

*Rep. and Cas. of Pract. in C.P.* 110. and *1 Barnes's Notes* 119.

6. A demurrer, and several issues were joined, before argument plaintiff proceeded to try the issues; as to one the proof lay upon defendant, and as to the rest, upon plaintiff; plaintiff began at the assizes to give evidence upon the first issue, and failing in proof, was nonsuited; plaintiff moved to set aside the nonsuit, which was thought reasonable, though against the course of the court. Nonsuit set aside by consent, on payment of full costs. *M. 14 Geo. 2. Wilson v. Barber, 2 Barnes's Notes* 248.

7. The standing rule is, that if a nonsuit be *regular*, the parties are out of court, and it cannot be set aside; if *irregular*, it is not considered as a nonsuit. Lord Ch. Just. not quite satisfied with this rule, but till the judges of all the courts at *Westminster* agree to alter it, the rule must stand. If the courts were to set aside regular nonsuits, the merits of causes and points of law would be brought in question on motions. *M. 25 Geo. 2. in the case of Hartly, alias Green, v. Atkinson, 2 Barnes's Notes* 255.

Judgment as  
in case of a  
nonsuit pursuant  
to the statute.

1. To move for judgment as in case of a nonsuit, pursuant to the *Act 14 Geo. 2.* in the first place a rule must be given for the plaintiff to enter the issue upon record, which if he fails to do, defendant may have a *nonpross* for want thereof. If plaintiff enters the issue, the roll must be produced in court, and thereupon defendant may move for a nonsuit upon the act. Whenever the court admits the cause shewn by plaintiff sufficient to discharge the rule to shew cause why a nonsuit, the court will appoint a future day for the trial, in country causes at the

next

next assizes, in *London* or *Middlesex* at sitting at a convenient distance. *Per Cur'*, *M. 15 Geo. 2. in casu Diggs v. Price*, 2 *Barnes's Notes* 248.

2. Plaintiff's own illness held sufficient to prevent a nonsuit upon the late act, and next assizes appointed for the trial. *M. 15 Geo. 2. Clarke v. Gorrill*, *Ibid.* 249.

3. Rule to shew cause why judgment as in case of a nonsuit discharged, plaintiff to pay costs of the application, and peremptorily to try the cause next sitting. *E. 15 Geo. 2. Dapp v. Woodman*, 2 *Barnes's Notes* 249.

4. Issue joined *Trinity* term last, plaintiff did not proceed to trial at the then next assizes, and before the last, which was the second assizes, plaintiff married. After notice of trial given, defendant moved for judgment as in case of nonsuit. *Cur'* were of opinion, that tho' no excuse was shewn for plaintiff's not proceeding to trial at the first assizes, yet defendants for that default should have applied in *Michaelmas* term last, but are now too late; as to the second assizes the excuse is sufficient; by the marriage the suit is abated *de facto*. Rule discharged. *T. 16 & 17 Geo. 2. Vile, widow, v. Darw and others*, *Ibid.* 250.

5. Judgment as in case of a nonsuit applied for, and the question was, whether an action *qui tam* was within the statute or not? *Per Cur'* held that it was. *T. 17 & 18 Geo. 2. Suggon qui tam v. Webster*, *Ibid.* 253.

6. Defendant had applied for, and received costs, for plaintiff's not proceeding to trial at last assizes, and now moved for judgment as in case of a nonsuit, after having obtained a rule for costs for not proceeding to trial. 2 *Barnes's Notes* 103, 251.

Defendant cannot move for judgment as in case of a nonsuit, after having obtain-

case of a nonsuit, but having made his election, and taken costs for not proceeding to trial, he cannot have the other remedy. *T. 17 & 18 Geo. 2. Ogle, Esq; executor, v. Moffit, 2 Barnes's Notes 253.*

7. After motion for judgment of nonsuit, application for leave to discontinue wrong, and the rule was made absolute for a nonsuit. *Hil. 18 Geo. 2. Lowe v. Peacock and others, 2 Barnes's Notes 254.*

8. On motion for judgment as in case of a nonsuit, affidavit must be made of notice of motion, and that the cause was not tried. *E. 19 Geo. 2. Pepiatt, one, &c. v. Bell, Ibid. 255.*

9. Replevins within the statute for judgment as in case of a nonsuit, for the act has made no distinction. *Ibid. 257.*

10. Plaintiff had obtained rules for special jury and view, a view was had by four jurors only; plaintiff entered his cause for trial and was ready to proceed, but defendant refusing to consent, it could not be tried for want of a view returned by six jurors at least; it not being plaintiff's fault that the view was incomplete. Rule to shew cause why judgment as in case of a nonsuit discharged. *E. 27 Geo. 2. Hamp v. Cuming, Supplement to 2 vol. Barnes's Notes, p. 43.*

Non-suit at trial.

1. In *homine replegiando* plaintiff nonsuited at trial, the defendant shall have his costs. *Hil. 2 Geo. 2. Hat, et ux, v. Lyet, Pract. Reg. in C. P. 223.*

2. Administrator nonsuited upon a trial in trover, the possession, loss and trover were in the life of the intestate, and the conversion after his decease, he shall pay costs. *M. 4 Geo.*

2. *Atkins, administrator, v. Spence, Pract. Reg. in C. P.* 115.

3. Where an executrix shall pay costs on a nonsuit at trial, upon the statute of Hue and Cry. *Pract. Reg. in C. P.* 115.

4. Executor nonsuited at trial on an *indebitatus assumpsit* for money had and received after the testator's death, shall pay costs. *Hil. 6 Geo. 2. Bangs, executor, v. Bangs, Pract. Reg. in C. P.* 116.

5. An administrator nonsuited on prohibition, brought for a demand accrued in testator's lifetime, shall pay no costs. *T. 13 Geo. 2. Creek and another, administrator v. Pitcairn, Pract. Reg. in C. P.* 118.

6. Nonsuit at the trial for want of confessing lease, entry and ouster, lessor of plaintiff having taken out a *fi. fa.* against defendant's goods for costs, instead of proceeding on the common rule. *Cur'* ordered restitution to be made, and defendant's costs to be paid by plaintiff's lessor and his attorney. *T. 13 & 14 Geo. 2. Goodright, on the demise of Rewell, v. Vice, in ejectment, 2 Barnes's Notes* 146.

7. In replevin, defendant brought down the record, and plaintiff not appearing, insisted to have a *verdict*, which the judge complied with; but the court set aside the verdict, and ordered the *postea* to be amended and a nonsuit to be returned, and that defendant should pay costs of the motion. *M. 20 Geo. 2. Hicks v. Young, in replevin, Ibid.* 371.

*Nonprofs* for want of plaintiff's entering issue, signed a day too soon, set aside. The rule runs, "unless plaintiff within four days

"next after notice shall cause the issue to be

"en-

Nonprofs for  
want of enter-  
ing issue.

“entered,” which excludes the day of notice. The rule was served *Friday 22d June*, and the issue roll brought in *Tuesday* following, on which day the *nonprofs* was signed. T. 26 & 27 *Geo. 2. Margerum v. Fenton*, 2 *Barnes's Notes* 257.

Plaintiff nonsuited by judge's mistake.

*Indebitatus assumpsit* brought against a stakeholder for money had and received for plaintiff's use.—The judge who tried the cause was of opinion that the action would not lie, therefore nonsuited the plaintiff without hearing any evidence. Plaintiff upon affidavit of this matter moved to set aside the nonsuit, but the court refused to make any rule. It was alleged from the bar, that the court of King's Bench had made a rule in the like case, but no such was produced. M. 7 *Geo. 2. Love v. Day*, 1 *Barnes's Notes* 226.

Where plaintiff dies after nonsuit, and before the day in bank.

Action of debt brought upon a *nonprofs* in an action, wherein defendant's testator was plaintiff, he died after the nonsuit, and before the day in bank. This is 'a matter of error. The nonsuit is not helped by the statute, which extends only to verdicts. M. 8 *Geo. 2. Costa v. Missaubin, administrator, during the minority of an infant, executor. Ibid.* 226.

*Proceedings by attornies.*

**I**F an attorney is plaintiff, and he sues as such (for he may waive his privilege, and sue as a common person) the first process is an attachment of privilege.

Of suing it out.] Make a præcipe.

*The form of the præcipe.*

London, **A**TTACHMENT of privilege for C. D. gent. one, &c. against A. B. Débt, [or as the action is].  
 C D. agent. Ret. &c.  
 —Oct. 1758. affidavit for 24 l.

Write the attachment of privilege on a treble 6 d. stamp.

*The form of the attachment.*

**G**EORGE the second, &c. To, &c. greeting. Attach A. B. so that you may have him before our justices at *Westminster* on *Saturday* next after, &c. (a) to answer C. D. 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 from time out of mind used and approved of in the same, of a plea of trespass [as the action is] (b); and have you there this writ.

(a) Attachment of privilege should have fifteen days between the teste and return. M. 11 Geo. 2. Hayward, an attorney, v. Denison, Pract.

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Reg. in C. P. 438. 1 Barnes's Notes 301. S. C. and P. Cur' considering the attachment of privilege in nature of an original writ. (b) If bailable, instead of saying, "Of a plea of trespass," say, "Of a plea of trespass on the case."—No *acetiam*.

writ. Witness *Sir John Willes* Knt. at *Westminster* the——day of——in the——year of our reign.

*Cooke.*

(a) Attachment of privilege indorsed for bail without an affidavit of debt filed is irregular; but in this case it appearing that an affidavit was actually made before the writ sued out, but by

Indorse [the sum sworn to, (ifailable) (a) and] the agent's or attorney's name who sues out the writ, and the year and day it is signed. Carry the præcipe and writ to the prothonotary who will sign the writ and keep the præcipe (b); you pay nothing for signing. Get it marked by the clerk of the warrants, before it is sealed (c); pay nothing unless in arrear for termages, sealing 1 *d.*—If the attachment is notailable, a copy must be served on defendant with an *English* notice as for a *capias*. But ifailable, you must apply to the sheriff for a warrant.

mistake was not filed, *Car'* discharged the rule to shew cause why an attachment for contempt should not issue against plaintiff, and ordered plaintiff to pay costs, defendant consenting to bring no action. *Hil. 9 Geo. 2. Ware, an attorney, v. Racket, 1 Barnes's Notes 23.* (b) Attachment of privilege not to be signed by the prothonotary unless a præcipe be left in the office containing the defendants names, not exceeding four in the whole, with the return-day thereto, and the day of signing the same, together with the agent's or attorney's name who sues out the same. *Rule Hil. 11 Geo. 2.* (c) Attachments of privilege of no force unless they are signed by the clerk of the warrants before they are sealed. *Rules T. 29 Car. 2. T. 9 W. 3.*

Common appearance and putting in bail.] If the attachment requires only a common appearance, it must be entered with the prothonotary who signed the writ, (pay 3 s. 10 *d.*) and if it requires special bail, his clerk of the dockets prepares the bail-piece, (or you may prepare it yourself) and attends the judge or the court when the recognizance of bail is entered into, and the bail justify, or fresh bail is added, in the same manner as the filazer does on mesne process by original.

Decla-

Declaring.] Ingross declaration on treble *id.* stamp paper according to the following form, *viz.*

*Cooke.*

*Easter, &c.*

*Middlesex,* **C** D. late of, &c. was attached by to wit. **C.** a writ of our Lord the King of privilege, issuing out of the court here, to answer *A. B.* gent. one of the attornies of the court of our Lord the King of the bench here, according to the liberties and privileges of the same court for such attornies and other ministers of the same bench, time out of mind used and approved of in the same, of a plea of trespass on the case, &c. (as the case is) and whereupon the said *A. B.* in his proper person complains that whereas.—The rest as in common cases, only you must add pledges to prosecute as in *K. B.*

N O T E.

If an attorney *delivers* or *files* his declaration and gives notice thereof four days *exclusive* before the end of the term the process is returnable in, defendant must plead same term, if rule to plead given and plea demanded.

1. Held that by the *Stat. 3 Jac. 1.* an attorney could not bring an action for fees till a bill was delivered. *E. 11 Geo. 1. Clarke, one, &c. v. Godfrey, Rep. and Cas. of Pract. in C. P. 27.—Pract. Reg. in C. P. 36.* Concerning actions for fees, &c. and taxing attornies bills.

2. By the act of 2 *Geo. 2. cap. 23.* for the better regulation of attornies and solicitors, it is enacted, “ That no attorney or solicitor shall



commence or maintain any action for the recovery of any fees, charges or disbursements, at law or in equity, till the expiration of one month after the delivery of his bill to the party or parties to be charged therewith, or left for him, her or them, at his, her or their dwelling-house, or last place of abode, written in a common legible hand, and in the *English* tongue, (except law terms and names of writs) and in words at length (a), (except times and sums) and subscribed by the attorney.”

(a) *Fide post*  
this page.

3. A motion and rule made to tax the plaintiff's bill of costs, which was taxed *ex parte*, after several attendances, but at last it appearing to the court that the plaintiff had not signed his bill, the court declared that a bill not signed was not to be taxed by virtue of the *Act 2 Geo. 2. c. 23.* for the regulation of attornies and solicitors, and discharged the rule and the proceedings which had been had thereon. *M. 4 Geo. 2. Ellison v. Kirby, Rep. and Cas. of Pract. in C. P. 60.*

4. Action for fees and disbursements. Plaintiff had delivered a bill, wherein several abbreviations were made, as *Mr.* for *Master*, *pd.* for *paid*, &c. at the trial verdict for plaintiff; but a point was reserved, whether plaintiff could maintain his action upon this bill so delivered with abbreviations upon the *Stat. 2 Geo. 2. c. 23. s. 22.* It was insisted for the plaintiff, that by *Stat. 6 Geo. 2. c. 14. s. 5.* to explain the act to make proceedings in the *English* tongue, proceedings in courts of justice may be wrote with the like abbreviations as have been usually made in the *English* language. The court held the delivery of such a bill, a proceeding within the description of the *Act 6 Geo. 2.* and that upon this bill

bill the plaintiff could well maintain his action, and gave judgment for him. *E. 8 Geo. 2. Ray v. Jackson, Pract. Reg. in C. P. 37.*

5. *Cur'* upon reading the *Acts 3 Jac. 1.* and *Defendant 2 Geo. 2.* relating to attornies and sollicitors, moved to stay made a rule that plaintiff should shew cause proceedings in why all proceedings should not be staid till an action brought for he delivered defendant a bill of costs. *E. 6 Geo. fees, no bill 2. Clarke, an attorney, v. Stone, for fees, &c. having been 1 Barnes's Notes 28. delivered. Up- on shewing*

cause, *Cur'* were of opinion that they could not consider the matter as an irregularity, because it is illegal, and against an act of parliament, but set aside the judgment and inquiry, upon payment of costs, bringing the money into court, pleading the general issue, and taking short notice of trial. *M. 7 Geo. 2. Welland, an attorney, v. Rock, ibid. 166.*

6. The administrator of an attorney may commence a suit without delivering a bill, and the bill is not liable to be taxed. *M. 4 Geo. 2, Griffith, administrator, v. Squire, Rep. and Cas. of Pract. in C. P. 58. Lee, executor, v. Knight, M. 6 Geo. 2.* Action for fees for business done by plaintiff's testator. Motion to tax the bill upon bringing the money into court, *sed negatur. 1 Barnes's Notes 90. — Chapple and another, executors of Goughan, an attorney, v. Chapman, T. 10 Geo. 2. S. P. 1 Barnes's Notes 96.*

7. Motion for plaintiff to have the costs of taxing his bill, a sixth part not being taken, but only a ninth, A rule to shew cause was granted, which was made absolute. *M. 6 Geo. 2. Hirst v. Dixon, Rep. and Cas. of Pract. in C. P. 78. Pract. Reg. in C. P. 36. S. C.*

8. Motion was made to tax plaintiff's bill of costs, but denied, defendant having given a bond for the money. *M. 8 Geo. 2. Marsh v. Carter, Rep. and Cas. of Pract. in C. P. 109. —*

## The present Practice of the

*Pract. Reg. in C. P.* 37. S. C. says, the bond had been given five years ago, and the vouchers delivered up. *Cur'* discharged the *nisi*, saying, an attorney at this rate could never be safe.

9. An attorney's bill cannot be taxed after an action brought, and a writ of inquiry executed, for then the damages are ascertained. *E.* 8 *Geo.* 2. *Clarke v. Taylor, Rep. and Cas. of Pract. in C. P.* 118. *Pract. Reg. in C. P.* 38. S. C.

10. Where the whole demand of an attorney's bill appears to be for conveyancing business, it is not to be taxed; plaintiff must recover upon a *quantum meruit*. *M.* 12 *Geo.* 2. *Hillier v. James, 1 Barnes's Notes* 37.

11. When an attorney abates, and the bill is afterwards taxed, the abatement is to be taken out of the prothonotary's deductions; as where the attorney's bill amounted to 5 *l.* 4 *s.* 6 *d.* the attorney abated 10 *s.* and received 4 *l.* 14 *s.* 6 *d.* in full for his bill; the client afterwards got an order to have it taxed, and the prothonotary took off 19 *s.* 6 *d.* Motion that the attorney should pay the costs of the taxation, the bill delivered being less by a sixth part than the bill taxed. Rule to shew cause. Insisted for the attorney, that as 4 *l.* 14 *s.* 6 *d.* was received in full, it ought to be deemed a bill for that sum only, and the 10 *s.* which the attorney abated, ought to be deducted out of what the prothonotary has taken off. *Cur'* (Ch. Just. and *William Fortescue* J. absent) it must be so. Rule discharged. *T.* 13 & 14 *Geo.* 2. *Ecollier v. Dutoure, MS. Ca. Pract. Reg. in C. P.* 39. S. C.

12. Attorney's bill that has been paid not to be taxed, for *per Cur'* the statute directing taxation of attornies bills supposes them to be unpaid, and a rule to shew cause clandestinely obtained, discharged with costs. *T. 22 & 23 Geo. 2. Trim v. Slater, 2 Barnes's Notes 39.*

13. Defendant had obtained a treasury rule for taxation of plaintiff's attorney's bill at peril of costs. On plaintiff's application *Cur'* ordered the bill to be taxed as between attorney and client, at peril of costs. *Hil. 23 Geo. 2. Moorhouse v. Barham, ibid. 121.*

14. If an attorney will not *voluntarily* deliver a bill of fees and disbursements, the party must take out a summons for him to deliver the same, and upon the party's or his attorney's undertaking, the judge will make an order for the attorney to deliver a bill to be taxed by the prothonotary, and if the attorney does not then deliver a bill, the party must move the court to make the judge's order a rule of court; and if that rule is not obeyed, he may move for an attachment, or he may first move the court for the attorney to deliver a bill, &c. and not take out a summons.

Where an attorney will not *voluntarily* deliver his bill.

15. The rule for costs of taxation of an attorney's bill should not at the *first* instance be absolute, but to shew cause. By *Stat. 2. Geo. 2.* if a sixth part of an attorney's bill be deducted, the court are not left to their discretion, but are obliged to award costs of the taxation against the attorney; where a sixth part is not deducted, the court are left to their discretion. The statute is a good guide, what it directs in one case seems to be a right rule in the other; ever since the statute, costs of taxation have been reciprocally given to the party charged, and to

the attorney, as a sixth part has, or has not, been taken off. *Vide Supplement to 2 vol. Barnes's Notes, p. 15.*

(a) Plaintiff an attorney of

*Proceedings against attornies (a).*

C. P. sues defendant an attorney of the same court, by common *capias*, and not by bill; proceedings staid without costs, and defendant's having had a judge's order for time to put in bail, held no waiver of his objection to plaintiff's method of proceedings against him. *M. 28 Geo. 1. Uncoyn, one, &c. v. Robinson, one, &c. Supplement to 2 vol. Barnes's Notes, p. 7.*

An attorney sued as executor or administrator has no privilege, but may be sued as a common person.

If an attorney be defendant, he is not to be served with a copy of process, nor arrested, being supposed to be always present in court, but a bill must be filed against him in the following form, according to the nature of the action.

*Cooke.*

*Trinity term in the, &c.*

*E. 4 Geo. 2. Taylor v. Fuller, Rep. and Cas. of Praet. in C. P. 64. —Praet. Reg. in C. P. 34. S. C.*

*To the justices of our Lord the King of the bench,*

*Middlesex,* C. D. by E. F. his attorney com-  
to wit. C. plains of A. B. gent. one of the  
attornies of the court of our Lord the King of  
the bench, present here in court in his proper  
person, for that whereas—go on with the  
declaration, but instead of saying, “and there-  
fore he brings his suit, &c.” you say, “and  
therefore he prays relief,” adding the com-  
mon pledges to prosecute.

Having drawn the bill, ingross it on a treble  
1 d. stampt parchment, carry it to *Westminster*,  
and give it to one of the cryers, who will call de-

defendant thrice (a) in open court; pay him one shilling. The cryer will get the bill signed by the prothonotary in whose office you have made it (which is usually the office in which the defendant practices, if it be known) who will take for the entering the same, and mark it accordingly. Then take the bill back, and get a treble 6 d. stamp added at the bottom thereof, or you may annex a common bail-piece thereto, and the secondary will give you a rule thereon for defendant to appear; pay him 4 d. and then the bill is filed in the prothonotary's office (a), and you give the following notice to defendant to appear in four or eight days, according to the rule, *Hil. 11 Geo. 2.*

(a) *Vide Rep. and Cas. of Pract. in C. P. 3.*

(a) The bill is to be filed in the prothonotary's office till the rule is out, and afterwards filed with the *custos brevium*; so declared *per Cur'*, E 11 *Annæ, in an Anon. case,*

Common pleas.

A. B.  
against

C. D. gent. one, &c.

SIR,

**T**AKE notice, that a bill was this day filed in the office of *Geo. Cooke, esq;* chief prothonotary of his Majesty's court of Common Pleas at *Westminster*, against you at the suit of the plaintiff *A. B.* in an action of trespass upon the case on several promises, and unless you appear to the said bill on *Monday* the 26th of *Jan.* instant, you will be forejudged the court. Dated 23 *Jan.* 175

*Rep. and Cas. of Pract. in C. P. 3.*

(b) It is the day given by the secondary's rule which is *inclusive*, but see the rule, *Hil. 11 Geo. 2.* which says the days are to be exclusive of the day of giving notice.

To Mr. C. D.  
the defendant.

R. S. attorney  
for the plaintiff.

Where any bill shall be filed against any attorney of this court, no forejudger shall be entered against him upon such bill for want of appearance, if the action be laid in *London* or *Middlesex*, and such attorney reside within twenty

ty miles of *London*, until four days after notice *in writing* of filing such bill be given to such *attorney* or *his agent*, or left at his usual place of abode, and a rule given for such appearance as usual; and if such attorney resides *above* twenty miles from *London*, or the action be laid in any other county than *London* or *Middlesex*, then no forejudger shall be entered till eight days after such notice, shall be given in such manner as aforesaid, and a rule to appear as before said; the said days to be *exclusive* of the day of giving such notice. *Rule Hil. 11 Geo. 2.*

An attorney subscribing a bill filed against him, is only an undertaking to appear, which he must actually do in the prothonotary's remembrance, and which on application the court will compel him to do. *M.*

*1 Geo. 2. Whitcomb v. Worthington, an attorney, Rep. and Cas. of Pract. in C. P. 66.*  
(a) In the memorandum of

Appearance.] If the defendant appears to the bill, he enters his appearance with the proper prothonotary, and then you deliver a declaration to the *defendant* or *his agent*; charge on the back thereof, and proceed as you do in other cases; but here note, that the declaration and issue both begin with the memorandum in the form following, and both in the declaration and issue you add the pledges to prosecute at the end of the declaration.

*Cooke.*

*Trinity term in the, &c.*

*Middlesex,* **B**E it remembered (a), that on the to wit. **B**—day of—in this same term *C. D.* came here into court by—his attorney, and exhibited to the justices of our Lord the King here his certain bill against *A. B. gent.* one of the attornies of the court of our Lord the

the declaration against an attorney, the nature of the action, as debt or case, need not be set forth. *T. 7 & 8 Geo. 2. Adkin v. Worthington, an attorney, Pract. Reg. in C. P. 35. — Rep. and Cas. of Pract. in C. P. 105. S. C. — Ib. 130. Siasbotbam v. Frith, an attorney, E. 9 Geo. 2. S. P.*

the King of the bench, present here in court in his proper person, the tenor of which said bill follows in these words, to wit, To the justices of our Lord the King of the bench, *Middlesex*. ff. *C. D.* &c. so on with the bill to the end, adding pledges. But where the defendant does not appear upon notice of bill being filed, you sign a forejudger.

N O T E.

Rule absolute to amend bill filed, and declaration thereon, against an attorney, by striking out the words [*commenced and*] next before the word [*prosecuted*] on payment of costs. *M. 28 Geo. 2. Law v. Salisbury, one, &c. Supplement to 2 vol. Barnes's Notes, p. 3.*

The method of forejudging an attorney for want of an appearance.] You enter the bill and a forejudger on the prothonotary's roll thus:

*Middlesex*, **B**E it remembered that on the——  
to wit. **B** day of——in this same term, *C. D.* came here into court by——his attorney, and exhibited to the justices of our now Lord the King of the bench here, his bill against *A. B.* gent. one of the attornies of the court of our said now Lord the King of the bench here, present here in court in his proper person, in a plea of trespass on the case, the tenor of which said bill followeth in these words, to wit, To the justices of our Lord the King of the bench, *Middlesex*, to wit, *C. D.* by——his attorney complaineth of *A. B.* gent. &c. (the whole bill to) and thereupon he prayeth relief, &c. Pledges  
for



for prosecuting *John Doe* and *Richard Roe*, whereupon the said *A. B.* being solemnly called came not, therefore he standeth forejudged from exercising his office of attorney for his contumacy, &c.

Also write the same, or an *incipitur* thereof on a sheet of double 2 s. 6 d. stamp paper, take both roll and paper to the prothonotary, pay him 2 s. for signing the forejudger, and to the clerk of the warrants 1 s. 4 d. for striking the defendant off the roll. The clerk of the warrants will sign your paper, and keep the roll for his own justification; and then you may proceed to arrest the defendant, or serve him with process, and so may any other person; for after a forejudger an attorney cannot be proceeded against by bill, for his being forejudged is as much a bar, and deprives him of his privilege with regard to others, as an outlawry is a bar for any other person to take advantage of, as well those that are strangers, as those that are parties to the outlawry.

### N O T E S.

1. An attorney forejudged (and not restored) sued out a writ in his own name, an attachment was granted against him on shewing cause. *E. S. Geo. 2. Cowper v. Sayer, Rep. and Cas. of Pract. in C. P. 117.* but discharged on payment of costs of the complaint. *Vide Ibid. 121. The King v. Hodgson.—Pract. Reg. in C. P. 43. S. C.*

2. An attorney forejudged (as appeared by certificate from the clerk of the warrants) sued  
by

by bill, pleaded in abatement that he is no attorney, and good. *T. 11 & 12 Geo. 2. Farrel v. Head, an attorney, Pract. Reg. in C. P. 8. 1 Barnes's Notes 36. S. C. per Cur'*. Defendant is totally deprived of privilege, pending a fore-judger. Plaintiff may reply as he pleases, and traverse the fact, which is triable by the record, or demur if he thinks the plea bad. The plea is sworn to be true, and seems not to be frivolous. *Ibid.*

3. Pending a forejudger against defendant by another person, plaintiff sued him by bill, second forejudger set aside, for defendant's privilege was suspended by the first, and plaintiff ought to have sued him by original. *E. 17 Geo. 2. Vincent v. Willoughby, 2 Barnes's Notes 35.*

4. Proceedings against an attorney in an action *qui tam* commenced by original, irregular, and staid; for these actions are never considered as the King's causes. In prosecutions at the King's suit, defendants tho' acquitted can have no costs; *secus* in actions *qui tam*. *T. 24 & 25 Geo. 2. Britten, who as well, &c. v. Teasdaile, 2 Barnes's Notes 43.*

Restoring an attorney.] When defendant hath made satisfaction to the plaintiff, or if he appears and will controvert the suit, he must take out a judge's summons for plaintiff to shew cause why he should not be restored, and if it appears to the judge that the plaintiff hath had satisfaction, or the matter in dispute is such as may be controverted by the defendant, the judge will make an order for the clerk of the warrants to restore him, and the clerk of the war-

rants

rants restores defendant accordingly, and keeps the order.

### N O T E.

An attorney who had been at his own instance struck out of the roll, and was put into the commission of the peace, and made a commissioner of the land-tax, upon an affidavit (setting forth his reasons) was restored to his privilege, he consenting to take no advantage of any action pending. *T. 16 Geo. 2. Mr. John Moody's case, in the Treasury, 2 Barnes's Notes 33.*

*Entry of an issue on a bill against an attorney. The bill of Easter, and the issue of Trinity.*

*Cooke.*

(a) The term in which issue was joined. *Trinity (a) term in the—year of the reign of King George the second.*

(b) The term in which the bill was filed. **H**ERETOFORE as it appeareth in the term of *Easter (b)* last past in the 645 roll, it is thus certained: *Middlesex*, to wit, Be it remembered, that on the—day of—in this same term, *C. D.* came here into court by *J. P.* his attorney, and exhibited to the justices of our Lord the King of the bench here his bill against *R. S.* gent. one of the attornies of the court of our Lord the King of the bench, present here in court in his proper person, in a plea of trespass on the case, the tenor of which said bill followeth in these words, to wit, To the justices of our Lord the King of the bench, *Middlesex,*

*sex*, to wit, C. D. by J. P. his attorney complaineth against R. S. gent. one of, &c. [set forth the whole bill *verbatim* to] and therefore he prayeth relief, &c. Pledges of prosecuting *John Doe* and *Richard Roe*.

And the said R. in his proper person cometh <sup>Imparlancc.</sup> and defendeth the force and injury when, &c. and prayeth leave to imparle thereupon here, until *Friday* next after the morrow of the *Holy Trinity*, and hath, &c. the same day is given to the said C. here, &c. And now here at this day cometh as well the said C. by his attorney aforesaid, as the said R. in his proper person, and upon this the said C. prayeth that the said R. may answer to his said bill, &c. and the said R. as before defended the force and injury, &c. and saith, that he did not undertake and promise in manner and form as the said C. above declareth against him, and of this he putteth himself upon the country, &c. and the said C. doth so likewise, &c. Therefore the sheriff is commanded that he cause to come here on ——— next after ——— twelve, &c. by whom, &c. and who neither, &c.

*Scire facias.*

*Sci. fa.* what, and in what cases it is necessary.] A *sci. fa.* is a writ judicial going out of the record, and lies where one hath recovered *debt* or *damages* in the King's court, and has not sued out execution within the year and a day, then after the year and the day he shall have the said writ to warn the party, and if the party comes not, or if he comes and says nothing to discharge or stay the execution, the party suing out

out the *sci. fa.* will be intitled to have execution (a).  
 (a) At commonlaw, if

after judgment the plaintiff sued not out execution within the year, he had no way but by an action on the judgment. But a *sci. fa.* in personal actions is given by the statute of *Westm. 2. c. 45. 2 Inst. 469, 470. See Salt. 600.*

A *sci. fa.* also lies on a recognizance of bail, and in many other cases.

It is called a *sci. fa.* because of the words of the writ to the sheriff, *viz.* “That by good, &c. make known to the said A. that he be before, &c. to shew if any thing he hath or knoweth to say for himself, why, &c.”

Although this writ be a judicial writ, yet because defendant may plead thereto, this *sci. fa.* is accounted (in law) in the nature of an action.

In case of the death of either party judgment must be revived by *sci. fa.*

And by the *Stat. 8 & 9 W. 3. c. 9. s. 6. 15.*  
 “In all actions in this court, if any *plaintiff* shall happen to die after any *interlocutory* judgment, and before *final* judgment, the action shall not abate; if such action might be originally maintained by the executors or administrators of such plaintiff, and if the *defendant* die after *interlocutory* judgment, and before *final* judgment, the action shall not abate, if such action might be originally prosecuted against the executors or administrators of such defendant, and the plaintiff or his executors or administrators shall have a *sci. fa.* against the defendant, his executors or administrators, to shew cause why damages in such action should not be assessed and recovered, and if such defendant, &c. shall appear at the return of such writ and not alledge matter sufficient to arrest the *final* judgment, or (being returned warned, or upon

upon two writs of *sci. fa.* it be returned that the defendant, &c. had nothing, &c.) shall make default, a writ of inquiry shall be awarded, which being executed and returned, final judgment shall be given.

In a *sci. fa.* to revive a judgment, it is not necessary to insert the particular term wherein the judgment was given. Upon *multiel record* it may be made certain by the record. 1 *Barnes's Notes* 309.

If the plaintiff be delayed from taking out execution within the year and a day by an injunction out of *Chancery*, he cannot after the injunction dissolved take out execution without reviving the judgment by *sci. fa.* But it will be no breach of the injunction to take out execution within the year, so as it is not executed, which will save the trouble of bringing a *sci. fa.* by continuing the execution on the roll by *vic' non misit breve.* 6 *Mod.* 288.

No execution upon a judgment after the year without reviving by *sci. fa.* notwithstanding the cause has been staid by injunction out of *Chancery*; for the courts of law do not

take notice of *Chancery* injunctions, as they do of writs of error. *Hil.* 6 *Geo.* 2. *Simpson v. Gray et ux'*, *Rep. and Cas. of Pract. in C. P.* 82.—*Pract. Reg. in C. P.* 377. S. C.

If a man recovers debt or damages by judgment, and the defendant dies, no execution lies against his executor without a *sci. fa.*

Or if plaintiff had judgment for debt or damages, and died before execution, his executor shall not have execution, though it be within the year, without a *sci. fa.*

*Vide* the *Stat.* 8 & 9 *W.* 3. p. 368. relating to the death of either party after interlocutory judgment, and before final.

If there be two plaintiffs in a personal action, and one of them dies, that shall not put the other to a *sci. fa.* So if one of the defendants

The present Practice of the  
die. *Far.* 68. *Moor* 367. *pl.* 503. *Noy* 150.  
5 *Mod.* 339.

But a suggestion of the death must be made  
on the record. *Salk.* 319.

Of suing out, and proceeding on *sci. fa.*] A  
*sci. fa.* (and *alias* if any) must be wrote on a 2 s.  
stamp piece of parchment, and signed by the  
prothonotary in whose office the proceedings  
were, pay him 1 s. 4 d. sealing 7 d. Then it  
must be delivered to the sheriff to be returned,  
pay 1 s. and when returned, it must be entered on  
the prothonotary's remembrance-roll, and a rule  
must be given thereon for defendant to appear;  
pay for rule and duty 2 s. After the return is  
out, you sign and docket the judgment and enter  
it up. Signing judgment 2 s. filing warrant 4 d.

Where a *sci. fa.* to revive, &c. is not neces-  
sary.] If the plaintiff has within the year and  
day sued out execution, got it returned and  
filed, and continued it on the roll by *vic' non  
misit breve*, it is sufficient to warrant an execu-  
tion after the year and day.

If there be a *cesset executio* for a year, the  
plaintiff may within the next year take out exe-  
cution without a *sci. fa.*

Where two *nichils*, &c. must be returned.]  
In case of the death of the defendant you must  
have a *sci. feci* or two *nichils* returned, but in  
case of the plaintiff's death, one *nichil* is suffi-  
cient.

Quashing *sci. fa.*] Plaintiff on motion in the  
Treasury may quash his own *sci. fa.* without  
paying costs, tho' the defendant has appeared,  
for

for no costs shall be paid on proceedings by *sci. fa.* till a declaration be delivered, and the defendant has pleaded.

N O T E S.

A *sci. fa.* quashed at the plaintiff's request *quia improvide* (a), without costs, because defendant had not pleaded. *M. 6 Geo. 2. Huer v. Whitehead, Rep. and Cas. of Pract. in C. P. 74.—Ibid. 109. M. 8 Geo. 2. Pool v. Broadfield,* held that plaintiff may waive his *sci. fa.* without paying costs, at any time before the defendant has pleaded. *1 Barnes's Notes 309. S. C. and P.*

(a) It was sued out into a wrong county.

Into what county a *sci. fa.* on a judgment must issue.] A *sci. fa.* must be brought in the same county where the first action was laid, and therefore, on a judgment wherein the action was laid in *Cumberland*, a *sci. fa.* was brought in *Westmoreland*, and judgment was had thereupon, but reversed on error in the Exchequer Chamber. *Hob. 4. 3 Cro. 228.—And see Yel. 218. S. C.* for the diversity between a *sci. fa.* on a judgment, and an action of debt on a judgment.

Into what county on a recognizance.] If a recognizance of bail be taken before a judge at his chambers in *London*, and entered on record as in *London*, it was resolved by all the prothonotaries that the *sci. fa.* shall be directed to the sheriffs of *London*, and not to the sheriff of *Middlesex*, *5 Mar. Brook, Lien 85.* tho' the recognizance is not a perfect record till it be entered upon the roll; yet when it is entered, it is a record from the first acknowledgment, and



binds persons and lands from that time, for it is the acknowledgment before the judge that gives it the face of a record, tho' the inrolment be necessary for the testification and perpetuity of it. *Hob.* 195. But in the case of *Andrews* and *Harborne* the prothonotaries certified that upon such recognizance the *sci. fa.* might be brought in *Middlesex*, or in *London*; and that it used to be brought either in *London* or *Middlesex*. 1 *Roll. Abr.* 891. *All.* 12.

So where bail taken by commissioners in the county of *York*, a *sci. fa.* lies against them either in the county of *York* or *Middlesex*. 2 *Lutw.* 1287. See *Salk.* 564, 600, 659.—*Vide* this work, pag. tit.

(a) In this case one *sci. fa.* with a *nil* returned is sufficient.

*Sci. fa. after a year and a day.*

**G**EORGE the second, &c. To the sheriff of *Middlesex* greeting. Whereas *A. B.* lately in our court, to wit, in the term of——in the——year of our reign before *Sir. John Willes* Knt. and his companions then our justices of the bench at *Westminster*, by the consideration of the same court recovered against *C. D.* late of, &c. otherwise called, &c. as well a certain debt of—*l.* as—*s.* which were adjudged to the said *A. B.* in our same court for his damages which he had by occasion of the detaining that debt whereof the said *C.* is convicted, as by the record and proceedings thereof remaining in our same court before our justices at *Westminster* manifestly appeareth, yet execution of the said judgment still remaineth to be made as on the information of the said *A. B.* we have been given to understand; and because we are willing that those things which in our same court  
are

are rightly acted, be demanded by a due execution, we command you that by good and lawful men of your bailiwick you make known to the said C. that he be before our justices at *Westminster* on, &c. (*the return*) to shew if any thing he hath or knoweth to say for himself why the said A. ought not to have execution against him for the debt and damages aforesaid, according to the form of the said recovery, if it shall seem expedient to him; and have there the names of them by whom you shall make known to him, and this writ. Witness *Sir John Willes* Knt. at *Westminster* the —day of, &c.

*Cooke.*

*The entry on the roll of a judgment on a sci. fa.*

*Middlesex,* **T**HE sheriff was commanded, to wit. Whereas *A. B.* lately in our court of our Lord the now King, to wit, in the term of — in the — year of the reign of our said Lord the King, before *Sir John Willes* Knt. and his companions, then justices of our said Lord the King of the bench here, to wit, at *Westminster*, by the consideration of the same court recovered against *C. D.* late of, &c. otherwise called, &c. as well a certain debt of — *l.* as — *s.* which were adjudged to the said *A.* in the same court for his damages which he had by occasion of the detaining that debt whereof the said *C.* is convicted, as by the record and proceedings thereof remaining in the same court of our said Lord the now King here, to wit, at *Westminster* aforesaid, manifestly appeareth, yet execution

cution of the said judgment still remaineth to be made, as on the information of the said *A.* the King hath been given to understand, and because, &c. that by good, &c. he make known to the said *C.* that he be here at *Westminster* at this day, to wit, [*the return*] to shew if any thing, &c. why the said *A.* ought not to have execution against him for the debt and damages aforesaid, according to the form of the said recovery, if, &c. And now here at this day came the said *A.* by——his attorney, and offered himself on the fourth day against the said *C.* in the plea aforesaid; and he being solemnly demanded came not, and the sheriff now sendeth that he hath nothing, &c. nor is he found, &c. It is therefore considered that the said *A.* have execution against the said *C.* for the debt and damages aforesaid, by the default of the said *C.* &c.

One *sci. fa.*  
with a *nichil*  
returned is  
sufficient.  
*Vide p. 354.*

*Sci. fa. in debt for an administrator.*

**G**EORGE the second, &c. To, &c.  
**I** Whereas *A. B.* lately in our court, to wit, in the term of——in the——year of our reign, before *Sir John Willes* Knt. and his companions, then our justices of the bench at *Westminster*, by the consideration of the same court recovered against *C. D.* late of, &c. otherwise called, &c. as well a certain debt of—*l.* as—*s.* 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, as by the record and proceedings thereof remaining in our said court manifestly appeareth, yet execution of the said judgment still remaineth

maineth to be made, and the said *A.* is dead, as on the information of *E. F.* widow, administratrix of all the goods and chattels which were of the said *A.* at the time of his death, we have been given to understand; and because we are willing that those things which in our said court have been rightly acted should be demanded by a due execution, we command you that by good and lawful men of your bailiwick you make known to the said *C.* that he be before our justices at *Westminster* on [*the return*] to shew if any thing he hath or knoweth to say for himself why the said *E.* ought not to have execution against him, *as before, fol. 373.*

*Entry of a sci. fa. in debt by an executor.*

— THE sheriff was commanded [*as to wit. before, fol. 373.*] yet execution still remaineth to be made, and the said *A.* is dead, as on the information of *E. F.* executor of the testament of the said *A.* the King hath been informed, and because, &c. by good, &c. he make known to the said *C.* [*as before, fol. 374.*] And now here at this day came the said *E.* by — his attorney, and offered himself on the fourth day against the said *C.* in the plea aforesaid, and the said *C.* *Nichil return-* being solemnly demanded came not, and the <sup>ed.</sup> sheriff now returneth that he hath nothing, &c. nor is he found, &c. And upon this the said *E.* *Profert.* bringeth here into court the letters testamentary of the said *A.* by which it sufficiently appeareth to the court here, that the said *E.* is executor of the testament of the said *A.* and thereof hath the administration, &c. and he prayeth execution against the said *C.* of the debt and dama-

Judgment.

ges aforesaid in form aforesaid to be adjudged to him, &c. It is therefore considered that the said *E.* have execution against the said *C.* of the debt and damages aforesaid, by the default of the said *C.* &c.

*Entry of a sci. fa. in case against an administrator.*

— THE sheriff was commanded, Where-  
to wit. **T**as *A. B.* lately in the court of our Lord the now King here, to wit, in the term of—-in the—-year of his reign, before *Sir John Willes* Knt. and his companions, then justices of our Lord the King of the bench here, to wit, at *Westminster*, by the consideration of the same court recovered against *C. D.* late of, &c.—-l. which to the said *A.* in the same court of our Lord the King now here were adjudged for his damages which he had by occasion of the not performing certain promises and undertakings made by the said *C.* in his life-time to the said *A.* whereof the said *C.* was convicted, as by the record and proceedings thereof remaining in the same court of our Lord the King now here, to wit, at *Westminster* aforesaid, manifestly appeareth, yet execution of the said judgment still remaineth to be made, and the said *C.* is dead, as on the information of the said *A.* the King hath been informed, and because, &c. that by good, &c. he would make known to *M. G.* widow, administratrix of the goods and chattels which were of the said *C.* who died intestate, &c. that she be here at this day, to wit, on the morrow of *All Souls*, to shew if any thing, &c. why the said *A.* ought not to  
have

have execution against her of the damages afore-  
 said of the goods and chattels which were of  
 the said C. at the time of his death being in the  
 hands of the said M. to be administred, if she  
 hath so much in her hands, according to the  
 form of the said recovery, if, &c. And now  
 here at this day came the said A. by——his  
 attorney, and offered himself on the fourth day  
 against the said M. in the plea aforesaid, and  
 she being solemnly demanded, came not, and  
 the sheriff now returneth that she hath nothing,  
 &c. nor is she found, &c. Therefore as before  
 the sheriff was commanded, that by good, &c.  
 he should make known to the said M. that she  
 should be here at this day, to wit, on the [*the*  
*return*] to shew in form aforesaid, at which day  
 came the said A. by his said attorney, and here-  
 upon the said M. on the fourth day of the plea  
 being solemnly demanded came not, and the  
 sheriff, *as before*, returneth that she hath nothing,  
 &c. nor is she found, &c. and upon this the  
 said A. saith, that after the judgment aforesaid  
 rendered the said C. died intestate, and that ad-  
 ministration of the goods and chattels which  
 were of the said C. at the time of his death,  
 after the death of the said C. was committed to  
 the said M. at———aforesaid, and the said  
 A. prayeth execution against the said M. of the  
 damages aforesaid of the goods and chattels  
 which were of the said C. at the time of his  
 death being in the hands of the said M. to be  
 administred, if she hath so much thereof in her  
 hands. It is therefore considered, that the said  
 A. have execution against the said M. of the  
 damages aforesaid of the goods and chattels  
 which were of the said C. at the time of his death  
 in the hands of the said M. to be administred if  
 she

*Return nihil.*

*Alias sci. fa.*

*Return nihil.*

she hath so much thereof in her hands, &c. by the default of the said *A.* &c.

*Entry of a sci. fa. in debt against executors, and two nihilis returned.*

*London,* **T**HE sheriffs were commanded, to wit, **T** Whereas *R. F.* [as before to] yet execution of the said judgment still remaineth to be made, and the said *T.* is dead, as on the information of the said *R.* the King has been informed, and because, &c. that by good, &c. they make known to *A. J.* widow, and *M. J.* executors of the testament of the said *T.* that they be here at this day, to wit, from the day of *Easter* in 15 days, to shew if any thing, &c. why the said *R.* ought not to have execution against them of the debt and damages aforesaid of the goods and chattels of the said *T. T.* at the time of his death in their hands to be administered, according to the form of the said recovery, if, &c. And now here at this day came the said *R.* by——his attorney, and the said *A.* and *M.* on the fourth day of the plea being solemnly demanded came not, and the sheriffs now return that the said *A.* and *M.* have nothing, &c. nor are they found, &c. Therefore, as before, the sheriffs are commanded that by good, &c. they make known to the said *A.* and *M.* that they be here from the day of *Easter* in five weeks to shew in form aforesaid, at which day here came as well the said *R.* by his attorney aforesaid, as the said *A.* and *M.* by *F. K.* their attorney, and the sheriffs now return that they have nothing, &c. nor are they found, &c. as before.

*Sci. fa.*

*A sci. fa. where the plaintiff died after interlocutory judgment, and before final judgment.*

GEORGE the second, &c. To the sheriffs of *London*, greeting. Whereas G. K. in his life-time, lately in our court, to wit, in the term of——in the——year of our reign, before *Sir John Willes* Knt. and his companions, then our justices of the bench at *Westminster*, by our writ had impleaded M. G. late of *London*, widow, declaring in the same plea against her, that whereas the said M. [setting forth the whole declaration to] and thereof he brought suit, &c. And it was proceeded in our same court in such manner that in the term of the——in the——year of our reign, by the same court it was considered, that the aforesaid G. ought to have recovered his damages against the said M. occasioned by not performing the promises and undertakings aforesaid; but because it was not known what damages the said G. had sustained on occasion of not performing the promises and undertakings aforesaid, therefore the sheriffs of *London* were commanded, that by the oath of good and lawful men of their bailiwick they should diligently inquire what damages the said G. had sustained, as well on occasion of the not performing the promises and undertakings aforesaid, as for his costs and charges by him about his suit in that behalf laid out, and the inquiry which the sheriffs should thereof make they should make manifest to our justices at *Westminster* aforesaid from [the return] then next following, under the seal, &c. and the seals, &c.

as



Death of  
plaintiff.

Executrix  
proves the  
will.

*Profert.*

*Sci. fa.*

as by the record and process thereof remaining in our same court, to wit, at *Westminster* aforesaid, may plainly appear. The inquiry nevertheless of the damages aforesaid yet remaineth to be made, and the aforesaid G. at *London* aforesaid made his testament and last will in writing, and thereby constituted and appointed E. K. his wife sole executrix thereof, and afterwards, and after the judgment aforesaid given at *London* aforesaid died, after whose death the said G. proved the said testament in due form of law, and took the burthen of the execution of that testament upon her, as by the letters testamentary thereof here in court by the said E. produced to our justices sufficiently appeareth; and because we will those things which in our same court are rightly acted be duly carried into execution, we command you that by good and lawful men of your bailiwick you make known to the said M. that she be before our justices at *Westminster* on [the return] to shew if she hath or knoweth any thing to say for herself why the damages aforesaid by him the said G. on occasion of not performing the promises and undertakings aforesaid in the action aforesaid sustained, should not be assessed and adjudged to the said E. according to the form of the statute in this case lately made and provided, if to her it shall seem expedient; and have you there the names of them by whom you shall make it known to her, and this writ. Witness Sir John Willes Knt. at *Westminster* the——day of *Oct.* in the——year of our reign.

If a *nihil* be returned according to the *Stat.* 8 & 9 *W.* 3. c. 9. s. 6, 15. an *alias sci. fa.* must issue, you must enter them *verbatim* in the prothonotary's remembrance, and give a rule.

*Entry*

*Entry on the roll of the above sci. fa.*

London, **T**H E sheriffs were commanded, to wit. **T** Whereas G. K. lately in the court of our Lord the now King, to wit, in—the —year of the reign of our said Lord the King, before *Sir John Willes* Knt. and his companions, then justices of our said Lord the King of the bench here, to wit, at *Westminster*, by the writ of our said Lord the King had impleaded *M. G.* late of *London* widow, declaring in the same plea against her, that whereas [*setting forth the whole declaration as in the sci. fa.*] <sup>First sci. fa. roll.</sup> And it was proceeded in the same court of our said Lord the King in such manner that in the term of the —in the—year of the reign of our said Lord the King, by the same court it was considered, that the aforesaid G. ought to have recovered his damages against the said *M.* occasioned by not performing the promises and undertakings aforesaid, but because it was not known what damages the said G. had sustained on occasion of not performing the said promises and undertakings, therefore the then sheriffs were commanded, that by the oath of good and lawful men of their bailiwick they should diligently inquire what damages the said G. had sustained as well on occasion of not performing the promises and undertakings aforesaid, as for his costs and charges by him about his suit in that behalf laid out, and the inquiry which the sheriffs should thereof make they should make manifest to the justices of our said Lord the King, to wit, at *Westminster* aforesaid from [*the return*], then next following, under the seal, &c. and the seals, &c. as by the record and process there-

thereof in the same court of our said Lord the King here, to wit, at *Westminster* aforesaid remaining may plainly appear: The inquiry nevertheless of the damages aforesaid yet remaineth to be made, and the said *G.* at *London* aforesaid made his testament and last will, and thereby constituted and appointed *E. K.* his sole executrix thereof, and afterwards and after the judgment aforesaid given at *London* aforesaid died, after whose death the said *E.* proved the said testament in due form of law, and took the burthen of the execution of that testament upon her, as by the letters testamentary thereof here, to wit, at *Westminster* aforesaid, by the said *E.* produced to the said justices of our said Lord the King sufficiently appeareth; and because, &c. that by good, &c. the said sheriffs should make known to the said *M.* that she should be here at this day, to wit, on, &c. [*the return*] to shew, if any thing, &c. why the damages aforesaid by him the said *G.* on occasion of not performing the promises and undertakings aforesaid in the action aforesaid sustained, should not be assessed and adjudged to the said *E.* according to the form of the statute in that case lately made and provided, if, &c. And now here at this day, to wit, on the— aforesaid cometh the aforesaid *E.* by— her attorney, and hath offered herself the fourth day against the said *M.* in the plea aforesaid, and the said *M.* being solemnly called cometh not, and the now sheriffs return that she hath nothing, &c. nor is to be found, &c. Therefore as before the sheriffs are commanded, that by good, &c. they make known to the said *M.* that she be here in— to shew in manner aforesaid.

*Return nihil.*

*Second*

*Second sci. fa. roll.*

London, **H**eretofore as it appeareth in this to wit. **H** same term in the——roll it is contained, to wit, *London*, to wit, The sheriffs were commanded [*the last entry verbatim, and then go on*] at which day here cometh the said *E.* by——her said attorney, and hath offered her self the fourth day against the said *M.* in the plea aforesaid, and the said *M.* being solemnly called cometh not, and the sheriffs as before do return that she hath nothing, &c. nor is to be found, &c. and thereupon the said *E.* prayeth that the damages aforesaid by him the said *G.* on occasion of not performing the promises and undertakings aforesaid in the action aforesaid sustained, may be assessed and adjudged unto her; therefore it is considered, that the damages aforesaid by him the said *G.* on occasion of not performing the promises and undertakings aforesaid sustained, be assessed and adjudged unto the said *E.* according to the form of the statute in that case made and provided, by default; and because it is still unknown what damages the said *G.* hath sustained by reason of the premisses aforesaid, therefore as before the sheriffs are commanded, that by the oath of good and lawful men of their bailiwick they diligently inquire what damages the said *G.* hath sustained, as well by reason of the said premisses, as for his costs and charges by him laid out about his suit in that behalf, and the inquisition which they shall thereupon make that they make manifest to the justices of our Lord the King here, to wit, at *Westminster* aforesaid in [*the return*] under the seal, &c. and the seals, &c. At which

Judgment that damages be assessed.

Inquiry awarded.

Return of inquiry.

Judgment  
signed 17th  
April 1737.

Mercy.

which day here cometh the said *E.* by her said attorney, and the sheriffs, to wit, —and—now return here a certain inquisition taken before them at *Guildball* in the parish of *St. Lawrence Jury* in the ward of *Cheape* of the same city, on the—day of—last past, by the oath of 12, *Et c.* by which it is found that the said *G.* by reason of the premisses, sustained damages beside his costs laid out by him about his suit in that behalf, to —pounds, and for his costs and charges afore-said to—. Therefore it is considered that the said *E.* as executrix afore-said, do recover against the said *M.* the said damages to—found by the said inquisition in manner afore-said, and also —adjudged by the court here to the said *E.* at her request for the increase of the said costs and charges afore-said, which said damages amount in the whole to—. And the said *M.* in mercy, *Et c.*

*Declaration on a sci. fa. upon a judgment recovered in the late King's reign against the defendant and his wife (since deceased) executrix.*

*Coke.*

—Term in the—year of the reign of King George the second.

*Middlesex,* **I**T was commanded to the sheriff, to wit. **I** Whereas *A. B.* gent. in the court of our late sovereign Lord *George* the first, late King of *Great Britain, Et c.* to wit, in—term in the—year of the reign of the said late King, before—Knt. and his companions,

nions, then the said late King's justices of the bench at *Westminster*, by the consideration of the said court had recovered against C. M. late of *Westminster* in the county of *Middlesex*, esq; and the lady E. M. his wife, executrix of the testament and last will of C. Lord M. her late husband deceased, lately called C. Lord M. as well a certain debt of ——— as ——— which in the the said court of the said late King were adjudged to the said A. for his damages by occasion of the detaining that debt to be levied of the goods and chattels which were of the said C. Lord M. at the time of his death in the hands of the said E. M. and lady E. M. to be administered, if they had so much in their hands; and if they had not, then the damages aforesaid to be levied of the proper goods and chattels of the said C. M. and Lady E. M. whereof they were convicted, as by the record and proceedings thereupon in the court of our Lord the present King now here remaining manifestly appeareth; yet execution of the said judgment still remaineth to be done, and the said Lady E. M. is dead; as the King hath heard from the information of the said A. and because, &c. by good, &c. he should make known to the aforesaid C. M. administrator of the goods and chattels which were of the said Lady E. M. and administrator with the will of the said C. Lord M. annexed, of the goods and chattels which were of the said C. Lord M. at the time of his death unadministred by the said Lady E. M. that he should be here at this day, to wit, on, &c. to shew if any thing, &c. why the said A. ought not to have execution against him of the debt and damages aforesaid of the goods and chattels which were of the said C. Lord M. at

the time of his death, being in the hands of the said *C. M.* to be administred, according to the form of the recovery aforesaid, if, &c. And now here at this day comes as well the said *A.* by—his attorney, as the said *C. M.* summoned by—his attorney, and the sheriff, to wit, *J. R.* esq; and *T. G.* esq; now return that he, by virtue of the said writ to him directed by *C. D.* and *E. F.* good, &c. had made known to the said *C. M.* that he should be here at this day to shew in form aforesaid, &c. And upon this the said *A.* prayeth execution to be adjudged to him against the said *C. M.* of the debt and damages aforesaid, to be levied of the goods and chattels which were of the said *C. Lord M.* at the time of his death not administred by the said *Lady E. M.* in the hands of the said *C. M.*

*Plea no assets come to hands.*

**A**ND the said *C. M.* by—his attorney cometh and saith, that the said *A.* ought not to have his execution against him of the debt and damages aforesaid of the goods and chattels which were of the said *C. Lord M.* at the time of his death, because he saith no goods or chattels which were of the said *C. Lord M.* at the time of his death not administred by the said *Lady E. M.* at the time of the death of the said *E.* or at any time afterwards, have come to the hands of the said *C. M.* to be administred, and that the said *C. M.* hath not, nor on the day of suing forth the said writ, nor at any time afterwards, had any goods or chattels which were of the said *C. Lord M.* at the time of his death in the hands of him the said *C. M.* to be

administred, whereof he could have satisfied the said *A.* of the debt and damages aforesaid, or any parcel thereof; and this he is ready to verify; wherefore he prayeth judgment if the said *A.* ought to have his execution against him of the debt and damages aforesaid of the goods and chattels which were of the said *C. Lord M.* at the time of his death.

*Replication. Assets come to hand.*

AND the said *A.* saith, that he by any thing before alledged ought not to be barred from having his execution against the said *C. M.* for the debt and damages aforesaid of the goods and chattels which were of the said *C. Lord M.* at the time of his death, because he saith, that the said writ of the said *A.* was sued forth on the—day of—in the—year of his present Majesty's reign, and that the said *C. M.* on the said day of suing forth the said writ had diverse goods and chattels which were of the said *C. Lord M.* at the time of his death in the hands of the said *C. M.* to be administred, to the value of the debt and damages aforesaid, wherewith he could have satisfied the said *A.* for the debt and damages aforesaid, to wit, at *Westminster* aforesaid, and this he prayeth may be inquired of by the country.



*Declaration on a sci. fa. upon a judgment  
for assets in futuro against an executrix.*

*Cooke.*

*—Term in the—year of the reign of King  
George the second.*

*London,* **I**T was commanded to the sheriffs,  
to wit. **I** Whereas *A. B.* widow, and *C. D.*  
lately in the court of our Lord the present King  
here before the justices of our Lord the present  
King of the bench here, to wit, at *Westminster*,  
by the judgment of the said court had recovered  
against *E. F.* late of *London* widow, executrix  
of the testament and last will of *G. F.* late of  
*London*, esq; her late husband deceased, —  
pounds for their damages which they had sus-  
tained, as well by occasion of the not perform-  
ing certain promises and undertakings made by  
the said *G.* in his life-time to the said *A.* and  
*C.* in *London*, to wit, in the parish of *St. Mary  
le Bow* in the ward of *Cheape*, as for their  
costs and charges by them the said *A.* and *C.*  
about their suit in that behalf expended, ad-  
judged to the said *A.* and *C.* by the said court  
of our said Lord the King, before the justices  
of our said Lord the King at *Westminster*, to  
be levied of the goods and chattels which  
were of the said *G.* at the time of his death,  
which after the giving the said judgment  
should come to the hands of the said *E.* to be  
administred, whereof she was convicted, as by  
the record and proceedings thereupon remain-  
ing in the said court of our said Lord the King  
before the justices of our said Lord the King  
here, to wit, at *Westminster* aforesaid, manifestly  
appear

appeareth: And whereas after the said judgment was given, diverse goods and chattels which were of the said G. at the time of his death to the value of the damages aforesaid and above have come to the hands of the said E. to be administred, out of which she could have satisfied the said A. and C. of their damages aforesaid, as the King has been given to understand by the information of the said A. and C. and because, &c. that by good, &c. they should give notice to the aforesaid E. that she might be here at this day, to wit, on, &c. to shew if any thing, &c. why the said A. and C. ought not to have execution against her of the damages aforesaid of the goods and chattels which were of the said G. at the time of his death, which after the said judgment was given have come to the hands of the said E. to be administred, according to the form and effect of the recovery, if, &c. and now here at this day came as well the said A. and C. by——their attorney, as the said E. by——her attorney, and the said A. and C. offered themselves on the 4th day against the said E. of the plea aforesaid, and the sheriffs now returned, that by——and——good, &c. they had given notice to the said E. to be here at this day to shew, &c. and upon this the said A. and C. pray execution against the said E. of the damages aforesaid, of the goods and chattels which were of the said G. at the time of his death, which after the said judgment was given have come to the hands of the said E. to be administred, to be adjudged to them, &c. Upon which the said E. saith, that after the said judgment was given, no goods or chattels which were of the said G. at the time of his death have come to the hands of the said E. to

be administred, whereof she could have satisfied the said *A.* and *C.* of their damages aforesaid, or of any parcel thereof; and of this she putteth herself upon the country, and the said *A.* and *C.* likewise. Therefore the sheriffs are commanded that they cause to come here twelve, &c. by whom, &c. and who neither, &c. to recognize, &c. because as well, &c.

*Entry of sci. fa. against bail.*

*Middlesex,* **T**HE sheriff was commanded, to wit. **T** Whereas *A. B.* of, &c. and *C. D.* of, &c. lately, that is to say, in—term in the—year of the reign of our Sovereign Lord the now King, before *Sir John Willes* Knt. and his companions, then our said Lord the King's justices of the bench at *Westminster*, came in their proper persons and acknowledged, and each of them by himself acknowledged to owe to *E. F.* the sum of 100 pounds, which said sum of 100 pounds they the said *A.* and *C.* for themselves and their heirs, willed and granted, and each of them for himself and his heirs willed and granted to be made of their and each of their lands and chattels, and to be levied to the use and behoof of the said *E.* And whereas *G. H.* of, &c. lately, that is to say, in the same—term in the—year aforesaid, in the said court of our said Lord the King, before *Sir John Willes* Knt. and his companions, then our said Lord the King's justices of the bench at *Westminster*, came in his proper person and acknowledged himself to owe to the said *E. F.* the sum of 200 pounds, which said sum of 200 pounds the said *G. H.* for himself and his heirs  
wil.

willed and granted to be made of his lands and chattels, and to be levied to the use and behoof of the said *E.* under this condition, that if judgment should happen to be given for the said *E.* against the said *G.* in the same court, in a certain plea of debt upon demand for—pounds prosecuted in the same court by the said *E.* against the said *G.* that then the said *G.* would satisfy the said *E.* his said debt and damages, on occasion of detaining the said debt, to be adjudged to the said *E.* against the said *G.* in the same court in the plea aforesaid, or render his body on that occasion to the prison of our said Lord the King of the *Fleet*; and although the said *E.* afterwards, that is to say, in the same—term in the said—year of the reign of our said Lord the King in the same court, before the said *Sir John Willes* Knt. and his companions then our said Lord the King's justices of the bench aforesaid, by the judgment and consideration of the same court recovered against the said *G.* as well his said debt of—pounds as—pounds which were adjudged to the said *E.* in the same court for his damages which he had on occasion of detaining of that debt whereof the said *G.* is convicted, as by the record and proceedings thereof now remaining in the same court at *Westminster* aforesaid is manifestly apparent: Nevertheless the said *G.* hath not yet satisfied the said *E.* for his debt and damages aforesaid, nor rendered his body on that occasion to the said prison of the *Fleet*, according to the form of the said recognizance, as our said Lord the King has received information from the said *E.* and because, &c. that by good, &c. he should make known to the said *A. B. C. D.* and *G. H.* that they be here at this day,

that is to say, on the morrow, &c. to shew if any thing, &c. that is to say, the said *A. B.* why the said 100 pounds by him in form aforesaid acknowledged should not be made of his lands and chattels, and the said *C. D.* why the said 100 *l.* by him in form aforesaid acknowledged should not be made of his lands and chattels, and the said *G.* why the said 200 pounds by him in form aforesaid acknowledged should not be made of his lands and chattels, and levied to the use and behoof of the said *E.* according to the form of the said recognizance, if, &c. and now at this day the said *E.* cometh here by—— his attorney, and offered himself on the fourth day against the said *A. B. C. D.* and *G. H.* in the plea aforesaid, and they, though solemnly called, came not; and the sheriff now returneth that the said *A. B. C. D.* and *G. H.* have not, nor hath any one of them any thing, &c. nor are they, nor is any one of them found, &c.

*Return nihil.*

*Alias sci. fa.*

Therefore as before the sheriff was commanded that by good, &c. he should make known to the said *A. B. C. D.* and *G. H.* that they be here from the day, &c. [*the return*] to shew in form aforesaid; at which day the said *E.* cometh here by his attorney aforesaid, and offered himself on the fourth day against the said *A. B. C. D.* and *G. H.* in the plea aforesaid, and they, though solemnly called, come not; and the sheriff, as before, now returneth that the said *A. B. C. D.* and *G. H.* hath not, nor hath any one of them any thing, &c. nor are they, nor is any one of them found, &c. And thereupon the said *E.* prayeth execution against the said *A. B. C. D.* and *G. H.* to wit, against the said *A. B.* of the said 100 pounds by him in form aforesaid acknowledged, and against the said *C. D.*

of

of the said 100 pounds by him in form aforesaid acknowledged, and against the said *G. H.* of the said 200 *l.* by him in form aforesaid acknowledged, according to the form of the said recognizance to be adjudged to him, &c. Therefore it is considered, that the said *E.* have execution against the said *A. B. C. D.* and *G. H.* that is to say, against the said *A. B.* of the said 100 *l.* by him in form aforesaid acknowledged, and against the said *C. D.* of the said 100 pounds by him in form aforesaid acknowledged, and against the said *G. H.* of the said 200 pounds by him in form aforesaid acknowledged, by default, &c.

*Note;* the first *sci. fa.* is made out by the filazer, but the second *sci. fa.* must be signed by the prothonatory.

*Sci. fa. against bail on a habeas corpus, upon a recognizance taken before a commissioner.*

**G**EORGE the second, &c. To the sheriff of *Middlesex;* greeting. Whereas *A. B.* of the city of *Coventry* in the county of the same city, and *C. D.* of the same city heretofore, to wit, on the — day of — in the — year, &c. before — esq; one of the commissioners by our justices at *Westminster* appointed, according to the form of the statute in this case lately made and provided, became bail, and each of them became bail for *E. F.* in the sum of 20 *l.* and whereas the said *E. F.* on the same — day of — in the — year of, &c. aforesaid, before the same commissioner acknowledged that he  
 owed

owed to *G. H.* the sum of 40 *l.* which said sum of 20 *l.* the said *A.* and *B.* acknowledged, and each of them acknowledged to be made of their and each of their lands and chattels, and which said sum of 40 *l.* the said *E. F.* acknowledged to be made of his lands and chattels, and levied to the use and behoof of the said *G.* upon this condition, that the said *E. F.* should appear in our court before our justices at *Westminster* at the suit of the said *G.* in a certain plea of trespass and assault to the damage of 20 *l.* And if in our same court judgment should happen to be given in the same plea for the said *G.* against the said *E. F.* then the said *E. F.* should satisfy all the damages which should be adjudged to the said *G.* in our same court in the plea aforesaid, or render his body on that occasion to the prison of the *Fleet*, as by the record and proceedings thereof remaining in our same court manifestly appeareth: And although the said *G.* in the term of ——— in the ——— year of, &c. before *Sir* ——— *Knt.* and his companions, our justices of the bench at *Westminster*, by the consideration of the same court recovered against the said *E. F.* 19 *l.* which in our same court were adjudged to the said *G.* for his damages which he had by occasion of the said trespass and assault, whereof the said *E. F.* is convicted, as by the record and proceedings thereof in our same court also remaining manifestly appeareth: Yet the said *E. F.* hath not satisfied the said damages to the said *G.* nor rendered his body on that occasion to the said prison of the *Fleet*, according to the form of the said recognizance, as from the information of the said *G.* we have been given to understand; and because we will that those things which in our said court are  
rightly

rightly acted and acknowledged be brought to a due execution, we command you that by good and lawful men of your bailiwick you make known to the said *A. B. C. D.* and *E. F.* that they be before our justices at *Westminster* on, &c. [*the return*] to shew if any thing they have or know to say for themselves, to wit, to the said *A.* why the said 20*l.* by him in form aforesaid acknowledged ought not to be made of his lands and chattles; to the said *C.* why the said 20*l.* by him in form aforesaid acknowledged should not be made of his lands and chattels; and to the said *E. F.* why the said 40*l.* by him in form aforesaid acknowledged should not be made of his lands and chattels, and be levied to the use and behoof of the said *G.* according to the form of the said recognizance, if it shall seem expedient to him; and have there the names of them by whom you shall make known to them, and this writ. Witnesses, &c.

### *Outlawry.*

#### *Outlawry before judgment.*

**A** Person who is not easily to be taken, and hath not sufficient estate in the county whereby he may be summoned, &c. may be outlawed in the following actions, *viz.* trespass, assault, case, covenant, account, debt, detinue, replevin.

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

A man cannot be outlawed on process with *ac etiams*, and if your original be only a *clausum*



*sum fregit*, the defendant may after he is returned outlawed, and the *exigent* filed, reverse the outlawry without bail, he paying the plaintiff's costs; (*Vide p.* ) and his own charges of the reversal, which are about 40*s.* and therefore the usual method, and the best for the plaintiff, is to make out a *præcipe* for a *special* original according to the nature of the action, thus, in case :

(a) If the action be laid in London (a), I F A. B. give you security to prosecute his suit, then put by sureties and safe pledges C. D. late of, &c. in the said county, yeomen that, &c. to shew wherefore, that whereas the said C. (setting forth the cause of the action, as by declaration,) but instead, &c. say, To the damage of the said A. 20*l.* as he says.

Returnable in eight days of *St. Hilary*.

must be five county days, which are held every month, and the hustings in London, which answer the county days, are held every fortnight, and for this reason most lay their actions in London in suing to the outlawry.

*Note*; you may have four names in one writ. — Carry the *præcipe* to the curfitor of the county where you lay your action, who will thereupon make out the original. If in debt 2*s.* 6*d.* in case 2*s.* 6*d.* the first count, and 6*d.* every other count besides the fine due to the King.

If the *præcipe* be carried to the Curfitor before the effoin-day of a term, he will make the original returnable on any return of the precedent term, by which you save time.

You

You may return the original of course thus:

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

The within named *A. B.* hath nothing in our bailiwick by which he can be *attached* [or *summoned*, as the case is.] If in *case* or *trespass* you say *attached*.

*C. D. Esq;* }  
 and } *Sheriffs.*  
*E. F. Esq;* }

Then carry the original thus returned to the proper filazer, who thereupon will make out a *capias, alias and pluries* (a) altogether, when the original will bear it, each of which writs must have fifteen days between the teste and return. Or if at first you carry the *præcipe* to the filazer he will procure the original, and make out the *capias, alias and pluries*, and take the cursitor's fee and fine, and also for himself 2 s. 6 d. the first count, and 6 d. every other count. *Note*; there must be fifteen days between the teste and return of each writ of *capias, alias and pluries*, and the return of the first is the teste of the second, and so in order.

(a) *Capias, alias and pluries* may be all sued out at one and the same time, by the constant practice of the court. *Per Cur', Hil. 18 Ges. 2. Vide 2 Barnes's Notes 260.* Nor is a date (i. e. day of suing out) to such process usual, *per Cur. Ibid.*

These writs you get sealed, and afterwards you may return them of course severally *non est inventus*.

The return.

The within named *A. B.* (a) is not found in our bailiwick. (a) Naming the defendant in the writ.

The