

clerk for five years to an attorney duly admitted, as by the statute is directed, and for the said term of five years shall have continued in such service, and then be examined, sworn, admitted and inrolled.

If any attorney, with whom any person shall be bound by contract in writing to serve as aforesaid, shall die before the expiration of such five years; or if such contract shall by mutual consent be vacated, or such clerk be legally discharged by rule or order of court before the expiration of such five years, then if such clerk shall by (b) contract in writing serve as a clerk to some other attorney, admitted as aforesaid, during the remainder of the said five years, such service shall be as effectual as if he had served five years to the person to whom he was originally bound.

*If his master shall die, or the contract be vacated, before the five years are expired, then to serve the remainder of the five years with another attorney.*

*Stat. 22 G. c. 46. sect. 9.*

The judges, before they admit such person, are to inquire touching his fitness and capacity, and if thereby satisfied, and not otherwise, are to administer to him, in open court, the oath after mentioned, and cause him to be admitted an attorney, and his name to be inrolled, without fee or reward, except 1 s. for administering the oath. *Same Stat. sect. 6.*

*Judges to examine his fitness and capacity before admission.*

Mr. *Rayner*, in his readings on *sect. 11.* of this statute, says that Mr. *Barrington's* observation "that notwithstanding *stat. 4*

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(b) Though without entering into any new articles.  
*Stat. 22 Geo. 2. c. 46. §. 15,*

*Hen. VI. chap. 18.* it is not the modern practice to examine attornies before admittance," is not true, and asserts that no attorney is admitted at this day, without a previous (c) examination; but whether by virtue of 4 *Hen. VI. chap. 18.* or 2 *Geo. II. chap. 23.* he will not take upon him to say. *Rayn. Read. 2 Geo. II. chap. 23. p. 45.*

*The oath.*

I *A. B.* do swear, That I will truly and honestly demean myself in the practice of an attorney according to the best of my knowledge and ability.

*So help me God.*

*id. sect. 1.*

*A Quaker on taking his solemn affirmation, may be admitted an attorney.*

Any person being one of the people called Quakers, having served a clerkship with an attorney or solicitor, and being qualified as by statute 2 *Geo. 2. c. 23.* is required, may, on taking his solemn affirmation instead of the oath by the said act directed, before such judges, and others who are to administer the said affirmation, be admitted and inrolled as an attorney or solicitor, as if he had taken the said oath. *Stat. 12 Geo. II. c. 13. §. 8.*

*Attornies to be inrolled.*

The clerk of the warrants of the *Common Pleas* is, without fee or reward, to inrol the

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(c) The Judge inquires into the fitness of the attorney, by asking him a few trivial law questions, the answers to which, generally convince him of the abilities of the clerk, as much as reading the *neck verse* (formerly necessary, in order to obtain benefit of clergy) did convince the court and mankind of the learning of the culprit. *Rayn. Read. 108.*

name

name of every person who shall be admitted an attorney of this court, pursuant to this act, and the time when admitted, in an alphabetical order, in rolls or books to be provided for that purpose, to which all persons shall have recourse without fee or reward.

*Stat. 2. Geo. 2. c. 23. §. 18.*

No attorney shall have more than two clerks at one and the same time, who shall be bound by contract in writing. *Same stat.*

*No attorney to have more than two clerks at one time.*

The prothonotaries of this court may have three clerks, and at one and the same time, and no more; and such clerks having served five years may be admitted, &c. in the same manner as any person may, who shall have served a clerkship to a sworn attorney for five years. *Same stat. §. 15.*

*Prothonotaries may have three clerks.*

Any person sworn, admitted, and inrolled an attorney of this court, with consent in writing, and in the name of any attorney of any other court of record at *Westminster, &c.* may sue out any writ, or commence or defend any action in such court, notwithstanding such person be not sworn or admitted an attorney in such court, *Same stat. §. 10.*

*Attorney, with consent of attorney of another court, may practice in such court.*

Attorney of *C. B.* may by this clause of the statute carry on proceedings in the court of great sessions of *Wales*, in the name of an attorney of that court, and declare for business and fees. *Barnes 160.*

If any sworn attorney of this court shall knowingly and willingly permit or suffer any other person to sue out any writ, or commence or defend any action, in his name, not being a sworn attorney or a sworn solicitor

*Attorney permitting those that are not, to act in his name, disabled to practice.*

citor

citor in *Chancery*, &c. and shall be thereof convicted, he shall, from the time of such conviction, be disabled to practice, and his admittance be void. *Same stat.* §. 17.

*Attorney may be admitted a solicitor.*

A sworn attorney of this court may be sworn, admitted and inrolled a solicitor in all or any of the courts of equity without any fee for the oath, or any stamp, if the master of the rolls, &c. shall, on examining, be satisfied that such attorney is duly qualified to be so admitted. *Same stat.* §. 20.

*Attorney of the King's Bench not to be admitted of C. P. without a new stamp.*

2 Geo 2. c. 23. §. 20.

An attorney of the *King's Bench* applied in the treasury to be admitted an attorney of this court without stamps, but upon looking into the above statute of 2 *Geo. 2. c. 23.* wherein no provision is made for an attorney of one court to be admitted an attorney of another without duty, though there is a provision for solicitors of one court of equity, *and for attorneys to be admitted solicitors without duty,* the judges refused to admit him without payment of the duty. *Barnes 38.*

*No attorney to commence any action for fees, &c. until a month after a bill delivered and signed.*

No attorney of this court shall commence any action for recovery of any fees, charges, or disbursements, until one month after he shall have delivered to the party to be charged therewith, or left for him at his dwelling-house, or last place of abode, a (*d*) bill of such fees, charges and disbursements, in a com-

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(*d*) That so the client may have an opportunity of looking into it before he is run to any further expence, *Pract. Reg. C. P. 36. Rep. & Cas. Pract. C. P. 27.* Taxation cannot regularly be applied for before bill delivered. *Barnes 36, 243.*

mon legible hand, and in the *English* tongue, (except law terms, and the names of writs) and in words at length (except times and fums) subscribed (e) with the proper hand of such attorney [since by *stat. 12 Geo. 2.* a bill may be wrote with such abbreviations as are commonly used in the *English* language;] and upon application of the party chargeable by such bill, or any other in that behalf authorised, unto any judge of the court, &c. where the business, or the greatest part thereof in amount or value was transacted; and upon submission of the party, or other person authorised as aforesaid, to pay the whole, that upon taxation shall appear due to such attorney, the judge, &c. is required and impowered to refer the bill, and the whole of such attorney's demands thereupon (although no action be depending touching the same) to be taxed, without any money (f) being brought into court. And if the attorney, having due notice, shall refuse to attend such taxation, the officer may proceed *ex parte* (pending which reference no action shall be brought;) and upon such taxation the party shall forthwith pay to the attorney the whole that shall be found due, and in default be liable to an attachment or process of

*And on application of the party chargeable by such bill.*

*And submission to pay what shall appear due on taxation.*

*The bill to be referred to be taxed.*

*Without bringing money into court.*

*No action to be brought pending the reference.*

*On taxation the party so*

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(e) Co. Cas. 60.

(f) Lord chief justice *King* first introduced the practice of bringing money into court, because the party being stopped from suing at law, he thought it reasonable that the attorney should have security for his money: this was previous to this statute. See *Moseley* 68. pl. 40.

contempt,

pay what shall  
be found due.

And if attor-  
ney found to be  
over paid ;

then to refund.

If bill taxed  
be less by a  
sixth than bill  
delivered, the  
attorney to  
pay the costs of  
taxation, aliter  
at the discretion  
of the court.

Not to extend  
to any bill of  
fees between  
one attorney  
and another.

Nor to convey-  
ancing business.

After an at-  
torney's death  
his bill not to  
be taxed.

contempt, or other proceeding at the election  
of the attorney. And if upon such taxation  
it shall be found, that such attorney has been  
overpaid, then the attorney shall forthwith  
pay to the party all such money as the officer  
shall certify to have been so overpaid ; and  
in default shall in like manner be liable to  
attachment, or process of contempt, or other  
proceeding, at the election of the party.

And the court is to award costs of taxation  
according to the event thereof, (*viz.*) if the  
bill taxed be less by a sixth part, than the  
bill delivered, the attorney is to pay the costs ;  
if not less by a sixth part, the court at dis-  
cretion shall charge the attorney or client ac-  
cording to the reasonableness or unreasonableness  
of the bill. *Same Stat. §. 23.*

Nothing in the said act contained shall ex-  
tend to any bill of fees, charges and dis-  
bursements, due from one attorney or soli-  
citor to any other attorney or solicitor, or  
clerk in court, but every such attorney, soli-  
citor or clerk in court, may use such remedy  
for recovery of his fees, charges and dis-  
bursements, against such other attorney or  
solicitor, as he might have done before the  
making the said act. *Stat. 12. Geo. 2. c. 13.*  
§. 6.

An attorney's bill for conveyancing bu-  
siness only, is not liable to be taxed otherwise  
than by a jury upon a *quantum meruit*. *Barnes*  
41, 42. *Bul. Ni. Pri.*

After an attorney is dead his bill is not  
liable to be taxed. *Rep. & Cas. Pract. C.*  
P. 58. *Barnes* 42. *S. P.* 119, 122.

The court will not order that an attorney shall deliver his bill, and that the same shall be taxed, on one and the same motion, they being distinct matters, and the latter part may prove fruitless; the bill may be reasonable, and no occasion to tax it; the motion must be for the attorney to deliver his bill, and then, if there be occasion, the client may move to have it taxed; but the more usual way is to summons the attorney before a judge; and if the judge's order be disobeyed, to move the court, that the order may be made a rule of court, and then proceed to an attachment in case of further contempt.

*Of application to tax an attorney's bill.*

Any person in his own name, or in the name of any other, suing out any writ, or commencing or defending any action, in any of the courts of law or equity, mentioned in the said act as attorney or solicitor, in expectation of any gain, fee or reward, without being admitted, shall forfeit 50*l.* to the use of the person who shall prosecute, and be made incapable to maintain any action for any fee, reward or disbursement, on account of prosecuting or defending any such action.

*Any person practising as an attorney not being admitted forfeits 50*l.**

*Stat. 2 Geo. 2. c. 23. §. 24.*

No attorney who shall be a prisoner in any gaol or prison, or within the limits, rules or liberties of any gaol or prison, shall, during his confinement, in his own name, or the name of any other, sue out any writ or process, or commence or prosecute any action or suit, and all proceedings in such action or suit shall be void and of no effect;

*No attorney being a prisoner to commence or prosecute any action.*

*Such attorney to be struck off the roll.*

*As also any other attorney permitting such attorney to use his name.*

*Not to extend to suits commenced before the confinement of such attorney.*

*Suing on a bail bond given in an action commenced before the imprisonment, is but a continuance of the original suit.*

*Attornies prisoners may defend, tho' not prosecute suits.*

*Every person bound clerk to cause an affidavit to be made of the execution of the articles, specifying the names and places of abode of the parties, date, &c.*

and such attorney so commencing or prosecuting any action or suit as aforesaid, shall be struck off the roll, and be incapacitated from acting as an attorney for the future; and any attorney permitting and empowering any such attorney as aforesaid, to commence or prosecute any action or suit in his name, shall be struck off the roll, and be incapacitated from acting as an attorney for the future. *Stat. 12 Geo. 2. c. 13. §. 9.*

This not to extend to prevent any attorney so confined as aforesaid, from carrying on or transacting any suit or suits commenced before the confinement of such attorney. *Same Stat. §. 10.*

After an action commenced by an attorney he becomes a prisoner, then the bail bond is assigned, and he, being still a prisoner, commences an action on the bail bond; this has been held to be a continuance of the original suit commenced before the attorney became a prisoner. *2 Barnes 46.*

It has also been held, that the above act, disqualifying attornies who are prisoners from practising, relates only to the prosecuting, and not to the defending suits. *Barnes 263.*

Every person, who after 1 July 1749, shall be bound by contract in writing to serve as a clerk to any attorney of this court, as by *Stat. 2 Geo. 2.* is directed, shall within three months after the date of such contract, cause an affidavit to be made of the actual execution of such contract by such attorney, and the person so bound, specifying the name of such attorney, and of the person so bound, and



and their places of abode respectively, together with the day of the date of such contract; and such affidavit shall be filed within the time aforesaid in this court, with the officer after mentioned, or his deputy, who shall make and sign a memorandum or mark of the day of filing such affidavit, at the back or bottom thereof. *Stat. 22 Geo. 2. c. 46. §. 3.*

*Affidavit to be filed, and the day of filing marked thereon.*

No person shall be admitted an attorney before such affidavit so marked shall be produced, and openly read in court. *Same Stat. §. 4.*

*No person to be admitted an attorney, till affidavit read in court.*

In this court the clerk of the warrants, or his deputy, shall be the proper officer for filing such affidavits. *Same Stat. §. 5.* And shall keep a book, wherein shall be entered the substance of such affidavit, specifying the names and places of abode of every such attorney and clerk, and of the person making such affidavit, with the date of the contract, and the days of making and filing such affidavit, and may take, at the time of filing such affidavit, 2 s. 6 d. for his aforesaid trouble, which book may be searched gratis. *Same Stat. §. 6.*

*Clerk of the warrants to file such affidavits, and enter substance thereof in a book.*

*Fee 2 s. 6 d. Book to be searched gratis.*

No attorney shall have, take, or retain any clerk, who shall become bound by contract in writing as aforesaid, after such attorney shall have discontinued or left off, or during such time as he shall not actually practise as, or carry on the business of an attorney. *Same Stat. §. 7.*

*No attorney to take such clerk after he has discontinued business.*

L. had served an apprenticeship to G. a scrivener in the city, and also a sworn attorney of the court of *Common Pleas*: By the tenor

*Service to a scrivener tho' also an attorney not good.*

tenor of the articles G. covenanted to instruct L. in the art and mystery of a scrivener; and it appeared that G. during the term of five years specified in the articles, had never practised as an attorney, but acted as a scrivener only. Application was made to the lord chief justice, and in the treasury, that L. might be sworn an attorney, which was refused, he not having served as *clerk* to an attorney; but as *apprentice* to a scrivener.

*N. B.* There was formerly the same determination in the case of a young man who had served Mr. *Metcalfe*, an attorney and scrivener in *Wood-street*; *Metcalfe*, during the term of five years specified in the indentures of apprenticeship, practised in both capacities; but the covenant in the articles being to instruct the apprentice in the art of a scrivener only, the judges refused to admit him as an attorney. *Barnes* 39, 40.

Every person so bound, to be during the whole time actually employed by such attorney.

Every person bound by contract in writing to serve any attorney as by the said act is directed, shall during the whole time and term of service specified in such contract continue, and be actually employed by such attorney, or his agent, in the proper business, practice or employment of an attorney. *Same stat.* §. 8.

If before the expiration of the time the attorney die, &c. or the clerk be discharged by, &c.

Provided if any such attorney, to or with whom any such person shall be so bound, shall happen to die before the expiration of such term, or discontinue or leave off his practice, or if such contract shall by mutual consent of the parties be cancelled, or such clerk shall be legally discharged by rule of the court before

before the expiration of such term, and the said clerk shall in any of the said cases be bound by another contract or contracts in writing to serve, and shall accordingly serve in manner beforementioned, as clerk to any other such practising attorney or attornies as aforesaid, during the residue of the said term of five years, such service shall be deemed and taken to be as good, effectual and available, as if such clerk had continued to serve as a clerk for the said term, to the same person to whom he was originally bound, so as affidavit be duly made and filed of the execution of such second contract or contracts, within the time and in like manner, as is before directed concerning such original contract. *Same Stat. §. 9.*

*and be bound to serve for the remainder of the time;*

*such service to be good.*

*So as affidavit be made, &c. of the execution of the articles.*

Every person who shall become bound as a clerk as aforesaid, shall, before he be admitted an attorney, cause an affidavit of himself, or such attorney to whom he was bound as aforesaid, to be duly made, and filed with the officer before appointed, that he hath actually and really served and been employed by such practising attorney, to whom he was bound as aforesaid, or his agent during the said whole term of five years. *Same Stat. §. 10.*

*Before admittance of an attorney, affidavit to be made and filed of actual service.*

If any sworn attorney shall act as agent for any person or persons not duly qualified to act as an attorney or solicitor as aforesaid, or permit or suffer his name to be any ways made use of upon the account, or for the profit of any unqualified person or persons, or send any process to such unqualified per-

*Attorney acting as agent or permitting his name to be used for or sending any process to any unqualified person, thereby*

*to enable him to appear or act as an attorney, to be struck off the roll.*

son or persons, thereby to enable him or them to appear, act or practice in any respect as an attorney or solicitor, knowing him not to be duly qualified as aforesaid, and complaint shall be made thereof in a summary way to the court, from whence any such process did issue, and proof made thereof upon oath to the satisfaction of the court, that such sworn attorney had offended therein as aforesaid, then every such attorney so offending shall be struck off the roll, and for ever after disabled from practising as an attorney or solicitor; and in that case, and upon such complaint and proof made as aforesaid, it shall be lawful for the said court to commit such unqualified person, so acting or practising as aforesaid, to the prison of the said court, for any time not exceeding one year. *Same Stat. §. 11.*

*And the unqualified person to be committed.*

*None but attorneys to practise at general or quarter-sessions.*

No person shall act as a solicitor, attorney, or agent, or sue out any process at any general or quarter-sessions of the peace, either with respect to matters of a criminal or of a civil nature, unless such person shall have been heretofore admitted an attorney of one of the courts of record at *Westminster*, and duly enrolled pursuant to *Stat. 2 Geo. 2. c. 23.* or be hereafter admitted an attorney and enrolled as aforesaid, pursuant to this act, or such other law as shall be then in being, and unless such person shall continue so entered on the roll at the time of such his acting in the capacity aforesaid; but every person, who shall so act, not being admitted and enrolled as aforesaid, shall be subject to a penalty

penalty of 50*l.* to be recovered by action of *under penalty* debt, bill, &c. by any person, who shall *of 50*l.** sue for the same, within 12 months after the offence committed, with treble costs of suit.

And if any attorney shall permit any person, *No attorney* not being admitted and inrolled as aforesaid, *to permit an* to make use of his name in the courts of *unqualified* general or quarter-sessions as aforesaid, such *person to use* attorney shall be subject to the like penalty *his name at* of 50*l.* to be recovered in manner aforesaid. *the sessions un-*  
*der the like*  
*penalty.*  
*Same stat. §. 12.*

By *stat. 2 Geo. 2. c. 23. §. 22.* "Every *Name of at-* process for arresting, and every writ of exe- *torney to be* cution, or some label annexed, and every war- *written on* rant upon such process, shall, before service *every writ.* or execution, be subscribed or indorsed with the name of the attorney, clerk in court or solicitor, by whom such process, &c. shall be sued forth; and where such attorney, &c. shall not be the person immediately employed, then also with the name of the attorney so immediately employed: and every copy of any writ served upon any defendant shall before service be subscribed with the name of the attorney immediately employed."

Motion to stay proceedings, because the *No attorney's* copy of the writ with which the defendant *name to copy of* was served, had not attorney's name to it. *writ.*

*Pract. Reg. C. P. 440.*

Rule to shew cause why proceedings *Proceedings not* should not be discharged with costs. The *to be discharg-* objection was, that no attorney's name was *ed, tho' attor-* set to the sheriff's warrant as required by act *ney's name is* of parliament; but by the court; the warrant *not to the she-* is not void, the act of parliament is directory *riff's warrant.*

only; the sheriff is blameable, but the party must not suffer for his default. *Barnes* 412. *Pract. Reg. C. P.* 441.

*Attorney's name to the writ, tho' not to the warrant, sufficient.*

Motion that proceeding might be stayed, the attorney's name not being to the warrant made by the sheriff, tho' it was to the writ on which the warrant was made. Rule to shew cause. The court (*Fortescue A.* absent) said, that as the attorney's name was to the writ, it was sufficient, but that till the *Stat.* 12 *Geo.* 2. c. 13. the not inserting the name of the attorney in the warrant was bad, and thought some former determinations on this head, not declaring the process void, were quite wrong. *Pract. Reg. C. P.* 442.

*Writ not void tho' without an attorney's name.*

Motion to stay proceedings because no attorney's name was set to the writ, denied. *Barnes* 407. *Pract. Reg. C. P.* 441. *Rep. & Cas. Pract. C. P.* 102.

*Process delivered without Filacer's name.*

Motion to stay proceedings upon process delivered without *Filacer's* name being put thereto; court said the act of parliament did not require it; so no rule was granted. *Rep. & Cas. Pract. C. P.* 106.

Provided that nothing herein contained shall extend to deprive the attornies of the dutchy of *Lancaster*, or of the courts of great sessions in *Wales*, or of the counties palatine of *Chester*, *Lancaster* and *Durham*, from acting within their respective jurisdictions. *Same Stat.* §. 13.

By statute 17 *Geo.* 3. c. 37. further time is given for the filing affidavits of the execution of contracts of clerks to attornies, to *Mich.* term. 1777.

An attorney that has not been attending his employment in this court by the space of one year, unless hindered by sickness, shall not be allowed his privilege of an attorney.

*Attorney not attending, &c. to have no privilege.*

*Mich. 1654.*

It is observable, that the above rule or order of court, was made in times very unfavorable to personal as well as public liberty, though that specious pretence was given out and received as the sole motive for causing that extraordinary *Epocha*, in the history of this country, called the usurpation.

*Observations on rule of Mich. term, 1654, touching the privilege of an attorney being free from arrest.*

A rule therefore made at such a period of anarchy and lawless confusion ought not, in my humble opinion, to be considered as sufficient authority, or indeed as any authority at all, much less as the ground and reason for over-ruling the privilege in question; will it not be too much to establish this remnant of lawless power, un sanctified by any subsequent act, either of a court of justice, or of the legislature, (without one or other of which authorities, I believe it will be difficult to produce an approved precedent of any rule, order, act, judicial or legal, being adopted, or even countenanced by courts of justice at this day, especially in a matter of personal privilege, and such two as may eventually affect the property or interest of every individual subject of this kingdom.)

And indeed at the time, when the above old and disused rule was considered as authority, it seems to have militated, even then, with a much more superior authority, viz. *Stat. 1 Hen. V. chap. 4.* whereby no under-sheriff

sheriff may practice as an attorney, during his employment in the said office, upon pain of exclusion, from being an attorney, and from being re-admitted ever after.

So that if a gentleman of the profession acts now-a-days as under-sheriff, he runs the risque of not only being struck off the roll of attornies, but also of being precluded of all possible chance of being restored, at any future period of his life, by any means whatever; for if he does practice within the year of his being under-sheriff, *Stat. Hen. V.* obliges the judges to strike him off the roll; and if he does not practice for a year, they declare themselves authorized so to do, by the practice of the court, under the above old, disused, and I may add, abused rule of 1654.

The judges in the time of princess *Elizabeth*, that glorious queen of *England*, were of opinion, that as long as an attorney remains such on record, though he does not alledge in his plea of privilege, that he has any clients, or that he prosecutes or defends any causes, at the time of an action being brought against him, and wherein he is arrested, he ought to have, and be allowed his privilege; for if he is not qualified to be an attorney, the court will strike him off the roll, on motion, and cause shewn, that he ought so to be. See *Lutw.* 1667. and the term of a writ of privilege for an attorney, in *Rest. Entr.* 469. b.1

The whole court of common pleas, during the time Lord *Camden* presided therein,



were unanimously of the above opinion, for the same reason; and therefore allowed an attorney of that court his privilege of freedom from arrest, in a civil suit, on its being verified to the satisfaction of the court, that his name remained of record, on the roll of attornies of that court, as an attorney thereof.

No attorney to be lessee in an ejection, nor bail for a defendant in this court. *Mich. 1654. M. 6 Geo. 2.* *Not to be lessee in ejection nor bail.*

No person without rule of court, or order of a judge or prothonotary, and notice to the adverse party or his attorney, shall change or shift his attorney; and such attorney newly coming in to take notice at his peril of the rules whereunto the former attorney was liable, had he continued. *Mich. 1654.* *No changing attorney without rule or order.*

The court will not permit an attorney to be changed in a cause, and another attorney appointed in his stead, till his bill of fees and disbursements be settled and paid. *Barnes 40.* *And his bill paid.*

No attorney, without leave of the court, shall shift from the prothonotary's office where first sworn and settled; and no prothonotary shall suffer such attorney to enter any of his causes in his office contrary to his rule. *Trin. 21 Car. 2.* *Attornies not to shift from one prothonotary's office to another.*

But see now the following rule.

In the Common Pleas.

*Trinity Term 10 Geo. III.*

**W**HEREAS *William Mainwaring* esq; chief prothonotary, *John Floyer* and *Anthony Dickins* esqs; the two other prothonotaries

notaries of this court, have agreed, that the fees, perquisites and profits, arising from the business transacted in their respective offices, except certain peculiar fees belonging to the chief prothonotary, shall be equally divided between them, and have proposed, that their said offices shall be carried on in one place, and as one office; and *Henry Fotbergill*, *Henry Paramor*, and *Henry Barnes*, the secondaries to the said prothonotaries, have come to the like agreement with respect to the fees, perquisites, and profits of their respective offices (except certain peculiar fees belonging to the secondaries to the chief and second prothonotaries) and have proposed, that their said offices shall be carried on in one place, and as one office, in case this court shall approve the said agreements and proposals; and the right honourable the earl of *Litchfield*, as *custos brevium* of this court, hath signified his assent thereto, and this court having taken the premisses into consideration, and being of opinion that the same will be for the advantage of the suitors, doth approve the said agreements and proposals, and think fit and order, that the same be carried into execution; and that from and after the feast of *All Souls* next, the names of the respective prothonotaries as heretofore severally put upon proceedings in the said court, be omitted, and such proceedings be only intituled "In the *Common Pleas*," and that any of the said three prothonotaries shall and may proceed on and determine all or any references and benefits of this court, which  
ought

ought to be transacted by the prothonotaries thereof, unless this court shall give particular directions concerning the same.

The clerk of the warrants to certify to the seal office the names of such attornies that have discontinued, and are forejudged the court, and put out of the roll, and have not filed any warrants of attorney, nor continued their names upon the roll for above four terms past; and thereupon no such person shall have a writ of privilege or attachment sealed until they have the said writ signed by the clerk of the warrants, to testify that their names are on the roll, for which no fee is to be paid. *Trin. 29 Car. 2.*

*Attornies who have discontinued, forejudged, or put out of the roll, not to have writ of privilege or attachment.*

And now the sealer does not put the seal to any writ of privilege or attachment before it is marked by the clerk of the warrants.

*Writ of privilege to be signed by the clerk of the warrants.*

An attorney has the privilege of suing by attachment of privilege, and of being sued by (b) bill in manner herein after mentioned. To this privilege there are some exceptions, as 1. At the king's suit, (but in a *qui tam* he has his privilege.) 2. In a real action. 3. Where he sues, or is sued, *in auter droit* as heir, executor or administrator. 4. Where he joins, or is joined with another. 5. Where there is not the same remedy in this court, as in the case of a foreign attachment in *London*. 6. When he is sued by an attorney of another court, *viz.* an attorney of

*Privilege of an attorney as to suing and being sued. See Gilb. Hist. C. P. 207, &c.*

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(b) Though demanded under 40s. Barnes 158, 159. 2 Wils. Rep. 44.

this

this court sued by an attorney of *B. R. et vice versa*, for the general rule is, that privilege takes away privilege; but then it ought to be for a debt really due, and not on a note colourably indorsed without consideration, in order to deprive the defendant of his privilege; for this is an abuse of privilege in the plaintiff, who thereby becomes unworthy of any privilege. *Barnes* 44. If an attorney of one court hath cause of action against another attorney of the same court, he ought to sue by bill, and not by attachment of privilege; for it seems needless to send a writ to the sheriff to bring in a defendant, who is presumed to be standing at the plaintiff's elbow in his own court.

Attorney of *Common Pleas* by entering into a bail bond in an action in *B. R.* waves his privilege of being sued in *C. B.* *Barnes* 117.

*Attorney not bound to serve in the militia.*

*nor constable, &c.*

On hearing counsel for Mr. *Heaton*, an attorney *C. B.* and for the deputy lieutenantcy, the court granted a writ of privilege to excuse Mr. *Heaton* from serving in the militia of the city of *London*, the service being personal. *Mich.* 14 *Geo.* 2. *Barnes* 42. Privilege from serving the office of constable, though there be a custom for persons to be chosen into that office in respect of their estates, or otherwise, for no custom shall be intended to be more antient than that of this court. *Cro. Car.* 283, 389. *Noy* 112. *March* 30. 1 *Mod.* 13. 1 *Vent.* 16, 29. 2 *Keb.* 477, 508. 1 *Low.* 265. *T. Raym.* 179. For privilege in other respects, see *Townsend's*

Townsend's Tables 452, 453. Cornwall's Tables 432, 433.

All attornies of this court should be admitted of some inn of court, or *Chancery*, and take chambers there, (if they conveniently may be had) else lodgings in some convenient place near the said inns, and leave notice in writing with the butler or porter of such inn where their lodgings are, except such attornies, who are inhabitants or housekeepers in *London, Westminster, Southwark*, or the suburbs thereof, and liberty of the *Tower of London*, and *St. Katherine's*; or are attornies of any courts within the said cities, town and liberty. *Mich. 1654. Trin. 29 Car. 2. Mich. 4 Annæ.*

Clerk of the warrants is to cause an alphabetical book to be prepared and kept in his office, for inspection *gratis*; wherein every practising attorney, resident in *London* or *Westminster*, or within ten miles thereof, shall have his name and place of abode, or some place within the said cities, or one of them, where he may be served with the proceedings of court: and if copy of such as do not require personal service, be left at place last (i) entered, with any person there; that shall be deemed good service. *Hilary 9 Geo. III.*

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(i) If no entry be made, fixing up any of the said proceedings, in the Prothonotary's office, No. 2. *Tanfield Court, Inner Temple*, (unless personal service be required) shall be deemed sufficiently served. Same rule.

Every

*Each attorney pays 8d. a term to the clerk of the warrants.*

Every attorney of the court pays to the clerk of the warrants 8*d.* a term, *viz.* 4*d.* a term for the puisne judges (to be distributed in charity) and 4*d.* a term for the cryers of the court. And when any attorney brings a writ of privilege or attachment to be marked, or warrant of attorney to be filed, he must pay the arrears (if any) of his termage.

*Attorney restored, who had been struck out of the roll at his own request.*

Mr. *Moody*, an attorney of *Hampshire*, having at his own request been struck out of the rolls of attornies, was, upon his own motion in the treasury chamber, and producing an affidavit of his reasons, restored to the office and privilege of an attorney, he consenting not to take advantage of his privilege against any action then depending against him, if there was any. *Trin.* 16 *Geo.* 2. *Barnes* 42, 43.

*Attorney answerable for his agent.*

A country attorney is answerable to his client for his agent. *Barnes* 37.

*Matters not to be transacted in the country.*

Where country attornies are concerned, declarations, pleas, and other proceedings, should not be delivered and carried on in the country, but by the agents in town.

*Declaration.*

If a rule be given to declare, and the plaintiff's attorney in the country agrees that a demand of the declaration may be made on him in the country, which is accordingly done, and a *Non-pros* signed for want of a declaration, the *Non-pros* is irregular, and may be set aside; for by the practice of the court, the declaration should have been demanded of the agent in town,

If the agent of the plaintiff's attorney *Plea.* gives the agent for the defendant time to plead, the country attorney cannot sign judgment till that time be expired.

A plea delivered in the country is irregular, and judgment may be signed. See *Barnes* 251.

If the country attorneys agree that the issue *Issue.* shall be delivered in the country, and it is notwithstanding tendered in town, and not paid for by the agent, judgment may be signed, for the agreement is void. *Barnes* 251.

But where the defendant pleads by his attorney in the country, and the plaintiff's attorney accepts it there, he may tender the issue in the country, and if not paid for there, may sign judgment. *Issue.*

Notice of trial must be given in town, *Notice of trial.* but a countermand may be given in the *Countermand.* country.

In order to be admitted an attorney, you must make an affidavit of having faithfully served your time out; having done this, or indeed before, take that part of the articles executed by your master, to one of the judges chambers, who will (*k*) examine whether you are qualified to be admitted; you must get the deputy clerk of the warrants N<sup>o</sup>. 6. *Clifford's Inn*, to attend the judge with the original affidavit of the due execution of your articles. Some morning in

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(*k*) See *Ante* 37.

term time attend *Westminster* hall to be sworn; this done get your admission engrossed on a treble 40s. stamp piece of parchment, signed by the judge who examined you. The expences out of pocket are about seven guineas. See *Rayn. Read. on Stat.* 4to. p. 108.

### *Sheriffs.*

**A**S they are bound to execute the process of the court, and punishable by the court for misbehaviour in executing the same, they are generally esteemed and looked upon as officers of the court.

*Every sheriff to make a deputy on record in court.* Every sheriff shall make yearly a deputy on record, in the *Chancery, King's Bench, Common Pleas,* and *Exchequer*, before they shall return any writs, to receive all manner of writs and warrants delivered to them. *Stat. 23 H. 6. c. 10.*

Every sheriff is to make and enter on record a deputy to receive all manner of writs and process. *Mich. 1654. Hill. 14, 15, and Hill. 15 & 16 Car. 2. Trin. 1 Jac. 2, Com. Rep. 566. pl. 243.*

*Deputy to have his name and place of abode in London or Westminster set up in the office of the clerk of the warrants.* Each deputy yearly to have his name and place of residence in *London* or *Westminster*, set up in the office of the clerk of the warrants. *Mich. 1654.*

*To give his attendance in Westminster* Sheriffs deputies are to give their attendance in *Westminster-Hall* daily in term-time, that



that they may with more conveniency dif- Hall in Term  
patch the duty belonging to their respective time.  
offices. *Mich.* 1654. *Hil.* 14 & 15. and  
*Hil.* 15 & 16 *Car.* 2. *Trin.* 1 *Jac.* 2.

Sheriffs are not to deliver out any warrants *Sheriffs not to*  
before the writs be sued forth and delivered *deliver out*  
to them. Nor deliver out any blank war- *warrants be-*  
rants. *Mich.* 1654. *Hil.* 14 & 15 *Car.* 2. *Trin.* 1 *Jac.* 2. *fore writs de-*  
*livered to them,*  
*or blank war-*  
*rants.* Stat 43 Eliz. c. 6. 6 Geo. 1. c. 21.

No under-sheriff to practice as an attorney *No under she-*  
during such his employment. *Stat.* 1 *H.* 5. *Stat.* 22 *G.* 2. c. 46. §. *riff to practice*  
4. *Mich.* 1654. *Stat.* 22 *G.* 2. c. 46. §. *as an attorney.*  
14.

The sheriff, for serving any execution *Sheriff's fees*  
upon the body, lands, goods or chattels, *on executions.*  
shall have 12 *d.* in the pound where the sum  
exceeds not 100 *l.* and if it does exceed, then  
6 *d.* for every pound exceeding 100 *l.* that he  
shall levy, or take the body in execution for.  
(1) *Stat.* 29 *Eliz.* c. 4.

This act shall not extend to *poundage* on  
*Ca. Sa.* at the suit of any sheriff, or other  
crown officer upon bail bond on prosecution  
for duties to the king, or penalty for pre-  
venting clandestine running or receiving pro-  
hibited goods, or where poundage would not

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(1) This printed statute is wrong, for the parliament  
was held 28 *Eliz.* *T. Raym.* 1. *Pl. Com.* 303. *Ander.*  
294. *pl.* 303. 2 *Mod.* 242. *Lutw.* 203, 1117. *Skin.*  
364.

be due, if proceedings were carried on in name of the crown. 7 *Geo.* III. chap. 29.

*On writ of Possession.*

On executing a writ of *Habere facias possessionem*, the sheriff shall not take above 1s. in the pound, where the rent exceeds not 100*l.* per annum; and 6*d.* in the pound for every pound over and above. *Stat.* 3 *Geo.* 1. c. 15. §. 16.

*On Capias ad satisfaciendum*

On executing a *Capias ad satisfaciendum*, the sheriff to take poundage only for the real debt, on penalty of treble damages, and 200*l.* The real debt to be mark'd on the back of the writ. *Same stat.* §. 17.

*Sheriffs to indorse attorney's name on warrants.*

Every sheriff, or other officer who shall make out any warrant upon any writ, process or execution, and shall not subscribe or indorse the name of the attorney who sued out the same, shall forfeit the sum of five pounds, to be assessed as a fine upon such sheriff or other officer, by the court; one moiety to the king, the other moiety to the party aggrieved by such omission. *Stat.* 12 *Geo.* 2. c. 13. *Stat.* 2 *Geo.* 2. c. 23. §. 22.

*Sheriff not returning process within 6 days after service of rule, to pay costs.*

If any sheriff, under-sheriff, or their deputy, bailiff, coroner, bailiff of any liberty, or other officer having the return of process, shall not return the same, or bring in the body within four days after, *Barnes*, 102. See *Id.* 400. *H.* 7 *Geo.* III. *Barnes* 494, after service of a rule of this court for that purpose, he shall be liable to pay the costs occasioned by such neglect. *Hil.* 8 *G.* 1.

*Service on the under sheriff sufficient.*

Service of the rule on the under-sheriff, or on one who really acts as under-sheriff, though he be not under-sheriff, is sufficient

to

to ground attachment against the sheriff.  
*Barnes 405.*

When a new sheriff is chosen, yet the old sheriff continues sheriff of the county till the new sheriff is sworn, and he receives a writ of *Supersedeas*. *Old sheriff to continue till new one sworn.*

On the decease of any sheriff the under-sheriff is to act in his name till another be appointed. *Stat. 3 Geo. I. c. 15. §. 8.* *On the death of a sheriff the under sheriff to act till a new one appointed.*

The sheriff of every shire, being no city or town made a shire, within which there is any franchise or liberty, the lord whereof is intitled to the return of writs, shall (if required by such lord) within one month after such request, nominate and appoint one or more deputy or deputies, at the costs of such lord, to be resident at some town or place in or near such franchise or liberty, to be appointed by the lord chancellor and chief justice of *B. R.* and *C. B.* or one of them hereby authorized to appoint such town or place, and to settle what costs shall be paid therefore by such lord; and such deputy or deputies shall reside at such town or place so to be appointed, and have authority in the sheriff's name to receive and open all such writs and process (the execution or return whereof doth belong to the lord of such franchise or liberty), and in the name and under the seal of the sheriff, to issue out such warrant, or warrants to such lord as by law is requisite for the due execution of such writ or process; and such deputy or deputies is and are required, on tender of such writ or process, to receive and open the same, and

*quest and cost of a lord of a franchise or liberty, to appoint a deputy to reside at some place in or near the franchise. Place and costs to be appointed and settled by lord chancellor, &c. Deputy to receive writs, and in name and under seal of sheriff to issue warrants to the lord of the franchise.*

*Taking no more than the accustomed fees.*

*Punishment of sheriff or deputy making wilful neglect.*

*Sheriff by indenture and schedule to turn over all writs, &c. to his successor.*

*Or make satisfaction to party injured*

*Sheriff not liable to return any writ, unless required within 6 months after expiration of his office.*

issue such warrants thereon without delay, in such manner and form as the sheriff may or ought to do, without taking any further fee than now due and accustomed for such warrant; on pain that every such sheriff or deputy guilty of any wilful neglect or default shall be punished as for a contempt of court, and make satisfaction to the party damaged.

*Stat. 13 Geo. 2. c. 18.*

High sheriff can appoint no more than one under sheriff extraordinary. 2 *Wils.* 378.

All sheriffs of any county, city, liberty, division, town corporate, or place, shall, at the expiration of their office, turn over to the succeeding sheriff, by indenture and schedule, all such writs and process as shall remain in their hands unexecuted, who shall duly execute and return the same; and in case any such sheriff shall refuse or neglect to turn over such process, in manner aforesaid, every such sheriff so neglecting or refusing shall be liable to make such satisfaction, by damages and costs, to the party aggrieved, as he, she, or they, shall sustain by such neglect or refusal. *Stat. 20 Geo. 2. c. 37.*

No sheriff shall be liable to be called upon to make a return of any writ or process, unless he be required so to do within six months after the expiration of his said office. *Same*

*Stat.*

*Of the four terms.*

THESE are four terms in the year, *The four terms.*  
 during which this court sits, viz. *Michaelmas* term, *Hilary* term, *Easter* term, and *Trinity* term; the two first are call'd fix'd *Fixed and*  
 terms, as constantly falling on certain fix'd *moveable*  
 days in the year, the two latter terms are *terms.*  
 called moveable terms, *Easter* term being  
 governed by *Easter* day, and *Trinity* term  
 being governed by *Corpus Christi* day, both  
 which are moveable feasts. *Hilary* and *Tri-* *Issuable terms.*  
*nity* terms are called issuable terms, for that  
 in them issues are made up for trials at *Instr. cler. 21,*  
 the assizes which respectively follow those *22.*  
 terms.

*Michaelmas* term begins on the sixth of *Michaelmas*  
*November*, if not *Sunday*; if *Sunday*, on *term.*  
 the seventh (its essoin-day being the third  
 day of *November*: The morrow of *All*  
*Souls*) and ends on the twenty-eighth day of  
*November*, if it be not a *Sunday*, but if a  
*Sunday*, then on the morrow following. This  
 term, before the statute 16 *Car. 1. c. 6.*  
 began on the ninth day of *October*, and had  
 eight returns, which by that statute are re-  
 duced to six, and before the *stat. 24 Geo. 2.*  
*c. 48.* began on the twenty-third day of  
*October*, and had six returns, which by that  
 statute are reduced to four.

Hilary term.  
See *Spelm.*  
*Rem* 82.  
*Instr. cler.* 21.

*Hilary* term begins on the twenty-third day of *January* (except it be on a *Sunday*, and then on the morrow after) being always that day eight weeks on which *Michaelmas* term ended, its effoin-day being the twentieth of *January*, and it ends on the twelfth day of *February* (if not *Sunday*, and then on the morrow after) being always the same day of the week on which *Michaelmas* term began.

In the *Exchequer* it begins eight days before the full term in the other courts. *Spelm. Rem.* 86.

Easter term.  
*Instr. cler.* 21.

*Easter* term begins on the *Wednesday* fortnight after *Easter-day*, its effoin-day being the *Sunday* next preceding, but held on the *Monday*, and ends on the *Monday* next after *Ascension* day.

In the *Exchequer* it begins eight days before the full term in the other courts. *Spelm. Rem.* 86.

Trinity term.

*Trinity* term begins on the *Friday* next after *Trinity Sunday*; and though that day should happen to be the feast of *St. John the Baptist*, the term must then begin, for by the *stat. 32 H. 8. c. 21.* the full term shall begin on the *Friday* next after *Corpus Christi* day; the effoin-day is the *Monday* preceding. It ends on the *Wednesday* fortnight after it began, except it happen on the twenty-fourth of *June*, being the feast of *St. John the Baptist*, and then it must be adjourned on the *Tuesday* to the *Thursday* following. This term was limited and settled as it now

is,

is, by the said *stat.* 32 *H.* 8. it having before more returns, and a different commencement.

In the *Exchequer* it begins four days before the full term in the other courts. *Spelm. Rem.* 86.

The *essoine-day* (from *essoine*, or *exonnie*, *Essoin-day*, an *excuse*, where the defendant cannot conveniently appear) is said to be the first day of the term, and on that day one of the judges goes down to *Westminster* for the keeping *essoins*, *profers*, *returns*, &c. But full term begins always the fourth day after inclusive, except in *Trinity* term, when it begins on the fifth, by reason of *Corpus Christi* day, which is *dies non juridicus*.

The *essoine-day* is the first day of term, but in common parlance the first day the court sits is the first day of the term; so where promise was made, the day after the *essoine-day* of *Trinity* term, to deliver an indenture before the end of the *Trinity* term next, adjudged he must do it the same term, not that time twelve months. *Bishop and Harcourt, Cr. El.* 210. *pl.* 6. *Sav.* 124. *Ander.* 240. *pl.* 256. *Leon.* 210. *pl.* 295. 5 *Rep.* 37. 2 *Danv. Abr.* 9. *id.* 225. *pl.* 12. 3 *Danv. Abr.* 46. *pl.* 1.

On a writ of adjournment nothing can be done at the day but to read the writ, and adjourn all appearances and proceedings till the day appointed, and no appearance can be made, or other matters done then, and because

*Writ of adjournment.*  
*Cro. Jam.*  
445, 446.

cause an imparlance was entered as on that day, it was held error.

*Judgment.*

A judgment relates to the effoin-day, which is the first day to law, and not to the *Quarto die post*, which is but a day of grace; *ideo* a judgment of *Hilary* term had precedence to a statute acknowledged. 22 *Jan. Stamford* and *Cooper, Cr. Casr.* 102. *Hettl.* 72. *Hut.* 95. 1 *Rep.* 94.

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*Michaelmas*



*Michaelmas* term, which contains three weeks and two days, hath four returns.

By *O R I G I N A L*.

1. On the morrow of *All Souls*.
2. On the morrow of *Saint Martin*.
3. In eight days of *Saint Martin*.
4. In fifteen days of *Saint Martin*.

By *ATTACHMENT, BILL, &c.*

- |      |   |
|------|---|
| On ( | ) next after the morrow of<br><i>All Souls</i> .    |
| On ( | ) next after the morrow of<br><i>St. Martin</i> .   |
| On ( | ) next after eight days of<br><i>St. Martin</i> .   |
| On ( | ) next after fifteen days of<br><i>St. Martin</i> . |

*Hilary* term, which contains three weeks complete, hath four returns.

*By ORIGINAL.*

1. In eight days of *Saint Hilary*.
2. In fifteen days of *Saint Hilary*.
3. On the morrow of the purification of the blessed *Mary*.
4. In eight days of the purification of the blessed *Mary*.

*By ATTACHMENT, BILL, &c.*

- On ( ) next after eight days of *St. Hilary*.
- On ( ) next after fifteen days of *St. Hilary*.
- On ( ) next after the morrow of the purification of the blessed *Virgin Mary*.
- On ( ) next after eight days of the purification of the blessed *Virgin Mary*.

*Easter*

*Easter* term, which contains three weeks and six days, hath five returns.

By *O R I G I N A L*.

1. In fifteen days of *Easter*.
2. In three weeks from the day of *Easter*.
3. In one month from the day of *Easter*.
4. In five weeks from the day of *Easter*.
5. On the morrow of the ascension of our Lord.

By *ATTACHMENT, BILL, &c.*

- On (*Wednesday*) next after fifteen days of *Easter*.
- On ( ) next after three weeks from the day of *Easter*.
- On ( ) next after one month from the day of *Easter*.
- On ( ) next after five weeks from the day of *Easter*.
- On (*Monday*) next after the morrow of the ascension of our Lord.

*Trinity*

*Trinity* term, which contains twenty days, hath four returns.

By *O R I G I N A L*.

1. On the morrow of the Holy *Trinity*.
2. In eight days of the Holy *Trinity*.
3. In fifteen days of the Holy *Trinity*.
4. In three weeks from the day of the Holy *Trinity*.

By *ATTACHMENT, BILL, &c.*

- On ( *Friday* ) next after the morrow of the Holy *Trinity*.
- On (            ) next after eight days of the Holy *Trinity*.
- On (            ) next after fifteen days of the Holy *Trinity*.
- On ( *Wednesday* ) next after three weeks from the day of the Holy *Trinity*.

All

All the effoin-days in *Easter* term except the last, which is "*the morrow of the ascension of our Lord*" and all the effoin-days in *Trinity* term except the first, which is "*the morrow of the Holy Trinity*," fall on *Sundays*.

*Effoin days in Easter and Trinity terms are Sundays, except.*

All writs issuing out of this court, grounded upon original writs out of *Chancery*, must be made returnable on general return days as on the morrow of the *Holy Trinity*; but writs of attachment, and writs subsequent thereto, and writs grounded on bills filed against attornies, and such officers of the court as are intitled to the privilege of the court, or members of the house of commons, writs of *Habeas corpus*, &c. must be made returnable on a day certain in full term, as on *Friday* next after the morrow of the *Holy Trinity*. But care must be taken that they be not made returnable on any of the following days, which are *Dies non iudicii*, viz. the feast of the *Purification* in *Hilary* term, *Ascension day* in *Easter*, and the feast of *St. John the Baptist*, if it happen in *Trinity* term (unless it be the first day of that term.)

*Writs grounded on originals returnable on general returns.*

*Attachments, &c. on days certain.*

*Dies non iudicii.*

There must be at least fifteen days between the *Teste* and return of all original writs returnable in this court, and between the *Teste* and return of all ordinary writs sued and procured upon the same, except where altered by act of parliament.

*Fifteen days between Teste and return of original writs and writs subsequent.*

A *Capias ad respondendum*, not having 15 days between the *Teste* and return, set aside, but without costs, 2 *Wils.* 117. 3 *Wils.* 455. *Barnes* 427.

*Cap. ad respond.* amended, there not being 15 days between the *Teste* and return thereof. 3 *Wils. Rep.* 454.

Notice on copy of writ served to appear at return, mentioning the day of the month, without adding *instant*, *next*, or 1757, sufficient; and former (a) doctrine on this subject exploded. *Barnes* 425.

And attachments of privilege.

An attachment of privilege at the suit of an attorney must also have fifteen days between the *Teste* and return.

Where writs of *Ven. fac.* *Hab. cor. jur.* *Distring. jur.* *Fi. fac.* and *Ca. sa.* need not have 15 days between *Teste* and return.

In all actions of debt, and other personal actions, actions of *Ejectione firmæ* for lands or tenements, after issue joined to be tried by a jury, and after any judgment had or obtained, there shall not need to be fifteen days between the *Teste* and return of any writ of *Venire facias*, *Habeas corpora juratorum*, or *Distringas juratores*, writ of *Fieri (b) facias*, or writ of *Capias ad satisfaciendum*, and the want thereof shall not be assigned for error; but not to extend to any writ of *Capias ad satisfaciendum*, whereon an exigent after judgment is to be awarded, or to a *Capias ad satisfaciendum* against the defendant to make the bail liable. 13 *Car. 2. Stat.* 2. c. 2. §. 6, 7.

Except a *Ca. sa.* to ground an exigent, or make bail liable.

(a) See *Barnes* 419.

(b) Rule absolute to quash writ of *Fi. Fa.* returnable on a general return, instead of a day certain, as it ought to have been, without costs, and defendant to bring no action. *Barnes* 213.

*Of commencing an action.*

**A**LL actions in this court are either *Action by original* founded on originals out of *Chancery*;

On attachments of privilege at the suit of *Attachment of* attornies, or other officers intitled to the *privilege* privilege of the court;

On bills filed against such attornies or of- *Bill.* ficers, or against members of parliament;

On writs of *Habeas corpus cum causa, Cer-* *Habeas cor-* *tiorari, &c.* removing causes out of inferior *pus, &c.* courts of record;

On writs of *Recordari facias loquelam, Ac-* *Re. fa. lo.* *cedas ad curiam,* or writs of false judgment, *&c.* removing causes out of inferior courts not of record.

In commencing actions in this court, *It* is to be considered, *What* causes of action *require* bail, and what persons are liable to be held to bail. *Of bail.*

Bail is not required of an (a) heir, nor of an *No bail of an* executor or administrator, unless on a *Deva-* *heir, nor of an* *stavit* grounded, as I apprehend, on a re- *executor or* *turn* by the sheriff to a *Fieri facias de bonis* *administrator,* *testatoris,* or a *Scire fieri* inquiry, and not on *unless on a* *the bare suggestion of the plaintiff.* *Devastavit* *Gilb. returned.* *Hist. C. P. 37.*

In debt on a penal statute the defendant is *Nor on a pe-* *not to be held to special bail.* *Yelv. 53. Gilb.* *nal statute.* *Hist. C. P. 37. Barnes 80.*

Neither is bail required in debt on a bail- *Nor on a bail-*

(a) The contrary held in *Rep. & Cas. Pract. C. P. 8.*  
 VOL. I. G bond;

*bond or recognizance of bail.* bond, or recognizance of bail, for that would tend to bail *ad infinitum*. But see *Rep. & Cas. Pract. C. P.* 18. *Pract. Reg. C. P.* which seem *contra*.

*In battery, conspiracy, or false imprisonment, no bail of course.* In assault (b) conspiracy, or false imprisonment, no bail of course, without special motion and order. *Mich.* 1654. *Gilb. Hist. C. P.* 37. *Barnes* 76.

*No bail for a malicious prosecution where the plaintiff was acquitted upon a defect in the indictment.* In an action for a malicious prosecution a judge will not grant an order to hold the defendant to bail, if the plaintiff was acquitted upon a defect in the indictment, and not upon the merits. 2 *Keb.* 796. *pl.* 34. *Barnes* 76 *Rep. & Cas. Pract. C. P.* 148. *Pract. Reg. C. P.* 66.

*Bail by order for criminal conversation.* In an action for a criminal conversation with the plaintiff's wife, on an affidavit of the fact, a judge will grant an order to hold the defendant to bail for such sum as he shall think reasonable on the circumstances of the case and parties. *Barnes* 61. *Pract. Reg. C. P.* 63.

*Bail in an action for mesne profits.* On affidavit and application in the treasury, the judges have ordered the defendant to be held to bail in an action for mesne profits. *Barnes* 79, 85. See 87. *Pract. Reg. C. P.* 62.

*In debt for rent.* Defendant may be held to bail in an action of debt for double rent, by virtue of *Stat.* 4. *Geo.* 2. c. 28. §. 1.

*Bail in trespass for enter-* On an affidavit made, the defendant was

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(b) *Barnes* 76. A judge at his chambers will order special bail if he thinks fit, which the defendant has a right to get discharged by application to the court, if not well founded. *Barnes* 61.

held



held to bail in an action of trespass, for entering the plaintiff's hop-ground, and taking and carrying away 20,000 hop-poles, to the plaintiff's damage of 40*l.* The court refused to discharge the defendant on a common appearance, and declared, tho' it was reasonable to have a judge's order in battery, there was none in this case. *Cook & al. v. Sankey, Trin. 7 & 8 Geo. 2. Rep. & Cas. Pract. C. P. 106. Pract. Reg. C. P. 64. Barnes 65.*

In slander no bail, except in slander of title, and then to be left to the discretion of the judge. *Mich. 1654. Barnes 80.*

Bail is not generally required in covenant, unless it be for payment of money. *Same rule. Barnes 67, 78.*

But tho' the covenant be not for payment of money, if the plaintiff makes an affidavit of the sum he is damnified in by the breach of the covenant, the court will not discharge the defendant on a common appearance. *Barnes 67. but Barnes 108, 109. seem contra.*

Defendant held to bail, where cause of action did not accrue till after the bankruptcy and the money due on a contingency, the same not being within any of the statutes of bankrupts. *Barnes 113.*

Where an action of debt is brought on a judgment, if there was bail put in to the original action the defendant shall not be held to bail in the action of debt on the judgment. *Barnes 107, 116.* but if there was no bail in the original action, then bail

*ing plaintiff's hop-ground, and taking away his hop-poles.*  
*No bail in slander, except slander of title.*  
*Nor in covenant, unless for payment of money.*  
*Or damages ascertained by affidavit.*  
*Bail in debt on a judgment, if no bail in the original action; aliter if bail in the original action.*

must be put in to the action of debt on the judgment. *Barnes* 71. *Com. Rep.* 556. *Pract. Reg. C. P.* 54, 56, 57. *Rep. & Cas. Pract. C. P.* 32, 77.

*The like tho' error brought on the judgment, and bail be put in on the writ of error.*

If a writ of error be brought on a judgment, and bail be put in on the writ of error, and pending the writ of error, an action of debt be brought on the judgment, the defendant in such action shall be held to bail if there was no bail in the original action; for though it may be said the bail on the writ of error is a security for the plaintiff's demand, yet it is to be observed that there may be accidents whereby such bail will not be liable; as that the writ may abate by the death of the chief justice, or the like.

After judgment reversed by writ of error, defendant had a *Supersedeas*, but before discharged, was charged with new declaration at plaintiff's suit; and upon application to court was discharged by rule from new declaration, and her *Supersedeas* was allowed; after discharge plaintiff caused defendant to be arrested and held to bail for former cause of action; whereupon court was moved to be again discharged by *Supersedeas*, upon entering common appearance: court was (c) divided in opinion, upon hearing council on both sides. *No rule. Barnes* 499.

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(c) The defendant was a woman, and therefore I think her having two judges in her favour, and being a case of liberty, she should have been discharged.

A prisoner discharged by *Supersedeas* for want of prosecution shall not be held to bail in an action of debt brought on the judgment obtained in the cause wherein he was discharged. *Hil. 8 Geo. 2. Barnes 116, See the rule at large, tit. Prisoners.*

*Prisoner discharged not to be held to bail in debt on the judgment.*

If an action be brought against *baron and feme*, and the wife only be arrested, she shall be discharged on a common appearance; for otherwise the husband may contrive the imprisonment of the wife; *3 Wils. 124.* but if both the husband and wife be arrested, she shall not be discharged until bail be put in (a) for both, for otherwise a woman may marry a man in gaol and defraud her creditors. *Barnes 67, 68. Sed qu' : Rep. & Cas. Pract. C. P. 117. Barnes 96, 100. 6 Mod. 17, 105. 7 Mod. 10, 63. Lev. 1, 216. Barnes 67, 68. Sid. 395. pl. 2. 2 Keb. Rep. 442. pl. 4. But see 10 Mod. 162.*

*Action against baron and feme, and wife only arrested, she shall be discharged on a common appearance. Aliter if both arrested.*

Husband and wife rendered after judgment, in discharge of bail wife released upon motion. *3 Wils. 124.*

No attorney of this court, or other officer intitled to the privilege of the court, is to be held to bail, unless it be on an attachment for a contempt (to which, bail must be taken by the court or a judge, and not by the sheriff) or in an action at the suit of an attorney, or any other person intitled to the privilege of

*Attorney not to be held to bail unless for a contempt; &c.*

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(d) An attachment granted against an under-sheriff for detaining a married woman in prison till husband found bail for her. *Let. 224.*

another court, viz. B. R. or, for in such case the plaintiff's privilege takes away the defendant's. *Vide antea.*

*Seamen and  
soldiers.  
31 Geo. 2.  
c. 10. s. 28.*

By *stat. 1 Geo. 2. stat. 2. c. 14. §. 15.* No (e) seaman to be taken out of his majesty's service, unless oath be made that the original cause of action amounted to 20*l.* *Barnes 95, 114.* and by the annual mutiny act, no soldier to be taken out of his majesty's service unless oath be made that the original debt amounted to 10*l.* *Pract. Reg. C. P. 61. Barnes 114, 433.* An out-pensioner of *Chelsea* college, not being a soldier in actual service, is not a soldier within the meaning of the mutiny acts. *Pract. Reg. C. P. 59, 60. Barnes 432. Rep. 3 Cas. Pract. C. P. 77.*

*No bail where  
the cause of  
action amounts  
not to 10*l.**

No person shall be held to bail upon any process issuing out of this court, where the cause of action does not amount to the sum of ten pounds or upwards; and in all cases where the cause of action shall not amount to ten pounds or upwards, the plaintiff shall not arrest the body of the defendant, but shall serve him personally with a copy of the process. *Stat. 12 Geo. c. 29. §. 1, 2. Stat. 5 Geo. 2. c. 27. Stat. 13 Geo. 2. c. 18.* All these acts are perpetuated by 21 *Geo. 2. c. 3.*

*But defendant  
to be served  
with copy of  
process.*

*No special bail  
in Wales or  
the counties  
Palatine, un-*

No sheriff or other officer within the principality of *Wales*, or counties palatine, upon any writ or process issuing out of any of the

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(e) No volunteer mariner. *Stat. 2 Geo. 3. c. 12. Act. 36.*

courts of record at *Westminster*, shall hold any person to special bail, unless an affidavit be first made in writing, and filed in that court out of which such writ or process is to issue, signifying the cause of action, and that the same is twenty pounds and upwards; and where the cause of action is twenty pounds and upwards, bail shall not be taken for more than the sum expressed in such affidavit. *Stat. 11 E 12 W. 3. c. 9. s. 2.*

*less affidavit be made of the cause of action, and that the same amounts to 20l. and upwards.*

A defendant not to be held to bail, on a discontinuance, in a meer action for same sum and cause, but common appearance to be accepted, and *Supersedeas* granted. *Barnes 113.*

After nonsuit in *B. R.* a common appearance ordered to be accepted in a newailable action in *C. B.* *Barnes 115.*

Defendant held to bail *second* time, for *same* cause of *action*, after plaintiff had discontinued the first writ, by reason of a mistake. *2 Wils. 381.*

*Proceedings by original in actions not requiring bail.*

If the cause of action does not require bail, a *Præcipe* is to be made out for a common *Capias* in trespass, on which the plaintiff may declare in any county, or for any cause of action, as the case shall require. The filacer makes out the *Capias*, and procures the original from the cursitor, and returns and files it.

*Where no bail required, a common clause sum fregit to be sued out. May declare thereon in any county, or for any cause of action.*

## The Præcipe.

Præcipe in  
trespass.

*Middlesex*, Capias for *W. P.* against *J. B.*  
late of the parish of *St. Clement Danes* in  
the county of *Middlesex*, taylor, broke  
the *Close* at *Westminster*.

*J. R.* Returnable on the octave  
22 Dec. 1777. of *St. Hilary*.

The *Præcipe* is to be carried to the pro-  
per filacer, who will make out the *Capias*.

## The Form of the Capias.

Capias there-  
on.

	s.	d.
Original	1	0
Filing	0	4
Capias	0	10
Duty	2	0
Seal	0	7
<hr/>		
	5	3

*GEORGE* the third, &c. To the she-  
riff of *Middlesex*, greeting. We command  
you, that you take *J. B.* late of the parish  
of *St. Clement Danes* in your county, *Taylor*,  
if he shall be found in your bailiwick, and  
keep him safely, so that you may have his  
body before our justices at *Westminster* on  
the octave of *St. Hilary*, to answer *W. P.* (*f*)  
in

(*f*) Plaintiff declares in an action *qui tam*, &c. upon  
a *Cap. ad respond.* sued out in his own name only, and  
held well enough. 3 *Wils.* 141.

*Barnes* says in a *N. B.* that the practice of this court,  
is the same as settled in *B. R.* by the authority of the  
case of *Canning* and *Davis*, *E.* 9 *Geo.* III. *Barnes*  
494, 495, the point settled seems to be, that plaintiff  
need not set out in process, in whose or what right he  
sues. Lord *Willes* when he differed in opinion from  
*Barnes's* book, always said the *Court* and not *Barnes*  
was

in a plea, wherefore with force and arms he broke the *Clofe* of the said *W.* at *Westminster*, and did other injuries to him, to his great damage, and against our peace; and have there this writ. Witness Sir *William De Grey*, knight, at *Westminster*, the twentieth day of *November* in the seventh year of our reign.

You may put four defendants in a writ; but there must be but one plaintiff, unless it be a joint action.

Then a copy of the process must be made with an *English* notice, subscribed as mentioned in the two next paragraphs, which copy must be served on the defendant.

But by *stat. 5 Geo. 2. c. 27. §. 4.* (made perpetual by *stat. 21 Geo. c. 3.*) upon every copy of such process shall be written a notice of the intent and meaning of such service, to the effect following, *viz.*

*Notice to be written on the copy of the process.*

*C. D.* You are served with this process, to the intent that you may, by your attorney

*The form of the notice.*

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was mistaken; I take leave to join with the chief justice in his politeness on this occasion; for I am persuaded the case alluded to is the rummage of a dead man's papers; for it is impossible to say in what court it was determined; Mr. *Ashurst* was for defendant, Mr. Solicitor-General for plaintiff.—Now for my part, in the course of 20 years attendance in the court of *Common Pleas*, I never observed any advocates but *Serjeants* move there; and if it is said it was a case in *B. R.* then the *N. B.* is not very satisfactory. It seems therefore to be, as I observed before, the rummage of a dead man's papers; and I would have it expunged out of the next edition, for it disgraces the best book of practice in this court.

appear in his majesty's court of *Common Pleas* at the return, thereof, being the twentieth of *January* 1778, [as the case shall happen to be] in order to your defence in this action.

*The day of the return to be inserted though a Sunday.*

The very day of the return of the process must be inserted, although it should happen to be a *Sunday*. *Barnes* 293, 294, 295. *Rep. & Cas. Pract. C. P.* 105, 106.

*5s. for making and serving the copy.*

No more than 5s. is to be taken for the making and serving a copy of such process, and no fee for the notice. *Stat. 5 Geo. 2. c. 27.*

*In franchises the process to be served by the proper officer.*

In particular franchises and jurisdictions the proper officer there shall execute such process. *Stat. 5 Geo. 2. c. 27.*

But if the process be not served by the proper officer, the court will not stay proceedings; the lord of the liberty may bring his action, if he thinks proper. *Barnes* 404. *Pract. Reg. C. P.* 345. *Rep. & Cas. Pract. C. P.* 96.

*Capias, and not original, to be served.*

The process, of which a copy is directed by the above statutes to be served on the defendant, must be a *Capias*, and not an original writ. *Barnes* 410.

*Of serving process in a county palatine.*

If the process be directed into a county palatine, the defendant is to be served with a copy of such process, and not with a copy of the mandate thereupon from the bishop or chancellor to the sheriff of the county. *Pract. Reg. C. P.* 334. *Rep. & Cas. of Pract. C. P.* 119. *Barnes* 406, but held otherwise in *Pract. Reg. C. P.* 343. *Rep. & Cas. Pract. C. P.* 38.



When the defendant is served with a copy of a writ, there must be an *English* notice subscribed as above directed, tho' the cause of action should be above ten pounds, or the writ should be a special *Capias*. *Where copy served, it must be with notice, tho' action for above 10l. or writ special.*

If the process be against *baron* and *feme*, service on the husband is sufficient for both; and if the husband does not appear for himself and his wife, the plaintiff may enter an appearance for both. *Process against baron and feme, service on the husband sufficient.* *Barnes* 406, 412.

But in a joint action against two or more defendants, each defendant must be served with a copy of the process. *In a join action each defendant must be served.*

Proceedings were stayed by the court, because no attorney's name was set upon the copy of the process served upon the defendant. *Attorney's name to be on copy of process.* *Barnes* 415. *Rep. & Cas. of Pract. C. P.* 102. *Pract. Reg. C. P.* 440, 441.

Service of process, though made on the return thereof, is deemed well served. *Hil. 8 Geo. III. C. B. 10 Feb. 1768. Wils. Rep.* 372.

It seems as if the court formerly (g) required, that process should be served before the day of return; but they then differed as to the time of day, for in one (h) case they held, that service of process at ten o'clock in the evening, on the day of return, was good service, for that there was no fraction of a

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(g) See *Barnes* 415, 416, 424. *Rich. Pract. Reg.* 352. *Co. Cas. & Rep. Pract.* 52.

(h) *E. 1 Geo. II. C. B. Matthews and Partridge.* MS. notes.

day; and in (i) another, it was alledged, that the service was at seven o'clock in the evening, of the day of return, and that the court was risen before the service; however the judges would not then presume, that the service was after the rising of the court, unless it was proved by affidavit; but now I apprehend, that, according to the above-mentioned rule, if the process be served any time of the day whereon it is returnable, before nine o'clock in the evening, it will be sufficient.

*Irregularity in process to be complained of before interlocutory judgment.*

If there be any irregularity in the service of the process, or in the notice subscribed to the process, the defendant must apply to the court before interlocutory judgment is signed. *Pract. Reg. C. P.* 347. See *Barnes* 211, 296, 269. *Rep. & Cas. Pract. C. P.* 152. See *Postea fol.*

*And process to be annexed to affidavit.*

If the defendant complains of any irregularity in the process, or notice subscribed, he must annex the copy to his affidavit.

### *Proceedings by original in actions requiring bail.*

*If bail required, affidavit to be made of cause of action.*

If the cause of action amounts to ten pounds or upwards, affidavit must be made and filed of the cause of action. *Stat.* 12 *Geo.* 1. c. 29. 5 *Geo.* 2. c. 27. 21. *Geo.* 2. c. 3.

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(i) *Hil.* 5 *Geo.* II. C. B. *Hayne* and *Cane.*