

for the use of diverse of his coaches and chariots by him the said C. at his special instance and request before that time used, hired and had, and being so indebted, and the said C. in consideration thereof afterwards, *to wit*, on the same day and year aforesaid, at *Westminster* aforesaid in the said county of *Middlesex*, took upon himself, and to the said L. then and there faithfully promised, that he the said C. would well and truly pay the said 200 l. to him the said L. when he the said C. should be afterwards thereunto requested.

And also whereas the said C. afterwards, *to* Quantum meruit thereon. *wit*, on the same day and year aforesaid, at *Westminster* aforesaid in the said county of *Middlesex*, in consideration that the said L. had before that time, at the like special instance and request of him the said C. let to hire to him the said C. diverse other horses, mares and geldings, and diverse other coaches and chariots of him the said L. and had also at the like special instance and request of the said C. before that time by diverse of his servants done and performed for him the said C. diverse other labours and attendances, took upon himself, and to the said L. then and there faithfully promised, that he the said C. would well and truly pay to the said L. so much money, as he the said L. had reasonably deserved to have for the same, when he the said C. should be afterwards thereunto requested. And he the said L. doth aver, that he the said L. reasonably deserved to have for the same the further sum of 200 l. of like lawful money, *to wit*, at *Westminster*

R 2 afore-

In simul com-
putasset.

Breach.

aforesaid in the county aforesaid, whereof the said C. afterwards, that is to say, on the same day and year aforesaid there had notice. *And also whereas* the said C. afterwards, *to wit,* on the same day and year aforesaid, at *Westminster* aforesaid in the county aforesaid, had accounted with him the said L. touching and concerning diverse other sums of money by him the said C. to him the said L. then due and in arrear, and unpaid; and upon that account he the said C. was found in arrear to him the said L. in the sum of 132 *l.* 7 *s.* of like lawful money, and being so found in arrear he the said C. in consideration thereof afterwards, *to wit,* on the same day and year aforesaid, at *Westminster* aforesaid in the county aforesaid, took upon himself, and to him the said L. then and there faithfully promised that he the said C. would well and truly pay the said 132 *l.* 7 *s.* to the said L. when he the said C. should be afterwards thereunto requested: *Nevertheless* the said C. in no wise regarding his said several promises and undertakings so made by him as aforesaid, but contriving and fraudulently intending him the said L. in this behalf craftily and subtilly to deceive and defraud, hath not paid to him the said several sums of money, or any of them or any part thereof (although to pay the same to him the said L. he the said C. afterwards, that is to say, on the same day and year aforesaid, at *Westminster* aforesaid in the county aforesaid, was requested by the said L.) but the said C. to pay the same to him hath hitherto altogether refused, and still

still doth refuse to pay him the same, to the damage of the said L. 200*l.* as he saith,

R. R. *Returnable on the morrow of All Souls.* *

This *Præcipe* must be carried to the curfitor of the county in which the action is laid, on or before the effoin-day of the subsequent term, pursuant to the following order.

No curfitor shall make, or permit to be made, within his respective office and division, any original writs whatsoever of any return past, unless he shall receive the instructions for making thereof within the term wherein the said writs are to be returnable, or at farthest *on or before* the effoin-day of the next succeeding term, without special warrant from the lord chancellor or lord keeper of the great seal of *England*, or master of the rolls for the time being. *Lord Clarendon's orders in chancery.*

Original to be bespoke on or before the effoin day of the succeeding term.

If the debt demanded, or damages laid, exceed 40*l.* the plaintiff pays a fine to the king in proportion to such debt or damages, as follows:

Fine to the king.

| | l. | s. | d. |
|--|----|----|----|
| From 40 <i>l.</i> to 100 marks ——— | 0 | 6 | 8 |
| From 100 marks to 100 <i>l.</i> ——— | 0 | 10 | 0 |
| From 100 <i>l.</i> to 200 marks ——— | 0 | 13 | 4 |
| From 133 <i>l.</i> 6 <i>s.</i> 8 <i>d.</i> to 166 <i>l.</i> 13 <i>s.</i> 4 <i>d.</i> | 0 | 16 | 8 |
| From 166 <i>l.</i> 13 <i>s.</i> 4 <i>d.</i> to 200 <i>l.</i> — | 1 | 0 | 0 |
| And for every 100 marks more | 0 | 6 | 8 |
| And for every 100 <i>l.</i> more ——— | 0 | 10 | 0 |

*Of returning
the original.*

When the curfitor has made out the original, the plaintiff's attorney returns it of course thus ;

8

Pledges to prosecute } *John Doe,*
 } *Richard Roe.*

The within named *C. M.* hath nothing in any bailiwick whereby he can be * attached,

The answer of

Robert Darling, Esq; } Sheriff.
James Esdail, Esq; }

And then he files it with the *Custos brevium.*

*Warrant of
attorney.*

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

Of writs of inquiry.

*Notice of exe-
cuting writ of
inquiry.*

WHEN you have signed your interlocutory judgment, you are to give the defendant notice of executing the writ of inquiry ; and in some instances you may give notice of executing the writ of inquiry before you have signed interlocutory judgment, as in cases of demurrers and issues on *Nul tiel record*, as appears *fol.* 228.

*Where 8 days
notice of exe-
cuting writ of
inquiry in
London or
Middlesex.*

In *London* or *Middlesex* (the defendant dwelling within forty miles of *London*) there must be eight days notice given of executing a writ of inquiry, exclusive of the day whereon the notice is given. *Mich.* 1654.

*Where fourteen
days.*

But if the defendant lives above forty miles from *London*, and the inquiry is to be execu-

* *Vide antea fol.* 125-6, the difference between attached and summoned.

ted in *London* or *Middlesex*, there must be fourteen days notice, exclusive of the day of the notice. *Same rule.* This rule holds good although the defendant be an attorney of the court. *Barnes* 265. and notwithstanding *Stat. 14 Geo. 2. chap. 17.* See *ante* 196.

And eight days notice, exclusive of the *Eight days no-* day of the notice, must be given of execu- *tice in the* ting writs of inquiry in the country. *Same country.* *rule.*

If there have been no proceedings for *Where a* twelve months after judgment, there must be *term's notice.* a term's notice given of executing a writ inquiry of damages; and such notice must be given before the effoin-day of the term. *Vide antea fol. 197. Rule, Pas. 13 Geo. 2.*

Where the plaintiff concludes *ad patriam,* *Where plain-* and gives notice of trial on the back of his *tiff concludes* pleading (pursuant to the rule of *Trinity 2* *ad patriam,* *gives notice of* *Geo. 1. antea fol. 197.*) if the defendant does *trial, and de-* not join issue on such pleading before the rule *fendant don't* is out, the defendant's attorney shall, after *join issue, no-* judgment obtained, be obliged to accept no- *tice of inquiry* tice of executing a writ of inquiry from the *to be from the* time that the notice of trial was given on the *time notice of* back of such pleading, as aforesaid. *Hilary given.* *6 Geo. 1.*

Videa antea fol. 227. Where defendant *Where notice* shall be obliged to accept notice of executing *of inquiry may* a writ of inquiry on the back of a joinder in *be given on* demurrer or demurrer; and *fol. 234.* where *demurrer or* he shall be obliged to accept the like notice *joinder in de-* on the back of an issue of *Nul tiel record.* *And on issue of* *Nul tiel re-*

Where the plaintiff has entered an appear- *cord.* *Where notice* *to be delivered* ance for the defendant, pursuant to the act of parliament, left a declaration for him in the *office,*

*to defendant, or
left at his last
place of abode.*

office, given him proper notice thereof, and signed judgment for want of a plea, he may give notice of executing his writ of inquiry either by delivering the notice in writing to such defendant, or leaving the same for him at his last or most usual place of abode, which shall be a sufficient notice to such defendant.

Mich. 1 Geo. 2.

*Notice of in-
quiry not to be
given to de-
fendant if his
attorney be
known.*

Notice of trial or of (a) executing a writ of inquiry given to a defendant, when his attorney is known, is not good notice; but when the defendant's attorney is not known, notice of trial or of executing a writ of inquiry may be given to the defendant. *Rep. and Cas. of Pract. C. P. 62. Pract. Reg. C. P. 275.*

The form of the notice.

Common Pleas.

*John Denn
against
Richard Fenn.*

S I R,

*The form of a
notice of in-
quiry.*

Be pleased to take notice, that a writ of inquiry of damages in this cause will be executed on *Monday* the fourteenth day of *May* instant, between the hours of ten and twelve in the forenoon, at the *Court-House at Westminster.*

Your humble servant,

*To Mr. N. C.
Attorney for deft.*

*L. R.
Attorney for the plt.
4th May 1778.*

Notice

(a) *Barnes 311.*

Notice of executing a writ of inquiry at eleven of the clock in the forenoon is good, if the writ be executed before twelve. *Pract. Reg. C. P.* 446. *Barnes* 302. *As to the time.*

Notice of executing a writ of inquiry between the hours of eleven and two is bad, it should be confined to two hours at most, as between ten and twelve. *Rep. and Cas. of Pract. C. P.* 113. *Pract. Reg. C. P.* 445, 446. *Barnes* 296.

Notice of executing a writ of inquiry at ten in the forenoon, or so soon after as the sheriff can attend, is bad for uncertainty. *Rep. and Cas. of Pract. C. P.* 99. *Pract. Reg. C. P.* 134. *Barnes* 295.

The notice should be certain as to the place, *viz.* the house, street, &c. A notice of executing a writ of inquiry at the sign of the *Three Tons* in *Brook-street, Middlesex*, was held bad, not saying where that *Brook-street* was, *viz.* in *Holborn*, there being three *Brook-streets* in *Middlesex*. *Lemark v. Newman*, *Trin.* 10 *Geo.* 2. *Pract. Reg. C. P.* 447. *Barnes* 299, 300. *Com. Rep.* 551. *And place.*

Notice of inquiry may be given in the country to the country attorney. *Barnes* 305. *Vide antea* 196. *Notice to country attorney.*

Notice for executing a writ of inquiry before a judge at the assizes ought to be for the assizes generally, and not for any particular day, and need not be entered with the marshal, it not being within the rule concerning records of *Nisi prius*, the judge being no more than an assistant to the sheriff to whom the writ was directed. *Of executing inquiry before a judge of assise.*

Promissory note, &c. must be proved on writ of inquiry.

If the action be on a promissory note or bill of exchange, the letting judgment go by default is not such an admittance of the note or bill, as to render the proof of them unnecessary; on the contrary they must be proved on executing the writ of inquiry. *Barnes* 233. but *Gould* J. C. P. upon judgment by default, in an action upon a promissory note of hand, or bill of exchange, the sum due thereon, is admitted, and need not be proved upon the execution of the writ of inquiry, 3 *Wils. Rep.* C. B. 165. *H. 11 Geo. 3. A. D. 1771. Anon.*

Irregularities cured by defence.

Irregularity in the notice, &c. is cured by the defendant's making a defence on executing the writ of inquiry. *Barnes* 233, 413.

After defence made on executing a writ of inquiry, defendant cannot take advantage of mistake in declaration. 2 *Wils.* 380.

Inquiries set aside.

Inquiries have been set aside for excessive damages, and where the sheriff has admitted improper evidence to lessen damages.

Inquisition taken before two under sheriffs extraordinary, set aside. 2 *Wils.* 378.

Motion to set aside inquisition may be made on the sixth day in term, after inquiry returnable, if final judgment be not before signed. 2 *Wils.* 379.

A writ of inquiry of damages.

Writ of inquiry.

GEORGE the third, by the grace of God, of Great Britain, France, and Ireland, king, defender of the faith, &c. To the sheriff

sheriff of *Middlesex*, greeting. Whereas *B.* *C.* late of *S.* in your county, gentleman, was attached to be in our court before our justices at *Westminster*, to answer *D. E.* in a plea, wherefore whereas the said *B.* on the tenth day of *March* in the _____ year of our reign, at *Westminster* in the county of *Middlesex*, &c. [*as in the declaration to*] to the damage of the said *D.* of fifty pounds, as he saith; and it was in such manner proceeded in our said court, that the said *D.* ought to recover against the said *B.* his damages, by occasion of the not performing the said promises and undertakings (*or by occasion of the premisses, by occasion of the said trespass, trespass and assault, breach of the covenant, or the like, as the action is.*) But because it is unknown what damages the said *D.* has sustained by occasion of the premisses, we command you, that by the oath of twelve good and lawful men of your county (*if in London, say, of your bailiwick*) you diligently inquire what damages the said *D.* hath sustained as well by occasion of the premisses, as for his costs and charges by him about his suit in this behalf expended; and the inquisition which you shall make thereof make appear to our justices at *Westminster*, on the morrow of the ascension of our Lord, under your seal, and the seals of them by whose oath you shall make that inquisition; and have you there the names of them by whose oath you shall make that inquisition, and this writ. Wit-
ness

ness * Sir *William De Grey*, knight, at
Westminster, the day of
 in the seventh year of our reign.

Cooke.

If the action be at the suit of an attorney of the court, the writ of inquiry is in this form :

*The form
 when at the
 suit of an at-
 torney.*

GEORGE the third, &c. To, &c.
 Whereas C. V. was attached by our writ of privilege issuing out of our court here, to be before our justices at *Westminster*, to answer S. O. gentleman, one of the attornies of our court of the bench, according to the liberties and privileges of the same court, for such attornies and other ministers of the same bench, time out of mind used and approved in the same; for that, *to wit*, That whereas the said S. on the day of, &c. (*setting forth the declaration to*) to the damage of the said C. of twenty pounds, as is said; and it was in such manner proceeded in our said court, That, &c. (*as before, making the writ returnable on a day certain, as on Monday next after fifteen days of Easter, and not on a general return day.*)

* A writ of inquiry in this court was tested *Philip lord Hardwick*, instead of *Sir John Willes*; on writ of error brought, it was held this was no good cause of error, and judgment was affirmed. *Andr.* 74. 2 *Str.* 1080. Whether writ be not sufficient without adding day or year, after the name of the chief justice, in the *teste*. See *Barnes* 425, 426.

If an attorney be defendant, the form is thus: *When against an attorney.*

GEORGE the third, &c. To, &c.
Whereas *D. W.* by *W. T.* his attorney, came into our court before our justices at *Westminster*, and exhibited to our said justices his bill against *T. P.* gentleman, one of the attornies of our court of the bench, present in our said court, in his proper person, for that, &c. (*as before*) and the writ to be returnable on a day certain.

Writs of inquiry are to be signed by the prothonotary before they are sealed.

If your witnessess will not voluntarily attend, you may have a *Subpœna* for them in this form:

GEORGE the third, by the grace of God, of *Great Britain, France, and Ireland*, king, defender of the faith, &c. To *A. B. C. D. E. F.* and *G. H.* greeting. We command you, and each of you, firmly injoining, that all other matters laid aside, and notwithstanding any excuse, you be in your proper persons before the sheriff of *Middlesex*, at the *Court-House* at *Westminster*, on the _____ day of _____ at eleven of the clock in the forenoon of the same day, to testify the truth in a certain matter of controversy depending in our court before our justices of the bench, between *K. J.* plaintiff, and *S. H.* defendant, in a plea of trespass on the case; and this you are not to omit under the penalty of one hundred pounds. Witness Sir *William De Grey*, knight, at *Westminster*,
Subpœna ad testif. on a writ of inquiry.

Westminster, the twelfth day of *May* in the seventh year of our reign.

Cooke.

When the writ is signed and sealed, you make out tickets for the witnesses to the following effect, *viz.*

Mr. ———

By virtue of a writ of *Subpœna* to you directed, and herewith shewn unto you, you are personally to be and appear before ——— our sheriff of the county of ——— or his under sheriff on ——— the ——— day of ——— at ten o'clock in the forenoon of the same day, at the house of ——— the sign of the *King's Arms*, in ——— in the said county, then and there to testify the truth, according to your knowledge, upon a writ of inquiry of damages, to be then and there executed in a certain cause now depending between ——— plaintiff and ——— defendant, in a plea of ——— on the part of the plaintiff. And this you are not to omit upon pain of 100*l.* Dated the ——— day of ——— in the eighteenth year of the reign of our sovereign lord *George* the third, by the grace of God of *Great Britain, France, and Ireland*, king, defender of the faith, and so forth, and in the year of our Lord 1778.

By the court.

When the writ of inquiry is returned by the sheriff, you get the inquisition stamped with a double half-crown stamp, and then
carry

carry it to the prothonotary to tax your costs, and after that, you deliver it to the clerk of the judgments to enter up final judgment on the roll.

Where final judgments shall be signed on inquisitions upon writs of inquiry, the inquisition shall be immediately left with the clerk of the judgments of the respective prothonotary, and shall not afterwards be taken out of the office without leave of the court. *Trin. 29 Car. 2. Trin. 13 Geo. 2.*

On signing judgment, the inquisition to be left with the clerk of the judgments.

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

If inquiry not executed according to notice, deft. to have costs.

Of bringing in rolls and docketing the rolls.

EVERY attorney that shall receive any roll, either plea or common, from the respective prothonotaries of this court, shall sign and set his name to such prothonotary's book, from whom he shall receive the same; and no prothonotary shall deliver any roll but to the proper hand of some known attorney or clerk of their respective offices. *Pas. 34 Car. 2.*

Attorney on receiving roll from prothonotary's office to sign the book.

Rolls not to be carried into the country.

No attorney shall carry any rolls of this court into the country. *Pas.* 12 *Jac.* 1. *Mich.* 1649. *Mich.* 1654. *Pas.* 34 *Car.* 2.

When attornies are to bring in their rolls. Easter term.

Every attorney of this court, that shall receive any roll or rolls as aforesaid, plea or common, of any *Easter* term, shall bring the same into the office from whence he received it on or before the first day of the next *Trinity* term.

Trinity.

And the rolls received of any *Trinity* term shall be brought into such office on or before the feast-day of *St. Michael* the archangel next ensuing the said term.

Michaelmas.

And the rolls received of any *Michaelmas* term shall be brought into such office on or before the sixth day of *January* next ensuing.

Hilary.

And the rolls received of any *Hilary* term shall be brought into such office by the space of four days before the feast of *Easter* next after the said term. *Pasch.* 34 *Car.* 2.

Caret paper.

The prothonotaries, on delivering the common rolls to the clerk of the warrants, are also to deliver a note of the rolls that are wanting; the same note to be subscribed by the clerk of the warrants, and redelivered to the prothonotary; and the clerk of the warrants, on delivering over the common rolls to the clerk of the effoins, is to take the like note from the clerk of the effoins of the rolls wanting. *Mich.* 1654.

No post rolls to be delivered to attornies.

The clerk of the effoins shall not deliver out any post rolls, or other rolls of this court, to any attorney or clerk of this court, but to the respective prothonotaries and other officers

cers of this court, that have a right to such rolls. *Pasch. 34 Car. 2.*

The several and respective officers of this court shall deliver in all their rolls of *Trinity, Michaelmas, and Hilary* term, to the clerk of the effoins, before the effoin-day of the several terms following; and their rolls of *Easter* term upon or before the first day of *Trinity* term following; and the officer, who shall not bring or send in all his rolls of the said several terms at the times aforesaid, shall pay to the clerk of the effoins, for every roll brought in after *12 d. 6 Jac. 1. Pas. 5 W. & M.*

When the officers are to carry in the rolls to the clerk of the effoins.

The plea rolls of every term shall be brought in to the clerk of the effoins three weeks after the end of the term following, and, in default thereof, there shall be likewise paid to the clerk of the effoins, for every plea roll brought in after, *12 d. Pas. 5 W. & M.*

The clerk of the effoins shall a fortnight within every term lay before the court an account of what rolls are wanting, that ought to have been brought in according to the said rules, together with the attornies names who took them out of the said offices, that this court may proceed as they shall think fit against such persons as shall not have brought in their rolls according to the said rules. *Trin. 2 Geo. 1.*

The clerk of the effoins to lay before the court an account of what rolls are wanting.

On carrying in your rolls to the prothonotary you are to docket them on the common docket, in the manner as you'll see others, thus:

Of docketing judgments.

Not informed in debt.
Middlesex. West for Burton
Parker for Taylor, } Roll 225.

Says nothing in Case.
M. Same for fame,
 Same for fame, } Same.

Forejudger.
M. Same for *Wace*,
 against
Wilson an attorney, } 342.

Execution by default.
M. Same for fame,
 against
Vanbrugh. administ. } Same.

The prothonotary delivers the rolls over to the clerk of the warrants, who is to inspect the same, and estreat all fines and amer- ciaments against sheriffs and others that he shall find amongst the said rolls, and then to deliver them to the clerk of the effoins, who docketts them, pursuant to the statute of 4 & 5 of *W. & M. c. 20.* then binds them up, and carries them over to the treasury at *West- minster*.

Of executions.

Ca. fa.

1. **A** *Capias ad satisfaciendum* is a writ which issues after a judgment; and by this writ the sheriff is commanded to take
 the

the body of the defendant, and have him in court at the return of the writ to satisfy the plaintiff.

This writ was by the common law only in trespasses, *Quare vi armis*, being direct and wilful wrongs; but now by the statute 25 *Ed.* 3. may issue in other cases. It is deemed a full execution, and in the law sufficient for the whole debt; *corpus humanum non recipit estimationem*; and where the body is taken on a *Capias ad satisfaciendum*, no other execution can be had against the defendant's lands or goods. But in case the defendant dies in execution, by the statute 21 *Jac.* 1. c. 24. the plaintiff, his executors or administrators, may lawfully sue forth execution against the lands and tenements, goods and chattels of the defendant so dying in execution, in like manner as if the deceased defendant had never been taken in execution: In this case the judgment must be revived by *Scire facias*.

If deft. dies in execution, p't. may have execution against the lands or goods.

If two be bound jointly and severally to me, and I sue them jointly, I may have a *Capias* against them both, and the death or escape of one, shall not discharge the other; but I cannot have a *Capias* against the one, and another kind of execution against the other, because though they be two several persons, yet they make but one debtor, when I sue them jointly; but if I sue them severally, I may sever them in their kinds of execution; though if once any satisfaction be had of one, or against the sheriff for an escape

of one, the rest may be relieved upon an *Audita querela*. Hob. 59.

Fi. fa.

2. A *Fieri facias* is a writ which commands the sheriff to levy the debt or damages and costs recovered by a judgment of the goods of the defendant, and to have the same in court at the return of the writ to satisfy the plaintiff.

Where executed after defendant's death.

3 Danv. 319. pl. 8.

If only part levied, Ca. fa. or Elegit for residue.

If after this writ is sued out, and before it is executed, the defendant dies, it may be executed on his goods in the hands of his executors or administrators.

If only part of the debt or damages be levied, the plaintiff may have a *Ca. fa.* or *Elegit* for the residue. Hob. 57, 58.

After *Fi. fa.* executed, and thereby part of the debt and costs levied; plaintiff before return irregularly sued out a *Test. Fi. Fa.* and under it levied the residue. Court of C. P. set aside the *Test.* and ordered restitution and costs. *Barnes* 213.

Where *Fi. fa.* not returned, continuances entered on the roll, not sufficient, to support *Ca. fa.* on old warrant of attorney, not revived, and *Ca. fa.* set aside with costs, and *Supersedeas* awarded to discharge defendant.

Defendant arrested by *Ca. fa.* pays the money to the sheriff's officer; at the return, sheriff returns that *Fi. fa.* against the goods of the plaintiff in *Ca. fa.* at suit of defendant therein was delivered to him, and that he levied the money in *Fi. fa.* out of the cash received on *Ca. fa.* return held insufficient, and sheriff ordered to pay money levied

levied under *Ca. fa.* to plaintiff therein, deducting poundage. *Barnes* 214.

3. *Elegit*; this writ is given by the statute *Elegit. of W. 2. 13 Ed. 1. c. 18.* And by this writ the sheriff is to deliver to the plaintiff all the chattels of the defendant, except his oxen and the beasts of his plow, and one half of his land, to hold until the debt or damages, and costs recovered, be satisfied, upon a reasonable price or extent.

If on an *Elegit* only goods be levied, and these not sufficient to satisfy the judgment, the plaintiff may have a *Capias* for the residue, it being in effect but a *Fieri facias*. *Hob. 58.*

If I take out a *Ca. fa.* or *Fi. fa.* and they take no effect, I may have one of them after another, or an *Elegit* after both, if they fail. *Hob. 57.*

If the judgment be on a bond with a penalty, the plaintiff may, as far as the penalty will extend, levy the poundage payable to the sheriff, and all incident charges of the execution. *Barnes. 198.*

If execution be not sued out within a year, the judgment must be revived by *Scire facias*. *Barnes 197. 206. but see 210.*

But on a rule to shew cause, why a *Fieri facias* should not be set aside, the judgment being above a year old, and not revived by *Scire facias*, nor any continuances of a *Fieri facias* entered on record; the plaintiff having, before cause shewn, entered the continuances, and producing intervening writs of *Fieri facias*

cias to warrant the same, the rule was discharged.

Of Testatum Executions. In case of a *Testatum fieri facias* or *Ca. sa.* the court will not go into a nice inquiry when the *Fieri facias*, or *Ca. sa.* into the original county to warrant the *Testatum*, was sued out; it is sufficient if the first *Fieri facias*, or *Ca. sa.* returned be produced. *Barnes* 211.

Of execution pending debt on the judgment. If the plaintiff hath brought an action of debt on the judgment, he cannot take out an execution of that judgment, until he hath discontinued the action of debt. *Barnes* 208.

After execution executed the court cannot inquire into the Quantum of debt and costs. It hath been held, that after execution executed, though the judgment be for a penalty, the court cannot refer to the prothonotary to inquire what is due for principal, interest, and costs; and what is levied in order to make restitution of the surplus, without consent of the plaintiff; but the defendant must apply for relief to a court of equity. *Barnes* 204.

Capias ad satisfaciendum in debt.

Ca. sa. indibt. *GEORGE* the third, by the grace of God, of *Great Britain, France, and Ireland*, king, defender of the faith, &c. To the sheriffs of *London*, greeting. We command you, that ye take *W. B.* late of *London*, cabinet-maker, otherwise called *W. B.* late of the parish of _____ in the county of *Middlesex*, cabinet-maker, if he be found in your bailiwick, and keep him safely, so that you may have

Signing
Seal
Duty

s. d.
0 4
0 7
3 0
—
2 11

have his body before our justices at *Westminster* on the morrow of the holy *Trinity*, to satisfy *R. R.* as well of a certain debt of fifty pounds, which the said *R.* in our court before our justices at *Westminster* recovered against him, as of sixty-three shillings, which in our said court were adjudged to the said *R.* for his damages, which he had by occasion of the detaining that debt, whereof the said *W.* is convicted; and have there this writ. Witnesses Sir *William De Grey*, knight, at *Westminster*, the day of in the seventh year of our reign.

To satisfy *R. R.* of fifty pounds, which *Trespass on the* were adjudged to the said *R.* in our said *case.* court, before our justices at *Westminster*, for his damages which he sustained by occasion of a certain trespass on the case done to the said *R.* by the said *W.* at *S.* in your county, whereof he is convicted; and have you there this writ. Witness, &c.

For his damages which he had by occasion of the not performing certain promises *Trespass on the* and undertakings made to the said *R.* by the *case sur as-* said *W.* at *W.* in your county; whereof, &c. *sumpit.*

For his damages which he had by occasion of the not performing a covenant made be- *Breach of co-* tween the said *W.* and the said *R.* according *venant.* to the force, form and effect of certain indentures [or articles] made between them; whereof, &c.

For his damages which he sustained by occasion of a certain trespass and assault, made *Trespass and* on the said *R.* by the said *W.* with force and *assault.*

arms, and against our peace, at *W.* in your county; whereof, &c.

Trespafs.

For his damages which he sustained by occasion of a certain trespass done to the said *R.* by the said *W.* with force and arms, and against our peace, at *L.* in your county; whereof, &c.

*In ejectment
for damages.*

For his damages which he sustained by occasion of a certain trespass and ejectment of a farm done to the said *R.* by the said *W.* with force and arms, and against our peace, at *L.* in your county; whereof, &c.

Replevin.

For his damages which he had by occasion of the taking and unjustly detaining the cattle of the said *R.* at *W.* in a certain place called the *H.* in your county; whereof, &c.

Words.

For his damages which he had by occasion of the speaking and publishing certain false and scandalous words by the said *W.* of the said *R.* at *B.* in your county; whereof, &c.

*Testatum Ca.
fa.*

Signing ^{s.} ^{d.}
o 8

If you make out a *Testatum Ca. fa.* you are to write as before, to [whereof he is convicted *inclusive*] and after those words you are to proceed thus; and whereupon our sheriff of *N.* [*the sheriff to whom the first Ca. fa. was directed*] sent to our justices at *Westminster* at a certain day now past, that the said *W.* was not found in his bailiwick, whereas it is testified in our said court, that he lurketh and secreteth himself in your county; and have there, &c.

*Ca. fa. est. r
a Sci. fa.*

If it be after a *Sci. fa.* then after the words [whereof he is convicted] say, and whereupon it is considered in our said court, that the aforesaid *R.* have his execution against
the

the aforesaid *W.* of the debt and damages aforesaid, by the default of the said *W.* and have there, &c.

GEORGE the third, by the grace of *A Testatum*
God, of *Great Britain, France, and Ireland,* *Ca. fa. after*
king, defender of the faith, &c. To the *a Sci. fa: by*
sheriff of *S.* greeting. We command you, *an administ.*
that you take *V. C.* late of, &c. if he be *durante mino-*
found in your bailiwick, and keep him safely, *ritate execu-*
so that you may have his body before our ju- *toris of an*
stices at *Westminster* on the octave of the holy *executor,*
Trinity to satisfy *J. F.* administrator of the
goods and chattels which were of *B. F.* du-
ring the minority of *W. F.* executor of the
testament and last will of the said *B.* late ex-
ecutor of the testament and last will of *W. B.*
deceased, as well of a certain debt of sixty
pounds, which the aforesaid *B.* lately in our
court before our justices at *Westminster* reco-
vered against the said *V.* as of fifteen pounds,
which in our said court were adjudged to the
said *B.* for his damages which he had by oc-
casion of the detaining that debt whereof the
said *V.* is convicted; and whereupon it is
considered in our said court, that the afore-
said *J.* have his execution against the said *V.* *Sci. fa'.*
of the debt and damages aforesaid, by the
default of the said *V.* And whereupon our
sheriffs of our city of *Exeter* have returned to
our justices at *Westminster* at a certain day now *Testatum.*
past, that the aforesaid *V.* is not found in
their bailiwick, whereas it is testified in our
said court, that the said *V.* lurketh and se-
creteth

creteth himself in your county; and have there this writ. Witness, &c.

Testatum Ca. *fa. for the residue after a Fi. fa. in debt.* GEORGE the third, by the grace of God, of Great Britain, France, and Ireland, king, defender of the faith, &c. To the sheriff of *Lincoln*, greeting. We command you, that you take *W. G.* late of *S.* in the county of *Leicester*, gentleman, otherwise called *W. G.* of *S.* in the county of *Leicester*, gentlemen, if he shall be found in your bailiwick, and keep him safely, so that you may have his body before our justices at *Westminster* in fifteen days from the day of Saint *Martin*, to satisfy *W. R.* gentleman, of eighteen pounds nine shillings and one penny, parcel of a certain debt and damages, *to wit*, of a certain debt of forty pounds, which the said *W. R.* in our court before our justices at *Westminster* recovered against him, and of forty shillings which in your said court were adjudged to the said *W. R.* for his damages which he had by occasion of the detaining that debt whereof the said *W. G.* is convicted, of which said debt and damages twenty-three pounds ten shillings and eleven pence, other parcel, by virtue of our writ thereupon were lately made and levied of the goods and chattles of the said *W. G.* And whereupon our sheriff of *N.* sent to our justices at *Westminster* at a certain day now past, that the said *W. G.* is not found in his bailiwick, whereas it is testified in our said court, that the said *W. G.* lieth hid, wandereth and sculketh in
your

Testatur.

your county; and have there this writ.
Witness, &c.

GEORGE the third, &c. To, &c. *Ca. sa. against*
greeting. We command you, that you take *two where*
W. A. late of, &c. and *W. S.* late of, &c. if *several da-*
they be found in your bailiwick, so that you *mages by in-*
may have their bodies before our justices at *quiry in tres-*
Westminster, on *pass and as-*
to wit, fault.

to the said *W. A.* to satisfy *R. B.* of twenty
pounds, and the said *W. S.* to satisfy the said
R. B. of forty pounds, for his several damages
which the said *R.* sustained by occasion of a
certain assault, beating, wounding and ill
treatment made on the said *R.* by the said *W.*
and *W.* and against our peace with force and
arms, at *B.* in your county, as is found by
a certain inquisition of the country of your
county taken between them; and also the
said *W.* and *W.* to satisfy the said *R.* of se-
venteen pounds which were adjudged to the
said *R.* in our said court, for his costs and
charges which he sustained by occasion of the
premises; whereof they are convicted; and
have there, &c.

To satisfy *C. D.* late of, &c. esq; of nine *Upon a nonsuit*
pounds and ten shillings, which in our court *in debt.*
before our justices at *Westminster*, by the dis-
cretion of the said justices, according to the
form of the statute in that case made and pro-
vided, were adjudged to the said *C.* for his
costs and charges which he sustained, for that
the said *E. T.* did not prosecute his writ by
him the said *E.* obtained in our said court
against the said *C.* in a certain plea of debt
upon

upon demand for forty pounds, whereof the said *E.* is convicted; and there, &c.

If in case, say, — in a certain plea of trespass on the case.

In trespass, — in a certain plea of trespass.

In ejectment, — in a certain plea of trespass and ejectment of farm; *et sic de cæteris.*

*A Testatum
Ca. sa. of privilege for an
attorney
against an attorney, in
debt.*

GEORGE the third, by the grace of God, of *Great Britain, France, and Ireland,* king, defender of the faith, &c. To the sheriff of *L.* greeting. Attach *L. R.* gentleman, one of the attornies of our court of the bench, otherwise called *L. R.* of, &c. so that you may have him before our justices at *Westminster* on *Wednesday* next after the morrow of *All Souls*, to satisfy *J. S.* gentleman, another attorney of our court of the bench, as well of a certain debt of sixty pounds, which the said *J.* in our court before our justices at *Westminster* recovered against him, as of fourteen pounds and ten shillings which were adjudged to the said *J.* in our said court, for his damages which he had by occasion of the detaining that debt, whereof the said *L.* is convicted; and whereupon our sheriff of *M.* sent to our justices at *Westminster* at a certain day now past, that the said *L.* was not found in his bailiwick, whereas it was testified in our said court, that he lurketh and secreteth himself in your county; and have there this writ. Witness, &c.

Testatum.

GEORGE

GEORGE the third, by the grace of *A Testatum*
 God, of *Great Britain, France, and Ireland,* *Ca. fa. by a*
 king, defender of the faith, &c. To the she- *surviving*
 riffs of *N.* greeting. Attach *W. T.* gentle- *plaintiff*
 man, one of the attornies of our court of the *against an at-*
 bench, otherwise called *W. T.* of, &c. so that *torney, in*
 you may have him before our justices at *West-*
minster on *next after*

to satisfy *V. D.* as well of
 a certain debt of five hundred pounds, which
 the said *V. D.* and one *T. J.* now deceased, in
 our court before our justices at *Westminster* re-
 covered against him, as of nine pounds which
 in our said court were adjudged to the said
V. and *T.* for their damages which they had
 by occasion of the detaining that debt, where-
 of the said *W.* is convicted; and whereupon
 it is considered in our said court, that he the *Sci. fa.*
 said *V.* have execution against the said *W.* of
 the debt and damages aforesaid, by the de-
 fault of the said *W.* And whereupon our she- *Testatum.*
 riffs of *London* sent to our justices at *Westmin-*
ster on a certain day now past, that the said
W. was not found in their bailiwick, whereas
 it is testified in our said court, that the said
W. lurketh and secreteth himself in your
 county; and have there this writ. Witness,
 &c.

GEORGE the third, by the grace of *Testatum Ca.*
 God, of *Great Britain, France, and Ireland,* *fa. against*
 king, defender of the faith, &c. To the she- *bail after*
 riff of *Surry,* greeting. Whereas we lately *Nulla Bona*
 commanded our sheriff of *Middlesex,* that he *returned on a*
 should cause to be made of the lands and *Fi. fa'.*
 chattels *Recital of Fi.*
fa.

chattels in his bailiwick of *T. S.* late of, &c. thirty-eight pounds; and of the lands and chattels in his bailiwick of *F. F.* late of, &c. other thirty-eight pounds; and of the lands and chattels in his bailiwick of *T. P.* late of, &c. other thirty-eight pounds. Which said several sums of thirty-eight pounds each of them the said *T. S. F.* and *T. P.* heretofore, *to wit*, in the term of the Holy *Trinity* in the year of our reign, before Sir *Robert Eyre*, knight, and his companions, then our justices of the bench at *Westminster*, severally acknowledged themselves to owe to *E. P.* and *W. F.* to be made of their lands and chattels, and to the use and behoof of the said *E. P.* and *W. F.* to be levied; which said recognizance in that same term at *Westminster* aforesaid is intolled, as by the said record and proceedings thereon in our same court before our said justices at *Westminster* aforesaid remaining manifestly appears; and that he should have that money before our said justices at *Westminster* from the day of *Easter* in fifteen days last past, to render to the said *E.* and *W.* for the several sums of money aforesaid, according to the form of the said recognizance whereof they are convicted; and whereupon it is considered in our said court, that the said *E.* and *W.* should have their execution against the aforesaid *T. S. F.* and *T. P.* of the said several sums of thirty-eight pounds by them in form aforesaid acknowledged, by the default of them the said *T. S. F.* and *T. P.* And whereupon our sheriff of *Middlesex* at that day sent to our said justices at *Westminster*,

Return.

minister, that the said *T. S. F.* and *T. P.* had not, nor had any one of them any lands or chattels in his bailiwick, whereof he was able to make the said several sums of 38*l.* 38*l.* and 38*l.* or any part thereof: We therefore command you, that you take the said *T. S. F.* and *T. P.* if they may be found in your bailiwick, and keep them safely, so that you may have their bodies before our justices at *Westminster* on the morrow of the Holy *Trinity*, to satisfy the aforesaid *E.* and *W.* of the said several sums of thirty-eight pounds, according to the form of the said recognizance, whereof they are convicted; and whereupon our said sheriff of *Middlesex* sent to our said justices at *Westminster* from the day of *Easter* in five weeks last past, that the aforesaid *T. S. F.* and *T. P.* were not, nor was any one of them found in his bailiwick, whereas it is testified in our said court, that they lurk and secrete themselves in your county; and have there, &c.

Testatum.

GEORGE the third, by the grace of God, of *Great Britain, France, and Ireland*, king, defender of the faith, &c. To the sheriff of *D.* greeting. Whereas we lately by our writ commanded our sheriff of *M.* that of the goods and chattels in his bailiwick, which were of *S. V.* late of, &c. at the time of his death, in the hands of *V. C.* gentleman, late of, &c. executor of the testament and last will of the said *S.* he should cause to be made as well a certain debt of five hundred pounds, which *W. W.* in our court before our justices

Testatum Ca.
sa. against an
executor after
a Devastavit
and Nul aBo-
na returned.

at

at *Westminster* recovered against the said *V. C.* as also eighteen pounds which in our said court were adjudged to the said *W.* for his damages which he had by occasion of the detaining that debt, if the said *V.* had so much in his hands to be administered; and if he had not, then the said damages to be levied of the proper goods and chattels of the said *V.* and should have that money before our justices at *Westminster* on the morrow of the Purification of the blessed *Mary* last past, to render to the said *W.* for his debt and damages aforesaid, whereof he is convicted; and our said sheriff of *M.* at that day sent to our said justices at *Westminster*, that the said *V. C.* had before the coming of the said writ sold and wasted diverse goods and chattels which were of the said *S. V.* at the time of his death, to the value of the debt and damages aforesaid, and had converted the money arising therefrom to his own proper use, so that he could not levy, or cause to be made the said debt and damages of the goods and chattels of the said *S. V.* And the said *V. C.* had no goods or chattels of his own proper goods and chattels in his bailiwick, whereof he could cause to be made the said damages, or any part thereof, as by that writ he was commanded; therefore we command you, that you take the said *V. C.* if he may be found in your bailiwick, and keep him safely, so that you may have his body before our justices at *Westminster* on the morrow of the Ascension of our Lord, to satisfy the said *W.* of the debt and damages aforesaid; and whereupon our
 sheriff

sheriff of *M.* from the day of *Easter* in fif- Tellatum.
teen days last past sent to our justices at
Westminster, that the said *V. C.* was not found
in his bailiwick, whereas it is testified in our
said court, that the said *V. C.* lurketh and
secreteth himself in your county; and have
there this writ. *Witness, &c.*

GEORGE the third, *&c.* to the sheriff Ca. sa. for
of *K.* greeting. Whereas we lately by our damages
writ commanded you, that of the goods and against an ex-
chattels in your bailiwick, which were of *N.* ecutrix after
R. deceased, at the time of his death, being Nulla bona
in the hands of *M. R.* late of *N.* in your propria re-
county, widow, executrix of the testament turned.
and last will of the said *N.* to be administer'd,
you shall cause to be made thirty-four pounds,
which in our court, before our justices at
Westminster, were adjudged to *R. B.* for his
damages which he sustained by occasion of
the not performing certain promises and un-
dertakings made to the said *R.* by the said *N.*
in his life-time at *M.* in your county, if the
said *M.* had so much thereof in her hands to
be administered; and if she had not, then
fourteen pounds and ten shillings of the da-
mages aforesaid to be levied of the proper
goods and chattels of the said *M.* and should
have that money before our justices at *West-*
minster from the day of the Holy *Trinity* in
three weeks last past, to render to the said *R.*
for his damages aforesaid, whereof she is con-
victed; and you at that day sent to our said
justices at *Westminster*, that the said *M.* had
no goods nor chattels in your bailiwick which
VOL. I. T were

were of the said *N.* at the time of his death, whereof you could cause to be made the said damages, or any penny thereof, nor any of her own proper goods or chattels in your said bailiwick, whereof you could cause to be made the said fourteen pounds and ten shillings of damages aforesaid, or any penny thereof; we therefore command you, that you take the said *M.* if she may be found in your bailiwick, and keep her safely, so that you may have her body before our justices at *Westminster* from the day of _____ to satisfy the said *R.* of the said fourteen pounds and ten shillings of damages aforesaid; and have there this writ. Witness, &c.

Ca. fa. in case
at the suit of
an executrix.

GEORGE the third, &c. To the sheriffs of *London*, greeting. We command you, that you take *M. G.* late of *L.* widow, if she shall be found in your bailiwick, and her safely keep, so that you may have her body before our justices at *Westminster*

to satisfy *E. K.* executrix of the testament and last will of *G. K.* her late husband deceased, of one hundred and seventeen pounds and ten shillings, which to the said *E.* in our court before our justices at *Westminster*, were adjudged for the damages of the said *G.* which he sustained by reason of not performing certain promises and undertakings made by the said *M.* to the said *G.* in his life-time at *L.* aforesaid in the parish of *St. Mary Le Bow* in the ward of *Cheap*, whereof the said *M.* is convicted; and whereupon it was considered in our same court, that the damages

Sci. fa. on
Stat. 8 & 9
W. 3. c.

damages aforesaid by him the said G. sustained by occasion of not performing the promises and undertakings aforesaid, should be assessed and adjudged to the said E. according to the form of the statute in that case made and provided, by default. Witness, &c.

GEORGE the third, by the grace of *A Fieri facias* God, of *Great Britain, France, and Ireland, in debt.* king, defender of the faith, &c. To the sheriff of *Lincoln*, greeting. We command you, that you cause to be made of the goods and chattels in your bailiwick of *B. C.* late of, &c. as well a certain debt of 20*l.* which *D. E.* in our court, before our justices at *Westminster* recovered against him, as sixty shillings which were adjudged to the said *D.* in our said court, for his damages which he had by occasion of the detaining that debt; and have that money before our justices at *Westminster* on the morrow of the Ascension of our Lord, to render to the said *D.* for his debt and damages aforesaid, whereof the said *B.* is convicted; and have there this writ. Witness Sir *John Eardley Wilmot*, knight, at *Westminster*, the day of, &c.

For varying the *Fieri facias* according to the nature of the action, the directions before given, *fol.* &c. for making out the *Capias ad satisfaciendum*, will serve.

In a *Testatum fieri facias*, after the words *Testatum Fi.* [*whereof he is convicted*] say, and whereupon *fa.* our sheriff of *N.* sent to our justices at a cer-

tain day now past, that the said *B.* hath no goods or chattels in his bailiwick, whereof he could cause to be made or levied the said debt and damages, or any part thereof: Whereas it is testified in our said court, that the said *B.* hath sufficient goods and chattels in your county whereof the said debt and damages may be caused to be made and levied; and have there this writ. Witness, &c.

*Fi. fa. against
an administratrix.*

GEORGE the third, &c. To, &c. greeting. We command you, that of the goods and chattels in your bailiwick, which were of *S. H.* deceased, at the time of his death, in the hands of *E. H.* late of, &c. widow, administratrix of the goods and chattels which were of the said *S. H.* to be administered, you cause to be made as well a certain debt of thirty pounds, which *R. F.* gentleman, in our court, before our justices at *Westminster* recovered against her, as ten pounds which in our said court were adjudged to the said *R.* for his damages which he had by occasion of the detaining that debt, if the said *E.* hath so much goods and chattels which were of the aforesaid *S.* at the time of his death in her hands to be administered; and if she hath not, then the damages aforesaid to be levied of the proper goods and chattels of the said *E.* And have that money before our justices at *Westminster* on the morrow of the Holy *Trinity*, to render to the said *R.* for the debt and damages aforesaid whereof she is convicted; and have there this writ. Witness, &c.

GEORGE

GEORGE the third, &c. To, &c. greet-
 ing. We command you, that of the goods
 and chattels in your bailiwick of *J. M.* late of,
 &c. and *E.* his wife, lately called, &c. you
 cause to be made twenty and five pounds and
 ten shillings which in our court, before our
 justices at *Westminster*, were adjudged to *J. J.*
 and *R. R.* for their damages which they sus-
 tained by occasion of the not performing cer-
 tain promises and undertakings to the said *J.*
 and *R.* by the said *E.* when she was sole,
 made at *B.* in the county of *S.* And have
 that money before our justices at *Westminster*
 from the day of the Holy *Trinity* in three
 weeks, to render to the said *J.* and *R.* for
 their damages aforesaid, whereof the said *E.*
 is convicted; and whereupon it is considered
 in our said court, that the said *J.* and *R.* have
 their execution against the said *J. M.* and *E.*
 of the damages aforesaid, by the default of
 the said *J. M.* and *E.* And whereupon our
 sheriff of *S.* at a certain day now past, sent
 to our justices at *Westminster*, that the said
J. M. and *E.* had no goods or chattels in his
 bailiwick, whereof the said damages could
 be made, whereas it is testified in our said
 court, that the said *J. M.* and *E.* have suffi-
 cient goods and chattels in your county,
 whereof the said damages may be made; and
 have there this writ. Witnesses, &c.

Testatum Fi.
 fa. after Sci.
 fa. in case on
 assumpsit upon
 a recovery
 against the
 wife while
 sole.

Sci. fa.'

Testatum.

GEORGE the third, &c. To, &c. We
 command you, that of the goods and chattels
 of *W. C.* late of, &c. otherwise called, &c.
 in your bailiwick, you cause to be made as
 well

Fi. fa. on a
 judgment by a
 feme execu-
 trix while
 sole, where-
 upon execution

is awarded on a Sci. fa. at the suit of the husband and wife.

well a certain debt of one hundred and sixty pounds, which *E. W.* widow, executrix of the testament and last will of *S. W.* deceased, in our court, before our justices at *Westminster* recovered against him, as sixty shillings, which to the said *E.* in our said court were adjudged for her damages, which she had by occasion of the detaining that debt; and have that money before our justices at *Westminster* on the octave of the Purification of the blessed Virgin *Mary*, to render to *R. W.* whom the said *E.* married after the said judgment was given, and to the said *E.* for the debt and damages aforesaid, whereof the said *W.* is convicted; and whereupon in our said court before our justices at *Westminster* it is considered that the said *R.* and *E.* have execution against the said *W.* of the debt and damages aforesaid, by the default of the said *W.* And have there this writ. Witness, &c.

Sci. fa.'

A Fieri facias against bail after Sci. fa.'

GEORGE the third, by the grace of God, of *Great Britain, France, and Ireland*, king, defender of the faith, &c. To the Sheriff of *Middlesex*; greeting. We command you, that you cause to be made of the lands and chattels in your bailiwick of *T. S.* late, &c. gentleman, thirty-eight pounds; and of the lands and chattels in your bailiwick of *F. F.* late, &c. smith, other thirty-eight pounds; and of the lands and chattels in your bailiwick of *T. P.* late of, &c. other thirty-eight pounds. Which said several sums of thirty-eight pounds each of them the said *T. S. F.* and *T. P.* heretofore, *to wit*, in the term of the

the Holy Trinity in the year
of our reign; before Sir Robert Eyre, knight,
and his companions, then our justices of the
bench at *Westminster*, severally acknowledged
themselves to owe to *E. P.* and *W. F.* to be
made of their lands and chattels, and to the
use and behoof of the said *E. P.* and *W. F.*
to be levied; which said recognizance in that
same term at *Westminster* aforesaid is inrolled,
as by the said record and proceedings there-
on in our said court before our justices afore-
said remaining manifestly appeareth; and
have that money before our said justices at
Westminster from the said day of *Easter* in fif-
teen days, to render to the said *E.* and *W.*
for the debt aforesaid, according to the form
of the said recognizance, whereof they are
convicted; and whereupon it is considered in *Sci. fa.*
our said court, that the said *E.* and *W.* have
execution against the aforesaid *T. S. F.* and
T. P. of the said several sums of thirty-eight
pounds by them in form aforesaid acknow-
ledged, by the default of them the said *T. S.*
F. and *T. P.* And have there this writ. Wit-
ness, &c.

And hereupon the said [*plaintiff*] prayeth *Award of Fi;*
the writ of our lord the king to be directed *fa. and conti-*
to the sheriff of the county aforesaid, to le- *nuances.*
vy the said hundred pounds of the goods
and chattels of the said [*defendant*] for the da-
mages aforesaid. And it is granted to him
returnable here [*the return*] at which day
comes here the said [*plaintiff*] by his attor-
ney aforesaid. And the sheriff hath not sent
the said writ; therefore let another writ be

made to him in form aforesaid, &c. returnable here [*the return*]: at which day [*ut supra*.]

Fi. fa. in debt after Sci. fa. for executors on judgment recovered by testator.

GEORGE the third, &c. To the sheriff of *B.* greeting. We command you, that of the goods and chattels of *J. B.* late of *C. W.* in your county, innholder, otherwise called, &c. you cause to be levied as well a certain debt of 500*l.* which *J. D.* in our court before our justices at *Westminster* recovered against him, as 50*s.* which to the said *J. D.* in our said court were adjudged for his damages which he had sustained by reason of detaining that debt. And have you there that money before our justices at *Westminster* from the day of *St. Michael* in three weeks, to render to *W. C.* and *T. B.* executors of the testament and last will of the said *J. D.* for the debt and damages aforesaid. And whereupon it is considered in our said court, that the aforesaid *W.* and *T.* have execution against the said *J. B.* of the debt and damages aforesaid, by the default of the said *J. B.* whereof he is convicted; and have you there this writ. Witness, &c.

The first *Fieri facias* must be directed to the sheriff of the county where the action was laid; and on a return of *Nulla bona* you may have execution into any other county you shall think proper.

Elegit in debt. *GEORGE* the third, &c. To, &c. greeting. Whereas *E. F.* lately in our court before

fore our justices at *Westminster*, by the consideration of the said court, recovered against *B. C.* late of, &c. as well a certain debt of fifty pounds, as ten shillings, which in our said court were adjudged to the said *E.* for his damages which he had by occasion of the detaining that debt, whereof the said *B.* is convicted. The said *E.* afterwards came into our said court, and by the statute in that case made and provided chose to have delivered to him all the goods and chattels of the said *B.* except his oxen and the beasts of his plow, and also a moiety of all his lands and tenements in your bailiwick, to hold to him the goods and chattels aforesaid, as his own proper goods and chattels; and also to hold the said moiety as his freehold to him and his assigns, according to the form of the said statute, until the said debt and damages shall be thereof levied; and therefore we command you, that all the said goods and chattels of the said *B.* except the oxen and beasts of his plow, and also a moiety of all his lands and tenements in your bailiwick, whereof the said *B.* on the octave of *St. Hilary* in the

year of our reign, on which day the said judgment was given, or at any time after, was seised, you cause to be delivered by a reasonable price and extent, to hold to him the said goods and chattels as his own proper goods and chattels; and to hold the said moiety as his freehold to him and his assigns, according to the form of the said statute, until the debt and damages aforesaid shall be thereof levied; and in what manner you shall

execute

execute this writ make appear to our justices at *Westminster*, on the morrow of *All Souls*, under your seal, and the seals of them by whose oath you shall make the said extent and appraisement; and have there this writ. Witnesses, &c.

Elegit in trespass.

GEORGE the third, &c. To, &c. greeting. Whereas *L. R.* lately in our court before our justices at *Westminster*, by the consideration of the said court, recovered against *H. H.* late of, &c. thirty-five pounds, which in our said court were adjudged to the said *L.* for his damages, which he had by occasion of a certain trespass done to the said *L.* by the said *H.* with force and arms against our peace at *W.* in your county, whereof the said *H.* is convicted. The said *L.* afterwards came into our court, &c. [*as before, using the word damages instead of debt and damages.*]

Elegit after a Sci. fa.'

GEORGE the third, &c. To, &c. greeting. Whereas lately in our court before our justices at *Westminster* it was considered that *E. S.* have execution against *H. S.* late of, &c. otherwise called, &c. by the default of the said *H. S.* as well of a certain debt of twenty pounds, which the said *E.* in our court before our justices at *Westminster* recovered against the said *H.* as of fifty shillings, which in our said court were adjudged to the said *E.* for his damages, which he had by occasion of detaining that debt, whereof the said *H.* is convicted. The said *E.* afterwards came, &c. *as before.*

GEORGE

GEORGE the third, &c. To the Sheriff of *Berks*, greeting. Whereas *E. K.* executrix of the testament and last will of *G. K.* her late husband, deceased, lately in our court before our justices at *Westminster*, by the consideration of the same court, recovered against *G. M.* late of *London*, widow, one hundred and seventeen pounds and ten shillings, which in our same court before our justices at *Westminster* aforefaid were adjudged to the said *E.* according to the form of the statute in that case lately made and provided, by the default of the said *M.* for the damages of the said *G.* which he had sustained by occasion of not performing certain promises and undertakings made by the said *M.* to the said *G.* in his life-time, whereof the said *M.* is convicted. And the said *E.* afterwards came into our same court, and by the statute in such case made and provided chose to have delivered to her all the goods and chattels of the said *M.* except the oxen and beasts of her plow. And likewise a moiety of all her lands and tenements in your bailiwick, to hold to her the said *E.* the goods and chattels aforefaid as her own proper goods and chattels, and also to hold the said moiety of the said lands and tenements as her own freehold, to her the said *E.* and her assigns according to the form of the statute aforefaid, until she hath levied the damages aforefaid. And therefore we command you, that without delay you do deliver to the said *E.* by a reasonable price and extent, all the goods and chattels of the said *M.* except the oxen and beasts of her

Elegit on a judgment by Sci. fa. quare damna assideri non debent post mortem querentis port. per executricem.

Stat. 8 & 9 W. 3. c.

her plow. And in like manner the moiety of her lands and tenements in your bailiwick, of which the said *M.* was seized on the octave of Saint *Hilary* in the seventh year of our reign, on which day judgment was thereof given, or at any time afterwards, to hold to her the said *E.* and her assigns according to the form of the statute aforesaid, until she shall have levied thereof the damages aforesaid. And in what manner you shall execute this our writ make manifest to our justices at *Westminster* aforesaid, on the morrow of *All Souls*, under your seal, and the seals of them by whose oath you shall make the extent and appraisement thereof. And have you there this writ. Witness, &c.

May have several Elegits.

A man may award on the roll *Elegits* into as many counties as he pleases, and execute all or any at his pleasure; but it is said, if he awards an *Elegit* into one county, extends the lands upon the writ, and afterwards files it, he is barred, and cannot sue out an *Elegit* into any other county.

Where by inquisition on an *Elegit* it is found that the plaintiff was seized of the lands at the time the judgment was given, upon an ejectment (which must be) brought to recover the possession, the plaintiff need only give in evidence the copy of the judgment, *Elegit* and inquisition thereupon filed, and is not bound to prove the party seized at the time of the judgment; and if he was not seized, it must be proved by the other side.

Of PROCEEDINGS for and against Attornies.

WHERE an attorney is plaintiff, the first process is an attachment of privilege, which is in the following form:

GEORGE the third, &c. To, &c. greet- *Attachment*
ing. Attach *T. R.* so that you may have him *for an attor-*
before our justices at *Westminster* on *Saturday* ^{*ney.*}
next after the morrow of *All Souls*, to answer *Liber. Intrat.*
S. B. gent. one of the attornies of our court *220. k.*
of the bench, according to the liberties and *V. Stat. 13*
privileges of the same court for such attor- *Car. 2. Stat.*
nies and other ministers of the same bench *2. c. 2. l. 4.*
from time out of mind used and approved
in the same, of a plea of trespass [*as the ac-*
tion is] And have you there this writ. Wit-
ness Sir *William De Grey*, knight, at *West-*
minster, the day of
in the year of our reign.

An attorney suing by attachment of privilege and nonsuited, may be taken in execution for the costs on a *Ca. Sa.* returnable on a general return. *3 Wils. 58.*

If the attachment requires bail you must mark the sum sworn to on the back, thus:
——— Affidavit for 42 l. ——— And also the day it is sued out.

You must make out a *Præcipe*, containing *Præcipe to be*
the plaintiff's and defendant's names, not ex- *left with the*
ceeding four in the whole, with the return of *prothonotary*
the *at the time of*

signing the writ.

the writ, day of signing, and the agent's or attorney's name, who sues out the same; this *Præcipe* you must leave with the prothonotary, who without fee or reward is to enter the same on a remembrance roll, to be kept in his office for that purpose; and he is not to sign (a) any attachment of privilege unless such *Præcipe* be left in his office at the time of signing thereof. *Hil. 11 Geo. 2.*

The form of the Præcipe.

Suffolk. Attachment of privilege for S. B. gentleman, one of the attornies, &c. against T. R. Debt.

R. R. Agent, *Ret.* Saturday next after
7 Oct. 1767. *the morrow of All Souls.*
Affidavit for 42 l.

You pay nothing to the prothonotary for signing this writ, and only one penny for the seal.

Of appearing putting in bail thereto.

If the attachment requires only a common appearance, a copy must be served with a notice, as in *fol.* and the appearance must be entered with the prothonotary who signed the writ, and if it requires bail, his clerk of the dockets prepares the bail-piece or recognizance, and attends a judge or the

(a) But the writ is to be first marked by the clerk of the warrants, for which nothing is paid, unless plaintiff is in arrear for termages.

court, when the same is entered into, and the bail justify, or fresh bail is added, in the same manner as the filacer does on mesne process by original.

The declaration at the suit of an attorney begins in this manner:

In the Common Pleas.

Easter term in the seventeenth year of the reign of king George the third.

Middlesex, *P.* B. late of, &c. was attached *Declaration by*
to wit. by a writ of our lord the *an attorney for*
king of privilege, issuing out of the court *fees and dis-*
here to answer *L. R.* gentleman, one of the *bursements.*
attornies of the court of our lord the king of
the bench here, according to the liberties and
privileges of the same court, for such attor-
nies and other ministers of the same bench
time out of mind used and approved in the
same, of a plea of trespass on the case, &c.
And whereupon the said *L.* in his proper per-
son complaineth, that whereas the said *P.* on
the nineteenth day of *December* in the year of
our Lord one thousand seven hundred and
thirty-eight, at the parish of *St. Clement*
Danes in the county of *Middlesex*, was indebt-
ed to the said *L.* in thirty pounds of lawful
money of *Great Britain*, for work and labour
as an attorney and solicitor before that time
done and performed by the said *L.* upon the
retainer, and at the special instance and re-
quest of the said *P.* in and about the prose-
cuting, defending and soliciting diverse cau-
ses,

Quantum me-
ruit thereon.

ses, suits and busineses, and for money laid out, expended and paid by the said *L.* at the like special instance and request of the said *P.* in and about the prosecuting, defending and soliciting of those causes, suits and busineses, and for money due to the said *L.* for his fees due, and of right payable to him in that respect; and being so indebted, he the said *P.* in consideration thereof, afterwards, *to wit,* on the same day and year, at the parish aforesaid in the county aforesaid, undertook, and then and there faithfully promised the said *L.* that he the said *P.* would pay to the said *L.* the said sum of money when he should be thereunto requested. *And whereas* the said *P.* afterwards, *to wit,* on the same day and year, at the parish aforesaid in the county aforesaid, in consideration that the said *L.* upon the retainer of the said *P.* and at his special instance and request, had before that time done and performed other work and labour as an attorney and solicitor in and about other causes, suits and busineses, and laid out, expended and paid other money in and about the prosecuting, defending and soliciting of those causes, suits and busineses last mentioned, undertook, and then and there faithfully promised the said *L.* that he the said *P.* would pay to the said *L.* so much money as he reasonably deserved to have for his last mentioned work and labour; and so much money as he had laid out, expended and paid in and about the prosecuting, defending and soliciting the said last mentioned causes, suits and busineses, and so much money as was
due

due to the said *L.* for his fees due, and of right payable to him in that respect, when he the said *P.* should be thereunto requested. And the said *L.* averreth, that he reasonably deserved of the said *P.* for his said last mentioned work and labour, other thirty pounds of like lawful money, and that he had so laid out, expended and paid in and about the said prosecuting, defending and soliciting the said last mentioned causes, suits, and businesses, other thirty pounds of like lawful money; and that twenty pounds of like lawful money were due to the said *L.* for his fees, due and of right payable to him in that respect, *to wit*, at the parish aforesaid in the county aforesaid, whereof the said *P.* afterwards, that is to say, on the same day and year aforesaid, there had notice. *And whereas also* the aforesaid *P.* afterwards, *to wit*, on the same day and year, at the parish aforesaid in the county aforesaid, was indebted to the said *L.* in fourteen pounds of like lawful money, for the like sum of money by the said *L.* at the special instance and request of the said *P.* before that time expended, laid out, disbursed and paid; and being so indebted, the said *P.* afterwards, *to wit*, on the same day and year at the parish aforesaid in the county aforesaid, in consideration thereof undertook, and to the said *L.* then and there faithfully promised, that he the said *P.* the said fourteen pounds to the said *L.* when he should be thereunto requested, would well and truly pay and content; *Yet* the said *P.* in no wise regarding his said several promises and undertakings

Indeb. as-
lump for mo-
ney laid out.

Breach.

undertakings made in form aforesaid, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said *L.* in this respect, hath not paid to the said *L.* the said several sums of money, or any of them, or any part thereof (although the said *P.* afterwards, *to wit*, on the thirtieth day of *December* in the same year, at the parish aforesaid in the county aforesaid, was requested by the said *L.* so to do) but has hitherto refused, and still doth refuse to pay the same to the said *L.* to the damage of the said *L.* of thirty pounds; and thereof he bringeth suit, &c.

(a) Pledges for prosecuting { *John Doe,*
and
Richard Roe.

Mr. *Rayner*, in his readings on stat. 2 *Geo.* II. chap. 23. sect. 23. hath given the profession a lecture on an action for fees, &c. See *Rayn. Read.* p. 62 to 102, including the previous steps necessary in regard to delivering the bill, before the commencement of the suit.

If an attorney be defendant, a bill must be prepared in the following form, according to the nature of the action.

(a) It hath been determined that *pledges* need not be put into the declaration by attachment of privilege. *Barnes* 163. but see 2 *Wils. Rep. C. B.* 142, 143, which seems *contra*.

In the Common Pleas.

Of Easter term in the seventeenth year of the reign of king George the third.

To the justices of our lord the king of the bench.

Middlesex, *R.* *R.* gentleman, administrator *Bill against*
to wit, of all and singular the goods *at attorney at*
and chattels, and credits of *R. F.* clerk de- *the suit of an*
ceased, at the time of his death, who died *administrator.*
intestate, by *J. C.* his attorney complaineth
of *T. J.* gentleman, one of the attornies of
the court of our now lord the king of the
bench here present here in court in his proper
person, for that, whereas the said *T.* in the
life-time of the said *R. F.* *to wit,* on the *Indeb. af-*
ninth day of *April* in the year of our Lord *sump. for mon-*
1767, at *Westminster*, in the county of *Mid-*
dlesex aforesaid, was indebted to the said *R.* *ney had and*
F. in his life-time in 250*l.* of lawful money *received in*
of *Great Britain*, for so much money by the *life-time of*
said *T.* to the use of the said *R. F.* before that *intestate.*
time had and received; and being so indebt-
ed the said *T.* afterwards, *to wit,* on the same
day and year at *Westminster* aforesaid in the
county aforesaid, in consideration thereof un-
dertook, and then and there faithfully pro-
mised the said *R. F.* in his life, to pay him
the said sum of money when he should be re-
quested to pay the same; yet the aforesaid *Breach.*
T. not at all regarding his promise and under-
taking aforesaid, but contriving and fraudu-
lently intending crattily and subtilly to de-
ceive

*Administration
committed.*

ceive and defraud the said *R. F.* in his life-time, and the said *R. R.* since the death of the said *R. F.* hath not yet paid the aforesaid sum of money, or any part thereof, to the said *R. F.* in his life-time, or to the said *R. R.* since the death of the said *R. F.* (to which said *R. R.* since the death of the said *R. F.* *to wit*, on the 16th day of *June* in the year of our Lord 1767, at *Westminster* aforesaid in the county aforesaid, administration of all and singular the goods, chattels and credits which were the goods, chattels and credits of the said *R. F.* at the time of his death, by *William*, by Divine Providence archbishop of *Canterbury*, primate of all *England* and metropolitan, was committed) although the aforesaid *T.* in the life-time of the said *R. F.* by him the said *R. F.* and after the death of him the said *R. F.* by the aforesaid *R. R.* *to wit*, on the 17th day of *June* in the year of our Lord 1767, aforesaid, at *Westminster* aforesaid in the county aforesaid, was requested so to do; but he hath absolutely refused to pay the same to the said *R. F.* and since the death of the said *R. F.* hath, and still doth refuse to pay the same to the said *R. R.* to the damage of the said *R. R.* of 300*l.* And thereupon he prayeth relief, &c. And the said *R. R.* bringeth here into court the letters of administration aforesaid, to him as aforesaid granted, which testify the granting of the administration aforesaid to the said *R. R.* in form aforesaid,

Profert.