

## The present Practice of the

If bail upon an *habeas corpus* be taken before a judge at his chamber, and not excepted against, then, unless the bail be filed within four days after the expiration of the twenty days, a *procedendo* may be granted on a certificate that the bail is not filed. *Same rules.*

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

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

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

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

*Of justifying bail.*

**I**F exception to the bail be in vacation time, it is usual (*sed qu.* to what purpose) to justify within four days before a judge at his chambers, for which you pay 2*s.* and then the bail must justify the first day of the next term in court.

Note ; Defendant's attorney must give the like notice to the plaintiff's attorney of putting in bail, and justify as in other cases.

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

*Of removing causes from cities and towns where the judges of nisi prius seldom go.*

**I**F the cause be removed by *habeas corpus* out of the courts of *Canterbury, Southampton, Hull, Litchfield* or *Pool*, or other counties where the judges of *nisi prius* seldom go, if the action be *transitory*, it must be laid in the county of *Kent, Southampton, York, Stafford* or *Dorset*, or other county where such city or town lies, and the recognizance is to be taken accordingly.  
*Rule M. 1654. sect. 12.*

## N O T E S.

1. An *habeas corpus* brought by plaintiff, a declaration delivered, and judgment signed, but all set aside, as *irregular*, because the plaintiff having once made his election cannot remove his own cause; besides there is no process to bring the defendant into court, as there is in case of a *recordari facias loquelam*. T. 10 Ann. *Hobbs v. Williams*, *Pract. Reg. in C. P.* 216.

2. An *habeas corpus* brought by the plaintiff, a declaration delivered, and judgment signed, but all was set aside as irregular, because the plaintiff having once made his election cannot remove his own cause, nor can the defendant be compelled to appear. T. 11 Ann. *Anon. Rep. and Cas. of Pract. in C. P.* 5.—*Vide Hobbs v. Williams*.

3. One *Edmonds* brought into court by the under-sheriff of *Herefordshire* upon a *habeas corpus*, the distance being 130 post miles from *London*; by the course of the court the under-sheriff could have but 6*l.* 10*s.* being 1*s.* per mile; but upon his affidavit that *Edmonds* was a dangerous man, and that he had notice thereof from several persons who had actions depending against him, and therefore was forced to have a guard of four men; the court on motion ordered the under-sheriff to be paid 10*l.* and *Edmonds* to pay it, or be remanded. *Hil.* 12 Ann. *Edmond's Case*, *Rep. and Cas. of Pract. in C. P.* 8.

4. A prisoner brought up by *habeas corpus* at his own instance, refusing or not being able to pay

pay the sheriff 1 s. *per* mile for bringing him up, the court will remand him (a).

(a) *Vide Stat:*  
31 Car. 2. c. 2.

— M. 8 Geo. 2. *Isaac Hope's Case*, *Pract. Reg. in C. P.* 219.—*Rep. and Cas. of Pract. in C. P.* 110. S. C.

5. On *habeas corpus* to be removed to the Fleet, prisoner tendered it to the sheriffs of Bristol with seven guineas (exceeding 1 s. *per* mile) which they refused, attachment granted against them. Hil. 10 Geo. 2. *Nicholas Fling's Case*, 1 *Barnes's Notes* 276.

6. King being a prisoner in *Newgate* in the city of Bristol, brought a *habeas corpus* directed to the sheriffs of that city, returnable here. King tendered to the sheriff 7 l. 7 s. for bringing him up, (which is more than is allowed by the statute) the sheriff refused to accept the money and demanded 10 l. Motion for an attachment against the sheriffs. Rule to shew cause. *Draper* for the sheriffs said that *Bristol* was 104 miles distant from *London*, that the 7 l. 7 s. was not sufficient recompence, and that King had not given any security as the act required, to return in case the court should remand him. *Cur'*: The sheriffs ought to have obeyed the writ, and not made themselves judges, the court would have done them justice, therefore let an attachment go; whereupon *Draper* offering to pay the defendant his costs, and bring a new *habeas corpus* at the sheriffs expence, an attachment was staid for ten days, and the sheriff be allowed 5 l. 4 s. which is after the rate of 1 s. *per* mile for bringing King up. Hil. 10 Geo. 2. *King's Case*, *Pract. Reg. in C. P.* 219. *Rep. and Cas. of Pract. in C. P.* 140. S. C.



7. The entry of an *habeas corpus* upon the roll amended, and made agreeable to the writ. *Vide* 2 *Barnes's Notes* 8.

8. Commitment on an *habeas corpus*, returnable before the Chief Justice, by another judge, regular, without amendment of the return. It is similar to the *habeas corpus* act, 32 *Car.* 2. In the absence of the Chief Justice, the other judge hath the same power. *T.* 24 *Geo.* 2. *Merefield v. Hullis*, *Ibid.* 19.

9. The return of an *habeas corpus cum causa* was amended, at the instance of the court who returned it, by inserting a custom, though another rule touching the granting of a *procedendo* was pending. *M.* 26 *Geo.* 2. *Harrison, chamberlain of London, v. Patter*, *Ibid.* 25.

10. On an *habeas corpus* defendant is not obliged to put in bail till served with a judge's order for that purpose. *M.* 8 *Geo.* 2. *Gibson v. Britton*, *Pract. Reg. in C. P.* 52.

11. If defendant puts in bail upon his *habeas corpus* without staying to be forwarded by a rule for bail, and plaintiff does not declare within two terms after bail put in, the cause will be out of court, but the rule for bail is not limited to any particular time. *Hil.* 16 *Geo.* 2. *Clarke v. Harbin*, 2 *Barnes's Notes* 64.

12. Held *per Cur'*, that on a *certiorari* or *habeas corpus* the plaintiff may declare in this court as he pleases, and is not confined to the same species of action he declared in below, though the parties were at issue in the court below. *E.* 13 *Geo.* 2. *Turner v. Bean*, *Pract. Reg. in C. P.* 221.

13. A prisoner brought up before the return of the *habeas corpus*; the court would not receive him. *M.* 8 *Geo.* 2. *Day's Case*, *Rep. and Cas.*

*Cas. of Pract. in C. P.* 108. *Pract. Reg. in C. P.* 218. S. C.

14. Defendant was brought to the bar by *habeas corpus* returnable in one month from the day of *St. Michael*, the court committed him to the *Fleet* though the day of the return was past. *M. 8 Geo. 2. Hewitt v. Powell*, 1 *Barnes's Notes* 148.—*Rep. and Cas. of Pract. in C. P.* 108. S. C. Says, the return being on a *Sunday*, the next day the defendant was committed.—*Pract. Reg. in C. P.* 218. S. C. says, the defendant may be brought in on a *habeas corpus* at any time between the return day and appearance day.

15. *Habeas corpus cum causa* to an inferior court, bearing *teste* the first day of this term, and returnable *tres Michaelis*, allowed below, when the cause was ready for trial: There was an affidavit that the defendant was 76 years of age, and of the fact and of notice of the motion. *Cur'*: Let the defendant shew cause to morrow why the *habeas corpus* should not be discharged, and let the attorney attend then in court. On the morrow, upon hearing counsel on both sides, *Cur'*, Let the *habeas corpus* be set aside, and by consent let the rule as to the attorney be discharged. *T. 3 & 4 Geo. 2. Harvey v. Condy the elder*, *Pract. Reg. in C. P.* 216.

16. Motion for a *procedendo* to *Boston Borough* court, an *habeas corpus* to remove the cause being brought after interlocutory judgment in the inferior court, *Cur'* thought it too late after judgment, and made the rule for *procedendo* absolute. *T. 7 & 8 Geo. 2. Wyatt v. Markham*, 1 *Barnes's Notes* 148. *Vide Stat.* 43 *Eliz. c. 5.*—21 *Jac. c. 23.*—*Pract. Reg. in C. P.* 217. S. C.

17. *Habeas corpus* delivered after issue joined too late, and the court below were warranted by the act of parliament to proceed. *M. 8 Geo. 2. Hornbuckle v. Eaton, 1 Barnes's Notes 148.*

18. *Samuel Martin*, brought into court by *habeas corpus* directed to the sheriff of Gloucester-shire, prayed to be committed to the Fleet with the causes mentioned in the return, which were: First, a detainer for want of sureties, by a warrant from a justice of peace on an indictment for leaving a bastard child, whereby a parish became chargeable with its maintenance. Secondly, an *excommunicato capiendo* issued out of chancery, returnable in the King's Bench. And thirdly, with Exchequer process on a recognizance forfeited at the sessions. Prisoner remanded. *Cur'* being of opinion, that as to the two first causes of detainer, they had no jurisdiction; as to the third, the court inclined to think that, as it was not an extent, defendant might have been committed therewith, abstractedly considered. *E. 25 Geo. 2. Ex parte Martin.*

### Habeas corpus in ejectionment.

**I**N ejectionment an *habeas corpus* is the proper process to remove a plaintiff from the mayor of London's court, under which the defendant must appear in this court, and enter into the common rule, and plaintiff must declare *de novo*. A *certiorari* which had issued was quashed, and an *habeas corpus* to be taken out. *T. 24 Geo. 2. Highmore v. Barlow in ejectionment, 2 Barnes's Notes 259.*

*The form of an habeas corpus ad satisfaciendum to the warden of the Fleet, to bring a prisoner up to be charged in execution.*

GEORGE the second, &c. to the warden of our prison of the *Fleet* greeting. We command you that you have before our justices at *Westminster*, on *Wednesday* next after, &c. the body of *B. C.* late of *London*, Gent. detained in our prison under your custody, as it is said, by whatsoever name he is called in the same, to satisfy *G. D.* of — pounds for his damages which he has sustained, as well by occasion of the not performing certain promises and undertakings lately made by the said *B.* to the said *G.* as for his costs and charges by him about his suit in that behalf expended, whereof the said *B.* is convicted, and further to do and receive what our said court shall then and there consider of him in this behalf, and have there, &c.

Pay at the <i>Fleet</i> .	0	9	4
In court to the secondary.	0	9	0
Cryers.	0	2	0
Tipstaff bringing up the prisoner.	0	10	0
If you draw up the rule pay the } secondary more.	0	2	6
At the <i>Fleet</i> .	0	2	6

*Writ of habeas corpus cum causa returnable immediately.*

GEORGE the second, &c. to the sheriff of *Middlesex* greeting. We command you that you have the body of ——— detained in  
G g 4
our



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our prison under your custody, as it is said, by whatsoever name he is called in the same, together with the day and cause of the taking and detaining the said *A.* before Sir *John Willes*, Knight, our Chief Justice [or before Sir — knight, one of our justices] of the bench, at his chambers in *Serjeants Inn*, in *Chancery Lane*, immediately after the receipt of this our writ, to do and receive what our said Chief Justice [or justice] shall then and there consider of him in this behalf; and have there this writ. Witness, &c.

Though the *habeas corpus* be returnable before the Chief Justice, any other judge of the court may commit the defendant to the *Fleet*.

*The expence out of pocket.*

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

Habeas

*Habeas corpus to the palace court.*

GEORGE, &c. to the judges of our court You may  
of our palace at *Westminster*, and to every of make this  
them, greeting. We command you that you writ return-  
have, &c. as in the other habeas corpus to the able immedi-  
*atè.*  
*end.*

The allowance at the marshal's court	}	o	4	8
for the first cause.				
For every cause after.		o	1	o
If bailed, stamps.		o	2	o
Judge's clerk taking the bail.		o	7	6

A *habeas corpus ad satisfaciendum* may be granted to the warden of the *Fleet*, or to the keeper of any inferior prison of a liberty or franchise, where a *capias* is returned in court, *non est inventus*; such writ to recite shortly the *capias*, and to be returnable at a day certain in court, and the number roll of the judgment to be indorsed upon the writ by the attorney who sues it out, and such writ shall be a good cause of detainer, as well as where a *capias ad respond'* comes to a sheriff. *Rule Mich. 1654. sect. 10.*

If defendant be brought into court upon a *habeas corpus ad satisfaciendum*, he can be charged in execution upon that judgment only on which the *habeas corpus ad satisfaciendum* issued, and if there be several judgments on which he is to be charged in execution, there must be a writ of *habeas corpus* on each judgment.

*The*

*The form of an habeas corpus ad satisfaciendum directed to the marshal of the King's Bench.*

GEORGE the second, &c. to the marshal of our *Marshalsea* before us, greeting. We command you, that you have before our justices at *Westminster*, on *Friday* next after fifteen days of, &c. the body of *A. B.* Esquire, in our prison under your custody detained, as it is said, together with the day and cause of the taking and detaining him, by whatsoever name he is called in the same, to satisfy *C. D.* widow, of 20*l.* which the said *A.* heretofore, to wit, on the ——— day of ——— in the ——— year of our reign, before Sir *Robert Eyre*, Knight, late Chief Justice of our court of the bench, at his chambers, situate in *Serjeants Inn*, in *Chancery Lane*, *London*, acknowledged to owe to the said *C.* to be levied of his lands and chattels, as by the said recognizance in our court of the bench aforesaid remaining of record plainly appears: And whereupon it is considered in our said court, that the said *C.* have execution against the said *A.* of the said 20*l.* by the default of the said *A.* and whereupon our sheriff of *Middlesex* returned to our justices at *Westminster*, from the day of *St. Michael* in three weeks last past, that the said *A.* has no goods or chattels in his bailiwick, whereof he could cause to be made the said 20*l.* or any part thereof, and further to do and receive what our said court shall then and there consider of him in his behalf; and have there this writ. Witness, &c.

See 52.

For

For the form of a *procedendo*, vide *The King's Bench Practice*.

Note; As the *habeas corpus* removes all causes against the defendant in the inferior court, the *procedendo* carries them back.

### *Replevin.*

**I**F one distrain another's cattle or goods for rent or other thing, the owner shall have a writ of replevin or *replegiari*, whereby the sheriff is commanded to return the cattle or goods to the owner till the right of distress is determined. The owner shall find surety to pursue his action, and if he pursue it not, or if it be found or judged against him, then he that took the distress, shall have again the distress, which is called the return of the beasts, &c. and he shall have in such case a writ called *de retorno habendo* [of having a return.]

This suit may be by original out of chancery returnable in this court (a), but it is most usually commenced in the county court, and removed into this court by *recordari facias loquelam*, commonly called *Are. fa. lo.*—*Are. fa. lo.* takes its name from the first syllable of each word in the name of the writ, viz. *recordari facias loquelam*.

(a) A replevin lies in a court baron or hundred court.

But if the suit be first commenced in an inferior court of record, then it must be removed into this court by writ of *certiorari*, for the *re. fa. lo.* doth not go to a court of record, because there the suit is already recorded.

The person that is distrained is to be plaintiff in the replevin, and the person distraining the defendant or avowant.



*A plaint entered in replevin.*

**A**. B. complains against C. D. of his beasts unjustly taken, in his house or his freehold, in the parish of, &c.

*A writ of replevin, or replegiare de averiis.*

**G**EORGE the second, &c. to, &c. We command you, that justly and without delay, you cause to be replevied to A. B. his certain horse, &c. which C. D. took, and unjustly detaineth, as it is said; and cause him after to be justly deduced thereof, that we may hear no more clamour thereon for defect of justice. Witness, &c.

*Re. fa. lo.*

How to sue out, &c. a *refalo*.] Make a *præcipe*, carry it to the curfitor of the proper county, who will make out the writ, pay him 5 s. then carry it to the under-sheriff to be returned.

*The præcipe for a Re. fa. lo.*

<sup>a</sup>; The suit may be removed either by plaintiff or defendant.

to wit, **R**E. fa. lo. for——— [either plaintiff or defendant (a) naming them] of a plaint between C. D. against E. F. and G. H. for taking and unjustly detaining the cattle, goods and chattels of the said C.

Returnable from *Easter* day in 15 days.

How

How to proceed where *refalo* is brought by plaintiff.] If the plaintiff in replevin brings a *recordari facias loquelam*, he files it, when returned, with the filazer (a) of the county, and gives a rule for defendant to appear, and in default thereof may have a *pone, distringas, &c.* *Vide E. 7 Geo. .(b). Anon. Pract. Reg. in C. P. 371.*

(a) In replevin, the *re. fa. lo.* must be filed with the filazer, in other actions, with the prothono-

tary. 2 Barnes's Notes 177. (b) Does not say, first or second:

How if brought by defendant.] He files the *recordari facias loquelam* when returned with the filazer, and gives a rule for the plaintiff in replevin to declare, and in default of a declaration he may have a writ of *retorno habendo*.

Notice of filing *refalo*.] *Per cur'*: If the defendant for the future do not file his *recordari facias loquelam* at the day on which it is returnable, he shall give the plaintiff's attorney notice of filing it. *M. 3 Geo. 2. In the case of Taylor v. Blaxford and others, Pract. Reg. in C. P. 370. Rep. and Cas. of Pract. in C. P. 55. Hil. 3 Geo. 2. Taylor v. Blaxland and others, S. C. Says, the court were of opinion, that notice ought to be given in replevin of filing the refalo, if brought in after the four days, and that a declaration ought to be called for in writing, and set aside the return' habend', which had issued without such notice, and says that E. 4 Geo. 2. in Coleman v. Poynter, there was the like resolution by the court.*

Of calling for a declaration.] Some practifers say, that there is no occasion to call for a declaration, however, it is but fair practice, and the safer way to call upon the plaintiff's attorney for a declaration. *Vide the above case.*

*Procedendo.*

*Procedendo.*

**I**F *defendant* brings the *recordari facias loquelam*, and does not get it returned and filed within two terms, the plaintiff must get a certificate thereof from the filazer, and thereupon the curfitor will make him out a writ of *procedendo*, upon which plaintiff may proceed in the court below.

## N O T E S.

1. There can be no inquiry for defendant in replevin where there has been no avowry, for on all pleadings in replevin where there has been no avowry, the defendant has a nonprofs and costs; and the avowry, which is in nature of a declaration, is the ground of an inquiry for the defendant. *Hil. 1 Geo. 1. Durham v. Price, Rep. and Cas. of Praet. in C. P. 42.*

2. A writ of second deliverance is in the nature of a *superfedeas* to the *retorn' habend'* if brought before the *retorn' habend'* is executed; not so after an inquiry *fieri facias* or *elegit*. *T. 10 Geo. 2. Anon. Praet. Reg. in C. P. 375.*

3. Nonprofs signed, plaintiff in replevin, tho' under a judge's order to plead issuably, having demurred, and held *per Cur'* to be regular; but upon payment of costs, pleading issuably to two avowries, and taking notice of trial within this term, the *nonprofs* was set aside. *M. 16 Geo. 2. Sutton v. Waddisore, in replevin, 2 Barnes's Notes 250.*

4. The particular place of taking the goods, &c. ought to be inserted in every declaration  
in

in replevin. *Per Cur'*. E. 17 Geo. 2. *Bullythorpe v. Turner, in replevin, Ibid.* 281.

5. *Cepit in alio loco* is to be considered as a plea in bar, and not in abatement. No affidavit is requisite to be filed therewith, nor is it necessary to be pleaded within four days after the declaration delivered. *Resolutio curiæ. Ibid.*

6. Whether a plaintiff in replevin may discontinue, *vide 2 Barnes's Notes* 145.

7. Proceedings set aside after trial of several issues, and a verdict for plaintiff, the goods distrained having never been replevied; but by consent of the attornies on both sides remained in the distrainer's hands, and without any writ of *re. fa. lo.* or appearance in this court, plaintiff declared, and defendants avowed. M. 17 Geo. 2. *Richardson v. Frank and another.*

8. In replevin, defendant brought down the record, and plaintiff not appearing, insisted to have a verdict, which the judge complied with, but the court, upon the plaintiff's motion and after hearing the judge's report, ordered the *postea* to be amended, and a nonsuit to be returned, and that defendant should pay costs of the motion. M. 20 Geo. 2. *Hicks v. Young, in replevin.*

9. Proceedings staid on payment of 47 l. rent distrained for, and costs, after declaration, but before avowry. T. 26 & 27 Geo. 2. *Davis v. Price, in replevin, 2 Barnes's Notes* 346.

10. Replevins are within the statute for signing judgment, as in case of a nonsuit.

11. An avowant, though not named in the *Stat. 4 Ann.* yet held to be within the meaning and intent of that statute; and allowed costs on the pleas found for him, to be deducted out of costs



costs allowed plaintiff. *Hil. 28 Geo. 2. Bright v. Jackson, in replevin.*

(a) Stat. 11  
Geo. 2 gives  
avowants dou-  
ble costs.

12. Double (a) costs not allowed on a non-suit in replevin, where plaintiff declared for taking and detaining an ox, and defendant avowed the taking as a seizure for an *beriot custom*, claiming no right to distrain. *Aliter*, had it been for *beriot service* for which cattle, &c. are distrainable; For *beriot custom* not. *M. 29 Geo. 2. Lloyd, Esquire, v. Waiton, in replevin, Supplement to 2 vol. Barnes's Notes p. 16.*

*A count, avowry and judgment in replevin.*

— A. B. was summoned to answer C. D. to wit. A. of a plea, wherefore he took the cattle or beasts of the said C. and them unjustly detained against sureties and pledges, and whereupon the said C. by — his attorney complains that the said A. the — day of, &c. in the — year of the reign of, &c. at G. in a certain place there called, &c. took the cattle; that is to say, two horses and one cow of the said C. and them unjustly detained against sureties and pledges until such a day, wherein they were delivered by — Esquire, sheriff of the county aforesaid, or bailiff of the Lord the King, sworn and acknowledged; whereupon he saith, that he is the worse and hath damage to the value of 10*l.* and therefore he brings his suit, &c.

And the said A. by — his attorney, comes and defends the force and injury when, &c. and well avows the taking of the cattle aforesaid, in the said place in which, &c. and justly, because, he saith, &c. [*here insert the avowry or plea*]

*plea, that he took not the said cattle as the said C. by his declaration supposeth, with the answer, replication, issue and special verdict.]* And because the justices here will advise themselves of and upon the premisses before they give judgment, day is given to the parties aforesaid, until, &c. to hear their judgment thereof, because the said justices are not yet advised, &c. on which day comes here as well the said C. as the said A. by their attornies aforesaid; and upon this the premisses aforesaid being seen, and by the justices here fully understood, It is considered, that the said C. take nothing by his writ aforesaid, but be in mercy for his false claim, &c. and that the said A. go thereof without day, &c. and that he have return of the cattle aforesaid, to be kept by him irreplegiable for ever, and how, &c. make it here appear in, &c. It is also considered that the said A. do recover against the said C. his damages aforesaid by the jurors in form assessed, as also, — for his expences and costs by the court here of increase with his assent adjudged, which damages in the whole amount to, &c.

Recordari facias loquelam,

**G**EORGE the second, &c. to the sheriff of ——— greeting. We command you, that in your full county you cause the plaint to be recorded which is in the same county, without our writ, between A. B. and C. D. and E. F. of the cattle, goods and chattels of the said A. taken and unjustly detained as it is said, and that you have the said record before our justices

at *Westminster*, from, &c. [*the return*] under your seal and the seals of four lawful knights of the same county, of such as shall be present at the said record, and that you prefix the same day to the parties, that then they may be there ready to proceed in the said plaint as shall be just; and have you there the names of the said four knights and this writ. Witness ourself at *Westminster*, the — day of — in the fourteenth day of our reign. Let execution be done of this writ, if the said *A.* desire it, otherwise not.

*The form of a pone in replevin.*

GEORGE the second, &c. to the sheriff of — greeting. Put by sureties and safe pledges *C. D.* and *E. F.* that they be before our justices at *Westminster*, from, &c. [*the return*] to answer to *A. B.* of a plea whereof they took the cattle, goods and chattels of the said *A.* and them unjustly detained, against gages and pledges as he saith, and to shew wherefore they have not appeared in our court before our justices at *Westminster*, from, &c. last past, at the day prefixed to them; and have you there the names of the pledges and this writ. Witness Sir *John Willes*, knight, at *Westminster*, the — day of — — in the — — — year of our reign.

*Ejectment.*

*Ejectment (a).*

OF preparing and serving a declaration in ejectment.) Buy a blank declaration of your stationer unstamped to keep for use, fill it up, and likewise as many declarations in ejectment on treble 1 *d.* stamps as there are tenants to be served. Fill these up agreeable to your copy.

(a) No attorney to be lessee in ejectment. Rule M. 1654. sect. 1. Ejectment in C.P. for lands in *Wales* good. 1 *Barnes's Notes* 29.

If the lands lie in *London* or *Middlesex*, the notice to appear should be for the first day of next term; for if made generally the defendant will have the whole term to appear in (b).—But if the tenements lie in any other county, the notice may be to appear either the beginning of the next term, or, for the next term generally.—Serve each declaration on the tenant in possession or his wife, before the *essoin* day of the term, or plaintiff cannot have judgment till the term following. On service of declaration read the notice to the tenant, or fully explain the nature thereof. If there be no person in the house, or on the premises, to deliver a declaration in ejectment to, a lease of ejectment must be sealed at the house or on the premises, and the lessee left in possession, and some person appointed to enter and eject him, and then an action may be brought against such ejector, and the possession recovered.

(b) *Vide p.* 471. *Note* 12. *p.* 478. *Note* 6.



## N O T E S.

The tenant in possession, on a *Sunday* acknowledged the receipt of a declaration in ejectment,

1. Service on tenant's *son* or *daughter*, or apprentice, is not good, unless the tenant afterwards acknowledge the receipt thereof, which acknowledgment must be proved to the court by affidavit.

which before the *effix* day of the term, had been delivered to his *daughter*, and she acquainted with the contents, and held good service. Common rule for judgment *nisi*. T. 16 *Geo.* 2. *Goodtitle v. Thrustout*, on the demise of *Maria*, 2 *Barnes's Notes*.

2. On affidavit that the tenant absconded to avoid being served, that she came into the possession surreptitiously, and of service of declaration in ejectment on her son who is her servant, manages her affairs, and lives in her family. Rule to shew cause why such service on her son and servant should not be good service, and leaving a copy of this rule at her house good service. Rule made absolute. *M.S. Notes*.

3. On affidavit that one of the tenants is a lunatick, that one C. lives with her, transacts her business, and has the sole conduct thereof and of her person, but would not permit the deponent to have access to her with the declaration in ejectment, whereupon it was delivered to C. Rule that she and C. both shew cause, why this service should not be good; and service of this rule on him be good service thereof. *Ibid*.

4. On affidavit that the tenant in possession secreteth himself, to prevent his being served with a declaration in ejectment, and could not be served though frequent endeavours had been used, and that the declaration had been delivered

ed

ed to his daughter who kept his house (being a publick house,) and that she was acquainted with the contents of the subscription. A rule was for the tenant to shew cause why such former service should not be deemed good, the rule to be served on the daughter at the house. *M.S.*

*Notes.*

5. Deponent swore, " That he went to the  
 " messuage in question, and the tenant's wife  
 " refusing to open the door, but speaking  
 " through the wicket, he did shew her a copy  
 " of the declaration, and acquainted her with  
 " the contents, and read the *English* subscription  
 " to her, but as soon as he had so done she  
 " shut the wicket, and refused to take the de-  
 " claration, and not being able to deliver the  
 " same, he affixed the same on the door of the  
 " said messuage, which the tenant in possession  
 " did on the same day acknowledge to have  
 " received." *Chief Justice* and *Denton Justice*  
 were of opinion, that it was not a good service,  
 and *Price* and *Fortescue* Justices held the con-  
 trary; so no rule was made. Note; it did  
 not appear by the affidavit that the copy was  
 tendered to the wife, which the court seemed  
 to think would have been very material. *M.*  
*6 Geo. 2. Kirwood v. Backhouse, Rep. and Cas. of*  
*Pract. in C. P. 75. Pract. Reg. in C. P. 165.*  
*S. C.* Says, the court was divided, and so no  
 rule was made. *1 Barnes's Notes 113.* *S. C.*  
 takes no notice of the court's being divided,  
 but says the service was held *insufficient*, because  
 the tenant's acknowledgment that he received  
 the declaration is not enough, an actual delivery,  
 or tender and refusal, ought either to be proved  
 or confessed.

Declaration was tendered to tenant in possession, which she refusing to accept, it was left on the floor in her presence, and she retiring into a parlour and shutting the door, the person serving read the notice aloud, so as she might hear it; held good service. Hil. 16 Geo. 2.

*Bayly v. Bayly, on*

*the demise of Abbot, v. Toggel, 2 Barnes's Notes 152.*

6. Declaration in ejectment left on the premises, the tenant after a tender, and acquaintance with the declaration and subscription, refusing to take it, and threatening to shoot the deponent, held a good service by all the judges. E. 7 Geo. 2. *Halsal, lessee, &c. v. Wedgwood, Rep. and Cas. of Pract. in C. P. 100. Pract. Reg. in C. P. 166. S. C. — Rep. and Cas. of Pract. in C. P. 100. S. C. — The Chief Justice (in S. C.) said it would have been a good delivery, if there had been no violence offered, since the declaration was tendered, refused and left on the premises in the tenant's presence. Pract. Reg. in C. P. 167. — 1 Barnes's Notes 117. S. C. Per cur': It is the same as a continual claim, where the party comes as near the land as he can to make his claim for fear of his life.*

7. The affidavit of service of declaration in ejectment was, "That deponent did deliver the declaration into the hands of ——— the wife of Nathaniel Bates, and to Benjamin Tipping, which said Nathaniel Bates and Benjamin Tipping are or one of them is tenant in possession." Affidavit held to be uncertain. No Rule. Hil. 7 Geo. 2. *Bate, lessee of Baker, against Tipping, Pract. Reg. in C. P. 166. — T. 7 & 8 Geo. 2. Harding v. Greensmith, on the demise of Baker. Affidavit "That deponent did serve the wives of A. and B. who, or one of them, are tenants in possession, &c."* Affidavit defective. 1 Barnes's Notes 118.

8. Affidavit of service of declaration, "On A. B. the tenant in possession or C. his wife," uncertain. Hil. 7 Geo. 2. *Bribeck v. Hughes,*

*Pract.*



*Pract. Reg. in C. P.* 165.—1 *Barnes's Notes* 116. S. C.

9. All declarations in ejectment must be delivered before the effoin-day of every term, otherwise plaintiff cannot have judgment till the subsequent term, declaration in ejectment being the first process; in other cases a writ precedes the declaration. *M.* 7 *Geo.* 2. *Roe, on the demise of Bird, v. Doe,* 1 *Barnes's Notes* 115.

10. Notice at the foot of a declaration in ejectment must be subscribed by the casual ejector, and not by the nominal plaintiff. Rule for judgment discharged. *M.* 7 *Geo.* 2. *Peaceable v. Troublesome,* 1 *Barnes's Notes* 115.—*Hil.* 2 *Geo.* 2. *Barker v. Merefield,* in *B. R. S. P.* *Ibid.*

11. Good service of a declaration delivered to the tenant's father, who was acquainted with the contents, &c. tenant acknowledging the receipt before the effoin-day. *Hil.* 8 *Geo.* 2. *Roe v. Doe, Rep. and Cas. of Pract. in C. P.* 115.—1 *Barnes's Notes* 120. S. C.—*Scrape v. Hunt,* *Hil.* 8 *Geo.* 2. The like resolution on a delivery to the daughter, and she acquainted with the contents; and the tenant's confessing the receipt of it. *M.S. Notes.* 1 *Barnes's Notes* 120. S. C.

12. Notice to appear in beginning of *Michaels* term (not on the first day) in *London* sufficient; vacant possession. *M.S. Notes.* 1 *Barnes's Notes* 119. S. P.

13. Declaration in ejectment intitled *T.* 4 *Geo.* 2. instead of 3 & 4 *Geo.* 2. not material.

14. Though the lessor's name be omitted in that part of the declaration, which recited the writ, yet if he is named in the body of the declaration, good. *M.* 9 *Geo.* 2. *Goodright, lessee of Barker, v. Thrustcut,* *Pract. Reg. in C. P.* 175.



## The present Practice of the

15. Demise may be laid on a day after that term of which the declaration is: As where a title accrued at Christmas, a declaration in ejectment of Michaelmas term is delivered before the effoin-day of Hilary term, and the demise laid on the first of January, which was after Michaelmas term. Ergo the declaration could not be a declaration of Michaelmas term. On motion for an imparlance, Cur' refused it, and said, that an ejectment was the creature of the court, and the Demand was from the time of the service of the declaration. Hil. 13 Geo. 1. *Scrape v. Hunt*, Pract. Reg. in C. P. 164. — Note; If judgment in this case was entered against the casual ejector, the tenant in possession could not take advantage of this error, because he was a stranger to the action. — If the tenant in possession appeared, a new declaration of Hilary term would have been delivered, and then all would be right. Ibid.

Nota.

16. Declaration served on tenant's sister, and receipt acknowledged by tenant in possession, though after the effoin-day of the term, and held good. T. 13 Geo. 2. *Goodlad, lessee of Roundel, v. Jefferson*, Pract. Reg. in C. P. 167.

17. Service of declaration in ejectment on the churchwardens and overseers of the poor of a parish, who rented the tenement in question for the habitation of their poor only, good service. And a rule made for judgment. Hil. 13 Geo. 2. *Tupper, lessee of Mercer and Wooller, v. Doe*, Pract. Reg. in C. P. 168. — 1 Barnes's Notes 129. S. C.

18. A tenant in possession and his wife both absconding could not be served with a declaration in ejectment. Cur' made a rule for tenant to shew cause, why service of a declaration on his servant should not be good, and directed the

rule

rule to be served in that manner. 2 *Barnes's Notes* 157.

19. Tenant in possession, a single woman, absconding and secreted herself in the messuage in question. Rule to shew cause why service of the servant at the house should not be good. This rule to be served on the servant at the house. *E. 22 Geo. 2. Short, on the demise of Elmes, v. King, Ibid.*

For declarations in ejectment, vide *The King's Bench Practice*.

NOTES relating to amendment of declarations, in ejectment.

1. *Cur'* cannot enlarge demise in any ejectment without defendant's consent. *T. 10 & 11 Geo. 2. Scrape v. Rhodes, 1 Barnes's Notes 12.— 2 Barnes's Notes 13. Driver, on the demise of Scrutton, v. Scrutton and others, Hil. 18 Geo. 2. S. P.—*Issue being joined, term in ejectment cannot be enlarged without consent. *Pract. Reg. in C. P. 17.*

2. Motion to make two amendments in declaration; first, in the parcels; secondly, in a mistake of the plaintiff's name for the defendant's, granted on payment of costs. *M. 1 Geo. 2. Williams, lessee of Betts, v. Barcleys, Pract. Reg. in C. P. 16.*

3. Amendment of declaration by adding new counts after issue joined, denied. *Cur'* said it was never usual to give plaintiff leave to add a new count after defendant had pleaded. *M. 2 Geo. 2. Cooper v. Middleton, Ibid.*

4. Amendment of declaration in ejectment, by altering the day of the demise, denied after issue joined.

joined. *Hil. 4 Geo. 2. Newel, lessee of Neal, v. Baker, Pract. Reg. in C. P. 16.*

5. Declaration amended after issue joined, and verdict set aside, upon payment of costs. *E. 1 Geo. 2. Know v. Wyche and others; Ibid. 17.*

6. When plaintiff amends his declaration and pays costs, defendant not intitled to an imparlance. *Ibid.*

7. Lessor's name omitted in that part of the declaration which recites the writ, not material. *M. 9 Geo. 2. Goodright, lessee of Parker, v. Thrustout. Ibid. 175.*

*Motion for judgment against the casual ejector.*

**M**AKE affidavit of the service of declaration on treble 6*d.* stamped paper. Make a copy of the declaration on treble 1*d.* to annex to affidavit, give affidavit and declaration to a serjeant to move for judgment, pay him 10*s.* 6*d.*

The serjeant that moves must sign the declaration, and deliver it himself to the secondary in open court. *Rule Hil. 2 Geo. 2. 1728.*

The secondary keeps the affidavit and declaration on the motion; *ergo*, you should have a declaration filled up by you before the motion is made, else you must pay for a copy.

Secondary, on request, to shew his alphabetical paper of ejections moved or delivered into court. *Rule Hil. 2 Geo. 2.*

If tenements lie in *London* or *Middlesex*, and (a) Uncertain notice be to appear the first day or *beginning* (a) vide *Tredder v. Travis*, p. 478. Note 6. for plaintiff shall take nothing by his motion for

for

for judgment against the *casual* ejector for default of appearance, unless the motion be made within one week next after the first day of every *Michaelmas* and of every *Easter* term, and within four days next after the first day of every *Hilary* and *Trinity* terms. *Rule T. 32 Car. 2.*

If an ejectment be brought on a *vacant* possession, upon the *Stat. 4 Geo. 2. c. 28.* the plaintiff may move for judgment against the casual ejector at any time in the term; the above rule of *32 Car. 2.* limiting the time for moving for judgment in ejectment in *London* and *Middlesex*, relating only to an ejectment where the declaration is delivered to the tenant in possession in *London* or *Middlesex*, and not to *vacant* possessions there. *Vide p. 477. Note 3.*

In country ejectments, though declaration before *Easter* or *Michaelmas*, plaintiff has all the next issuable term to move for judgment.

In country ejectments you may move any time within the term, though it is generally deferred till the latter end of the term.

You must move for judgment against casual ejector, if you would compel an appearance or have judgment, though if plaintiff's and defendant's attorney know each other, they often agree, to save the expence of the motion, on dividing the serjeant's half guinea between them; but in this case plaintiff's attorney should be very cautious of depending on a *verbal* promise to appear only, lest by neglect of the motion he should be deceived.

If the tenements lie in any other county than *London* or *Middlesex*, though the declaration be delivered before the effoin of *Easter* or *Michaelmas* term, yet tenant has four days after the end of the next issuable term, (i. e. *Hilary* or *Trinity*)



*Trinity*) to appear and plead.—And if the tenements lie in a county where the assizes are held but *once* a year, the tenants hath (as I apprehend the practice to be) four days after the end of the term next preceding such assizes, to appear and plead; As if term ended on a *Weãnesday*, tenant has all *Monday* next to appear and plead.

## N O T E S.

Rule for judgment in *Michaelmas* term, unless appearance within four days after notice, denied, where the declaration was intituled of *17 Trinity* instead of *16* & *17 Geo. 2.* *M. 17 Geo. 2. Barnes's Notes* 153.

1. Declaration in ejectment intituled *Trin. 4 Geo. 2.* instead of *3* & *4* not material, for if there had been no title to the declaration it would have been good, and the notice is dated at a day certain. But that the tenants may have an opportunity to apply to the court, let there be a rule for judgment against the casual ejector on the second day of next term, upon notice to the tenants. *M. 4 Geo. 2. York, lessee of Chambers, v. Ferris, Pract. Reg. in C. P. 162.*

2. Upon motion for judgment on the act *4 Geo. 2. c. 28.* *Cur'* said it was not sufficient for the lessor of the plaintiff to say generally in his affidavit, *that he has a right to re-enter*, but he must *shew how he has such right*, but there is no occasion to produce the lease in court on the motion, an affidavit of the facts being sufficient (a). Proper affidavit of the facts required

(a) The affidavit required in this case is in substance as follows, *That the declaration was fixed upon such a place, being the most notorious part of the premises in question, (there being no person in possession on whom the declaration could be legally served) that half a year's rent was then due from the late tenant, that no sufficient distress was to be found*

red by the act being now produced, *Cur'* made found upon the the usual rule for judgment. *Hil. 5 Geo. 2. premisses to answer the arrears then due, that the late tenant held*  
*Molden v. Wrangham, on the demise of Camden, Rep. and Cas. of Pract. in C. P. 68.*

*such premisses by virtue of a lease from the lessor of the plaintiff, and that therein is contained a clause of re entry for non-payment of that rent. Ibid. —Pract. Reg. in C. P. 168. S. C.*

3. On vacant possession in London and Middlesex, you may move for judgment any time in term, the rule T. 32 *Car. 2.* not extending to vacant possessions. *Vide Rep. and Cas. of Pract. C. P. 76. Pract. Reg. in C. P. 196. 1 Barnes's Notes 115. —Vide ante p. 475.*

4. Motion for judgment in ejectment, upon affidavit that the declaration was delivered to the wife of A. B. and to B. T. and to each of them, and swears that both or one of them is tenant in possession; but denied for uncertainty in the affidavit. *M. 8 Geo. 2. Harding v. Green-smith, on the demise of Baker, widow, Rep. and Cas. of Pract. in C. P. 107. 1 Barnes's Notes 118. S. C. Vide ante p. 470. Note 7.*

5. A declaration in ejectment for lands in Staffordshire, was delivered in last Trinity vacation, with notice to appear in Hilary term next, (taking no notice of Michaelmas the intervening term;) appearance in Michaelmas bad, the tenants should have appeared as of the term mentioned in the notice; but the right not having been tried, *Cur'* set aside the judgment signed against the casual ejector as of Hilary, on payment of costs, &c. *E. 8 Geo. 2. Hodgson, lessee of Kendal, v. Mason, Pract. Reg. in C. P. 163. —1 Barnes's Notes 178. Mason, on the demise of Kendale, v. Hodgson, S. C.*

6. Motion

6. Motion for judgment, in *London*, where the notice to appear was not on the *first* day, but in the *beginning* of *Michaelmas* term; *possession vacant*. Rule for judgment, unless some person claiming title appeared within four days. *M. 8 Geo. 2. Tbredder v. Travis, 1 Barnes's Notes 119.—Rep. and Cas. of Pract in C. P. 108. S. C. Cur'* said the *beginning* of the term was uncertain, and therefore gave tenant till sixth of *November* to appear and plead. The motion for judgment was on *Stat. 4 Geo. 2. c. 28.*

7. Ejectment for five tenements and one acre of land; motion to set aside judgment against *casual* ejector for uncertainty in the parcels, *viz.* as to the five tenements. Rule to shew cause. *T. 10 & 11 Geo. 2. Fitchet, lessee of Perry, v. Jones, Pract. Reg. in C. P. 161.*

8. Judgment against the casual ejector was set aside for irregularity, and the possession ordered to be restored, but plaintiff's lessor who withheld the possession absconding, the rule for restoring the possession proving ineffectual, a writ of restitution was ordered. *M. 12 Geo. 2. Goodright, lessee of Russell, v. Noright, Pract. Reg. in C. P. 176.—1 Barnes's Notes 125. S. C.*

9. Judgment against casual ejector was signed for want of a plea delivered in form, but set aside without costs. *E. 19 Geo. 2. Goodtitle v. Notitle, on the demise of Brimer and others, in ejectment, M.S. Notes. 2 Barnes's Notes 212. S. C.*

*Affidavit of service of a declaration in ejectment.*

In the Common Pleas.

<i>Richard Roe</i>	}	In ejectment on the	
against			demise of <i>A. B.</i>
<i>John Doe.</i>			and <i>C. D.</i>

**E**. F. of, &c. maketh oath that he this deponent did, on the ——— day of ——— last past, deliver to Mr. *A. B.* the tenant in possession of the premisses (a) mentioned in the declaration hereunto annexed, or of some part thereof, a true copy of the said declaration, and of the notice here underwritten, and did at the same time inform the said *A. B.* that unless he would appear in this court by some attorney thereof, on the first day of this present *Michaelmas* term, and cause himself by rule of the said court to be made defendant in the room of the casual ejector *John Doe*, judgment would be entered against the said casual ejector by default, and that the said *A. B.* would be turned out of possession; or words to that or the like effect,

(a) The deponent must positively swear that *A. B.* was tenant in possession of, &c.

*E. F.*

Swearing affidavit.

a i o

*Rule*



*Rule for judgment against the casual ejector.*

Hilary term in the ——— year of King George the  
second.

*Cooke.*

Rule, duty  
and filing affi-  
davit 6s. 6d. } *A. against B.* } ——— day of ——— upon  
the casual ejector. } the affidavit of ——— Gent.  
It is ordered that unless ——— tenant in pos-  
session of the tenements in question, or any  
other person concerned in the title thereof, on  
*Saturday* next shall appear by an attorney of  
this court, who shall then forthwith receive a  
declaration, and plead thereto the general issue,  
and consent to the common rule for confessing  
lease, entry and ouster upon the trial to be had,  
let judgment against the casual ejector be en-  
tered; and in the mean time proceedings are to  
stay. Upon the motion of master serjeant ———.  
By the court,  
Entered. *Pacey.*

Rule to plead.] On motion for judgment  
against casual ejector, you must give a rule to  
plead.

Signing judgment against the casual ejector  
for want of a plea.] When the rule to plead is  
out, search the prothonotary's plea book for  
plea and rule; if not filed, make an *incipitur* of  
the declaration on a double 2s. 6d. stamped  
sheet of paper, to which you *affix* the rule against  
the casual ejector. You also make an *incipitur*  
of the declaration on a roll of that term the  
judgment is of; make out a warrant of attorney,  
file

file it at the warrant of attorney's office, pay  
To prothonotary for signing judgment  
you pay ——. .

*Hab. fa. possessionem.*] After judgment signed  
make out an *habere facias possessionem*. No *præ-*  
*cipe*. Duty 2 s. Signing it with prothonotary  
1 s. 4 d. If on a double or treble demise; you  
pay 8 d. for each demise after the first. Seal-  
ing 7 d.

But if defendant appears, proceedings are as  
after mentioned.

How to appear and plead.] If the tenant  
appears, plaintiff's attorney gets a blank rule of  
assent from the proper secondary (*i. e.* the se-  
condary of the prothonotary, in whose office  
declaration is in) pay him fill it up accord-  
ing to the following form, p. 483. Ingross the  
general issue *Not guilty*; on a treble 1 d. stamped  
sheet of paper, and annex the rule to it. Then  
enter an appearance for the tenant with the pro-  
per filazer, pay him who will stamp the  
rule and write appearance entered (*a*), then  
leave the rule and plea annexed with the pro-  
thonotary.

(*a*) If a plea  
in ejectment  
is left in the  
office, yet if  
the rule by

consent is not annexed to it with the filazer's stamp, signifying that the ap-  
pearance was entered, the plaintiff may sign his judgment. *E. 5 Geo. 2.*  
*Webb v. Akers, on the demise of Burdus, Rep. and Cas. of Pract. in C. P. 71.*  
—*Trueman v. Badright, on the demise of Rivers. M. 1733.* The like de-  
termination. *Ibid. 72.* 1 *Barnes's Notes* 124. S. P.

Defendant's attorney often neglects to enter  
an appearance, and only leaves the rule and  
plea, or delivers them to plaintiff's attorney and  
then plaintiff's attorney does it, and charges for  
it on the issue, but this is wrong, for defendant's  
attorney should take care to enter an appear-  
ance.

## N O T E S.

1. If the person who claims title to the premises, and would defend the action, is not in possession thereof, you must move the court for him to be made defendant instead of the *nominal* defendant; but this is with consent of tenant in possession, unless it is his landlord.

2. In all cases of vacant possession, (unless such as are within the *Stat. 4 Geo. 2. c. 28.* concerning landlords and tenants by lease, with a clause of re-entry,) no instance can be shewn, where any person claiming title hath been let in to defend, but he that can first seal a lease upon the premises, must obtain possession, and any other person claiming title may eject him if he can, and by the course of the court; no defence can be made in these cases but by the defendant in the ejectment, who is a real ejector. *T. 10 Geo. 2. Ex parte Beauchamp and Burt, 1 Barnes's Notes 122.*

3. Appearance must be entered with the filazer, and marked on common rule, before left with the prothonotary. *Vide ante p. 481.*

4. Motion by plaintiff's lessor, that the conditional rule entered into by his wife by another name might be set aside; but denied, *Chit'* thinking the validity of the marriage a fit matter to be tried. *T. 26 & 27 Geo. 2. Roe, on the demise of Stone and wife, against Doe, 2 Barnes's Notes 160.*

5. Action against an attorney for appearing and pleading in ejectment without authority. Leave to withdraw the pleas, and proceedings against the attorney staid on payment of costs to be taxed, which are all the damages the  
 plaintiffs

plaintiffs have sustained. T. 5 & 6 Geo. 2.  
*London v. Hill, an attorney.—Four other causes  
 against the same, Pract. Reg. in C. P. 177.*

*General rule in ejectment by consent.*

*Cooke.*

———— term ——— of George the second.

*Middlesex,* **I**T is ordered, by the consent of *Roe* against  
 to wit. **I** ——— attorney, for the plaintiff, *Doe* for ———  
 and ——— attorney for *E. F.* who claims title messuages with  
 to the tenements in question, that the said *E. F.* shall be admitted defendant, and that the said *E. F.* shall immediately appear by his said attorney, who shall receive a declaration, and plead thereto the general issue this term, and at the trial to be had thereon shall appear in his proper person, or by his counsel or attorney, and confess the lease, entry and ouster of so much of the tenements specified in the plaintiff's declaration, as are in the possession of the said defendant, or his tenants, or any persons claiming by or under his title; or that in default thereof judgment shall be thereupon entered against the defendant *John Doe*, the casual ejector, but proceedings shall be stayed against him until default shall be made in any of the premisses; and by the like consent it is further ordered, that if by reason of any such default the plaintiff happen to be nonsuited upon the trial, the said *E. F.* shall take no advantage thereof, but shall thereupon pay to the plaintiff costs, to be taxed by the prothonotary: And it is further ordered, that the lessor of the plaintiff shall be liable to the payment of costs to

I i c the



The present Practice of the  
the said *E. F.* by the court here to be in any  
manner allowed or adjudged.

By the court.

*J. S.* for the plaintiff.

*R. S.* for the defendant.

How to draw up rule by consent to confess  
lease, entry and ouster.] Plaintiff's attorney  
takes the rule and plea from the prothono-  
tary, if not delivered to him; and if no appear-  
ance be entered thereon, he enters appearance  
with the proper filazer, and a *Li. lo.* (*i. e.* an  
*imparlance*) with prothonotary, and charges on  
the issue, *viz.* for appearance *5. 10d. Li. lo. 2s.*  
Then he carries the rule to the secondary, who  
keeps it, and therefrom draws up two rules in  
the same manner, one for each party. Pay him

[*Vide* notes title *Trial* and *verdict.*—*Non-  
profs.*]

Issue.] Write copy of your issue on treble  
penny stamped paper, and annex one of the rules  
thereto, and deliver issue and rule to defendant's  
attorney. You charge for the half rule on the  
issue, ( )

If the defendant's attorney does not pay for  
the issue, the plaintiff's attorney may sign judg-  
ment against the defendant. *Vide* 1 *Barnes's  
Notes* 121.—But *Q.* if he can against the casual  
ejector; *sed vide* the words of the rule by  
consent.

## N O T E S.

1. Variance between the issue delivered and  
the record of *nisi prius*; the defendant confessing  
lease, entry and ouster at the trial, will not pre-  
ven

vent his taking advantage of the variance. *M.*  
*8 Geo. 2. Jones v. Hergest, on the demise of John*  
*Thomas, Rep. and Cas. of Pract. in C. P. 110.—*  
*1 Barnes's Notes 119. S. C.*

2. Six declarations in ejectment delivered to  
 six tenants, one appearance and one plea for all  
 jointly; six several issues delivered and paid  
 for. Issues consolidated into one, the declara-  
 tions being all alike, and the constant practice  
 being to make but one cause. *E. 8 Geo. 2.*  
*Grimston v. Grimston, on the demise of Lord*  
*Gower and another, Rep. and Cas. of Pract. in*  
*C. P. 119.*

*1 Barnes's*  
*Notes 121.*  
*Grimstone v.*  
*Burges and*  
*others, on the*  
*demise of Lord*  
*Gower. E.*  
*8 Geo. 2. S. P.*

*Of landlord and tenant as to ejectment.*

**W**HERE *half* a year's rent shall be in  
 arrear, the landlord having a lawful  
 right to re-enter for non-payment, may serve a  
 declaration in ejectment without a formal de-  
 mand or re-entry; or in case the same cannot  
 be legally served, affix such declaration on the  
 door of the demised messuage, or some notori-  
 ous place of the lands, which shall be deemed  
 a legal service; and on proof that half a year's  
 rent was due before the said declaration was  
 served, and no sufficient distress on the premises,  
 the lessor shall recover judgment and execution  
 as fully as in case a formal re-entry had been  
 made; and if the lessee shall suffer judgment  
 to be recovered on such ejectment and execu-  
 tion, without paying the arrears and costs, and  
 without filing a bill within six months after  
 execution, he shall be barred from all relief in  
 law or equity, other than by writ of error, and

The present Practice of the  
the lessor shall hold the demised premisses discharged from such lease. *Stat. 4 Geo. 2. c. 28.*

But if the tenant before trial will either tender to the lessor, or bring into court the rent in arrear, together with all costs, all further proceedings shall cease. *Same Statute.*

A tenant to whom a declaration in ejectment shall be delivered for any lands, tenements or hereditaments, shall forthwith give notice thereof to his landlord, or his bailiff or receiver, under penalty of forfeiting the value of three years improved or rack-rent of the premisses so holden in possession of such tenant, to the person of whom he holds. *Statute 11 Geo. 2. c. 19.*

The court where such ejectment shall be brought, may suffer the landlord to make himself defendant, by joining with the tenant to whom such declaration shall be delivered, in case he shall appear; but in case such tenant shall refuse to appear, judgment shall be signed against the casual ejector for want of such appearance; but if the landlord of any part of the lands, tenements or hereditaments, for which such ejectment was brought, shall desire to appear by himself, and consent to enter into the like rule, that by the course of the court the tenant in possession, in case he had appeared, ought to have done, then the court shall permit such landlord so to do, and order a stay of execution upon such judgment against the casual ejector, until they shall make further order therein. *Same Statute.*

NOTES.

N O T E S.

1. The word *landlord* means not every person claiming title, but a person who is in some degree of possession, as receiving rents, &c.

2. Landlord admitted defendant, afterwards lessor of plaintiff and his attorney prevailed on tenant to quit possession; this no contempt, and an attachment against plaintiff's lessor and his attorney, denied. *Hil. 12 Geo. 2. Plumb v. Savage, on the demise of Bryan, (or Bryam,) Rep. and Cas. of Pract. in C. P. 155. 1 Barnes's Notes 127. S. C.* Says it was no contempt, but a fraud, which ought to be prevented, and is not remedied by the act 11 Geo. 2. c. 19.—Ejectment is a fiction, and in the breast of the court. *Tenants should be bound not to change the possession. Ibid.*

3. Motion for landlord to defend upon *Stat. 11 Geo. 2. c. 19.* Cur' objected, that this motion could not properly be made till after judgment signed against the casual ejector, and that affidavits ought to be produced of the tenant's refusal or neglect to appear; *ergo* no rule. But declared that the intent of signing judgment against the casual ejector, was only that the plaintiff, after having tried his cause against the landlord, (the tenant not being a party) might have the benefit of his verdict, and take possession under the judgment, which under such verdict he could not. It seems reasonable (upon a proper affidavit) to grant a rule to shew cause, before judgment against the casual ejector can be signed, to prevent the ill consequence of taking possession immediately. *M. 12 Geo. 2.*



*Hobson, on the demise of Bigland, against Dobson, 1 Barnes's Notes 125.*

4. On *Stat. 11 Geo. 2.* Landlord was added defendant to *C. D.* one of his tenants, who appeared to defend for the tenements in his possession, and that as to the tenements in possession of *T. M.* another tenant who refused to appear, (as *per* affidavit) the landlord to appear and defend singly, and plaintiffs to sign judgment against the casual ejector, as to the last tenements, but that execution to stay till further order. *M. 12 Geo. 2. Roe, on the demise of Gobard, v. Doe, Ibid. 126.*

5. Leave to take out execution on judgment against casual ejector, neither tenants nor landlord added to them having appeared in time. *E. 18 Geo. 2. Roe v. Doe, on the demise of Hyde, in ejectment, 2 Barnes's Notes 154.*

### *Of staying proceedings in ejectment.*

See *Stat. 11 Geo. 2. c. 19. p. 486.* A motion to bring 100 *l.* into court, the de-

**P**ROCEEDINGS in ejectment stayed upon paying the lessor of the plaintiff his rent in arrear and costs. *Hil. 11 Ann. Anon. Rep. and Cas. of Pract. in C. P. 6.*

defendant suggesting that the ejectment was brought for non-payment of a fine, and for letting a lease contrary to the custom of the manor, and therefore he proposed to bring in the 100 *l.* to answer the fine, and that the lessor of the plaintiff should proceed at his peril for the forfeiture in respect to the lease, supposed to be let contrary to the custom of the manor, but denied; for though it can be no disadvantage for lessor to stay proceedings on payment of his rent and costs: yet the granting this motion may probably give the defendant such an advantage over the lessors who have brought this ejectment for a just cause, as may do them injustice.

Proceedings stayed till the lessor of the plaintiffs, being lord of the manor, delivered the defendant a copy of his admission. *T. 3 Geo. 2. Thompson v. Smith, on the demise of Warner, Esq; Ibid. 57.*

On motion to stay proceedings on payment of mortgage money and costs, pursuant to *Stat. 7 Geo. 2.* Cur' said the prothonotary will make just deductions and allowances on paying mortgage off. *E. 8 Geo. 2. Goodright v. Moore, 1 Barnes's Notes 121.*

A mortgagor must pay off bond-debts which were a lien upon the estate, as well as mortgage, else no proceedings on the *Stat. 7 Geo. 2.* staid. *Vide ibid. 123.*

Proceedings in ejectment staid on *Stat. 7 Geo. 2.* on payment to plaintiffs, assignees of mortgagee, mortgage money and costs, but not of a bond and simple contract debt, due to them in their own right (*a*). *T. 14 & 15 Geo. 2. Bingham, on the demise of Lane and others, v. Gregg, M.S. Notes.*

Proceedings staid on payment to plaintiffs (who were both devisees and executors) rent due to them and costs, as devisees, but not as executors, they not being intitled to bring an ejectment as executors. *M. 16 Geo. 2. Duckworth, on the demise of Tubley and others, v. Tunstall, in ejectment, Ibid.*

[*Vide Costs, p. 492.*]

*Trial and verdict.*

**T**HE confessing lease, entry and ouster at the trial, is not such a defence as will bar defendant from taking advantage of a variance between the issue delivered and the record of *nisi prius*. Rule absolute for setting aside the verdict. *M. 4 Geo. 2. Gulliver v. Appleyard, Pract. Reg. in C. P. 169.*

(a) These defendants were acquitted at the trial by reason of their not confessing lease, entry and ouster, as appeared by an indorsement on the *posita*.

1 Barnes's Notes 113.

Some of the defendants appeared by one attorney, and some by another. At the trial some of the defendants appeared, and confessed lease, entry and ouster, but the others would not. Plaintiff had a verdict against those who appeared, and confessed lease, &c. but the defendants, who did not confess lease, &c. had a verdict found for them (a) by the direction of the judge; the defendants who did not confess lease, entry and ouster, to pay costs to the lessor of the plaintiff, and the plaintiff at liberty to sign judgment against the casual ejector, and take possession of the land in the possession of those defendants. *E. 7 Geo. 2. Ellis, lessee of Lord Faulconbridge, against Knowles and others, Pract. Reg. in C. P. 173.* 1 Barnes's Notes 118. S. C. Says nothing about costs to be paid by the defendants, who did not confess lease, &c. But that leave to sign judgment against the casual ejector as to these defendants was granted.

*New trial.*

NOT usual to grant a new trial in ejectment, where the verdict is for the *defendant*, because the plaintiff may bring a fresh ejectment, and no other disadvantage happens to him. But where the verdict is for the *plaintiff* it is otherwise, and new trials have been granted, for there the consequence of not granting a new trial is the alteration of the possession of the premises, in question, *Per Cur.*—But the judge who tried the cause in ejectment being of opinion, that it ought to be tried over again, a new trial was granted on payment of costs. *Ibid.* M. 8 Geo. 2. *Letgoe, lessee of Wheeler, v. Pitt, Pract. Reg. in C. P.* 408. 1 *Barnes's Notes* 322.

Nonfuit *and* Nonprofs.

IF the plaintiff is nonsuited by default of the landlord's not appearing to confess lease, entry, &c. or obtains a verdict, the court on producing the *postea*, will make an absolute rule to take out execution against the casual ejector, and not a rule to shew cause.

Motion to set aside a *nonprofs* at the assizes for default of confessing lease, entry and ouster, there being a material variance between the issue delivered and the record of *nisi prius*. *Cur.*: The defendant should have appeared, and confessed lease, entry, &c. and his doing that would not have been making a defence, so as to have hindered him from taking advantage of the variance.



(a) *Vide p.*  
490.

ance; and so was determined. *Gulliver v. Ap-pleyard* (a). But as this cause was in ejectment, where the possession would be altered without having the merits of the cause tried, *Cur'* set aside the *nonpross* on payment of costs. *M. 8 Geo. 2. Jones, lessee of Thomas, v. Hergest, Pract. Reg. in C. P. 170.*—*1 Barnes's Notes 119. S. C.—Rep. and Cas. of Pract. in C. P. 110.*

### Costs in ejectment.

Agreed *per*  
*cur' Cur'*, that  
the lessor of  
the plaintiff  
cannot be  
brought into  
contempt for  
non-payment  
of costs upon  
a nonsuit *per*  
evidence, unless he be served with the rule by consent, as well as with a copy of the *capias ad satisfaciendum*. *Hil. 13 Geo. 2. Wright, lessee of Batts, v. Hall, Pract. Reg. in C. P. 172.*

WHERE a verdict in ejectment is for the defendant, or the plaintiff becomes nonsuited upon evidence, a *ca. sa.* must be made out against the plaintiff, and the costs demanded thereupon of the plaintiff's lessor. Shewing the *ca. sa.* is sufficient; for it is not necessary to deliver a copy. But see the margin. *E. 1 Geo. 2. Anon. Pract. Reg. in C. P. 171.*

Where the plaintiff becomes nonsuited by reason of the defendant's not confessing lease, entry and ouster, the costs are taxed on the rule by consent, and judgment signed against the casual ejector. *Ibid.—Vide Ellis, &c. v. Knowles and others, p. 490.*

On a nonsuit for want of confessing lease, entry, and ouster at the trial, lessor of plaintiff having taken out a *fi. fa.* against defendant's goods for costs, instead of proceeding on the rule by consent, as he ought to have done, *fi. fa.* was set aside with costs to be paid by him and his

his attorney, and the goods to be returned, defendant consenting to discontinue without costs, an action he had brought on this occasion in *B. R.* and no other action to be brought. *Vide Pract. Reg. in C. P.* 172. 1 *Barnes's Notes* 146.

Proceedings in ejectment staid, till the costs of a *nonpross* for not entering the issue in a former ejectment for the same lands were paid. The costs had been demanded of the plaintiff's attorney, the plaintiff being beyond sea. *T.* 6 & 7 *Geo.* 2. *Pendock v. Johnson, Pract. Reg. in C. P.* 174.

Ejectment in this court staid till costs in a former ejectment brought in *B. R.* were paid. The courts of *Westminster-Hall* pay the same regard one for another, and consider a former ejectment in another court as they do a former ejectment in the same court. The same practice in *Sc'io.* *T.* 17 & 18 *Geo.* 2. *Holdfast, on the demise of Hattersley, an infant, against Jackson,* 2 *Barnes's Notes* 107.

Costs taxed upon the common rule by consent, ordered to be paid by defendant to the representative of lessor of plaintiff, who died after the trial. *Hil.* 7 *Geo.* 2. *Goodright v. Holton,* 1 *Barnes's Notes* 91.

Where there are several defendants and one is acquitted, how he is to have costs. See 2 *Barnes's Notes* 103.

*Security for costs; &c.*

Proceedings in  
ejectment not  
staid till costs  
of a former  
ejectment paid  
where the les-  
sor of the  
plaintiff is in  
custody upon  
an attachment  
for non-pay-  
ment of those  
costs, the attachment being in effect an execution. T. 13  
Geo. 2. *Denn, lessee of Mortimer, v. Denn, Pract. Reg. in C. P.* 175.  
: *Barnes's Notes* 127. S. C.

THE lessors of the plaintiff being poor; shall not be obliged to name a plaintiff able to pay costs, for the lessors are in the nature of plaintiffs in any other action; and ought to be on the same footing as other plaintiffs are. *M. 5 Geo 1. Goodright v. Thrustout, on the demise of Jones et ux. Rep. and Cas. of Pract. in C. P.* 15.

Judgment being for the defendant in an ejectment where the lessor of the plaintiff was a peeress; an attachment against her goods and chattels (the Duke being then dead) was granted for the costs taxed. *Hil. 12 Ann. Thornby; on the demise of Duke and Dutchess of Hamilton; v. Fleetwood, Rep. and Cas. of Pract. in C. P.* 7.

An infant, lessor of the plaintiff, not to give security for payment of costs in case he should fail in the suit. T. 10 Geo. 2. *Roe v. Doe, on the demise of Fitzherbert, 1 Barnes's Notes* 123.

Upon affidavit of the death of the lessor of plaintiff, proceedings to stay till security given for defendant's costs. *Hil. 28 Geo. 2. Goodright; on the demise of Larmer, against Searle, in ejectment, Supplement to 2 vol. Barnes's Notes* p. 14.

*Judgment*

*Judgment arrested.*

JUDGMENT in ejectment arrested, declaration being of *one messuage or tenement*, which is too uncertain. *E. 7 Geo. 2. Makepeace v. Hopwood, 1 Barnes's Notes 117.*

Tenement is all a man holds, and after judgment the sheriff cannot tell of

what to deliver possession. The common rule was made to stay judgment till cause shewn, and afterwards upon hearing plaintiff, judgment was arrested. *Ibid.*

*Error on ejectment.*

ERROR on a judgment after special verdict for the defendant in ejectment, no bail necessary. *Hil. 12 Ann. Thornbill, lessee of the Duke and Dutchess of Hamilton, v. Thetwood, Pract. Reg. in C. P. 178.*

In ejectment verdict for plaintiff, writ of error brought, and good bail put in, and held sufficient, though plaintiff in error did not enter into the recognizance. The *Stat. 16 & 17 Car. 2. c. 8. s. 3.* requires that the plaintiff in error should *himself* enter into the recognizance in cases of *ejectment* and dower, yet notwithstanding this *Stat.* the bail were permitted to justify, and plaintiff in the ejectment to proceed at his peril. *T. 10 & 11 Geo. 2. Goodtitle v. Bennington (a), Pract. Reg. in C. P. 179. Ibid. 180. Doe, lessee of Godfrey, v. Lushington (b). M. 12 Geo. 2. S. P.—*Bail in error cannot be taken by a commissioner in the country, and it would be very hard to oblige a defendant who lives at a great distance from *London*, to come into court to enter into a recognizance in this case

(a) 1 Barnes's Notes 71. S.C.

(b) Rep. and Cas. of Pract.

in C. P. 152.

S.C. 1 Barnes's Notes 77. S.C.



case. And by good bail being put in, plaintiff in the ejectment has a better security than he is intitled to. *Per Cur: Ibid.*

*Casual ejector cannot bring error:* Defendant not confessing lease, entry and ouster at the trial, plaintiff was nonsuited, and thereupon signed judgment against *Roe*, the casual ejector. Motion for an attachment against *Adney*, defendant's attorney, for bringing a writ of error in the name of *Roe*. Rule to shew cause. On shewing cause it appearing, that *Adney* had been informed by some of the curfitor's clerks, that a writ of error lay in this case, the rule for an attachment was discharged, but *Adney* to pay costs, and to *nonpross* the writ of error at his own charge. *E. 13 Geo. 2. Roe, lessee of Humphreys, v. Collier, Pract. Reg. in C. P. 181. 1 Barnes's Notes 129. S. C.*

The recognizance in error on judgment after verdict in ejectment to be taken in the value of two years profits, and double costs. *E. 24 Geo. 2. Roe, on the demise of Fenwick and others, v. Pearson, in ejectment, in error, 2 Barnes's Notes 85.*

After verdict for *plaintiff*, leave to take out execution on the judgment against the casual ejector, *non obstante* a writ of error brought by defendant, denied. *T. 17 & 18 Geo. 2. Farside, on the demise of Lord Sidney Beauclerk and others, v. Hayley, Ibid. Vide next head.*

*Action for the mesne profits.*

**I**N an action of trespass for the mesne profits, brought pending a writ of error on the ejectment; plaintiff may proceed to ascertain his damages, and to sign his judgment, but *Cur'* will stay execution thereon till the writ of error on the judgment be determined. *T. 2 Geo. 2. Harris v. Allen, Rep. and Cas. of Pract. in C. P. 46.*

On motion in treasury, that defendant might be held to bail upon affidavit in an action for mesne profits, the judges ordered defendant *Motteram* to be held to bail for 500*l.* but would not order the other defendants to be held to bail, they being only his undertenants. *T. 2 & 3 Geo. 2. Duncombe v. Motteram and others, Pract. Reg. in C. P. 62.*

Defendant held to bail, by a judge's order, in an action for mesne profits, brought after judgment against the casual ejector discharged by consent on common appearance; the *acetiam* by mistake being in case instead of trespass only. *M. 15 Geo. 2. Treberne v. Gressingham, 2 Barnes's Notes 59.*

*Removing ejectment from the mayor's court of London.*

**I**N ejectment, a writ of *habeas corpus* is the proper process to remove the plaintiff, (under which the defendant must appear in this court, and enter into the common rule, and plaintiff must declare *de novo*) and not a writ of *certiorari*, as in replevin, whereby, after the record