

The answer of

E. F. Esq; }
 and } Sheriffs.
 G. L. Esq; }

Quere, If the plaintiff ought not to make an affidavit of his debt on suing out the *capias*, and endeavour to get the *capias*, *alias* and *pluries* executed, if possible, and returned by the sheriff? *Sed vide post*.

In case of a total absconding, no endeavours to arrest are necessary (a). On process to outlawry no affidavit for bail is required by the statute to prevent vexatious arrest, or the course of the court. *Per Cur'*, *Hil. 18 Geo. 2. Farnworth v. Smith*, 2 *Barnes's Notes* 260.

(a) It is not necessary to shew an attempt to arrest the defendant. *Per Cur'*, *M. 6 Geo. 2. Resp. and Cas. of Pract. in C.P.* 78.

Next make out and file a warrant of attorney on the *pluries* (b), pay 4 d.

(b) Every attorney shall file his warrant of attorney of the term wherein any *exigent* is awarded, upon pain of 40 s. for every time he offends, and is attainted by due examination of the justices of this court, such warrant to be filed upon or before the esoin day of every *Trinity* term, or within twenty-one days next after the end of every other term. *Hil. 14 & 15 Car. 2.*

The warrant of attorney.

Trinity term, &c.

London, A B. putteth in his place C. D. his attorney against E. F. late of, &c. in a plea of trespass on the case.

Upon

Upon filing this warrant of attorney the clerk of the warrants will stamp the *pluries* (a). (a) No exigenter shall receive any *pluries capias* in order to make an *exigent* or proclamation thereon, before the same be signed or stamped by the clerk of the warrants, or his deputy, to the end it may appear that the warrant of attorney therein is duly filed. *Rule Hil. 2 & 3 Jac. 2.*

Then carry the *pluries* to the exigenter of the county where the action is laid, who will thereupon make out an *exigent* and proclamation, which you get sealed; carry the *exigent* to one of the *Compters* (if in *London*,) and leave it there to be perfected, and the proclamation you send down to the sheriff of that county wherein the defendant dwelt at the time of awarding the *exigent* for the defendant to be proclaimed (a). — *Vide p.*

(a) Where any *exigent* shall be awarded, a

writ of proclamation shall be made out of the *same teste and return as the writ of exigent*, directed to the sheriff of the county where the defendant at the time in the *exigent* awarded shall be dwelling, which writ of proclamation shall contain the effect of the same action, and the sheriff to whom the proclamation shall be directed shall make three proclamations, *viz.* one in the open county court, one other at the general quarter-sessions of the peace in those parts where the defendant at the time of the *exigent* awarded shall be dwelling, and one other one month at least before *quint. exact.* by virtue of the writ of *exigent*, at or near the most usual door of the church or chapel of that town or parish where the defendant shall be dwelling at the time of the *exigent* so awarded; and if the defendant shall be dwelling out of any parish, then in such place as aforesaid of the parish next adjoining to the defendant's dwelling, and upon a *Sunday* immediately after divine service. All outlawries pronounced, and no proclamation awarded and returned according to this statute, are void. *Stat. 31 Eliz. c. 3. s. 1.*

The sheriff for making the proclamation at or near the church door shall have 12 *d.* *Same Stat. s. 1.*

The officer in whose office the *exigent* shall be taken shall make out a proclamation, and shall take no more for making such writ of proclamation and entering it on record, but only 6 *d.* *Stat. 6 Hen. 8. c. 4. s. 3. 4.* According to the provision of the statute of the 31 *Eliz.* all attornies are to be careful that writs of proclamation be delivered, and sheriffs to take care duly to execute the same. *Rule Mich. 1654.*

Objected

Objected, that the return of the proclamation was bad; it importing; that proclamations were made as the sheriff was by the writ commanded. *Cur* seemed to think the return sufficient, but said defendant as to it might bring a writ of error, if so advised. *M. 20 Geo. 2. Dale, widow, v. Robinſon, 2 Barnes's Notes 261.*

The exigenter keeps the *pluries*, the *capias* and *alias* you may keep yourself.

If there happen not to be five county days between the teste and return of the exigent, you must apply to the exigenter's office for a writ of *allocatur* in order to bring in the five county-days, and the like must be in *London* for want of hustings; for tho' the hustings in *London* are once a fortnight; yet it often happens that there are not five hustings between the teste and the return of the exigent. Seal the *allocatur*, and then carry and leave it at the *Compter* (if in *London*;) or to the proper sheriff, to be returned; and when the exigent is returned with five hustings or county days, and the proclamation returned with three proclamations indorsed to be made thereon, is the defendant outlawed.

But *Note*, that you may take out your proceſs in order, and endeavour to take the defendant upon any of them.

The two chief terms to commence suits to the outlawry, especially for the country, are *Easter* and *Michaelmas*.

If you begin in *Easter* term, you may procure your *capias* and *alias capias* returnable in *Trinity* term, and in *Trinity* term sue forth your *pluries*, exigent and proclamation.

In *Michaelmas* term you may sue forth the original *capias* and *alias capias* returnable the same term, and *pluries capias* returnable in *Illary* then next following, and in the same term procure your exigent and proclamation.

But

But in *London* you may begin in *Trinity* term, and the party may be outlawed in *Hilary* following, the hustings being every fortnight, and the county court only every month.

After the exigent and proclamation returned you file the proclamation with the *custos breviarum*; and for farther process against the defendant, carry the exigent to the clerk of the outlawries, who will thereupon make out a general writ of *capias utlagatum* against the defendant's body, or a special writ of *capias utlagatum* against the defendant's body, goods and lands, into as many counties as you shall think proper either in *England* or *Wales*.

On a special *capias utlagatum* you may proceed to take defendant's body, or make inquiry of his goods or lands.

Here please to observe, that it is most usual (for the reason before given, *p.* 396. *Note (a)*) to outlaw the defendant in *London*, (and then the exigent must be left at one of the *Compters* to be returned.) But if you lay the action in any other county, then instead of leaving the exigent at one of the *Compters*, you must send it to the sheriff of the county wherein the action is laid, and likewise the proclamation to the same sheriff, or the county clerk, if the defendant lives in that county; if not, send the proclamation to the sheriff or county clerk of the county wherein the defendant dwells, for the exigenter, in making out the writ, will direct it accordingly. *Vide p.* 399.

N O T E S.

1. A visible person outlawed, he being a desperate man, riding armed, and telling the plaintiff that he absconded. *Hil. 3 Geo. 2. Potts v. Voyce, Pract. Reg. in C. P. 272.*

2. Defendant who absconded, outlawed in the first instance. *M. 6 Geo. 2. Paterfon v. Greave, Pract. Reg. in C. P. 273.*

3. Proceedings refused to be staid, where plaintiff died after the day of outlawry, but before the return. *M. 27 Geo. 2. French v. Manby, 2 Barnes's Notes 262.*

4. A *capias utlagatum* executed on a Sunday; the defendant discharged, but an attachment denied, because the *Stat. 29 Car. 2. c. 7.* gives a remedy by action. *E. 6 Geo. 2. Osborn, Widow, v. Carter, Rep. and Cas. of Pract. in P. C. 90. 1 Barnes's Notes 228. S. C.*

5. If a plea of outlawry in bar be not pleaded *sub pede sigilli*, yet plaintiff cannot sign judgment, but must apply to the court, or demur. *T. 6 & 7 Geo. 2. Panter v. Coppin, widow, Rep. and Cas. of Pract. in C. P. 92.—1 Barnes's Notes 162. S. C.*

6. Landlord shall not be paid a year's rent out of goods taken on a *capias utlagatum*, for *Cur'* held that the *capias utlagatum* was within the exception of the *Stat. 8 Ann.* and had been so adjudged in *B. R. T. 1712. Eden v. Crain.—M. 2 Geo. 2. Pindar v. Saunderson, Pract. Reg. in C. P. 272.*

7. A person visible outlawed, he living within the verge of the court, and plaintiff not being able to obtain leave to arrest him. *Hil. 8 Geo. 2. Fort v. Eyre, Pract. Reg. in C. P. 274.*

8. A prisoner on a *capias utlagatum* discharged on the insolvent debtors act; *Cur'* being unanimous that the act extends to outlawries. *M. 11 Geo. 2. Hand v. Kelley, Pract. Reg. in C. P. 339.*

9. If the plaintiff sues in an inferior court, and after outlaws the defendant for the same cause of action, and the defendant is thereon taken, he shall not pay the costs of the inferior court. *Instr. Clericalis, Pt. 1. p. 549.*

Of procuring the money levied on the defendant's goods.

WHERE defendant's goods are taken on a special *capias utlagatum*, the sheriff on the plaintiff's request, will extend and appraise the goods by inquisition, and for that purpose the plaintiff must first have them inventoried and appraised by proper persons to give evidence of their value to the jury. If they are not worth above 40*l.* they will hardly be worth plaintiff's trouble to extend them. In *Middlesex* the sheriff takes for the inquisition as follows.

For taking the inquisition, schedule of the goods seized, and return,	}	<i>l.</i>	<i>s.</i>	<i>d.</i>
		0	18	6

To the bailiff for summoning the jury.	}	0	4	0
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For the use of the room where the inquisition is taken.	}	0	1	0
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To every juryman 1 <i>s.</i>	0	12	0
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0	17	0
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1	15	6
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The present Practice of the

It may be proper to give the defendant notice of taking the inquisition, as in case of a writ of inquiry.—You may make out a *subpoena* for witnesses if necessary.

After the *capias utlagatum* is returned with the inquisition annexed, you carry it to the clerk of the outlawries, who will transcribe and transmit into the Exchequer; then you employ a clerk in the King's Remembrancer's office, who will sue out a writ of *venditioni exponas*, by virtue of which the sheriff will sell the goods. If the money raised exceeds not 20*l.* the court of Exchequer on motion will order the money to be paid to the plaintiff; but if above 20*l.* a petition must be presented to the Lords of the Treasury, to the following effect.

To the Right Honourable the Lords Commissioners of his Majesty's Treasury.

The humble petition of R. R.

Sheweth,

THAT *W. S.* late of, &c. being indebted to your petitioner in the sum of 50*l.* your petitioner did in *Nov.* last at his very great charge prosecute the said *W. S.* to an outlawry, and by virtue of a special *capias utlagatum* directed to the sheriff of *Middlesex* several goods of the said *W. S.* were seized, and found by inquisition to be of the value of 45*l.* which goods were afterwards sold by the said sheriff, by virtue of a writ of *venditioni exponas*, at the same price and value they were so appraised at, and the money thereupon raised now remains in the hands of the sheriff of *Middlesex*.

That

That your petitioner's said debt, and the charge he has already been at in prosecuting the said outlawry, greatly exceeds the sum so remaining in the sheriff's hands;

Wherefore your petitioner humbly prays your Lordships, that the money so levied as aforesaid may be paid over to your petitioner.

And your petitioner shall ever pray, &c.

This petition the Lords of the treasury will refer to the solicitor, and the plaintiff must make an affidavit before a Baron of the Exchequer, to support the allegations in the petition; particularly of his debt, and the charge he has been at. This affidavit with the attorney's bill, *conditioni exponas*, and return, must be laid before the solicitor of the Treasury, who being satisfied of the truth of the petition, will make a report to their Lordships accordingly, and then a warrant will issue to his Majesty's attorney general to consent, that so much of the money levied as shall remain in the hands of the sheriff, after deducting the usual poundage, be paid to the plaintiff towards satisfaction of his debt and costs, on his moving the court of Exchequer for an order for that purpose; this warrant must be delivered to the attorney general, who on the plaintiff's making such motion by counsel, will consent accordingly, and then on producing the orders under seal, the sheriff will pay the money to the plaintiff.

Expence out of pocket.

	<i>l.</i>	<i>s.</i>	<i>d.</i>
Duty and oath of the affidavit,	0	2	6
To the solicitor of the Treasury,	1	1	0
To his clerk,	0	5	0
At the Treasury for the reference, &c. } warrant and poundage, when the } sum does not exceed 50 <i>l.</i> you pay } about }	3	3	0
To the attorney general,	2	2	0
To his clerk,	0	2	6
Fee to the counsel to move,	0	10	6
To the clerk of the Exchequer ac- } cording to the length of the pro- } ceedings about }	5	10	0

*Of appearing to, superseding the exigent,
and reversing the outlawry.*

IF the defendant has notice of an *exigent* against him, find out what sheriff it is directed to, as you may by searching at the exigenter's office. Get a note of it, as the plaintiff's and defendant's names and additions, the cause of action and return thereof, in order to make out a *supersedeas* by. Having made out the *supersedeas quia improvidè*, carry it to the filazer of the county, who, upon your entering an appearance for the defendant, will sign the writ. Seal it. Then send it to the sheriff of the coun-

(a) Vide Rule ty the *exigent* is directed to, to be allowed be-
T. 2 Jac. 2. fore the return of the *exigent* (*a*).
P. 2.

Super-

Supersedeas to the *exigent* (which is in itself an appearance (a) should be delivered to the sheriff before the return of the *exigent*, or the defendant will be regularly outlawed notwithstanding his having entered his appearance with the exigenter, which is unnecessary and a novel imposition by the exigenter, whose book is two years old only. *M. 11 Geo. 2. Peach v. Wadland*, 1 *Barnes's Notes* 228. *Pract. Reg. in C. P.* 274. S. C. says, that *Cur'* held that it was not necessary to enter an appearance to the *exigent* before a *supersedeas* be made out, for the *supersedeas* is an appearance of itself.

(a) On making out a *supersedeas*, the defendant need not enter an appearance with the exigenter; the *supersedeas* itself is an appearance, *Dyer* 233.—

If the defendant appears by *supersedeas quia improvidè*, or doth duly render himself upon the *exigent*, no bail is required. *Rule M.* 1654.

Before the reversing of any outlawry, or any *supersedeas* made thereunto, if the defendant be arrested on the *capias utlagatum*, and the sum or damages expressed in the original, whereupon the *exigent* was awarded, amounts to 10 *l.* or upwards, the defendant must give special bail, and pay full costs of suit to the *exigent*; further costs are respited to the time of signing judgment for the plaintiff. *Hil. 15 & 16 Car. 2. T. 2 Jac. 2.*—Nor can he render himself in discharge of his bail, but he or they must pay the money.

If an outlawry should be sued out for less than 10 *l.* *Vide* 1 *Barnes's Notes* 230.

If the action requires only a *common* appearance, you enter it with the filazer (pay 2 *s.* 6 *d.*) If *special* bail, give the filazer a note of the bail, and he will attend the judge on your putting in bail,

A defendant may appear before he is returned outlawed without of bail, be the debt never so

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great, by superseding the *exigent*, and paying the plaintiff's costs; and after he is returned outlawed, and the *exigent* is filed, in case the outlawry is not special, but only in trespass *quare clausum fregit*, he has a right to reverse the outlawry at his own expence, on entering a common appearance only,

and

and payment of which give notice to plaintiff's attorney.—
 of costs, and his own charges it is as in other cases.
 of the reversal,

which are about 40 s. Where more than one are outlawed in one writ, if an attorney reverse it not as to all, but as to one, he shall be forced to appear but for one. *Infr. Cler. Pt. 1. p. 548.*

By the practice of this court the defendant has always had till the *quarto die post* to appear to the *exigent*. *Per Cur.' T. 11 Geo. 1. Colt, Esq; v. Hull, Rep. and Cas. of Pract. in C. P. 28.*

No outlawry after the death of the plaintiff shall be reversed without the defendant's appearing and putting in special bail (if the action so requires) to the executor or administrator of the plaintiff, or to the husband and wife, where the wife, whilst a feme sole, sued the defendant to an outlawry before marriage. Provided that the plaintiff's attorney, to the writ of *exigent* or *capias utlagatum* do within fourteen days after notice to him given of the defendant's intention to reverse the outlawry, (deliver (a) the name of the executor or administrator of such deceased plaintiff to the proper prothonotary. *Rule T. 2 Jac. 2.*

(a) (Deliver) is not in the Rule.

(b) Except where the extent is returned into the Exchequer. *Vide Rule T. 2 Jac. 2. Post.*

Upon defendant's appearing and reversing the outlawry, he shall pay to the plaintiff the usual costs of the *exigent*, together with the fine paid to the king upon the original, if any was paid; and all further costs shall be respited to the time of signing Judgment for the plaintiff (b). *Rule T. 35 Car. 2.*

Upon every Writ of *exigent*, if a *superseas* be not put in thereunto *at or before the day of appearance thereof*, no *superseas* shall by any sheriff be allowed to any such writ until the defendant shall have paid the plaintiff or his attorney, or left with one of the prothonotaries, the

the full and just costs of suit therein to the exigent. *Rule T. 2 Jac. 2.*

And where the sheriff shall have taken an inquisition, and extended the goods, chattels, &c. and returned the same into the Exchequer, such *further* costs shall be taxed by the prothonotary, and paid to the plaintiff or his attorney, or left in the court for him, as the plaintiff hath been at in prosecuting the said inquisition, before any certificate of the reversal shall be made by the clerk of the outlawries. *Rule T. 2 Jac. 2.*

No sheriff, under-sheriff, their deputies or bailiffs, shall set at liberty any person arrested upon any *capias utlagatum*, until he receive a *supersedeas* according to law from the officer thereunto appointed. *Rule M. 1654. Stat. 13 Car. 2. s. 4.*

No sheriff, under-sheriff, &c. shall set at liberty any person taken upon any writ of *capias utlagatum*, nor discharge the lands or goods of any person outlawed, without a lawful *supersedeas* under the seal of the court. *Rule Hil. 15 & 16 Car. 2.*

Upon affidavit made and filed, that any sheriff, officer or bailiff has enlarged any Person arrested upon *capias utlagatum* before judgment, without a lawful *supersedeas* in that behalf, the person so offending shall pay forty shillings to the party grieved, who shall have an attachment of course against such sheriff, &c. for payment of the same, and the party offending shall likewise undergo such other punishment as by the court shall be thought fit. *Rule T. 2 Jac. 2.*

Before

Bail on writs of error to be perfected in four days after exception, or the clerk of the errors shall *nonpross* such writ of error. *Rule M. 6 G.*

2.

(a) 31 *Eliz.*

c. 3. s. 3.

Vide Stat. 4 &

5 W. & M.

c. 18.

Vide Stat. 4 &

5 W. & M.

c. 18.

Before any allowance of any writ of error, or reversing of any outlawry be had, by plea or otherwise, through or by want of any proclamation to be had or made according to the statute (a), the defendant in the original action shall put in bail, not only to appear and answer to the plaintiff in the former suit, in a new action to be commenced by the said plaintiff, for the cause mentioned in the first action, but also to satisfy the condemnation, if the plaintiff shall begin his suit before the end of *two terms* next after the allowing the writ of error, or otherwise avoiding of the said outlawry. *Rule M. 12 Geo. 1.*—On allowing any writ of error to reverse any outlawry, the defendant must enter into a recognizance to satisfy the condemnation money, according to *Stat. 13 Eliz. c. 3. sect. 3. M. 12 Geo. 1. per cur'.* *Rep. and Cas. of Pract. in C. P. 29.*

Declaring after outlawry reversed.

(b) The Rule says *proceed.* If an outlawry be reversed, the plaintiff may declare upon a *new* original, in another County than that where the action was first laid. 3 *Lew. 245.* If a co-executor be outlawed, and one appear, you declare against both, and shall have Judgment against both, but costs only against him that appeared. *Instr. Cl. pt. 1. p. 548.*

ON defendant's reversing the outlawry, the plaintiff must *declare* (b) within two terms next after notice of such reversal, or defendant shall have costs to be taxed. *Rule T. 33 Car. 2.*—Where the plaintiff does not declare within two terms after outlawry reversed, the defendant may give a Rule to this effect, *viz.* That unless the plaintiff declares in the cause within

four days after notice of this rule to him or his attorney given, he shall pay to the defendant or his attorney costs, to be taxed. *T. 2 Geo. 1.* so said in *Yer v. Causey, Praet. Reg. in C. P.* 271.

Of reversing an outlawry by plaintiff, the debt being paid, *vide post this page.*

N O T E S.

1. Upon a *superfedeas* to an *exigent* your appearance is but at the return of the *exigent*, and you are not bound to receive a declaration before then. *M. 7 W. 3. Normansell v. Biggerstaff, Instr. Cl. pt. 1. p. 550.*

2. To an action in *B. R.* on a promissory note, the defendant pleaded the plaintiff was outlawed in *B. C.* the plaintiff replies *nul tiel record*, and a rule was given to bring the record into court, in the mean time the plaintiff reversed the outlawry in this manner; (That debt being satisfied,) affidavit was made that the debt was paid. Upon the plaintiff's attorney in the outlawry consenting before a Common Pleas judge, one of the prothonotaries clerks, by order of the said judge, entered up the reversal of the outlawry, and the plaintiff obtained his judgment.

3. Outlawry reversed after several *capias's* *utlagatum*, and defendant taken thereon; defendant shall only pay costs to the *exigent*, the subsequent costs to attend the event of the cause. So ruled by all the judges in the treasury upon prothonotary *Cooke's* certificate. *Hil. 3 Annæ, Manghen v. Graham, Praet. Reg. in C. P.* 270.

Outlawry reversed by plaintiff.

But they admitted, that if the outlawry had been sent into the Exchequer, and any levy made or lease granted, that then the defendant should pay the plaintiff all his costs. *Ibid.*

4. *Cur'*

Note: in this case the writ was tested after the death of the defendant. *Ibid.*

4. *Cur'* held, that no *capias utlagatum* can be sued out after the death of the defendant. T. 13 Geo. 1. *Bristow et al' v. Dickon, Rep. and Cas. Pract. in C. P.* 36.

5. Judgment set aside, plaintiff after *superse-deas of exigent*, which was returnable *tres Mich.* having delivered a declaration, without notice to plead indorsed, and signing judgment in four days, when defendant was intitled to eight; the words of the rules of E. 3 Geo. 2. and M. 3 Geo. 2. being general, and extending to all process returnable first or second return, without exception as to an *exigent*, or any other particular process. M. 21 Geo. 2. *Sevinley v. Woodhouse, 2 Barnes's Notes* 214.

6. Motion that plaintiff should reverse an outlawry at his own expence, for that the defendant being visible, and daily to be arrested or served with process, (of which affidavits were made) and living in *London*, was outlawed there. The motion was after great debate denied. — But *Cur'* said, if the defendant had been outlawed in another (a) county, they would have ordered the plaintiff to reverse the outlawry, and pay costs (b). M. 4 Geo. 2. *Hayes v. Longboham, Rep. and Cas. of Pract. in C. P.* 61.

(a) Outlawry in a foreign (i. e. not in the county where defendant dwelt)

county regular if in the county where the action is laid to arise. *Per cur. M. 6 Geo. 2. Norton v. Gilbert, Rep. and Cas. of Pract. in C. P.* 78.

(b) *Sed quære*; for the writ of proclamation, which by the *Stat. 31 Eliz. c. 3.* must be awarded to the sheriff of the county where the defendant dwelt at the time of the *exigent*, was intended to remedy any surprize of this sort upon the defendant. Several cases were cited in *B. R.* where persons being outlawed though in the same county, yet it appearing that they were visible, and easy to be arrested or served with process, the plaintiffs were ordered to pay costs, and reverse the outlawry at their own expence. *Ibid.* 61.—*Ibid.* 78. says it is not necessary to shew an attempt to arrest the defendant.—*Id.* 2.

7. Outlawing a man beyond seas is error, and not irregularity ; and motion for defendant, that plaintiff might reverse the outlawry at his own expence, denied. *M. 7 Geo. 2. North v. Chambers, 1 Barnes's Notes 228. — E. 11 Geo. 2. Blunt v. Beale, S. P. Ibid. 229.*

8. Though the defendant is sworn to appear publickly, yet if he keeps out of the way of arrest, he may be outlawed. *Hil. 12 Geo. 2. Holman v. Brasier, 2 Barnes's Notes 230.*

9. On a Motion to set aside an outlawry, *Cur'* held that the defendant's own affidavit of his being a visible person, without a like affidavit by his neighbours, is not a sufficient Foundation to set aside an outlawry. *M. 12 Geo. 2. Bennet v. Skinner, Ibid. v. Sydenham, Rep. and Cas. of Pract. in C. P. 151.*

10. Defendant was outlawed by *special* original, and upon reversing the outlawry, put in bail. Plaintiff proceeded to judgment, and defendant brought a writ of error ; Motion by bail to discharge their recognizance, no original having been filed within two terms ; but denied, and they left to their plea. *M. 14 Geo. 2. Carleton v. Wilkinson, 2 Barnes's Notes 57.*

11. Defendant waived specially on mesne process as a single woman ; after the *exigent*, and before the outlawry, married ; she was afterwards arrested by her maiden name by a *capias utlagatum*. Rule to shew cause why the outlawry should not be reversed at the husband's expence, on his entering a common appearance for himself and wife, but discharged, the marriage being after the *exigent*. *M. 15 Geo. 2. White v. Dunster, 2 Barnes's Notes 259.*

12. After

12. After return of the *exigent*, but whilst in the sheriff's hands, and before defendant was returned outlawed, a *superfedeas* was allowed to the *exigent* on payment of costs. *M. 20 Geo. 2. Withall v. White, 2 Barnes's Notes 261.*

13. Motion to set aside outlawry after Judgment, for want of a proclamation, denied. *T. 21 Geo. 2. Wiatt v. Parker, 2 Barnes's Notes 262.*

14. On a motion for reversing an outlawry, it is discretionary in the court to relieve by motion, or put the parties to a writ of error. *Vide 2 Barnes's Notes 264.*

15. Outlawries in trespasss *quare clausum fregit*, defendants may reverse at their own expence, on entering common appearances, and payment of costs. Defendants, before the outlawries are transcribed into the Exchequer, may reverse them on entering common appearances and payment of common costs as far as the *exigent*; but after they are transcribed, costs must be paid to the time of reversal. *Ibid.*

Where the court see an unlawful proceeding, they will not put the party to his writ of error, but relieve

16. The outlawry commenced and completed during defendant's residence in *Ireland*, reversed at his expence, without bail or appearance. *M. 29 Geo. 2. Reilley against O. Connor Esquire, Supplement to 2 vol. Barnes's Notes p. 45.*

him in a summary way. *Ibid.*

Nonpross after outlawry.

PLAIN T I F F cannot be *nonprossed* after outlawry reversed, for he cannot lose that writ which by reversal is become void. *T. 2 Geo. 1. Ye: v. Cassey, Pract. Reg. in C. P. 271.*

Outlawry

Outlawry after judgment.

IF you have judgment against a man that lurks in several counties, in regard you cannot *regularly* have execution against him in more counties than one at one time, the best way is to sue him to outlawry after judgment, for then you may take out as many writs of *capias utlagatum* against him as you please, and this for a small charge; besides, it saves you the charge of reviving the judgment by *scire facias* after the year, and you have an *exigent* immediately after the return of the *ca. sa.* without an *al'*, *pluries* or writ of proclamation.

The method of suing defendant to outlawry after judgment.

FIRST sue out a *ca. sa.* for the debt and costs, as the case is, into the same county where the action was laid, and get *non est inventus* returned by the sheriff; then carry the same to the *exigenter* of the same county, who will make out an *exigent* thereupon, which must be delivered to the under-sheriff, to be returned as other *exigents* are.

The *exigent* being returned, the clerk of the outlawries will make out a *capias utlagatum* into as many several counties as you will, either in *England* or *Wales*, *general* or *special*; and if the defendant be taken, he cannot be discharged without satisfaction to the plaintiff, or pardon of the outlawry, or reversing the same for sufficient error.

NOTES.

N O T E S.

1. Motion to discharge the defendant, being a feme covert, and in execution upon outlawry *after* judgment. *N. B.* The defendant was outlawed before coverture. *Per North*, help yourself as you can; and *per tot' cur'*, we will not discharge her till the monies are paid. If a feme covert be in custody upon outlawry *before* judgment, and the husband will appear for her, then the feme shall be discharged; *per tot' cur'*, *Instr. Cl. pt. 1. p. 547.*

2. A feme covert taken upon an *utl'* shall be discharged upon bringing a *superfedeas*, and entering only an appearance. *Ibid. 549.*

3. Defendant ought not to be outlawed *after* judgment, where the proceedings are by bill and not by original writ. And defendant being taken on a *capias utlagatum* was discharged. *M. 5 Geo. 1. Carvil v. Manby, an attorney, Pract. Reg. in C. P. 271.*

4. After error brought, the plaintiff cannot proceed to outlaw the defendant on the judgment. *E. 10 Geo. 2. Spinks v. Bird, Pract. Reg. in C. P. 184.*

5. Defendant outlawed after judgment was taken by a *capias utlagatum*; the judgment of outlawry was entered after plaintiff's death, and the *capias utlagatum* issued without a revival of the judgment. *Capias utlagatum set aside. E. 27 Geo. 2. The King against Manby, on the prosecution of French, deceased, Supplement to 2 vol. Barnes's Notes p. 45.*

Prisoners outlawed.

IF you outlaw a man that you know is a prisoner in the *Fleet*, you shall have no costs, and reverse the outlawry at your own charge.

The proceedings on the *exigent post ca. sa.* staid, defendant after the *teste* and before the return becoming a prisoner in the *Fleet*, at the Suit of a third person. *M. 15 Geo. 2. Speed v. Barber, 2 Barnes's Notes 258.*

Per cur'.
The *exigent* was well sued out before defendant's commitment to the *Fleet*, and no notice

of that commitment was given to the plaintiff's agent till after the *exigent*, but the outlawry will signify nothing, because it may be reversed by writ of error, But plaintiff may charge defendant in execution, *ibid.*—*Heely v. Hewson, E. 16 Geo. 2.* It appearing that pending the *exigent* defendant was a prisoner in *York* city, *Cur.* reversed the outlawry without costs to plaintiff, upon defendant's entering a common appearance. *Ibid. 259.*

Proceedings against prisoners.

Declaration.

WHERE defendant is in custody for want of bail, declaration must be delivered before the end of the next term after the return of the writ (*a*) or surrender in discharge of bail (*b*), to the keeper (*c*), gaoler or turnkey, (pay 1 s.) and at the same time you ask the keeper, &c. if defendant is not his prisoner, and the keeper, &c. must deliver the declaration, &c. to the prisoner, or you may deliver it to the prisoner himself.

(*a*) Rule E. 5 *W. & M.*
(*b*) Rule E. 8 *Geo. 1.*—If a prisoner escapes, his *recaption* shall be looked on as the time of the render, from

whence plaintiff is to proceed. *M. 13 Geo. 2. Mabjon v. Butle, 1 Barnes's Notes 285.*

(*c*) Keeper or gaoler neglecting to deliver the declaration forthwith to the prisoner, is liable to an attachment. *Rule E. 5 W. & M.*

If a defendant in custody on a *King's Bench* process be committed by the court of *C. P.* or by a judge thereof, to the *Fleet* prison, before a declaration delivered, the plaintiff cannot declare against him in the *King's Bench* without removing him to the prison of that court by *Habeas corpus ad respondendum*; but he may declare against him in the *C. P.* and, for default in declaring in due time, the court of *C. P.* may discharge the defendant out of custody.—After declaration delivered, the action must be *carried* on in that court in which the plaintiff declared, though the defendant be removed to the prison of another court; and the *supersedeas* for default of subsequent proceedings must be issued out of that court in which the plaintiff declared. *Vide p. 428. ca. 2.*

Where a defendant was served with a copy of process, but before declaration delivered became a prisoner in the *Fleet*, and the plaintiff entered an appearance for him pursuant to the statute, and left a declaration in the office, and gave him notice of it, the court set aside the proceedings, and held that the declaration ought to have been delivered at the *Fleet*.

*How to declare against a prisoner in custody
in a county gaol.*

NO declaration to be delivered till after the return of the writ. *Rule E. 5 W. & M.*

If defendant is in custody of a sheriff, you make two copies of your declaration on treble *rd* stamped paper, one to deliver to the keeper, &c. or prisoner, and the other to annex
to

to an affidavit of the delivery, to be filed with the proper secondary, before the end of twenty days after the second term, *Easter* term excepted, and within ten days after *Easter* term. No rule to plead, &c. to be given until such affidavit is filed.

N O T E.

Declaration against a prisoner in a county gaol need not be entered with the prothonotary before the delivery, it is only necessary where the prisoner is in the *Fleet*, it being so expressly directed by *Stat. 4 & 5 W. & M. c. 21. Hil. 8 Geo. 2. Strickland, Bart. v. Hodgson, Rep. and Cas. of Pract. in C. P. 114.—Pract. Reg. in C. P. 329. S. C. — 1 Barnes's Notes 268. S. C.* says, it is sufficient to enter the declaration at any time before giving a rule to plead.

How to declare against a prisoner in the Fleet.

MAKE two copies of your declaration on treble *1d.* stamp paper, carry them both to the prothonotary to be entered (*a*) and marked, one of which copies is to be delivered to defendant, or turnkey, &c. and the other to be annexed to an affidavit of the delivery, and filed with the proper secondary, who will thereupon give a rule to appear and plead.

(*a*) Declaration need not be entered with the prothonotary before the delivery, when the defendant is in any other prison save the *Fleet*.

How to charge a prisoner in custody of the warden of the Fleet with a declaration in a new action.

NO copy of a declaration delivered at the Fleet prison against any prisoner there, shall be a sufficient charge to hold such prisoner to bail, or to retain such prisoner in custody for want of bail, unless an affidavit, that the plaintiff's cause of action amounts to 10*l.* or upwards, be first made and filed in the proper prothonotary's office, and an indorsement made by the said prothonotary or his deputy upon such copy of a declaration, signifying the sum specified in such affidavit, for which sum so indorsed bail shall be required, and for no more. *Rule Hil. 8 Geo. 2.*

(a) *Vide* the case of *Simpson v. Warren*, *11 Geo. 2. Rep. and Cas. of Pract. in C. P. 144. 1 Barnes's Notes 72 — Pract. Reg. in C. P. 330.*

Note; If the defendant was arrested at your client's suit, and you charge him in the Fleet with a declaration, the sum sworn to is not indorsed on the declaration, because there was an affidavit of the debt when you took out the process upon which the defendant was arrested, and the sum sworn to appears in the return to the *habeas corpus*; and it has been determined (a), that the rule of *Hil. 8 Geo. 2.* extends only to cases where the delivery of the declaration to a prisoner is the first process; and therefore if you charge the Defendant with a new action at the suit of another plaintiff, and the declaration comes in as a new charge, there the above rule of *Hil. 8 Geo. 2.* must be observed. *Vide Pract. Reg. in C. P. 330. Rep. and Cas. of Pract. in C. P. 144. 1 Barnes's Notes 72.* and in this case affidavit of your debt being filed with the

pro-

prothonotary, and two copies of your declaration being wrote on treble 1*d.* stamp paper, and the declaration being entered and marked, you deliver one copy (*viz.* the copy indorsed by the prothonotary or his deputy) to the turnkey, who will enter the action (pay 1*s.*) and the other copy you keep to annex to an affidavit of such delivery, which must be filed as before mentioned.

N O T E S.

1. A prisoner in the *Fleet* on a contempt cannot be charged with a declaration without motion and leave of the court. *E. 11 Geo. 1. Allgood v. Howard, Rep. and Cas. of Pract. in C. P. 27.* But if he accepts the declaration, and suffers plaintiff to take judgment, he waives all Advantage of the *irregularity.* *M. 13 Geo. 1. Pepper v. Bawden, Esq; ibid. 31.*

2. A prisoner on an attachment for contempt, which is a criminal prosecution, cannot be charged with a declaration (*a*) or execution without leave. *M. 13 Geo. 1. Pletwood v. Turkey, Pract. Reg. in C. P. 325.* and such a prisoner is not intitled to a day-rule. *M. 5 Geo. 2. Theedam v. The warden of the Fleet, ibid. 326.*

(a) a Prisoner surrendering himself as a fugitive, cannot be charged with a declaration. *M.*

11 Geo. 2. Baldwin, and others, v. O Carrol, ibid. 326.

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Notes 281. S. C.

3. When a declaration is delivered against a prisoner in the *Fleet* as a new charge, in order to hold him to bail, the declaration indorsed by the prothonotary or his deputy, pursuant to the rule of *Hil. 8 Geo. 2.* should be delivered, and not a copy, and for want thereof rule was made absolute for a *superfedeas*, on defendant's

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entering a common appearance. *Hil. 13 Geo. 2. Newbail v. James, Pract. Reg. in C. P. 331. 1 Barnes's Notes 315.*

Charging defendant in custody in county gaols.

IF defendant be in *Newgate, Ludgate*, or other county gaol, there must be process to charge defendant in custody, directed to the sheriff.

Rule to plead when defendant is in the Fleet.

Vide Stat.
8 & 9 W. 3.
c. 27. s. 13.

UPON filing your affidavit of the delivery of the declaration with the *secondary* in the proper prothonotary's office, he gives a rule to plead, which is always out in eight days, and if no *appearance* and plea, the prothonotary will sign judgment *without your having an office copy of the affidavit of the delivery of the declaration*, on producing a certificate of an appearance not being entered.

The form of the affidavit of the delivery of a declaration against a prisoner.

In the Common Pleas.

<i>A. B.</i>	}	In a plea of Trespas on the Case.
against		
<i>C. D. late of, &c.</i>		

E. *F. of, &c. gent. maketh oath, That he this deponent on the — day of — last, at the lodge of the Fleet prison, delivered a declaration in this cause to — one of the turnkeys of the said prison, a true copy of which declaration*

ration is hereunto annexed; and this deponent also saith, that the said — did then acknowledge to this deponent, that the defendant C. D. was at that time a prisoner in the said prison of the *Fleet*.

Sworn, &c.

E. F.

When defendant in custody in a county gaol must appear and plead.

NO rule shall be given for defendant in custody to appear and plead to any declaration against him, until an affidavit be filed with the proper secondary of the delivery of the copy of such declaration, and of the time when, and the person to whom the said Copy was delivered, and a copy of the said affidavit shall be produced to the prothonotary before judgment signed, together with a certificate from the proper officer that no appearance is entered with him. *Rule E. 5 W. & M.*

If a copy of a declaration be delivered before *mensum paschæ* in *Easter* term, or *crastinum animarum* (a) in *Michaelmas* term, and affidavit thereof be made and filed, and the defendant doth not appear within ten days after *Easter* or *Michaelmas* term respectively, judgment may be signed upon certificate as aforesaid, rule having been given; but if he appears as aforesaid, within ten days after such term, he shall imparl till the next term, unless the action be in *London* or *Middlesex*, and defendant be in prison within forty miles of *London* or *Westminster*, and then though the prisoner does appear within ten days after the end of the term, he shall plead two days before the effoin-day of the next term, and in default thereof, rule having been given, judgment

(a) This is now the first return of *M.* term.

may be entered against him as aforesaid. *Same rule.*

If the declaration be delivered on or after *mensam paschæ* in *Easter* term, or *crastinum anniversarium* (a) in *Michaelmas* term, or any time in *Hilary* or *Trinity* term, and plaintiff shall thereupon give a rule to appear and plead, if defendant appears two days before the effoin-day of the next term, he shall *imperl* until the next term; but if he shall not appear within that time, judgment may be entered against him as aforesaid. *Same rule.*

(a) Now first return.

If the writ be returnable in one term, and the declaration be delivered before the effoin-day of the next term, plaintiff in such next term may give rules to appear and plead; and if defendant does not appear and plead by the expiration of the rules, judgment may be signed against him, as aforesaid. *Same rule.*

Declaration delivered to a prisoner the last day but one in *Easter* term, he must plead two days before the effoin-day of *Trinity* term. *T. 6 & 7 Geo. 2. Bond, and others, v. Jope, 1 Barnes's Notes 149.*

When to proceed to final judgment and execution.

IF any plaintiff shall declare against any defendant in custody of the warden of the *Fleet* prison, or of any sheriff or other officer, by virtue of any process of this court, and shall not further proceed to judgment (a) within three terms after such declaration delivered, *inclusive* of the term in which the declaration shall be delivered, *the defendant having appeared*; or if any

(a) Final judgment is here to be understood.

any plaintiff having obtained judgment in this court in any action, against any defendant a prisoner as aforesaid, and shall not charge such defendant so remaining a prisoner in execution, upon the judgment so obtained, within two terms next after such judgment so had and obtained, including the term in which the said judgment shall be signed, then such defendant remaining in prison may be discharged out of custody, where he shall be so detained, by *superfedeas*, to be allowed by one of the justices of this court, if cause shall not be shewn by plaintiff or his attorney, why such plaintiff had not proceeded before that time to judgment and execution as aforesaid; upon notice to be given to either of them by the defendant's attorney or agent, and oath made of such notice. *Rule E.* 8 Geo. 1.

And where a defendant shall surrender himself, or be surrendered to the *Fleet* prison in discharge of his bail, and a declaration has been delivered, or judgment had against such defendant before such surrender, then the plaintiff shall proceed to judgment upon such declaration delivered within three terms after such render, (the defendant having appeared) and charge such defendant in execution within two terms after such judgment obtained, or such defendant may be discharged out of custody by *superfedeas* to be allowed by one of the justices of this court, if cause shall not be shewn to the contrary as aforesaid by the plaintiff or his attorney, upon notice to either of them given by the defendant's attorney or agent, and oath made of such notice given. *Same rule.*

How

How to charge a prisoner in execution in the Fleet.

(a) Vide habeas corpus ad satisfacienda' p. MAKE out an *habeas corpus ad satisfaciendum* (a). Stamps 5 s. Signing by prothonotary 1 s. 4 d. Sealing 7 d. Backing by a judge 4 s. Carry it to the clerk of the papers at the *Fleet*, four days before the return, pay 9 s. 2 d. To the *treasury keeper* 2 s. on bringing the roll into court on which the *final* judgment must be entered, *ergo*, it may be proper to give the clerk of the judgments two or three days notice before hand. Bringing up defendant 10 s. 6 d. To the cryer 2 s. To the secondary 9 s.

N O T E S.

1. Defendant brought up by *habeas corpus* from the King's Bench prison to be charged in execution at plaintiff's suit, moved to be remanded, upon an affidavit that he was a member of the last parliament; and continued so to the end of last sessions; it appearing by the return of the *habeas corpus*, that defendant was taken by process out of B. R. since the end of last sessions of parliament, and was not charged with any process here, he was remanded in order to move the King's Bench to be discharged from the actions there, because if the first taking and detainer were *illegal*, he ought not to be charged in execution here. *E. 7 Geo. 2. Dutton v. Pitt, 1 Barnes's Notes 136.*

2. Ruled by the judges in the treasury, that where defendant is to be charged in execution

on

on several judgments, there must be an *habeas corpus* on every judgment. *M. 19 Geo. 2. Pettit, and others, v. Molley, 2 Barnes's Notes 179.*

How to discharge a prisoner for want of a declaration.

IF defendant be in a *county gaol*, get a certificate from the gaoler of the cause he is charged with, and a certificate from *all* the prothonotaries, (*for every plaintiff may declare in what prothonotary's office he pleases, and is not obliged to declare in that prothonotary's office where the habeas corpus was signed,*) and thereupon you get a judge's *fiat*, which you file with the *filazer*, and he, on your entering an appearance, signs your *superfedeas*; or, you may proceed to take out a judge's summons for plaintiff to shew cause why the defendant should not be discharged for want of a declaration, which is the best method when the defendant is in a *county gaol*.

N O T E S.

1. *Cur'* declared, that where a defendant being in custody is intitled to a *superfedeas*, the plaintiff cannot detain him by delivering a declaration, though the defendant neglects to procure himself to be superseded. *E. 13 Geo. 1. Farmer v. Jenkinson, Rep. and Cas. of Pract. in C. P. 34.*

2. Defendant

The removal to the Fleet being before a declaration delivered, plaintiff must declare in this court; he cannot declare in the court of

King's Bench, (unless he removes defendant by *habeas corpus ad respond'*;) and for want of a declaration defendant is to be discharged by this court.— Where a defendant is removed after declaration delivered, the action must proceed in that court wherein plaintiff declares, and defendant is to be superseded by that court for want of subsequent prosecution, though detained in the prison of the other court. *Ibid.*

2. Defendant arrested by a King's Bench process, and being charged with a *capias* at another person's suit, removed himself to the Fleet; If plaintiff does not declare within two terms, defendant may apply for a *superfedeas* to C. P. so is the practice in B. R. M. 14 Geo. 2. *Madock v. Fletcher*, 2 Barnes's Notes 299.

3. Declaration delivered against defendant in the county gaol for Devon on a Sunday, three days before the end of the second term, held good, and no *superfedeas* granted, the Stat. 29 Car. 2. c. 7. not taking in this case. M. 16 Geo. 2. *Tompkins, an attorney, v. Woodley*; in the treasury. Note; the defendant did not make affidavit, that he did not receive the declaration, nor had it on the day after the delivery.

4. Defendant continuing in custody after he became supersedable without applying for a *superfedeas*, plaintiff discontinued his first action, and after tendering defendant 6s. 8d. costs taxed on the discontinuance, charged him in custody with a new writ for the old cause of action. Rule absolute for a *superfedeas* on entering a common appearance, but discharged as to costs. T. 24 Geo. 2. *Peck v. Adams*, 2 Barnes's Notes 320.

5. In

5. In a *joint* action against two, one only arrested, the other absconding; plaintiff does not declare within two terms, but was proceeding to outlaw the absconding defendant, *superseas* granted for want of a declaration. *T. 24 Geo. 2. Tracy v. Garinston and another, 2 Barnes's Notes 320.*

Lord chief justice thought that plaintiff ought to be allowed a reasonable time to outlaw the absconding defendant, but said he has not

shewn that he used all diligence as he ought to have done. *Ibid.*

How to discharge a prisoner for not proceeding to judgment or execution.

YOU must summons plaintiff to shew cause why a *superseas* (b) should not be granted, which (if no cause shewn to the contrary) the judge will grant on entering an appearance.

(b) After declaration, the prothonotary signs the *superseas*, and not the *filazer*.

N O T E S.

1. Defendant, a prisoner in the *Fleet*, was brought to the bar by *habeas corpus* in order to be charged in execution at plaintiff's suit. Objected, that plaintiff not having charged defendant in execution within three (c) terms after judgment obtained, was now too late, defendant being intitled to a *superseas*; and so held *per Cur,* and the prisoner was remanded. *M. 7 Geo. 2. Robins v. Wigley, 1 Barnes's Notes 263. — Ibid. 280. aliter.* — Prisoner not lodging his *superseas* till after an *habeas corpus ad satisfaciendum* lodged, was charged in execution. *Hil. 11 Geo. 2. Clayton v. Stapp, Pract. Reg. in C. P. 334. S. C.*—In this case the prisoner had not even served the judge's order for a *superseas*.

(c) Three in the original.

2. In

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2. In all cases where a prisoner in the *Fleet*, or other gaol or prison, is discharged, or ordered to be discharged by this court, or any of the justices thereof, by *superseas*, for want of prosecution, and such prisoner be afterwards arrested or detained in custody by action of debt brought upon the judgment obtained in the cause wherein such prisoner was so discharged, or ordered to be discharged, a common appearance shall be accepted for the defendant in such action of debt upon the judgment. *Rule Hil. 8 Geo. 2.*

3. Where a defendant is discharged (on entering a common appearance) out of custody for want of the plaintiff's proceeding to judgment within three terms, the plaintiff may afterwards proceed to judgment, and take the defendant in execution; but if the plaintiff has proceeded to judgment, and the defendant be discharged out of custody for want of being charged in execution within two terms after judgment obtained, the defendant's person cannot afterwards be taken in execution on that judgment. *Wright, administrator, v. Kersewill, M. 10 Geo. 2. 1 Barnes's Notes 275.—Rep. and Cas. of Pract. in C. P. 135. S. C.—Ibid. 136. Clarke v. Venner, M. 10 Geo. 2. S. P.—Pract. Reg. in C. P. 333. S. C.—1 Barnes's Notes 276. S. C.*

4. Defendant obtained a *superseas* for want of prosecution; but before he was discharged, plaintiff charged him in execution. Defendant ordered to be discharged with costs, consenting to bring no Action. *T. 10 Geo. 2. Kirke v. Burrows, 1 Barnes's Notes 274.*

5. The three terms allowed a plaintiff to proceed to final judgment, are always taken to be
inclusive

inclusive of that term whereof the declaration is, and unless plaintiff proceeds to *final* judgment within the third term, he is too late. *Hil.* 11 *Geo.* 2. *Davis v. Hall*, 1 *Barnes's Notes* 279.

6. Prisoner not charged in execution till after second term by *accident*, yet no *superfedeas* granted. *Hil.* 12 *Geo.* 2. *Ashley v. Sutton*, *Pract. Reg. in C. P.* 335. 1 *Barnes's Notes* 281. C. S.

7. Declaration was delivered in *Hilary* term The rule *East* last with an imparlance; and in *Easter* term *ster* 8 *Geo.* 1. defendant pleaded, and plaintiff demurred to is general, the plea on the first day of the last term; de- plaintiff is to fendant joined in demurrer, and plaintiff not proceed to proceeding further to a *concilium*, or otherwise, judgment, all last term, a *superfedeas* for want of plaintiff's (i. e. *final* judgment) proceeding to judgment within three terms was within three granted; which extends only to discharge defen- terms, in all dant's person from confinement, the action still of the term of remains pending; and defendant's remedy, as which the de- to *nonprofs*, is separate and distinct from the *su-*claration is *persedeas*. *M.* 13 *Geo.* 2. *Huggins v. Bambridge*, delivered, un- a prisoner in the *Fleet*, 1 *Barnes's Notes* 287. less plaintiff can shew it was out of his power to proceed so fast. Defendant shall take no advantage of the Court's delay; or in counties where the assizes were held but once a year, it may be impossible to comply with the letter of the rule. *Ibid.*

8. Defendant after judgment was rendered to the *Fleet* in discharge of his bail in *Hil.* vacation last, and now moved for a *superfedeas*, for want of being charged in execution within two terms, pursuant to the general rule *E.* 8 *Geo.* 1. insisting that the render must be taken to be of *Hil.* term; rule *nisi* made absolute, no cause being shewn. *T.* 16 *Geo.* 2. *Judge v. Torr*, 2 *Barnes's Notes* 302.

9. Defendant

9. Defendant a prisoner applied to be discharged by *supersedeas* for want of being charged in execution within two terms after judgment; plaintiff excused himself by the delay of a *ca. sa.* to the gaoler in due time. But *Cur'* held that to be insufficient; the *ca. sa.* ought to have been delivered to the sheriff, and the sheriff's warrant to the gaoler. Rule absolute for *supersedeas*. *Hil.* 17 *Geo.* 2. *Poole v. Cooke*, 2 *Barnes's Notes* 308.

10. Within two terms after final judgment, plaintiff, instead of charging defendant in execution, charged him with a declaration in an action of debt on the judgment. *Cur'* held this no cause against a *supersedeas*, which was granted. *Hil.* 18 *Geo.* 2. *Childs v. Proves*, *ibid.* 310.

11. Where a prisoner in the *Fleet* is intitled to a *supersedeas*, for want of proceeding to final judgment within three terms, *vide ibid.* 309.

12. Declaration, judgment and execution against a prisoner set aside, (with costs) as *irregular*, being all subsequent to the time of defendant's being *superfedable* and his application for a *supersedeas*. *Hil.* 29 *Geo.* 2. *Webb v. Dorwell*, *Supplement to 2 vol. Barnes's Notes* p. 51.

13. A prisoner in the *Fleet* being brought into court, by a *habeas corpus ad satisfaciendum*, to be charged in execution on a judgment obtained by plaintiff, insisted upon having been *superfedable* for two years past. *Cur'* remanded him *uncharged* in execution, but detained at others suits. *T.* 24 *Geo.* 2. *Pennington v. Welch*, 2 *Barnes's Notes* 319.

14. A prisoner is wrongfully detained in custody from the time he becomes superſedeable for want of proceedings againſt him; and the court on application will order a *ſuperſedeas*. *Vide Gibbs v. Tupigny de Maily, T. 24 & 25 Geo. 2. 2 Bernes's Notes 322.*

Additional NOTES relating to prisoners.

1. In an action of debt againſt *A.* and *B.* two obligors on a *joint* bond for payment of Money, *A.* was arreſted and in priſon, but *B.* abſconding could not be arreſted, and therefore plaintiff proceeded to the *exigent* in order to outlaw him; and now, two terms being near expired, plaintiff moved for time to declare, in regard *B.* could not be outlawed before the end of the term, but denied. *Hil. 2 Geo. 2. Fiſher v. Incker and another, Praet. Reg. in C. P. 327.*

2. Declaration againſt a priſoner delivered on the fifth day after laſt term, *viz. Monday 12th June*, the term ending on *Wednesday 7th June*, and good, it being the conſtant practice to have four intire law-days to deliver declarations againſt priſoners, and give rules to plead; and as *Sunday* was the fourth day, a rule could not be given on that day, but might on the *Monday*. *M. 5 Geo. 2. Walker v. Hilton, Praet. Reg. in C. P. 328.*

3. Plaintiff obtained a treaſury rule, to ſhew cauſe why he ſhould not have time to declare againſt *Allardyce*, who was in cuſtody; *Bigbie* abſconding, plaintiff was proceeding to outlawry againſt him. Rule abſolute, without prejudice to defendanſt *Allardyce's* application for a *ſuperſedeas*. *T. 25 & 26 Geo. 2. Linth-*

waite v. Bigbie and Allardyce, 2 Barnes's Notes
323.

But a prisoner
irregularly
charged with
a declaration
must complain
before judg-
ment. *M. & C. P.*
Geo. 2. Cooper
7. Leary, Ibid. 329.

1. If a man be in custody upon a declaration
irregularly delivered, the plaintiff shall not be
at liberty to charge him with a new declaration,
unless he be in custody at another person's suit.
E. 6 Geo. 2. King v. Boswell, Pract. Reg. in
C. P. 328.

2. Defendant, whilst at large, was served with
a copy of process, with notice to appear, but
before declaration became a prisoner in the *Fleet*,
plaintiff entered an appearance, according to
the statute, left a declaration in the office, and
gave defendant notice thereof. Declaration and
the subsequent proceedings set aside, there ha-
ving been no method to charge a prisoner with a
declaration, but by *habeas corpus*, till the statute
of *William* the Third. The declaration should
have been delivered at the *Fleet*. *Hil. 20 Geo. 2.*
Prime and others, v. Moore, 2 Barnes's Notes
313.

3. Defendant was a prisoner in the county gaol
for *Devon*, charged by the present and other plain-
tiffs. Plaintiff discontinued his action, and paid
costs, and then served a copy of a common *ca-*
pias, with notice to appear, on defendant in cus-
tody, entered an appearance for defendant ac-
cording to the statute, left declaration in the of-
fice, and gave notice thereof to defendant, and
for want of a plea signed judgment, and executed
fiat facias, and held regular; plaintiff, since the
act to prevent vexatious arrests, having no other
way of charging defendant with a common

capias

capias than as above; the notice of the declaration was dated 28 *January*, to plead within eight days; and the judgment signed 5 *Feb.* Objected, that the judgment was signed a day too soon, but over-ruled. The words of the notice are not, *from the day of the date*, but *from the date*, which is the delivery. Rule discharged. This case differs from *Pryme and others v. Moore*, last *Hilary* term, where defendant was arrested *when at large*, and became a prisoner in the *Fleet*, before, declaration (a). (a) *Vide* 2 *T. 21 Geo. 2. Plume v. Dingle*, 2 *Barnes's Notes* 314. *Barnes's Notes* 313.

1. Plaintiff had two different causes of action *Supersedeas.* against defendant, one as administrator, the other as assignee. Defendant was arrested at plaintiff's suit, as administrator; but in the title of the affidavit for bail, *administrator* was omitted, though put into the writ, defendant remained in custody for want of bail. Plaintiff did not declare as administrator, but made a new affidavit of his other demand as assignee, and delivered a declaration indorsed for bail. A *supersedeas* granted in the first cause, the affidavit being a nullity, but the arrest is not void in the second cause. *Hil. 8 Geo. 2. Abdy, administrator, against Hopkins, widow; Abdy, assignee, &c. v. The same. Ibid.*

2. Defendant superseded on an irregular execution, but before the rule was drawn up plaintiff lodged with the sheriff a *capias ad respon-* *After supersedeas issued, though before allowance, plaintiff shall*
not charge defendant with a *new* declaration, and *Q.* if after at liberty by a *supersedeas* defendant may be arrested? *Cur'* as to this divided, and no rule was made. *Ibid.* 1 *Barnes's Notes* 261, 273. Afterwards held, that where a prisoner is superseded he cannot be held to bail for the *old* cause of action. 2 *Barnes's Notes* 315, 322.

audum against defendant. *Cur'* ordered defendant to be discharged, for he ought to have the full benefit of the rule, and be actually discharged before any new charge against him by the same plaintiff. *T. 8 & 9 Geo. 2. Calvert v. Goddard, Pract. Reg. in C. P. 332.*

3. Application for a *superseas*, and to be discharged on the Lords act inconsistent. *Hil. 13 Geo. 2. Poulter v. Salmon, 1 Barnes's Notes 286.*

Escape.

After a voluntary escape gaoler cannot retake prisoner. *1 Barnes's Notes 269.*

Prisoner on a *capias ut agatur* discharged.

A prisoner in the *Fleet* on a *capias utlagatum*, on motion discharged on affidavit of plaintiff's death, and that on searching the proper offices at *Doctors Commons*, no administration appeared to have been granted, or will proved. *M. 6 Geo. 2. Wagstaffe v. Darby, 1 Barnes's Notes 258.*

Prisoner discharged on common bail, on *certiorari* brought by plaintiff.

Plaintiff brought his action in an inferior court, and held defendant to bail. Plaintiff afterwards removed the proceedings into this court by *certiorari*; defendant discharged on entering a common appearance, by the opinion (a) They were of three judges (a) *contra* Lord Chief Justice of opinion that the *certiorari* having been brought by plaintiff to remove his own action he has lost his bail. The practice is the same in civil as in criminal cases. Where defendant brings a *certiorari* to remove an indictment into the *King's Bench*, the bail is continued; but where the *certiorari* is brought by the prosecutor, the bail is discharged. *Cro. Jac. 363. Beston and Baker. 2 Lord Raym. 837. Crisp against Smith*; the *certiorari* is admitted to be regular, but by it plaintiff has relinquished the bail in the inferior court. He has lost bail by his own act. Defendant ought to be protected against vexation, and from being harrassed. *Ibid.*

Willes

*Willes (a). T. 28 Geo. 2. Keeling v. Elliott, (a) His Lord-
Supplement to 2 vol. Barnes's Notes, p. 49.* ship compared
this case to a

discontinuance; a plaintiff may by settled practice, after holding a defendant to bail, discontinue his action, begin *de novo*, and hold defendant to bail again; plaintiff's being liable to payment of costs on a discontinuance, does not materially vary the case. *Ibid.*

Superfedeas on putting in good bail.

GEORGE the second, &c. To the sheriff of *London* greeting. Whereas *C. R.* is detained in our prison under your custody, by virtue of our writ returnable before our justices at *Westminster*, on, &c. [*the return*] to answer *J. M.* in a plea of trespass, and also in a plea of trespass on the case, to the damage of the said *J.* of 100 *l.* and because it sufficiently appears to our said justices at *Westminster*, that the said *C.* hath appeared in our said court, and found sufficient bail to answer the said *J.* in the plea of trespass on the case aforesaid; therefore we command you, that if the said *C.* is detained in our said prison under your custody by occasion of the said action, and no other, then you permit him to go at large, as you will answer the contrary at your peril. Witness, &c.

A superfedeas to a steward of a liberty.

GEORGE the second, &c. To ——— chief steward of the liberty of *Bury St. Edmunds* in the county of *Suffolk*, greeting. Whereas by our writ we commanded our sheriff of *Suffolk*, that he should take *J. M.* gent. if he might be found in his bailiwick, and

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keep him safely, so that he might have his body before our justices at *Westminster* at a certain day in the said writ specified, to answer *R. S.* esq; in a plea of trespass, and also in a certain plea of trespass on the case upon promise, to the damages of the said *R.* of — pounds, and you, by virtue of a certain warrant upon our said writ by the sheriff of the county aforesaid thereupon directed to you, took the said *J.* within the said liberty, and still detain him in our prison under your custody; yet because the said *J.* after the taking aforesaid, found sufficient bail before our said justices at *Westminster*, to answer the said *R.* in the pleas aforesaid, therefore we command you, that if the said *J.* by the occasion aforesaid, and no other, is detained in our prison under your custody, then without delay you cause the said *J.* to be discharged out of the same prison, and permit him to go at large. Witness, &c.

Superedeas on entering a common appearance.

GEORGE the second, &c. to the sheriff of — greeting. Whereas *A. B.* is detained in our prison under your custody, by virtue of our writ of *capias* issued out of our court before our justices at *Westminster*, returnable before our said justices on, &c. [the return] to answer *C. D.* in a plea of trespass, and also in a certain plea of trespass on the case upon promise, to the damage of the said *C.* — pounds whereby — pounds bail was directed to be taken: But because it sufficiently appears to our said justices at *Westminster*, that the said *A.* has appeared by *J. P.* his attorney, to answer the
said

said C. in the plea aforesaid, we command you, that if the said A. be detained in our prison under your custody, by virtue of the said writ, and for no other cause, that then you suffer him to go at large, as you will answer the contrary at your peril. Witnesses, &c.

Superfedeas for want of an affidavit of the debt, and indorsement on the back of the declaration, &c.

GEORGE the second, &c. to the warden of our prison of the *Fleet* greeting. Whereas *W. P.* in the term of the Holy Trinity last past, [*if delivered in the vacation insert the day*] was charged in our said prison under your custody, with a copy of a declaration at the suit of *J. W.* in an action of debt upon bond for the sum of ———. But because it sufficiently appears to our justices at *Westminster*, that no affidavit that the said plaintiff's cause of action amounted to ten pounds or upwards was first made and filed in the proper prothonotary's office, nor an indorsement made by the said prothonotary or his deputy upon such copy of the declaration, signifying the sum of money which should have been specified in such affidavit, according to the late rule of court made for that purpose, and because the said *W.* hath appeared by his lawful attorney to answer the said *J.* in the plea aforesaid, we command you, that if the said *W.* be detained in our said prison under your custody, by virtue of the said declaration and for no other cause, that then, &c. *as before.*

Superfedeas for want of declaring in two causes.

GEORGE the second, &c. to the sheriff of ——— greeting. Whereas *A. B.* is detained in our prison under your custody, by virtue of our writ of *capias*, returnable before our justices at *Westminster*, on, &c. [*the return*] to answer *C. D.* in a plea of trespass, and also in a certain plea of trespass on the case upon promise, to the damage of the said *C.* 30 *l.* whereupon bail for 20 *l.* was directed to be taken; and whereas the said *A.* is also detained in our said prison under your custody, by virtue of another writ of *capias*, returnable before our said justices at *Westminster*, on, &c. [*the return*] to answer *E. F.* in a plea of trespass, and also in a certain plea of trespass on the case upon promise, to the damage of the said *E.* of 50 *l.* whereupon bail for 40 *l.* was directed to be taken: But because it sufficiently appeareth to our said justices at *Westminster*, that the said *A.* hath appeared in our court before our said justices by *J. P.* his attorney, to answer as well the said *C.* as the said *E.* in the several pleas aforesaid, and that the said *C.* and *E.* have not, and neither of them hath proceeded to declare against the said *A.* in due time after his commitment, pursuant to the rules of our court of common pleas at *Westminster*, therefore we command you, that if the said *A.* be detained in our prison under your custody, for the causes aforesaid, &c. *as before.* Witness, &c.

Superfedeas

Superfedeas for want of prosecution.

GEORGE the second, &c. to the sheriff of the city of *Canterbury* greeting. Whereas by our writ we commanded our late sheriff of the city of *Canterbury*, that he should take *A. B.* if he should be found in his bailiwick, and keep him safely, so that he might have his body before our justices at *Westminster*, from the day of, &c. in the — year of our reign, to answer *C. D.* in a plea of trespass, and also for 20*l.* of debt upon demand; and the said *A. B.* by virtue of our said writ was taken, and is now detained in our prison under your custody; yet because the said *C. D.* hath in no manner hitherto proceeded in the said pleas against the said *A. B.* and the said *A. B.* hath by *R. S.* his attorney appeared in our court before our justices at *Westminster*, and is ready to answer the said *C. D.* in the pleas aforesaid; we therefore, &c. as before. Witness, &c.

Superfedeas for want of plaintiff's proceeding to judgment.

GEORGE the second, &c. to the sheriff of — greeting. Whereas *A. B.* is detained in our prison under your custody, by virtue of our writ of *capias*, returnable before our justices at *Westminster*, on, &c. [the return] last past, to answer *C. D.* in a plea of trespass, and also in a certain plea of debt upon demand for 40*l.* and whereas the said *A.* afterwards,
that

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that is to say, on the — day of — last past, was charged with a declaration at the suit of the said C. in the plea aforesaid: But because it appeareth to our justices at *Westminster*, that the said A. hath appeared in our court of Common Pleas to answer the said C. in the plea of debt aforesaid, and that the said C. hath not proceeded to judgment against the said A. within three terms after delivery of the said declaration, as required by the rules of our said court, we command you, *&c. as before.* Witness, *&c.*

Superfedeas for not charging defendant in execution.

GEORGE the second, *&c.* to the warden of our prison of the *Fleet*, greeting. Whereas C. D. on the — day of *June* 175—. rendered himself to our said prison of the *Fleet*, before — — esq; one of our justices of our court of the bench, in discharge of his bail, at the suit of A. B. for — pounds; and because the said A. hath not proceeded to charge the said C. in execution within two terms next after judgment obtained, according to the rules of our said court of the bench, we therefore command you, that if, *&c.* Witness, *&c.*

Superfedeas

Superfedeas for want of proceeding to judgment and execution at the suits of several plaintiffs.

GEORGE the second, &c. to the warden of our prison of the *Fleet*, greeting. Whereas it has been certified to our justices of our court of the bench at *Westminster*, that *A. B.* was committed to our said prison of the *Fleet* for want of bail, upon our writ of *habeas corpus*, at the suit of *C. D.* in a plea of trespass, and also in a certain plea of debt upon demand for — pounds, and on the — day of — 175—. was charged with a declaration at the suit of *E. F.* in a plea of trespass on the case for — pounds; and on the — day of the same month, was charged with a declaration at the suit of the said *C.* in a plea of debt for 40 *l.* and also on the — day of — then next following, was charged with another declaration at the suit of *G. H.* in plea of trespass upon the case for — pounds; and for that it appeareth to our said justices, that the said *C.* and *E.* or either of them, have not proceeded to charge the said *A.* in execution in due time in the said causes, or either of them, according to the rules and orders of our said court; and also for that it appeareth to our said justices, that the said *G.* hath not in due time proceeded to judgment against the said *A.* in the said cause, according to the rules and orders of our said court; and because the said *A.* hath appeared in our said court by his lawful attorney in the several actions aforesaid, we therefore command, &c. *as before.*

Habeas

Habeas corpus cum causa, *and* procedendo.

A Writ of *habeas corpus* is used for two purposes: First, to remove causes from inferior courts, to be determined in this court. Secondly, to remove the body of a defendant out of any other prison to the *Fleet*.

No writ of *habeas corpus*, or other writ for the removing a cause out of any inferior court, shall be received or allowed by the judge or officer to whom the same shall be delivered, (but he may proceed in such cause as if no such writ had been delivered to him) except the writ be delivered before the jury which is to try the issue have appeared, and one of them be sworn. *Stat. 43 Eliz. c. 5.*

By *Stat. 21 Jac. 1. c. 23.* no writ of *habeas corpus*, *certiorari*, or other writ to remove any action commenced within any city, liberty, &c. shall be allowed by the steward, judge, &c. of such court, unless delivered before issue or demurrer joined in such case, so as the said issue or demurrer be not joined within six weeks after arrest or appearance of the defendant to such action or suit; and if any action commenced in such court of record in any city, liberty, &c. shall be removed by any writ or process, and afterwards he remanded back by writ of *procedendo*, or other writ, then the said action shall never afterwards be removed or stayed before judgment by any writ out of any court whatsoever.

And if in any action or cause not concerning freehold inheritance, title of lands, lease or rent, commenced in any such court of record,
it

it shall appear or be laid in the declaration, that the debt, damages, or thing demanded doth not exceed 5*l.* then such action shall not be staid by any writ whatsoever other than writ of error or attainit.

But this act is only to extend to such courts of record in cities, liberties, &c. and for so long time only as there shall be an utter barrister of three years standing, steward, &c. or judge or recorder of such inferior court, or assistant to such judge of the same inferior court, as shall not be an utter barrister of that standing, and not of counsel in any action in such inferior court.

The practice of ill designing people in time rendered ineffectual this act; for a vexatious defendant sued in an inferior court for a debt under 5*l.* would set up a fictitious action against himself for a pretended demand above 5*l.* and then bring a *habeas corpus cum causa*, which would take in both actions, and by this means the smallest action was removed into a superior court, whereby an honest but poor plaintiff has been necessitated to submit to the loss of his demands, not being able to bear the expence of such superior court.

But by the *Stat. 12 Geo. 1.* the judges of such inferior courts, as are described in the *Stat. 21 Jac. 1.* may proceed in such actions, &c. as are therein specified, which appear or are laid not to exceed 5*l.* although there may be other actions against such defendants wherein the plaintiff's demand shall exceed 5*l.*

Of removing a prisoner to the Fleet.

IF a prisoner in custody of any sheriff or gaoler charged with process out of the King's Bench or Exchequer, and not with any process out of this court, be minded to be turned over to the *Fleet* prison, he must procure himself to be charged with some process out of this court, before he brings his writ of *habeas corpus*, that he may be returned charged therewith, otherwise he cannot be turned over.

Concerning the returns of an habeas corpus.

A *Habeas corpus cum causa ad faciendum et recipiendum*, directed to any sheriff (other than of *London* or *Middlesex*) is not to be returnable *immediatè* or in the vacation, but at a day certain in court in the term. *Rule M. 1654. l. 10.*

But an *habeas corpus* directed to the sheriffs of *London* or *Middlesex*, may be granted in term or vacation time, returnable immediately. *Same rule and sc̄e.*

And in cases of *habeas corpus* returnable immediately, the sheriff ought to make his return the same day that the writ is delivered, and to bring the body immediately, as required by the writ, without permitting him to wander abroad by colour or pretence thereof. *Same rule and sc̄e.*

And where a writ of *habeas corpus* is directed to a sheriff, warden of the Fleet, marshal or gaoler, the prisoner is to be brought in custody according

according to the writ at the day limited, without being permitted to wander, &c. *Same rule and sect.*

If upon a *habeas corpus* the prisoner is returned charged with process out of the King's Bench or Exchequer, and with process out of the Common Pleas, he may be committed with these causes. *Same rule and sect.*

If upon a *habeas corpus cum causa* the prisoner be returned charged with a process out of the Common Pleas, though it be returnable at a future day, he may be committed with this cause. *Same rule and sect.*

All writs of *habeas corpus* returned in court, must be made returnable at a day certain. *Rule 1654. Hil. 13 & 14 Car. 2.*

Writs of *habeas corpus* directed to the inferior courts of *London, Westminster, Southwark*, and other courts within five miles of *London* may be returnable immediately. *Rule Mich. 1654. sect. 11. Rule Hil. 13 & 14 Car. 2.*

Bail on habeas corpus.

IF bail be taken in the absence of the plaintiff or his attorney, the same is to be taken *de bene esse*; and if, on notice in writing given to the plaintiff, or his attorney, of the names and additions of the bail, the time when and before whom put in, no exception be taken within twenty days, then upon oath made of such notice the bail is to be delivered out to be filed. *Rule M. 1654. sect. 11. Hil. 13 & 14 Car. 2.*

If