

said court of our said lord the king, before Sir *John Eardley Wilmot*, knt. and his companions, then our said lord the king's justices of the bench at *Westminster*, came in his proper person, and acknowledged himself to owe to the said *H. D.* the sum of 220*l.* which said sum of 220*l.* the said *J. H.* for himself and his heirs, willed and granted to be made of his lands and chattels, and to be levied to the use and behoof of the said *H.* under this condition, that if judgment should happen to be given for the said *H.* against the said *J. H.* in the same court, in a certain plea of debt upon demand, for 124*l.* prosecuted in the same court by the said *H.* against the said *J. H.* that then the said *J. H.* would satisfy the said *H.* his said debt and damages on occasion of detaining the said debt to be adjudged to the said *H.* against the said *J. H.* in the same court in the plea aforesaid, or render his body on that occasion to the prison of our said lord the king of the *Fleet*; and although the said *H.* afterwards, that is to say, in the same *Michaelmas* term in the said 7th year of the reign of our said lord the king, in the same court, before the said Sir *John Eardley Wilmot*, knt. and his companions, then our said lord the king's justices of the bench aforesaid, by the judgment and consideration of the same court, recovered against the said *J. H.* as well his said debt of 124*l.* as 16*l.* 10*s.* which were adjudged to the said *H.* in the same court for his damages, which he had on occasion of detaining that debt, whereof  
the

the said *J. H.* is convicted, as by the record and proceedings thereof now remaining in the same court at *Westminster* aforesaid is manifestly apparent. Nevertheless the said *J. H.* hath not yet satisfied the said *H.* for his debt and damages aforesaid, nor rendered his body on that occasion to the said prison of the *Fleet*, according to the form of the said recognizance, as our said lord the king has received information from the said *H.* And because, &c. that by good, &c. he should make known to the said *J. H.* *J. H.* and *S.* that they be here at this day, that is to say, on the morrow of the holy *Trinity*, to shew if any thing, &c. that is to say, the said *J. H.* why the said 110*l.* by him in form acknowledged should not be made of his lands and chattels; and the said *S.* why the said 110*l.* by him in form aforesaid acknowledged should not be made of his lands and chattels; and the said *J. H.* why the said 220*l.* by him in form aforesaid acknowledged should not be made of his lands and chattels, and levied to the use and behoof of the said *H.* according to the form of the said recognizance, if, &c. And now at this day the said *H.* cometh here by *L. R.* his attorney, and offered himself on the fourth day against the said *J. H. S.* and *J. H.* in the plea aforesaid; and they, though solemnly called, came not; and the sheriff now returneth, that the said *J. H. S.* and *J. H.* have not, nor hath any one of them any thing, &c. nor are they, nor is any of them found, &c.

*Return Nihil.*

*Alias awarded.* Therefore, as before, the sheriff was commanded,

manded, that by good, &c. he should make known to the said *J. H. S.* and *J. H.* that they be here from the day of the holy *Trinity* in three weeks, to shew in form aforesaid; at which day the said *H.* cometh here by his attorney aforesaid, and offered himself on the fourth day against the said *J. H. S.* and *J. H.* in the plea aforesaid, and they, though solemnly called, come not; and the sheriff, as before, now returneth, that the said *J. H. S.* and *J. H.* have not, nor hath any one of them any thing, &c. nor are they, nor is any one of them found, &c. And thereupon the said *H.* prayeth execution against the said *J. H. S.* and *J. H.* *to wit,* against the said *J. H.* of the said 110*l.* by him in form aforesaid acknowledged, and against the said *S.* of the said 110*l.* by him in form aforesaid acknowledged, and against the said *J. H.* of the said 220*l.* by him in form aforesaid acknowledged, according to the form of the recognizance, to be adjudged to him, &c. Therefore it is considered, *Judgment.* that the said *H.* have execution against the said *J. H. S.* and *J. H.* that is to say, against the said *J. H.* of the said 110*l.* by him in form aforesaid acknowledged; and against the said *S.* of the said 110*l.* by him in form aforesaid acknowledged; and against the said *J. H.* of the said 220*l.* by him in form aforesaid acknowledged, by default, &c.

*GEORGE, &c.* To the sheriff of *Mid-* Sci. fa. against  
*dlesex,* greeting. Whereas *S. N.* of the city bail on a Ha-  
of *Coventry* in the county of the same city, beas corpus  
*cordwainer,* and *J. S.* of the same city in upon a recog-  
nizance taken  
the before a com-



commissioner, de-  
fendant in per-  
son.

Stat. 4 W. &  
M. c. 4.

the county of the same city, farrier, here-  
tofore, *to wit*, on the fourth day of *May* in  
the ——— year, &c. before *S. W.* esq; one  
of the commissioners by our justices at *West-*  
*minster* appointed, according to the form of  
the statute in this case lately made and pro-  
vided, became bail, and each of them be-  
came bail for *J. F.* in the sum of 50*l.* And  
whereas the said *J. F.* on the same 4th day  
of *May* in the ——— year of, &c. aforesaid,  
before the same commissioner acknowledged,  
that he owed to *B. C.* the sum of 100*l.*  
Which said sum of 50*l.* the said *S.* and *J.*  
acknowledged, and each of them acknow-  
ledged to be made of their, and each of  
their lands and chattels; and which said sum  
of 100*l.* the said *J. S.* acknowledged to be  
made of his lands and chattels, and levied  
to the use and behoof of the said *B.* upon  
this condition, that the said *J. F.* should ap-  
pear in our court before our justices at *West-*  
*minster*, at the suit of the said *B.* in a certain  
plea of trespass and assault to the damage of  
50*l.* And if in our same court judgment  
should happen to be given in the same plea  
for the said *B.* against the said *J. F.* then the  
said *J. F.* should satisfy all the damages which  
should be adjudged to the said *B.* in our same  
court in the plea aforesaid, or render his  
body on that occasion to the prison of the  
*Fleet*, as by the record and proceedings  
thereof remaining in our same court mani-  
festly appeareth. And although the said *B.*  
in the term of *Easter* in the ——— year of,  
&c. before Sir ———, knight, and his com-  
panions,

panions, our justices of the bench at *Westminster*, by the consideration of the same court recovered against the said *J. F.* 19*l.* which in our same court were adjudged to the said *B.* for his damages which he had by occasion of the said trespass and assault whereof the said *J. F.* is convicted, as by the record and proceedings thereof in our same court also remaining manifestly appeareth; Yet the said *J. F.* hath not satisfied the said damages to the said *B.* nor rendered his body on that occasion to the said prison of the *Flect*, according to the form of the said recognizance, as from the information of the said *B.* we have been given to understand. And because we will that those things which in our said court are rightly acted and acknowledged, be brought to a due execution, we command you, that by good and lawful men of your bailiwick you make known to the said *S. J. S.* and *J. F.* that they be before our justices at *Westminster* on [the return] to shew if any thing they have, or know to say for themselves, *to wit*, to the said *S.* why the said 50*l.* by him in form aforesaid acknowledged ought not to be made of his lands and chattels; to the said *J. S.* why the said 50*l.* by him in form aforesaid acknowledged should not be made of his lands and chattels; and to the said *J. T.* why the said 100*l.* by him in form aforesaid acknowledged should not be made of his lands and chattels, and be levied to the use and behoof of the said *B.* according to the form of the said recognizance, if it shall seem expedient to him; and

have there the names of them by whom you shall make known to them, and this writ. Witnesses, &c.

Intrat. Scire fieri & inquir'.  
Award of F. fa. in debt for executors against an executrix.

Cambridge, *to wit*, The sheriff was commanded, that of the goods and chattels which were of *Henry Cromwell*, esq; deceased, lately called *Henry Cromwell* of *Wicken* in the county of *Cambridge*, esq; in the hands of *Elizabeth Cromwell* late of *Spunny* in the county aforesaid, widow, executrix of the testament of the said *Henry* to be administered, being in his bailiwick, he should cause to be made as well a certain debt of 200*l.* which *Christopher Wynne*, esq; and *Sarah* his wife, *Thomas Percival*, gentleman, and *Mary* his wife, and *Thomas Balls*, gentleman, which said *Sarah*, *Mary*, and *Thomas Balls*, were executors of the testament of *George Balls*, gentleman, deceased, in the court of our lord *Charles* the second, late king of *England*, before the justices of the said late king at *Westminster*, recovered against the said *Elizabeth*, as 40*s.* which in the same court of the said late king were adjudged to the same *Christopher* and *Sarah*, *Thomas* and *Mary*, and *Thomas*, for their damages which they had by occasion of the detaining that debt, to be levied of the same goods and chattels, if the said *Elizabeth* had so much thereof in her hands to be administered; and if she had not, then the said damages to be levied of the proper goods and chattels of the said *Elizabeth*; and that he should have that money here from the day of the holy *Trinity* in three weeks, to render to the said *Christopher* and *Sarah*, *Thomas* and *Mary*,

Debenis testatoris si, &c.

Si non &c.  
Damna ce bonis propriis.



*Mary, and Thomas, for the debt and damages* afore-*said, whereof the said Elizabeth* is convicted. And now here at this day came the said *Christopher and Sarah, Thomas and Mary, and Thomas, by Richard Puplet* their attorney; and the sheriff now return-*Return.* eth, that he, by virtue of the said writ to him directed, had caused the said 40s. being *Damages levi-* the damages afore-*said, to be made of the* *cd de bonis* proper goods and chattels of the said *Eliza-* *propriis.* *beth,* which said 40s. he hath here at this day to render to the said *Christopher and Sarah, Thomas and Mary, and Thomas,* for the damages afore-*said; and the said sheriff fur-* ther returneth to the justices here, that there *Nulla bona* are no goods or chattels in his bailiwick which *testatoris.* were of the said *Henry,* in the hands of the said *Elizabeth* to be administered, whereof he could cause to be made the said debt and damages, or any part thereof; and because the said return is conceived to be made in delay of the execution of the said judgment as to the debt afore-*said; and it is testified in* *Devastavit* the same court of the king here, on the be-*suggested.* half of the said *Christopher and Sarah, Thomas and Mary, and Thomas,* that the said *Elizabeth* hath sold, elained, wasted, converted and disposed to her own proper use divers goods and chattels which were of the said *Henry* at the time of his death, and have come to the hands of the said *Elizabeth* to be administered, to the value of the debt afore-*said, to the intent that execution of the* said debt might not be thereof made; and our said lord the king being unwilling that those

Fieri facias  
pro debito  
awardet.

Si debitum le-  
vari non possit  
tunc si constat  
per inquisiti-  
onem quod  
def. devast'.

Sci. fa.

Clift's Entr.  
662.

Notice of exe-  
cuting Sci'  
fier. Inquir'.

those things, which in the same court of the said late king were rightly acted and adjudged, should be rendered void by art or deceit; therefore the sheriff is commanded, that of the goods and chattels which were of the said *Henry* at the time of his death in the hands of the said *Elizabeth* to be administered, being in his bailiwick, he should cause to be made the said debt, if it may be thereof levied, and have the money thereof levied here, on [the return] to render to the said *Christopher* and *Sarah*, *Thomas* and *Mary*, and *Thomas*, for the debt aforesaid; and if the said debt cannot be levied in form aforesaid, then if it can appear to the same sheriff by inquisition on that behalf to be taken, upon the oath of good and lawful men of his bailiwick, or by any other method whereby he may be the better certified thereof, that the said *Elizabeth* hath sold, elained, wasted or converted, and disposed to her own use, goods and chattels which were of the said *Henry* at the time of his death, and have come to the hands of the said *Elizabeth* to be administered, then by good, &c. he should make known to the said *Elizabeth*, that she be here at the time aforesaid, to shew, if, &c. why the said *Christopher* and *Sarah*, *Thomas* and *Mary*, and *Thomas*, ought not to have execution against her of the debt aforesaid, to be levied of the proper goods and chattels of the said *Elizabeth*, according to the form of the said recovery, if, &c.

Like notice must be given of executing a *Scire fieri* & *inquir.* as is given of trial, or of executing



executing a writ of inquiry or damages.  
*Barnes* 304. *Pract. Reg. C. P.* 379. *Rep.*  
*& Cas. of Pract. C. P.* 1.

In the Common Pleas.

Hilary ——— George *the third.*

Middlesex, **I**T was commanded to the she-  
*to wit.* riff, Whereas *W F.* esq; in the *Declaration on*  
court of our sovereign lord George the third, *a Scire facias*  
king of *Great Britain, &c. to wit,* in *Easter* *upon a judg-*  
term in the seventh year of our reign, be- *ment recover-*  
fore Sir *John Eardley Wilmot,* knight, and *ed against the*  
his companions, our justices of the bench at *defendant and*  
*Westminster,* by the consideration of the said *his wife (since*  
court had recovered against *C. M.* late of *deceased) exe-*  
*Westminster* in the county of *Middlesex,* esq; *cutrix.*  
and the lady *E. M.* his wife, executrix of the  
testament and last will of *C. lord M.* her late  
husband, deceased, lately called *C. lord M.*  
as well a certain debt of 39*l.* as 50*s.* which  
in the said court of the said king were ad-  
judged to the said *W.* for his damages by  
occasion of the detaining that debt to be le-  
vied of the goods and chattels which were  
of the said *C. lord M.* at the time of his  
death in the hands of the said *C. M.* and lady  
*E. M.* to be administered, if they had so  
much in their hands; and if they had not,  
then the damages aforesaid to be levied of  
the proper goods and chattels of the said *C.*  
*M.* and lady *E. M.* whereof they were con-  
victed, as by the records and proceedings  
VOL. I. D d there-

*Death of the  
wife.*

*Defendant ad-  
ministratoꝛ of  
his wife, and  
administratoꝛ  
de bonis non,  
&c. of her  
testator.*

thereupon in the court of our lord the present king now here remaining manifestly appeareth; yet execution of the said judgment still remaineth to be done, and the said lady *E. M.* is dead, as the king hath heard from the information of the said *W.* And because, &c. by good, &c. he should make known to the aforesaid *C. M.* administrator of the goods and chattels which were of the said lady *E. M.* and administrator, with the will of the said *C.* lord *M.* annexed, of the goods and chattels which were of the said *C.* lord *M.* at the time of his death, unadministered by the said lady *E. M.* that she should be here at this day, *to wit*, on the octave of the Purification of the blessed *Mary*, to shew if any thing, &c. why the said *W.* ought not to have execution against him of the debt and damages aforesaid, of the goods and chattels which were of the said *C.* lord *M.* at the time of his death, being in the hands of the said *C. M.* to be administered, according to the form of the recovery aforesaid, if, &c. And now here at this day comes as well the said *W.* by *F. P.* his attorney, as the said *C. M.* summoned, &c. by *J. S.* his attorney; and the sheriff, *to wit*, *J. R.* esq; and *T. C.* esq; now return, that he, by virtue of the said writ to him directed by *R. H.* and *S. W.* good, &c. had made known to the said *C. M.* that he should be here at this day to shew in form aforesaid, &c. And upon this the said *W.* prayeth execution to be adjudged to him against the said *C. M.* of  
the

the debt and damages aforesaid, to be levied of the goods and chattels which were of the said C. lord M. at the time of his death not administered by the said lady E. M. in the hands of the said C. M.

And the said C. M. by J. S. his attorney *Plea.* cometh and saith, that the said W. ought not to have his execution against him of the debt and damages aforesaid, of the goods and chattels which were of the said C. lord M. at the time of his death, because he saith no goods or chattels which were of the said C. lord M. at the time of his death not administered by the said lady E. M. at the time of the death of the said E. or at any time afterwards, have come to the hands of the said C. M. to be administered; and that he the said C. M. hath not, nor on the day of suing forth the said writ, nor at any time afterwards, had any goods or chattels which were of the said C. lord M. at the time of his death in the hands of him the said C. M. to be administered, whereof he could have satisfied the said W. of the debt and damages aforesaid, or any parcel thereof: And this he is ready to verify: Wherefore he prayeth judgment, if the said W. ought to have his execution against him of the debt and damages aforesaid of the goods and chattels which were of the said C. lord M. at the time of his death. *No assets come to hands.*

And the said W. saith, that he by any thing before alledged ought not to be barred from having his execution against the said C. M. for the debt and damages aforesaid, *Replication. Assets comes to hands.*



of the goods and chattels which were of the said C. lord M. at the time of his death, because, he saith, that the said writ of the said W. was sued forth on the 24th day of *January* in the \_\_\_\_\_ year of his present majesty's reign; and that the said C. M. on the said day of suing forth the said writ had diverse goods and chattels which were of the said C. lord M. at the time of his death in the hands of the said C. M. to be administered, to the value of the debt and damages aforesaid, wherewith he could have satisfied the said W. for the debt and damages aforesaid, *to wit*, at *Westminster* aforesaid; and this he prayeth may be inquired of by the county.

### In the Common Pleas.

Michaelmas ————— George *the third.*

*Declaration  
on a Sci. G.  
upon a judgment for assets  
in futuro  
against an executrix.*

London, **I**T was commanded to the she-  
*to wit*, **I**riffs, Whereas M. G. widow,  
and N. V. lately in the court of our lord the  
present king here, before the justices of our  
lord the present king of the bench here,  
*to wit*, at *Westminster*, by the judgment of  
the said court had recovered against K. M.  
late of *London*, widow, executrix of the te-  
stament and last will of H. M. late of *Lon-*  
*don*, esq; her late husband deceased, 1480*l.*  
for their damages which they had sustained,  
as well by occasion of the not performing  
certain promises and undertakings made by  
the

the said *H.* in his life-time to the said *M.* and *N.* in *London*, to wit, in the parish of *St. Mary Le Bow* in the ward of *Cheap*, as for their costs and charges by them the said *M.* and *N.* about their suit in that behalf expended, adjudged to the said *M.* and *N.* by the said court of our said lord the king, before the justices of our said lord the king at *Westminster*, to be levied of the goods and chattels which were of the said *H.* at the time of his death, which after the giving the said judgment should come to the hands of the said *K.* to be administered, whereof she was convicted, as by the record and proceedings thereupon remaining in the said court of our said lord the king before the justices of our said lord the king here, *to wit*, at *Westminster* aforesaid manifestly appeareth. *And Suggestion of*  
*whereas*, after the said judgment was given, *assets since*  
diverse goods and chattels which were of the *come to defen-*  
said *H.* at the time of his death, to the va- *dant's hands.*  
lue of the damages aforesaid and above, have come to the hands of the said *K.* to be administered, out of which she could have satisfied the said *M.* and *N.* of their damages aforesaid, as the king has been given to understand by the information of the said *M.* and *N.* And because, &c. that by good, &c. they should give notice to the aforesaid *K.* that she might be here at this day, *to wit*, on the morrow of *St. Martin*, to shew if any thing, &c. why the said *M.* and *N.* ought not to have execution against her of the damages aforesaid of the goods and chattels which were of the said *H.* at the time of his

death, which after the said judgment was given have come to the hands of the said K. to be administered, according to the form and effect of the recovery, if, &c. And now here at this day came as well the said M. and N. by J. H. their attorney, as the said K. by J. S. her attorney; and the said M. and N. offered themselves on the fourth day against the said K. of the plea aforesaid; and the sheriffs now returned, that by J. N. and R. R. good, &c. they had given notice to the said K. M. to be here at this day, to shew, &c. and upon this the said M. and N. pray execution against the said K. of the damages aforesaid, of the goods and chattels which were of the said H. at the time of his death, which after the said judgment was given have come to the hands of the said K. to be administered, to be adjudged to them, &c. Upon which the said K. saith, that after the said judgment was given, no goods or chattels which were of the said H. at the time of his death, have come to the hands of the said K. to be administered, whereof she could have satisfied the said M. and N. of their damages aforesaid, or of any parcel thereof; and of this she putteth herself upon the country; and the said M. and H. likewise: Therefore the sheriffs are commanded, that they cause to come here twelve, &c. By whom, &c. And who neither, &c. To recognize, &c. Because as well, &c.

*Defendant appears.*

*Sheriffs return Scire fec.*

*Defendant pleads no assets come to hand.*

*Issue.*

You enter the writ of *Scire facias* and *Alis*, if any, on the prothonotary's remembrance



brance roll, and give a rule thereon for the defendant to appear.

The plaintiff on motion in the treasury *No costs on Sci. fa. till* may quash his own *Scire facias* without paying costs, though the defendant has appeared; for the practice of this court is, that no costs shall be paid on proceedings by *Scire facias* till a declaration be delivered, and the defendant has pleaded.

In a *Scire facias* to revive a judgment it is *Term of the judgment not* not necessary to insert the particular term in which the judgment was given. *Barnes 431. necessary.*

At common law, if after judgment the plaintiff sued not execution within the year, he had no remedy, but by an action on the judgment; but a *Scire facias* in personal actions is given by the statute of *Westminster 2. c. 45. 2 Inst. 469, 470, vide Salk. 600.*

If there be a *Cesset executio* for a year, the plaintiff may within the next year take out execution without a *Scire facias*. *Where no Sci. fa. if a Cesset execut.'*

If the plaintiff be delayed from taking out execution within the year and a day by an injunction out of *Chancery*, he cannot after the injunction dissolved take out execution without reviving the judgment by *Scire facias*; but it will be no breach of the injunction to take out execution within the year, so as it be not executed, which will save the trouble of bringing a *Scire facias*, by continuing the execution on the roll by *Vic' non misit breve. 6 Mod. 288. But see Rep. and Cas. of Pract. C. P. 82. & Pract. Reg. C. P. 377. Both which seem contra.* *must be sued out tho' execution stayed by injunction.*

Defendant charged in execution 4 years after judgment without Sci. fa.'

Execution by default was awarded on a *Scire facias* upon a judgment in debt, and the defendant four years afterwards being in the  *Fleet*  for another cause was brought into court by *Habeas corpus*, where he admitting himself to be the same person was committed in execution *moraturus quousque*—*Nota post annum & diem alique novo Scire facias.* Dy. 214. pl. 47.

On death of defendant.

If a man recovers debt or damages by judgment, and the defendant dies, no execution lies against his executor without a *Scire facias*.

Or of plaintiff Sci. fa. must issue.

If a man has judgment for debt or damages, and dies before execution, his executor shall not have execution, though it be within the year, without a *Scire facias*.

*Vide antea fol.* Death of either party after interlocutory judgment, and before final judgment.

But not on death of one where there are many plaintiffs or defendants,

If there be two plaintiffs in a personal action, and one of them dies, that shall not put the other to a *Scire facias*; so if one of the defendants die. *Moor* 367. pl. 503. *Noy* 150. 5 *Mod.* 339. 7 *Mod.* 68. But a suggestion of the death must be made on record. *Salk.* 319.

Into what county Sci. fa. on a judgment must issue.

On a judgment wherein the action was laid in *Cumberland* a *Scire* was brought in *Westmoreland*, and judgment was had thereon; but that judgment was reversed on error in the *Exchequer* chamber, for a *Scire facias* must be brought in the same county where the first action was laid. *Hob.* 4. *Cro. Car.* 228, & *vide Kel.* 218. S. C. for the diversity

ty between a *Sci e facias* on a judgment, and an action of debt on a judgment.

If a recognizance of bail be taken before a judge at his chambers in *London*, and entered on record as taken in *London*, it was resolved by all the prothonotaries, that the *Scire facias* should be directed to the sheriffs of *London*, and not to the sheriff of *Middlesex*, *Bro. Abr. fol. 66. b. pl. 85.* though the recognizance is not a perfect record 'till it be entered upon the roll; yet when it is entered, it is a record from the first acknowledgment, and binds persons and lands from that time; for it is the acknowledgment before the judge that gives it the force of a record, though the inrolment be necessary for the testification and perpetuity of it. *Hob. 195.* But in the case of *Andrews and Harborne* the prothonotaries certified, that upon such recognizance the *Scire facias* might be brought in *Middlesex*, or in *London*; and that it used to be brought either in *London* or *Middlesex*. *Roll. Abr. 891. All. 12.* So where bail taken by commissioners in the county of *York*, a *Scire facias* lies against them either in the county of *York* or *Middlesex*. *2 Lutw. 1287. Vide Salk. 564, 600, 659.*

Leave to amend *Sci. fa.* against bail, sometimes refused, where advantage of surrendering principal would thereby be lost. *Barnes 26, 27.*

*Outlawry.*



## Outlawry.

**I**N the following actions, *viz.* Trespass, assault, case, covenant, account, debt, detinue and replevin, you may proceed to outlaw a man who is not easily to be arrested, and hath not sufficient estate in the county whereby he may be summoned, &c.

*Defl. sooner outlawed in London than in another county.*

If the action be laid in *London*, the defendant will be sooner outlawed than in another county; in regard that between the teste and return of the exigent there must be five county days, which are held every month, and the *Hustings* in *London*, which answer the county days, are held every fortnight.

*Of the Præcipe for the original.*

You cannot outlaw a man on procefs with *Acetiams*; and if your original be only a *Clausum fregit*, the defendant may reverse the outlawry without bail, and therefore the best way is to make out a *Præcipe* for a special original, which is in this form, according to the nature of the action.

*A Præcipe for a special original on an Indeb. assumpit for the charges of a funeral.*

*London*, If *T. J.* shall make, &c. then put, &c. *C. W.* late of *New Bond-street* in the county of *Middlesex*, upholster, that he be before our justices at *Westminster*, on the morrow of the Purification of the blessed *Mary*, to shew wherefore whereas the said *C.* on the 10th day of *August* in the year of our Lord 1766, at *London*, to wit, in the parish of *St. Mary le Bow* in the ward of *Cheap*, was indebted to the said *T.* in 60*l.* lawful money of *Great Britain*, as well for work,

work, labour and care of the said T. about the funeral of one R. F. deceased, by the said T. before that time, at the special instance and request of the said C. done and performed, as for diverse materials and necessary things, by the said T. at the like special instance and request of the said C. at the costs and charges of the said T. on that occasion found and provided; and by the said T. in and about that funeral used and expended; and being so indebted the said C. in consideration thereof afterwards, *to wit*, on the same day and year at *London* aforesaid, in the parish and ward aforesaid, undertook, and then and there faithfully promised the said T. that he the said C. would well and truly pay to the said T. the said 60*l.* when he should be thereunto afterwards required.

*And also whereas* the said C. afterwards, *to* Quantum meruit thereon. *wit*, on the day and year aforesaid, at *Lon-* don aforesaid, in the parish and ward aforesaid, in consideration that the said T. at the like special instance and request of the said C. had before that time done and performed other work and labour in and about the funeral of one R. F. deceased, and at the like special instance and request of the said C. had found and provided at the costs and charges of him the said T. diverse materials and necessary things on that occasion, and had expended and used the said materials and necessary things last mentioned in and about the last mentioned funeral, undertook, and then and there faithfully promised the said T. that he the said C. would, when he should be thereunto

thereunto required, well and truly pay and content to the said T. not only all such sums of money as the said T. reasonably deserved to have for his said work and labour last above mentioned, but also all such sums of money as the said materials and necessary things last mentioned at the time of the finding and providing thereof, as aforesaid, were reasonably worth; and the said T. averreth, that he reasonably deserved to have for his last mentioned work and labour 20*l.* of like lawful money; and that the materials and necessary things last mentioned were at the time of the finding and providing thereof, as aforesaid, reasonably worth 40*l.* of like lawful money, *to wit*, at *London* aforesaid, in the parish and ward aforesaid, of which afterwards, that is to say, on the same day and year aforesaid, the said C. there had notice: *Nevertheless* the said C. no ways regarding his said promises and undertakings made in form aforesaid, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said T. in this behalf, has not paid to the said T. the said several sums of money, or any part thereof, nor any ways contented him for the same (although the said C. afterwards, *to wit*, on the 12th day of *August* in the year aforesaid, at *London* aforesaid, in the parish and ward aforesaid, was thereunto requested by the said T.) But he hath hitherto refused, and still doth refuse to pay the same to the said T. to the damage of the said T. of 60*l.* as he saith,

Returnable, &c.

You

*Breach.*



You carry this *Præcipe* to the cursitor of the county, who will thereupon make out an original: If the *Præcipe* be carried to the cursitor before the effoin-day of a term, he will make the original returnable on any return of the precedent term. You may return the original of course thus :

*Of returning the original.*

Pledges of prosecuting { *John Doe,*  
*Richard Roe.*

The within named *C. W.* hath nothing in our bailiwick by which he can be attached [or \* summoned.]

*J. B. esq;* }  
and } *sheriffs.*  
*W. W. esq;* }

You must carry the original thus returned to the filacer of the county, who will make out a *Capias, Alias and Pluries* all together, if the original will bear it, each of which writs must have 15 days between the teste and return. After the *Capias, Alias and Pluries* are sealed, you may return them severally, after this manner :

*Of making out the Capias, Alias and Pluries.*

The within named *C. W.* is not found in our bailiwick.

*Of returning them.*

---

\* *Vide antea fol.*

The answer of  
 J. B. esq; }  
 and }  
 W. W. esq; } Sheriffs.

I apprehend the plaintiff ought to make an affidavit of his debt on suing out the *Capias*, and endeavour to get the *Capias*, *Alias* and *Pluries* executed, if possible, and let them be returned by the sheriff.

*Warrant of attorney to be filed of the same term with the exigent.*

Every attorney shall file his warrant of attorney of the term wherein any *Exigent* is awarded, upon pain of 40s. for every time he offends, and is attainted by due examination of the justices of this court; such warrant to be filed upon or before the *essoin-day* of every *Trinity* term, and within 21 days after the end of every other term. *Hil. 14, 15. Car. 2.*

*Exigenter not to receive Pluries before signed by clerk of the warrants.*

No exigenter shall receive any *Pluries capias* in order to make an exigent or proclamation thereon, before the same be signed or stamped by the clerk of the warrants, or his deputy, to the end it may appear, that the warrant of attorney therein is duly filed. *Hil. 2, 3. Jac. 2.*

*Trinity term in the seventh year of the reign of king George the third.*

*The warrant of attorney.*

London. *T. J.* putteth in this place *L. R.*  
 his attorney against *C. W.* late  
 of *New Bond-street* in the county of *Middlesex*,

sex, upholster, in a plea of trespass on the case.

This warrant of attorney being filed, for which you pay 4*d.* the clerk of the warrants stamps the *Pluries*, which you thereupon carry to the exigenter of the county, who will make out an exigent and proclamation, which you are to get sealed, and carry to the sheriff of the county in which you have laid the action, and the proclamation to the sheriff of that county wherein the defendant dwells at the time of awarding the exigent.

*Exigenter, on receipt of the Pluries stamp, to make out the exigent and proclamation.*

If there happen not to be five county days between the teste and return of the exigent, you must apply to the exigenter for an *Allocatur* to bring in the five county days; and the like must be in *London* for want of *Hustings*.

*Where an Allocatur necessary.*

You may make out your process in order, and endeavour to take the defendant on any of them; and it is the safer way so to do.

Where any exigent shall be awarded, a writ of proclamation shall be made out of the same teste and return as the writ of exigent directed to the sheriff of the county where the defendant at that time of the exigent awarded shall be dwelling, which writ of proclamation shall contain the effect of the same action; and the sheriff to whom the proclamation shall be directed shall make 3 proclamations, *viz.* one in open county court, one other at the general quarter-sessions of the peace in those parts, where the defendant at the time of the exigent awarded shall be dwelling; and one other one month

*When an exigent is awarded, a proclamation to be made out of the same teste and return.*

*Sheriff to make three proclamations.*



month at least before the *Quint. exat'*, by virtue of the writ of exigent, at or near the most usual door of the church or chapel of that town or parish where the defendant shall be dwelling at the time of the exigent so awarded; and if the defendant shall be dwelling out of any parish, then in such place as aforesaid of the parish next adjoining to the defendant's dwelling, and upon a *Sunday* immediately after divine service. All outlawries pronounced, and no proclamation awarded and returned, according to this statute, are void.—*Stat. 31 Eliz. c. 3. §. 1.*

*His fee.*

The sheriff, for making the proclamation at or near the church door, shall have 12*d.* *Same stat. §. 1.*

*Officer who makes out the exigent to make out the proclamation.*  
*His fee.*

The officer in whose office the exigent shall be taken shall make out the proclamation, and shall take no more for making such writ of proclamation, and entering it on record, but only 6*d.* *Stat. 6 Hen. 8. c. 4. §. 3, 4.*

*Attornies to be careful that writs of proclamation be delivered.*

According to the provision of the statute of the 31 *Eliz.* all attornies are to be careful that writs of proclamation be delivered, and the sheriffs to take care duly to execute the same. *Mich. 1654.*

*Proclamation to be filed with the Custos brevium.*

After the exigent and proclamation is returned, you file the proclamation with the *Custos brevium*, and carry the exigent to the clerk of the outlawries, who will thereupon make out a *Capias utlagatum* either general or special, the one against the defendant's body, the other against his body, goods and lands,

*Capias utlagatum either general or special.*

lands, into as many counties as you shall think proper either in *England* or *Wales*.

If the defendant appears by *Supersedeas* *quia improvide*, or doth truly render himself upon the exigent, no bail is requirable. *Mich. 1654.* *If defendant appears on the exigent, no bail is required.*

No sheriff, under-sheriff, their deputies or bailiffs, shall set at liberty any person arrested upon any *Capias utlagatum*, until he receive a *Supersedeas* according to law from the officer thereunto appointed. *Mich. 1654.* *Stat. 13 Car. 2. c. 2. §. 4.* *Sheriff not to discharge defendant arrested on Capias utlagatum without a Supersedeas.*

No sheriff, under-sheriff, &c. shall set at liberty any person taken upon any writ of *Capias utlagatum*, nor discharge the lands or goods of any person outlawed, without a lawful *Supersedeas* under the seal of the court. *Hil. 15, 16 Car. 2.*

Upon affidavit made and filed, that any sheriff, officer, or bailiff, has enlarged any person arrested upon *Capias utlagatum* before judgment, without a lawful *Supersedeas* in that behalf, the person so offending shall pay 40s. to the party grieved, who shall have an attachment of course against such sheriff, officer, bailiff, or party offending, for payment of the same; and the party offending shall likewise undergo such other punishment as by the court shall be thought fit. *Trin. 2 Jac. 2.* *Penalty of 40s &c.*

Before the reversing of any outlawry, or any *Supersedeas* made thereunto, the defendant shall give special bail, if the sum or damages expressed in the original, whereupon the exigent was awarded, shall amount to the

sum of 10*l.* or upwards. *Hil.* 15, 16 *Car.* 2. *Trin.* 2 *Jac.* 2.

*Defendant to give bail to satisfy the condemnation.*

Before any allowance of any writ of error, or reversing of any outlawry be had, by plea or otherwise, through or by want of any proclamation to be had or made according to this statute, the defendant in the original action shall put in bail, not only to appear and answer the plaintiff in the former suit in a new action, to be commenced for the cause in the first action, but also to satisfy the condemnation if the plaintiff shall begin his suit before the end of \* *two terms* next after the allowing the writ of error, or otherwise avoiding the said outlawry. *Stat.* 31 *Eliz.* c. 3. s. 3. *Mich.* 12 *Geo.* 1. the rule says of \* *the term* next after, &c.

*Outlawry after the death of the plaintiff not to be reversed without bail to the executor.*

No outlawry after the death of the plaintiff in the action shall be reversed, without the defendant's appearing and putting in special bail (if the action requires it) to the executor or administrator of the plaintiff, or to the husband and wife, where the wife while a *Feme* sole sued the defendant to an outlawry before marriage, provided that the defendant's attorney do, within 14 days after notice given of the defendant's intention to reverse the outlawry, deliver the name of the executor or administrator of such deceased plaintiff to the proper prothonotary. *Trin.* 2 *Jac.* 2.

Judgment of outlawry appearing to be entered after plaintiff's death, and *Cap.* viii.



to be issued without revival of judgment; *Cap. utl.* was set aside. *Barnes 325.*

Outlawry commenced and completed during defendant's residence in *Ireland*, was ordered to be reversed at his expence, without bail or appearance. *Barnes 325.* But court will not exercise their discretionary power to reverse outlawries on motion in a summary way for a visible defect, but in a favorable case for defendant; and therefore where he appeared to be an absconding person, and the motion, though in his name, not made by him, but by a third person, and the matter appearing to be a contention between creditors, the court would not interfere, but put party to bring his writ of error. *Barnes 325, 326.*

No defendant, who shall be outlawed and shall appear and reverse such outlawry, shall upon the reversal pay to the plaintiff any sum of money exceeding the usual costs of the *Exigent*, together with the fine paid to the king upon the original, and all further costs shall be respited to the time of signing judgment for the plaintiff. *Trin. 33 Car. 2.*

*On reversing an outlawry defendant only to pay costs to the exigent, and the fine.*

*Further costs respited quousque.*

Upon every writ of *Exigent*, if a *Superseas* be not put in thereto, at or before the day of appearance thereof, no *Superseas* shall by any sheriff be allowed to any such writ, until the defendant shall have paid unto the plaintiff or his attorney, or left in the court with one of the prothonotaries thereof, the full and just costs of suit therein; and upon the reversal of any outlawry the defendant shall, before the reversal or any *Superseas*

*No Superseas to the exigent, unless put in before the day of appearance, to be allowed till costs paid.*

*On reversal defendant shall pay costs to the exigent.*

*Where inquisition taken, &c. further costs to be taxed.*

*persedeas*, pay to the plaintiff or his attorney, or leave in the court for him the full costs of suit to the *Exigent*. And where the sheriff shall have taken an inquisition, and extended the goods, chattels; &c. and returned the same into the *Exchequer*, such further costs shall be taxed by the prothonotary, and paid to the plaintiff or his attorney, or left in the court for him, as the plaintiff hath been at in prosecuting the said inquisition, before any certificate of the reversal shall be made by the clerk of the outlawries. *Trin. 2 Jac. 2.*

On making out a *Superseas* the defendant need not enter an appearance with the Exigenter; the *Superseas* itself is an appearance. *Dyer 233.*

*On reversing an outlawry, if plt. proceed not in two terms def. to have costs taxed.*

Every defendant who shall be outlawed, and cause the said outlawry to be reversed, if the plaintiff thereupon shall not proceed within two terms next after notice of reversing thereof, shall have costs to be taxed by the prothonotary. *Trin. 33 Car. 2.*

*Of outlawing after judgment*

A man may be outlawed after judgment, and that without any writ of *Alias*, *Pluries*, or proclamation. In this case you sue out a writ of *Capias ad satisfaciendum*, which must have 15 days between teste and return; and if the defendant cannot be taken thereon, you get the sheriff to return *Non est inventus* on the writ, and then carry it to the Exigenter, who will make out a writ of *Exigent* against the defendant, upon the return of which you may have a *Capias utlagatum*, either general or special, and into as many counties as you please, either in *England*

land or *Wales*; and if the defendant's body be taken, or his goods extended thereon, he can obtain no discharge for either till he has made satisfaction.

But if a writ of error be brought on the judgment, the plaintiff cannot proceed to outlaw the defendant pending the writ of error; for though the plaintiff may bring an action of debt on the judgment pending a writ of error, and proceed to judgment thereon, it has always been confined to restraining the plaintiff from taking out execution, and the *Exigent* being founded on the *Capias ad satisfaciendum* is a proceeding to execution, and therefore not justifiable.

It much behoves practisers to be cautious when they outlaw, for if the defendant appears \* publickly, and the attorney can be affected with the knowledge of it, the court will, I apprehend, make him reverse it at his own charge, if not otherwise punish him.

Before defendant is returned outlawed, he may supersede the *Exigent*, though founded on a special original, but cannot after, without bail, who are bound to pay the money at all events, not being at liberty to render the principal in their discharge. *Barnes* 326.

---

\* A visible person outlawed, he being a desperate man, riding armed, and telling the plaintiff that he absconded. *Pract. Reg. C. P.* 272. See *Barnes* 325.

A person visible outlawed, he living within the verge of the court, and plaintiff not being able to obtain leave to arrest him. *Pract. Reg. C. P.* 274.



Of procuring  
the money le-  
vied on the  
defendant's  
goods.

Where the defendant's goods are taken on the special *Capias utlagatum*, the sheriff, if the plaintiff requires it, will extend and appraise the goods by inquisition, and for that purpose the plaintiff must first have them inventoried and appraised by proper persons, to give evidence of their value to the jury; if they are not worth above 40*l.* they will hardly be worth the plaintiff's trouble to extend them. In *Middlesex* the sheriff takes for the inquisition as follows :

	<i>l.</i>	<i>s.</i>	<i>d.</i>	<i>l.</i>	<i>s.</i>	<i>d.</i>
For taking the inquisition, schedule of the goods seized, and return				0	18	6
To the bailiff for summoning the jury	0	4	0			
For the use of the room where the inquisition is taken	0	1	0			
To every juryman 1 <i>s.</i> —	0	12	0			
				0	17	0
				1	15	6

It may be proper to give the defendant notice of taking the inquisition, as is done of executing a writ of inquiry.

If there be occasion, a *Subpœna* for witnesses may be made out in the following form.

*GEORGE, &c.* To *A. B. &c.* greeting. We command you, and every of you, that

that all excuses being laid aside, you be in your proper persons before the sheriff of our county of *Middlesex* on — the — day of — at — of the clock in the — noon at the court-house at *Westminster* [or at the *Three Tons* in *Brook-street* near *Holborn*] in the county of *Middlesex*, to testify and declare the truth according to your knowledge, upon a certain inquisition to be taken by the said sheriff, on the oath of good and lawful men of his county, pursuant to our precept to inquire what lands and tenements, goods and chattels *W. S.* late of, &c. was possessed of on the — day of — in the year of our Lord —, on which day he was outlawed at the suit of *R. R.* And this you, either or any of you, are not to omit, under the penalty of 100*l.* for the default of each of you. Witness, &c.

When the *Capias utlagatum* is returned with the inquisition annexed, it must be carried to the clerk of the outlawries, who will transcribe, and transmit it into the *Exchequer*; then a clerk in the king's remembrancer's office must be employed, who will sue out a writ of *Venditioni exponas*, by virtue of which the sheriff will sell the goods. If the money raised exceeds not 20*l.* the court of *Exchequer*, on motion, will order the money to be paid to the plaintiff; but if the money be above 20*l.* a petition to the following effect must be presented to the lords of the treasury.

*To the right honourable the lords  
commissioners of his majesty's  
treasury.*

*The humble petition of R. R.*

*Sherwick,*

*Petition to the  
lords of the  
treasury,*

**T**HAT *W. S.* late of, &c. being indebted to your petitioner in the sum of 50*l.* your petitioner did in *November* last, at his very great charge, prosecute the said *W. S.* to an outlawry; and by virtue of a special *Capias utlagatum* directed to the sheriff of *Middlesex*, several goods of the said *W. S.* were seized, and found by inquisition to be of the value of 45*l.* which goods were afterwards sold by the said sheriff, by virtue of a writ of *Venditioni exponas*, at the same price and value they were so appraised at, and the money thereupon raised now remains in the hands of the sheriff of *Middlesex*.

That your petitioner's said debt, and the charge he has already been at in prosecuting the said outlawry, greatly exceed the sum so remaining in the said sheriff's hands.

Wherefore your petitioner humbly prays your lordships, that the money so levied as aforesaid may be paid over to your petitioner.

*And your petitioner shall ever  
pray, &c.*

This



This petition the lords of the treasury will refer to their solicitor, now *Thomas Nuttall*, esq; The plaintiff must make an affidavit before one of the barons of the *Exchequer*, to support the allegations in the petition, particularly of his debt and the charge he has been at. This affidavit, with the attorney's bill, *Venditioni exponas* and return, must be laid before the solicitor of the treasury, who being satisfied of the truth of the petition will make a report to their lordships accordingly, and then a warrant will issue to his majesty's attorney general, to consent that so much of the money levied as shall remain in the hands of the sheriff, after deducting the usual poundage, be paid to the plaintiff, towards satisfaction of his debt and costs, on his moving the court of *exchequer* for an order for that purpose; this warrant must be delivered to the attorney general, who on the plaintiff's making such motion by counsel, will consent accordingly, and then, on producing the order under seal, the sheriff will pay the money to the plaintiff.

*The expence out of pocket of this application.*

	<i>l.</i>	<i>s.</i>	<i>d.</i>
Duty and oath of the affidavit	0	2	6
To the solicitor of the treasury	1	1	0
To his clerk	0	5	0
At the treasury, for the reference, &c. warrant and poundage, when the sum does not exceed 50 <i>l.</i>	}	3	3 0
you pay about	—		

Te

	l.	s.	d.
To the attorney general ———	2	2	0
To his clerk ———	0	2	6
Fee to the counsel to move —	0	10	6
To the clerk in the <i>Exchequer</i> according to the length of the proceedings, about ———	5	10	0

### Of writs of error.

**W**HERE a party apprehends himself grieved by the judgment of this court, he may remove the same by a writ of error into the *King's Bench*. This writ is made out by the curfitor for the county wherein the action is laid; and is in this form:

A writ of error.

**G**EORGE the second, by the grace of God, of *Great Britain, France, and Ireland*, king, defender of the faith, &c. To his trusty and well-beloved Sir knt.  
 chief justice of the bench, greeting. Forasmuch as in the record and process, and also in giving of judgment, in a plaint which was in our court before you and your associates, our justices of the said bench, by bill between *William Norman* and *Samuel Burrough*, gent. one of the attornies of our court of the bench, of a certain trespass upon the case done to the said *William* by the said *Samuel* as it is said, manifest error hath intervened, to the great damage of the said *Samuel*, as by his complaint we are informed, we, willing that the said error, if any be, be duly amended,

ded,

ded, and full and speedy justice done to the said parties in this behalf, do command you, that if judgment be given thereupon, then you send to us distinctly and plainly under your seal, the record and process of the said plaint, with all things touching the same, and this writ; so that we may have them on the octave of *St. Hilary*, wheresoever we shall then be in *England*; that inspecting the record and process aforesaid, we may cause farther to be done thereupon for amending the said error, as of right, and according to the law and custom of *England*, shall be meet to be done. Witness *Caroline*, queen of *Great Britain, &c.* guardian of the same realm, &c. at *Westminster*, the 26th day of *November* in the 10th year of our reign. *Burgh.*

You pay for this writ 13s. viz, 2s. 6d. Of allowing the curfitor's fee and seal, and 10s. 6d. the king's duty. You carry this to the clerk of the errors to be allowed, for which you pay 2l. 2s. 6d. whereupon he gives you a note directed to the attorney of the adverse party, signifying his allowance of the writ, which notice you must deliver accordingly.

No execution shall be stayed upon any writ of error, or *Superfedeas* thereupon to be sued for the reversing of any judgment given in any action, or bill of debt, upon any single bond for debt, or upon any obligation, with condition for the payment of money only; or upon any action or bill of debt for rent, or upon any contract, unless such person in whose name such writ of error shall be brought, with two sufficient sureties, such as the court

*Writ of error*  
*no Superfedeas*  
*on any single*  
*bond for debt,*  
*bond condition-*  
*ed for payment*  
*of money only,*  
*debt for rent,*  
*or on any con-*  
*tract.*

*Unless bail put*

*in.*

(wherein



(wherein such judgment is given) shall allow of, shall first before such stay made, or *Superfedeas* awarded, be bound unto the party for whom such judgment is given, by recognizance to be acknowledged in the same court, in double the sum adjudged to be recovered by the said former judgment, to prosecute the said writ of error with effect; and also to pay (if the said judgment be affirmed) the debt, damages and costs adjudged upon the former judgment; and all costs and damages to be awarded for the same delaying of execution. *Stat 3 Jac. 1. c. 8.*

To prosecute  
with effect.  
P. y the debt,  
&c.

And costs for  
delay of execu-  
tion.

Writ of error  
no Superfedeas  
after verdict.  
On action on  
*Stat. 2 Ed. 6.*  
Promise for  
payment of  
money, trover,  
covenant, &c.  
tinue and tres-  
pass.  
Unless bail as  
above said.

And no execution shall be stayed by any writ of error, or *Superfedeas* thereupon, after any verdict and judgment thereupon obtained in any action of *debt*, on *statute 2 Edw. 6. for not setting forth of tithes*, nor in any action upon the *case*, upon any promise for payment of money, action *sur trover*; action of *covenant*, *detinue* and *trespass*, unless such recognizance, and in such manner, as by the said act 3 *Jac. 1.* is directed, shall be acknowledged in the said court where such judgment is given. The second *stat. 13 Car. 2. c. 2. s. 8, 9.*

On writ of er-  
ror after ver-  
dict, double costs  
if judgment af-  
firmed.

And if any person shall sue or prosecute any writ of error for reversal of any judgment whatsoever given *after any verdict*, and the said judgment shall be affirmed, then such person shall pay unto the defendant in the said writ of error his double costs, to be assessed by the court where the writ of error shall be depending, for the delaying of execution. *Same statute, s. 10.*

And

And no execution shall be stayed by writ of error, or *Supersedeas* thereupon, after verdict and judgment thereupon, in any action personal whatsoever, unless a recognizance with condition, according to the statute 3 Jac. 1. shall be first acknowledged in the court where the judgment shall be given. In writs of error brought upon any judgment after verdict in any writ of dower, or in any action of *ejectione firmæ*, no execution shall be stayed, unless the plaintiff in such writ of error shall be bound unto the defendant in such writ of dower, or action of *ejectione firmæ*, in such reasonable sum as the court to which such writ of error shall be directed, shall think fit, with condition that if the judgment shall be affirmed, or that the said writ of error be discontinued in default of the plaintiff therein, or that the said plaintiff be nonsuit in such writ of error, that then the plaintiff shall pay such costs, damages, and sum and sums of money, as shall be awarded upon such judgment affirmed, discontinuance, or nonsuit had. *Stat. 16, 17 Car. 2. c. 8. s. 3.*

*Writ of error no Supersedeas after verdict in any action personal, unless bail as aforesaid.*

*Nor after verdict in dower or ejection.*

*Unless plt. in error be bound, &c.*

*On affirmance, discontinuance or nonsuit, to pay costs.*

The court, wherein such execution ought to be granted upon such affirmance, discontinuance or nonsuit, shall issue a writ to inquire, as well of the mesne profits, as of the damages by any waste committed after the first judgment in dower or *ejectione firmæ*; and upon the return thereof, judgment shall be given and execution awarded for such mesne profits and damages, and also for costs of suit. *Same Stat. s. 4.*

*On affirmance, &c. writ to inquire of the mesne profits, &c.*

This

*This act not to extend to executors, &c.*

*Penal statutes, &c.*

*Nor indictments, &c.*

*In what penalty recognizance shall be taken on a writ of error after verdict in ejectment, or dower.*

*No bail in error on bond for performance of covenants, tho' condition did not appear on record.*

*Bail in error on judgment upon bond for payment of money mentioned in a mortgage.*

This act not to extend to any writ of error to be brought by any executor or administrator, nor to any action popular, nor to any action upon any penal law or statute (except action of debt for not setting forth of tithes) nor to any indictment, presentment, inquisition, information or appeal. *Same stat. s. 5.*

To ascertain the practice of this court, and settle for the future what shall be deemed a reasonable sum for the penalty of the recognizance, to be entered into where a writ of error is brought upon any judgment after verdict in ejectment or dower; it is ordered, that the recognizance to be entered into on every such occasion, pursuant to the statute 16 & 17 Car. 2. shall be taken in a penal sum, to the amount of two years value of the premises comprised in the verdict; and double costs recovered, subject to the condition mentioned in the said act. *Trin. 24 & 25 Geo. 2.*

Judgment in debt on a bond conditioned for the performance of covenants, but notwithstanding the condition did not appear on the record, the court held, that the matter of bail being examinable by affidavit, and the bond being conditioned as above, bail was not required on the writ of error. *Spinks and Bird, Mich. 10 Geo. 2. Barnes 72.*

Judgment in debt on bond conditioned for payment of 300*l.* mentioned in a surrender in mortgage of copyhold lands; writ of error brought, and bail ordered. *Woods and Arminstrong, Mich. 12 Geo. 2. Barnes 78.*



*Scire facias* on a recognizance of bail in error, award of execution thereon against the bail, who bring a writ of error upon that award of execution. No bail is required on this writ of error, for that would be bail *ad infinitum*.

*No bail required on writ of error brought by bail in error.*

No attorney shall make out any execution *Non obstante brevi de errore* until he has had a certificate from the clerk of the errors, that the record is not removed, and a *Non pros* thereupon duly signed. *Trin. 28 Car. 2.*

*No execution Non obstante errore, without certificate of Non pros signed.*

All writs of error shall be forthwith delivered to the clerk of the errors for the time being; and no one shall be obliged to forbear suing out execution by pretence of any writ of error, before the writ of error shall be delivered to the clerk of the errors. *Some rule,* and *Mich. 28 Car. 2.*

*Writ of error to be delivered to the clerk of the errors. And till then no stay of execution.*

Held, that a writ of error is not a *Superseas* from the time of the sealing, but from the delivery to the clerk of the errors. *Mich. 15 Geo. 2. C. B. Meriton v. Stevens. Barnes 205. Hil. 18 Geo. 2. C. B. Sykes v. Dawson. Barnes 209.*

And in cases where special bail is required, unless the plaintiff on such writ of error shall, within four days after the delivery thereof, put in bail according to law, and obtain a writ of *Superseas* thereon, the defendant may proceed to execution notwithstanding such writ of error. *Mich. 28 Car. 2.*

*Where bail required, bail to be put in within four days.*

*Aliter execution.*

In all cases where bail shall be filed on writs of error, such bail shall likewise be perfected within four days after exception taken there- to; or in default thereof the clerk of the errors

*Bail to be perfected in 4 days after exception.*

errors shall *Non pros* such writ of error, *Mich. 6 Geo. 2.*

*No execution for not transcribing without certificate.*

After a writ of error shall be duly allowed, and a *Supersedeas* thereupon obtained, no execution shall be made for not transcribing the record into the *King's Bench* without a certificate in writing by the clerk of the errors, that the plaintiff in such writ of error made default in transcribing the record into the *King's Bench*, according to a rule of court to be first given of course. *Mich. 28 Car. 2.*

*Of perfecting bail on rule for better bail in vacation.*

If a rule for better bail in error is served in vacation, the plaintiff in error has not of course, till the next term to perfect his bail, but ought to justify before a judge; and if the defendant in error be not satisfied with that, then the plaintiff in error, having done every thing in his power, has until the next term to perfect his bail.

Time refused to perfect bail in error, because no real error suggested. *2 Wils. 144.*

*Execution after error, tho' before notice, void.*

An execution sued out after a writ of error allowed is void, whether the party have notice of the writ of error or not; but if he have not notice of it, he is not punishable for a contempt, though restitution ought to be made. *Smith v. Cave, 3 Lev. 312.*

*Debt on judgment after error.*

After a writ of error brought on a judgment in this court, an action of debt may be brought upon the judgment pending the writ of error; but then the plaintiff ought to declare on the whole matter, *viz.* of the judgment in this court, of the removal by writ of error, and that the judgment is still in full force, *prout patet*

*patet per record' inde in banco regis. Gale v. Till, 3 Lev. 396. V. antea fol.*

If an action of debt be brought on a judgment pending a writ of error in the original action, the plaintiff may proceed to judgment, but not to take out execution till the writ of error be determined. *Coe and Allam, Pract. Reg. C. P. 55. Trin. 9 Geo. 1. Jackson and Duckett, Pract. Reg. C. P. 54. Rep. & Cas. of Pract. C. P. 32. Hil. 13 Geo. 1.*

*Debt on judgment pending error, plt. may proceed to judgment, but can't have execution if deft. applies.*

But the plaintiff may take out execution notwithstanding the writ of error, if the defendant does not apply to the court to stay execution. *Humphreys and Daniel, Barnes 202. Rep. and Cas. of Pract. C. P. 129. Pract. Reg. C. P. 183. Pas. 9 Geo. 2. The plaintiff, pending a writ of error, cannot have an Exigent post ca. sa. on the original judgment: Spinks and Bird. Pas. 10 Geo. 2. Barnes 314. Pract. Reg. C. P. 184.*

If a writ of error be brought on a judgment, and the plaintiff brings an action of debt on the recognizance against the bail in the original action, pending the writ of error, the court will stay the proceedings till the writ of error is determined; for if the plaintiff might proceed to judgment against the bail, they would be thereby deprived of an opportunity of surrendering the defendant. *Newman and Butterworth, Hil. 8 Geo. 2. Barnes 66. Rep. and Cas. of Pract. C. P. 112. Pract. Reg. C. P. 82.*

*Debt on recognizance against bail, pending error, proceedings stayed.*

If a writ of error be brought on a judgment in this court, and the chief justice dies [before he has returned the writ of error]

*If writ of error abates by death of chief justice, execu-*



*tion with leave  
of the court.*

whereby the writ is abated, execution may be taken out with leave of the court; but if taken out without leave, it will be set aside, and restitution ordered. *Cranborne and Queenel, Thornton and Hays, Pract. Reg. C. P. 195. Barnes 201. Hil. 9 Geo. 2.*

*Of transcribing.*

At the return of the writ of error a rule must be given with the clerk of the errors, by the defendant in error, for the plaintiff to transcribe the writ of error into the *King's Bench*, which rule will be out in eight days after service thereof on the plaintiff in error, or his attorney; and if the record be not transcribed in eight days, the clerk of the errors will sign a *Non pros*. The rule to transcribe may be served on the plaintiff in error, and need not be served on his attorney.

*What time the  
clerk of the  
errors takes to  
transcribe.*

If the writ of error be returnable the first day of a term, the clerk of the errors takes the whole term to transcribe the record in, and does not carry in the transcript until the last day of that term; and if the writ of error be returnable on any other return than the first return of a term, he takes the whole subsequent vacation to transcribe in, and carries in the record on the first day of the next term.

Though writ of error be *non-prossed*, for want of transcribing record, yet the bail, being bound to prosecute writ of error with effect, will be liable. *Barnes 499.*

After the transcript is carried in, the whole proceedings are in the *King's Bench*. See the *Attorney's Practice in the Court of King's Bench*.

*Leave to file  
warrant of  
attorney after*

The plaintiff had obtained judgment in *Trin. 1726*. Error was brought in *Trin.*

1727, and the want of a warrant of attorney had been assigned for error, and a *Certiorari* taken out and returned, that there was no warrant of attorney; whereupon the plaintiff applied to the court for leave to file his warrant of attorney. After hearing *Cheshyre pro Quer.* and *Whitaker and Raby pro Def.* and great consideration, the court refused to let the warrant of attorney be filed. *Nipson and Quiller, Mich. 1 Geo. 2.*

*error brought denied. Pract. Reg. C. P. 197.*

The plaintiff has brought a *Scire facias* on a recognizance of bail, and had filed a warrant of attorney *de pl'ito transgr. super casum super scire facias*; error was brought, and the want of warrant of attorney assigned for error, and a *Certiorari* returned, that there was no warrant of attorney. The plaintiff moved to amend the warrant of attorney, by making it *de placito debiti super Sci. fa.* and upon hearing *Brantbwayte pro Quer.* the court gave leave to amend. *Societas Belgica ad indos occidentales negotians v. Henriques & al', Pract. Reg. C. P. 25. Pas. 1 Geo. 2: 2 Brownl. 167. 2 Coke 135.*

*Warrant of attorney amended after error brought.*

After error brought the record was ordered to be amended, by inserting at the top of the roll *from the day of St. Martin in fifteen days, in the ninth year, &c.* The cause of action having arose in *Michaelmas* term. *Deacon and Vivian, Pas. 9 Geo. 2. Barnes 7.*

*Record amended after error brought.*

Judgment roll amended after error brought, and *In nullo est erratum* pleaded, by striking out the words *ought to*, and inserting the word *do*, the judgment being, that the plaintiff *ought to recover*, instead of *do recover*: This

*The like on payment of costs, if plaintiff in error did not proceed.*

amendment was ordered without costs, if the plaintiff in error should proceed; *aliter* costs were to be paid. *Foster and Blackwell, Pas. 10 Geo. 2. Barnes 7, 8.*

*No discontinuance after error without costs.*

Judgment *pro Quer.* on demurrer, but not entered on record. Error brought, the court refused to let the plaintiff discontinue without paying the costs on the writ of error. *Pym and Warren, Mich. 6 Geo. 2. Barnes 169.*

Said that a *Scire facias* on a recognizance of bail upon a writ of error need not set forth the condition of the recognizance. *Hil. 17 Geo. 2. C. B. Melland v. Jenkins. Barnes 93.*



**COSTS ON ERROR brought in the  
EXCHEQUER CHAMBER.**

Hilary Term, 1778.

	Out of pocket			Agent			Attorney		
	<i>l.</i>	<i>s.</i>	<i>d.</i>	<i>l.</i>	<i>s.</i>	<i>d.</i>	<i>l.</i>	<i>s.</i>	<i>d.</i>
Searching if writ of error allowed, and when returnable	0	0	0	0	1	8	0	3	4
Rule to transcribe	0	2	4	0	2	4	0	2	4
Copy and service	0	0	0	0	1	0	0	2	0
Inquiring if plaintiff had transcribed, and forwarding same	0	0	0	0	1	8	0	3	4
Paid taking transcript out of office	0	2	6	0	2	6	0	2	6
Attending at Westminster to examine transcript	0	0	0	0	3	4	0	6	8
Paid for keys of Treasury, and to examine same	0	7	6	0	7	6	0	7	6
Paid clerk of errors in Excheq. chamber for copy of error and record	1	16	0	1	16	0	1	16	0
Fair copy at 2 <i>d.</i> a folio for agent, and 8 <i>d.</i> for attorney	0	0	0	0	8	8	0	17	4
Examining same with record	0	0	0	0	3	4	0	6	8
Term fee	0	0	0	0	3	4	0	6	8
Letters and messengers	0	0	0	0	1	0	0	2	0
	F f 3						Easter		

## Easter Term following.

	Out of Pocket			Agent			Attorney		
	<i>l.</i>	<i>s.</i>	<i>d.</i>	<i>l.</i>	<i>s.</i>	<i>d.</i>	<i>l.</i>	<i>s.</i>	<i>d.</i>
Rule to alledge diminution *	0	2	4	0	2	4	0	2	4
Copy and service	0	0	0	0	1	0	0	2	0
Term fee	0	0	0	0	3	4	0	6	8
Letters and messengers	0	0	0	0	1	0	0	2	0

## Michaelmas Term following.

Attending several times to see if errors assigned	0	0	0	0	1	8	0	3	4
Copy assignment of errors	0	0	0	0	1	0	0	2	0
Plea in <i>nullo est erratum</i>	0	0	0	0	1	6	0	3	0
Copy to file, duty, and paid	0	2	6	0	3	6	0	4	6
Paid setting down cause for affirmance	0	9	6	0	9	6	0	9	6
Copy paper book, fo. 60	0	0	0	0	10	0	1	0	0
Attending to examine same	0	0	0	0	3	4	0	6	8
Attending court on affirmance	0	0	0	0	3	4	0	6	8
Notice of taxing costs	0	0	0	0	1	0	0	2	0
Bill of costs, and copy	0	0	0	0	1	0	0	2	0
Attending taxation, and to examine <i>remittitur</i>	0	0	0	0	3	4	0	6	8

\* Rest of money paid for this rule is included in the charge for copy of writ and record.

	Out of Pocket			Agent			Attorney		
	<i>l.</i>	<i>s.</i>	<i>d.</i>	<i>l.</i>	<i>s.</i>	<i>d.</i>	<i>l.</i>	<i>s.</i>	<i>d.</i>
Paid for affirmance	3	18	6	3	18	6	3	18	6
Entry thereof and <i>re-</i> <i>mittitur</i>	0	0	0	0	2	8	0	5	4
Entry on roll	0	0	0	0	1	4	0	2	8
Engrossing and examining same at Treasury	0	0	0	0	3	4	0	6	8
Paid clerk there	0	3	6	0	3	6	0	3	6
Term fee	0	0	0	0	3	4	0	6	8
Letters and messengers	0	0	0	0	1	0	0	2	0

If Writ of ERROR should happen to be *non-prossed* for Disobedience to any of the Rules, the Items of Disbursements and Fees will be nearly as follow.

Trinity Term, 1778.

No Diminution being alledged, or no Errors being assigned, as Case may be.

Attending court, and motion for <i>Non pros</i>	0	0	0	0	3	4	0	6	8
Paid	4	0	0	4	0	0	4	0	0
Bill of costs and copy	0	0	0	0	1	3	0	2	6
Attending taxation, and to examine <i>remittitur</i>	0	0	0	0	3	4	0	6	8
Entry, and engrossing same on roll, attend- ing, &c.	0	0	0	0	4	6	0	9	0
Paid clerk of Treasury	0	3	0	0	3	0	0	3	0
Term fee, letters, &c.	0	0	0	0	4	4	0	8	8

F f 4

*Replevin.*



*Replevin.*

**T**HIS suit may be by original out of Chancery returnable in this court, but is most usually commenced in the county court, and removed into this court by writ of *Recordari facias loquelam* commonly called a *Refalo*, taking its name from the first syllable of each word in the name of the writ, viz. Recordari facias loquelam; but if the suit be first commenced in an inferior court of record, as in *London*, then it must be removed into this court by writ of *Certiorari*, for the *Refalo* doth not go to a court of record, because there the suit is already recorded. In order for a *Refalo* you make out a *Præcipe* to the curfitor of the proper county in the following form, viz.

Essex, **R**EFALO for (either plaintiff or to wit. defendant, naming them) of a plaint between *Richard Knightsbridge* against *John White* and *William Sell*, for taking and unjustly detaining the cattle, goods and chattels of the said *Richard*.

*Returnable from Easter day  
in 15 days.*

This *Præcipe* you deliver to the curfitor who will make out the writ, and then you carry it to the under-sheriff who will return it.

The suit may be removed either by the plaintiff or defendant.

If the plaintiff in replevin brings the *Recordari facias loquelam*, he files it, when returned, with the filacer of the county, and gives a rule for the defendant to appear, and in default thereof may have a *Pone, Distringas, &c.* Of proceeding if Resalo brought by plaintiff.

If the defendant brings the *Recordari facias loquelam*, he also files it, when returned, with the filacer, and gives a rule for the plaintiff in replevin to declare, and in default of a declaration may have a writ of return *Habend.* If by defendant.

If the defendant doth not file the *Recordari facias loquelam* at the day of the return, or at least on the appearance day of the return, he must give the plaintiff's attorney notice of filing it; it is said there is no occasion to call for a declaration; however, it is but fair practice and the safer method, to call upon the plaintiff's attorney for the declaration. Where notice of filing Resalo, and calling for a declaration necessary.

If the defendant brings the *Resalo* and doth not get it returned, and file it within two terms, the plaintiff may have a certificate thereof from the filacer, and thereupon the curfitor will make him out a writ of *Procedendo*, upon which he may proceed in the court below. When Procedendo shall go.

See the second volume for declarations, &c. in replevin.

The particular place of taking the goods ought to be mentioned in every declaration in replevin.— And the plea of *Cepit in alio loco* is a plea in bar, and not in abatement, and

and doth not require an affidavit, nor to be pleaded in four days after delivering the declaration.

Motion was made to set aside judgment, signed by defendant in replevin, for want of a plea in bar: case was, that defendant had pleaded an avowry, to which plaintiff put in a plea in bar; afterwards defendant obtained order on summons to amend avowry, on payment of costs; both which being done, defendant gave new rule for plaintiff to plead in bar *de novo*; and then demanded plea in bar afresh; plaintiff paid no regard thereto; whereupon defendant signed judgment, which plaintiff prayed might be set aside; question put by court was, how the practice stood in this case? which was answered by Mr. prothonotary *Dickins*, to be, that after rule to plead in bar *de novo*, and demand made, and no such plea by plaintiff, old plea in bar stood as before, whereto defendant ought to have replied, instead of signing judgment; which was therefore set aside. *Grose* for plaintiff; *Walker* for defendant. *Hil.* term, 17 *Geo.* III. C. B. A. D. 1777. MS. notes.

A writ of second deliverance is in the nature of a *Superfedeas* to the return *Habend.* if brought before the return *Habend.* be executed.

Double costs not allowed on a nonsuit in *replevin*, where plaintiff declared for taking and detaining an ox, and defendant avowed the taking as a seizure for an heriot custom, claiming no right to distrain; *aliter* had it been  
been