Stat. 32 *H.* 8. *c.* 30. *ſ.* 2. made perpetual, 2 & 3. *E.* 6. *c.* 32. Vide *Stat.* 18 *Eliz. c.* 14. *ſ.* 3.

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

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

(a) Note, plaintiff's attorney generally files the defendant's warrant of attorney at the ſame time he files the plaintiff's warrant, and on the ſame piece of parchment, and in the following form:

Michaelmas term in the twenty-eighth year of the reign of King *George* the ſecond.

Middleſex. *A. B.* putteth in his place *J. L.* his attorney againſt *C. D.* late of, &c. gent. in a plea of treſpaſs on the caſe.

Middleſex. *C. D.* late of, &c. gent. putteth in his place *R. J.* his attorney againſt *A. B.* in the plea aforeſaid.

If the defendant be deſcribed in the pleadings with an *alias dict'*, or the plaintiff or defendant be an executor or adminiſtrator, he muſt be named in the warrant of attorney in the ſame manner exactly as in the pleadings. The nature of the action muſt be expreſſed in the warrant, according as the caſe ſhall be, as thus: *In a plea of debt*; *In a plea of treſpaſs*; *In a plea of treſpaſs on the caſe*; *In a plea of treſpaſs and ejectment of farm*; *In a plea of treſpaſs and aſſault*; *In a plea of treſpaſs aſſault and impriſonment.*

The plaintiff's attorney in any action or ſuit ſhall file his warrant of attorney with the proper officer the ſame term he declares, and the attorney for the defendant ſhall file his warrant of attorney as aforeſaid the ſame term he appears, under the penalties inflicted upon attornies by any former law for default of filing their warrants of attorney. *Stat.* 4 & 5 *Annæ.*

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

NOTES.

1. Warrant of attorney amended after error brought and *certiorari* returned, by entering it *debt* inſtead of *caſe*; and if the adverſe party does not proceed in error, coſts to be paid him. *Rep. and Caſ. of Pract. in C. P.* 44. *Pract. Reg. in C. P.* 25.

2. Leave to file warrant of attorney after error brought, denied. *Pract. Reg. in C. P.* 197. *Rep. and Caſ. of Pract. in C. P.* 37. *Note*; it was for want of filing plaintiff's warrant of attorney *.Ibid.*

3. In ejectment warrant of attorney amended after error brought. *Rep. and Caſ. of Pract. in C. P.* 11.

Notice of trial.

Proof of notice of trial on oath made of want of notice to lie on the party bringing the cause to trial. *Rule M.* 1654 *f.* 21.

NOTICE of trial at the ſittings in *London* and *Middleſex.*] [If defendant lives *within* 40 miles of *London*, there muſt he eight days notice of trial given *excluſive* of the day of notice.—If *above* 40 miles from *London*, fourteen days *excluſive* of the day whereon the notice is given. *Rule M.* 1654.

NOTES.

1. Eight days notice of trial to defendant's agent, or at defendant's chambers in *Clifford's Inn*, (defendant being an attorney) was held ſufficient, tho' he had an houſe above 40 miles from *London. M.* 13 *Geo.* 1. *Nicholſon* v. *Colliſon*, *Pract. Reg. in C. P.* 387.

2. Defendant lived *above* 40 miles from *London*, but was in town when arreſted, and for nine days after notice of trial, but went away before the trial *prout* affidavit. Verdict ſet aſide for want of fourteen days notice. *E.* 5 *Geo.* 2. *Whitehead* v. *Dinely Goodere*, *Pract. Reg. in C. P.* 387. *Rep. and Caſ. of Pract. in C. P.* 72. S. C. and *per Cur':* The general rule of notice ſhall not be altered upon a defendant's coming to *London* for a few days. *Ibid.*

3. Fourteen days notice of trial muſt be given, defendant then living in *Ireland*; tho' plaintiff inſiſted that defendant had no ſettled habitation, was in town three months lodging at a bagnio, tho' he is *now abroad.* Verdict ſet aſide for want of fourteen days notice. *M.* 8 *Geo.* 2.

Gor-

Gorman v. *Boyle, Esq*; *Pract. Reg. in C. P.* 388. —*Rep. and Cas. of Pract. in C. P.* 111. S. C. and *per Cur'*: If the defendant's habitation *be forty miles from London*, he must have 14 days notice of trial, let him live where he will; *per Cur'*. *Ibid.*—1 *Barnes's Notes* 213. S. C.

4. Notice of trial to defendant when his attorney is known is bad; but when the attorney is not known, notice may be given to defendant. *Hil.* 4 *Geo.* 2. *Higgins* v. *Steward, Pract. Reg. in C. P.* 276, 396. If defendant's attorney cannot be found, the notice of trial ought to be given to the defendant himself, or left at his house. *Hil.* 5 *Geo.* 2. *White* v. *Edwards, Pract. Reg. in C. P.* 126.—All notices, where the party hath a known attorney, must be given to that attorney, or his agent, and not to the party himself. *Per Cur'*: *M.* 16 *Geo.* 2. 2 *Barnes's Notes* 240.——But quere, where neither the attorney nor party can be found, if the court on application will not order that notice in the office shall be good? I think they will.—The way to find out where an attorney lives, as expected by the court, is to inquire at the office of the filazer of the county, or at the seal-office, or of the prothonotary. *Vide Pract. Reg. in C. P.* 276.

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

Mr.—

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

Your humble servant,

R. S.

attorney for the plaintiff.

Dated, &c.

Notice

Notice of trial at the aſſizes.] Of trials in the country there muſt be eight days notice given *excluſive* of the day of notice. *Rule M.* 1654.—But now altered by the following ſtatute to ten days at leaſt.

By *Stat.* 14 *Geo.* 2. *c.* 17. *ſ.* 4. no cauſe whatſoever ſhall be tried at *Niſi prius* before any judge or juſtice of aſſize or *Niſi prius*, or at the ſittings in *London* or *Weſtminſter*, where the defendant reſides *above* 40 miles from the ſaid city reſpectively, unleſs notice of trial in writing has been given *at leaſt* ten days before ſuch intended trial.

Note; this act does not alter the above rule of *M.* 1654. for fourteen days notice of trial in *London* or *Middleſex*, when the defendant lives *above* 40 miles from *London*, as will appear by the following caſe.

Defendant lived above 40 miles from *London*, and plaintiff proceeded to trial at ſitting there, upon 10 days notice; no defence was made, and defendant inſiſting, that he was intituled to fourteen days notice of trial, moved to ſet aſide the verdict, and had a rule to ſhew cauſe which was made abſolute. By the *Act* 14 *Geo.* 2. no cauſe is to be tried in *London* or *Weſtminſter*, unleſs notice in writing be given *at leaſt* ten days before ſuch intended trial. Before this act fourteen days notice was the ſettled practice, and unleſs neceſſitated, the court will not be bound by an act made to take away a benefit from defendants. The practice or law of the court cannot be taken away but by *negative* words, *i. e.* there ſhall be no more than ten days notice.—Fourteen days notice notwithſtanding this act ſtill neceſſary. *Hil.* 15 *Geo.* 2. *Bowler* v. *Jenkin*, 2 *Barnes's Notes* 238.

Notice

Notice of trial on an old iſſue.] If an iſſue be joined *above* a year in any caſe, then one term's notice to be given of the trial. *Rule M.* 1654. *ſect.* 21.—In all caſes in which there have been no proceedings for four terms *exclu-ſive* of the term in which the laſt proceeding was had, the party who deſires to proceed again ſhall give a term's notice to the other of ſuch proceeding, ſuch notice to be given before the eſſoin-day of the fifth or other ſubſequent term. A judge's ſummons, if an order be made thereon, ſhall not be deemed a proceeding, but a notice of trial, tho' afterwards countermanded, ſhall be deemed a proceeding within this rule (*a*). *Rule E.* 13 *Geo.* 2.

(*a*) In which caſe common notice is only neceſſary.

NOTE.

1. In the caſe of *Coates* v. *Hammond*, *E.* 13 *Geo.* 2. the queſtion was, whether a whole term's notice of trial ſhould be given where there have been no proceedings for *three* terms. The practice appearing to be doubtful, was the occaſion of making the above rule of *E.* 13 *Geo.* 2. Vide *Pract. Reg. in C. P.* 392.

2. Notice of trial on an old iſſue was given to the attorney in the country, and not to the agent in town. *Per Cur'*: The notice on this old iſſue is well delivered to the attorney in the country; for it may be given either to the attorney or agent; but where notice of trial is given on the iſſue-book, it muſt be given to the agent, becauſe the iſſue can be delivered no where but in town. Notices of trials and countermands; notices of executing writs of inquiry and countermands, may be given either to the attorney

ney in the country, or to the agent in town. But of those things which are to be done *only in town*, notice must be to the agent. And all notices, where the party hath a known attorney, must be given to that attorney, or his agent, and not to the party himself. There has been no determination of this court, that notice of trial in the country is bad, tho' it hath been so understood. *Mountstephen* v. *Templer*, *M.* 7 *Geo.* Attorneys in the country are to take no notices but of trial, inquiries, and their countermands. *E.* 6 *Geo.* 2. Countermand of notice of trial may be given either in town or country. [*Vide p.* 208. *Note* 6.]

Notice of trial in the country.

3. After plea pleaded, proceedings had stayed *three* years, and then plaintiff delivered an issue, and afterwards gave fourteen days notice of trial. *Cur'* made the rule absolute to set aside the verdict, for want of a term's notice of his intent to proceed, by the party proceeding, pursuant to the general rule. *E.* 13 *Geo.* 2. *M.* 17 *Geo.* 2. *Blackmore* v. *Smith*, 2 *Barnes's Notes* 242.

4. *Note*; the general rule *E.* 13 *Geo.* 2. extends only to the party's intent to proceed, not to motions to end proceedings. 2 *Barnes's Notes* 244.

New notice of trial.] If plaintiff gives notice of trial for the assizes, and do not bring the trial on, he cannot try it without *new* notice, as before, unless by consent, or rule of court. *Rule M.* 1654. *f.* 21.

Notice of trial by continuance.

But in *London* or *Middlesex*, if plaintiff gives notice of trial for one sitting and he is not ready, he may give notice *before* that sitting that he will try it the next sitting. *Same rule and sect.* This is called notice of trial by continuance.

NOTES.

NOTES.

1. Plaintiff cannot *continue* his notice of trial a ſecond time, *i. e.* he can give *ſhort* notice of trial but once, but if the *full* time be given by the notice of *continuance*, the word *continuance* will not vitiate the notice, but plaintiff cannot *countermand* and *continue* in the ſame notice.

2. Continuing notice of trial from one ſitting to another is like *ſhort* notice, and notice cannot be continued above once, much leſs from the laſt ſitting to the next term, which is above eight days. It is all one whether the plaintiff ſays, "I give you notice," or "I continue my no-"tice. Provided there be full eight days. *T. 6 & 7 Geo. 2. Boyce v. Twiſt and others. Pract. Reg. in C. P.* 396.

Notice of trial before iſſue joined.] Heretofore where the plaintiff in pleading concluded *ad patriam*, he could not give notice of trial till the defendant had joined iſſue, which he was not obliged to do till a four days rule for that purpoſe was expired. But now in all caſes where the plaintiff in pleading concludes *ad patriam* (to the country) defendant's attorney may annex notice of trial upon the back of ſuch pleadings, whether the ſame be delivered to the defendant's attorney, or left in the office, and ſuch notice ſhall be as good as if iſſue had been joined. *Rule T. 2 Geo.* 1.

And if he does not join iſſue before the rule is out, then after judgment obtained defendant's attorney ſhall be obliged to accept of notice of executing a writ of inquiry from the time that the notice

notice of trial was given on the back of the pleadings. *Rule Hil.* 6 *Geo.* 1.

Short notice of trial.] Where the plaintiff may give short notice of trial, as where the defendant has had time given him to plead on taking short notice of trial, the plaintiff must give him as much time as he can.

NOTE.

Two days notice is sufficient where defendant consents to take short notice of trial, tho' in a *country* cause. *E.* 3 *Geo.* 2. *Hood* v. *Darby*, *Pract. Reg. in C. P.* 390.

Notice for trial by *proviso*.] If the plaintiff gives notice for a trial, and proceeds not, the defendant may take it by *proviso*, according to law, but then he must give the same notice of trial as the plaintiff should have done if he had proceeded to trial. *Vide Rule M.* 1654. *f.* 21.

In *London* or *Middlesex*, if no warning for a trial, then the defendant not to take it by *proviso* to try it the same term, but afterwards he may take it by *proviso* according to law, giving proper notice. *Same rule.*

NOTES.

1. The defendant shall not try by *proviso* till there be *a laches* (*a*) in the plaintiff, except in cases where the defendant is as a plaintiff, as in *replevin*, *prohibition*, *quare impedit*, which are to have *returns*, *consultation*, and *writ to the bishop*. 2 *Salk.* 652.

(*a*) So in the original.

2. De-

2. Defendant may try the cauſe by *proviſo* upon one default being made the next term after iſſue joined, and need not wait till a full term has intervened after iſſue joined. *E.* 7 *Geo.* 2. *Williams* v. *Jones*, *Rep. and Caſ. of Pract. in C. P.* 101.—*Pract. Reg. in C. P.* 397. S. C. 1 *Barnes's Notes* 211. S. C.

3. On trial by *proviſo* defendant muſt give fourteen days notice of trial, if the plaintiff would have been bound to give the ſame. *M.* 9 *Geo.* 2. *Swale, an attorney*, v. *Leaver*, *Pract. Reg. in C. P.* 388. *Rep. and Caſ. of Pract. in C. P.* 124. S. C.—1 *Barnes's Notes* 217. S. C.

Countermand of notice of trial.

COuntermand of notice of trial to be delivered in writing at leaſt ſix days before the intended trial. *Stat.* 14 *Geo.* 2. *c.* 17. Unleſs at the ſittings in *London* or *Middleſex*, and defendant lives *within* 40 miles, then two days before the ſitting for which notice of trial was given is ſufficient.

NOTES.

1. Notice of trial may be countermanded after the record is made a *remanet*. *M.* 4 *Geo.* 2. *Powey* v. *Walker*, *Pract. Reg. in C. P.* 393.

2. Plaintiff gave notice of trial for the firſt ſitting within term, then gave notice that he countermanded the notice of trial for the firſt ſitting, and continued it for the ſecond ſitting. Defendant made no defence at the trial, and plaintiff had a verdict, but ſet aſide; for *per Cur.*: Plaintiff cannot *countermand* and *continue* in the ſame

same notice, for they are contradictions. *Hil.* 11 *Geo.* 2. *Smith* v. *Hough*, *Pract. Reg. in C. P.* 394.—*Rep. and Cas. of Pract. in C. P.* 146. S. C. 1 *Barnes's Notes* 220. S. C.

3. No notice or countermand to be given on a Sunday, *Rep. and Cas. of Pract. in C. P.* 15.—But Sunday intervening before the countermand, and the day of the intended trial, to be accounted as any other day.

4. Notice of trial for the sittings in *London* for the Monday, countermanded on the Saturday, good. *M.* 14 *Geo.* 2. *Stafford* v. *Thompson* *Pract. Reg. in C. P.* 395. 2 *Barnes's Notes* 237. S. C. says, the commission-day of the assizes (*a*) was *Monday*, and notice of trial was countermanded on *Saturday* next before, and held to be regular.

(*a*) *Pract. Reg. in C. P.* 395. says the notice was for the sittings in *London*.

5. Countermand given in due time in *London* of a *Devonshire* cause held good. *M.* 2 *Geo.* 2. *Gerry* v. *Shelton*, *Rep. and Cas. of Pract. in C. P.* 48. And so it was said to have been settled in a cause laid in *Yorkshire* between *Shipley* v. *Sweeting*, *T.* 13 *Geo.* 1. *Ibid.* 49.

(*a*) *Vide p.* 201, 203, 204.

6. Action laid in *Cornwall*. *Cur'* declared that all notices of trial must be given in town (*a*), but countermands may be given either in town or country. *T.* 8 & 9 *Geo.* 2. *Goodright* v. *Hoblyn*, *in ejectment*, *Rep. and Cas. of Pract. in C. P.* 120. 1 *Barnes's Note* 215. S. C.—2 *Barnes's Notes* 239. *Tashburn* v. *Havelock*, *M.* 16 *Geo.* 2. Countermand of notice of trial may be given either in town or country; *per Cur.*'—*Cites E.* 6 *Geo.* 2.

7. Costs to be taxed unless notice of trial be countermanded in time. *Rules Hil.* 14 & 15 *Car.* 2. *Rule* 3. *and M.* 3 *Geo.* 1.

Brief

Brief.

THE brief for counſel muſt contain a true abſtract of all the pleadings; a ſtate of the caſe; the proofs neceſſary to be made; and what is ſuppoſed will be objected by the adverſe party, with anſwers to thoſe objections.

Record of niſi prius.

OF paſſing record of *niſi prius*.] The record of *niſi prius* for a trial muſt be engroſſed (*a*) on parchment ſtamped with a double half crown.—The iſſue or an *incipitur* thereof muſt be entered on a roll (*b*) which you have from the proper prothonotary's office.

(*a*) Every record of *niſi prius* is to be engroſſed in a fair legible character, and ſo entered on the roll. The beginning of every pleading to be with a *new* line, and the *firſt* word in a greater character than the reſt; and in all actions that have diverſe *narrs*, (i. e. *counts*) notice thereof muſt be given by figures in the margin of ſuch record of *niſi prius*, and all records of *niſi prius* that ſhall be engroſſed in this court, are to be of the exact breadth of the rolls of this court, and not *broader* or *leſſer*. *Rule T.* 29 *Car.* 2. (*b*) The prothonotaries are not to ſign any records of *niſi prius*, till the ſame or an *incipitur* thereof be entered upon the roll. *Rules M.* 1654. *E.* 5 *W. & M.* And all iſſues are to be entered of the term they are joined. *Rules E.* 5 *W. & M.*—*Hil.* 11 *Geo.* 1.

When the *niſi prius* record is prepared, carry it and the iſſue roll to the prothonotary who will mark the record and roll. Pay 1*s.* and for entering iſſue 2*s.* a count, or if ſpecial 8*d. per* ſheet. File warrants of attorney with the clerk of the warrants (*c*), or carry them with the record to the

(*c*) No record of *niſi prius* to be ſigned or ſealed, unleſs firſt ſtamped by the clerk of the warrants, that it may appear that the warrants of attorney are duly filed. *Rule Hil.* 2 & 3 *Ja.* 2,

nisi prius office, and the clerk of the *juratas* will examine and see that the *jurata* is rightly entered. Pay at sittings 1 *s.* at assizes 6 *d.* and then deliver the warrants of attorney (if not already filed) and the record to the clerk of the treasury (*d*), pay him 2 *s.* for first three sheets, and 4 *d.* for every other sheet, and 2 *s.* 2 *d.* for the seal.—If three weeks after term 2 *s.* more for a judge's warrant (*e*).

(*d*) The clerk of the treasury will take the fee for the warrants of attorney, but this is a matter of favour. (*e*) Records of *nisi prius* for trial of issues at the assizes, to be signed by the proper prothonotary, and signed and sealed by the clerk of the treasury within the space of *three* weeks after every *issuable* term, and not afterwards without a *special* warrant to be obtained for that purpose. *Rule T.* 29 *Car.* 2.

There is but one *placita* in the record of *nisi prius*, unless it be an *old* issue, or, on the *death* or *change* of the Chief Justice, but after the plea it is usual to leave a blank before the *jurata* for another *placita* in case the cause is not tried at the assizes intended.

NOTES.

1. Amendment of a record by striking out the entry of a view, denied, there being nothing to amend by.

2. After verdicts, record of *nisi prius* and writs of *habeas corpora jurat*,' being lost by Mr. *Jacomb* the late associate, Rule for defendant and *Jacomb* to shew cause why new records and writs should not be made out agreeable to the old, and verdicts returned according to the finding of the jury, made absolute, no cause being shewn to the contrary. *T.* 27 & 28 *Geo.* 2. *Lassiter* v. *Har-*

Harvey, Supplement to 2 vol. Barnes's Notes 54.

3. The *jurata* was thus; "The jurors, &c. are reſpited here until from the day of *Eaſter* in "fifteen days, unleſs, &c." whereas it ſhould have been on Wedneſday next after fifteen days from the day of *Eaſter*; but ordered to be amended. Ch. Juſt. The entry of the *jurata* is the entry of the clerk of the *juratas*, and this is his inadvertency, and may be amended. *Forteſcue* J. *Cane* v. *Marſh in* G. B. E. 7 *Geo.* 2. The *venire facias* was amended by making it returnable on a particular return day inſtead of a general return day, and if it may be amended in the *venire*, it certainly may be in a *jurata*. *Reeve* J. The *jurata* is the award of the court; this is a miſtake of the clerk in entering it; as it is *vitium clerici* it may be amended. *T.* 7 & 8 *Geo.* 2. *Walthoe* v. *Harriſon, an attorney, Pract. Reg. in C. P.* 22.——*Rep. and Caſ. of Pract. in C. P.* 101. S. C.

The form of a record of nisi prius.

Cooke.

Please to remember that in C. B. the placita, as before observed, is wrote but once except on the *death* or *change* of a chief, or on an old record, in which case you write a second placita, and then the jurata. *Vide p.* 210.

Pleas at Westminster *before* Sir John Willes Knt. *and his companions, justices of our Lord the King of the bench, of* *term in the* *year of the reign of our Sovereign Lord* George *the second, by the grace of God of* Great Britain, France *and* Ireland *king, defender of the faith,* &c.

Roll

Middlesex, to wit. C. D. late of, *&c.* Esq; was attached to answer *E. F.* of a plea of trespass on the case, and whereupon the said *E. F.* by *J. P.* his attorney complaineth, that whereas, *&c.* [to the end of the issue and award of *venire.*]

Jurata.

Middlesex, to wit. THE jury between *E. F.* plaintiff, and *C. D.* late of, *&c.* Esq; in a plea *(a)* of trespass on the case, are respited here until on the morrow of the *Holy Trinity (b)*, unless *Sir John Willes* Knt. the King's Chief Justice of the Bench here assigned by virtue of the statute in that case made and provided, shall first come, on——the——day of——*(c)*, at *Westminster* in the great hall of pleas there, commonly called *Westminster Hall*, in the county of *Middlesex (d)*, for default of jurors because none came; Therefore let the sheriff have the bo-

(a) If in replevin say, *In a plea of taking and unjustly detaining the cattle of the said* E.

(b) The return of the *habeas corpora juratorum*, and which should be the next return after the day of trial. (c) The day of the sittings. (d) If in *London*, say, *At the* Guildhall *of the city of* London *aforesaid.*

dies

dies of the ſeveral perſons mentioned in the panel annexed to the writ of *habeas corpora juratorum*, and be it known that the juſtices here in court in this ſame term delivered a writ thereupon to the deputy of the ſheriff of the county aforeſaid, to be executed in due form of law, &c.

Jurata *where the trial is to be had at the aſſizes.*

Eſſex, to wit. THE jury between *A. B.* plaintiff, and *C. D.* late of, &c. gent. in a plea of treſpaſs on the caſe, is reſpited here until the morrow of *All Souls*, unleſs the King's Juſtices aſſigned to the take aſſizes in the county aforeſaid, by form of the ſtatute in that caſe made and provided, ſhall come before on——(*a*) in the county aforeſaid, for default of the jurors, becauſe none came; Therefore, &c. (*as before.*)

(*a*) The day the aſſizes are to be held.

A niſi prius *record in ejectment.*

Cooke.

Pleas at Weſtminſter, &c.

Roll

Middleſex, to wit. C. D. late of the pariſh of *St. John the Baptiſt* in the precinct of the *Savoy* in the *Strand* in the county aforeſaid, eſq; was attached to anſwer *A. B.* gent. of a plea, wherefore with force and arms, five chambers and one kitchen with the appurtenances in the precinct of the *Savoy* aforeſaid, in the *Strand* in the county aforeſaid, which *E. F.*

esq; and *G. H.* gent. to the aforesaid *A.* did demise for a term which is not yet past, he the said *C.* entered, and the said *A.* from his farm aforesaid ejected, and other enormities to him did, to the great damage of him the said *A.* and against his present Majesty's peace; and whereupon the said *A.* by his attorney complaineth, that whereas the aforesaid *E. F.* and *G. H.* the day of in the year of his present Majesty's reign, at the parish of *St. Clement Danes* in the county aforesaid, did demise unto him the said *A.* the tenements aforesaid with the appurtenances; *To have and to hold* the tenements aforesaid with the appurtenances, *&c. as in the declaration to the end.*

Plea: And the said *C. D.* by his attorney cometh and defendeth the force and injury by the aforesaid *A.* against him charged, when, *&c.* and saith, that he is not guilty of the trespass and ejectment aforesaid, in such manner and form as the said *A.* hath against him above complained; and of this he puts himself upon the country; and the aforesaid *A.* doth the like, *&c.* Therefore the sheriff is commanded to cause to come here in, *&c.* [*the return*] twelve good, *&c.* by whom, *&c.* and who neither, *&c.* to recognize whether the said *C. D.* is guilty of the premisses, as the said *A. B.* above complaineth; because as well the said *A.* as the said *C.* between whom the contention thereupon is, have put themselves upon their country.

Venire awarded.

Jurata *in ejectment.*

Middlesex, to wit. THE jury between *A. B.* plaintiff, and *C. D.* late of the parish of *St. John the Baptist* in the precinct of the

the *Savoy* in the *Strand* in the county aforeſaid, eſq; in a plea of treſpaſs and ejectment of the farm, is reſpited here until, *&c.* unleſs *Sir John Willes* Knt. Chief Juſtice of our Lord the King of the bench here, aſſigned by form of the ſtatute in that caſe made and provided, on Tueſday the—day of—at *Weſtminſter* in the great hall of pleas there, commonly called *Weſtminſter Hall*, in the ſaid county, ſhall firſt come for the default of the jury, becauſe none came; Therefore let the ſheriff have the bodies of the ſeveral perſons mentioned in the panel to the writ of *habeas corpora juratorum* annexed; and be it *Le ſciendum.* known that the juſtices thereupon here in court in the ſame term delivered a writ to the deputy of the ſheriff of the county aforeſaid, to be executed according to due form of law, *&c.*

Venire facias.

BUY a blank at a ſtationer's, fill it up, get it ſigned by the prothonotary, then ſealed and returned by the under-ſheriff, or his deputy. Stamps 2 *s.* ſigning 1 *s.* 4 *d.* ſeal 7 *d.* To the ſheriff for return 2 *s.* or 2 *s.* 6 *d.* When you have this writ returned by the ſheriff, you carry it with a panel annexed to the petty bag-office in the *Rolls* yard, where they are filed, and the clerk of the jury will make out the *hab. corp.* or *diſtr.*'

NOTES.

1. Motion to arreſt judgment for a defect in the award of the *venire*, which was in *Engliſh*, and

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 the ſame queſtion was depending in *B. R. Cur'* enlarged the rule till next term. *Hil.* 6 *Geo.* 2. *Fray* v. *Smith*, 1 *Barnes's Notes* 160.—*Pract. Reg. in C. P.* 414. *Tray* v. *Smith*, *E.* 6 *Geo.* 2. S. C. The *venire facias* need not be awarded at length.

2. A blank for the return of the *venire* in the record not cauſe for an arreſt of judgment. It is the conſtant practice to leave a blank. The award of the *ven. fa.* is no part of the iſſue, and is amendable by the *venire* itſelf. *E.* 12 *Geo.* 2. *Bryan* v. *Smith*, 1 *Barnes's Notes* 349.

3. *Venire fa. de novo* awarded, where intire damages, and part of the words not actionable. *E.* 8 *Geo.* 2. *Smith*, *an attorney*, v. *Hayward*, *Pract. Reg. in C. P.* 415.

4. Twenty-four jurors returned to the *venire fa.* and forty-eight to the *hab. corp.'* Defendant made no defence at the trial. Verdict for plaintiff, but ſet aſide without coſts, as being expreſsly contrary to the expreſs words of the ſtatute 3 *Geo.* 2. and to the reaſon of the ſtatute. *T.* 11 & 12 *Geo.* 2. *Penrice* v. *Jackſon*, *Pract. Reg. in C. P.* 416.—1 *Barnes's Notes* 347. S. C. *Rep. and Caſ. of Pract. in C. P.* 150. S. C.—Imperfect returns may be helped by the ſtatute, but here the fault is matter of fact. *Per Cur. ibid.*

5. Return of *venire facias*, if defective within ſtatutes of amendment. *T.* 13 & 14 *Geo.* 2. *Fowke* v. *Horabin and others*, 2 *Barnes's Notes* 3.

6. Ver-

6. Verdict ſet aſide, the *venire* being returnable at a day ſubſequent to the aſſizes, for till after the return of the *venire*, and default by jurors, there could be no *niſi prius*. The jury proceſs was returned properly. *E.* 23 *Geo.* 2. *Woeden* v. *Saunders, in ejectment*, 2 *Barnes's Notes* 375.

7. Where ſeveral iſſues joined, if enough is found for the court to give judgment upon, no *venire facias de novo* ought to iſſue. *E.* 24 *Geo.* 2. *Bartlett* v. *Spooner*, 2 *Barnes's Notes* 377.

8. On an action upon the ſtatute of hue and cry, the *venire* was awarded *de corpore com. alias quam de hundred of Exminſter*, and held to be well, the ſtatute not being a penal law, but an act made to give the party a ſatisfaction for a wrong done. *M.* 1 *Geo.* 2. *Boyd qui tam* v. *The hundred of Exminſter, Rep. and Caſ. of Pract. in C. P.* 38.

9. Every *venire* for the trial of any iſſue in any action or information, upon any penal ſtatute, ſhall be awarded of the body of the proper county where ſuch iſſue is triable. *Stat.* 24 *Geo.* 2. *c.* 18.

Venire facias, vide p. 218.

Habeas corpora juratorum.

BUY a blank (2 *s.*) fill it up, carry it with the *venire* and panel to the petty-bag office, and the clerk will examine and ſign it, pay in *London* or *Middleſex* 2 *s.* at the aſſizes 1 *s.* 9 *d.* ſeal 7 *d.* No *præcipe* is made for the office. If the cauſe be not tried at the time mentioned in the *habeas corpora*, make out a new one; and if you carry the old one you ſave 1 *s.* 1 *d.*

1 *s.* 1 *d.* The writs of *diſtringas* or *habeas corpora* muſt be returned by the ſheriff.—*Note*; where an attorney is *plaintiff* or *defendant*, the writs muſt be returnable on a day certain, and not on a general return.

NOTE.

Motion to amend a *hab. corp'*. The *hab. corp.* was made returnable on Wedneſday next after eight days of the purification of the *Bleſſed Mary*, or before *Sir Robert Eyre* Knt. our Chief Juſtice of our court of Common Pleas, if on Thurſday the 7th of *Februry*, &c. ſhall firſt come; whereas the return ſhould have been on Wedneſday next after fifteen days from the day of *Eaſter*, unleſs *Sir Robert Eyre* Knt. *&c.* on Wedneſday the 13th day of *Feb.* ſhall firſt come, *&c.* *Cur'* ſaid this was made good by the *Stat.* 5 *Geo.* 1. *c.* 13. Before this ſtatute, a fault in the *habeas corpora* was not amendable by the ſtatutes of jeofails, altho' the not having a *habeas corpora* was helped. *T.* 7 & 8 *Geo.* 2. *Waltboe* v. *Harriſon*, *an attorney*, *Pract. Reg. in C. P.* 22.

A venire facias.

GEORGE the ſecond, *&c.* To the ſheriff of——greeting. We command you that you cauſe to come before our juſtices at *Weſtminſter* on the morrow, *&c.* [*the return*] twelve free and lawful men of the body of your county, each of whom has ten pounds of lands, tenements or rents by the year at leaſt, by whom the

the truth of the matter may be better known, and who are in no way a kin either to *A. B.* the plaintiff, or to *C. D.* late of, &c. or to *E. F.* late of, &c. (*a*) to make a certain jury of the county between the parties aforesaid, *in a plea of taking and unjustly detaining cattle* (*b*), because as well the said *A. B.* and *E. F.* (*the party who first takes the issue*) as the said *C. D.* between whom the matter in variance is, put themselves upon that jury; and have there the names of the jurors and this writ. Witness *Sir John Willes* Knt. at *Westminster*—day of—in the—year of our reign.

(*a*) If the defendant be declared against with an *alias dict.* or as an executor or an administrator, he must be here described as in the pleadings.

Pacey.

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

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

Habeas corpora juratorum.

GEORGE the second, &c. To the sheriff of——greeting. We command you that you have before our justices at *Westminster*, from

(*b*) Take care to insert the cause of action in the *venire* as the action is, thus:

In a plea of debt.
In a plea of trespass on the case.
In a plea of trespass and assault.
In a plea of trespass, assault and imprisonment.
In a plea of trespass and ejectment of farm.
In a plea of breach of covenant.
In a plea of detaining goods or writings.

from the day of *Eaſter* in fifteen days (*a*) or before our juſtices aſſigned to take the aſſizes in your county, by force of the ſtatute in that caſe made and provided, if they ſhall come before, on —the—day of—(*b*) at (*c*) in your county, the bodies of the ſeveral perſons named in the panel annexed to this writ, jurors ſummoned in our court before our juſtices at *Weſtminſter*, between *A. B.* plaintiff, and *C. D.* late of, &c. and *E. F.* late, &c. of a plea of taking and unjuſtly detaining cattle (*d*), to make that jury; and have there this writ. Witneſs *Sir John Willes* Knt. at *Weſtminſter* the——day of——in the—— year of our reign.

(*a*) The day in bank the next return after the trial.

(*b*) The day the aſſizes are held.

(*c*) The place where.

(*d*) As the action is.

Bulſtrode.

Subpœna ad teſtificandum.

THE *ſubpœna* is made out by the attorney, and ſigned by the proper prothonotary; no note for the office. Duty, &c. 2 *s.* ſigning 1 *s.* ſealing 7 *d.*—Four witneſſes may be in one *ſubpœna*, and each witneſs muſt be ſerved with a ticket (*e*).

(*e*) Some attornies ſerve each witneſs with a copy of the *ſubpœna* itſelf.

NOTE.

Rule for *Richard James* to ſhew cauſe, why an attachment of contempt againſt him ſhould not iſſue for his not attending as a witneſs on defendant's part at laſt *Surry* aſſizes, purſuant to *ſubpœna* ſerved, and a ſufficient recompence tendered him, diſcharged; it appearing, that, tho'

Richard

Richard James was reſident at *Lambeth Marſh*, and the road from thence to *Kingſton* (where the aſſizes were held) extremely good, yet he was very weak and infirm, 80 years old, and afflicted with an aſthma and dropſy. His apothecary attended at *Kingſton* ready to make oath (as now he did) that *Richard James* could not attend the aſſizes without danger of his life. The granting of attachments in theſe caſes is purely at the diſcretion of the court; defendant may come at *Richard James*'s evidence by application here, to have him examined before a judge upon interrogatories, or to the court of *Chancery*, by bill to perpetuate his teſtimony. *E.* 27 *Geo.* 2. *Stretch and wife* v. *Wheeler*, *Supplement to* 2 *vol. Barnes's Notes p.* 6.

The form of a ſubpœna ad teſtificandum.

GEORGE the ſecond, *&c.* To *A. B. C. D. E. F.* and *G. H.* greeting. We command and firmly injoin you and each of you, that laying all other matters aſide, and notwithſtanding any excuſe, you be in your proper perſons before (*) our juſtices at the aſſizes to be held at———(*a*) in the county of———on (*b*) next enſuing, to teſtify and ſpeak the truth in a certain matter of controverſy pending undetermined in our court before our juſtices at *Weſtmin-*

(*a*) The place where the aſſizes are to be held.
(*b*) The day when.

(*) If the trial is to be had in *London*, ſay.—That *&c.*

you be before *Sir John Willes* Knt. our Chief Juſtice of the bench at *Guildhall*, *London*, on [the day of the ſitting] to teſtify, *&c.*

If in *Middleſex*, you ſay, Before *Sir John Willes* Knt. our Chief Juſtice of the bench at *Weſtminſter* in the great hall of pleas there, called *Weſtminſter Hall*, to teſtify, *&c.*

miniſter, between *A. B.* plaintiff, and *C. D.* late of *E.* in the ſaid county of *S.* gent. defendant, in a plea of treſpaſs (*a*); and this you are not to omit under the penalty on each of you of one hundred pounds. Witneſs *Sir John Willes*, Knt. at *Weſtminſter*, the——day of——in the ——of our reign.

(*a*) As the action is.

Cooke.

Subpœna *ticket.*

Mr.—

BY virtue of a writ of *ſubpœna* to you directed, and herewith ſhewn unto you, you are commanded perſonally to be and appear before his Majeſty's juſtices of aſſize [or the Chief Juſtice, as before directed, according as the caſe is] at [the place] on——the——day of ——by——of the clock in the——noon of the ſame day, to teſtify the truth, according to your knowledge, in a certain cauſe now depending, and there to be tried between *A. B.* plaintiff, and *C. D.* late of, *&c.* gent. defendant in a plea of treſpaſs, [as the action is] on the part of the plaintiff [*or defendant, if at his inſtance the witneſs is* ſubpœna'd] and hereof you are not to fail, upon pain of one hundred pounds. Dated the——day of—— in the year of our *Lord* 1759, and in the—— year of the reign of our Sovereign Lord *George* the ſecond, King of *Great Britain*, &c.

Plaintiff moved for a *hab. corp.* to bring two priſoners in the *Fleet*, both charged in execution, to the ſittings at *Guildhall*, to teſtify in this cauſe, upon an affidavit of their being material

rial witneſſes. Rule to ſhew cauſe why ſuch *ba. corp.* ſhould not be granted, or, why the witneſſes ſhould not be examined upon interrogatories, and their depoſitions read in evidence at the trial; and afterwards enlarged to ſhew cauſe as before, (plaintiff indemnifying the warden;) but for want of the conſent of defendants and the warden, the rule was diſcharged. Sometimes ſuch writs of *ba. corp.* have been granted: The ſingle point of law is, whether under ſuch *ba. corp.* (the priſoners being in execution) the warden could not defend himſelf againſt an action for an eſcape? The laſt time this queſtion was before all the judges, *ſeven* againſt *five* were of opinion, that the *ba. corp.* would not excuſe the warden, but he would be liable to anſwer for an eſcape. *Stiles's Pract. Reg.* 160, 283. *Lord Raymond* 851, granted *ad teſtificandum apud le Old Baily pro rege*, without affidavit, *Paſch.* 11 *Ann.* 3 *Keble* 51. *The King* againſt *Huggins*, at the *Old Baily*, granted *ad teſtificandum pro rege*, —*Geo.* 2.—*M.* 17 *Geo.* 2. *Burdus* v. *Shorter and Satchwell*, 2 *Barnes's Notes* 178.

On an affidavit that *Mordecai Dalmeida* a priſoner in the *Fleet*, charged in execution, was a material witneſs, defendant moved for an *ba. corp. ad teſtificandum*, to bring him before Lord Chief Juſtice at the ſittings after term. The court declared it to be a very doubtful point whether ſuch an *ba. corp.* would he a juſtification for the warden in an action of eſcape, and therefore did not grant the writ; but by conſent a rule was made that the depoſitions of *Dalmeida*, taken in *Chancery*, be read in evidence on the trial at law. *M.* 19 *Geo.* 2. *Francia* v. *Lambroza de Mattos & ux'*, 2 *Barnes's Notes* 179.

Entering

Entering causes for trial.

IN *London* or *Middlesex.*] Causes for trial at the sittings in *London* or *Middlesex* must be entered in the *Marshal*'s book *two* days at least *exclusive* before the day of trial, or in default thereof the *Marshal* may enter a *ne recipiatur*. *Rule E.* 1 *Jac.* 2.

By notice fixed up in the offices, *Hil.* 8 *Geo.* 1. *ne recipiaturs* shall be allowed to be entered for the sittings of *nisi prius* after every term, unless the record of *nisi prius* and writs be made up, and brought into court *on* or *before* the *days* and *sittings* respectively.

Entering fee in *London* or *Middlesex* 13 *s.* 9 *d.* *viz.* The Ch. Just. 10 *s.* 9 *d.* Marshal 2 *s.* Associate 1 *s.*

NOTES.

1. In *London* and *Middlesex*, *ne recipiaturs* may be entered after eight of the clock in the evening the day next but one before the day of sitting. *T.* 13 *Geo.* 1. *Mary* v. *Amies*, *Rep. and Cas. of Pract. in C. P.* 37.—*Ne recipiaturs* may be entered in *London* and *Middlesex* the evening next but one before the day of sitting. 4 *Geo.* 2. *Ibid.* 60.

2. Costs allowed for not going on to trial at the sittings in *Middlesex*, tho' the defendant had entered a *ne recipiatur*; and *Cur'* said there is the same reason that the defendant should have his costs at the sittings in *London* and *Middlesex* as at the assizes, and it hath been constantly allowed at the assizes. *M.* 4 *Geo.* 2. *Duel qui tam* v. *Stow*,

Pract.

Pract. Reg. in C. P. 406.—*Rep. and Caſ. of Pract. in C. P.* 60. S. C. The plaintiff ſhould have entered his cauſe in due time. *Per Cur. Ibid.*

Entering cauſe for trial at the aſſizes.] The writ and record to be entered together with the Marſhal before the firſt ſitting of the court after the commiſſion day, except in the counties of *York* and *Norfolk*, and *there* before firſt ſitting of the court on the ſecond day after the commiſſion day, and every cauſe muſt be tried in the order it is entered in, unleſs the court orders otherwiſe. *Rule T.* 10 & 11 *Geo.* 2. and *Hil.* 14 *Geo.* 2. By the twelve judges.

The fee for entering the cauſe for trial at the aſſizes is, 11 *s.* 8 *d. viz.* the judge 6 *s.* 8 *d.* clerk of the aſſizes 2 *s.* marſhal 2 *s.* cryer 1 *s.*

Special jury.

THE perſon or party, who ſhall apply for a *ſpecial* jury, ſhall not only *bear and pay* the fees for ſtriking ſuch jury, but ſhall alſo pay and diſcharge all the expences occaſioned by the trial of the cauſe by ſuch ſpecial jury, and ſhall not have any farther or other allowance for the ſame, upon taxation of coſts, than ſuch perſon or party would be intitled unto, in caſe the cauſe had been tried by a common jury, unleſs the judge before whom the cauſe is tried ſhall immediately after the trial, certify in open court under his hand, upon the back of the record, that the ſame was a cauſe proper to be tried by a ſpecial jury.—And no perſon who ſhall ſerve upon a ſpecial jury, or be returned,

shall be allowed or take for serving on any such jury, more than the judge who tries the cause shall think just and reasonable, not exceeding 1 *l.* 1 *s.* except in causes wherein a view hath been directed. *Stat.* 24 *Geo.* 2. *c.* 18.

NOTES.

1. After a common jury returned in *Middlesex*, and the cause made a *remanet* by consent; at the sitting after last term defendant moved for a special jury, offering to take notice of trial for the second sitting within this term, and obtained a rule to shew cause, which was discharged. *Cur'* said this had been done between assizes and assizes, but that they would not delay the plaintiff in this case without consent.—Death, or other accidents may happen. *T.* 16 *Geo.* 2. *Cross* v. *Skipwith*, *Bart.* 2 *Barnes's Notes* 355.

2. In this case it appearing that common jury process had been awarded, issued and returned, and that the cause stood as a *remanet* in Lord Chief Justice's paper; *Cur'* refused to grant a *special* jury. Tho' in country causes between assizes and assizes, the practice is otherwise. *Hil.* 24 *Geo.* 2. *Dodson* v. *Stevens*, *Ibid.* 376.

3. Motion for special jury too late after *venire facias* sued out, and common panel returned and filed. *T.* 13 & 14. *Clarke* v. *Sheppard*, *Ibid.* 385.

Trials at bar.

ON trials at bar, (which are to be moved for,) the plaintiff's attorney must before the essoin-day of the term, in which the cause is

is appointed to be tried, give notice to the chief prothonotary or his ſecondary, of the day on which ſuch cauſe is to be tried, that the ſame may be put down in the court-book; and in caſe of neglect, then without motion and ſpecial direction of the court, ſuch cauſe ſhall not be tried that term. *Rule Hil.* 9 *Ann.*

On trials at bar, the Lord Chief Juſtice and the other judges are to have copies of the iſſues in ſuch cauſes delivered to them four days before the time appointed for trial. *Rule M.* 3 *Geo.* 2.

NOTES.

1. Not uſual to grant a trial at bar the ſame term in which the motion is made. *Vide Rep. and Caſ. of Pract. in C. P.* 66.

2. A trial at bar granted in an action for criminal converſation with plaintiff's wife, on defendant's affidavit of his having twenty witneſſes to examine, and damages laid at 50,000 *l.* plaintiff having liberty to examine a witneſs in an ill ſtate of health before a judge, in the mean, time and defendant waiving his privilege of parliament. *T.* 7 & 8 *Geo.* 2. *Lord Hillſborough* v *Jefferyes, Eſq*; 1 *Barnes's Notes* 320. *Rep. and Caſ. of Pract. in C. P.* 103. S. C. *Pract. Reg. in C. P.* 411.

3. Trials at bar, where and for what reaſon granted or not, *Vide* 2 *Barnes's Notes* 351, 365.

Putting off a trial.

Rep. and Cas. of Pract. in C. P. 105. *Edgar* v. *Hill, T.* 7 & 8 *Geo.* 2. S. P.— *Ib.* 150. *Sellen* v. *Chamberlain,*

1. MOtion to put off a trial must be made *two* days at least before the day of trial. *E.* 7 *Geo.* 2. *Roberts* v. *Downes, an attorney, Rep. and Cas. of Pract. in C. P.* 98.—*Pract. Reg. in C. P.* 399. S. C. *Vide* 1 *Barnes's Notes* 319.

T. 11 & 12 *Geo.* 2. S. P. *Pract. Reg. in C. P.* 400. S. C. and P. 1 *Barnes's Notes* 329. S. C. and P. says, the motion was on Wednesday to put off the cause for Thursday after eight days notice of trial, and held too late.—1 *Barnes's Notes* 326. *Bourne* v. *Church, T.* 10 *Geo.* 2 S. P. for *per Cur'* these motions must be made at least *two* days before the day of trial.—*Pract. Reg. in C. P.* 400. *Martindale* v. *Shipman, Hil.* 12 *Geo* 2. Notice for trial on Thursday; defendant's agent received a letter by Monday's Post, that a material witness was taken ill at *Nottingham*; he gave notice on the Tuesday, and moved on the Wednesday that the trial might be put off. Rule to shew cause. *Cur'*: It is the practice of this court that no motions of this kind shall be received unless made two days before the day appointed for the trial, we cannot dispense with it, unless some extraordinary emergency makes it necessary. In this case on the defendant's own shewing, he might have given notice on the *Monday* after the Post came in, and moved it on the Tuesday. Rule discharged.—1 *Barnes's Notes* 320. *Roberts* v. *Lord Hillsborough, T.* 7 & 8 *Geo.* 2. *June* 27th motion to put off the trial, which was to be the next day, denied, as being too late. No rule.

2. Notice of trial was given for Tuesday the 14th of *May*, on Monday the 13th of *May* motion was made to put of the trial. Defendant had given notice to set off a debt, and the witness sworn to be absent was material, as to that matter only. *Cur'* were of opinion that that being a collateral defence, and as no trial had hitherto been put off on that account, the rule to shew cause was discharged, and *Cur'* declared that for the future such motions ought to be made at least two days before the trial. *E.* 7 *Geo.* 2. *Roberts* v. *Downes, an attorney,* 1 *Barnes's Notes* 319. *Pract. Reg. in C. P.* 399. 3. If

3. If it appears that a witneſs who is ſworn to be a material witneſs, went out of town or abroad beyond the ſea after the notice of trial was given, the court will not put off the trial for it, the defendant might have *ſubpœnaed* him in time.

If a witneſs goes out of town after notice of trial given, trial not to to be put off tho' motion made in time.

T. 10 *Geo.* 2. *Bourne* v. *Church*, 1 *Barnes's Notes* 326.

4. In *Eaſter* term a motion was made to put off a trial to *Michaelmas* term, but denied, as a thing never done, for with the ſame reaſon it may be put off for ten terms, and at that rate the plaintiff might be delayed for ever; but on ſhewing a precedent in a cauſe between *Dighton* v. *Ellis*, *M* 12 *Geo.* 1. *(a) Barret*, where a trial was put off from *Michaelmas* to *Eaſter* term, and the neceſſity of the caſe being urged, *Cur'* granted a rule to ſhew cauſe this term, and now a rule was granted to reſpite the trial till *Michaelmas* term, but at the peril of paying coſts, if defendant then deſired further time. *T.* 2 *Geo.* 2. *Williams* v. *French*, *Rep. and Caſ. of Pract. in C. P.* 45. *Pract. Reg. in C. P.* 398.

(a) Pract. Reg. in C. P. 398.

5. A trial was put off from *Eaſter* term till *Michaelmas*, upon affidavit that a material witneſs for defendant was gone to ſea, and was not expected home till *Auguſt*, *E.* 8 *Geo.* 2. *Stratford* v. *Marſhall*, 1 *Barnes's Notes* 324. But ſays common practice *contra*.—*Rep. and Caſ. of Pract. in C. P.* 119. S. C. and P. Tho' it was declared that the common practice was only to put off trials from one term to another. *Ibid.*—*Pract. Reg. in C. P.* 399. S. C.

6. Motion to put of a trial upon affidavit of ſeveral witneſſes being wanting, who were ſworn to *be material witneſſes*, *as he (b) believes*, but denied, becauſe it is not ſworn *poſitive* that they

(b) Deponent.

are *material*, which is always required; for that the court will not delay the plaintiff without manifeſt cauſe. *M.* 6 *Geo.* 1. *Welberry* v. *Liſter*, *Rep. and Caſ. of Pract. in C. P.* 81.

7. On motion to put off a trial, defendant muſt make [the uſual] affidavit himſelf, without which the trial is never put off. *Hil.* 7 *Geo.* 2. *Price and another*, v. *Warren*, *Rep. and Caſ. of Pract. in C. P.* 96.—*Pract. Reg. in C. P.* 401. *Carter* v. *Uppington*, *M.* 7 *Geo.* 2. A third perſon made affidavit that he was acquainted with the nature of the cauſe, and that *A. B.* was a material witneſs for defendant. *Cur'* refuſed to put off the trial, becauſe the defendant himſelf had not ſwore that *A. B.* was a material witneſs.—1 *Barnes's Notes* 318. S. C. ſays none but the party himſelf can ſwear to any perſon's being a material witneſs.—2 *Barnes's Notes* 353. *Day* v. *Samſon*, *T.* 14 & 15 *Geo.* 2. Affidavit for putting off a trial for want of a material witneſs, was made by a third perſon, and held good; for *per Cur'*: There may be many caſes where a third perſon can ſwear another to be a material witneſs, and the defendant himſelf cannot; as where a factor ſells goods for his principal, and employs a porter to deliver them, the factor knows the porter to be a material witneſs, but the principal does not. The court took objection to the affidavit which runs thus: *That* A. B. *and* C. D. *are material witneſſes for defendant in this cauſe, without whoſe evidence defendant cannot ſafely proceed to trial, as defendant is adviſed, and verily believes.* The belief ſeems to go thro' the whole, as well as to *A. B.* and *C. D.* being material witneſſes. As to the other neceſſary part of the affidavit, (that is,) that the party cannot ſafely make defence without their teſti-

teſtimony, though the *former part*, (that is) *A. B.* and *C. D.* being material witneſſes ought to be *poſitively* ſworn; *belief*, as to it, is not ſufficient, but as to the *latter part* it is. Theſe two requiſites ought not to be *coupled* but *disjoined*. *Cur'* inlarged the rule that the affidavit might be amended, which being done, a rule was made to put off the trial.

8. On a motion to put off a trial for want of a material witneſs; the affidavit muſt ſet out an expectation of the witneſs's returning by ſuch a time, the defendant himſelf muſt ſwear the witneſs is material, (abſolutely) and without whoſe teſtimony he cannot ſafely proceed to trial, as he is informed and believes.--Where a witneſs has a ſettled reſidence abroad, the court will not put off the trial, becauſe there is no expectation of his coming at all; but if the witneſs ſhould write hither, and promiſe to come over in a reaſonable time, the court will conſider of it. *M.* 7 *Geo.* 2. *Eyre* v. ——, *Pract. Reg. in C. P.* 402—.Defendant's wife made affidavit that defendant was gone to ſea, and *A. B.* a material witneſs, as ſhe believes, with him: *Cur'* denied to put off the trial, the affidavit not being ſufficient. *E.* 7 *Geo.* 2. *Gray* v. *Halton*, 1 *Barnes's Notes* 319. A material witneſs was obliged to go to *Briſtol* fair, and had ſettled and appointed ſeveral people to meet him as uſual at that annual fair. Trial put off. *T.* 10 *Geo.* 2. *Goſtwick, Eſq*; v. *Throgmorton*, *Pract. Reg. in C. P.* 402.

9. Action for words. Motion to put off the trial upon the common affidavit, but denied; for *Cur'* thought it unreaſonable to put off the trial in an action for words, (though never knew the diſtinction which the *Ch. Juſt.* ſtated between actions for words and other actions) be-

cause it did not appear by the affidavit that the witness was in company, neither did it set out the nature of the evidence, which might have induced the court to have considered it farther. *T.* 6 & 7 *Geo.* 2. *Truby* v. *Nicholls.* *Same* v. *Gardiner*, *Pract. Reg. in C. P.* 403.—*Ibid.* 404. *Bud* v. *Milward*, *Hil.* 10 *Geo.* 2. Trial in slander ut off on an affidavit of the absence of a material witness, tho' objected that it did not appear that the witness was present when the words were spoken, and *Truby*, &c. cited. *Cur'* gave their opinion *seriatim*, and said, there was no reason to encourage these actions more, nor indeed so much as other actions (*a*).—1 *Barnes's Notes* 327. S. C. and P. and says the affidavit was in common form, which is the same in all cases.

(*a*) Actions for goods sold, or the like.

Costs for not going on to trial.

IF plaintiff gives notice of trial, and does not go to trial accordingly, defendant upon motion shall have his costs of attendance, to be taxed by the prothonotary, unless the plaintiff countermand his notice in convenient time, or shew cause to be allowed by the court, in excuse of such costs. *Rule M.* 1654.

NOTES.

1. Defendant gave notice of trial by *proviso*, and plaintiff also gave notice of trial, neither went on to trial or countermanded, and both got rules for costs for not going on to trial; *Cooke* prothonotary doubted whether both were intitled to costs, but the judges were of opinion, that as both sides gave notice of trial, and neither proceeded to trial, each side was intitled

tled to coſts. *M.* 13 *Geo.* 1. *Readiag* v. *Grafton*, *Pract. Reg. in C. P.* 405.

2. *Cur'* ordered coſts to be taxed againſt a pauper for not proceeding to trial, and declared that a pauper ſhould pay coſts for all defaults, as an executor or adminiſtrator ſhould for their own defaults. *M.* 2 *Geo.* 2. *Walker et al'* v. *Packer*, *Rep. and Caſ. of Pract. in C. P.* 47.—*Pract. Reg. in C. P.* 405. S. C. ſays defendant (*a*) was a pauper, and gave notice of trial by *proviſo*. *Cur'* ſaid it was merely diſcretionary in them to oblige the pauper to pay coſts, or diſpauper him. The King's Bench had diſpaupered, and the Exchequer had given coſts, but this court had given coſts. In this caſe defendant giving a ſecond notice of trial, proceedings were ſtaid till coſts of the firſt notice paid. *Ibid.* 406.

(*a*) 1 *Barnes's Notes* 231. *E.* 8 *Geo* 2. held that the *Stat.* 11 *Hen.* 7. *c.* 12. for admitting pauper extends to *plaintiffs* only, and not to *defendants*.

3. Plaintiff paid coſts for not going to trial, though the defendant had entered a *ne recipiatur*. *M.* 4 *Geo.* 2. *Duel qui tam* v. *Stow*, *Rep. and Caſ. of Pract. in C. P.* 60 —*Pract. Reg. in C. P.* 406.

4. Agreed by the judges in the treaſury, that the prothonotary may tax coſts for not going on to trial at diſcretion. *M.* 4 *Geo.* 1. *Anon. Pract. Reg. in C. P.* 404.

5. Rule for plaintiff to pay coſts for not proceeding to trial at laſt *Northumberland* aſſizes, according to notice, diſcharged; it appearing that the cauſe was entered with the marſhal, that one material witneſs was ſerved with a *ſubpœna*, and could not attend, and another was diſabled by a fall from his horſe. Plaintiff had made no *wilful default*, if he had he muſt have paid coſts tho' he ſues as an executor. *M.* 17 *Geo.* 2. *Ogle*, *executor*, v. *Moffatt*, 2 *Barnes's Notes* 107.

[*Vide p.* 235. *Note* 3. *p.* 238. *Notes* 10, 11]

Non-

Nonsuit.

FOR not proceeding to trial in due time.] Where issue is or shall be joined, and the plaintiff hath neglected, or shall neglect to bring such issue on to be tried, according to the course and practice of the court, it shall be lawful for the judges at any time after such neglect, upon motion in open court, (due notice having been given thereof) to give the like judgment for the defendant, as in cases of nonsuit, unless the judges shall upon just cause and reasonable terms allow any further time or times for the trial of such issue. And if the plaintiff shall neglect to try such issue within the time or times so allowed, then in and in every such case the judges shall proceed to give judgment as aforesaid. *Stat.* 14 *Geo.* 2. *c.* 17. *s.* 1.

The method of obtaining such judgment of nonsuit.] If the plaintiff doth not proceed to try his cause in due time, and the issue is not entered on record, and the roll carried in, a rule must be given for plaintiff to enter the issue upon record *(a)*, which if he fails to do, defendant may sign a *nonpros* for want thereof. *Vide* 2 *Barnes's Notes* 248.

(a) This is a four day rule exclusive of the day of service.

When the roll is carried in, defendant may give notice of motion, and move for judgment, as in case of a nonsuit, upon the above act, and the roll must be produced in court.—*Vide* 2 *Barnes's Notes* 249.

NOTES.

N. O T E S.

1. Judgment as in caſe of a nonſuit, moved for on affidavit of notice of motion only. Rule to ſhew cauſe diſcharged, for there ought to have been *alſo an affidavit that the cauſe was not tried.* *E.* 19 *Geo.* 2. *Pepiatt, one, &c.* v. *Bell,* 2 *Barnes's Notes* 235.

2. Whenever *Cur'* admits the cauſe ſhewn by plaintiff ſufficient to diſcharge the rule to ſhew cauſe why a nonſuit, the court will appoint a future day for the trial. In country cauſes at the next aſſizes, in *London* or *Middleſex* at a ſitting at a convenient diſtance. *Per Cur'* *M.* 15 *Geo.* 2. *Diggs* v. *Price,* 1 *Barnes's Notes* 248.

3. If the defendant obtains a *treaſury* rule againſt plaintiff for coſts for not going to trial purſuant to notice, and coſts are taxed thereon, he has made his election, and cannot move for judgment as in caſe of a nonſuit, for he cannot take both remedies, but one only. *T* 16 *Geo.* 2. *Honiwell* v. *Blatchford,* 2 *Barnes's Notes* 103.

Rule to ſhew cauſe why judgment as in caſe of a nonſuit, diſcharged. Defendant having firſt applied for coſts for plaintiff's not proceeding to trial, has made his election. Plaintiff ordered *peremptorily* to proceed to trial at the aſſizes. *T* 16 & 17 *Geo.* 2. *Guy* v. *Wilkinſon,* 2 *Barnes's Notes* 251.—*Ibid* 253. *T.* 17 *Geo.* 2. *Ogle, Eſq; executor,* v. *Moffitt* S. P. In this caſe plaintiff had applied for, and received coſts for not proceeding, *&c.*

4. Tho' further time for going to trial hath been given, yet upon reaſonable cauſe it may be ſtill enlarged, notwithſtanding the word *peremptory* in the rule; and what cauſes have been held ſufficient to prevent a nonſuit, *Vide the following caſes,* 5, 6, 7, 8, 9, 10, 11.

5. Plain-

5. Plaintiff's own illness was held sufficient to prevent a nonsuit upon the *Stat.* 14 *Geo.* 2. *c.* 17. and next assizes appointed for trial. *M.* 14 *Geo.* 2. *Clarke* v. *Gorrill*, 2 *Barnes's Notes* 249.

In this case it was objected, that plaintiff's affidavit was sworn before his own attorney; but *per Cur'* the objection comes too late. *Ibid.*

6. Plaintiff ordered to pay the costs of an application for judgment of nonsuit upon the late statute, and *peremptorily* to try the cause at the next sitting. The court inclined to think they could, if they thought it reasonable, enlarge the time afterwards, in case of a default. *E.* 15 *Geo.* 2. *Dapp* v. *Woodman*, *Ibid.* 249.

7. Issue was joined in *Trinity* term last, but plaintiff did not proceed to trial at the then next assizes, and before the last, which was the second assizes, Plaintiff married, to wit, 10 *Dec.* 1741. After notice of trial given, defendant moved for judgment as in case of nonsuit, and upon shewing cause, *Cur'* were of opinion that tho' no excuse was shewn for plaintiff's not proceeding to trial at the *first* assizes, yet defendants for that default should have applied in *Michaelmas* term last, but are now too late; as to the second assizes, the excuse is sufficient, by the marriage the suit is abated *de facto*. Rule discharged. *T.* 16 *Geo.* 2. *Vile, Widow*, v. *Daw and others*, 2 *Barnes's Notes* 250.

8. Plaintiffs not having proceeded to trial after issue joined, according to the course of the court, defendant had applied for judgment, as in case of nonsuit, and plaintiffs having made a reasonable excuse, farther time was allowed for trial *peremptorily* at last assizes. Plaintiffs gave no new notice of trial, but made default again,

and

and endeavoured to excuſe the ſecond default by affidavit, purporting that plaintiffs found a debt entered in the bankrupt's books as due from defendant, but for want of the bankrupt's attending plaintiffs in time according to his duty, and ſuplying them with proof of the debt, and informing them how to anſwer a ſet-off, inſiſted on by defendant, plaintiffs could not proceed to trial. *Per Cur':* The word [*peremptory*] in the rule doth not preclude the court from a further enlargement of the time, if they think it reaſonable. It is wrong to inſert the word [*peremptory*]; the ſecond excuſe may be better than the firſt. The ſtatute is founded on neglect. Suppoſe plaintiff's attorney ſhould die *manu Dei*, or defendant ſhould by ſome act of his hinder the trial, the effects of the bankrupt muſt not be waſted to the prejudice of his creditors. No notice of trial was given for laſt aſſizes, defendants attendance was then unneceſſary. The bankrupt after obtaining his certificate, may be a witneſs. The time for trial was further enlarged till next aſſizes, upon payment of coſts of the application. *M.* 17 *Geo.* 2. *Milton and another, aſſignee of a bankrupt,* v. *Terrill,* 2 *Barnes's Notes* 252.

9. Two of plaintiff's witneſſes were diſabled by the gout, *&c.* from attending the trial laſt aſſizes. Excuſe good to prevent nonſuit. Time given plaintiff to try at next aſſizes *peremptorily*, or payment of coſts for not proceeding to trial at laſt aſſizes only. Where the excuſe is ſufficient, the court do not give coſts of the application; *aliter* where it is inſufficient. *Hil.* 18 *Geo.* 2. *Jones, on the demiſe of Wyatt,* v. *Stephenſon, in ejectment,* 2 *Barnes's Notes* 254.

10. Iſſue

10. Issue joined, and notice of trial given for last sitting in *London* within last term, but a mistake being discovered in the declaration; plaintiff did not proceed to trial; defendant applied for judgment as in case of a nonsuit; but the issue roll not being struck into the bundle; *Cur'* gave plaintiff leave to amend his declaration on payment of costs of application, and for not proceeding to trial, and appointed a *peremptory* day for trial. *M.* 26 *Geo.* 2. *Beere* v. *Brooking*, *Ibid.* 256.

11. The record was offered to be entered at last assizes a little out of time, and defendant's attorney, then present, had refused to consent that it should be received. On application for judgment as in case of a nonsuit, *Cur'* refused to give costs of the application, but ordered plaintiff to pay for costs for not proceeding to trial, and *peremptorily* to proceed to trial at next assizes *E.* 26 *Geo.* 2. *MS. Notes.*

12. After a rule to shew cause why judgment of nonsuit *secundum stat.* Plaintiff cannot afterwards apply for leave to discontinue. Rule absolute for a *nonpros.* *Hil.* 18 *Geo.* 2. *Lowe* v. *Peacocke and others*, 2 *Barnes's Notes* 254.

13. Judgment as in case of a nonsuit, for not proceeding to trial, may be given in an action *qui tam*, for a common informer may be nonsuited. Plaintiff was ordered to pay costs of the application, and *peremptorily* to proceed to trial at next assizes. *T.* 17 & 18 *Geo.* 2. *Sugar qui tam* v. *Webster*, 2 *Barnes's Notes* 253.

14. So in replevin, for the statute has made no distinction. *E.* 26 *Geo.* 2. *Bentley* v. *Scott and others, in replevin*, *Ibid.* 257.

Postea.

Postea.

IN this court the associate writes the *postea* (a). If the cause be tried in term, call upon him about the fifth day after the trial. If tried in the vacation, call the fifth day of the ensuing term.

(a) *Vide Rule E. 2 Jac. 2.*

NOTES.

1. On signing judgment the *postea* to be left with the clerk of the judgments. *Rule T. 13 Geo. 2. Rule 2.*

2. *Posteas* on *qui tam* prosecutions shall be delivered to the prothonotary, and not to the prosecutor. *Rule E. 34 Car. 2.* and a note of that record, when judgment hath been entered of record, with the number of the roll thereof, to be delivered to the clerk of the warrants. *Ibid.*

3. At the assizes a case was made and referred to the judge of assize, (*viz.* a judge of *B. R.*) who afterwards referred it to the opinion of the court of Common Pleas, out of which the cause issued. The court were of opinion for the defendants, and the question was in what manner the *postea* was to be delivered, whether by a certificate from the court or a rule to the judge who tried the cause, and then by his order; or whether the court should make a rule for the delivery thereof without applying to the judge of assize. *Cur'* after due consideration ordered the *postea* to be delivered to defendant's attorney without any application to the judge of assize. *Hil. 6 Geo. 2. Makepeace v. Stevens*

and

and others, Rep. and Cas. of Pract. in C. P. 85. *Pract. Reg. in C. P.* 324. 1 *Barnes's Notes* 316.

4. Verdict for plaintiff generally; Ld. Ch. Just. certified that defendant *Edward Jones* was found not guilty, but that the associate had by mistake taken a verdict against both, *postea* amended by indorsing thereon, that *Edward Jones* is not guilty. *E.* 8 *Geo.* 2. *Williams* v. *Evan Jones and Edward Jones, Rep. and Cas. of Pract. in C. P.* 118.

5. *Postea* ordered to be amended by the associate in court, by returning the verdict on the third instead of the first count, according to the finding of the jury upon the report of Baron *Carter*, before whom the cause was tried. Defendant to have four days after the amendment to move in arrest of judgment, and plaintiff to pay defendant costs of this application. *Hil.* 15 *Geo.* 2. *Hankey, Knt. qui tam,* v. *Smith,* 2 *Barnes's Notes* 354.

The form of a postea.

AFterwards on the day and at the place within contained the within named—— by his attorney within named, came before *Sir John Willes* Knt. Chief Justice of our Sovereign Lord the King of his common bench, *Sir*—— Knt. one of his said Majesty's justices of the said common bench, justices of our Sovereign Lord the King appointed to hold the assizes for the county of——, and the within named——altho' solemnly required, came not there, but made default: Therefore let the jury, whereof mention is made within, be accepted of against him by his default; Whereupon, the jurors summoned

moned to be upon that jury; ſome of them (that is to ſay) *A. B. C. D.* (ſo naming the reſt that appeared) came, and were ſworn upon that jury; and becauſe the remainder of the jurors of that jury have not appeared, therefore others of the by-ſtanders are by the ſheriff of the county aforeſaid; at the requeſt of the ſaid ——and by the command of the ſaid juſtices; put on a-freſh, whoſe names are in the within written panel, to be affiled according to the ſtatute in ſuch caſe made and provided; which ſaid jury ſo newly put on, (that is to ſay) *E. F.* and *G. H.* who being ſummoned likewiſe came to declare the truth of the within contents, together with the other jurors before impanelled and ſworn; and being choſen, tried and ſworn, declare upon their oaths, that the ſaid——did undertake in the manner and form as the ſaid—within complains againſt him; and they aſſeſs the ſaid——his damages occaſioned by the ſaid within contents, beſides his expences and coſts laid out by him in this behalf; to——pounds, and for his expences and coſts to forty ſhillings. Therefore, *&c.*

Poſtea in ejectment.

AFterwards the day and place within contained, before *Sir John Willes* Knt. Chief Juſtice within written, having——gent. for his aſſociate, by form of the ſtatute, and ſo forth, cometh the within named *A. B.* by his attorney within contained, and the within written *C. D.* altho' ſolemnly called, cometh not; Therefore let the jury, whereof mention is within made, be taken againſt him by default; and the jurors of

the ſaid jury being called come, who to ſpeak the truth of the within contained being elected, tried and ſworn, ſay upon their oath, that the ſaid *C.* is guilty of the treſpaſs and ejectment within mentioned, as the ſaid *A. B.* within complaineth againſt him; and they aſſeſs the damages of him the ſaid *A.* on occaſion thereof, over and above the coſts and charges which he has been put to about his ſuit in this behalf, to one ſhilling, and for thoſe coſts and charges, to twenty ſhillings. Therefore, *&c.*

Vide verdicts ſet aſide, p. 256.

Special verdicts.

OF entring proceedings on record, *&c.*] If a ſpecial verdict be found, plaintiff's attorney muſt enter the proceedings to the end of the ſpecial verdict on record, and deliver it to the ſecondary in court, and get a ſerjeant to move for a *conſilium* or day for argument; then draw up the rule, and ſerve it on defendant's attorney.

Of delivering paper books on ſpecial verdicts.] In all cauſes entered in the court book for argument at the bar on ſpecial verdicts *(a)*, the attorneys in the cauſe ſhall deliver true copies of the record to the reſpective juſtices of this court, by the ſpace of one week at the the leaſt next before the day appointed for ſuch argument; namely, plaintiff's attorney one copy thereof to the Ld. Ch. Juſt. and another to the ſenior judge; and defendant's attorney, like copies to the other two juſtices. *Rule E. 27 Car. 2.*

(a) And demurrers.

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

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

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

(*a*) For demurrer, *vide* *Rule M.* 6 *Geo.* 2. *Rule* 3.

Arreſt of judgment.

1. A Motion in arreſt of judgment muſt be made *before* or *upon* the appearance day of the return of the *habeas corpora juratorum.* *T.* 13 *Geo.* 2. *Lyte* v. *Rivers*, 1 *Barnes's Notes* 331.

2. If motion in arreſt of judgment be made on the *laſt* day of term, the party moving muſt produce an affidavit, that he has given notice of his motion to the other ſide.

3. When you move in arreſt of judgment, you muſt bring the iſſue roll into court.

4. When you alledge matters of fact in arreſt of judgment, the matters of fact muſt be proved by affidavit.

5. In arreſt of judgment in ejectment, becauſe no notice of trial, two affidavits were made, one by the tenant in poſſeſſion, the other by the attorney.

6. Too late to move to ſet aſide an *interlocutory* judgment after *final* judgment ſigned. *E.* 11 *Geo* 1. *Anon. Pract. Reg. in C. P.* 241.

7. Cannot take advantage of a *miſnomer* in arreſt of judgment. It muſt be pleaded in abatement. *Per Cur'. T.* 5 *Geo.* 2. *Aldridge* v. *Wood, Pract. Reg. in C. P.* 7.

8. No motion to ſet aſide a judgment the *laſt* day of the term, if the defendant could have applied ſooner. *E.* 9 *Geo.* 2. *Southouſe* v. *Pye, Rep. and Caſ. of Pract. in C. P.* 130.

9. Trover (*inter alia*) for a parcel of old iron. Verdict for the plaintiff, and general damages; on motion in arreſt of judgment held that a parcel of old iron is too general. *T.* 10 *&* 11 *Geo.* 2. *Talbot* v. *Spear, Pract. Reg. in C. P.* 412.

10. Words not actionable, judgment arreſted after verdict. *M.* 13 *Geo.* 2. *Palmer* v. *James, Rep. and Caſ. of Pract. in C. P.* 160.

11. Action of treſpaſs for aſſaulting, beating and wounding plaintiff's mare, and verdict for plaintiff. In arreſt of judgment, objected that this action is not applicable to a dead thing or a brute beaſt, but to one of the human ſpecies only;

only; but over-ruled. Aſſault upon a ſhip (a dead thing) bad; but for an injury to a beaſt, a writ in treſpaſs *vi et armis* appears in the *Regiſter*; the beating and wounding were found by the jury. *M.* 17 *Geo.* 2. *Marlow* v. *Weeks*, 2 *Barnes's Notes* 360.

12. On a motion in arreſt of judgment, the entry of the judgment on the verdict ſtaid, till further order, defendant, on plaintiff's proſecution having been convicted of bigamy, and this action merged in that felony. *T.* 16 *&* 17 *Geo.* 2. *Proctor, Spinſter*, v. *Burry*, 2 *Barnes's Notes* 357.

13. Motion in arreſt of judgment for uncertainty, declaration in treſpaſs being for entering plaintiff's houſe, and taking and carrying away divers quantities of *China* ware, earthen ware and linen, without ſetting forth the particulars, but denied. *E.* 25 *Geo.* 2. *Hobbs* v. *Greene*, 2 *Barnes's Notes* 222.

14. The entry of the arreſt of judgment muſt be made before plaintiff can bring a writ of error, or maintain a new action. *M.* 27 *Geo.* 2. *Bulling* v. *Rogers*, *Ibid.* 226.

15. Judgments may be arreſted for a wrong concluſion, as if in an action of aſſault plaintiff concludes *contra pacem Dom' regis*, whereas it ſhould (*per Stat.* 1 *W. & M.*) have been *contra pacem regni.*

Verdicts (*a*).

(*a*) Where a joint act is brought againſt two, and both plead the ſame plea; if the verdict be found only againſt one, the other, againſt whom it is not found, recovers no coſts. If one had confeſſed judgment, and the other pleaded, and a verdict gone againſt him, the coſts of trial are againſt them joint, and he that confeſſed judgment is as far liable to them as the other, and there is but one taxation. *Inſtr. Clericalis*, 1 *Pt. p.* 586.

Verdict given.

1. A Verdict cannot be given but in the preſence of the plaintiff, and therefore if he will not appear he muſt be nonſuit.

2. In replevin defendant brought down the record, and plaintiff not appearing, inſiſted to have a verdict, which the judge complied with; but *Cur'* ſet aſide the verdict, ordered the *poſtea* to be amended, and a nonſuit to be returned, and defendant to pay coſts of the motion. *M.* 20 *Geo.* 2. *Hicks* v. *Young*, 2 *Barnes's Notes* 371.

3. Verdict may be taken upon any part of the declaration, to which the evidence is applicable. *Inſtr. Clericalis*, 1. *p.* 587.

No coſts given by jury.

In an action upon the caſe, the jury upon the trial having found damages, but refuſing to find any coſts; motion that coſts might be added, becauſe the jury are *ex officio* bound to give coſts, and the court will ſupply this defect, and ordered accordingly. *Hil.* 11 *Anne*, *Mores* v. *Tong*, *Rep. and Caſ. of Pract. in C. P.* 7.

Verdicts ſet aſide.

1. The court will not ſet aſide a *ſpecial* verdict without the conſent of the other ſide. *Inſtr. Clericalis* 1. *p.* 587.

2. Verdict ſet aſide, no iſſue being joined by the plaintiff. *T.* 7 & 8 *Geo.* 2. *Rye* v. *Croſsman*, *Rep. and Caſ. of Pract. in C. P.* 102. 1 *Barnes's Notes* 334. S. C.

3. There

3. There have been many inſtances of verdicts being ſet aſide for *exceſſive* damages, but no inſtance of verdicts being ſet aſide for *ſmallneſs* of damages, tho' in point of reaſon there is the ſame cauſe for ſetting aſide the one as the other. *Per Cur' in Lord Gower* v. *Heath*, T. 7 & 8 *Geo.* 2. *Pract. Reg. in C. P.* 431.—*Rep. and Caſ. of Pract. in C. P.* 104. 1 *Barnes's Notes* 334.

Where a demand is certain, as by promiſſory note, *Cur'* will ſet aſide a verdict for too ſmall damages, but not where damages are uncertain, as for curing a wound. *Per Cur.* *E.* 18 *Geo.* 2. *in Ruſſel* v. *Balls*, *in aſſumption*, 2 *Barnes's Notes* 366, 367.

4. In treſpaſs *not guilty* to part, and a juſtification to part; merits on juſtification for plaintiff, and 5 *s.* damages. No evidence on the *not guilty*. General verdict not to be ſet aſide. *Hil.* 7 *Geo.* 2. *Southby* v. *Day and others*, 1 *Barnes's Notes* 106.

5. Action for two ſets of words, part not actionable. Verdict general for that reaſon ſet aſide, and a *ven. fa. de novo* ordered. *E.* 8 *Geo.* 2. *Smith* v. *Hayward*, *Rep. and Caſ. of Pract. in C. P.* 118.—1 *Barnes's Notes* 340. S. C. ſays a *venire de novo* was awarded according to an antient (*a*) rule of court. *Ibid.*—Verdict general, if one ſet of words are bad, the judgment muſt be arreſted as to the whole. *Vide Rep. and Caſ. of Pract. in C. P.* 160.

(*a*) *Rule M.* 1654. *f.* 24.

6. After a motion in arreſt of judgment, the party may move to ſet aſide the verdict on new matter diſcloſed to him after the motion in arreſt of judgment, provided ſuch motion be made before judgment pronounced. *E.* 8 *Geo.* 2. *Philips* v. *Fowler*, 1 *Barnes's Notes* 325. *Note*; in this caſe the verdict was ſet aſide for jury's caſting lots. *Ibid. Pract. Reg. in C. P.* 409. S. C.—*Rep. and Caſ. of Pract. in C. P.* 124. S. C.