

quary ought not to have been executed till trial on the first issue. *Hil. 7 Geo. 2. Pryor v. Earl of Islay, executor of the Earl of Suffolk, 1 Barnes's Notes 152.*

3. Motion by plaintiff to quash his own writ of inquiry, which was executed the day after the return (a), and granted, and plaintiff to sue out another writ. Defendant having been at great expence in defending the writ, had costs allowed him. *M. 7 Geo. 2. Suttle v. Layton, Rep. and Cas. of Pract. in C. P. 93.—Pract. Reg. in C. P. 449. S. C. Rep. and Cas. of Pract. in C. P. 85. Stanton v. Winch, Hil. 6 Geo. 2. S. P. 449.*

(a) The return was on a Sunday, and the writ was executed on the Monday. *Vide Pract. Reg. in C. P. 449.*

4. Inquiry executed before judgment given on demurrer was actually signed by prothonotary, irregular. *T. 7 & 8 Geo. 2. McCarty v. Parminster, 1 Barnes's Notes 153.*

5. If the jury on a writ of inquiry find no damages, inquisition may be quashed; otherwise if they find damages tho' never so small (a). *M. 10 Geo. 2. 1 Barnes's Notes 154.* If no damages found, a second writ of inquiry may not issue without leave. *Ibid. 156.*

(a) Inquisition set aside, and leave for plaintiff to execute a new inquiry, the sheriff on the execution of the writ having admitted improper evidence to be given by defendant, whereby the damages were lessened. *T. 14 & 15 Geo. 2. Tutton v. Andrews.*

(a) Fifty pounds (on the circumstances of the case) held not to be excessive damages on an inquiry in an action for a false return of a rescous. *1 Barnes's Notes 189.*

6. Inquiry set aside for excessive (a) damages upon payment of costs, and a new (b) writ of inquiry to be executed before a judge at next assizes. *M. 15 Geo. 2. Yale v. Swaine, for false imprisonment, 2 Barnes's Notes 189.*

(b) A new writ of inquiry cannot be executed in the same case without leave of the court.

7. Motion to set aside a writ of inquiry for its having been altered before the return, but denied, it having been resealed, and not made use of before the alteration, and the complaint being groundless, and containing some scandal. *Cur'* gave plaintiff his costs. *M. 15 Geo. 2. Langley v. Botbwright, an attorney, 2 Barnes's Notes 189.*

8. Objections to the regularity of an inquiry cured by defendant's making defence. *2 Barnes's Notes 190, 246.*

9. Motion to set aside inquisition taken on a writ of inquiry for *smallness* of damages; the jury found 8 *l.* only, though plaintiff's cure by a surgeon was proved to be well worth eighteen guineas, and tho' no affidavit was produced by defendant to controvert the fact, *Cur'* refused to make any rule. *M. 18 Geo. 2. Donnelly v. Baker, in assault and battery, 2 Barnes's Notes 129.*

Inquiry not to be quashed for *smallness* of damages only, but may for misdemeanor in the sheriff. *M. 10 Geo. 2. Gilbert v. Nightingale, Rep.*

and Cas. of Pract. in C. P. 135. Pract. Reg. in C. P. 450. S. C. 1 Barnes's Notes 154. S. C. Rule nisi to quash an inquiry (on plaintiff's motion) for smallness of damages occasioned by a misbehaviour of the sheriff and others, and to issue a new writ. E. 6 Geo. 2. Gilbert v. Morshead, Rep. and Cas. of Pract. in C. P. 89.

10. On the execution of a writ of inquiry, the jury found for damages the value of the third part of the land from the time of the husband's death to the day of the inquisition, without any deduction for reprises, *viz.* land-tax, repairs and chief rent, and for costs the jury gave the amount of the attorney's bill for the demandant, upon his evidence that the same was a reasonable charge, and he expected it from his client. Damages are given by the statute of *Merton*, costs by the statute of *Glocester*. The court thought that the value of the third

third part of the profits run since the death of the husband, should have been computed only to the time of awarding the writ of inquiry, and not to the day of inquisition, that an allowance ought to have been made for reprizes. The words of the writ are (*ultra reprizas*), and that the attorney's bill to his client, the demandant, ought not to have been the measure of the costs. The inquisition was set aside, and a new writ of inquiry ordered to be executed before a judge at next assizes on payment of costs. T. 18 & 19 Geo. 2. *Penrice, widow v. Penrice, by writ of dower unde nihil habet*, 2 Barnes's Notes 191. *Quere* whether the jury should not have given common costs one shilling, as usual, and the rest be taxed and allowed *de incremento per prothonotary*. But this was not before the court. *Ibid.*

11. Judgment and inquiry set aside, declaration being intitled of *Mich.* instead of *Hil.* term, and the costs to attend the event of the trial. 2 Barnes's Notes 219.

Writ of inquiry on bill returnable on a general return is error, and not irregularity, and

rule nisi moved for before final judgment discharged. M. 8 Geo. 2. *Elmes v. Thomlinson, an attorney*, *Ibid.* 439 — 1 Barnes's Notes 154. S. C.

Amending writ of inquiry.

1. *Proceeding by bill on, &c.* On the roll the writ of inquiry was awarded, returnable on a general return, instead of a day certain, but ordered to be amended. M. 5 Geo. 2. *Kirby v. Ellison*, *Pract. Reg. in C. P.* 24.

2. Writ of inquiry amended by striking out a defendant's name after the *taliter processum fuit*. E. 17 Geo. 2. *Ingham v. Chrishal and Note*, 2 Barnes's Notes 11.

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Three breaches in covenant, one confessed, two controverted, *venire tam quam*, verdict for plaintiff, but omitted to inquire damages of first breach, a writ of inquiry was granted. *M. 7 Geo. 2. Townshend v. Pool, 1 Barnes's Notes 151.*

Writ of inquiry ⁱⁿ covenant.

Judgment by default in prohibition, the plaintiff shall have a writ of inquiry of his damages, and his costs taxed from the time the rule for the prohibition was made absolute. *M. 7 Geo. 1. Bettinson, Bart. v. Henchman & al. Farrington v. Eosdem, Rep. and Cas. of Pract. in C. P. 20.*

Inquiry in prohibition.

A writ of inquiry of damages.

GEORGE the second, &c. To the Sheriff of *Middlesex*, greeting. Whereas *A. B.* late of— in your county, gent. was attached to be in our court before our justices at *Westminster* to answer *C. D.* in a plea, for that whereas the said *A.* on the— day of— in the— year of our reign at *Westminster* in the county of *Middlesex*, &c. [as in the declaration] to the damage of the said *C.* of— pounds as he saith, [or *as it is said*] and it was in such manner proceeded in our said court that the said *C.* ought to recover against the said *A.* his damages by occasion of the not performing the said promises and undertakings (a). But because it is not known what damages the said *C.* hath sustained by occasion of the premises, Therefore we command you that by the oath of twelve good and lawful men of your county (b), you diligently inquire what damages the said *C.* hath sustained as well by reason of

(a) Or by occasion of the premises, by occasion of the said trespass, Trespass and assault, breach of covenant, or the like, as the action may be.

(b) If in London, say, of your Bailiwick.

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the premisses [or on that occasion] 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, &c. under your seal and the seals of those by whose oath you shall make such inquisition; and have you there the names of them by whose oath you shall make that inquisition and this writ. Witness *Sir John Willes* Knt. at *Westminster* the—day of—in the—year of our reign.

Cooke.

Writ of inquiry of damages at the suit of an attorney of the court.

GEORGE the second, &c. To, &c.
Whereas C. D. was attached by our writ of privilege issuing out of our court here, to be before our justices at *Westminster* to answer A. B. gent. 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, in a plea, 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 A. of—pounds, as it is said, and it was in such manner proceeded in our said court of the bench, That, &c. (*as before*.) making the writ returnable on a day certain as in B. R. and not on a general return day, because the proceedings in this case are not by original.

A writ.

A writ of inquiry where an attorney is defendant.

GEORGE the second, &c. To the sheriff of——&c. Whereas C. D. by S. S. his attorney came into our court before our justices at *Westminster*, and exhibited to our said justices his bill against J. M. gent. one of the attornies of our court of the bench present in our said court in his proper person, of a plea, for that, &c. (*as before*). This writ must be returnable on a day certain, as in B. R.

Subpœna ad testificandum on a writ of inquiry.

GEORGE the second, &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——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 John Willes* Knt. at *Westminster* the——day of——in the——year of our reign.

Cooke.

Execu-

Execution:

A *Ca. fa. fi. fa.* or an *elegit* must be written on a treble 6 *d.* stamp. *Ca. fa.* or *fi. fa.* must be signed by the prothonotary in whose office the proceedings are, pay him 4 *d.* each, seal 7 *d.* each. And if a *testat'* 8 *d.* signing, and 1 s. 2. *d.* sealing.

NOTES concerning a *ca. fa.*

1. Where the body is taken in execution on a *ca. fa.* no other satisfaction can be had against the defendant's lands or goods. But in case defendant dies in execution, by the *Stat. 21 Jac. 1. c. 24.* the plaintiff, his executors or administrators may 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. *Note*; in this case the judgment must be revived by *scire facias*.

2. *Ca. fa.* tho' executed, was ordered to be amended by the judgment roll, by making the defendant's christian name *Edmund* instead of *Edward*. *E. 12 Geo. 2. Brown v. Hammond, Pract. Reg. in C. P. 25. 1 Barnes's Notes 16. S. C.*

3. *Ca. fa.* left with the sheriff in order to be returned *non est inventus*, after a writ of error brought, is irregular. *Hil. 10 Geo. 2. Mackereel v. Hammerton, Pract. Reg. in C. P. 198.*

4. If *A.* and *B.* be bound *jointly* and *severally* to *C.* and *C.* sue them *jointly*, *C.* may have a *capias* against them both, and the death or escape of one shall not discharge the other; but *C.* cannot

not

not have a *capias* against the one, and another kind of execution against the other, because tho' they be two several persons, yet they make but one debtor when C. sues them jointly, but if C. sues them *severally*, C. may sever them in their kinds of execution; though if once a very satisfaction be had of one, or against the sheriff, or an escape of one, the rest may be relieved upon an *audita querela*. *Hob.* 59.

5. There must be fifteen days between the *teste* and return of a *ca. sa.* against the principal to ground proceedings against bail. 1 *Barnes's Notes* 53.

6. If a *ca. sa.* is returned pending a writ of error, it is no regular foundation for proceedings against bail. 1 *Barnes's Notes* 85.

7. *Per Cur,* plaintiff cannot sue out a *ca. sa.* and *fi. fa.* at the same time, and take out the sheriff's warrants thereon.—Plaintiff in this case had executed both *ca.* and *fi. fa.* and both were set aside as irregular. *T. 6 & 7 Geo. 2. Snape and others, assignees, v. Hancock,* 1 *Barnes's Notes* 135.

N O T E S concerning a *fi. fa.*

1. If after a *fi. fa.* 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.

2. If only part of the debt or damages be levied by a *fi. fa.* the plaintiff may have a *ca. sa.* or *elegit* for the residue. *Hob.* 57, 58. Plaintiff within the year levied part of the debt, &c. by *fi. fa.* He may either continue down the execution, or revive by *sci. fa.* *Hil. 5 Geo.*

2. *Marsberg v. Harlin, an attorney, Pract. Reg. in C. P.* 209.

3. Judgment was obtained in *Middlesex*, and a *fi. fa.* issued into that county, and returned *nulla bona*; and thereupon a *fi. fa.* was issued into *London*, but was not made a *test' fi. fa.*, *testat'* to set aside the *fi. fa.* in *London* for want of its being made a *testat'* but refused, *Cur'* being of opinion that the award of the *testat' fi. fa.* upon the roll was sufficient to warrant a *fi. fa.* into *London*, and that it need not be made a *testat'*. *M. 6 Geo. '2. Oates v. Forest, 1 Barnes's Notes 132.—Rep. and Cas. of Pract. in C. P.* 79. *S. C.—Pract. Reg. in C. P.* 210. *S. C.* says, the words *testatum sit, &c.* are needless in an execution. *Ibid.* 211.—A *fi. fa.* into a foreign county held to be regular, tho' it did not appear to be a *test'*, a *fi. fa.* into the proper county appearing to have been issued and returned. *T. 8 & 9 Geo. 2. Bond v. Jacobs, Pract. Reg. in C. P.* 212.—*1 Barnes's Notes 138.* *S. C.* says, a writ of *testat' fi. fa.* issued immediately after judgment, and before a *fi. fa.* returned and filed to warrant it, on plaintiff's producing a *fi. fa.* returnable in the proper county, the rule to shew cause why *test' fi. fa.* should not be set aside, was discharged.

4. A *fi. fa.* executed, refused to be amended. *Hil. 4 Geo. 2. Garland v. Spice, Pract. Reg. in C. P.* 24. but see notes on *ca. se. p.*

5. Warrant on a *fi. fa.* being altered after it was sealed by inserting a new Bailiff's name, *Cur'* held that no goods were thereby taken in execution, and ordered the bailiff and the attorney, who were privy to the alteration, to shew cause why an attachment should not go against them.

them. *Hil. 7 Geo. 2. Hann v. Capel, Pract. Reg. in C. P. 214.*

6. Judgment in a joint action against several defendants; *fi. fa.* issued out against the goods of one only; motion to set aside *fi. fa.* and for restitution. Plaintiff prayed to amend, and quoted *Brown v. Hammond, Vide p.* The parties came into terms by agreement between themselves without any determination by the court, and by consent the rule to shew cause was made absolute with costs. *M. 21 Geo. 2. Stanynought one, &c. v. and seven others, 2 Barnes's Notes 172.*

7. A bill of sale held to be a removal of goods taken by a *fi. fa.* and a year's rent ordered to be paid the landlord out of the money levied by the sheriffs of London. *Hil. 24 Geo. 2. West & ux' v. Hedges, 2 Barnes Notes 174.*

8. A *fi. fa.* was irregular in two respects, (1.) In the return, which was general, 15 *Martin*. instead of a day certain. (2.) It commanded the sheriff to have the money when levied at the return in court, to be rendered to plaintiff the husband only, and not to the husband and wife, though both were plaintiffs. Rule absolute to set aside *fi. fa.* and the execution thereof, *without* costs.—Plaintiffs produced a judgment by confession to warrant the *fi. fa.* but it was faulty, the recovery being by plaintiff the husband only. *Cur'* ordered the judgment to be rectified agreeable to defendant's confession, and that the defendant should bring no action. *M. 29 Geo. 2. Hanbury and wife v. Cowper, one, &c. by bill. Supplement to 2 vol. Barnes's Notes p. 52.*

NOTES concerning an *elegit*.

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

2. If a *ca. fa.* or *fi. fa.* be sued out, and they take no effect, plaintiff may have one of them after another, or an *elegit* after both. *Hob. 57.*

3. If on an *elegit* only goods be levied, and these not sufficient to satisfy the judgment, plaintiff may have a *ca. fa.* for the residue, an *elegit* being in effect but a *fi. fa.* *Hob. 58.*

4. Plaintiff may award on the roll *elegits* into as many counties as he pleases, and execute all or any; 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.

5. Where by inquisition on an *elegit* it is found that the plaintiff was seised 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 seised at the time of the judgment; and if he was not seised, it must be proved by the other side.

NOTES concerning *testatum* executions.

1. In cases of a *test. fi. fa.* [or *ca.*] the court will not go into a nice inquiry when the *fi. fa.* [or *ca. fa.*] into the original county to warrant the *test'* was sued out; it is sufficient if the first *fi. fa.* [or *ca. fa.*] returned be produced. *Cur. Hil. 18 Geo. 2. in Burdus v. Satchwell,* 2 *Barnes's Notes* 169.

2. Judgment obtained in *Middlesex*, defendant was taken eight of *May* last by a *test' ca. fa.* out of *Middlesex* into *Somersetshire*; objected that no *ca.* in *Middlesex* was returned to warrant the *test'* as appeared by search in *Easter* and *Trinity* terms last; but after the search a *ca. fa.* in *Middlesex* was returned, and entered in the sheriff's books. *Cur'* declared, that had the application been recent, they must *ex debito justitiæ* have taken notice of it; but as defendant had so long acquiesced, and as possibly an action for an escape might have been brought against the sheriff of *Somersetshire*, the rule to shew cause why the *test' ca. fa.* should not be set aside, was discharged. *M. 20 Geo. 2. Smith and wife v. Phripp, Ibid.* 171.

3. Plaintiff having obtained judgment in *Middlesex*, sued out in the first instance a *test' fi. fa.* into *Warwickshire*, and took defendant's goods in execution. Motion to set aside the *test' fi. fa.* for want of a *fi. fa.* returned *nulla bona* in *Middlesex* to warrant it. Plaintiff after *test' fi. fa.* executed, and notice of motion, but before the motion made, got a *fi. fa.* in *Middlesex* returnable, which *Cur'* held sufficient. *T. 22 & 23 Geo. 2. Sweetapple v. Atterbury,* 2 *Barnes's Notes* 174.

Additional notes concerning executions.

Of levying
debt, &c. on
a bond with a
penalty.

1. If judgment be on a bond with a penalty, plaintiff may, as far as the penalty will extend, levy the poundage, and all incident charges of levying.

*Pract. Reg. in
C. P. 213.*
Says it was re-
ferred by con-
sent.

2. Verdict and judgment for plaintiff on a bond on which execution was taken out, and debt, interest and costs to the time the execution was compleated, levied out of the penalty. Defendant moved for restitution of all the money levied, being 37*l.* 10*s.* 0*d.* except 21*l.* which was allowed [for costs] on the *postea*. After long debate, *Cur'* referred it to the prothonotary to compute what was due [for costs] as between attorney and client, and afterwards they seemed to be of opinion that in all such cases the prothonotary should allow interest and costs from the time of the judgment to the compleating the execution. *E. 6 Geo. 2. Daking v. Thornbill, Rep. and Cas. Pract. in C. P. 90.* — *Pract. Reg. in C. P. 213.* S. C. says, plaintiff levied the principal, interest, and his attorney's whole bill of costs, amounting to 37*l.* 10*s.* (tho' prothonotary had allowed but 21*l.*) and the sheriff's poundage, and that *Cur'* said it was but reasonable to allow costs as between attorney and client. — *1 Barnes's Notes 134.* S. C. says, plaintiff may levy the poundage and other necessary charges besides the costs taxed, out of the penalty, and that if defendant should think himself aggrieved, the court upon application would refer the matter to the prothonotary, to inquire whether plaintiff hath levied more than he ought to have done or not. — Debt on a bond, judgment and execution; plaintiff, by virtue of
the

the penalty, may levy his full costs, the poudage, &c. T. 13 & 14 Geo. 2. *Bevan v. Jones*, *Pract. Reg. in C. P.* 214.

3. *Cur'* were of opinion, that after execution executed, tho' the judgment be for a penalty, they have not jurisdiction at common law or by statute to refer to the prothonotary to examine into the sum due for principal, interest and costs, and into the *quantum* levied, in order to make restitution of the surplus, without plaintiff's consent, but the defendant must seek relief in a court of equity. T. 13 & 14 Geo. 2. *Bevan v. Jones*, 2 *Barnes's Notes* 162.

1. If execution be not sued out within a year, the judgment must be revived by *sci. fa.* Of suing out execution within the year, and reviving the judgment by *sci. fa.* after the year, and of continuing *ca. fa.* or *fi. fa.* on the roll.

2. Judgment of *Mich.* 1731, signed *Nov.* 13th. *Fi. fa.* bore teste *Nov.* 28th, in *Mich.* following. Defendant moved to set aside the *fi. fa.* as irregular, the judgment not being revived by *sci. fa.* and the *fi. fa.* not being issued within the year. Plaintiff insisted that the *fi. fa.* being issued within the fourth term from the time of signing judgment, it was regular, and produced an affidavit that execution had been some time stayed by an injunction out of *Chancery*. *Cur'* held the injunction to be quite out of the case, and that the year is to be computed from the day of signing judgment; and therefore set aside the *fi. fa.* *Hil.* 6 Geo. 2. *Sympson v. Gray and wife and another*, 1 *Barnes's Notes* 132.

3. Judgment was entered 11th and 12th, revived in *Easter* term 13 Geo. 2. and defendant was taken in execution in *July* 1741. and was

then discharged by plaintiff's consent, and a written agreement was entered into by the parties, that the judgment should stand revived for twelve months. After more than a year from the last *ca. sa.* plaintiff caused defendant to be again taken in execution, *without continuance on the roll*, relying upon the written agreement; *Cur'* held the agreement to be null and void, and made the rule absolute to set aside the last *ca. sa.* and discharged defendant out of custody. *M. 16 Geo. 2. Thompson v. Bristow, 2 Barnes's Notes 165.*

4. Defendant obtained a *superseas* for want of a declaration in an action of debt on judgment, and was afterwards taken in execution by a *ca. ad satisfac.* issued after a year and day from the time of the judgment, without any *sci. fa.* to revive. Defendant brought his action for false imprisonment, and plaintiff justified under the *ca. sa.* Defendant applied to set aside the *ca. sa.* and it appearing that a *ca. ad respond.* only, and not a *ca. sa.* had issued within the year, there was nothing to warrant the continuance of a *ca. sa.* on the roll, and the rule was made absolute to set aside the *ca. sa.* *T. 16 & 17 Geo. 2. Ashdowne v. Fisher.*

5. On a rule to shew cause why a *fi. fa.* should not be set aside, the judgment being above a year old, and not revived by *sci. fa.* nor any continuances of *fi. fa.* entered on record, plaintiff, before cause shewn, entered the continuances, and producing intervening writs of *fi. fa.* to warrant the same. Rule discharged without costs. *E. 20 Geo. 2. Low v. Beart, 2 Barnes's Notes 172.*—*Elegit* may be continued before suing out the writ, *fi. fa.* or *ca. sa.* cannot be continued without suing out the writ. *Ibid.*

1. A moiety of damages recovered in the original action levied on one bail, and the other bail not having goods sufficient to levy the remainder, second execution against the goods of first bail held irregular. Plaintiff cannot levy by parcels without defendant's request and consent; he might have levied the whole upon defendant at first, who it appeared had then goods sufficient to answer. Second *fi. fa.* set aside, and restitution ordered. *E. 9 Geo. 2. Fisher v. Carruthers, 1 Barnes's Notes 141.*

In what cases *Cur'* will set execution aside.

2. Subsequent to the taking out *fi. fa.* and before it was executed, plaintiff had entered into an agreement in writing to forbear executing the *fi. fa.* if the defendant would pay him 4 s. per week, which sum the defendant constantly paid or tendered to plaintiff; plaintiff afterwards took defendant's goods in execution; *Cur'* held plaintiff to his written agreement, and set aside the execution. *Hil. 6 Geo. 2. Boyce v. Hall, Pract. Reg. in C. P. 212.*

3. Execution returnable on a general return instead of a day certain. This being an execution, no advantage can be taken of it upon a writ of error. *Supersedeas* ordered to issue, and by consent, on plaintiff's paying costs, the defendant shall bring no action. *M. 14 Geo. 2. Walker v. Harris one, &c. Ibid. 439.*

4. By rule of court in 1654. the whole proceedings after appearance ought to be in one and the same office; and *Cur'* would have set aside a *fi. fa.* and *venditioni exponas*, they not having issued from the same office in which judgment was signed, had not application been made too late. *Note*; the *fi. fa.* issued so long ago as 1739, and the application to set aside *fi. fa.* and

and *renditioni exponas* was made. *E. 14 Geo. 2. Pickering v. Landon, 2 Barnes's Notes 163.*

5. Where plaintiff brings an action of debt on a judgment, he cannot regularly take out execution on that judgment till he has discontinued the action of debt; if he does, *Cur'* will set aside the execution, and order the goods to be restored with costs. *Hil. 18 Geo. 2. Burdus v. Satchwell, 2 Barnes's Notes 169.*

Feme covert
taken in execution.

1. Trespas and assault against *Baron* and *Feme*, verdict for plaintiff, execution against husband and wife, and the wife taken in execution; *per tot' Cur'*: She is well charged in execution, and ought not to be discharged. *E. 13 Ann. Cooper v. Old & ux, Pract. Reg. in C. P. 208.—Carry & ux' v. Garbut, T. 4 Geo. 1.* The like resolution on a verdict for the defendant. *Ib.*—But where the action was brought for the labour of plaintiff's wife done for defendant during coverture, and plaintiff failing in the action, the wife *only* was taken in execution by *ca. sa.* for the costs, but discharged; for *Cur'* held, that as the demand did not accrue to the wife *dum sola*, she was wrongfully joined a party in the action, and that the wife, who by law is supposed to have nothing whereout to make satisfaction, ought not to be detained in execution. If in such case the wife could be detained, a runaway husband would have it in his power to procure his wife to be imprisoned. *M. 17 Geo. 2. Rownson and wife v. Williamson, 2 Barnes's Notes 167.*

2. The debt was contracted by the woman while sole, and plaintiff having recovered judgment, both husband and wife were taken in execution, and held good; for no instance can be shewn where the wife has been discharged from

an execution. *E. 12 Geo. 2. Barriman v. Gilbert and wife, 1 Barnes's Notes 142.*

1. Defendant brought up by the Marshal of Defendant the King's Bench on an *habeas corpus ad faciendum & recipiendum*, charged in execution. *M. hab. corp. 6 Geo. 1. Fulthorpe v. Moore, Pract. Reg. in C. P. 210.* brought up by from the King's Bench charged in execution.

2. A prisoner brought up by the Warden of the *Fleet* on an *habeas corpus* to be charged in execution; the prisoner had served notice of the allowance of a writ of error, *Cur'* would not stop the *habeas corpus*, but defendant was charged in execution. *T. 10 Geo. 2. Hannot and others v. Farrelles, Rep. and Cas. of Pract. in C. P. 133. S. C.—1 Barnes's Notes 274. Hannot v. Farettes, S. C.*

If plaintiff or defendant be alive after execution taken out, and die before executed, yet it may be executed before the continuance or return-day. *E. 11 Geo. 2. Anon. Pract. Reg. in C. P. 215.* Execution executed after plaintiff's or defendant's death, &c.

Execution taken out on a judgment in this court, and debt brought on the judgment in the Mayor's court at *Worcester*, plaintiff to make his election. *T. 11 & 12 Geo. 2. Richard v. Davis, Pra. Reg. in C. P. 215.—1 Barnes's Not. 142. S. C.* Judgment in one court, and debt on the judgment in another, &c.

After judgment in a joint action against all the defendants, plaintiff sued out a *fi. fa.* against the goods of one of the defendants only, motion for defendant to set aside the *fi. fa.* and for restitution. Plaintiff prayed to amend the *fi. fa.* by the judgment, and quoted *Brown v. Hammond, E. 12 Geo. 2.* The parties came into Judgment in a joint action *fi. fa.* against one.

into terms of agreement, between themselves without any determination by the court, and by consent the rule was made absolute. *M. 21 Geo. 2. Stanynought, one, &c. v. and seven others, 2 Barnes's Notes 172.*

Of paying
landlord's rent
out of money
levied.

The question was, whether the landlord's rent should be paid out of the money levied in execution upon the defendant's goods, who was a bankrupt, and thereupon another question arose, whether or no if the defendant was a bankrupt before the levy, the goods were liable to the payment of the rent. *Cur'* thought it a proper matter to be determined by a jury, whether the defendant was a bankrupt or not at the time of the levy, and directed an issue to be tried accordingly. *E. 7 Geo. 2. Patrick v. Pettis, 1 Barnes's Notes 137.*

Defendant taken
in execution
discharged.

Defendant taken in execution when he was attending the execution of a writ of inquiry as attorney for his client, ordered (on shewing cause) to be discharged. *T. 7 & 8 Geo. 2. Pigot v. Charlewood, 1 Barnes's Notes 137.*

A bankrupt's
goods taken
in execution.

Defendant rendered in discharge of bail, and his person was discharged out of execution by the court as a bankrupt, pursuant to the statute. His goods were afterwards taken by a *fi. fa.* and *Cur'* held that the goods may be taken; there is no clause in the statute which extends to the goods. *T. 16 & 17 Geo. 2. Ashdowne v. Fisher, 2 Barnes's Notes 165.*

Reviving
judgment by
an executor.

An executor may revive, but cannot take out execution pending writ of error. *M. 20 Geo. 2. Wright v. Treweeke, 2 Barnes's Notes 347.*

1. Debt on a judgment after error, the plaintiff may proceed to judgment, but not to take out execution till error determined. *Pract. Reg. in C. P.* 55.—*Ibid.* 182. S. P.

Of suing out execution, after error brought, and allowed.

2. The allowance of a writ of error is a *superseas*, if the execution be executed after the allowance thereof, without notice of it. *M. 1 Geo. 2. Miller v. Miller, Rep. and Cas. of Pract. in C. P.* 39.

The allowance is notice of itself. *Salk.* 321. Yet to bring the attorney into contempt,

he must have had notice thereof.

3. Judgment signed after the return of the writ of error was out, record not removed, and execution regular. *M. 2 Geo. 2. Harding v. Avery, Pract. Reg. in C. P.* 186.—*Rep. and Cas. of Pract. in C. P.* 50.

The judgment when signed hath relation to the day in bank, so that a writ of error returnable

after in the same term would have removed the record. *1 Mod.* 212.

4. Judgment by *cognovit actionem* signed after the return of the writ of error, execution set aside, and restitution to be made, the plaintiff's attorney having promised to sign judgment on a certain day, which was before the return of the writ of error, but did not. Plaintiff's attorney to sue out a new writ of error at his own costs. *T. 2 & 3 Geo. 2. Griffin v. King, Rep. and Cas. of Pract. in C. P.* 54.

5. Judgment in ejectionment and error brought; the plaintiff in ejectionment may bring an action for the mesne profits, and proceed to judgment, but not to execution till error determined. *T. 2 Geo. 2. Harris v. Allen, Rep. and Cas. of Pract. in C. P.* 46.

6. After return of the writ of error was out plaintiff signed judgment, and took out execution, and regular, tho' bail on the writ of error.

M. 2

M. 2 Geo. 2. Joy v. Francia, Pract. Reg. in C. P. 187.

7. If final judgment be not signed till a subsequent term after error allowed, execution regular. *E. 6 Geo. 2. Cooke v. Harroche, 1 Barnes's Notes 133.*

8. Error returnable effoin-day of term, judgment is signed of same term, execution cannot be sued out. *E. 6 Geo. 2. White v. Morgan, 1 Barnes's Notes 134.*

1 Barnes's Notes 133.
1 C. P. 28, a
1 Barnes's Notes 133
 made to set aside an execution issued after a writ of error allowed, and notice thereof given to plaintiff's attorney.
 It appeared

that an *interlocutory* judgment was issued and a writ of inquiry executed in *Mich.* term last, and a writ of error was then allowed, and notice given, but the *final* judgment was not signed till the beginning of *Hil.* term last. *Cur'* held the execution to be regular, the *interlocutory* judgment not being removed by the writ of error, and the *final* judgment being signed of a subsequent term, was not removed. *Ergo* refused to make any rule.

The writ of error being become inefficual by the death of the Ch. Just. the return not being signed by him, and consequently the record not removed, yet plaintiff cannot take out execution without motion and leave of the court. *Hil. 9 Geo. 2. Hayes v. Thornton, 1 Barnes's Notes 140. Pract. Reg. in C. P. 196. S. C.*

10. Error abated by the death of the Ch. Just. Leave given to take out execution. *Hil. 9 Geo. 2. Cramborn v. Quennel, Pract. Reg. in C. P. 195. 1 Barn. Not. 139. S. C.—Held upon hearing counsel on both sides, that the writ of error not being returned, and signed by the Ch. Just. becomes in-*

ineffectual by his death, and the rule to shew cause why plaintiff should not have leave to take out execution, was made absolute. *Hil. 9 Geo. 2. Olorenshaw v. Stanyforth, 1 Barnes's Notes 139. Rep. and Cas. of Pract. in C. P. 128. S. C.—Pract. Reg. in C. P. 197. S. C.* After error allowed, and notice thereof given, plaintiff in the judgment executed a *fi. fa.* for want of bail within four days; defendant moved to set aside *fi. fa.* suggesting that plaintiff could not regularly take out execution till after certificate from the clerk of the errors, that no bail was put in. *Cur'* held such certificates not essentially necessary before taking out execution, tho' such certificates have been frequently taken out of caution. The *Stat. 16 & 17 Car. 2.* is positive as to bail within four days. *Vide General rules T. & M. 28 Car. 2.* No bail is put in. Bail ought to have been put in before the motion. *Cur'* discharged the rule to shew cause. A question arose whether after bail perfected the goods can be restored? Held, that if defendant's person be taken by a *ca. sa.* and bail in error afterwards perfected, the person shall be discharged; but in case of a *fi. fa.* the proceedings, so far as the sheriff hath gone, must stand. *E. 25 Geo. 2. Inledon v. Clarke, in error, 2 Barnes's Notes 175.*

11. Pending a writ of error, action brought on the judgment, and after judgment therein execution executed; *per Cur,'* defendant might have moved to stay proceedings in the action on the judgment, pending the writ of error, which is always granted; but having made no application, plaintiff is regular. *E. 9 Geo. 2. Humphryes v. Daniel, 1 Barnes's Notes 140. Rep. and Cas. of Pract. in C. P. 130. S. C. Pract.*

Such motion must be made before second judgment.

Vide Clarkson v. Physick.

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Pract. Reg. in C. P. 183. S. C. 1 *Barnes's Notes* 143. *Robinson v. Tuckwell*, S. P. and determination.—*Rep. and Cas. of Pract. in C. P.* 159. S. C. *Vide Pract. Reg. in C. P.* 186.—After judgment in an action of debt on a former judgment, and *ca. sa.* delivered to the sheriff, defendant moved to stay execution pending a writ of error brought to reverse the former judgment. Shew cause. *Per Cur'*: The motion comes too late; it ought to be before judgment in the latter action. *M.* 13 *Geo.* 2. *Clarkson v. Physick*, 1 *Barnes's Notes* 134.

12. Writ of error being brought before the *exigent* executed, stays the proceedings to outlawry. *E.* 10 *Geo.* 2. *in Spincks v. Bird*, 1 *Barnes's Notes* 314.

13. Joint action against several defendants, plaintiff obtained a verdict against four of the defendants, and had 20*l.* damages. He recovered judgment by default against another defendant, and 5*s.* damages; the four defendants brought a writ of error in the name of the last defendant who was not bound to put in bail upon the writ of error, because the judgment against him was by default. Leave given to take out execution against the four defendants, notwithstanding the writ of error. *E.* 11 *Geo.* 2. *Mason v. Simonds and others*, *Pract. Reg. in C. P.* 194. 1 *Barnes's Notes* 141. S. C.

14. Defendant suffered judgment by default, and staid till after execution was sent down into *Dorsetshire*, and then got a writ of error allowed, and served the agent with the allowance thereof; and tho' it was impossible to stay the execution in *Dorsetshire*, the writ having been sent down some time before, yet *Cur'* set aside the execution, and ordered restitution, and
would

would not give the plaintiff his costs, for the allowance of a writ of error is a *superfedeas* from the time of the allowance, tho' the sheriff executes the writ before notice thereof was given; and yet neither the plaintiff, nor his attorney, nor agent, nor the sheriff, were blameable for any misconduct. *E. 13 Geo. 1. Jennings v. West, Rep. and Cas. of Pract. in C. P. 35.*

15. Writ of error returned in *Mich.* term, judgment signed in vacation following, and execution executed, held irregular. *Hil. 13 Geo. 2. Card v. Eastmead, in ejectment, Pract. Reg. in C. P. 193. 1 Barnes's Notes 195. S. C.*

16. Writ of error is a *superfedeas* from the allowance, but no contempt till notice. *1 Barnes's Notes 275.—Ibid. 314.* says, writ of error is a *superfedeas* from the sealing, tho' no contempt is incurred till after notice of the allowance.—*2 Barnes's Notes 164. Merton v. Stevens, M. 15 Geo. 2. Cur'* after consideration determined that a writ of error is not a *superfedeas* from the sealing, but from the delivery to the clerk of the errors, according to the rule. *M. 28 Car. 2.* —In this case judgment was signed 28th *Oct.* and 29th *Oct.* between five and six in the evening the sheriff seized defendant's goods by a *fi. fa.* which defendant moved to set aside, a writ of error having passed the Great Seal in the morning of the 29th *Oct.* but it was not allowed before the *fi. fa.* executed. Question was, from what time the writ of error is to be deemed a *superfedeas*. *Cur'* determined as above, whereupon the parties entered into an equitable rule by consent.—*Ibid. 170.* Writ of error held to be no *superfedeas* before delivered to the clerk of the errors to be allowed.

*The forms of diverse writs of execution.**Capias ad satisfaciendum in debt.*

GEORGE the second, &c. To the sheriffs of *London* greeting. We command you that ye take *C. D.* late of *London*, smith, otherwise called *C. D.* of the parish of— in the county of *Middlesex*, smith, if he shall be found in your bailiwick, and keep him safely, so that you may have his body before our justices at *Westminster* on, &c. [here name the return] to satisfy *A. B.* as well of a certain debt of— which the said *A.* 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 *A.* for his damages which he had by occasion of detaining that debt, whereof the said *C.* is convicted; and have there this writ. Witness *Sir John Willes* Knt. at *Westminster* the—day of—in the—year of our reign.

If in trespass on the case, say,

TO satisfy *A. B.* of—pounds which were adjudged to the said *A.* in our said court before our justices at *Westminster*, for his damages which he had sustained by occasion of a certain trespass on the case done to the said *A.* by the said *C.* at—in your county, whereof he is convicted; and have you there this writ. Witness, &c.

If in trespass on the case sur assumpsit, say,

FOR his damages which he had by occasion of the not performing certain promises and undertakings made to the said *A.* by the said *C.* at——in your county; whereof, &c.

If for words, say,

FOR his damages which he had by occasion of the speaking and publishing certain false and scandalous words by the said *C.* of the said *A.* at——in your county; whereof, &c.

If in trespass, say,

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

If in trespass and assault, say,

FOR his damages which he sustained by occasion of a certain trespass and assault made on the said *A.* by the said *C.* with force and arms, and against our peace, at——in your county; whereof, &c.

If in replevin, say,

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

Breach of covenant.

FOR his damages which he had by occasion of the not performing a covenant made between the said *C.* and the said *A.* according to the force, form and effect of certain indentures [or articles] made between them; whereof, &c.

If in ejectment for damages, say,

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

Testatum ca. sa.

IF you sue out a *testatum ca. sa.* you are to write as before to [whereof he is convicted inclusive] and after those words you say, and whereupon our sheriff of — [the sheriff to whom the first *ca. sa.* was directed] sent to our justices at *Westminster*, at a certain day now past, that the said *C.* was not found in his Bailiwick, whereas it is testified in our said court, that he
lurk-

hurketh and secreteth himself in your county ;
and have there, &c.

Ca. fa. after a sci. fa.

IF a *ca. fa.* issue after a *sci. fa.* then after the
the words [*whereof he is convicted*] say, And
whereupon it is considered in our said court,
that the aforesaid *A.* have execution against the
aforesaid *C.* of the debt and damages aforesaid,
by the default of the said *C.* and have there,
&c.

*Ca. fa. against two, several damages by inqui-
ry in trespass and assault being given.*

GEORGE the second, &c. To, &c. gree-
ting. We command you that you take
C. D. late of, &c. and *E. F.* late of, &c. if they
be found in your Bailiwick, so that you may
have their bodies before our justices at *Westmin-
ster* on _____ to wit, the said *C. D.* to satisfy
A. B. of ten pounds, and the said *E. F.* to sa-
tisfy the said *A. B.* of twenty pounds, for his
several damages which the said *A.* sustained by
occasion of a certain assault, beating, wounding
and ill treatment made on the said *A.* by the
said *C.* and *E.* and against our peace, with
force and arms, at _____ in your county, as
is found by a certain inquisition of the country
of your county taken between them, and also
the said *C.* and *E.* to satisfy the said *A.* of _____
pounds which were adjudged to the said *A.* in
our said court for his costs and charges which

he sustained by occasion of the premisses, whereof of they are convicted; and have there, &c.

Ca. fa. upon a nonsuit in debt.

TO satisfy *C. D.* late of, &c. esq; of— pounds, which in our court before our justices at *Westminster*, by the discretion of the said justices, according to the form of the statute in that case made and provided, were adjudged to the said *C.* for his costs and charges which he sustained, for that the said *E. F.* 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 demand for—pounds, whereof the said *E.* is convicted; and have 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, and so of the rest.

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

GEORGE the second, &c. To the sheriffs of *London*, greeting. We command you that you take *C. D.* late of—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 *A. B.* executrix of the testament and last will of *E. B.* her late husband deceased, of—pounds, which to the said *A.* in our court before our justices at *Westminster* were adjudged for

for the damages of the said *E.* which he sustained by reason of not performing certain promises and undertakings made by the said *C.* to the said *E.* in his life time at *L.* aforesaid, in the parish of *St. Mary le Bow* in the ward of Cheap, whereof the said *C.* is convicted; and whereupon it was considered in our same court that the damages aforesaid by him the said *E.* sustained by occasion of not performing the promises and undertakings aforesaid, should be assessed and adjudged to the said *A.* according to the form of the statute in that case made and provided, by default. Witness, &c.

Sci. on the Stat. 8 & 9 W. 3.

Ca. sa. for damages against an executrix after nulla bona propria returned.

GEORGE the second, &c. To the sheriff of——greeting. Whereas we lately by our writ commanded you, that of the goods and chattels in your Bailiwick, which were of *N. R.* deceased at the time of his death, being in the hands of *M. R.* late of *N.* in your county, widow, executrix of the testament and last will of the said *N.* to be administred, you should cause to be made——pounds, which in our court before our justices at *Westminster* were adjudged to *B. R.* for his damages which he sustained by occasion of the not performing certain promises and undertakings 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 administred; and if she had not, then fourteen pounds and ten shillings of the damages aforesaid, to be levied of the proper goods and chattels of the said *M.* and that you should

Y 4

have

have that money before our justices at *Westminster* from, &c. [the return] to render to the said *R.* for his damages aforesaid, whereof she is convicted; and you at that day sent to our said justices at *Westminster*, that the said *M.* had no goods or chattels in your bailiwick, which were of the said *N.* at the time of his death, whereof you could cause to be made the said damages, or any peny thereof, or 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 peny 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, &c. [the return] to satisfy the said *R.* of the said fourteen pounds and ten shillings of damages aforesaid; and have there this writ. Witness, &c.

A testatum ca. fa. after a sci. fa. by an administrator during the minority of an executor, of an executor.

GEORGE the second, &c. To the sheriff of——greeting. We command you that you take *C. D.* late of, &c. if he be found in your bailiwick, and keep him safely, so that you may have his body before our justices at *Westminster* on, &c. [the return] to satisfy *J. F.* administrator of the goods and chattels which were of *B. H.* during the minority of *W. F.* executor of the testament and last will of the said *B.* late executor of the testament and last will of *W. B.* deceased, as well of a certain debt of——
pounds

pounds which the said *B.* lately in our court before our justices at *Westminster* recovered against the said *C.* as of—pounds which in our said court were adjudged to the said *B.* for his damages which he had by occasion of the detaining that debt whereof the said *C.* is convicted; and whereupon it is considered in our said court that the aforesaid *J.* have his execution against the said *C.* of the debt and damages aforesaid, by the default of the said *C.* and whereupon our—sheriffs of our city of—have returned to our justices at *Westminster* at a certain day now past, that the aforesaid *C.* is not found in their Bailiwick, whereas it is testified in our said court that said *C.* lurketh and secreteth himself in your county; and have there this writ. Witness, &c.

Testatum ca. *sa.* for the residue after a *sci.*
sa. in debt.

GEORGE the second, by the grace of God, of *Great Britain, France and Ireland* King, defender of the faith, &c. To the sheriff of—greeting. We command you that you take *C. D.* late of *S.* in the county of *L.* gent. otherwise called *C. D.* of *S.* in the county of *L.* gent. 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, &c. [the return] to satisfy *A. B.* gent. 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 *A. B.* in our court before our justices at *Westminster* recovered against him,
 and

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and of forty shillings which in our said court were adjudged to the said *A. B.* for his damages which he had by occasion of the detaining that debt, whereof the said *C. D.* 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 chattels of the said *C. D.* and whereupon our sheriff of *N.* sent to our justices at *Westminster* at a certain day now past, that the said *C. D.* is not found in his Bailiwick, whereas it is testified in our said court, that the said *C. D.* lieth hid, wandereth and sculketh in your county; and have there this writ. Witness, &c.

A testatum ca. sa. of privilege for an attorney against an attorney, in debt.

GEORGE the second, &c. To the sheriff of—greeting. Attach *C. D.* gent. one of the attornies of our court of the bench, otherwise called *C. D.* of, &c. so that you may have him before our justices at *Westminster* on *Wednesday* next after, &c. to satisfy *A. B.* gent. another attorney of our court of the bench, as well of a certain debt of—pounds which the said *A.* in our court before our justices at *Westminster* recovered against him, as of—pounds and—shillings which were adjudged to the said *A.* in our said court for his damages which he had by occasion of the detaining that debt, whereof the said *C.* is convicted, and whereupon our sheriff of—sent to our justices at *Westminster* at a certain day now past, that the said *C.* was not found in his bailiwick, whereas it is testified

testified in our said court, that he lurketh and secreteth himself in your county; and have there this writ. Witness, &c.

A testatum ca. sa. by a surviving plaintiff against an attorney, in debt.

GEORGE the second, &c. To the sheriffs of—greeting. Attach C. D. gent. one of the attornies of our court of the bench, otherwise called C. D. of, &c. so that you may have him before our justices at *Westminster* on *Wednesday*—next after—to satisfy *A. B.* as well of a certain debt of—pounds which the said *A.* and one *E. F.* now deceased, in our court before our justices at *Westminster* recover against him as—of—pounds, which in our said court were adjudged to the said *A.* and *E.* for their damages which they had by occasion of the detaining that debt, whereof the said *C.* is convicted; and whereupon it is considered in our said court, that he the said *A.* have execution against the said *C.* of the debt and damages aforesaid, by default of the said *C.* and whereupon our sheriffs of *London* sent to our justices at *Westminster* on a certain day now past, that the said *C.* was not found in their bailiwick, whereas it is testified in our said court that the said *C.* lurketh and secreteth himself in your county; and have there this writ. Witness, &c.

Tes-

Testatum ca. fa. against bail after nulla bona returned on a fi. fa.

GEORGE the second, &c. To the sheriff of——greeting. Whereas we lately commanded our sheriff of *Middlesex*, that he should cause to be made of the lands and chattels in his Bailiwick of *T. S.* late of, &c. thirty-eight pounds, and of the lands and chattels in his bailiwick of *S. 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——Knt. 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* afore said is inrolled, as by the said record and proceedings thereon in our same court before our said justices at *Westminster* afore said remaining manifestly appears; and that he should have that money before our said justices at *Westminster* from the day of, &c. last past, to render to the said *E.* and *W.* for the several sums of money afore said, 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 afore said *T. S. F.* and *T. P.* of the said several sums of thirty-eight pounds by them in form afore said
acknow-

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*, that the said *T. S. F.* and *T. P.* had not, nor had any 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, &c. 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, &c. 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 ca. fa. against an executor after a devastavit, and nulla bona returned.

GEORGE the second, &c. To the sheriff of—greeting. Whereas we lately by our writ commanded our sheriff of—that of the goods and chattels in his bailiwick which were of *C. D.* late of, &c. at the time of his death, in the hands of *E. F.* gent. late of, &c. executor of the testament and last will of the said *C.* he should cause to be made as well a certain debt of—pounds, which *A. B.* in our court before

OUR

our justices at *Westminster* recovered against the said *E. F.* as also eighteen pounds which in our said court were adjudged to the said *A.* for his damages which he had by occasion of the detaining that debt, if the said *E.* 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 *E.* and that he should have that money before our justices at *Westminster* on the morrow, &c. last past, to render to *A.* for his debt and damages aforesaid, whereof he is convicted, and our said sheriff of——at that day sent to our said justices at *Westminster* that the said *E. F.* had before the coming of the said writ sold and wasted diverse goods and chattels which were of the said *C. D.* 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 *C. D.* and the said *E. F.* 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 part thereof, as by that writ he was commanded; therefore we command you that you take the said *E. F.* if he be found in your bailiwick, and keep him safely, so that you may have his body before our justices at *Westminster* on the morrow, &c. to satisfy the said *A.* of the debt and damages aforesaid, and whereupon our sheriff of——from the day of *Easter* in fifteen days last past, sent to our justices at *Westminster*, that the said *E. F.* was not found in his bailiwick, whereas it is testified in our said court that the said *E. F.* lurketh
and

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

A. fi. fa. in debt.

GEORGE the second, &c. To the sheriff of——greeting. We command you that you cause to be made of the goods and chattels in your bailiwick of C. D. late of, &c. as well a certain debt of——which A. B. in our court before our justices at *Westminster* recovered against him, as——shillings which were adjudged to the said A. 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, &c. to render to the said A. for his debt and damages aforesaid, whereof the said C. is convicted; and have there this writ. Witness *Sir John Willes* Knt. at *Westminster* the——day of, &c.——

You must vary *fi. fa.* according to the nature of the action, and for that purpose the directions before given, p. 322, &c. for making out the *ca. fa.* will serve.

Testatum fi. fa.

IN a *testatum fi. fa.* after the words [*whereof he is convicted*] say, and whereupon our sheriff of——sent to our justices at a certain day now past that the said C. 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.

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.

Testatum si. fa: after a sci: fa. in case on assumpsit upon a recovery against the wife while sole:

GEORGE the second; &c. To, &c. greeting. 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—pounds which in our court before our justices at *Westminster* were adjudged to *J. J.* and *R. R.* for their damages which they sustained by occasion of the not performing certain 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, &c. 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.* have no goods or chattels in his bailiwick whereof the said damages could be made, whereas it is testified in our said court, that the *J. M.* and *E.* have sufficient goods and chattels in your county whereof the said damages may be made ; and have there this writ. Witness, &c.

Fi.

Fi. fa. against an administratrix.

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

Fi. fa. on a judgment recovered by a feme sole executrix, who afterwards marrying, execution is awarded on a sci. fa. at the suit of both husband and wife.

GEORGE the second, &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

The present Practice of the

well a certain debt of—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 —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, &c. 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 fi. fa. against bail after sci. fa.

GEORGE the second, &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 *J. S.* late, &c. gent.—pounds, (*the sum mentioned in the recognizance*) and of the lands and chattels in your bailiwick of *F. F.* late, &c. smith, other—pounds, (*the same sum as above*) and of the lands and chattels in your bailiwick of *T. P.* late of, &c. other—pounds, (*the like sum*) which said several sums of—eight pounds each of them the said *J. F. S.* and *T. P.* heretofore, to wit, in the term of the *Holy Trinity* in the—year of our reign, before *Sir—Knt.* and his companions then our justices of the bench at *Westminster*, severally acknowledged themselves

to

to owe to *E. P.* and *W. F.* to be made of the 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* afore said is intolled, as by the said record and proceedings thereon in our said court before our justices afore said remaining manifestly appeareth; and have that money beore our justices at *Westminster* from; &c. to render to the said *E.* and *W.* for the debt afore said, 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.* have execution against the afore said *J. F.* and *T.* of the said several sums of—eight pounds by them in form afore said acknowledged, by the default of them the said *J. F.* and *T.* and have there this writ. Witness, &c.

Award of fi. fa. and continuances.

AND thereupon the said—[plaintiff] prayeth the writ of our Lord the King to be directed to the sheriff of the county afore said, to levy the said—pounds of the goods and chattels of the said—[defendant] for the damages afore said; and it is granted to him returnable here [the return] at which day comes here the said—[plaintiff] by his attorney afore said, and the sheriff hath not sent the said writ, therefore let another writ be made to him in form afore said, &c. returnable here [the return] at which day, [as above.]

Fi. fa. in debt after a sci. fa. for executors on a judgment recovered by their testator.

GEORGE the second, &c. To the sheriff of——greeting. We command you that of the goods and chattels of C. D. late of——in your county, esq; otherwise called, &c. you cause to be levied as well a certain debt of——which A. B. in our court before our justices at *Westminster* recovered against him, as——which to the said A. B. 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, &c. to render to E. F. and G. H. executors of the testament and last will of the said A. B. for the debt and damages aforesaid; and whereupon it is considered in our said court that the aforesaid E. and G. have execution against the said C. D. of the debt and damages aforesaid by the default of the said C. D. whereof he is convicted; and have you there this writ. Witness, &c.

Sci. fa.

Note; the first *fi. fa.* must be directed to the sheriff of the county where the action was laid, and on his return of *nulla bona* you may have execution into what county you shall think proper.

An elegit in debt.

GEORGE the second, &c. To, &c. greeting. Whereas A. B. lately in our court before our justices at *Westminster* by the consideration of the said court recovered against C. D. late of, &c. as well a certain debt of—pounds as ——shill-

—shillings, which in our said court were adjudged to the said *A.* for his damages which he had by occasion of the detaining that debt, whereof the said *C.* is convicted. The said *A.* 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 *C.* except his oxen and the beasts of his plow, and also a moiety of 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 *C.* except the oxen and beasts of his plow, and also a moiety of all his lands and tenements in your bailiwick, whereof the said *C.* 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 this writ, make appear to our justices at *Westminster* on the morrow, &c. under your seal and the seals of them by whose oath you shall make the said extent and appraisement; and have there this writ. Witness, &c.

Elegit in trespass.

GEORGE the second, &c. To, &c. greeting. Whereas *A. B.* lately in our court before our justices at *Westminster* by the consideration of the said court recovered against *C. D.* late of, &c. — pounds which in our said court were adjudged to the said *A.* for his damages which he had by occasion of certain trespass done to the said *A.* by the said *C.* with force and arms and against our peace at — in your county, whereof the said *C.* is convicted. The said *A.* afterwards came into our court, &c. as before, only you must use the word *damages* instead of *debt and damages.*

An elegit on a judgment by sci. fa. for an executrix.

GEORGE the second, &c. To the sheriff of — greeting. Whereas *A. B.* executrix of the testament and last will of *C. B.* her late husband deceased, lately in our court before our justices at *Westminster* by the consideration of the same court recovered against *D. E.* late of *London*, widow, — pounds, which in our same court before our justices at *Westminster* aforesaid were adjudged to the said *A.* according to the form of the statute (*a*) in that case lately made provided, by the default of the said *D.* for the damages of the said *C.* which he had sustained by occasion of not performing certain promises and undertakings made by the said *D.* to the said *C.* in his life-time, whereof the said *D.* is convicted; and the said *A.* afterwards came in-

(a) Stat. 8
Ed. 3. 5.

to 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 *D.* 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 *A.* the goods and chattels aforesaid, 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 *A.* and her assigns, according to the form of the statute aforesaid, until she hath levied the damages aforesaid; and therefore we command you, that without delay you deliver to the said *A.* by a reasonable price and extent all the goods and chattels of the said *D.* except the oxen and beasts of her plow, and in like manner the moiety of all her lands and tenements in your bailiwick, of which the said *D.* was seized on the Octave, &c. in the———year of our reign, on which day the judgment was thereof given, or at any time afterwards, to hold to her the said *A.* 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 &c. 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.

Elegit after a sci. fa. returned.

GEORGE the second, &c. To, &c. greeting. Whereas lately in our court before our justices at *Westminster* it was considered

that C. S. have execution against J. M. late of, &c. otherwise called, &c. by the default of the said J. M. as well of a certain debt of—pounds which the said C. in our court before our justices at *Westminster* recovered against the said J. M. as of—shillings which in our said court were adjudged to the said C. for his damages which he had by occasion of detaining that debt, whereof the said J. is convicted. The said C. afterwards came, &c. as before.

Rolls.

Of bringing in, and docketing rolls.

A roll in the treasury spoiled by a mere accident, amended by the *nisi prius* roll and *psfisa*. The clerk of the treasury, and under clerks, and the treasury-keeper were examined.

Hil. 10 Ann.

Thornbill v.

Lesmax, Rep. and Cas. of Pract. in C. P. 3.

OF bringing in rolls.] Those rolls of *Easter* term to be brought into the office from whence received, on or before the first day of the next *Trinity* term.—Those of *Trinity* term, on or before the feast day of *St. Michael* the archangel next ensuing the said term.—Those of *Mich.* term, on or before the sixth of *January* next ensuing, and the rolls of *Hilary* term, four days before the feast of *Easter* next after the said term. *Rule E. 34 Car. 2.*

Of docketing judgments.] When you carry in your rolls, docket your entries at the proper prothonotary's office, on the common docket roll of the term of which they are entered. Pay nothing. You docket your entries thus:

Not

Not informed in debt.

Middlesex. *Andrews for Jones.* } Roll 158.
Watson for Roe. }

Says nothing in case.

Middlesex. *Same for Same.* } Same.
Same for Same. }

Forejudger.

London. *Same for Doe* } 189.
against }
Roe an attorney. }

Execution by default.

London. *Same for Same* } Same.
against }
Doe, administrator. }

N O T E S.

A motion was made to set aside the docket of a judgment as void by the *Stat. 4 & 5 W. c. 20.* but denied; it appearing on shewing cause, that the judgment was for a debt *bona fide*, that the roll was accidentally mislaid, and omitted to be carried in, but the true time of docketing appeared to be fairly entered without fraud. *T. 13 & 14 Geo. 2. Wait, an attorney, v. Garth, 2 Barnes's Notes 197.*

Non-

Nonprofs.

1. **W**HEN it may be signed for want of a declaration.] If plaintiff does not declare either of the term the writ is returnable, or before the end of the ensuing term, defendant having appeared, and given a rule to declare either at the end of the said ensuing term, or in four days after, and demanded declaration by note in writing (a), may sign a *nonprofs* at any time in the *vacation* of such ensuing term, and *not after*. *Rule Hil. 9 Ann.*

(a) See *Notices* M. 1
Geo. 2.

2. The rule and *nonprofs* for want of a declaration, ought to be in that prothonotary's office wherein the plaintiff's attorney practices. *E. 2 Geo. 2. Harvey v. Weston, Rep. and Cas. of Pract. in C. P. 53. sed quære*; for since the defendant's attorney must call on the plaintiff's attorney for a declaration in writing before he can sign a *nonprofs*, it seems indifferent in which office the rule is given; and the general received opinion is, that it may be given in any office, and so likewise the practice now seems to be. *Ibid.* — *T. 10 & 11 Geo. 2. Billing v. Billing, 1 Barnes's Notes 227. held per Cur'*, That the rule to declare must always be given in that prothonotary's office where plaintiff's attorney is entered; tho' a declaration be duly demanded, that is not sufficient to support the *nonprofs*, unless the rule be given in the proper office.

3. Plaintiff cannot be *nonprossed* for not declaring after an outlawry reversed. *T. 2 Geo. 1. Ter v. Cassey, Pract. Reg. in C. P. 271.*

4. Declaration demanded in the country by consent, *nonprofs* signed for want of a declaration set aside. Transactions of this kind must be in
town.

town. T. 6 & 7 Geo. 2. *Ellwood v. Ellwood*,
1 *Barnes's Notes* 225.

5. Costs against an executrix on a *nonprofs* for default of a replication. M. 4 Geo. 2. *Lamley et ux^s, executrix, v. Michels*, *Pract. Reg. in C. P.* 114.

1. *Non assumpsit* as to part, and issue on demurrer as to the other part; *nonprofs* for want of replication set aside on payment of costs, a *respondeas ouster* being awarded on the demurrer. Hil. 6 Geo. 2. *Pace v. Ellison et ux^s*, *Rep. and Cas. of Pract. in C. P.* 83. Setting aside *nonprofs*, &c.

2. After an action brought on a *nonprofs*, and judgment obtained thereon, too late to complain of the irregularity of the *nonprofs*, and the *nonprofs* was suffered to stand. M. 6 Geo. 2. *Hickeringill v. Knight*, *Rep. and Cas. of Pract. in C. P.* 75.—*Pract. Reg. in C. P.* 138. S. C.

3. *Nonprofs* not to be set aside tho' plaintiff depended that defendant had made a mistake, the issue or proof being on defendant. E. 7 Geo. 2. *Williams v. Jones*, 1 *Barnes's Notes* 211.

4. Plaintiff nonsuited by judge's mistake, yet *Cur^s* would give no relief. M. 7 Geo. 2. *Love v. Day*, 1 *Barnes's Notes* 226.

5. Rule to shew cause why a *nonprofs* should not be set aside for not confessing lease, entry and ouster, there being a variance between the issue delivered and the record. *Per Cur^s*: If defendant had confessed lease, &c. that would not have been a defence, for defendant might have afterwards moved to set aside the verdict for the variance, the *nonprofs* is regular, but set it aside upon payment of costs. M. 8 Geo. 2. *Jones, upon the demise of Thomas, v. Hengest*,
Rep.