

Pleadings, &c.

Rule to plead.

(a) *Pract.*
Reg. in C. P.
283.

(b) *Pract.*
Reg. in C. P.
284.

YOU give rule to plead with the proper secondary, pay him 1 s. 10 d. which by rule, *M. 1654*, will be out in four days *inclusive* of the day whereon it is given (a), but judgment may not be signed till the afternoon of the next day after the rule to plead is out (b). *Sunday* or any holy-day on which the court does not sit, is reckoned a day within the said rule, except it happens to be the last of the four days.

Rules to *plead* and rules to *declare* may be given *in term*, or within *four* days after the end of every term, but not afterwards: But rules to *reply*, *rejoin*, *join in demurrer*, &c. may be given *in term*, or within *sixteen* days after the end of every term.

If a rule to plead be given on *Monday*, judgment cannot be signed 'till *Friday* in the *afternoon*. And if a rule to plead be given on *Friday*, judgment may be signed on *Tuesday* in the *afternoon*, if the time for defendant to plead is expired, and a plea demanded where necessary.

N O T E S.

1. Where a rule to plead has been given, and defendant obtains an order for time to plead 'till the first day of the next term, the plaintiff

tilf may sign judgment by default of the defendant's pleading, without giving a new rule. *M. 1733. Taylor v. Slochan, Rep. and Cas. of Pract. in C. P. 67.*—*Dawson v. Garth, E. 10 Geo. 2.* Held that a rule to plead was not necessary where a judge has given time to plead. *Ibid. 141.*

2. Where the plaintiff has given a rule to plead, and has been delayed from signing judgment by an injunction out of chancery, after the injunction is dissolved he may sign judgment without giving a new rule. *M. 6 Geo. 2. Theedam v. Jackson, 1 Barnes's Notes 157.*

3. On a judge's order for time to plead 'till Monday, judgment cannot be signed 'till Tuesday in the afternoon; for the judge's order only enlarged the time of the rule to plead, and the plaintiff could not sign his judgment in any other manner than he should have done in case it had been a rule to plead. *M. 5 Geo. 2. Herne, one, &c. v. Chapman, Pract. Reg. in C. P. 287.*—*Rep. and Cas. of Pract. in C. P. 67. S. C.*

4. A rule to plead given before notice of declaration, &c. judgment thereon, bad. *1 Barnes's Notes 173, 4.*

5. In real and mixt actions, (except replevin) a peremptory rule to plead must be given. *1 Barnes's Notes 194.*—In dower a peremptory rule to plead must be given. *Rep. and Cas. of Pract. in C. P. 89.*

Demanding plea.

PLEADINGS to be demanded by note in writing before nine in the evening. Rule *E. 10 Geo. 2.* And the demand of a

plea indorsed on the back of the declaration is insufficient.

Where plaintiff appears for defendant, and declaration is filed in the office, and notice thereof given to the defendant, there is no need for further calling for a plea either on defendant or his attorney. *Vide* Rule M. 1 Geo. 2. 1 *Barnes's Notes* 177.

If plea is demanded after rule for pleading is out, the defendant has only to the afternoon of the next day to plead.

Prothonotaries *Cooke* and *Borrett* declared, that if the country attorney had no agent in town, the plaintiff's attorney or agent must (though it was very hard) make a demand of a plea, &c. of the country attorney himself; *cur'* of the same opinion. *E. 5 Geo. 2. Reed v. Brown, administratrix, Pract. Reg. in C. P.* 280.

In all *real* actions the plaintiff must move the court before he can sign judgment after the rule to plead is out.

Defendant being beyond the seas, and his attorney dead; rule absolute, that demand of a plea in the office shall be sufficient notice, upon affidavit of service of a rule to shew cause on one of the defendant's bail, and that the other was not to be found. *T. 16 & 17 Geo. 2. Bailey v. Semple, 2 Barnes's Notes* 241.

Searching for plea.

BEFORE you sign judgment, search the plea-book at the proper prothonotary's office for a plea.

Oyer.

Oyer.

DEMANDING *Oyer.*] Demand of *oyer* must be in writing; so held *per cur'*.
Vide Pract. Reg. in C. P. 280.

If *oyer* be demanded after rule to plead is out, plaintiff need not give it (a), but may sign judgment notwithstanding; but if plaintiff does give *oyer*, he cannot sign judgment till next day in the afternoon. *E. 5 Geo. 2. Hammond v. Horner et al'*, *Pract. Reg. in C. P.* 300. — *Rep. and Cas. of Pract. in C. P.* 72. S. C.

(a) Motion for *oyer* denied, the rule to plead being out, for *oyer* ought to have been demanded before the rule expired. *Hil. 7 Geo. 2. Hartley v. Varney*, *Rep. and Cas. of Pract. in C. P.* 96. 1 *Barnes's Notes* 234. *Hartley v. Varley*, S. C. — *Pract. Reg. in C. P.* 278. S. C. — *Rep. and Cas. of Pract. in C. P.* 73. *Littlehales v. Smith*, *E. 5 Geo. 2. S. P.* If defendant be streightened in time, he may apply to a judge. *Vide Pract. Reg.* 299. in S. C. — *Pract. Reg. in C. P.* 278. *Hargrave v. Cooke*, T. 13 & 14 *Geo. 2.* *Oyer* after rule to plead out denied, in debt on bond laid in *Northumberland*. 1 *Barnes's Notes* 163. *Farrance v. Brignell*. T. 6 & 7 *Geo. 2. S. P.* — 2 *Barnes's Notes* 265. *Barber, assignee, &c. against Satchwell, on a bail-bond*. T. 17 & 18 *Geo. 2. S. P.* Though the *Chief Justice* thought it was reasonable *oyer* might be demanded any time before judgment, but would not overturn the established practice.

But if the defendant by the course of the court has eight days time to plead, he may demand *oyer* at any time within the eight days notwithstanding the four day rule to plead is expired. *Hil. 17 Geo. 2. The Duke of Leeds v. Vevers*, 2 *Barnes's Notes* 208.

What time defendant has to plead after *oyer* given.] Defendant shall have as many days to plead after *oyer* given as he had at the time *oyer* was demanded. Agreed *per cur'* and the three prothonotaries. *M. 6 Geo. 2. Theedam v. Jackson*, *Pract. Reg. in C. P.* 26, 28. —

Rep. and Cas. of Pract. in C. P. 81. S. C.—
1 Barnes's Notes 157. S. C. Oyer is to be looked upon as part of the declaration, and defendant must have so much time to plead after oyer given as when oyer was demanded. *E. 5 Geo. 2. Hammond v. Horner et al'*, *Pract. Reg. in C. P.* 300.—*Rep. and Cas. of Pract. in C. P.* 143. *M. 11 Geo. 1. Simpson v. Duffield and wife, administrators*, S. P. *1 Barnes's Notes* 185. S. C.

N O T E S.

1. If defendant prays oyer, and a copy of a bond and condition, he is intitled to inspect it, and have a copy of the whole with the witnesses names, and all memorandums subscribed or indorsed. After the *profert* of a deed, it is considered as in court, and it may be material for the party's defence to inspect the same, &c. and accordingly the judgment signed in this cause for want of plea was set aside without costs, defendant on praying oyer not having had a perfect copy of the bond given him. *M. 15 Geo. 2. Longman v. Rogers*, *2 Barnes's Notes* 200.

2. Where defendant craves oyer, and has it, but makes the oyer no part of his plea, plaintiff may make up the issue with oyer, for the pleadings are supposed to be *ore tenus* at the bar, and a record is to be made of what is done there. *M. 18 Geo. 2. The weavers company v. Ware. Action on a Bye-law*, *2 Barnes's Notes* 266.

3. Oyer delivered to a defendant when demanded by his agent is bad, and the judgment signed for want of a plea, was set aside. Note; Defendant was an attorney, but was not sued

as an attorney. *Hil. 4 Geo. 2. Higgins, executor, &c. v. Steward, administrator, &c. Pract. Reg. in C. P. 275.*

4. On giving *oyer* plaintiff cannot sign judgment for not paying for the copies of the bond, &c. but may refuse to deliver them unless paid for, *per cur'* and all the prothonotaries, for this point differs from that of signing judgment for not paying for a copy of the issue or demurrer book, because the declaration is not compleat 'till *oyer* be given. *M. 6 Geo. 2. Theedam v. Jackson, Pract. Reg. in C. P. 26, 29. 1 Barnes's Notes 157. S. C.* But says, that for want of payment for the copy of an indenture set out in the declaration, (whereof defendant had craved *oyer*) *cur'* held that plaintiff may sign judgment.

5. *Cur'* never makes any rules for *oyer* of originals, which are matters of record. *T. 11 & 12 Geo. 2. Ford v. Burnham, 2 Barnes's Notes 250.*

6. Debt on bond for performance of articles, plaintiff is not obliged to give *oyer* of the articles, he is only obliged to give *oyer* of the deed he declares upon. *Hil. 5 Geo. 2. Champion v. Budd, Pract. Reg. in C. P. 276.*

7. *Oyer* of an indenture mentioned in the condition of a bond for payment of 14,000*l.* Rule to shew cause made absolute. *M. 6 Geo. 2. Grant, Bart. v. Ewer, Ibid. 277.* Note; The plaintiff is not bound to give *oyer* of any thing but the deed he declares upon, unless by special rule of court. *Ibid.*

8. It appearing by affidavit that the original deed (of which *oyer* was prayed) was in the defendant's custody. *Cur'*: Let the defendant shew cause why *oyer* of a copy should not be as
 effectual

effectual as *oyer* of the deed itself. On shewing cause an affidavit was produced, that the defendant had not the deed, though he had had it formerly. Rule made absolute. (But a Q. is in the book.) T. 5 & 6 Geo. 2. *Hampton v. Partridge. Ibid.* 277.

Within what time defendant ought to deliver *oyer* of a deed pleaded by him.] Declaration filed 3d *November*, and notice and rule to plead given the same day. *November* 12th, defendant pleaded a release with a *profert hic in curia*, and the same day *oyer* was demanded by the plaintiff in writing. *November* 14th in the afternoon, plaintiff signed judgment for want of *oyer*. The Q. was whether plaintiff could sign his judgment on the defendant's not giving *oyer* according to the demand, notwithstanding the plea. *November* 26, 1733, upon this point the court were unanimously of opinion, that in case a defendant pleads with a *profert*, and *oyer* be demanded and not given in a reasonable time,

(a) *Car'* held (a) plaintiff may sign his judgment without that from the applying to the court to set aside the plea, 12th of *Nov.* it being esteemed as no plea 'till verified by to the 14th *Nov.* was a reasonable time, and that the plaintiff craving *oyer*

(a) plaintiff may sign his judgment without that from the applying to the court to set aside the plea, 12th of *Nov.* it being esteemed as no plea 'till verified by to the 14th *Nov.* was a reasonable time, and that the plaintiff craving *oyer*

oyer. M. 7 Geo. 2. Blaxland, an attorney, v. Burgejs, 1 Barnes's Notes 168.—Rep. and Cas. of Pract. in C. P. 95. S. C.—Pract. Reg. in C. P. 301. S. C.

of the defendant was not the same, as the defendant craving *oyer* of the plaintiff, for if the plaintiff does not give *oyer* he delays himself, but when the defendant delays giving *oyer*, he stops the suit, and deprives the plaintiff of the benefit of his action. *Pract. Reg. in C. P. 302. in Blaxland and Burgejs.*

Plea.

IF defendant answers the plaintiff's declaration, it is either by plea or demurrer, of both which there are two sorts, *general* and *special*.

A *general* plea, commonly called the *general issue*, is a concise direct answer to the declaration.

A *special* plea contains some particular matter, either by way of excuse, justification, or the like.

General issue.] To be written in form (a) on a treble *d.* stamp; needs no serjeant's hand. Deliver it to plaintiff's attorney, but if he is not to be found, or if he refuses to accept it, it may be left in the proper prothonotary's office, and then plaintiff's attorney must take it out and make up the issue.

(a) Defendant's attorney left a note at the house of plaintiff's attorney on a double penny stamp in this manner, (*viz.*)

I plead *Nil debet*, yours, &c. Plaintiff's attorney, without sending notice to defendant's attorney that he expected a plea in *form*, signed judgment, which was held to be regular, and the said note to be no plea. Pleas delivered to attornies must be drawn up in the same manner as to be left in the office. *M. 6 Geo. 2. Martyn qui tam v. Skinner, 1 Barnes's Notes 158.*

General issues.] *Non est factum* to a debt on a bond, *Non est factum* to a bill or indenture, *Non est factum testatoris*, *Nil debet*, *Nil debet in debt qui tam*, *Non detinet in debt*, *Non assumpsit*; Not guilty *in case*, *in trespass*, *in assault*.

Replication to the general issue.] The replication to each of the above general issues is this; "And the said *B.* doth so likewise," *i. e.* likewise puts himself upon the country.

General

General issues.

Plea of Non est factum to a debt on a bond.

AND the said C. by A. B. his attorney, cometh and defendeth the wrong and injury when, &c. and saith, that he ought not to be charged with the said debt, by virtue of the said writing, because he saith, that that writing is not his deed; and of this he putteth himself upon the country.

Non est factum to a bill or indenture.

THE same as before, only instead of the word *writing*, say *bill*. The like on an indenture *mutatis mutandis*.

Plea Non est factum testatoris.

AND the said B. by C. D. his attorney, cometh and defendeth the wrong and injury, when, &c. and saith, that he ought not to be charged with the said debt, by virtue of the said writing, because he saith, that the said writing is not the deed of the said E. F. and of this he putteth himself upon the country.

Plea of Nil debet.

AND the said B. by — his attorney, cometh and defendeth the wrong and injury, when, &c. and saith, that he doth not owe to the said A. the said — pounds, or any part thereof, in manner and form as the said A. hath

hath above declared against him; and of this he putteth himself upon the country.

Plea of Nil debet in debt qui tam.

AND the said *B.* by — his attorney, cometh and defendeth the wrong and injury, when, &c. and saith, that he the said *A.* doth not owe to our said Lord the king and to the said *C. D.* who as well, &c. the said — pounds or any part thereof, in manner and form as the said *C.* who as well, &c. hath above declared against him; and of this he putteth himself upon the country.

Plea of Non detinet in debt.

AND the said *C. D.* by — his attorney, cometh and defendeth the wrong and injury, when, &c. and saith, that he doth not detain from the said *A. B.* the said — pounds, nor any part thereof, in manner and form as the said *A. B.* above complaineth against him; and of this he putteth himself upon the country.

Plea of Non assumpsit.

AND that the said *C.* by — his attorney, cometh and defendeth the force and injury when, &c. and saith, that he did not undertake in manner and form as the said *A.* above complaineth against him; and of this he putteth himself upon the country.

The present Practice of the

Plea of Non assumpsit by executors.

AND the said *A. B.* and *C. D.* by — their attorney, come and defend the force and injury when, &c. and say, that the said *E. F.* [*the testator*] in his life-time did not undertake in manner and form as the said *G.* above complaineth against them; and of this they put themselves upon the country.

Plea of Not guilty in case.

AND the said *C. D.* by — his attorney, cometh and defendeth the force and injury when, &c. and saith, that he is not guilty of the premisses above laid to his charge, as the said *A.* above complaineth against him; and of this he putteth himself upon the country.

Plea of Not guilty in trespass.

AND saith, he is not guilty of the said trespass as, &c. [*ut supra.*]

Plea of Not guilty in assault.

AND saith, that he is not guilty of the said trespass and assault as, &c.

Special plea.] To be written on a treble penny stamp, and signed by a serjeant.—If a plea which ought to be signed by a serjeant, or an affidavit annexed, be delivered or left in the office without a serjeant's hand; the plaintiff may sign judgment as if no plea had been delivered, without any application to the court
for

for leave. *M. 1 Geo. 2. Anon. Pract. Reg. in C. P. 282. Vide Ibid. 4. — Rep. and Cas. of Pract. in C. P. 38.*—The following pleas need no serjeant's hand (*a*), viz.

(a) *Rep. and Cas. of Pract.*

in C. P. 41. Pract. Reg. in C. P. 282.

*Comperuit ad diem,
Son assault demesne,
Plene administravit,
Riens per discent,
Nul tiel record.*

*Per minas,
Solvit ad diem,
Ne unques executor,
Infra ætatem,
Per dures.*

The above pleas are not taken to be special pleas, and the prothonotaries are paid for them as common pleas. *Vide Pract. Reg. in C. P. 283. — Rep. and Cas. of Pract. in C. P. 41.*—But *Non assumpsit infra sex annos* does require a serjeant's hand. *Rep. and Cas. of Pract. in C. P. 41.*

A special plea may be either delivered to plaintiff's attorney, (which is the usual way) or if he cannot be found, or refuses to accept it, then it may be filed with the prothonotary, and plaintiff's attorney must take it out of the office and make up the issue.

N O T E S.

1. No dilatory plea shall be received unless the party offering the same do by affidavit prove the truth thereof, or shew some probable matter to the court, to induce them to believe that the fact of such dilatory plea is true. *Stat. 4 & 5 Annæ.*

2. Plea

2. Plea of infancy (which is a dilatory plea) set aside, because no affidavit annexed. *T. 5 Geo. 2. Broadmead and others, executors, v. Star, Pract. Reg. in C. P. 5.*

3. *A.* sued as executor, pleads in abatement, that there was another executor, but did not annex an affidavit of the truth of his plea; plaintiff signed judgment. *Per cur'*: The judgment is regular. *M. 12 Geo. 1. Wilson v. Palmer, Pract. Reg. in C. P. 4.*—If a plea which ought to have a serjeant's hand or an affidavit annexed, be delivered without, plaintiff may *instanter* sign judgment. *M. 1 Geo. 2. Anon. Ibid. 282.*—Plea in abatement pleaded without affidavit annexed, judgment signed, and held to be regular. *M. 12 Geo. 2. De la Fountain v. Mings, ibid. Rep. and Cas. of Pract. in C. P. 38. S. C.*—Plea of *infancy* set aside because no affidavit annexed. *T. 5 Geo. 2. Broadmead & al', executors, v. Star, Pract. Reg. in C. P. 5.*—Want of addition of defendant's *estate, degree* or *mystery*, pleaded in abatement without an affidavit annexed, judgment signed, motion to set it aside, for that the truth of the plea appeared by the declaration, and therefore an affidavit not necessary. Rule to shew cause. *T. 8 & 9 Geo. 2. Perry v. Tomkin, ibid. 5.*—*Rep. and Cas. of Pract. in C. P. 120. S. C.*—Plea in abatement is not to be received *without* an affidavit. *E. 6 Geo. 2. Hart v. Jewks, Rep. and Cas. of Pract. in C. P. 89.*

4. The want of addition of the defendant's *estate, degree* or *mystery*, pleaded in abatement without an affidavit. Rule to shew cause. *T. 8 & 9 Geo. 2. Perry v. Tomkin, Pract. Reg. in C. P. 5.*

5. Defendant

5. Defendant pleaded in abatement, his attorney swore to the truth of it, and held sufficient, for *per cur.* probable cause is shewn, which is all that the statute requires. *Hil. 13 Geo. 2. Lumley v. Foster, Pract. Reg. in C. P. 6.*

6. *A.* sued by the name of *Finis Dinas*, pleads in abatement that his name was *Phineas* and not *Finis*, but both the plea and affidavit to verify it were intituled, *In a cause between Clixby plaintiff, and Finis Dinas defendant*, plea set aside. *M. 15 Geo. 2. Glixby v. Dinas, 2 Barnes's Notes 274.*

7. A plea of *infra ætatem* ought to have an affidavit annexed to verify the truth of the plea.

When to plead.] For the time of pleading see the general rules, *Tit. Declaration.*

In abatement, defendant must plead in four days after declaration delivered or filed, unless in vacation, and then he has four days in the next term to plead, as of preceding term.

N O T E S.

1. Defendant cannot plead in abatement, after a general imparlance, without obtaining a special imparlance precedent to the time of pleading, which must be within the four days given by Declaration of the Hilary term without any

imparlance, defendant pleaded in abatement four days within *Easter*, but had got no special imparlance from the prothonotary, till eight days within the term. *Per tot. cur.* He ought to have pleaded within four days of *Easter* term, and also should have got a special imparlance within the four days. The prothonotaries are obliged to give a special imparlance in the four days, and they never ask whether the defendant hath pleaded or not. *Judic. Respondeas ouster.—Rep. and Cas. of Pract. 78.* S. C. says *cur'* declared it was the established practice that where the declaration is delivered so late in the term, that the defendant is not obliged to plead

in that same term, he must within the

the rule to plead. *Threlkeld v. Goodfellow*,
 1 *Barnes's Notes* 149.
 first four days of the next term apply to the prothonotary for a *special*
 imparlance, or he cannot plead in abatement, which he may do having
 such *special* imparlance. But to all declarations where the defendant is to
 plead the same term, he may plead in abatement within four days after
 declaration delivered without any imparlance; but in such case, after the
 four days, no such plea shall be accepted, though no rule to plead be
 given. Note *Napier v. Biddle*, M. 1735. S. P. 1 *Barnes's Notes* 241.

2. Ejectment, declaration of *Easter* term,
 with notice to appear in *Trinity* term generally.
 If defendant would plead ancient demesne, he
 must come in, appear and plead it *within* the
 first four days of the term, and cannot after. *Per*
cur'. Although objected that by the notice un-
 der the declaration, defendant had the whole
 term to appear in. T. 7 & 8 Geo. 2. *Smith v.*
Roe, *Pract. Reg. in C. P.* 2. *Holfest v. Carlton*,
Hil. 1 Geo. 2. *Bingham v. Barker*, T. 2. Geo. 2.
 were cited as cases in point. *Ibid.* 3.—Defendant
 must move to plead ancient demesne within the
 first four days of the term. As the declaration
 must be delivered before the esoin day, the
 party may always apply within the first four
 days of the term, and though the appearance
 in ejectment is generally entered afterwards, yet
 it is always considered as an appearance of the
 first day of the term. T. 21 Geo. 2. *Deigh-*
ton, on the demise of Roberts, v. Foster, 2 *Barnes's*
Notes 156. Note; Defendant cannot plead an-
 cient demesne without motion and leave of the
 court, and must produce an affidavit *that the*
lands are ancient demesne, or reputed to be so.
Pract. Reg. in C. P. 2. Vide 2 *Barnes's Notes* 151,
 155. But any other plea to the jurisdiction of the
 court may be pleaded in time, without motion.
 2 *Barnes's Notes* 151.

3. Plea

3. Defendant on a *general* declaration shall plead in abatement within four days in term, altho' no rule to plead be given. If upon a *special capias*; within four days after the delivery of the declaration. *E. 8 Geo. 1. Birch v. Fryer, Pract. Reg. in C. P. 3.*—But afterwards agreed by all the judges in the treasury, that defendant must plead in abatement within four days after declaration delivered; or notice of the same having been left in the office (a).—Declaration was delivered 8 Feb. and

plea in abatement on the 14th Feb. plaintiff signed judgment, held to be irregular. *E. 4 Geo. 2. Biddleston v. Atcherly, Rep. and Cas. of Pract. in C. P. 64.*—*Biddleston v. Acherley, Pract. Reg. in C. P. 286. S. C.*

(a) Though no rule to plead be given. *E. 8 Geo. 1. Anon. Rep. and Cas. of Pract. in C. P. 23. Vide ibid. 64.*

4. A plea in abatement after the rule for pleading is out, is a nullity, and plaintiff may sign his judgment. *T. 7 & 8 Geo. 2. Humphreys v. Ward, 1 Barnes's Notes 236.*

5. Plea in abatement after the four days, the declaration not being well delivered, good, and the rule *inisi* for setting aside the plea discharged with costs. *M. 12 Geo. 2. Burnet v. Kendal, Pract. Reg. in C. P. 3.*

Notes relating to pleading, &c. in general.

1. **W**HERE a summons is taken out after rule to plead is out, such summons must be looked upon as obtained by imposition on the judge, and no stay of proceedings. *M. 10 Geo. 2. Whitehead v. Skew, and the same against Whitefield, Rep. and Cas. of Pract. 137.*—*1 Barnes's Notes 182. S. C.* A judge's summons regularly obtained, is a stay of proceedings till discharged, or other order made thereupon; but it is an abuse upon the judge to apply for his summons after rule to

Summons for time to plead.

plead is expired, when no summons ought to be granted. *Ibid.*—*Rep. and Cas. of Pract. in C. P.* 142. *Ottiwell v. D'Ath*, T. 10 & 11 Geo. 2. S. P.—1 *Barnes's Notes* 184. S. C.

2. Summons for time to plead, defendant's attorney did not attend, plaintiff's attorney signed judgment, but *Cui'* set it aside, because plaintiff's attorney should have first discharged the summons. *M.* 11 Geo. 2. *Brown v. Godfrey*, *Rep. and Cas. of Pract. in C. P.* 144. 1 *Barnes's Notes* 187. S. C.—*Rives and another v. Plumbé*, E. 5 Geo. 2. *the like resolution*, *Rep. and Cas. of Pract. in C. P.* 144. 1 *Barnes's Notes* 161. S. C.

Pleading a
false plea, &c.

1. If the defendant pleads a false plea, as *nil debet* to an action on the case upon *assumpsit*, the plaintiff may sign judgment.

2. *Nil debet*, not a plea to a declaration on a bail-bond. T. 13 Geo. 1. *Le Pla v. Warren*, *Rep and Cas. of Pract. in C. P.* 37.

3. Motion to set aside a demurrer to a declaration, where a plea in abatement had been pleaded to the declaration, and that plea demurred to; yet Mr. Serjeant—had demurred to the declaration, and to the demurrer before pleaded to the plea in abatement. *Cui'* resented this behaviour in the Serjeant, ordered the *Act* 3 E. 1. c. 29. against false pleading to be read, made a rule to set aside the demurrer, and ordered the Serjeant to pay the costs of the motion. *Hil.* 2 Geo. 2. *Richardson v. Sutton*, *Rep. and Cas. of Pract. in C. P.* 51.

4. *Nil debet* to a promissory note, a nullity. 1 *Barnes's Notes* 189.—So plea by an attorney of another court. *Ibid.* 194.

On a piece of stamp paper the defendants *say they are not guilty*, without delivering the plea at length, plaintiff signed judgment for want of a plea. *Cur'* said it was no defence, so the judgment was held regular. *Hil. 9 Geo. 2. Albany v. Griffin & Wife, (a) Rep. and Cas. of Pract. in C. P. 126.—Carew v. Minifie, Hil. 9 Geo. 2. The same rule, Ibid. (a)—Pract. Reg. in C. P. 306. S. C.*

General issue must be delivered at length.

Plea, though with notice to set-off, must be delivered in town. *M. 9 Geo. 2. Taylor v. Lawson, Pract. Reg. in C. P. 281.—1 Barnes's Notes 179. S. C.—Rep. and Cas. of Pract. in C. P. 123. S. C.*

Plea with notice of set-off to be delivered in town.

Leave to withdraw the general issue, and plead special justification, granted upon payment of costs, no delay or inconvenience being occasioned to plaintiff thereby. *M. 14 Geo. 2. Harrison v. Morris and others, in trespass, 2 Barnes's Notes 270.*

General issue waived.

1. The defendant may waive his special plea, and plead the general issue the *same* term, without leave of the court, on payment of costs, unless the plaintiff has replied, and then defendant must apply to the court, and pay costs. *M. 4 Geo. 2. Robinson v. Symmonds, Rep. and Cas. of Pract. in C. P. 67—Pract. Reg. in C. P. 302. S. C. says defendant of course may withdraw his special plea the same term it is pleaded, and plead the general issue, without costs.—Horsfull v. Greenwood and others, Hil. 12 Geo. 2. says, plaintiff may waive his special plea, and plead the general issue the same term without paying costs. Rep. and Cas. of Pract. in C. P. 155.—*

Waiving a special plea.

1 *Barnes's Notes Horsfall* 103. S. C. and P. and tho' plaintiff afterwards gets a verdict, yet he cannot have the costs of the special pleas allowed upon the taxation of the costs on the *postea*. *Ibid.* 104. in S. C.

2. Plea of judgments and bonds pleaded in bar withdrawn, and *plene administravit* admitted. *Hil.* 7 *Geo.* 2. *Martindale v. Galloway, executor, &c.* 1 *Barnes's Notes* 234.

Plea of tender.

1. A plea of tender ought regularly to be pleaded in the same manner as a plea in abatement, *viz.* four days after the declaration delivered, if delivered four days before the end of the term, and if the declaration be delivered before the effoin-day of a term, then the plea must be delivered within the first four days of that term, as a plea of the last term (*a*). But this is to be dispensed with upon particular circumstances; as if the defendant lives at a distance in the country, so that his attorney cannot deliver this plea in due time, the court will upon such reasonable cause give further time to plead a tender as of the term in which the declaration was delivered; but such application should be within the four days, or at least as soon as possible it can without any delay on the defendant's part.

(*a*) Vide
2 *Barnes's*
Notes 284.

2. Too late to plead a tender after a general imparlance. *Hil.* 19 *Geo.* 2. *Smith v. Philips, &c., &c.* 2 *Barnes's Notes* 284. Though this be agreeable to the strict rules of practice, yet they may and are dispensed with, on particular circumstances, and upon reasonable cause shewn to the court; as where the writ was returned in *Easter* term, and the declaration which was delivered before the effoin-day of this term, was sent post

to *Shrewsbury* the same day. Defendant's agent could not have instructions to plead a tender within the first four days of this term, but moved as soon as he could. Rule to plead a tender. T. 16 & 17 Geo. 2. *Bayley v. Houldston*, 2 *Barnes's Notes* 279.—*Vide* also *Ibid.* 281, 288, 295, 296. whereby it appears the court gave leave to plead a tender after the first four days of the term, application having been made as soon as possible.

3. Application for leave to plead a tender as of last term, after a general imparlance, may be made within the first four days of the next term. *Hil.* 12 Geo. 2. *King v. Nicholls*, 1 *Barnes's Notes* 254.

4. On a plea of tender, the money must be paid into court to the prothonotary when the plea is left. *Vide Pract. Reg. in C. P.* 239.—Plea of tender without bringing the money into court, is a nullity. 1 *Barnes's Notes* 181.

5. A plea of tender is *not an issuable* plea within the meaning of a judge's order for time to plead *on pleading an issuable plea*, and plaintiff may sign judgment. *M. 10 Geo. 2. Daversbill v. Barret, Rep. and Cas. of Pract. in C. P.* 134.

6. Plea of tender not to be withdrawn, and the general issue pleaded, because this alteration of the plea would put plaintiff to an inconvenience, the money pleaded to be tendered being brought into court. *Hil.* 7 Geo. 2. *Reeves v. Probart*, 1 *Barnes's Notes* 235.

7. After order to plead an issuable plea, a tender to part, and *non assumpsit* to residue, is a nullity. 1 *Barnes's Notes* 182.

8. Leave to withdraw plea of tender, and *Cur'* will perplead the general issue, and pay money into court mit defendant to withdraw a special plea and plead the general issue; but after plea pleaded cannot give him leave to bring money into court without plaintiff's consent. *Ibid.*

court upon the common rule, denied. *Hil.* 16 *Geo.* 2. *Salmon v. Aldrick*, 2 *Barnes's Notes* 275.

9. Defendant pleads a tender, plaintiff replies, and afterwards takes the money brought in, and enters an acquittal, and gives defendant notice that he would proceed no farther. Held he could not enter an acquittal without application to the court, and payment of costs to defendant. *E.* 21 *Geo.* 2. *Hill v. Williams, assignee, &c.* 2 *Barnes's Notes* 289.

Pleas in abatement. *Note*: the defendant cannot plead ancient demesne without leave of the court, and must produce an affidavit that the lands are ancient demesne.

1. Ancient demesne must be pleaded within the first four days of the term, after declaration delivered, or left in the office, as other pleas in abatement, and cannot afterwards. *T.* 7 & 8 *Geo.* 2. *Smith v. Roe, in ejectment, Pract. Reg. in C. P.* 2.—*Rep. and Cas. of Pract. in C. P.* 103. *S. C.*—*Holfast v. Carlton, Hil.* 1 *Geo.* 2. *Bingham v. Barker, T.* 2 *Geo.* 2. cases in point. *Vide Pract. Reg. in C. P.* 3. *Rep. and Cas. of Pract. in C. P.* 43.

Pract. Reg. in C. P. 2.—Leave to plead ancient demesne on affidavit that the premises in question were reputed to be such. 2 *Barnes's Notes* 17.

2. In ejectment, motion to plead ancient demesne must be in four days. 1 *Barnes's Notes* 236.—It is a plea to the jurisdiction of the court, and ought to be moved in four days. *Ibid.* 245.

3. Plaintiff shall pay no costs on confessing a plea in abatement, and entering a *nil capiat per breve*. *M.* 8 *Geo.* 2. *Allen v. Maxey, in the treasury, Pract. Reg. in C. P.* 6. 1 *Barnes's Notes* 92. *S. C.*

4. On

4. On a plea in abatement, plaintiff may confess the plea, and enter a *cassetur breve* without applying to the court, or paying costs. *M. 11 Geo. 2. Osborn v. Haddock, Pract. Reg. in C. P. 6.*

Barnes's Notes 190.
S. C. says, on a plea in abatement plaintiff may enter a *nil capiatur* per breve without leave, otherwise, in other cases.

5. Misnomer must be pleaded in abatement; for after defendant has pleaded *in chief* he cannot take advantage of the *misnomer* in arrest of judgment. *Per tot' cur', T. 5 Geo. 2. Aldridge v. Wood, Pract. Reg. in C. P. 7.*

6. An attorney forejudged sued by bill, (after a special imparlance) pleads in abatement that he is no attorney, and held good, on producing a certificate from the clerk of the warrants, that defendant had been forejudged five years ago, and that the forejudger still remained in force. *T. 11 & 12 Geo. 2. Farrel v. Head, an attorney, Pract. Reg. in C. P. 8.*

7. Plea of infancy by an attorney refused to be set aside, he being intitled to it as well as any body else. *T. 13 Geo. 2. Blazey v. Cross, an attorney, Pract. Reg. in C. P. 9.*

8. Plea in abatement not amendable. *Per tot' cur', E. 12 Geo. 1. Lyde v. Heale, Pract. Reg. in C. P. 21.—Rep. and Cas. of Pract. in C. P. 29. E. 12 Geo. 1. Dockary v. Lawrence, S. P. because such pleas are dilatory, and do not go to the right of the action. Ibid.—Vide Salk. 52, 49. 2 Keb. 70. 5 Mod. 69. Smith v. Scudamore, 2 Geo. 1. where amendment was said to have been denied.*

9. Plea of privilege in abatement of the writ ill, not saying *that he was an attorney at the time of suing out the original writ*, but only *that he was and is an attorney, and therefore ought*

ought to be sued by bill, and not by writ. Defendant to answer over. T. 11 & 12 Geo. 2. *Ellison v. Newton, Rep. and Cas. of Pract. in C. P.* 150.

10. Defendant pleaded coverture as the wife of *John Thomson*, in this manner, “and the afore-
“said *Sarah Spencer, &c.*” Her affidavit was in the same stile, but signed *Sarah Thompson*, plea set aside. M. 9 Geo. 2. *Raine v. Spencer*, 1 *Barnes’s Notes* 241.

11. A *feme sole* was arrested in the palace court, and a day or two afterwards married, and then removed the plaint by *habeas corpus* into this court, and pleaded her coverture in abatement. Plea set aside. Hil. 20 Geo. 2. *Haddock v. Howard*, 2 *Barnes’s Notes* 285.

12. Plea in abatement, traversing the inhabitan-
tancy, bad, 2 *Barnes’s Notes* 133.—not bad, though beginning with “comes and defends the
“wrong and injury when, &c.” *Ibid.*

13. Serjeants at law, and prothonotaries clerks, may plead in abatement or demur, if sued by *bill* instead of *original*. *Per cur’*: *Serjeants and prothonotaries clerks* are not obliged to attendance in court. Judgment *quod billa cassetur*. T. 7 & 8 Geo. 2. *Swain v. Girdler*, serjeant at law, 1 *Barnes’s Notes* 266.

Plene administravit.

1. Leave was given to plead *plene administravit* after regular judgment set aside on payment of costs. Hil. 6 Geo. 2. *Olivant v. Low, administrator, Pract. Reg. in C. P.* 234.—*Ibid.* 236. *Cruse v. Williams, an executor*. Regular judgment set aside on payment of costs, and leave to plead *plene administravit* generally.

2. Plea of judgments and bonds pleaded in bar withdrawn, and *plene administravit* admitted. Hil.

Hil. 7 Geo. 2. *Martindale v. Galloway, executor,*
&c. 1 *Barnes's Notes* 234.

In *formedon*, defendant never tenant to the free-*Formedon*.
bold must be pleaded in abatement. 1 *Barnes's*
Notes 238.

On an appearance to the *exigi facias*, the de- When to
fendant must plead *instanter*. M. 6 Geo. 1. plead *instan-*
Aplin v. Chambers, Rep. and Cas. of Pract. in ^{ter, &c.}
C. P. 18. A plea had been left in the office,
in the body of which plaintiff's christian name
was mistaken, for which mistake judgment was
signed, but set aside with costs, for though the
christian name was mistaken, it was a plea in
the cause. M. 2 Geo. 2. *Barker v. Hartley,*
widow, Rep. and Cas. of Pract. in C. P. 49.

Plea of outlawry in bar not pleaded *sub pede* Plea of out-
sigilli, therefore judgment signed, but set aside, lawry.
for *per cur,* if a plea in bar is insufficient, plain-
tiff should apply to the court or demur, and
not sign judgment, for the court and not the
party is to judge whether or no matters are pro-
perly pleaded. T. 6 & 7 Geo. 2. *Panter v.*
Coppin, widow, Rep. and Cas. of Pract. in C. P.
91.

Cannot add to a plea after replication or de- Adding to
murrer. Hil. 8 Geo. 2. *Peirson v. Ives, Rep. and* plea.
Cas. of Pract. in C. P. 114.

After a regular judgment set aside, defendant Pleading after
had leave to plead an issuable plea, but he a regular judg-
pleaded the statute of limitations.—Plea set aside; ment set aside.
for where the defendant has had an opportunity
of pleading the statute, but lets judgment go by
default

default, and afterwards applies to set aside that judgment, he shall not be let in, but upon payment of costs, and pleading the general issue. *Hil. 10 Geo. 2. Leaver v. Whicher, Rep. and Cas. of Pract. in C. P. 139.*—1 *Barnes's Notes* 183. S. C.—Where a plea of justification was absolutely necessary to try the merits, and the plaintiff had not been delayed of a trial, the court have admitted the defendant to make such defence, though the judgment set aside was regular, *Rep. and Cas. of Pract. in C. P. 139.* and the court in a like case admitted an administrator to plead *plene administravit* generally, which being in case of an administratrix was looked upon as the general issue. *Ibid.* See *Cruise v. Williams, Hil. 13 Geo. 2. ibid.*—*Pract. Reg. in C. P. 236.* S. C. 1 *Barnes's Notes* 195. S. C.

Cepit in alio loco.

Cepit in alio loco is a plea *in bar*, and not *in abatement.* 2 *Barnes's Notes* 281.

Order for time to plead, pleading issuably.

1. After order for time to plead, pleading an issuable plea, &c. a judgment confessed on a bond since the order may be pleaded. *E. 7 Geo. 2. Hughes v. Pellet, administrator, 1 Barnes's Notes* 235.

2. After an order for time to plead to issue, further time till a former judgment perfected, refused. 1 *Barnes's Notes* 240.

Plea amended.

1. Defendant mistook a fact, and set out a custom wrong, plea amended after execution of writ of inquiry, on payment of costs, and bringing into court the damages found by the inquisition. After interlocutory judgment, and before inquiry executed, defendant gave notice of motion

motion. Defence was made on the inquiry. *E.*

14 *Geo. 2. Broadbent v. Wilkes, 2 Barnes's Notes 9.*

2. Plea amended so as to state facts necessary to bring the construction of an act of parliament, and the true merits of the case before the court, after demurrer to the plea, joinder and argument, and farther day appointed, on payment of costs. *2 Barnes's Notes 20.*

3. Plea amended by leaving out a special imparlance, and pleading a tender as of last term, declaration having been delivered the last minute. Pleas of tender being in bar, and such as ought to be favoured. *E. 24 Geo. 2. Murray v. Bows, 2 Barnes's Notes 20.*

4. Defendant by leave of the court pleaded two pleas, *not guilty*, and a *special justification*. On the former plea issue was joined, to the latter plea plaintiff replied, defendant demurred to the replication, and plaintiff made up the issue, and obtained a verdict. Defendant this term obtained a rule to shew cause why he should not amend the latter plea on payment of costs; the court thought that the application for the amendment came too late, especially as it appeared that before the trial, (*viz.*) 16th *June* last defendant had applied for the same amendment; and then had a rule to shew cause, which rule defendant's agent had waived by a note in writing signed by him, directed to plaintiff's agent. The last rule to shew cause discharged. *Hil. 29 Geo. 2. Thornley v. Hughes, Supplement to 2 vol. Barnes's Notes 5.*

A bad justification in trespass, plaintiff took Bad justification.
issue, and verdict for defendant, yet judgment
for plaintiff, the trespass being confessed by the
plea.

plea. *M. 11 Geo. 2. Craven v. Hanley, 1 Barnes's Notes 186.*

Defendant pleads bankruptcy, and concludes with an averment, and not to the country, plaintiff demurred; *cur'* held the plea bad, and gave judgment for plaintiff. *E. 7 Geo. 2. Poole v. Broadfield, 1 Barnes's Notes 236.*

Claim of cognizance by the University of *Oxford* disallowed as coming too late after plea pleaded, and replication tendering an issue. *M. 14 Geo. 2. Wells v. Trehern, an attorney, 2 Barnes's Notes 270.*

Plea Puis darrein cont' in ejectment, a release from the lessor of the plaintiff.

AND the said *T. B.* and *I. H.* in their proper persons come and say, that the justices of our sovereign Lord the King ought not to proceed to take the jury aforesaid between the said defendants and the said plaintiff, because they say, after the last continuance of the said plea, to wit, after _____ from which the said plaintiff was last continued here until this day, to wit, on the 18th day of *July* last past, and before the same 18th of *July*, to wit, on the 17th day of *July* last past the said *J. B.* by the name of *J. B.* of _____ in the parish of _____ in the county of _____ by his writing sealed with the seal of the said *J.* bearing date the same 17th day of *July*, at _____ aforesaid, remised and released to the said *T.* and *I.* and their heirs, all his estate, right

right and title of and in the said messuages, lands and tenements in the said declaration mentioned, and also all and all manner of actions and causes of action whatsoever, of and concerning the said premisses, or any part thereof; And this they are ready to certify, &c. Wherefore they pray that the said justices will not proceed further to take the said jury, with this that the said T. and J. will verify that the said J. T. is made and named plaintiff in the same action, only to try the title of the said J. B. to the said tenements.

Double pleas.

DOUBLE pleas allowed.] *Non assumpsit* and *non assumpsit infra sex annos* (a). (a) Vide, 1 Barnes's Notes 233.—2 Barnes's Notes 295.

In the case of *Jackson* against *Warwick*, T. 25 & 26 Geo. 2. 2 Barnes's Notes 295. it was said, that the frequent applications made to plead *non assumpsit* and *non assumpsit infra sex annos* were unnecessary, because the latter plea singly would answer all purposes without the former (b); but this is a mistake. Under the former plea, coverture, a release, a set-off, may be given in evidence, which under the latter cannot be done. (b) And for this reason leave to plead *non assumpsit* and *non as-*

sumpsit infra sex annos was denied. M. 4 Geo. 2. *Oley v. Andrews*, Pract. Reg. in C. P. 307. *ibid.* 308. E. 4. Geo. 2. *Holtensvile and al v. Bambridge*.—Same term *Welydale v. Atkinson*, the like double plea denied. But E. 5. G. 2 *Clarke v. Bolton*, and *Goodall v. Moore*, leave was given to plead this double plea. *Ibid.* 309.

Non

Non assumpsit and a discharge under the insolvent debtors act (a).
(a) *Pract. Reg. in C. P.*

312. *Jones v. Body*, E. 12 Geo. 2.—1 *Barnes's Notes* 255. S. C.

Non est factum and defendant's discharge under said act (b).
(b) 1 *Barnes's*

Notes 255.

Lisle v. Jenkins, E. 12 Geo. 2.

In replevin, leave was given to avow two matters, viz. a justification of the distress under a lease for years, and that the goods distrained were *not* the property of the plaintiff in

(c) 1 *Barnes's* replevin (c).

Notes 247.

Bird v. Spincks, M. 10 Geo. 2.—*Pract. Reg. in C. P.* 184 S. C.

In trespass, *non cul'* and *liberum tenementum* (d).
(d) 1 *Barnes's*

Notes 245.

Stibbs v. Neaves, T. 10 Geo. 2.—*Pract. Reg. in C. P.* 315. S. C.—2 *Barnes's Notes* 277. *Brewer v. Matthews*, E. 16 Geo. 2. In this case the declaration was delivered so late last term that defendant had not time to plead double, but to prevent judgment pleaded *liberum tenementum*. Plaintiff replied, and defendant demurred, plaintiff applied for leave to amend the replication, and defendant to withdraw his plea, and plead *non cul'* and *liberum tenementum*; a rule was made to shew cause upon defendant's motion, and afterwards discharged, the pleas being contradictory. Where the *locus in quo* is ascertained by the declaration, (as in this case) *liberum tenementum* is no plea. It is only necessary where the trespass is laid generally, to put plaintiff upon making a new assignment. No affidavit is produced to verify that defendant's case requires both pleas for his defence.

(e) See *Solvit ad diem*, and a mutual debt (e).

1 *Barnes's*

Notes 250.

Damage feasant, and under a demise from the defendant to the plaintiff (f).
(f) 1 *Barnes's*

Notes 249.

Church v. Fendall, E. 11 Geo. 2. Ch. J. said he thought these pleas inconsistent, but as defendant had obtained a rule to shew cause, and plaintiff did not oppose it, the rule was made absolute. *Pract. Reg. in C. P.* 315. S. C. and P. A dis-

A distress for damage-feasant and for rent in arrear (a).

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

316. *Baynes v. Lutwidge*, M. 12 Geo. 2.—1 *Barnes's Notes* 250. S. C. This is not stronger than *not guilty*, and *liberum tenementum, solvit ad diem* and a *mutual debt*, which have been granted. *Ibid.*

Non assumpsit, a set-off, and a tender as of last term (b).

(b) 2 *Barnes's Notes* 293.

Whaler v. Harrison & al., M. 25 Geo. 2. A tender is no dilatory plea. *Per cur.* *Ibid.*

A tender of money to the first count, and *non assumpsit* to the residue as of the last term (c).

(c) 2 *Barnes's Notes* 296.

Pitfield v. Money, T. 26 & 27 Geo. 2. A tender is a fair plea. *Ibid.*

A special *plene administravit* and a set-off without an affidavit (d).

(d) 2 *Barnes's Notes* 272.

T. 14 & 15 Geo. 2. *Cofens v. Etherington*, executor. Note; no cause was shown.—*Pract. Reg. in C. P.* 313. S. C.

Non assumpsit and *plene administravit* without an affidavit from defendant that they have fully administered (e).

(e) M. 8 Geo. 2. *Heathfield*

v. Allen, leave to plead *non assumpsit* and *plene administravit* was denied *per cur.*, no affidavit being produced that defendant had fully administered. 1 *Barnes's Notes* 237.—*Pract. Reg. in C. P.* 311. S. C.—*Ibid.* 312. *Costa v. Misaubin*, M. 8 Geo. 2. granted on affidavit of having fully administered.—But afterwards in the case of *Garnett, an attorney, v. Harrison and Freeman, executors*, M. 15 Geo. 2. it was allowed without such an affidavit. 2 *Barnes's Notes* 273.—Before Lord Chief Justice *Eyre's* time this affidavit was not required, and it is not reasonable to expect it for the future. Pleading doubly is a privilege defendants are intitled to by act of parliament. The court gives leave to plead *non assumpsit* and *non assumpsit infra sex annos* without an affidavit, and that is a case more within the party's knowledge than a *plene administravit*. If either of the pleas are false, costs are given by the statute. *Ibid.*

Ne unques executor and *plene administra-*

(a) 2 Barnes's *vit* (a).

Notes 275.

Goddard and Martin v. Ballard and wife, executors, T. 16 Geo. 2. Note; no cause was shewn to the contrary.—*Ibid.* 286. *Crabb, clerk, v. Button, clerk, executor*, Hil. 20 Geo. 2. Leave granted on shewing cause. *Plene administrated* is within defendant's own knowledge. *Ibid.*

(b) 2 Barnes's *Non est factum* and *ne unques executor* (b).

Notes 279.

Banks v. Bullock, executor.

(c) 2 Barnes's *Non est factum* and *duress* (c).

Notes 292.

Meresfield v. Hulls, T. 24 Geo. 2. These pleas are *not* contradictory; one is a general, the other a special *non est factum*. *Ibid.*

Not guilty, and a general release from one

(d) 2 Barnes's of the plaintiffs (d).

Notes 272.

Steele and others, v. Pindar, in Trespass. The court has been too nice in the construction of the statute for pleading doubly, which is *general* and a *remedial* law. These pleas are not absolutely contradictory, the release is *general* and not *particular*, and cannot in this case be given in evidence under the not guilty. *Ibid.*

Not guilty, and four guineas paid plaintiff in

(e) 2 Barnes's satisfaction for all trespasses to such a time (e).

Notes 274.

Lacy v. Lock, in trespass. E. 15 Geo. 2.

Not guilty, *son assault demesne*, and *molliter*

(f) *Pract Reg. manus imposuit* (f).

in C. P. 315.

Heoper v. Wood, T. 13 & 14 Geo. 2.—2 Barnes's Notes 285. *Taylor v. Wittal, in trespass and assault*, T. 19 & 20 Geo. 2.—2 Barnes's Notes 279. T. 16 & 17 Geo. 2. *Lawrence v. Playford, in trespass and assault.* Rule obtained upon affidavit, to shew cause why defendant should not plead three pleas, *non cui, son assault demesne*, and *molliter manus imposuit*, made absolute to plead the first and last, rejecting the second; the case made by the affidavit not making it necessary for defendant's defence to plead the second.

Not guilty, *son assault demesne*, and satisfaction for all trespasses, not a particular trespass allowed to be pleaded (a).

(a) 2 Barnes's Notes 280.

Lannie v. Fieldhouse, in trespass, assault & maim, Hil. 17 Geo. 2.

Not guilty and a justification (b).

(b) Vide 2 Barnes's Notes 285, 286, 287.

Not guilty and *son assault demesne* (c).

(c) 2 Barnes's Notes 280.

Brislow v. Trappet, in trespass and assault, M. 17 Geo. 2. By defendant's affidavit the *assault* appeared to be justifiable. He has a right to plead the special plea, but is under a doubt whether without it the general issue will be sufficient or not. He takes upon himself the proof of a collateral matter by adding the special plea. If plaintiff recovers, he will have full costs, without a certificate, though the damage should be under 40s.

Leave to plead *non assumpsit* to the first count, and bring money into court, and plead *non assumpsit infra sex annos* as to the rest of the declaration, agreed *per cur'* (d).

(d) Pract. Reg. in C. P. 310.

Dun v. Holditch, executor, M. 11 Geo. 1.

Leave to plead *infra ætatem* and *non assumpsit*, on hearing plaintiff's counsel (e).

(e) Pract. Reg. in C. P. 311.

Brewer v. Gee, T. 6 & 7 Geo. 2. See vide p. 180.

Leave to plead *non est factum* and *plene administravit* (d).

(e) Pract. Reg. in C. P. 313.

Melborne v. Prudom, T. 5 & 6 Geo. 2.

Leave to plead bankruptcy to the first count, and to pay money into court on the common rule, and plead the general issue to the other

(a) 2 Barnes's counts (a).

Notes 276.

Hall v. Lane, in case on several promises, E. 16 Geo. 2.

Vide p. 184.

Double pleas denied.] *Non assumpsit* and a general release denied, because these pleas are

(b) 1 Barnes's contradictory (b).

Notes 252.

Gibson v. Cole, Hil. 6 Geo. 2. Pract. Reg. in C. P. 311. S. C. says, that the King's Bench and this court had always denied such double pleas. *Ibid.*

Motion in action on the case to plead *non assumpsit* and infancy denied, because it may be given in evidence. *Sed vide p. 179. Brewer v. Gee.*

denied, because the latter plea is useless; infancy may be given in evidence on the general issue: In debt on bond or other deed *non est factum* and infancy have been allowed to be pleaded, because tho' the bond, &c. may be defendant's deed; yet if he was under age at the time of its execution he is not bound by it. M. 28 Geo. 2. Anon. Supplement to 2 vol. Barnes's Notes 46.

Solvit ad diem and *riens per discent* denied without affidavit of the fact as to *riens per discent*

(c) 1 Barnes's produced from the heir (c).

Notes 238.

The burgesses of Wisbich v. Frier, M. 8 Geo. 2.

Motion for leave to plead *diem* denied. doubly (*viz.*)

non est factum and *solvit post diem*, denied as never yet granted. M. 28 Geo. 2. Fox, an executor, v. Meen, in debt on bond. Supplement to 2 vol. Barnes's Notes 46.

Liberum tenementum and a justification denied (a).

(a) 1 Barnes's Notes 233.

Halsey v. Feltham, T. 6 & 7 Geo. 2. the matters prayed to be pleaded being *inconsistent*. Note; it was an action of trespass for entering plaintiff's close and pulling down a were, and defendant moved to plead *liberum tenementum*, and a justification of pulling down the were as a nuisance.

Nil debet and *nil habuit in tenementis* refused (b).

(b) *Per cur'* the plea of *nil*

habuit, &c. may be given in evidence on the plea of *nil debet*. T. 8 & 9 Geo. 2. *Marshall v. Lawrence*, 1 Barnes's Notes 239. *Pract. Reg. in C. P.* 314. S. C.

Not guilty and *liberum tenementum* denied as contradictory, no affidavit being produced to verify that the defendant's case required both pleas for his defence (c).

(c) 2 Barnes's Notes 277.

E. 16 Geo. 2 *Brewer v. Matthews*, in trespass.

Where the *locus in quo* is ascertained by the declaration, *liberum tenementum* is no plea.

It is only necessary where the trespass is

laid generally, to put plaintiff upon making a new assignment.

Leave for some of the defendants to plead *non cul'* and that the premises in question are the freehold of Sir *William Courtenay*, Baronet, denied. The place is ascertained by the declaration, and plaintiff may give the same in evidence on the general issue, as on both pleas (d).

(d) 2 Barnes's Notes 277.

Rolle, Esq; v. Lytton and others, in trespass, E. 16 Geo. 2.

In trover, not guilty and that plaintiff be-
 (2) 2 Barnes's came a bankrupt and his effects assigned (a).
 Notes 292.

Herbert v. Flower & al, T. 24 & 25 Geo. 2.—These pleas are not both necessary for the defence, they amount to an *inversion* of the action, and pleading property in defendant. The *latter* may be given in evidence on the former. On *non assumpsit* every thing may be given in evidence but a general release. *Ibid.*

Non assumpsit and a discharge under a com-
 (b) *Pract.* mission of bankruptcy denied (b).
Reg. in C. P.
 310. *Newman v. Chandler*, Hil. 2 Geo. 2.

(c) 2 Barnes's Not guilty and a tender (c).
 Notes 291.

Alderson v.
Dodding, M. 22 Geo. 2. These pleas are contradictory, the *former* denies, and the *latter* admits. *Ibid.*

Not guilty and a licence without an affidavit
 (d) 2 Barnes's denied (d).
 Notes 278.

Prinnell v. Preston, E. 16 Geo. 2. In trespass for erecting a shed in plaintiff's close, called the yard.—Where the pleas are *contradictory*, defendant should make appear by affidavit that it is necessary for his defence to insist upon both. If the trespass be by cattle, the nature of the case is sufficient, an affidavit is not necessary, because the fact may be without the party's knowledge. If by the party himself, he must move upon affidavit. *Ibid.*

Not guilty and a release of a particular trespass never admitted, but not guilty and a general release has been admitted where an affidavit has been produced (e).
 (e) 2 Barnes's
 Notes 278.

In *quare impedit*, rule to shew cause why defendant should not plead nine different matters, (denying all the matters in the declaration,) but discharged (a).

(a) 2 Barnes's
Notes 276.

Rutter v. The Bishop of Hereford and the University of Cambridge, &c. E. 16. Geo. 2. Note; in this case the court refused to grant a commission to examine touching secret trusts for papists, according to the statute, without the University's consent to plead the popish act only. *Ibid.*

Not guilty and an accord and satisfaction, the matters prayed to be pleaded being contradictory (b).

(b) 1 Barnes's
Notes 234.

Dursley v. Cole, Hil. 7 Geo. 2. *Pract. Reg. in. C. P.* 314. S. C. but only says leave to plead not guilty, and that the defendant had made the plaintiff satisfaction, was denied.

Non assumpsit and *plene administravit* denied, no affidavit being produced that defendant had fully administered (c).

(c) 1 Barnes's
Notes 237.

Heathfield v. Allen, M. 8 Geo. 2.—*Pract. Reg. in C. P.* 311. S. C. says the motion was denied, the plea being contradictory. But such a plea was allowed on affidavit, M. 8 Geo. 2. *Costa v. Misaubin*, *Pract. Reg. in C. P.* 312.—*Vide* p. 177, this work.

Non assumpsit and several matters set-off against plaintiff's demand denied as contradictory (d).

(d) 1 Barnes's
Notes 239.

Farratt v. Robinson, E. 8 Geo. 2.—The general issue must be pleaded with notice to set-off, pursuant to the statute. *Ibid.*—*Pract. Reg. in C. P.* 312. S. C. The act of parliament is in the disjunctive, you may either plead the set-off alone, or set-off the debt under the general issue. *Ibid.*

Not guilty and a justification in trespass denied as contradictory (e).

(e) 1 Barnes's
Notes 248.

Barnett v. Greaves, Hil. 10 Geo. 2.

Leave to plead *non assumpsit*, *actio accrevit infra sex annos*, and that the plaintiff was a bankrupt, denied, for the bankruptcy is contradictory to the *non assumpsit* (a).

(a) *Pract.*

Reg. in C. P.

309. *Bourne and others v. Butler*, T. 10 Geo. 2.

Leave to plead *solvit ad diem*, and that the bond was delivered as an escrow, denied, no affidavit being made of the payment (b).

(b) *Pract.*

Reg. in C. P.

315. *Barr, an executor, v. Lucas*, T. 10 Geo. 2.

No double plea in an action upon a penal statute (c).

(c) *Pract.*

Reg. in C. P.

313.—2 *Barnes's Notes* 10. S. P. This case is not within the statute 4 Ann. chap. 16. for the amendment of the law. *Ibid.*—The said Stat. 4 Ann. for pleading double, does not extend to suits where the King is a party, unless for debt immediately owing, or revenue. 2 *Barnes's Notes* 282. *Vide* twenty-fourth sect. of the statute.

Rule absolute for leave to plead three pleas (*viz.*) *non assumpsit* by the testator, a general *plene administravit*, and a special *plene administravit*; it may be dangerous and inconvenient to rely on the third plea without the aid of the second; no affidavit to verify the *plene administravit* has been required of late. *Hil. 8 Geo. 2. Matthews v. Staiban, executor, Supplement to 2 vol. Barnes's Notes* 47.

Rule made absolute to plead not guilty and a licence; a licence to beat a man is very extraordinary, but leave to plead these pleas has been granted in other cases. T. 28 Geo. 2. *Milner v. Wilson, in trespass, assault and battery, Supplement to 2 vol. Barnes's Notes* 47.

Rule

Rule to shew cause why defendant should not reply several matters to a plea in bar to an avowry, discharged. No instance can be shewn of several matters replied since *Stat. 4 & 5 Ann.* several matters may with leave of the court be pleaded to a declaration in a common case; and in trespass to a new assignment, that being in the nature of a new declaration; and also in replevin in bar to an avowry or cognizance, setting out the right to seize or distrain, which is to be controverted; but tho' the words of the statute are to plead as many matters, &c. and replications, rejoinders, &c. are properly pleadings; yet the courts of *Westminster* have never carried their leave further than as before mentioned. *Poltro* against *Self* in *B. R. Hil. 17 Geo. 2.* quoted, where the court refused leave to reply doubly to a plea of tender. *M. 29 Geo. 2. Whitby v. Chapman, in replevin, Supplement to 2 vol. Barnes's Notes, p. 48.*

Motion for leave to plead double.] Defendant may have leave to plead double any time before judgment, though the rule to plead be out. *M. 7 Geo. 2. King v. Boswell, 1 Barnes's Notes 233.* but not before appearance, for till appearance, defendant is not in court. *Benn v. Geary, T. 7 & 8 Geo. 2. Ibid. 237.*

Defendant may have leave to plead double after a judge's order for time to plead, pleading an issuable plea, and a rule was made accordingly (after conferring with the judges of the other courts), defendant pleading issuable pleas, and taking short notice. *M. 10 Geo. 2. Leighton, Esq; v. Leighton, Bart. Pract. Reg. in C. P. 316. 1 Barnes's Notes 247.*

Leave to plead several matters must be given by the court, it cannot be done by a judge's order,

(a) 4 *Ann. c.* order, the statute (a) giving the power of leave to plead several matters to the court only. *E. 21 Geo. 2. Jones v. Davis et ux,* 2 *Barnes's Notes* 288.

On motion to plead double, unless *prima facie* the pleas appear to be frivolous, the court will not consider whether they are material or not; plaintiff may demur. *M. 24 Geo. 2. Lacy and Garrick v. Barry,* 2 *Barnes's Notes* 292.

After a single plea cannot add another: After defendant has pleaded a single plea he cannot have leave to add another, as after *non assumpsit infra, &c.* pleaded, he may not add *non assumpsit* though he would pay costs. *Hil. 8 Geo. 2. Peirson v. Jves,* 1 *Barnes's Notes* 238.—*Ibid.* 284. *Hil. 10 Geo. 2. Nevil v. Fisher,* S. P.

Defendant cannot add to plea, after replication or demurrer. *Hil. 8 Geo. 2. Long v. Lingwood,* *Pract. Reg. in C. P.* 317.

Cannot pay money into court and plead double: Defendant paid 10 *l.* into court on the common rule, and afterward obtained rule to plead double, *viz. non assumpsit* and *non assumpsit infra sex annos.* *Cur'* on motion discharged the rule to plead double, with costs; for by the words of the rule to pay money into court, the defendant must plead the *general issue*, and no other plea. Motion afterwards to plead double is an imposition on the court. *E. 10 Geo. 2. Buck v. Warren, an attorney,* 1 *Barnes's Notes* 248. *Pract. Reg. in C. P.* 317. S. C.

On a double plea both issues must be found for the plaintiff, or he cannot have judgment: Defendant had leave to plead *non assumpsit* and

non assumpsit infra sex annos; to the *non assumpsit infra sex annos* plaintiff replied an original, issue was joined on *nul tiel record*, and judgment for plaintiff, whereupon he executed a writ of inquiry of damages, and never proceeded upon the issue of *non assumpsit*. Motion to set aside the inquiry. *Cur'*: It is a judgment only as to part and not upon the whole proceedings, and the judgment should not have been executed till the other issue was tried. Defendant has a double defence given him by rule, and if any one of the issues be found for the defendant, he shall be excused; *ergo* this writ of inquiry is wrong, and if this way of proceeding was to be allowed, there would be an end of pleading double. *Hil. 7 Geo. 2 Pryor v. The Earl of Ilay, executor, &c. Pract. Reg. in C. P. 319.*

Action on a promissory note; defendant pleaded *non assumpsit* and *non assumpsit infra sex annos*. To the latter plaintiff replied an original, and upon *nul tiel record* had judgment. On trial upon the *non assumpsit* plaintiff was nonsuited, but upon the issue in which he had judgment, he executes a writ of inquiry, and takes damages. Defendant moved to set aside the inquiry. After consideration, writ of inquiry set aside. *M. 8. Geo. 1. Pryor v. The Earl of Ilay, executor, &c. Pract. Reg. in C. P. 320.*

Replication (a), rejoinder, &c.

(a) *Vide*
p. 185.

TO compel plaintiff to reply, give a rule with the secondary, pay him 1 s. 10 d. and demand a replication in writing. Such rule and rule to rejoin may be given within sixteen days after term.

NOTES.

N O T E S.

1. Replication not delivered in time, nor rule given to rejoin, but defendant's attorney having agreed to accept the issues delivered; held he had waived the form of the replication, &c. *Rep. and Cas. of Pract. in C. P.* 46.

2. After time given to rejoin issuably, the defendant may demur: The reason of giving time is that the party may consider whether he will demur or not. *Hil. 8 Geo. 2. Matthews v. Wheat, Rep. and Cas. of Pract. in C. P.* 111.

Paper Book.

ON trial at bar copies of the issue are to be delivered to the judges four days before the time appointed for the trial. *Rule M. 3 Geo. 2.*

Paper books on special verdicts how to be delivered, *Vide p.*

As to delivering paper books on special verdicts and demurrers, *Vide p.*

In judges books, counsels names, number-roll, and day of argument to be set down. *Vide p.*

Issue.

WHEN issue is joined make it up, deliver a copy thereof on treble *i d.* stamp paper to defendant's attorney, charge on the back for copy *4 d. per sheet*, reckoning seventy-two words to a sheet, besides the duty, and for entering of the defendant's plea, according
ing

ing to the length. If the general issue only 2 s. and for filing defendant's warrant of attorney 8 d. (a) and if plaintiff's attorney has appeared for defendant according to the statute, he may charge for the same on the back of the issue. Upon delivering the issue to defendant's attorney, he must pay for the same, or plaintiff may sign judgment. Upon the back of the issue you generally write the notice of trial, thus :

(a) Defendant's attorney on receiving the issue to pay the plaintiff's attorney the fee for filing his warrant, otherwise judgment.

Rule Hil. 14

§ 15 Car. 2.

Mr. A. B.

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

— day of *Nov. 1758*.

Yours, &c.

C. D. plaintiff's attorney.

N O T E S.

If the issue be of the *same* term with the declaration, and the defendant has paid for one copy of the declaration, he is only to pay for a copy of the pleadings subsequent to the declaration, as the plea, replication, &c. for he is not obliged to pay for two copies of the declaration in the *same* term. Vide *Rep. and Cas. of Pract. in C. P.* 91. *Harwood v. Demy*, T. 6 & 7 *Geo. 2*. Note; in *Palmby v. Masters* same term, *cur'* made the like resolution. *Ibid.* — Vide 2 *Barnes's Notes* 220.

Issue of the same term with the declaration.

Defendant's attorney, if copy of the issue be overcharged, may *tender* what is really due. — Formerly defendant was obliged to pay for the issue at all events, even tho' overcharged, and had

Of paying for issue when overcharged.

had no relief but on application to the court for plaintiff's attorney to refund, which *cur'* would order. *Pract. Reg. in C. P. Ryder v. Somerfield, M. 7 Geo. 2.—Rep. and Cas. of Pract. in C. P. 93. S. C.—*But in *Gardner v. Goodall, 2 Barnes's Notes 199. E. 14 Geo. 2.* judgment signed for want of paying for the issue book was set aside without costs, defendant taking short notice of trial for the third sitting, plaintiff having demanded more for the issue book than what was due, and *cur'* were clearly of opinion that the old doctrine, that defendants must pay whatever was demanded for paper books, ought to be exploded, it is sufficient if they are ready to pay what is due. *Ibid. 220. Dean v. Unwin, one, &c. 220. T. 24 Geo. 2.* held that it is necessary that defendant should tender the sum due for the issue.

Of paying for issue and signing judgment for nonpayment thereof.

1. Plaintiff may sign judgment for refusing to pay for a copy of the issue. *E. 13 Geo. 1. Lawson v. Hambleton, Rep. and Cas. of Pract. in C. P. 35.* But if defendant is a prisoner, and no attorney appears to be concerned for him, plaintiff cannot sign judgment for not paying for a copy of the issue, though he may in all other cases. *Ibid.*

2. Defendant's attorney must pay for the issue immediately on tender, and accept it *de bene esse*, and if the pleadings and the issue do not agree, he may return the issue the next morning. *M. 4 Geo. 2. Hammerly v. Mallory, an attorney, Pract. Reg. in C. P. 230.*

3. Judgment signed for nonpayment of money due for an issue-book tendered at the house of defendant's attorney twice, at proper hours, tho' not left there, held to be regular. *T. 24 & 25 Geo. 2. Ouldham v. Lee, 2 Barnes's Notes 221.*

4. Issue

4. Issue tendered to the porter of an inn at defendant's attorney's chambers in the absence of the attorney and his clerk, and the money charged thereon demanded but not paid for. Judgment signed, and held to be regular. Attornies must leave proper persons at their chambers to do their business in their absence. *E. 10 Geo. 2. Rolt v. Way, 1 Barnes's Notes 183.*

5. On nonpayment of the issue in ejectment, judgment may be signed against defendant, but not against casual ejector. *1 Barnes's Notes 184.*

6. The issue-book was left in the office, *A.* defendant's attorney not being to be found, and the same day notice was left under his chamber door. The next day plaintiff's attorney found *A.* at his chambers, and gave him notice that the issue-book was left in the office, and demanded the money for the same, which *A.* refused to pay, insisting that the issue-book ought to be brought to him, whereupon plaintiff's attorney signed judgment; and held to be regular, for defendants attornies must pay for issue books at their peril, and if they are not to be found, issue-books may be left in the office (*a*). *M. 7 Geo. 2. Glascock v. Martin, 1 Barnes's Notes 165.*

rits, and set aside the judgment upon payment of costs, pleading the general issue and taking short notice of trial. *1 Barnes's Notes 166.*

(*a*) But cur' let defendant in to try the merits,

In country causes the issue to be delivered to the agent in town, and not to the country attorney. *M. 7 Geo. 2. Mountstephen v. Templer, Rep. and Cas. of Praet. in C. P. 94.*—An agreement between country attornies to deliver the issue in the country is void, for if it be tendered to the agent in town, and not paid for, judgment may be signed. *M. 9 Geo. 2. Hasel-foot v. Duke, 1 Barnes's Notes 180.*—Issue

Delivering issue in country causes.

must

must be delivered to the agent in town. 2 *Barnes's Notes* 293.

Rule to enter
issue.

On a rule to enter the issue plaintiff has four days to enter it, exclusive of the day of notice. *Hil. 3 Geo. 2. Ellison v. Cornish, Pract. Reg. in C. P. 227.*

Entering issue
on record.

Issues to be entered on record the same term they are joined. *Rules, E. 5 W. & M. Hil. 11 Geo. 1. 2.* Issue not being entered of the same term it is joined, no reason to set aside a verdict. *Hil. 5 Geo. 2. West v. Smithfield, Pract. Reg. in C. P. 232.*

Variance be-
tween issue
and record.

Variance between the issue delivered and the record of *nisi prius* in the award of the *venire facias* not material. *T. 3 & 4 Geo. 2. Bastard v. Bartlett, Pract. Reg. in C. P. 229.*—Variance between the issue and the record of *nisi prius*, viz. the *et similiter* was left out in the issue, and inserted in the record of the *nisi prius*. Defendant had made no defence at the trial, having relied upon the variance, verdict set aside. *Cur'* held this to be a material variance, and not amendable. *T. 7 & 8 Geo. 2. Rye v. Crossman, Ibid 414.*—1 *Barnes's Notes* 334. S. C. *Cur'* held that no statute of jeofails extends to it, and that it is a material variance, but by consent the cause to be tried the sitting after term. *Ibid.*—Motion to set aside the verdict, the record of *nisi prius* differing from the issue-book delivered, the defendant's name being inserted in the paper-book, in joining issue, instead of plaintiff's; but in the record plaintiff's name was inserted, and the issue properly joined; but two issues being joined, a general verdict found for plaintiff.

tiff. *Cur'* refused to make any rule. *E. 6 Geo. 2. Thompson v. Simmons, 1 Barnes's Notes 333.*—In an action on an indorsed note, in the issue it was, *be the said indorsed*, (the name of the *indorsor* being omitted) and in the record, *be the said A. indorsed*, verdict set aside. *E. 8 Geo. 2. Wreathcock v. Bingham. Ibid. 334.*—*John John Shorter* in the declaration, and *John Shorter* in the issue, *immaterial*, and verdict not set aside. *Hil. 9 Geo. 2. Shorter v. Helbutt, Ibid. 335.*—In the first count in the issue book it was *plaintiff was indebted to plaintiff*, in the record, *defendant was indebted, &c.* and in the other places right. *Cur'* held the variance not to be material, and refused to set aside the verdict. *M. 10 Geo. 2. Johns v. Smith, Ibid. 335.*—Motion for a new trial, founded on a variance between the issue delivered and the record, granted; (tho' the court did not think the variance material,) the merits not having been tried. Costs to attend the event. *Vide 2 Barnes's Notes 381.*

Two defendants by the *same* attorney deliver two separate pleas of not guilty, the pleas must be entered separate in the issue. *E. 4 Geo. 2. Kirk v. Pomfret and Rusby, Pract. Reg. in C. P. 231.* Where there are two pleas, how they are to be entered in the issue.

Motion to arrest the judgment in *assault* and *battery*. There had been two several pleas of *son assault*, and issue was joined in the *last*, but left out in the *first*. Rule to shew cause discharged, because it appeared to be the clerk's mistake, and amendable by the statute of jeofail; and besides, as the issue is joined in the *latter* plea, that may also have reference to the *first*. *T. 7 & 8 Geo. 2. Eason and wife v. Wilkins and wife, Rep. and Cas. of Pract. in C. P. 106.* Two pleas, issue joined as to one only.

Issue of *nul
tiel record.*

1. Where the judgment upon an issue of *nul tiel record* is final, the rule for judgment should be, unless cause within four days, that the defendant may have that time to move in arrest of judgment; but where the judgment is *interlocutory* that reason fails, and a two day rule hath been held sufficient, because the defendant may move in arrest of judgment after the inquiry executed. Vide 2 *Barnes's Notes* 202.

2. Where the proceeding is by *original*, and a general return day is given to bring in the record, the defendant ought to be called to bring in the record at the rising of the court that day; and if he fail, the rule for judgment should be, unless cause on the appearance day of that general return, and the record may be brought in on that, or any intervening day; but where the proceedings are by *bill* against an attorney, and the day given to bring in the record is a day certain, the record cannot be brought in after that day, but on that day at the rising of the court the defendant ought to be called to bring in the record, and if he fail, the court will appoint the day to be inserted in the rule for judgment *nisi causa*. Vide 2 *Barnes's Notes* 203.

On a replica-
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record* in ano-
ther court,
plaintiff need
not deliver a
replication in
form, but may
deliver the is-

3. On a replication of *nul tiel record* in the *same* court, there is a compleat issue, and no need of a rule to rejoin, but if the record is in another court, there must. *E. 3 Geo. 2. Fox and another, assignee of the Sheriff, v. Lewis, Pract. Reg. in C. P. 227. Rep. and Cas. of Pract. in C. P. 56. S. C.*

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500. Issue

4. Entry upon record of an issue of *nul tiel record* amended by the writs of *scire facias* and *certiorari*, and the returns thereof, on payment of costs. *M. 6 Geo. 2. Hampson v. Chamberlain, Rep. and Cas. of Pract. in C. P. 76. 1 Barnes's Notes 3. S. C.*

5. On issue of *nul tiel record* plaintiff may continue the day for bringing in the record. *M. 13 Geo. 2. 1 Barnes's Notes 87, 88.*

6. Upon an issue of *nul tiel record* plaintiff delivered the book, and gave himself a day to bring in the record, *viz. tres Trin', July 8*, but did not bring in the record on that day. *July 9th* plaintiff offered the record, and moved it might be read; but refused, it not being brought in on the day plaintiff had given himself to produce it. *T. 13 Geo. 2. Calveraq v. Pinhero, Ibid. 256.*

In debt upon a bail-bond, defendant pleaded *comperuit ad diem*; motion to amend the issue, in which the condition of the bail-bond is misrecited, by making it agreeable to the bond, on payment of costs, and granted. *M. 11 Geo. 1. Walpole v. Robinson, Rep. and Cas. of Pract. in C. P. 26.*

Accepting of issue waives the form of a replication, and a rule to rejoin. *T. 2 Geo. 2. Sedgwick & al' v. Richardson, Rep. and Cas. of Pract. in C. P. 46.*

After issue joined, tho' improperly, a demurrer cannot be received. If no proper issue be joined, defendant may take advantage thereof in Arrest of judgment. *1 Barnes's Notes 88.*

Leave for plaintiff to deliver a new issue properly intituled. In the title of the issue delivered the word *George* was omitted, it stood

thus, “*Hilary term 20th King the second.*” *Hil.*
20 Geo. 2. Beaumand v. Stuart a prisoner, 2 Barnes’s
Notes 15.

The form of an issue by original.

(a) The term *Michaelmas* term (a) in the—year of King *George*
 the second.
 The issue is joined.

Verret.

Middlesex, **A.** B. late of *Westminster* in the
 to wit. **A.** county of *Middlesex*, gent. was
 attached to answer *C. D.* of, &c. [to the end of the
 declaration], and therefore he brings suit, and
 so forth. Then you begin a new line, and en-
 ter the pleadings to the end of the issue, after
 which follows the award of the *venire* in this
 form: Therefore it is commanded to the sheriff
 that he cause to come here from the—day of—
 [some return before the day of trial] twelve, &c.
 by whom, &c. and who neither, &c. to re-
 cognize, &c. because as well, &c.

*An award of a venire and writ of inquiry
 where two defendants appear, and one lets
 judgment go by default.*

AND the said *C.* and *D.* by—their attorney
 come and defend the force and inquiry
 when, &c. and say, that they did not undertake
 in manner and form as the said *A.* above com-
 plaineth against them; and of this they put them-
 selves upon the country, and the said *A.* like-
 wise. And the said *B.* by—his attorney cometh
 and

and defendeth the force and injury when, &c. and saith nothing in bar or preclusion of the aforesaid action of the the said *A.* whereby the said *A.* remaineth undefended by the said *B.* by reason whereof the said *A.* ought to recover against the said *B.* his damages occasioned by the non-performance of his said promises and undertakings; but because it is not known whether or no the said *C.* and *D.* will be convicted of the premisses, and if they shall be convicted, it is convenient and necessary that there should be only one taxation of damages for the whole premisses in one writ specified, and those damages ought to be settled by a jury of the county in that behalf; and that the writ of inquiry of damages aforesaid against the said *B.* be stayed until the said issue as aforesaid between the said *A.* and the said *C.* and *D.* shall be determined, therefore as well to try the issue between the said *A.* and the said *C.* and *D.* above joined, as also to inquire what damages the said *A.* hath sustained by occasion of the premisses aforesaid, the sheriff is commanded that he cause to come here twelve free and lawful men of the body of his county, &c. by whom, &c. and who are not related to the said *C.* or *D.* or the said *A.* to recognize, &c. because as well, &c.

For the form of an issue on a bill against an attorney, *vide p.*

Warrants of attorney.

EVERY attorney shall enter his warrant of attorney in every suit upon record in court, on pain of 10 *l.* and further punishment by imprisonment, at the discretion of the court.