſtice of Peace for *Middleſex*; ſo that it was not likely he could act as the Envoy's Domeſtick Servant, and inſiſted that the Words of the Envoy's Certificate produced by Defendant were *Menial Servant* only, which is not within the Act, the Words of the Act being *Domeſtick Servant*. *Per Cur'*: The Word *Menial* is not explained by our Law, *Domeſtick Servant* are the Words of the Act, and it doth not appear that Defendant was ſuch. A menial Servant may be employed out of the Houſe or Houſhold Affairs, a Domeſtick in or about the Houſe only. A Perſon hired as a Clerk is no Domeſtick Servant. Defendant did not appear to have received any Wages. Let the Rule be diſcharged.

Luker

Luker *againſt* Wallis, Widow. Eaſter 7 Geo. 2.

THE Defendant being an inſolvent Debtor was brought into Court a ſecond Time, and Plaintiff being dead, his Executor appeared, and prayed further Time to inquire into the Truth of Defendant's Diſcovery of her Effects; but the Court refuſed to enlarge the Time, which is limited by Act of Parliament, and diſcharged the Priſoner.

Warrington *againſt* Elliott.

PLaintiff's Attorny appeared and offered to ſign a Note for 2 *s.* 4 *d. per* Week, to be allowed Defendant in order to continue him in Priſon in Execution at the Plaintiff's Suit; but the Court diſcharged the Defendant for want of Plaintiff's ſigning ſuch Note, the Signing of the Attorny not being ſufficient.

Caſtle, and Wife, *againſt* Whitaker. Trin. 7 & 8 Geo. 2.

G*Irdler* moved for the Defendant to ſhew Cauſe why it ſhould not be referred to the Prothonotary, to examine what was due for the Plaintiff's Debt, in order that Defen-

Defendant might have the Benefit of the Lords Act, upon an Affidavit that 21 *l.* only remained due, tho' Defendant was charged in Execution for upwards of 100 *l.* Court refuſed that Rule, but made a Rule to ſhew Cauſe why, upon Payment of the 21 *l.* and Coſts to be taxed, Defendant ſhould not be diſcharged.

Swain *againſt* Girdler, Serjeant at Law.

DEfendant was ſued by Bill; to which he demurred, inſiſting that he ought to be ſued by Original, and upon arguing the Demurrer, a Caſe was quoted, *Baker* againſt *Swindale* in this Court, *Mich.* 10 *G. Roll* 360. that was an Action brought againſt a Prothonotary's Clerk by Original. He pleaded that he ought to be ſued by Bill; to which Plaintiff demurred, and the Court gave Judgment that the Defendant ſhould anſwer over. *Per Cur':* This Caſe is in Point; Serjeants, Prothonotaries Clerks, and all others not obliged to Attendance in Court, are upon the ſame Foot. Judgment *quod Billa caſſetur.* *Eyre* for Plaintiff; *Hawkins* for Defendant.

Cooper,

Cooper, and nine others, *againſt* Levi. Mich. 8 Geo. 2.

DEFENDANT was committed to the *Fleet* by the Commiſſioners of Bankruptcy for not anſwering Interrogatories in the long Vacation, when no Judge was in Town, and was then charged with Declarations at the Suit of ſeveral Plaintiffs, without Leave obtained from any of the Judges of the Court. Defendant applied to ſet aſide the Proceedings on the Day before the Writs of Inquiry were to be executed, and not before, and obtained a Rule to ſhew Cauſe, which was afterwards diſcharged on hearing Council on both Sides. The Court did not determine upon the Regularity of the Charge; but held that Defendant came too late to move after Judgment. *Eyre*, *Baynes* and *Urlin* for Plaintiffs; *Chapple* and *Skinner* for Defendant.

Jenner *againſt* Swan. Hil. 8 Geo. 2.

PER Cur': All Objections, as to the Inſufficiency of a Priſoner's Schedule of his Effects in Point of Form, are to be made upon the firſt Attendance: The ſecond Time the Priſoner is brought up, the Plaintiff muſt be prepared to falſify the Account given by Defendant of his Effects, if he can; he will then

then be too late to object to the Schedule in Point of Form.

Sir William Strickland *againſt* Hodgſon.

CHAPPLE moved to ſtay Proceedings upon a Declaration delivered againſt Defendant, a Priſoner in the County Gaol for *Northumberland*, the Declaration not having been entered in the Prothonotary's Office before it was delivered. The Motion was oppoſed by Serjeant *Eyre*; and upon looking into the Rule of Court made ſoon after the Statute of 4 & 5 *W.* 3. for eſtabliſhing the Practice touching the Delivery of the Declarations to Priſoners in Country Gaols, the Court were of Opinion that it is ſufficient to enter the Declaration any Time before giving a Rule to plead, and therefore no Rule was made.

Tidmas *againſt* Procter. Trin. 8 & 9 Geo. 2.

DEfendant, an Inſolvent Debtor, petitioned to be diſcharged for Non-payment of the Weekly Allowance of 2 *s.* 4 *d.* but it appearing that Plaintiff was dead before any Default made in Payment, the Court made no Rule. This is a Caſe unprovided for by Act of Parliament.

Tidmas

Tidmas *againſt* Procter. Mich. 9 G. 2.

COURT made a Rule for Plaintiff's Executor to ſhew Cauſe why Defendant, an Inſolvent Debtor, ſhould not be diſcharged for Non-payment of the Weekly Allowance of 2 *s.* 4 *d.* and upon an Affidavit of Service, no Cauſe being ſhewn, Defendant was ordered to be diſcharged, the Words of the Act of Parliament being general.

Featherſtonehaugh, and Wife Adminiſtratrix of Brown, *againſt* Atkinſon.

DEfendant had been a Priſoner in *Wood-ſtreet* Compter in 1732. upon meſn Proceſs at the Suit of *Brown*, Plaintiff's Inteſtate, and being at that Time a Serjeant at Mace, the Keeper of the Compter ſuffered him to have the Liberty of the Gate (as it is called) that is, to have his Liberty upon Promiſe to return into Cuſtody whenever called upon by the Keeper; the ſaid Action having never been diſcharged upon the Books of the Compter, and *Brown* in his Life-time having obtained Judgment, Plaintiffs revived the ſame by *Scire Facias*, and having obtained an Award of Execution, charged Defendant (ſtill a Priſoner on the Books) with a *Capias ad ſatisfaciendum*, as a Priſoner in Cuſtody of

of the Sheriffs of *London*; whereupon the Keeper of the Compter endeavoured to perſuade Defendant to return into Cuſtody; which he refuſing, the Keeper on *Sunday November* 9. retook Defendant at *George*'s Coffee-houſe, *Temple-Bar*, without any Warrant, and Defendant moved againſt the Keeper to be diſcharged, inſiſting that as the Eſcape was voluntary, the Keeper could not retake him; and alſo inſiſting, that the Debt was paid to *Brown* in his Life-time. The Keeper, on ſhewing Cauſe, could not controvert the firſt Thing inſiſted on, *viz.* that the Eſcape was voluntary, and as to Payment of the Debt, that was out of his Knowledge; *Brown*'s Action never was diſcharged from the Books, and Plaintiffs were not Parties to this Motion. But there having been a former Motion this Term by Defendant to be diſcharged, the Debt being paid; Plaintiffs had anſwered that Fact, and ſhewn ſufficient Cauſe to keep him in Cuſtody. The Eſcape on all Hands being admitted to be voluntary, Mr. Juſtice *Denton* and Mr. Juſtice *Forteſcue* were of Opinion, that the Keeper could not retake Defendant, and that he ought to diſcharge him. Had the Eſcape been real, the Keeper might have retaken Defendant upon a *Sunday*, and is not reſtrained by the Statute 29 *Car.* 2. Mr. Juſtice *Reeve* was of the ſame Opinion in Point of Law, but thought it too much for the Court to relieve

Defendant, who appeared to have acted (at leaſt very diſhonourably with regard to the Keeper) in this ſummary Way upon Motion, and that Defendant ſhould be put to his Action or an *Audita Querela*. Defendant was ordered to be diſcharged. *Skinner*, *Urlin* and *Wright* for the Keeper; *Glyde*, *Chapple* and *Eyre* for Defendant.

Roberts *againſt* Hammond. Hil. 9 G. 2.

DEfendant, an Inſolvent Debtor, was diſcharged on the Lords Act. Plaintiff afterwards brought an Action of Debt on the Judgment, and Defendant being arreſted thereupon, moved to be diſcharged, which was ordered on hearing Council on both Sides. The Perſon after being once diſcharged from an Execution by Act of Parliament, is to be free, and cannot be afterwards retaken by Execution or Action on the Judgment. *Chapple* for Defendant; *Wright* for Plaintiff.

Cain *againſt* Molineux.

DEfendant moved to be diſcharged out of Execution, being Steward of the Houſhold to Baron *Bourk*, a Foreign Envoy, and obtained a Rule to ſhew Cauſe, which was afterwards diſcharged on hearing Council on both Sides, it appearing that Defendant was a Trader, that he reſided at his own Houſe

Houſe in the *Old Palace-Yard, Weſtminſter*, and that the Envoy was at *Hanover* at the Time of the Arreſt. *Eyre* for Plaintiff; *Chapple* and *Skinner* for Defendant.

Deſeriſay *againſt* O'Brien.

DEfendant being arreſted at Plaintiff's Suit, moved upon the Act of Parliament of Queen *Anne* to be diſcharged out of Cuſtody upon Affidavits that he was a Courier employed in the Service of Sir *Thomas Geraldino*, Envoy from the King of *Spain*, and (during Receſs from Journies wherein he was frequently employed by the Envoy) did eat at his Houſe among his other Servants, and was paid Wages by him. It was inſiſted for Plaintiff, that Sir *Thomas Geraldino* was not a publick Miniſter within the Act of Parliament, but only an Agent for the Court of *Spain*, to treat with the *South Sea* Company: That admitting him to be a publick Miniſter, a Courier or Meſſenger, who is paid for each Journy according to his Deſert, and not a certain Sum for Wages by the Year, is not a Domeſtick Servant. It fully appeared by Affidavits produced on Behalf of Plaintiff, that Defendant was a Trader, and conſequently not entitled to the Benefit of the Act of Parliament. The Rule to ſhew Cauſe why Defendant ſhould not be diſcharged out of Cuſtody

was

was ſet aſide. *Ward* againſt *Purſell*, *Mich.* 2 *Geo.* 2. in *B. R.* was quoted. *Chapple*, *Eyre* and *Skinner* for Defendant; *Comyns* and *Wright* for Plaintiff.

Sherwyn *againſt* Bowes, Spinſter. Eaſter 9 Geo. 2.

AFTER Judgment reverſed by Writ of Error, Defendant had a *Superſedeas*; but before ſhe was thereby diſcharged, ſhe was charged with a new Declaration at Plaintiff's Suit, and upon Application to the Court was diſcharged by Rule from the new Declaration, and her *Superſedeas* was allowed. After her Diſcharge Plaintiff cauſed her to be arreſted and held to Bail for the former Cauſe of Action; whereupon ſhe moved the Court to be again diſcharged by *Superſedeas* upon entering a common Appearance; and upon hearing Council on both Sides, the Court was divided in Opinion. *Lord Chief Juſtice* and Mr. Juſtice *Comyns* looked upon the ſecond Declaration to be no Charge, and that the Court took it ſo when a Rule was formerly made for her Diſcharge; and thereupon ſhe had the Benefit of her *Superſedeas*, and that after the Judgment reverſed and annulled, Plaintiff had a Right, if he thought fit, to bring a new Action. Mr. Juſtice *Denton* and Mr. Juſtice *Forteſcue* were of Opinion, that after the Defendant had been diſcharged by

Rule of Court, as to the ſecond Declaration, ſhe ought to be now diſcharged on entering a common Appearance, and that the Rule of Court amounts to the ſame Thing as a *Superſedeas*. No Rule. *Hawkins* for Defendant; *Skinner* for Plaintiff.

Kirke *againſt* Burrowes. Trin. 10 G. 2.

DEfendant obtained a *Superſedeas* for Want of Proſecution; but before he was diſcharged by Virtue thereof Plaintiff cauſed him to be charged in Execution. Defendant was ordered to be diſcharged with Coſts, conſenting to bring no Action. *Eyre* for Defendant; *Skinner* for Plaintiff.

Hannot *againſt* Farettes.

DEfendant being brought to the Bar by the Warden of the *Fleet* by Virtue of a *Habeas Corpus ad ſatisfaciendum*, in order to be charged in Execution at Plaintiff's Suit, produced the Allowance of a Writ of Error; and objected, that as ſuch Writ was ſealed and allowed, he ought not to be charged; but the Court ſaid they would not intermeddle, Plaintiff might proceed at his Peril; and thereupon Defendant was charged in Execution.

Hannot *againſt* Farettes. Mich. 10 G. 2.

PLaintiff cauſed Defendant, a Priſoner in the *Fleet*, to be charged in Execution after Writ of Error ſealed and allowed, but before Notice thereof to Plaintiff's Attorny. The Court ſet aſide the Commitment in Execution, but refuſed to grant an Attachment againſt Plaintiff's Attorny, becauſe, though the Writ of Error be a *Superſedeas* from the Allowance, no Contempt is incurred till after Notice of it. *Chapple* for Defendant; *Eyre* for Plaintiff.

Wright, Adminiſtrator, *againſt* Kerſwill.

DEfendant was diſcharged out of Cuſtody by *Superſedeas* on entering a common Appearance, for Want of Plaintiff's proceeding to Judgment within three Terms after Declaration delivered. Plaintiff afterwards obtained Judgment, and Defendant being taken in Execution, moved to be diſcharged, inſiſting that after a *Superſedeas* his Perſon was free, and could not be again detained by Proceſs in the ſame Action, and it ſeems to have been the Senſe of the Court, when a Rule was made *Hil.* 8 *G.* 2. that if after a *Superſedeas* an Action of Debt be brought on Judgment, Defendant ſhall be diſcharged without Bail. It was urged for

Plaintiff, that Defendant having never been a Priſoner after Judgment might at any Time during his Confinement put in Bail to the Action, and being diſcharged on meſne Proceſs only before Judgment, he is after Judgment liable to be taken in Execution. The Court took Time to conſider of this Matter, and after conſulting the Judges of the other Courts, determined that in this Caſe Defendant having been diſcharged by *Superſedeas* before Judgment, was not finally diſcharged; but after Judgment is ſubject to be taken in Execution; though where a Defendant is ſuperſeded after Judgment for want of being charged in Execution (within two Terms after Judgment obtained) his Perſon cannot be afterwards taken in Execution. *Eyre* for Defendant; *Chapple* for Plaintiff.

Clarke *againſt* Venner.

THE ſame Caſe.

Nicholas Fling's Caſe. Hil. 10 Geo. 2.

DEfendant, being in Cuſtody of the Sheriffs of *Briſtol*, brought his *Habeas Corpus* to be removed to the *Fleet*, and tendered it to the Sheriffs with Seven Guineas (exceeding 1 *s. per* Mile) which the Sheriffs refuſed to accept, and inſiſted on 10 *l.* Defendant

fendant moved for an Attachment againſt the Sheriffs, and obtained a Rule to ſhew Cauſe, which was afterwards made abſolute. *Eyre* and *Corbett* for Defendant; *Draper* for the Sheriffs.

Mendes *againſt* Wolfe.

DEfendant, an inſolvent Priſoner, detained by two Executions, was by one Plaintiff allowed 2 *s.* 4 *d.* a Week on being continued in Cuſtody according to the Act of Parliament; and the other Plaintiff alſo inſiſting to detain Defendant, the Queſtion was what Allowance he ought to make; and held *per Cur'*, that the ſecond Plaintiff muſt alſo allow Defendant 2 *s.* 4 *d.* *per* Week.

Sibley *againſt* Sibley.

DEfendant taken in Execution, *September* 28. 1736. by *Ca. Sa.* returnable *tres Mich.* petitioned to be diſcharged on the Acts for Relief of Debtors; but *per Cur'* he comes too late; he ought to apply before the End of the firſt Term after the Arreſt, becauſe the Sheriff is liable to anſwer for an Eſcape from that Time, and not from the Return of the Writ.

Harriſon's Caſe. Eaſter 10 Geo. 2.

GEorge *Harriſon* an Attorny, being in *Serjeants Inn* waiting to attend Mr. Juſtice *Forteſcue* on a Summons, was prevailed on by an Agent for one of his Creditors, under Pretence of Buſineſs, to go with him to a Coffee-houſe in *Chancery-Lane*, near *Serjeants Inn*, where after the Hour appointed for the Attendance at the Judge's Chamber was expired, *Harriſon* was arreſted. It appeared that *Harriſon* had left his Clerk at the Judge's Chamber, with Directions to call him when the Judge was there, and at Leiſure. The Court ordered *Harriſon* to be diſcharged. *Chapple* for *Harriſon*; *Eyre* for the Creditor.

Hand *againſt* Kelly. Hil. 11 Geo. 2.

DEfendant being detained (*inter alia*) by a *Capias utlagatum* founded on an Outlawry upon meſne Proceſs proſecuted by Plaintiff, was brought to the Seſſions of the Peace by Virtue of the compulſive Clauſe in Inſolvent Debtors Act, 10 *Geo.* 2. and diſcharged, delivering a Schedule of his Effects. He was afterwards again arreſted by a *Capias utlagatum* renewed, and now moved to be diſcharged, giving a Warrant to appear *ſecundum Statut'*. Upon ſhewing Cauſe, the Court

Court was of Opinion, that as Defendant in this Caſe cannot have any Advantage by pleading, the Motion is proper. No Appeal lies from the Seſſions; the Determination there is final. Defendant is diſcharged from all Debts except Debts to the Crown. The Rule was made abſolute to diſcharge Defendant without Coſts. *Eyre* and *Wright* for Defendant; *Urlin* for Plaintiff.

Davis *againſt* Hall.

DEfendant moved for a *Superſedeas* for want of Plaintiff's proceeding to Judgment within three Terms after Declaration delivered. Declaration was of *Eaſter* Term, and the final Judgment ſigned in *Michaelmas* Vacation laſt. Plaintiff urged, that the Judgment being a Judgment of *Michaelmas* Term, though not ſigned till the Vacation, is ſufficient to prevent *Superſedeas*; but *per Cur'*, the three Terms are always taken to be incluſive of that Term whereof the Declaration is, and unleſs Plaintiff proceeds to ſign final Judgment within the third Term he is too late. Rule abſolute for *Superſedeas*. *Draper* for Plaintiff; *Huſſey* for Defendant.

Clayton *againſt* Stapp. Eaſter 11 Geo. 2.

DEFENDANT brought into Court by *Habeas Corpus ad ſatisfaciendum*; Serjeant *Agar* objected againſt his being charged in Execution, Mr. Juſtice *Forteſcue* having made an Order for a *Superſedeas May* 1. which was lodged with the Warden, and allowed, and Appearance entered; Defendant was ſuperſedable laſt Term, and ought to have the compleat Benefit; but Defendant not having ſerved the Order, nor allowed the *Superſedeas* till after *Habeas Corpus* was lodged with the Warden; *Cur':* He muſt be charged, and he may apply afterwards as he ſhall be adviſed. Plaintiff may proceed at his Peril.

Cock *againſt* Kerridge. Trin. 11 & 12 Geo. 2.

DEfendant having obtained a Rule to plead doubly (*Non aſſumpſit* and *Non aſſumpſit infra ſex annos*) Plaintiff moved to diſcharge it, inſiſting that Defendant, who was a Priſoner in the *Fleet* at the Time of his being charged with the Declaration before this Rule obtained, was diſcharged at the Seſſions of the Peace by the compulſory Clauſe in the Inſolvent Debtors Act 10 *G.* 2. and

and being at large could not regularly apply for the Rule to plead doubly, without firſt entering a common Appearance; which was not done. The Queſtion was never determined, but by Conſent Plaintiff had Leave to diſcontinue without Coſts. *Skinner* and *Urlin* for Plaintiff; *Wright* for Defendant.

Baldwin *againſt* O'Carroll.

DEfendant rendered himſelf into the Cuſtody of the Warden of the *Fleet* Priſon as a Fugitive for Debt, to take the Benefit of the late Act of Parliament, 10 *Geo.* 2. Plaintiff tendered a Declaration to the Warden, which he refuſed to accept, and thereupon Plaintiff moved for Leave to proceed, and had a Rule to ſhew Cauſe; but the Court ſeeming to be of Opinion that Defendant being in the Warden's Cuſtody for a particular Purpoſe only, was not liable to be charged with Declaration. Plaintiff conſented to waive his Proceedings, and the Rule was diſcharged. *Parker* for Plaintiff; *Urlin* for Defendant; *Eyre* for Warden.

Aſheley *againſt* Sutton. Hil. 12 Geo. 2.

RULE to ſhew Cauſe why a *Superſedeas* ſhould not Iſſue to diſcharge Defendant out of Cuſtody for want of being charged in Execution within two Terms. Plaintiff's Attorny,

Attorny, who lived in *London*, had ſent down a *Ca. Sa.* directed to the Sheriff of *Exeter* inſtead of *Devon*, which being ſent back, he rectified the Miſtake, got it reſealed, and ſent it again in Time (as he thought) to an Attorny at *Exeter*, with Directions to charge Defendant in Execution; but being miſtaken as to the Time of the Poſt's coming into *Exeter*, it came too late, and Defendant was not charged within the Term. It was urged for Defendant, that though the general Rule of Court directs a *Superſedeas* to iſſue unleſs Cauſe generally, and does not confine Plaintiff to any particular Matter, yet nothing has ever been admitted as good Cauſe againſt a *Superſedeas*, but a Treaty for an Accommodation, where Proceedings have ſtaid at Defendant's Requeſt; and if Defendant be not charged within the limited Time, through the Ignorance of Plaintiff's Attorny, Plaintiff and not Defendant muſt ſuffer. Enlarging the Matters to be ſhewn for Cauſe againſt *Superſedeas* will be productive of Motions, and render the Practice uncertain. And of this Opinion was Mr. Juſtice *Forteſcue Aland.* But *per Capital' Juſt' & al' Juſt'* any reaſonable Cauſe may be ſhewn. The Debt here is large (700*l.*) and no Intention to oppreſs the Defendant appears; the Want of Defendant's being charged in Time is by meer Miſtake, and through Accident; the *Ca. Sa.* when properly directed and reſealed is a new

Writ. It is common to diſpenſe with the Words of an Act of Parliament (a ſtronger Caſe than Rule of Court); where Inſolvent Debtor applies to be diſcharged for Non-payment of 2 *s.* 4 *d. per* Week, the Court refuſes it, unleſs the Default of Payment be wilful. Equity relieves in the Execution of Powers upon the Head of Accident. This is a Cauſe within the Meaning of the general Rule. The Rule diſcharged. *Wright* for Plaintiff; *Eyre* for Defendant.

J. Munoz *againſt* Levi. Eaſter 12 G. 2.

DEfendant being charged in Execution at Plaintiff's Suit for 33 *l.* 10 *s.* and with no other Execution, petitioned to have the Benefit of the Lords Act, and being brought into Court, Plaintiff objected that Defendant was now charged with another Execution at the Suit of *A. Munoz* for 182 *l.* and being charged for more than 100 *l.* could not have the Benefit of the Act. The Court held, that they muſt conſider the Charge as it ſtood at the Time of the Petition, and therefore with Regard to the Plaintiff *J. Munoz*, Defendant was within the Act.

Morſe *againſt* Warren. Mich. 11 G. 2.

MOTION to ſtay Proceedings againſt Sheriff of *Hertfordſhire* on a Six Days Rule to bring in the Body of Defendant. The Sheriff had returned a *Cepi*, upon which this Rule was founded. The Defendant went to Gaol for want of Bail, and the Gaoler let him go at large, (of which Affidavit was made) but Defendant was a Priſoner at the Time of the Motion. The Sheriff gave Notice to ſtay Proceedings, or that Plaintiff might bring a *Habeas Corpus* at his own Charge. *Cur'* diſcharged the Rule. *Skinner* and *Eyre pro Vic'*; *Prime pro Quer'*.

Berryman *againſt* Gilbert and his Wife. Trin. 13 Geo. 2.

DEfendants were brought into Court the ſecond Time from the *Fleet* Priſon to be diſcharged from an Execution purſuant to the Statute 2 *Geo.* 2. *Wright* for Plaintiff inſiſted upon detaining Defendants in Cuſtody upon allowing them 2 *s.* 4 *d. per* Week, and produced a Note ſigned *John King*, Attorny for Plaintiff, promiſing to pay the ſame, and an Affidavit that Plaintiff was abroad in Foreign Parts, ſo that Plaintiff's Attorny could not procure a Note ſigned by his Client. The Court held this Note inſufficient within the

the Words of the Act, and for want of a Note ſigned by Plaintiff himſelf Defendants were diſcharged. Vide *Warrington* againſt *Elliot*, *Eaſter* 7 *Geo.* 2.

Barker *againſt* Palmer.

THE Court made a Rule abſolute to diſcharge Defendant upon the Lords Act for Non-payment of 2 *s.* 4 *d. per* Week, undertaken to be paid by Plaintiff at *Norfolk* Aſſizes (conformable to the ſettled Practice of the Court of *King's Bench*) a Record of the Proceedings at the Aſſizes being ſent to this Court ſigned by the Judge of Aſſizes.

Mabſon *againſt* Butler. Mich. 13 G. 2.

RULE to ſhew Cauſe why Defendant ſhould not be diſcharged out of the *Fleet* Priſon by *Superſedeas* for want of Plaintiffs proceeding to Judgment within three Terms after Render. It appeared that Defendant had eſcaped, and had been a long time out of Cuſtody. *Per Cur'* : Let the Rule be diſcharged; in this Caſe the Time of Defendant's Recaption or coming again into Priſon ſhall be looked upon as the Time of the Render. *Eyre* for Plaintiff; *Price* for Defendant.

Huggins

Huggins *againſt* Bambridge, a Priſoner in the Fleet.

DEclaration was delivered in *Hilary* Term laſt, with an Imparlance; and in *Eaſter* Term Defendant pleaded, and Plaintiff demurr'd to the Plea on the firſt Day of laſt Term. Defendant joined in Demurrer, and Plaintiff not proceeding farther to a *Conſilium*, or otherwiſe, all laſt Term, Defendant moved for a *Superſedeas* for want of Plaintiff's proceeding to Judgment within three Terms after Declaration, purſuant to the Rule *Eaſt.* 8 *Geo.* It was urged for Plaintiff, that the Plea being very long and ſpecial, Plaintiff could not, probably, have procured an Argument laſt Term; and if he had, it was unlikely the Court would have given Judgment on the firſt Argument. *Per Cur':* Plaintiff has not proceeded as he might; he is not to judge whether the Court would have determined on the firſt Argument or not, it is an affected Delay to the Prejudice of Liberty: Plaintiff has ſhewn no good Cauſe why he did not proceed. The Rule is general, Plaintiff is to proceed to Judgment, (*i. e.* final Judgment) within three Terms, in all Caſes, incluſive of the Term of which the Declaration is delivered (the Intervention of the Argument of a Demurrer, or Trial of an Iſſue, makes no Difference) unleſs Plaintiff can ſhew

ſhew it was out of his Power to proceed ſo faſt. Defendant ſhall take no Advantage of the Court's Delay, or in Counties where the Aſſizes are held but once a Year, it may be impoſſible to comply with the Letter of the Rule; but here the Delay is Plaintiff's. Let a *Superſedeas* iſſue, which extends only to diſcharge Defendant's Perſon from Confinement; the Action ſtill remains pending, and Defendant's Remedy, as to *Non-pros*, is ſeparate and diſtinct from the *Superſedeas*. *Skinner*, *Wynne* and *Agar* for Defendant; *Eyre* and *Bootle* for Plaintiff.

Poulter *againſt* Salmon. Hil. 13 G. 2.

DEfendant had been ſuperſeded after Judgment for want of being charged in Execution within two Terms. Plaintiff afterwards brought an Action of Debt on the Judgment; and having obtained a ſecond Judgment, cauſed Defendant to be taken in Execution *October* 9, 1739. Defendant, laſt Term, applied for a *Superſedeas*; and the Court took Time to conſider whether he was ſuperſedable or not. This Term, pending the Conſideration of the Court upon the *Superſedeas*, Defendant petitioned, and had a Rule to be carried to next Aſſizes to be diſcharged by the Lords Act. The laſt Rule was ordered to be diſcharged. The Application for the *Superſedeas* and for this Rule

are

are inconſiſtent. *Bootle* for Plaintiff; *Prime* for Defendant.

Dorrell *againſt* Biſhop.

UPON an Affidavit that Plaintiff abſconded, and could not be perſonally ſerved with a Rule to ſhew Cauſe why Defendant ſhould not be diſcharged purſuant to the Lords Act, Court made a Rule, that Service upon Plaintiff's Attorny ſhould be deemed good Service, and upon Affidavit of Service on Plaintiff's Attorny Defendant was diſcharged, no Perſon attending on Plaintiff's Behalf to oppoſe Defendant's Diſcharge.

Proceſs, Service thereof, Rules, &c.

Wye *againſt* Wright. Mich. 6 Geo. 2.

PER *Cur'*: To make a perfect Service of a Rule, the Original Rule muſt be ſworn to have been ſhewn to the Party at the Time of ſerving the Copy.

Sheridan *againſt* Aſhby. Trin. 6 & 7 Geo. 2.

PLaintiff cauſed Proceſs to be ſerved upon Defendant, who afterwards removed from his Houſe; and Plaintiff not being able to find him, followed the firſt Service, and left the Notice of the Declaration under the Street-door of Defendant's empty Houſe. Court held the Judgment regular. *Chapple* for Plaintiff; *Darnal* for Defendant.

The King *againſt* Pike. Mich. 7 G. 2.

A Rule *Niſi* for an Attachment was ſerved by putting a Copy under the Door of Defendant's Houſe, and acquainting Defendant, who was in the Houſe, with the Contents. The Court held this to be inſufficient

Service, it being neceſſary that the Original Rule ſhould be ſhewn to the Party at the Time of Service.

Ruſh *againſt* Dale.

THE Court made a Rule for *Forreſt*, Defendant's late Attorny, to ſhew Cauſe why he did not pay Mony to the Plaintiff received of Defendant for that Purpoſe, *&c.* *Darnal* moved, upon an Affidavit of *Forreſt*'s concealing himſelf, that Service of the Rule at his Houſe might be good Service. *Per Cur':* The Rule not being for an Attachment, doth not require Perſonal Service.

Hall *againſt* Wilby. Hil. 7 Geo. 2.

URLIN moved to ſtay Proceedings, the Proceſs being ſerved within the Franchiſe of *Bury St. Edmunds*, and not by the proper Officer, contrary to the late Act of Parliament. *Per Cur':* The Act only preſerves and ſaves the Juriſdiction of particular Liberties. The Perſon injured muſt bring his Action, the Court cannot ſtay Proceedings.

Chance

Chance *againſt* Ruſſell.

BIRCH moved to ſtay Plaintiff's Proceedings, the Copy of the Proceſs ſerved upon Defendant not being directed to the Sheriff of any County. The Court denied the Motion, becauſe Defendant cannot take Advantage of this as an Irregularity; if the Writ be vicious, Advantage muſt be taken thereof in another Manner.

Longbothom *againſt* Knap and others.

PLaintiff ſued out a common *Clauſum fregit*, and the Sum for which he intended to declare in Debt upon a Recognizance of Bail being above 10 *l.* cauſed Defendant to be ſerved with a Copy of the Writ, without any Notice to appear ſubſcribed. Defendant moved to ſtay the Proceedings; and upon hearing Council on both Sides, the Court held the Service to be irregular, being of Opinion that in all Caſes where Proceſs is ſerved, it muſt be with Notice to appear, purſuant to the late Act of Parliament. *Comyns* for Defendant; *Skinner* for Plaintiff.

Smith *againſt* Wintle. Trin. 7 & 8 Geo. 2.

DEfendant moved to ſet aſide the Proceedings, upon an Affidavit that he was never ſerved with Proceſs. A Rule was made to ſhew Cauſe. Upon ſhewing Cauſe, Plaintiff, who ſerved the Writ, made an Affidavit that he put a Copy through a Crevice of the Door of the *Permit Office* in *Moorfields*, Defendant having locked himſelf in, that he plainly ſaw him through the Crevice, that he was very near the Door, and that he acquainted him what the Paper (put through the Crevice) was, which the Court held to be ſufficient Service, and diſcharged the Rule. *Darnal* for Plaintiff; *Birch* for Defendant.

Cutcliffe, an Attorny, *againſt* Standiſh.

THE Affidavit of Service of the Proceſs was as follows, (*viz.*) *That Deponent ſerved Defendant with a Copy of a Writ*, &c. *at the Plaintiff's Suit, except what related to other Defendants.* Defendant moved that Proceedings might be ſtayed: And a Rule was made to ſhew Cauſe, which was afterwards made abſolute on hearing Council on both Sides. *Chapple* for Plaintiff; *Belfield* for Defendant.

Porter

Porter *againſt* Kent. Mich. 8 Geo. 2.

BAYNES moved for an Attachment againſt the Sheriff of *Lincoln* for not bringing Defendant's Body into Court, according to a peremptory Rule. The Service was by delivering the Original Rule to the Under-Sheriff. Court made a Rule to ſhew Cauſe.

Buncombe *againſt* Love and his Wife. Eaſter 8 Geo. 2.

THE Proceſs was ſerved upon the Huſband only, and not upon the Wife. Held to be good in lieu of Arreſt. *Chapple* for Plaintiff; *Comyns* for Defendant.

Byers *againſt* Whitaker, in County Palatine of Lancaſter. Trin. 8 & 9 Geo. 2.

THE Court held that the *Teſtat' Capias* is the Proceſs to be ſerved upon Defendant, and not the Chancellor's Mandate; upon reading the Act of Parliament 5 *G.* 2. which is explanatory of the Act 12 *Geo.* By the laſt Act the Affidavit of Service of the Proceſs is directed to be ſworn before a Judge of the Court from whence Proceſs iſſued, or a Commiſſioner appointed by ſuch Court,

which muſt be intended of the Courts of *Weſtminſter*, none other can appoint ſuch Commiſſioners: Before the laſt Act of Parliament this Court was of Opinion, that the Proceſs to be ſerved muſt be the Proceſs whereby Defendant might have been arreſted before the firſt Act. *Beale* againſt *Smith*, *Mich.* 1 *Geo.* 2. But ſince the laſt Act to explain the former, the Court of *King's Bench*, and this Court, have held that the firſt Proceſs muſt be ſerved. *Birch* for Plaintiff; *Comyns* for Defendant.

Weſtall *againſt* Finch.

DEfendant moved to ſtay the Proceedings, the Proceſs not having been ſerved upon him, but upon another Perſon, and obtained a Rule to ſhew Cauſe. Upon ſhewing Cauſe, it was inſiſted by Plaintiff, that although the Proceſs might be ſerved upon a wrong Perſon, yet an Appearance being now entered, the Defendant was in Court, and the Miſtake was cured: But *per Cur'*: The Appearance is entered by Plaintiff, according to the Statute, and by no Means cures the Miſtake. Let the Rule be abſolute. *Hawkins* for Defendant; *Wright* for Plaintiff.

Hil. 9 Geo. 2.

WRIGHT moved to ſtay Proceedings, no Attorny's Name being put to the Copy of the Proceſs ſerved upon Defendant; but the Motion was denied. Plaintiff is not in Fault, but the Attorny.

Bennet *againſt* Sampſon. Eaſter 7 Geo. 2.

THE *Capias ad reſpondendum* was directed to the Sheriff (ſingular) of *London*, teſted *February* 13. which was the Day after the End of laſt *Hilary* Term. *Urlin* moved to quaſh it, alledging Defendant hath no other Remedy to take Advantage thereof, becauſe he cannot have *Oyer* of the Writ; nor will it appear upon the Record in Caſe of a Writ of Error. Court made a Rule to ſhew Cauſe, which was afterwards made abſolute on hearing *Chapple* for Plaintiff. This Writ bearing Teſte in Vacation, is void.

Blackall *againſt* Gould. Trin. 7 & 8 Geo. 2.

MOVED to ſtay Proceedings, becauſe no Attorny's Name was ſet to the Writ. Denied. *Warnell* againſt *Revell*, and *Fawks* againſt *Jay*, *Trin.* 5. *Perkin* againſt *Baker*, *Hil.* 5 *Geo.* 2.

Byas *and* Wife *and* Goodfleſh, *againſt* Lyell. Trin. 10 Geo. 2.

In tranſgr' ſuper Caſum. PLaintiff had proceeded againſt Defendant in the old Way, by *Pone* and Diſtreſs; and Defendant moved to ſtay Proceedings, ſuggeſting the ſame to be contrary to the Method preſcribed by the late Act of Parliament to prevent vexatious Arreſts, 12 *Geo.* and 5 *Geo.* 2. and the Queſtion was, Whether by theſe Statutes the old Method of Proceeding be taken away, and another Method inſtituted or not? It was urged for Plaintiff, that before the Statute of *Marlbridge* no *Capias* lay; that the antient Courſe of Proceeding was by Original, and where the Party was returned attached, no Proceſs lay, but a *Diſtringas*, except in Treſpaſs *vi & armis*. In this Caſe the Party is returned attached upon the Original, and no Proceſs to Outlawry lies: The Act of Parliament 12 *Geo.* preſcribes

preſcribes a Method in Caſes where the Cauſe of Action is under 10 *l.* and Plaintiff proceeds by Way of Proceſs againſt the Perſon: But here Plaintiffs do not proceed by Way of Proceſs againſt the Perſon, and after the Original returned as aforeſaid, no Proceſs againſt the Perſon can iſſue, and conſequently the Party cannot be ſerved with Proceſs. There is alſo an Exception in the Statute 12 *Geo.* as to Peers and privileged Perſons, who are to be proceeded againſt as by Stat. 12 *W.* 3. but that can relate only to Caſes where the Proceeding is by Way of Proceſs againſt the Perſon, and not by Method of *Pone* and Diſtreſs, which is a dilatory Method in Defendant's Favour, where Eſſoins may be caſt, and remains as it was, not affected by any of theſe Statutes. *Per Cur':* The Statute of *Marlbridge* and 25 *Ed.* 3. do not take away the antient Method of Proceeding by Original and *Diſtringas*; but where it is returned upon the Original, that Defendant hath nothing whereby he can be attached, a *Capias* againſt the Perſon may be iſſued, and a Proceeding to Outlawry carried on. The Words of the Statute 12 *Geo.* extend only to Proceedings by Way of Proceſs againſt the Perſon, and ſeem to admit Plaintiffs may proceed otherwiſe, as before; and it would be hard to ſay this Clauſe hath repealed the Law by Implication. As to Proceedings againſt privileged Perſons, a new Method by Bill

is

is preſcribed by the Statute of 12 *W.* 3. but the Law not altered. Let the Rule to ſhew Cauſe why the Proceedings ſhould not be ſtayed be enlarged. *Corbet* for Defendant; *Draper* for Plaintiff.

Humphreys *againſt* Mitchell.

PROCESS was ſerved *June* 16. dated 26. Held to be irregular, and Proceedings ſtayed. *Comyns* for Defendant; *Huſſey* for Plaintiff.

Williams *againſt* Faulkner. Trin. 10 Geo. 2.

DEfendant had obtained a Rule for Plaintiff to ſhew Cauſe why the Writ of *Capias ad reſpondendum* ſhould not be quaſhed, there not being fifteen Days between the Teſte and Return thereof. The Rule was diſcharged, this being Matter of Error, and not of Irregularity. *Corbet* for Plaintiff; *Skinner* for Defendant.

Cromwell *againſt* Goodwin.

THE Notice ſubſcribed to the Copy of the Proceſs ſerved, was directed to Plaintiff inſtead of Defendant; and the Notice of the Declaration left in the Office was without Date. Defendant moved to ſet aſide

Judgment and Inquiry; and both Notices being faulty, Judgment and Inquiry were ſet aſide. *Agar* for Defendant; *Wright* for Plaintiff.

Taylor *againſt* Nicholls. Mich. 10 Geo. 2.

THE Writ of *Capias ad reſpondendum* was returnable *tres Mich.* Teſte *July* 14, in the ninth Year of the King, (inſtead of the tenth Year.) A Rule was made to ſhew Cauſe why Proceedings ſhould not be ſtayed, which was afterwards made abſolute, no Cauſe being ſhewn.

Byas *and* Wife, *and* Goodfleſh, *againſt* Lyell. Mich. 11 Geo 2.

THE Rule to ſhew Cauſe why Proceedings ſhould not be ſtayed was diſcharged. *Draper* for Plaintiff; *Hayward* for Defendant. *Vide* this Caſe *Trin.* 10 *Geo.* 2.

Green *againſt* Upton.

THE Rule to tranſcribe the Record was ſerved on Plaintiff in Error, and for want of tranſcribing a *Non-pros* was ſigned. Plaintiff in Error moved to ſet aſide the *Non-pros*, inſiſting that the Rule to tranſcribe ought

ought to have been ſerved on *Forreſt*, his known Attorny in the Cauſe, and not on Plaintiff himſelf; and obtained a Rule to ſhew Cauſe, which was diſcharged, the Court declaring the Service ſufficient. Rules to tranſcribe are excepted out of the general Practice; Service thereof on the Party has been always held good. *Agar* for Plaintiff, *Parker* for Defendant.

Peter *againſt* Reignier, Adminiſtrator.

PLaintiff ſued out a Special Original, Damages 50*l.* and having ſerved a Copy thereof, proceeded as if a *Capias ad reſpondendum* with Notice to appear had been ſerved. Defendant moved to ſtay Proceedings, and obtained a Rule to ſhew Cauſe; before Cauſe ſhewn Plaintiff ſigned Judgment, which was ſet aſide with Coſts, and further Proceſs ſtaid. *Hayward* for Defendant; *Wynne* for Plaintiff.

Plaintiff might have proceeded by *Pone* and Diſtreſs, or taken a *Capias* on his Original which he pleaſed; but Service of a Copy of the Original in this Manner amounts to nothing more than Notice of the Debt. Proceſs to be ſerved according to the late Statute muſt be Proceſs againſt the Perſon.

Haward,

Haward, Attorny, *againſt* Diniſon. Trin. 11 & 12 Geo. 2.

THE Attachment of Privilege *Teſte* 23d, returnable *January* 31. Defendant moved to quaſh the Writ for want of fifteen Days between the *Teſte* and Return, and a Rule was made to ſhew Cauſe, which was afterwards made abſolute, the Court conſidering the Attachment of Privilege in the Nature of an Original Writ. *Draper* for Defendant; *Skinner* for Plaintiff.

Q. Whether this might not have been taken Advantage of by Plea in Abatement, or by Writ of Error.

Talbot *againſt* Odeham. Mich. 12 G. 2.

NOTICE of Declaration was ſworn to be put under the Latch of Defendant's Door on *June* 15. 1738. but not what Time of the Day or Night, nor that the Perſon who left the Notice knocked or endeavoured to open the Door. It did not appear that the Notice came to the Hands of Defendant or any of his Family; but being left ſo openly, might be taken away by any Body. This Notice was held inſufficient, and the Rule to ſhew Cauſe why Judgment ſhould not be ſet aſide, was made abſolute. *Prime* for Defendant; *Eyre* for Plaintiff.

White

White *againſt* Waſhington.

CApias returnable *tres Mich.* Notice to appear *October* 20. without ſaying *next*, Writ dated *Auguſt* 22. not cured by Plaintiff's entering the Appearance, becauſe the Notice to appear is defective. Defendant may apply any Time before Judgment. Many Blunders were made in the Copy of the *Capias*. Let Plaintiff's Attorny ſhew Cauſe why he ſhould not pay Plaintiff and Defendant their Coſts occaſioned by his Miſtakes. *Skinner* for Plaintiff; *Hayward* for Defendant.

Royſton *againſt* Reed.

RULE for *Ambroſe* late Sheriff of *Eſſex* to ſhew Cauſe why he ſhould not return ſeveral Writs of *Fi. Fa.* and *Venditioni exponas*. *Wynne* ſhewed for Cauſe, that all the Warrants on theſe Writs were granted to Special Bailiffs of Plaintiff's Nomination, and that Indemnities to the Sheriff were indorſed on all the Writs, and ſigned by Plaintiff and his Attorny. *Per Cur'*: The Rule muſt be abſolute. The Indemnities are neceſſary, becauſe Plaintiff may call for Returns, though Warrants were made to his own Bailiffs. *Eyre* and *Prime* for Plaintiff.

Laggett

Laggett *againſt* Watkins. Hil. 12 G. 2.

RULE to ſhew Cauſe why Proceedings ſhould not be ſtaid diſcharged with Coſts. The Objection was, that no Attorny's Name was ſet to the Sheriff's Warrant as required by Act of Parliament; but *per Cur'*, the Warrant is not void, the Act of Parliament is directory only; the Sheriff is blameable, but the Party muſt not ſuffer for his Default. *Skinner* for Plaintiff; *Huſſey* for Defendant.

Collins *againſt* Shapland and his Wife. Eaſter 12 Geo. 2.

HUSSEY for Defendant obtained a Rule to ſhew Cauſe why Judgment ſhould not be ſet aſide, the Wife having never been ſerved with Proceſs. On hearing *Draper* for Plaintiff the Rule was diſcharged, the Service of the Huſband being held ſufficient in lieu of Arreſt, and on Affidavit of ſuch Service Plaintiff was well warranted in entering Appearance for both Huſband and Wife, they not having appeared in Time. Vide *Buncomb* againſt *Love* and Wife. *Paſch.* 8 *Geo.* 2.

Amery *againſt* Smith. Trin. 13 Geo. 2.

MOTION to ſtay Proceedings founded on a Defect in the Affidavit filed with the Filazer, by Virtue whereof Defendant's Appearance was entered by Plaintiff *ſecundum Statutum*, without producing any Affidavit of Defendant. The Deponent in Filazer's Affidavit ſwore that he ſerved a Copy of the Writ annexed to his Affidavit, but ſaid nothing about Notice; and the Notice ſubſcribed to ſaid Writ was not directed to Defendant as required *per Stat.* and Blanks were left for the Day and Year of Appearance. Rule abſolute to ſtay Proceedings. *Draper* for Defendant; *Skinner* for Plaintiff.

Prohibition.

Eaglesfield *againſt* Anderſon. Trin. 7 & 8 Geo. 2.

DEfendant came to ſhew Cauſe why a Prohibition ſhould not be granted; and objected that no Affidavit was filed, whereby the Libel whereupon Plaintiff had moved, appeared to be a true Copy. *Per Cur':* The Objection is good. Rule diſcharged. *Wright* for Defendant; *Urlin* for Plaintiff.

Pitt *againſt* Evans. Mich. 12 Geo. 2.

RULE for Civilians to be heard on both Sides, in Relation to a Prohibition. Dr. *Lee* attended to argue againſt the Prohibition; but none would attend to argue for it, as by Affidavit appeared. *Per Cur':* We ought to hear Civilians on both Sides, or not at all. Enlarge the Rule, perhaps when our Opinion is known, a Doctor may attend on the other Side: Afterwards, no Civilian attending to argue for the Prohibition, Dr. *Lee* could not be heard againſt it.

Reference.

Corrance *againſt* Newſom, Criſp *and* Smith. Mich. 12 Geo. 2.

MOTION *per Prime* to make Rule, *Niſi prius* Rule of Court to refer to Prothonotary *Thompſon* to aſcertain Damages. Denied as improper.

Reſcous.

Taſker *againſt* Geale. Hil. 6 Geo. 2.

DEfendant was brought into Court by *Habeas Corpus* directed to the Sheriff of *Kent*, and upon the Return thereof it appeared that Defendant was detained by a Writ of *Reſcous* which had been iſſued by the Filazer, founded on a Reſcue returned by the Sheriff on a Writ of *Capias ad reſpondendum* between the Parties, in which Writ of *Reſcous* was contained an *Al' Cap'* againſt the Defendant to anſwer the Plaintiff according to the Tenor of the firſt *Cap'*. Motion was made to diſcharge Defendant, the Writ of *Reſcous* being complex, *i. e.* to anſwer the King for a Contempt, and to anſwer *Taſker*

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in a Civil Action. The Court denied to make any Rule, the Writ of *Reſcous* being in the common Form. Vide *Officina Brevium*, Title *Reſcous*, fol. 194.

Rex *contra* Philips and others. Eaſter 6 Geo. 2.

A *Reſcous* was returned by the Sheriff of *Eſſex*, and an Attachment being iſſued and Defendants taken thereupon, Defendants entered into Recognizances for their Appearance to be examined upon Interrogatories. The Court were of Opinion that a *Reſcous* returned by the Sheriff is not a Matter traverſable, but amounts to a Conviction, and the Party taken upon an Attachment founded upon a *Reſcous* returned is not proper to enter into Recognizance to be examined upon Interrogatories, ſuch Attachment being in the Nature of a *Capias pro Fine* to bring the Party into Court to be fined, and therefore diſcharged the Recognizance as irregularly taken.

Rex *contra* Baldwin and others.

EYRE moved to quaſh the Return of a *Reſcous* upon a *Fi. Fa.* as a bad Return. Rule to ſhew Cauſe. The Sheriff in this Caſe may raiſe the *Poſſe Com'*, and therefore cannot return a *Reſcous*.

The King *againſt* Tyrell and others. Trin. 6 & 7 Geo. 2.

AN Attachment having iſſued againſt Defendants upon a *Reſcous* returned, *Eyre* moved that they might ſubmit to a ſmall Fine. *Cur'* ordered the Fine to be ſuſpended till after the Trial of an Action to be brought againſt the Sheriff for a falſe Return, and in the mean time permitted Defendants to enter into Recognizances with Sureties.

The King *againſt* Tyrell and others. Eaſter 7 Geo. 2.

THE Sheriff had returned a *Reſcous* againſt Defendants, who had thereupon entered into the uſual Recognizance, and brought an Action againſt the Sheriff for a falſe Return, and obtained a Verdict. *Eyre* moved that the Recognizance might be diſcharged, which was granted upon producing the *Poſtea*.

Scire Facias.

Newarke *againſt* Newarke. Trin. 7 & 8 Geo. 2.

UPON hearing Council on both Sides, the Court determined that in a *Sci. Fa.* to revive a Judgment it is not neceſſary to inſert the particular Term wherein Judgment was recovered; the King's Bench Form is *Nuper recuperavit*, and the Precedents are both Ways in this Court. It is the ſame in Point of Law in both Courts, *Certum eſt quod certum reddi poteſt.* Upon *Nul tiel Record* it may be made certain by the Record. *Eyre* for Plaintiff; *Darnal* for Defendant.

Poole *againſt* Broadfield. Mich. 8 G. 2.

SCI. *Fa.* ordered to be quaſhed on Plaintiff's Motion without Coſts before Plea pleaded, although Defendant had entered an Appearance. *Chapple* for Plaintiff; *Eyre* for Defendant.

Matravers the Younger *againſt* Adlam *and* Browne. Trin. 10 & 11 Geo. 2.

SCI. *Fa.* on Recognizance of Bail. *Belfield* demurred to the *Sci. Fa.* and on the Argument objected that it doth not contain any poſitive Averment that Plaintiff recovered Judgment againſt the Principal; it is expreſſed only, that although Plaintiff recovered Judgment, yet Defendant did not pay the Condemnation-Mony, or render his Body to Priſon, *&c.* He objected alſo, that the Recognizance is in an Action at the Suit of *John Matravers*, and the Judgment recovered is by *John Matravers* the Younger, and it cannot be intended that *John Matravers* and *John Matravers* the Younger are one and the ſame Perſon. *Eyre* anſwered, that the *Sci Fa.* is in common Form, the Recovery of Judgment is ſufficiently averred, and as to the Indentity of the Perſon, it is ſet forth by *Sci. Fa.* after reciting the Recognizance, that although the ſaid *John Matravers* by the Name of *John Matravers* the Younger recovered Judgment, *&c.* The Court gave Judgment for the Plaintiff.

Soldiers.

Bowler *againſt* Owen. Mich. 6 G. 2.

DEfendant was an Out-Penſioner of *Chelſea* College, and the Queſtion was, Whether or no he was intitled to the Benefit of the Act of Parliament as a Soldier in his Majeſty's Service. The Court held he was not, being under no military Diſcipline, and ſubject only to the Control of the Commiſſioners.

Nichols and others *againſt* Wilder. Eaſter 6 Geo. 2.

PLaintiff brought an Action againſt Defendant, who was a Soldier, for a Debt under 10 *l.* and recovered Judgment for 14 *l.* 10 *s.* Damages and Coſts, and afterwards brought an Action of Debt upon the Judgment, and held Defendant to Bail, who moved to be diſcharged upon a common Appearance, being a Soldier, and the Debt for which he was originally ſued being under 10 *l.* The Court were of Opinion that the Debt which they were to conſider was the Sum recovered by the Judgment, and that Defendant muſt be held to Bail. The ſame Point was determined upon Conſideration, and looking into the Soldiers Act in *Hil.* 5 *Geo.* 2. *inter Bilſon* and *Smith.*

Savage *againſt* Monk. Trin. 11 & 12 G. 2.

DEfendant, a Soldier in the King's Service, was arreſted and held to Bail in an Action of Debt upon a Judgment, and moved to ſet aſide the Bail-Bond, the original Debt being only 3*l.* 3*s.* though the Damages and Coſts recovered did amount to more than 10*l.* The Court conſidered the Words of the Clauſe in Favour of Soldiers in the laſt and other Acts for puniſhing Mutiny, *&c.* and were of Opinion that the original Sum due in this Action is the Sum recovered by the Judgment. A Debt on Judgment cannot be conſidered as a Debt of a leſs Nature than a ſimple Contract, and the Rule to ſhew Cauſe why the Bail-Bond ſhould not be ſet aſide was diſcharged. *Eyre* for Defendant; *Parker* for Plaintiff.

Flanders *againſt* Nicholls.

DEfendant a Soldier in his Majeſty's Service was ſued by Plaintiff in the *Marſhal's Court* for a Debt of Three Pounds Seventeen Shillings and Four Pence, and after a Writ of Inquiry executed in that Court, the Coſts were taxed at Seven Pounds Fourteen Shillings, and Plaintiff ſigned final Judgment for the Sum total, being Eleven Pounds Eleven

ven Shillings and Four Pence. Defendant moved the Judge of the *Marſhal's Court*, that no Execution might be iſſued againſt his Perſon, which upon hearing both Sides was ordered, and the Judge directed Defendant to apply for Coſts, in caſe his Perſon ſhould be taken in Execution. Plaintiff brought an Action in this Court upon the Judgment, and Defendant moved that the Bail-Bond might be delivered up, on entering a Common Appearance, and obtained a Rule to ſhew Cauſe, and for Coſts. The Court on ſhewing Cauſe were of Opinion, that though the Clauſes in the former Acts of Parliament to prevent Soldiers being taken out of the King's Service have hitherto been defective, yet the Clauſe in the laſt Act 13 *Geo.* 2. is ſufficient, the original Debt being under Ten Pounds, and Plaintiff having proceeded to hold Defendant to Bail after he knew the Opinion of the Judge of the *Marſhal's Court*, the Rule was made abſolute *in omnibus*. *Agar* for Defendant; *Skinner* for Plaintiff.

Superſedeas.

Spincks *againſt* Bird. Eaſter 10 Geo. 2.

AFTER a Writ of Error abated by Death of late Chief Juſtice, Plaintiff with Leave of the Court ſued out a *Ca. Sa.* and an Exigent *poſt Ca. Sa.* and was proceeding thereon to Outlawry. Defendant brought a new Writ of Error, and had a *Superſedeas*. *Chapple* moved to diſcharge that Part of the *Superſedeas* which extended to ſtop the Proceeding to Outlawry, and obtained a Rule to ſhew Cauſe, which was diſcharged. The Outlawry is founded on the Execution, and the Writ of Error, which ſtays Execution, muſt ſtay the Outlawry, which is the Superſtructure. It appears by the Precedents that the *Superſedeas* is in common Form, and the Words thereof (ſurceaſe putting in Exigent) are well inſerted; the Writ of Error is a *Superſedeas* from the ſealing, tho' no Contempt is incurred till after Notice of the Allowance. The Writ of Error being brought before the Exigent executed ſtays the Proceeding to Outlawry. *Parker* for Defendant.

See Title Priſoners.

Newball

Newball *againſt* James. Hil. 13 Geo. 2.

A Copy of the Declaration was delivered at the *Fleet*, Defendant being a Priſoner there, but was not indorſed for Bail by the Prothonotary or his Deputy purſuant to general Rule *Hil.* 8 *George* 2. An Affidavit was filed, and the Declaration properly indorſed; but Plaintiff's Attorny left at the *Fleet* a Copy of the Declaration and Indorſement inſtead of the Original, which was held inſufficient, and the Rule to ſhew Cauſe why a *Superſedeas* ſhould not iſſue to diſcharge Defendant out of Cuſtody upon entering common Appearance was made abſolute. *Bootle* for Plaintiff; *Draper* for Defendant.

Trials, Verdict, &c.

Makepeace *againſt* Stevens, and others; Verdict for Defendant, Hil. 6 G. 2.

AT the Aſſizes a Point was reſerved, and referred to Lord Chief Juſtice *Lee*, then one of the Judges of the King's Bench, for his Opinion upon the Matter in Law, the Chief Juſtice deſired the Opinion of the Court of Common Pleas, out of which the Cauſe iſſued; the Court were of Opinion for the Defendants, and ordered the *Poſtea* to be delivered to their Attorny.

Philips, Qui tam, *againſt* Scullard. Eaſter 6 Geo. 2.

AN Action brought for 50 *l.* Penalty for ſelling Half a Pint of Cherry Brandy. The Fact was proved upon the Trial to be done by Defendant's Wife; but ſeveral Circumſtances appeared to ſhew, that ſhe was unwarily drawn in by falſe Pretences. Lord Chief Juſtice *Eyre*, who tried the Cauſe, directed the Jury to find for Plaintiff, but they found for Defendant contrary to Evidence. *Belfield* moved for a new Trial, and a Rule *Niſi cauſa* was granted, but

but was afterwards diſcharged upon ſhewing Cauſe; the Action being hard, and the Caſe having been repreſented to the Commiſſioners of Exciſe, who refuſed to direct a Proſecution.

Hemings *againſt* Robinſon. Mich. 6 Geo. 2.

A Point was reſerved at the Sittings of *Niſi prius*, Whether the Proof of the Indorſor of a Promiſſory Note his Acknowledgment that the Name indorſed on ſaid Note was his Hand-writing, be ſufficient to prove the Indorſement in an Action brought by Plaintiff as Indorſee againſt Defendant as Drawer? The Objection was, That no Perſon's Confeſſion but the Defendant's himſelf can be Evidence, and the Indorſor's Hand muſt be proved. The Objection was held good; and the Verdict, as to the ſecond Promiſe in the Declaration, was ordered to be vacated.

Huddleſtone *againſt* Brigſtock and others. Mich. 7 Geo. 2.

TWO Iſſues were joined between the Parties; and upon Trial both Iſſues were found for Plaintiff. Defendant moved for a new Trial; and Mr. Baron *Comyns*, before whom the Cauſe was tried, certified the Verdict

Verdict as to one of the Iſſues, to be contrary to Evidence; but as to the other Iſſue, certified it to be right. The Court, upon hearing Council on both Sides, were of Opinion that the Verdict could not be ſevered, and being right in Part muſt ſtand. *Baynes* for Defendant; *Darnal* for Plaintiff.

Anonymus.

THIS Cauſe was tried the laſt *Glouceſter* Aſſizes. Defendant moved for a new Trial; and Mr. Juſtice *Page* certified the Damages (which were 50 *l.*) to be exceſſive; but the Action appearing to be brought for a very malicious Proſecution; and Plaintiff having been impriſoned and tried for Felony, the Court were of Opinion that in the Nature of the Thing the Damages appeared to be moderate, and therefore refuſed to grant a new Trial.

Carter *againſt* Uppington.

A Third Perſon made Affidavit, that to his Knowledge *A. B.* was a material Witneſs for Defendant; and thereupon *Darnal* moved to put off the Trial; but the Court refuſed to make any Rule upon this Affidavit, becauſe none but the Party himſelf can ſwear to any Perſon's being a material Witneſs.

Roberts

Roberts *againſt* Downes, an Attorny. Eaſter 7 Geo. 2.

URLIN moved *Monday May* 13, to put off a Trial which was to be the Day following. Court made a Rule to ſhew Cauſe; but declared that for the future ſuch Motions ought to be made at leaſt two Days before the Day of Trial. *May* 14th Plaintiff came to ſhew Cauſe upon the Rule made the Day before, why the Trial ſhould not be put off. Defendant had given Notice to ſet off a Debt, and the Witneſs ſworn to be abſent was material, as to that Matter only; the Court were of Opinion that that being a collateral Defence, and as no Trial had been hitherto put off upon that Account, the Rule muſt be diſcharged. *Wright* for Plaintiff; *Urlin* for Defendant.

Gray *againſt* Halton.

RULE was made for Plaintiff to ſhew Cauſe why a Trial ſhould not be put off upon the Affidavit of Defendant's Wife, that Defendant was gone to Sea; and *A. B.* a material Witneſs, as ſhe believed, with him. Court, upon ſhewing Cauſe, diſcharged the Rule, the Affidavit not being ſufficient. *Darnal* for Plaintiff; *Baynes* for Defendant.

Ld. Hillſborough *againſt* Jefferyes, Eſq; Trin. 7 & 8 Geo. 2.

THIS was an Action for a Criminal Converſation with Plaintiff's Wife, and the Damages were laid for 50,000 *l.* Defendant moved for a Trial at Bar, upon an Affidavit that he had upwards of twenty Witneſſes to be examined. Rule made to ſhew Cauſe, which was afterwards made abſolute, Plaintiff having Liberty to examine a Witneſs in an ill State of Health before a Judge in the mean Time, and Defendant conſenting to waive his Privilege of Parliament. *Darnal* for Defendant; *Chapple* for Plaintiff.

Roberts *againſt* Lord Hillſborough.

JUNE 27th, *Birch* moved to put off the Trial, which was to be the next Day. *Darnal*, for Plaintiff, objected that the Motion came too late; to which the Court agreed. No Rule.

Parr *againſt* Seames and others. Mich. 8 Geo. 2.

CHAPPLE moved to ſet aſide Defendants Verdict; the Jurors, upon differing in Opinion, agreed to be determined by huſling Half-pence in a Hat; if the major Part came up

up Heads, the Verdict was to be for Defendants; but this Matter not appearing upon the Oath of any of the Jurors, but by Affidavit, that two of them had confeſſed the ſame, the Court, upon the firſt Motion, ordered the Entry of final Judgment to be ſtayed for a few Days only, to give Plaintiff an Opportunity to procure Affidavits from ſome of the Jurors; but it afterwards appearing that the Jurors were fearful to make Affidavits whereby to accuſe themſelves, and *Chapple* citing a Caſe in *Salk.* 645, *Dent* againſt the Hundred of *Hertford*, the Court enlarged the Rule upon hearing Council on both Sides 'till next Term. *Comyns* for Plaintiff.

Noble *againſt* Lancaſter.

THIS was an Action of *Trover*, whereto Defendant pleaded *Non Aſſumpſit*; and thereupon Iſſue was joined, and Plaintiff obtained a Verdict. *Belfield* moved for Defendant in Arreſt of Judgment; and the Court made a Rule to ſtay the Entry of final Judgment 'till Cauſe ſhewn by Plaintiff.

Gracewood *againſt* ——.

THE Court ordered Defendant, at Plaintiff's Expence, to give him a Copy of the Articles for *Epſom* Races, and to produce

the ſame at the Trial. Defendant was Stakeholder, and Plaintiff, whoſe Horſe won the Guineas or Plate, could not proceed to Trial without the Articles. *Baynes* for Plaintiff; *Eyre* for Defendant.

Letgoe, upon the Demiſe of Wheeler, *againſt* Pitt.

In Ejectment. THIS Cauſe was tried before Lord Chief Juſtice at the Sittings, and a Verdict obtained by Leſſor of Plaintiff. Defendant moved to ſet aſide the Verdict, upon Affidavits that ſome material Witneſſes for him abſented themſelves, and did not appear upon the Trial; and alſo prayed the Chief Juſtice's Certificate, ſuggeſting that the Verdict was contrary to Evidence. Court rejected the Affidavits relating to the Witneſſes, abſenting as immaterial. Chief Juſtice certified, that the Premiſes in Queſtion were Copyhold, and both Parties claimed under one *George Cromwell*, who had made two ſeveral Surrenders. Queſtion upon the Trial was, Whether *Cromwell* was *compos mentis* at the Time of the Surrender under which Defendant claimed; that nothing was objected to *Cromwell*'s Infanity 'till twelve Years after ſuch Surrender; and that the Chief Juſtice was of Opinion the Strength of the Evidence was with Defendant. Court ordered a new Trial, upon Payment of Coſts. *Eyre* and *Glyde*

Glyde for Leſſor of Plaintiff; *Chapple* and *Wright* for Defendant.

Baker, on the Demiſe of Brown, *againſt* Petcher.

In Ejectment. UPON the Trial a Verdict paſſed for Defendant, but a new Trial was granted, the Mortgage Deed under which Defendant claimed appearing to be a Counterfeit by the Stamp, the Dye which impreſſed it not being made 'till ſeveral Years after the Date of the Deed. Where Matter of Title is the Diſpute, and Defendant obtains a Verdict, a new Trial is always denied; but this is an extraordinary Caſe where the Revenue is concerned.

Champneys *againſt* Browne. Eaſter 8 Geo. 2.

THREE Adminiſtrators appointed a Receiver who received a Sum of Mony for their Uſe, and divided to each Adminiſtrator one third Part; two of the Adminiſtrators afterwards failed: And the Queſtion was upon a Point reſerved at *Niſi prius*, Whether the third Adminiſtrator was liable for the whole Sum, or for his own third Part only to a new Adminiſtrator. *Per Cur'*: Defendant is reſponſible for that third Part only which he received, and not for a *Devaſtavit*

committed by his Co-Adminiſtrators. If Payment had been made to a wrong Perſon, the Caſe had been otherwiſe; but here the Mony was properly paid. Defendant is not concerned how his Co-Adminiſtrators diſpoſe of their Parts; the three are equally entruſted. *Cro. Car.* 312. *Cro. Eliz.* 318. *Bridgm.* 37.

Stratford *againſt* Marſhall.

A Rule was made for Plaintiff to ſhew Cauſe why the Trial ſhould not be reſpited till *Michaelmas* Term next upon Affidavits that a material Witneſs for Defendant was gone to Sea, and was not expected home till *Auguſt* next. *Hawkins* for Defendant. Upon ſhewing Cauſe, *Skinner* for Plaintiff objected, That the Trial ought to be put off no longer than till next Term; and that Defendant might then apply again if his Witneſs ſhould not return before. *Per Cur':* Let the Rule be abſolute, it being ſworn that the Witneſs is not expected to return till *Auguſt* next. The Trial muſt be put off till *Michaelmas* Term, without farther Motion.

Note; Common Practice *contra*.

Ld. St. John *againſt* Abbot. Mich. 9 G. 2.

THIS Cauſe was tried at the laſt *Northampton* Aſſizes before Mr. Juſtice *Reeve*; and after the Evidence was ſummed up in the Forenoon,

Forenoon, the Jury retired to conſider of their Verdict: Before the Riſing of the Court they came into Court, attended by the Bailiff, to aſk a Queſtion, which was anſwered, and they were ſent back. At the Sitting of the Court in the Afternoon, the Judge was informed That ſome of the Jurymen (two or three) were in Court; whereupon being aſked by him what they did there, anſwered they could not agree, and were thereupon ſent back to their Fellows; and afterwards a Verdict was brought in for Plaintiff. The Judge did not certify the Verdict to be contrary to Evidence; the Court was of Opinion that this was a Miſbehaviour in the Jury, for which they are finable; but not a ſufficient Cauſe to ſet aſide the Verdict; Plaintiff was not in Fault. If the Jury had eat and drank at their own Expence, that is a Miſbehaviour, for which they are finable, but their Verdict muſt ſtand; tho' it is otherwiſe if they had eat and drank at the Expence of either Party. Rule to ſhew Cauſe why Verdict ſhould not be ſet aſide, diſcharged. *Belfield* for Plaintiff; *Birch* for Defendant.

Philips *againſt* Fowler. Eaſter 8 G. 2.

AFTER a Motion in Arreſt of Judgment, and pending the Conſideration of the Court, it being diſcloſed to Defendant by two of the Jurors, that they and their

Fellows being divided in Opinion had determined their Verdict by caſting Lots. Defendant moved to ſet aſide the Verdict upon an Affidavit of the Fact made by the two Jurors; and upon hearing Council on both Sides, the Queſtion was, Whether after a Motion in Arreſt of Judgment, Defendant in this Caſe could move to ſet aſide the Verdict. And the Lord Chief Juſtice, Mr. Juſtice *Denton*, and Mr. Juſtice *Comyns* were of Opinion, that though this Motion ſeems out of Time by the general Rule of Practice, yet, as it is founded upon a Matter diſcloſed to the Defendant after the Motion in Arreſt of Judgment, and is made before Judgment pronounced, the Court muſt receive it; and the Fact, as to the Jurors determining by Chance being undiſputed, the Verdict was ſet aſide. (Mr. Juſtice *Forteſcue*, *contra.*) *Vide* Lord *Fitzwalter*'s Caſe, *Salk.* 647. *Skinner* and others for Defendant; *Chapple* and others for Plaintiff.

Bourne *againſt* Church. Trin. 10 G. 2.

SKINNER moved for Defendant the Day before the Day appointed by Notice for Trial to put off the Cauſe by Reaſon of the Abſence of a material Witneſs. The Motion was denied, becauſe by the Courſe of the Court theſe Motions muſt be made at leaſt two Days before the Day of Trial; and becauſe

becauſe it appeared by the Affidavit whereon the Motion was grounded, that the Witneſs went out of Town after Notice of Trial given, ſo that had the Motion been made in proper Time, it could not have been granted.

Cartlidge *againſt* Eyles, Bart. Hil. 10 Geo. 2.

AT *Niſi prius* Plaintiff had a Verdict; and on a Motion for a new Trial the Court were divided in Opinion; and no Rule being made, Plaintiff was at Liberty to ſign final Judgment. *Chapple* for Plaintiff; *Eyre* for Defendant.

Bud *againſt* Milward.

THIS was an Action for ſcandalous Words; and Defendant moved the Court to reſpite the Trial upon an Affidavit of the Abſence of a material Witneſs. Upon ſhewing Cauſe, it was inſiſted the Affidavit ſhould have proved that the abſent Witneſs was preſent when the Words were ſpoken; and to ſhew that to be the Practice, a Caſe was quoted, *Truby* againſt *Nicholls*, *Trin.* 6 & 7 *Geo.* 2. *Per Cur':* There is no Reaſon to encourage theſe Actions more than (or indeed ſo much as) Actions for Goods ſold, and the like. The Affidavit is in common Form, which is the ſame in all Caſes;

and the Rule to ſhew Cauſe why the Trial ſhould not be reſpited was made abſolute. *Chapple* for Defendant; *Eyre* and *Agar* for Plaintiff.

Willis, an Attorny, *againſt* Bennett. Mich. 11 Geo. 2.

BELFIELD moved for a new Trial after the four Days expired, but before Judgment entered on the Verdict, and obtained a Rule to ſhew Cauſe; but the Court declared, that for the future no ſuch Motion ſhould be received after the four Days, unleſs where the Foundation of the Motion be a Fact not diſcloſed to the Party till after that Time.

Strickland *againſt* Fawcett. Hil. 11 Geo. 2.

A Rule was obtained for a View, which View being had by three Jurors only, as appeared by the Sheriff's Return, altho' by the Statute ſix are required, Plaintiff oppoſed the Cauſe coming on by Proviſo at the Aſſizes, but did not appear at the Trial, or croſs-examine Defendant's Witneſſes; and being nonſuited moved to ſet aſide the Nonſuit.

Fawcett *againſt* Strickland.

THIS Cauſe was attended with the ſame Circumſtances, and a Verdict being obtained without Defence, Plaintiff moved to ſet aſide the Verdict. On ſhewing Cauſe, it appeared that theſe were Cauſes of great Expence, and many Witneſſes attended at the Aſſizes; and a Propoſal being made and agreed to, that on Payment of 50*l.* Coſts, the Nonſuit and Verdict ſhould be ſet aſide. Court delivered no Opinion. *Eyre* and *Bootle* for *Strickland*; *Parker* for *Fawcett*.

Sellon *againſt* Chamberlayne. Trin. 11 & 12 Geo. 2.

MOVED on *Wedneſday* to put off Trial for *Thurſday*. *Cur'*: We will not receive the Motion; you ſhould have come two Days at leaſt before the Day of Trial; you have had eight Days Notice, and come now too late. *Comyns*.

Vide Title Damages.
Vide Title Evidence.

Mathews *againſt* Lee. Mich. 12 G. 2.

MOTION in Arreſt of Judgment, becauſe upon the Iſſue of *Riens per Deſcent*, the Jury had found that Lands came by

by Deſcent ſufficient to anſwer the Debt and Damages, and had not ſet out the Value of the Lands deſcended under the Statute *W.* 3. *Agar* for Plaintiff ſaid, it was a Replication at Common Law, and not under the Statute. *Birch* for Defendant. Rule *Niſi* diſcharged.

Martindale *againſt* Shipman. Hil. 12 Geo. 2.

RULE to ſhew Cauſe why Trial ſhould not be put off, diſcharged; the Motion being made the Day before the Day appointed for Trial, which is one Day too late. *Skinner* for Plaintiff; *Eyre* for Defendant.

Baſtard, Adminiſtrator of Baſtard, who was Executor of Baſtard, *againſt* Jutſham. Eaſter 12 Geo. 2.

THIS was an Action of Debt on Bond. Defendant pleaded *Non eſt factum*; whereupon Iſſue was joined, and a Verdict was found for Plaintiff. *Draper* moved in Arreſt of Judgment, and objected that the Action will not lie for the Adminiſtrator of an Executor; there muſt be an Adminiſtration *De bonis Teſtatoris non Adminiſtrat'* by Executor. Court granted a Rule to ſtay the Entry of Judgment upon the Verdict till farther Order.

Grave

Grave *againſt* Cliffe.

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*. *Burnett* moved to ſet aſide the Verdict, inſiſting upon this as a material Variance, and had a Rule to ſhew Cauſe. But it appearing that Mr. *Lacy*, Defendant's Council, 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. *Comyns* and *Draper* for Plaintiff; *Eyre* and *Burnett* for Defendant.

Lyte *againſt* Rivers. Trin. 13 Geo. 2.

HAYWARD for Defendant offered to move in Arreſt of Judgment *July* 5. But *per Cur'*, the Motion comes too late, Writ of *Habeas Corpora Jur.* was returnable 15 *Trin.* and the Motion in Arreſt of Judgment ought to be made before or upon the Appearance Day of that Return, which was *July* 4.

Lord

Lord G——r *againſt* Heath.

THIS was an Action upon the Statute of *Scan. Mag.* for the following Words ſpoken of the Plaintiff, *G--d d--m my Lord* G——r, *he is a Rogue, and all on his Side are Rogues, if the Mob would ſtand by me I'd drive them all, or lay the Town in Heaps.* The Words were proved upon the Trial, notwithſtanding which the Jury found only 12 *d.* Damages. *Darnal* for Plaintiff moved to ſet aſide the Verdict by Reaſon of the Smallneſs of the Damages; but not being able to produce any Inſtance of a Verdict's being ſet aſide merely for that Reaſon; though for exceſſive Damages Verdicts have been frequently ſet aſide, and in Point of Reaſon there is the ſame Cauſe for ſetting aſide one as the other; yet as the Difference has been always taken, and Practice long ſettled, *per Cur'*, We can make no Rule.

Reynolds *againſt* Simonds.

SKINNER for Defendant moved for a new Trial after the firſt four Days of Term. *Per Cur':* The Application comes too late. We have determined that theſe Motions ſhall never be received after the four Days. No Rule.

Variance.

Eggleton *againſt* Seneff, Bail for Curphey. Hil. 6 Geo. 2.

ORiginal Action brought in inferior Court againſt Defendant by the Name of *Curphey* removed by *Habeas Corpus* into the Common Pleas, and Bail put in by that Name. Plaintiff declares againſt Defendant by the Name of *Scurphee*, and recovers, and after Judgment brings an Action of Debt on the Recognizance, and ſets out a Recovery againſt *Curphey*; to which Defendant pleads *Nul tiel Record*. Plaintiff replies a Record of a Recovery againſt him by the Name of *Scurffee*. Judgment for Defendant upon *Nul tiel Record*.

Thompſon *againſt* Simmons. Eaſter 6 Geo. 2.

DARNAL moved to ſet aſide the Verdict, the Record of *Niſi prius* differing from the Iſſue-Book delivered, the Defendant's Name being inſerted in the Paper-Book, in joining Iſſue, inſtead of Plaintiff's; but in the Record Plaintiff's Name was inſerted, and the Iſſue properly joined; but

two

two Iſſues being joined, and a general Verdict found for Plaintiff, Court refuſed to make any Rule.

Rye *againſt* Croſſman. Trin. 7 & 8 Geo. 2.

RULE was made to ſhew Cauſe why the Verdict ſhould not be ſet aſide; the *& ſimiliter* being left out in the Iſſue delivered, but inſerted in the Record of *Niſi prius*, it was inſiſted for Plaintiff, that it was amendable; but the Court were of Opinion, that no Statute of *Jeofails* extends to it, that it is a material Variance, and therefore the Rule was made abſolute, Defendant having relied upon the Variance, and made no Defence upon Trial; but by Conſent the Cauſe to be tried the Sitting after Term. *Chapple* and *Eyre* for Plaintiff; *Baynes* for Defendant.

Wreathock, Attorny, *againſt* Bingham. Eaſter 8 Geo. 2.

THIS was an Action brought by the Indorſee upon a promiſſory Note, and in the Iſſue delivered the Name of the Indorſor was omitted thus (*he the ſaid indorſed*) and not (*he the ſaid* A. *indorſed*). In the Record of *Niſi prius* the Indorſor's Name was inſerted. Defendant made no Defence upon Trial, but inſiſted that this was a material

Variance, and moved to ſet aſide the Verdict, which was ordered on hearing Council on both Sides. *Wright* and *Hawkins* for Defendant; *Eyre* for Plaintiff.

Shorter *againſt* Helbutt. Hil. 9 G. 2.

URLIN moved to ſet aſide the Verdict for a Variance between the Declaration and Iſſue delivered, inſiſting upon the Variance as material, and that no Defence was made upon Trial. In the Declaration Plaintiff was called *John John Shorter*, and in the Iſſue delivered to Defendant (a Priſoner in the *Fleet*) Plaintiff was called *John Shorter*. Motion was denied.

Johns *againſt* Smith. Mich. 10 Geo 2.

UPON a Motion to ſet aſide the Verdict for a Variance between the Iſſue-Book delivered and the Record of *Niſi prius*, which Variance was, that in the firſt Count in the Iſſue Book it was alledged that Plaintiff was indebted to Plaintiff, and in the Record of *Niſi prius* the Miſtake was rectified without proper Leave; and it was alledged, that Defendant was indebted to Plaintiff. The Action was Caſe upon ſeveral Promiſes, and the Parties Names were rightly placed in the Remainder of the firſt Count, and in all the other Counts; and the Court held the Variance

Variance not to be material to the Point in Iſſue, and therefore refuſed to ſet aſide the Verdict. *Daniel* againſt *Mears* in this Court. *Mich.* 5 *Geo.* 2. *Belfield* for Defendant; *Chapple* for Plaintiff.

Venue and Venire Facias.

Cole *againſt* Gouing. Mich. 6 Geo. 2.

AFfidavit to change a *Venue* was penned, that the Promiſes in the Declaration (if any ſuch were made) were made in *Suſſex*, and not in *London*, &c. held inſufficient, and not agreeable to the common Form, which is, that Plaintiff's Cauſe of Action (if any ſuch he hath) did ariſe, *&c.*

Cowling *againſt* Reynoldſon.

BAYNES moved to change the *Venue* from *London* into the County of the City of *York* upon the common Affidavit. Denied *per Cur'* as unprecedented. He then prayed it might be changed into the County at large (*York*); which was alſo denied *per Cur'*, becauſe that is not the true County where the Cauſe of Action did ariſe.

Herbert *againſt* Shawe.

CHAPPLE moved to change the *Venue* from *Cumberland* into *Lancaſhire*, which being a County Palatine, the Motion was denied.

Anger *againſt* Wilkins.

THIS was an Action on the Caſe for ſeveral Sets of ſcandalous Words ſpoken of Plaintiff by Defendant. Plaintiff on the Trial obtained a Verdict, and the Damages were found entire, though ſome of the Words were not actionable. *Belfield* moved for a *Venire Facias de novo* on Payment of Coſts, that Plaintiff might ſever his Damages according to an ancient Rule of Court; which was granted by the Court. *Eyre* for Plaintiff.

Hardriſs *againſt* Sandell. Mich. 7 G. 2.

A Rule to change the *Venue* diſcharged, Defendant having had Time by a Judge's Order to plead, conſenting to plead an iſſuable Plea, and to take Notice of Trial within Term. *Chapple* for Plaintiff; *Baynes* for Defendant.

Singleton *againſt* Lacey.

A Rule to change the *Venue* diſcharged. Defendant having ſummoned Plaintiff before a Judge for Time to plead, though the Summons was diſcharged, and no Order obtained. *Eyre* for Plaintiff; *Chapple* for Defendant.

Belſhaw *againſt* Porter.

A Rule *Niſi* to change the *Venue* diſcharged, the Words of the Affidavit, whereupon the Rule was made, being that the Action did ariſe in the County of *Bucks*, and not in the County of *Middleſex*, or elſewhere out of the County of *Bucks*, *to Defendant's Knowledge and Belief*, which is not poſitive, and therefore inſufficient. *Skinner* for Plaintiff; *Comyns* for Defendant.

Dent *againſt* Lambert. Hil. 7 G. 2.

DEfendant moved to change the *Venue* from *Middleſex* into *Suffolk*. Plaintiff ſhewed for Cauſe, that he was an Attorny of the Court, and therefore had a Right to lay his Action in *Middleſex*; but it appearing that Plaintiff had not declared in Perſon, but by *Nicholas Cotterell* his Attorny, the *Venue* was changed.

Jarratt

Jarratt *againſt* Dawſon. Eaſter 7 G. 2.

THE *Venue* was laid in *Yorkſhire* inſtead of *London* by Miſtake of the Agent, contrary to the Inſtructions received from the Country Attorny his Client, as appeared by Affidavit; a Rule had been made in the Treaſury to amend the Declaration, upon hearing the Agents on both Sides, Plaintiff conſenting to give an Imparlance; but the Court diſcharged that Rule, as being without Precedent. Plaintiff after he has made his Election as to laying the *Venue* cannot afterwards change it.

Denton, an Attorny, *againſt* Lambert.

EYRE moved to change the *Venue* from *Middleſex* to *Suffolk* upon the common Affidavit. *Skinner* ſhewed for Cauſe, that Plaintiff who ſues as an Attorny has a Right to lay his Action in *Middleſex*; and ſo the Court held, though the Action was in Aſſault and Battery.

Welland, an Attorny, *againſt* Frument. Trin. 7 & 8 Geo. 2.

PLaintiff ſued Defendant by *Capias*, and not by Attachment of Privilege, and laid the Action in *Middleſex*. Defendant

moved to change the *Venue*; Plaintiff inſiſted, that in Right of his Privilege as an Attorny the *Venue* ought not to be changed; but Court were of Opinion that Plaintiff having declared as a common Perſon, and not as upon an Attachment of Privilege, the *Venue* muſt be changed. *Wright* for Plaintiff; *Baynes* for Defendant.

Caſtle *againſt* Boucher. Hil. 8 Geo. 2.

SKINNER moved to change the *Venue* from *Middleſex* into *Herefordſhire* in an Action for ſcandalous Words. The Words were not mentioned in the Affidavit, but only that if ſuch Words were ſpoken as in the Declaration, they were ſpoken in *Herefordſhire*, and not in *Middleſex*. Held bad.

Smith *againſt* Haward. Eaſter 8 G. 2.

THIS was an Action brought for ſeveral Sets of ſcandalous Words, and the Damages were found entire. Defendant moved in Arreſt of Judgment, the laſt Set of Words, *viz. This Child can hang you*, not being actionable; and upon hearing Council on both Sides, the Judgment was arreſted; but a *Venire Facias de novo* was awarded according to an ancient Rule of Court. Vide *Praxis utriuſque Banci*, fol. 22. *Darnal* for Defendant; *Birch* for Plaintiff.

Wood

Wood *againſt* Winch.

BIRCH moved the laſt Day of the Term to change the *Venue*. *Per Cur'*: It cannot be now done, as there is not a Day left in the Term for Plaintiff to ſhew Cauſe.

Ward *againſt* Coclough. Trin. 8 & 9 Geo. 2.

RULE to change the *Venue* diſcharged, the Action being brought upon a Promiſory Note. *Skinner* for Plaintiff; *Eyre* for Defendant.

Bickley *againſt* Mackerell.

A Rule was made to change the *Venue* from *Norfolk* into *London*. *Comyns* for Defendant, who quoted Sir *Samuel Gerrard*'s Caſe, *Salk.* 670. to ſhew that a Rule had been made to remove a *Venue* from a County at large into *London*.

Craſter *againſt* Cockerell. Hil. 9 G. 2.

URLIN moved to change the *Venue* into *Durham*, or an adjacent County where the Aſſizes are held twice a Year, upon the common Affidavit. The Motion was denied.

Paul *againſt* Young.

HELD upon hearing Council on both Sides, that Defendant cannot regularly move to change the *Venue* after taking out a Judge's Summons for Time to plead. *Wright* for Plaintiff; *Belfield* for Defendant.

Lutwich *againſt* Eames. Eaſter 9 G. 2.

EYRE moved to change the *Venue* from the County of *Cumberland* to the City of *London* upon the common Affidavit, and obtained a Rule to ſhew Cauſe, which was afterwards made abſolute. Vide *Bickley* againſt *Mackerell*, *Trin.* 8 & 9 *Geo.* 2.

Spooner *againſt* Milward, *Com' Staff'*.

THE *Venue* in the Declaration was laid at *Leek*, and not at *Leek* in the County aforeſaid. Defendant demurred, and ſhewed the Want of a proper *Venue* for Cauſe. Plaintiff joined in Demurrer; and upon Argument the Court gave Judgment for Plaintiff. It is ſufficient, according to the Courſe of this Court, to lay the *Venue* at *Leek*, which has Reference to the County in the Margent. And ſince by Act of Parliament the *Venire Facias* is *de corpore Comitatûs*, it is not neceſſary that any particular Place in the

the County be laid. *Belfield* for Plaintiff; *Skinner* for Defendant.

Lutwidge *againſt* Wilcox. Trin. 10 G. 2.

On a Policy of Inſurance. CHAPPLE had obtained a Rule to ſhew Cauſe why the *Venue* ſhould not be changed from *Cumberland* to the City of *Briſtol*, or *Somerſetſhire*, (the adjacent County) at Plaintiff's Election. *Bootle* ſhewed for Cauſe, that the Rule was unprecedented, and againſt the Courſe of the Court; for though in an Action on Policy of Inſurance the *Venue* may be changed, yet it cannot be to a City or adjacent County at Plaintiff's Election, which Cauſe was allowed, and the Rule diſcharged.

Lord Griffin *againſt* Buckby.

Action Scandalum Magnatum. WYNNE moved to change the *Venue*. Denied. The *Venue* is never changed in Actions for *Scandalum Magnatum*.

Box *againſt* Read and another.

AFfidavit of one of the Defendants held ſufficient to found a Motion to change the *Venue*.

Cooper *againſt* Mills, an Attorny. Mich. 10 Geo. 2.

DEfendant inſiſted in Right of his Privilege as an Attorny, that the *Venue* ought to be laid in *Middleſex*, his Duty requiring his Attendance at *Weſtminſter*; but *per Cur'* Defendant hath no ſuch Privilege. Plaintiff may lay his Action where he pleaſes, and if Defendant applies to change the *Venue*, it muſt be upon the uſual Affidavit. *Urlin* for Defendant; *Bootle* for Plaintiff.

Newby *againſt* Burton.

DEfendant having moved to change the *Venue* upon the common Affidavit, it was objected that he had obtained Time from a Judge to perfect his Bail, and therefore the Motion came too late; but the Objection was over-ruled. After an Order for Time to plead, pleading an iſſuable Plea, Defendant cannot move to change the *Venue*; but it has never been held ſo after Time to perfect Bail. *Wright* for Defendant; *Eyre* for Plaintiff.

Rice *againſt* Vinall. Hil. 10 Geo. 2.

THE Declaration was on a promiſory Note and other Counts. Defendant moved on the common Affidavit to change the *Venue*, and obtained a Rule to ſhew Cauſe, which was diſcharged, it appearing by Affidavit that Plaintiff's Cauſe of Action was upon a promiſory Note. *Eyre* for Plaintiff; *Chapple* for Defendant.

Howſe *againſt* Haſelwood.

IN the Margent ſtood the Word *Norfolk*, in the Body of the Declaration the *Venue* was laid at the City of *Norwich* in the County of the ſame City, throughout. Plaintiff executed a Writ of Enquiry of Damages directed to the Sheriffs of the City of *Norwich*. Defendant moved in Arreſt of Judgment, and obtained a Rule to ſhew Cauſe, which was diſcharged. Had no *Venue* been laid in the Body of the Declaration, Reference muſt be had to the Margent; but where a proper *Venue* is laid in the Body of the Declaration, the Word in the Margent ſhall not vitiate it, the County in the Margent will help, but not hurt. *Eyre* and *Comyns* for Plaintiff; *Wright* for Defendant.

Girdler,

Girdler, Serjeant at Law, *againſt* Wathews. Hil. 11 Geo. 2.

For Words. DEfendant moved to change the *Venue* from *Middleſex* into *Staffordſhire* upon the common Affidavit. Plaintiff inſiſted, that in Right of his Privilege the Cauſe ought to be retained in *Middleſex*. Plaintiff had ſued by Original; and therefore the *Venue* was changed. *Parker* for Defendant; *Skinner* and *Comyns* for Plaintiff.

Sheers *againſt* Bartlett.

THE Word *London* was in the Margent, and in the Body of the Declaration the *Venue* was laid at *Oxford*; after Iſſue joined, and Notice given in *London*, Plaintiff moved to amend by making the *Venue* in the Body of the Declaration agreeable to the Margent, which the Court offered to grant upon Payment of Coſts; but Plaintiff not ſubmitting to pay Coſts, the Rule to ſhew Cauſe for the Amendment was diſcharged. Plaintiff will venture to proceed in *Com' Oxon.* *Skinner* for Plaintiff; *Price* for Defendant.

Sheers *againſt* Bartlett. Trin. 11 & 12 Geo. 2.

LONDON was in the Margent, but in the Body of the Declaration the *Venue* was laid at *Tame* in *Oxfordſhire*. Plaintiff tried his Cauſe in *Oxfordſhire* and obtained a Verdict, and Defendant moved in Arreſt of Judgment, inſiſting that the *Venire Facias* being awarded to the Sheriffs in the Plural Number muſt ſignify the Sheriffs of *London*, and the Court muſt take Judicial Notice that there is but one Sheriff of *Oxfordſhire*. A Rule to ſtay the Entry of Judgment upon the Verdict was made, and afterwards diſcharged upon hearing Council. *Per Cur'*: Had there been no proper *Venue* in the Body of the Declaration, the Margent muſt have been reſorted to; but in this Caſe the Margent muſt be rejected; the Word *Sheriffs* for *Sheriff* is amendable; and here the *Venire Facias* is returned by the Sheriff of *Oxfordſhire*. *Parker* for Defendant; *Skinner* for Plaintiff.

Penrice *againſt* Jackſon.

THE Sheriffs of the City of *Worceſter* had returned to the *Venire Facias* the Names of 24 Jurors only, though 48 at

at leaſt are required by the Statute 3 *Geo.* 2. The Sheriffs, before the *Habeas Corp' Jurat'* was returned perceiving their Miſtake, returned to it the Names of 48 Jurors, and Plaintiff proceeded to Trial. Defendant made no Defence, but moved to ſet aſide the Verdict. *Per Cur':* Though imperfect Returns may be helped by the Statute, yet here the Fault is in the Matter of Fact; the Return of the *Habeas Corp'* muſt be of the ſame Jurors ſummoned on the *Venire Facias.* The Rule to ſet aſide the Verdict was made abſolute. *Parker* for Defendant; *Eyre* and *Skinner* for Plaintiff.

Davies *againſt* Grace, Attorny. Mich. 12 Geo. 2.

MOTION to change the *Venue* from *Middleſex* into *Surry.* Plaintiff inſiſted Defendant ought to pay for a new Bill; but *per Cur'* it is no more than in other Actions, a new Original is neceſſary in all Caſes. The *Venue* muſt be changed without Coſts. *Kettlebey* for Defendant; *Skinner* for Plaintiff.

Ellis *againſt* Chorke.

RULE to change the *Venue* diſcharged, Defendant having taken out a Judge's Summons for Time to plead.

Watſon

Watſon *againſt* Willis.

DRAPER ſhewed Cauſe againſt Rule to change the *Venue*, and ſaid it was on a promiſory Note, and no other Count in the Declaration. *Cur':* It is good Cauſe and ſettled Practice. *Kettelbey* for Defendant.

Thomeur *againſt* Rand. Hil. 12 G. 2.

MOTION made the laſt Day of the Term to change the *Venue*, upon Affidavit of Notice, denied, becauſe Plaintiff can have no Opportunity of ſhewing Cauſe.

Note; The Writ was returnable the ſecond Return of the Term, and Declaration delivered *February* 8. ſo that Defendant's Attorny could not procure an Affidavit from his Client in the Country ſo as to move ſooner.

Bryan *againſt* Smith. Eaſter 12 G. 2.

GAPPER for Defendant moved in Arreſt of Judgment, a Blank for the Return of the *Venire Facias* being left in the Record of *Niſi prius*, and obtained a Rule to ſhew Cauſe, which, on hearing *Draper* for Plaintiff, was diſcharged. It is conſtant Practice to leave a Blank; the Award

Award of the *Venire Facias* is no Part of the Iſſue, and is amendable by the *Venire Facias* itſelf.

Gouthouſe *againſt* Blaxland.

RULE for changing *Venue niſi*, diſcharged, the Defendant having obtained a Judge's Order for Time to plead. (Chief Juſtice abſent.) *Wright* for Plaintiff; *Comyns* for Defendant.

Winter *againſt* South, Attorny. Trin. 13 Geo. 2.

A RULE to change the *Venue* from *Middleſex* into *Surry*, upon the common Affidavit, without Coſts. Vide *Davies* againſt *Grace*, Attorny, *Mich.* 12 *Geo.* 2. *Cooper* againſt *Mills*, Attorny, *Mich.* 10 *Geo.* 2. *Draper* for Plaintiff; *Wright* for Defendant.

Blackſtock *againſt* Payne. Mich. 13 Geo. 2.

RULE to ſhew Cauſe why *Venue* ſhould not be changed. Plaintiff objected, that Defendant had obtained a Judge's Order for an Imparlance, and could not afterwards move to change the *Venue*. But the Objection was over-ruled. This is not Matter of

Favour (like Time to plead) but of Right; the Judge would not have ordered an Imparlance, if Defendant had not been entitled to it by Law. Rule abſolute. *Skinner* for Plaintiff; *Agar* for Defendant.

Fray *againſt* Smith.

DEfendant moved in Arreſt of Judgment after a Verdict, the *Venire* being awarded Twelve good, *&c.* and a Rule *Niſi* was granted, which was afterwards diſcharged, on ſhewing Cauſe upon an Affidavit that the Words in the *Venire* itſelf were Twelve free and lawful Men; and the Court being of Opinion that the Word *Good* in the Award of the *Venire* ought to be rejected.

Maugir *againſt* Hinds. Hil. 13 Geo. 2.

RULE to ſhew Cauſe why the *Venue* ſhould not be changed was diſcharged, it appearing that the Cauſe of Action was upon a Bill of Exchange only, and Plaintiff undertaking not to give Evidence upon any other Count in his Declaration, ſave that upon ſaid Bill of Exchange. *Skinner* for Plaintiff; *Agar* for Defendant.

Warden,

Warden, Attorny, *againſt* Norden.

RULE for changing the *Venue* diſcharged, Plaintiff being an Attorny, and entitled, becauſe of his neceſſary Attendance upon the Court, to lay his Action in *Middleſex*. *Wynne* for Defendant; *Skinner* for Plaintiff.

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