

term of five years thence next ensuing and fully to be complete and ended; by virtue of which demise the said *Richard* entered into the said tenements with the appurtenances, and was possessed thereof; and the said *Richard* being so possessed thereof, the said *John* afterwards, *to wit*, on the said 25th day of *April* in the said 6th year, with force and arms, &c. entered into the said tenements with the appurtenances which the said *Thomas* and *Conrade* had demised to the said *Richard* in form aforesaid, for the term aforesaid which is not yet expired, and ejected the said *Richard* from his said farm, and other wrongs, &c. to the great damage, &c. and against the peace, &c. whereupon the said *Richard* saith, that he is injured, and hath damage to the value of 20*l.* And thereof he bringeth suit, &c.

Mr. *John Wilkinson*, I am informed that *The notice.* you are in possession of, or claim title to, the premises in this declaration mentioned, or to some part thereof; and I being sued in this action as a casual ejector, and having no claim or title to the said premises, do advise you to appear on the first (i) day of the next *Michaelmas* term in his majesty's court

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(i) Where the notice to appear, on a vacant possession in *London*, was not on the first day, but in the beginning of *Mich.* term; rule was made for judgment, unless some person claiming title appeared within four days. *Barnes* 175.

of *Common Pleas* at *Westminster*, by some attorney of that court, and then and there by rule of the same court, to cause yourself to be made defendant in my stead, otherwise I shall suffer judgment therein to be entered against me by default, and you will be turned out of possession. I am

Your humble Servant,  
*John (k) Doe.*

Declaration in ejectment is the first process. *Barnes* 173, 186.

### In the Common Pleas.

*Easter term in the seventeenth year of king George the third.*

*Declaration in Suffolk, T. C. late of London, gentleman, ejectment of manors, messuages, barns, stables, &c.* *to wit.* T. C. was attached to answer E. S. in a plea, wherefore with force and arms he entered into the manors of K. otherwise K. H. C. H. B. and G. W. and 50 messuages, 50 barns, 50 stables, 50 gardens, 20 cottages, one water corn-mill, one wind-mill, 1000 acres of land, 1000 acres of meadow, 1000 acres of pasture, 500 acres of wood, and 500 acres of furze and heath, with the appurtenances, in the parishes of G. W. L.

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(k) The *English* notice at the foot of the declaration was subscribed by the nominal plaintiff, instead of the casual ejector, which court held bad, and discharged the rule for judgment. *Barnes* 172.

*W. B.*

*W. B.* and *K.* in the said county of *Suffolk*, which the honourable *M. G.* spinster, demised to the said *E.* for a term which is not yet expired, and ejected him from his said farm, and other wrongs to him did, to the great damage of the said *E.* and against the peace of our sovereign lord the king; and whereupon the said *E.* by *J. W.* his attorney complaineth, that whereas the said *M.* on the first day of *January* in the 7th year of the reign of his said majesty, at *Ipswich* in the county aforesaid, had demised to the said *E.* the said manors and tenements, with the appurtenances; to have and to hold the said manors and tenements, with the appurtenances, to the said *E.* and his assigns, from the 29th day of *September* then last past, to the full end and term of seven years then next following, and fully to be complete and ended: By virtue of which said demise the said *E.* entered into the said manors and tenements with the appurtenances, and was possessed thereof; and the said *E.* being so possessed thereof, the said *T.* afterwards (that is to say) on the first day of *January* in the said 7th year, with force and arms, that is to say, with swords, staves, and knives, entered into the said manors and tenements with the appurtenances, which the said *M.* demised to the said *E.* in manner aforesaid, for the term aforesaid, which is not yet expired, and ejected the said *E.* out of his said farm, and other wrongs, &c. to the great damage, &c. and against the peace, &c. Whereupon the said *E.* saith he is injured,  
and

and hath damage to the value of 20*l.* And thereof he bringeth this suit, &c.

*T. H.*

*The notice.*

I am informed that you are in possession, or claim title to the premisses in this declaration of ejectment mentioned, or to some part thereof; and I being sued in this action as a casual ejector, and having no claim nor title to the same, do advise you to appear on the first day of next *Trinity* term in his majesty's court of Common Bench at *Westminster*, by some attorney of that court, and then and there by rule of the same court to cause yourself to be made defendant in my stead, otherwise I shall suffer judgment therein to be entered against me, and you will be turned out of possession. I am

Your loving friend,

20 *May* 1778.

*T. C.*

Declaration was delivered to tenant in possession, in *Trinity* vacation, with (1) notice to appear in *Hilary* term then next; tenant in *Michaelmas between*, entered an appearance, but proceeded no further; and four days after *Hilary* term, plaintiff finding no appearance, no common rule entered into, or plea given, left, or filed, signed judgment against casual ejector; tenant moved to set aside judgment, and on hearing council on

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(1) Appearance should have been entered of the term mentioned in the notice. *Barnes* 250.





2. *Demise.*

years, from thence following, and fully to be complete and ended. *And whereas also* the said G. on the same day of in the said year of the reign of our said lord the king, at afore-said in the county aforesaid, had demised to the said C. the tenements aforesaid last above mentioned with the appurtenances; to have and to hold the same tenements last above mentioned with the appurtenances to the said C. and his assigns, from the said day of then last past, to the full end and term of years from thence next following, and fully to be complete and ended: By virtue of which said several demises the said C. entered into the several tenements aforesaid, with the appurtenances, and was possessed thereof; and the said C. being so possessed thereof, the said A. afterwards, that is to say, on the day of in the said year of the reign of our said lord the king, with force and arms, that is to say, with swords, staves and knives, entered into the said several tenements above specified, with the appurtenances, respectively demised to the said C. in manner aforesaid, and upon the possession of the said C. thereof, and ejected the said C. out of his said several farms (his said several terms therein not being ended) and other wrongs, &c. to the great damage, &c. and against the peace, &c. Whereupon the said C. saith, that he is injured and damaged to the value of 10*l.* And thereof he bringeth suit, &c.

Sixteen (n) declarations in ejectment, ordered to be consolidated into one, after the issues joined. *Barnes* 176.

In many cases the demise may be laid on a day after that term of which the declaration is; as where a title accrued at *Christmas*, a declaration of *Michaelmas* term is delivered before the effoin-day of *Hilary* term, and the demise is laid to be on the first day of *January*, if the tenant does not appear and defend, the court will give judgment against the casual ejector, and the tenant cannot move in arrest of judgment, as being no party to the suit; neither can a writ of error be brought in the casual ejector's name. If the tenant does appear, all will be right, for a declaration and issue will be made up of *Hilary* term, which will be after the demise.

*Demise may be laid on a day after the term the declaration is of.*

*Pract Reg. C. P. 164.*

No (o) judgment shall be entered against the casual ejector without motion first made by a serjeant in court, and oath in writing of

*No judgment against casual ejector with-*

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(n) Each declaration contained a large number of messuages, and word for word the same. *N. B.* had each declaration been for one messuage only, plaintiff might have tried them separately. *Barnes* 176.

(o) Court declared that the intent of signing judgment against the casual ejector, was only that the plaintiff, after having tried his cause against the landlord (tenant not being party) might have the benefit of his verdict, and take possession under the judgment, which under verdict he could not; and that it was reasonable (upon a proper affidavit) to grant a rule to shew cause, before judgment against the casual ejector could be signed, to prevent the ill consequence of taking possession immediately after. *Barnes* 179.

notice

*out motion, and notice to tenant in possession.* notice to the owner or tenant in possession of the lands in question, notwithstanding any former rule. *Pasc. 12 Car. 2.*

*To whom declaration in ejectment may be delivered.*

Delivery of declaration in ejectment must be to the tenant himself or his (*p*) wife, otherwise not good, though it be to the tenant's (*q*) father, (*r*) son, (*s*) daughter, (*t*) sister, (*u*) servant, unless the tenant afterwards acknowledges the receipt thereof, which (*x*) acknowledgment must be proved to the court by affidavit.

The contents of the declaration, as well as those of the notice or subscription (*y*) thereto of the casual ejector, to the tenant in possession, must be so signified and explained by the party serving to the party served, at the time of the service, as be fully understood by the latter, be the service on the tenant in possession, or upon any other person; which must always be on the premises in question; except only when the tenant is served personally, for then it need not.

(*p*) *Bul. Ni. Pri.* 95. *Barnes* 178. 180, 181, 194.  
See *Wilf. Rep. C. B.* 263.

(*q*) *Barnes*, 176.

(*r*) *Barnes* 190.

(*s*) *Barnes* 175, 183, *Co. Cas.* 115.

(*t*) *Rich. Reg.* 167.

(*u*) *Barnes* 188.

(*x*) *Bul. Ni. Pri.* 95. *Co. Cas.* 115. *Barnes* 175, 176, 185. *Rich. Reg.* 167.

(*y*) *Barnes* 167, 168, 169, 185.



In every case of service of the declaration, in the absence of the tenant, (the cases of serving tenant's father, daughter, sister, servant, with those of deserted possessions; and those especially provided for by *stat. 4 Geo. 2. chap. 28. sect. 2.* always and only excepted), there must be a tender of the copy to and refusal thereof by tenant, at time of attempting to serve it, either proved or confessed; and that above acknowledgement by tenant, of receipt of copy, will not be deemed sufficient (except as before excepted) in this court. See *Barnes 171.*

Service of the declaration in ejection on the servant of the tenant in possession, fixing at the same time copy of declaration, on street door, deemed sufficient in this court; as well, when tenant does not abscond, as when he does. See *Barnes 188, 190, 192.*

The declaration was tendered to the tenant in possession, whereupon it was left upon the floor in his presence; and he retiring into a parlour, and shutting the door, the person who so tendered and left the declaration, read the subscription aloud, so that the tenant might hear it; this was held good service. *Barnes 185.*

The tenant in possession secreting himself in the house, so that he could not be personally served with a declaration in ejection; a rule was made to shew cause, why service of it on the servant at the house, should not be good; the rule to be served on the same manner. *Barnes 188.*

On affidavit, that the tenant absconded to avoid being served; that she came into the possession surreptitiously, and of service of declaration in ejection on her son, who is her servant, manages her affairs, and lives in her family; rule to shew cause, why such service on her son and servant, should not be deemed good service, and leaving a copy of this rule at her house good service, made absolute. *Barnes* 190.

On affidavit, that one of the tenants is a lunatick; that one C. lives with, transacts her business, and has the sole conduct thereof, and of her person; but would not permit the deponent to have access to her with the declaration in ejection; whereupon it was delivered to C. Rule that she and C. both shew cause, why this service should not be good; and service of this rule on him be good service thereof. *Barnes* 190, 191.

On affidavit, that the tenant in possession secreted himself to prevent his being served with a declaration in ejection, and could not be served, though frequent endeavours had been used; and that the declaration had been delivered to his daughter, who kept his house (being a public house); and that she was acquainted with the contents of the subscription. A rule was made for the tenant to shew cause, why such former service should not be deemed good service; the rule to be served on the daughter at the house. *Barnes* 192.

Service of declaration on church-wardens and overseers of parish, who rented an house  
for

for harbouring some of the parish poor; and did not otherwise occupy the house than by placing the poor in it, deemed sufficient. *Barnes* 181.

Upon the delivery of a declaration in ejectment in *London* or *Middlesex*, the tenant in possession is to be acquainted, that he is to appear by his attorney here in court in defence of his title, in the beginning of the next term after the delivery of the declaration. And the plaintiff shall take nothing by his motion for judgment against the casual ejector for default of appearance, unless the motion be made within one week next after the first day of every *Michaelmas* term, and every *Easter* term, and within four days after the first day of every *Hilary* and *Trinity* term. *Trin.* 32 *Car.* 2.

*Tenant in possession to have notice to appear the beginning of the ensuing term.*

*Within what time motion for judgment must be made.*

This rule relates only to declarations in ejectment served upon tenants in possession; and an ejectment on a vacant possession in *London* or *Middlesex*, on *stat.* 4 *Geo.* II. *chap.* 28. may be moved at any time in term. *Barnes* 172.

No instance in case of vacant possession, (except such as are within *stat.* 4 *Geo.* II. *chap.* 28. concerning landlords and tenant by lease, with a clause of re-entry) can be adduced, in which any person claiming title, hath been let in to defend; for he who can first seal a lease on the premises, may obtain possession, and any other person claiming title, may eject him if he can; and by the constant practice of this court, no defence can be made in this case, but by the defen-

dant in the ejectment, who is a real ejector. *Barnes* 177.

*Declaration must be delivered before Effoin day of term.*

A true and examined copy of the declaration on a treble penny stamp sheet of paper, must be delivered to the tenant on or before the Effoin day of the then next term. *5 Com. Dig.* 249. *Barnes* 172, 173. otherwise plaintiff cannot have judgment till the subsequent term; and the reason is, because the declaration is the first process. *Barnes* 173.

*Notice in country ejectments.*

In a country ejectment the tenant is to appear and plead within four days exclusive after the next issuable term; but if the lands lie in a county where the assizes are held but once a year, I apprehend he is not to appear and plead till four days after the term next preceding such assizes.

*In Lond. and Middlesex.*

If the lands lie in *London* or *Middlesex*, the notice to appear should be for the first day of the next term; if in any other county, the notice may be for the beginning of the next term, or for the next term generally.

Leave to plead *ancient (z) demesne*, upon (a) affidavit, that premisses in question were reputed to be lands in *ancient demesne*. *Barnes* 185.

(z) *Barnes* 194, if he applies within the first four days of the term; for if this plea be not confined to a time certain, great delay of justice must follow; if plaintiff prevails on this plea to jurisdiction of court, judgment must be that defendant answer over. *Barnes* 187.

(a) Affidavit sufficient to shew probable cause for pleading this plea. *Barnes* 185.



To move for judgment, you make an affidavit of the service of the declaration in this form :

*In the Common Pleas.*

*Richard Roe* } In ejection on the demise  
against } of *Thomas Bland* and *Conrade*  
*John Doe,* } *de Golls.*

*L. R.* of, &c. makes oath, that he this deponent did, on the \_\_\_\_\_ day of \_\_\_\_\_ last past, deliver to Mr. *John Wilkinson*, the tenant in possession of the premises mentioned in the declaration hereunto annexed, or of some part thereof, a true copy of the said declaration, and of the notice there under written, and did at the same time inform the said *John Wilkinson*, that unless he would appear in this court by some attorney thereof on the first day of this present *Michaelmas* term, and cause himself by rule of the said court to be made defendant in the room of the casual ejector *John Doe*, judgment would be entered against the said casual ejector by default, and that he the said *John Wilkinson* would be turned out of possession ; or words to that or the like effect.

*Affidavit of service of a declaration in ejection.*

Affidavit of service "on *A. B.* tenant, or *C.* his wife," not sufficient, *Barnes* 173, nor "on the wives of *A. B.* who, or one of them, are tenants." *Id.* 174, 175, but "on the wife of tenant in possession, as she informed deponent, and as he verily believes," held sufficient. *Id.* 194. Rule to make

service good, set aside, because the affidavit on which it was grounded, was sworn before plaintiff's attorney, as a commissioner. *Id.* 92.

On this affidavit you get a serjeant to move for judgment against the casual ejector.

*You pay,*

	l.	s.	d.
For the duty and oath of the } affidavit ————— }	0	2	6
To the serjeant to move ———	0	10	6
Rule duty, and filing the affidavit	0	6	0

In the Common Pleas.

*Hilary the seventeenth of king George  
the third.*

*Rule for judgment against the casual ejector.*

*Hunt against Jones, } The casual ejector. } T* Welth day of *Fe-*  
*February,* upon the affidavit of *Thomas Sherwell,* gent. It is ordered, that unless *William Collins,* tenant in possession of the tenements in question, or any other person concerned in the title thereof on *Saturday* next shall appear by an attorney of this court, who shall then forthwith receive a declaration, and plead thereto the general issue, and consent to the common rule for confessing lease, entry and ouster, upon the trial to be had, let judgment against the casual ejector be entered; and in  
the

the mean time proceedings are to stay, upon the motion of master serjeant *Baynes*.

By the court.

Entered

*Fothergill.*

No declaration in ejection shall be taken or received by the secondary, unless signed by some serjeant at law, and delivered by himself to the secondary in open court. *Secondary not to receive decl. in ejection unless signed by a serjeant.*  
*Hil. 2 Geo. 2.*

The secondary shall the morning next after the end of every term, and at all other times when required, shew to any person, who shall demand the same, his alphabetical paper of ejections, moved or delivered into court in each term. *Same rule.* *Secondary, on request, to shew his alphabetical paper of ejections.*

When the rule is out, you search the prothonotary's plea-book, and if no plea is left, you ingross the declaration on a double half-crown stamped sheet of paper, to which you affix the rule against the casual ejector, and the prothonotary will sign judgment; then enter your judgment by *Nil dicit* on the roll, and make out a writ of *Habere facias possessionem*, for which you pay duty 1 s. 6 d. Signing 1 s. 4 d. Sealing 7 d. *Of signing judgment against the casual ejector.*

If the tenant (*b*) appears, his attorney gets a blank rule from the secondary, for which he pays 6 d. then fills it up according to the ensuing form, and signs his name at the bot- *Of the tenant's appearing.*

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(*b*) Though appearance is generally entered after first four days of term, yet it is always considered as appearance of first day of the term. *Barnes 188.*

tom of it, ingrosses the general issue, Not guilty (*postea* ,) in a double penny stamped sheet of paper, and annexes the rule to it, after he enters an appearance for the tenant with the proper filacer, who thereupon stamps the rule, and then leaves the plea and rule annexed with the prothonotary.

Appearance for tenant (*c*) in possession must be entered with filacer; and the common rule marked by him, before left in the prothonotary's office. *Barnes* 178.

The expence is as follows:

	l.	s.	d.
Search for motion for judgment against the casual ejector } judg- }	0	0	6
Blank rule	0	0	6
Entering appearance	0	2	0
Entering plea	0	2	0

In the Common Pleas.

Michaelmas term seventeenth year of George the third.

The general rule.

Middlesex, **I** T is ordered by consent of *J.* to wit. **I** D. attorney for the plaintiff, and *L. R.* attorney for *J. W.* who claims title to the tenements in question, that the said

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(*c*) The common rule by consent, having been entered for tenant, without consent, rule to shew cause, why the judgment signed against the casual ejector, should not be set aside, was discharged with costs *Barnes* 178.

*J. W.*



*J. W.* shall be admitted defendant; and that the said *J. W.* shall immediately appear by his said attorney, who shall receive a declaration, and plead thereto the general issue this term; and at the trial to be had thereon shall appear in his proper person, or by his counsel or attorney, and confess the lease, entry and ouster of so much of the tenements specified in the plaintiff's declaration, as are in the possession of the said defendant or his tenants, or any persons claiming by or under his title; or that in default thereof judgment shall be thereupon entered against the defendant *John Doe* the casual ejector; but proceedings shall be stayed against him until default shall be made in any of the premisses; and by the like consent it is further ordered, that if by reason of any such default the plaintiff shall happen to be nonsuited upon the trial, the said *J. W.* shall take no advantage thereof, but shall thereupon pay to the plaintiff costs to be taxed by the prothonotary. And it is further ordered, that the lessor of the plaintiff shall be liable to the payment of costs to the said *J. W.* by the court here to be in any manner allowed or adjudged.

*Roe against Doe for five messuages with the appurtenances, in the parish of Stepney in the county of Mid. on the demise of T. Bland and Con. de Golls.*

By the court.

*J. D.* for the plt.

*L. R.* for the deft.

Tenants in possession appeared with filacer, and entered into common rule, which was left in prothonotary's office, intituled with true name of cause, but by mistake in body

of plea, name of plaintiff's lessor was inserted (as person complaining) instead of nominal plaintiff's: attorney looking upon this plea as null, signed judgment against casual ejector, which judgment was set aside with costs as irregular, plea being properly intitled and no nullity. *Barnes* 191.

From this rule the plaintiff's attorney gets two rules drawn up by the secondary in the same manner on stamp paper, one for each party; this costs 7s. and then the plaintiff's attorney will make up the issue, and deliver a copy of it, and notice of trial to the defendant's attorney; and thereupon proceed to trial as in other cases.

*Where several  
defts. and some  
refuse to confess  
lease, entry,  
&c.*

If there be several defendants, and at the trial the plaintiff obtains a verdict against some of the defendants, and the other defendants refuse to confess lease, entry and ouster, the plaintiff may sign judgment against the casual ejector as to them. *Barnes* 121, 174.

*If Issue not  
paid for, judgment  
against  
d-ft. who  
appeared.*

If the defendant's attorney does (*d*) not pay for the issue, the plaintiff's attorney may sign judgment against the defendant, but not against the casual ejector, *ut (e) dicitur*; but see the words of the rule by consent.

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(*d*) *Barnes* 176.      (*e*) *Barnes* 253, in *Calcem*.

*A Nisi prius record in ejectment,  
with the poſtea.*

*Pleas at Weſtminſter before Sir Wil-  
liam De Grey, knight, and his com-  
panions, the lord our king's juſtices of  
the bench, of the term of Eaſter in  
the ſeventeenth year of the reign of  
our ſovereign lord George the third,  
by the grace of God, of Great Britain,  
France, and Ireland, king, defender  
of the faith, &c.*

Ro. 579.

Middleſex, *C. L.* late of the pariſh of St. *D e'aratione*  
*to wit,* *C. John the Baptiſt* in the pre-  
cinct of the *Savoy* in the *Strand* in the county  
aforeſaid, gent. was attached to answer *R.*  
*R.* of a plea, wherefore with force and arms,  
five chambers and one kitchen with the ap-  
purtenances, in the precinct of the *Savoy*  
aforeſaid in the *Strand* in the county afore-  
ſaid, which *Sir P. B.* bart. and *T. B.* eſq; to  
the aforeſaid *R.* did demise for a term which  
is not yet paſt, he the ſaid *C.* entered, and  
the ſaid *R.* from his farm aforeſaid ejected,  
and other enormities to him did, to the  
great damage of him the ſaid *R.* and againſt  
his preſent majeſty's peace. And whereupon  
the ſaid *R.* by *J. S.* his attorney complain-  
eth, that whereas the aforeſaid *Sir P. B.* and  
*T. B.* the fifth day of *January* in the ſixth  
year

year of his present majesty's reign, at the parish of *St. Clement Danes* in the county aforesaid, did demise unto him the said *R.* the tenements aforesaid, with the appurtenances; to have and to hold the tenements aforesaid, with the appurtenances, to the said *R.* and his assigns, from the 11th day of *December* then last past, unto the full end and term of five years from thence next following and fully to be complete and ended: By virtue of which demise the said *R.* into the tenements aforesaid, with the appurtenances, did enter, and was thereof possessed; and he the said *R.* so being thereof possessed, the aforesaid *C.* afterwards, *to wit,* the same 5th day of *January* in the 6th year aforesaid, with force and arms, &c. into the tenements aforesaid, with the appurtenances, which the aforesaid *Sir P. B.* and *T. B.* to him the said *R.* in form aforesaid had demised for the term aforesaid, which is not yet past, did enter, and him the said *R.* from his farm aforesaid did eject, and other enormities did to the said *R.* to the great damage of the said *R.* and against the peace of his present majesty; whereupon he saith, that he is damnified, and hath damage to the value of 20*l.* And thereof he bringeth suit, &c.

*Plea.*

And the said *C. L.* by *G. H.* his attorney cometh and defendeth the force and injury by the aforesaid *R.* against him charged, when and where, and in such manner, as this court shall award, and saith, that he is not guilty of the trespass and ejectment aforesaid



said, in such manner and form as the said *R. R.* hath against him above complained: And of this he putteth himself upon his country: And the aforesaid *R.* doth so likewise, &c. Therefore the sheriff is commanded to cause to come here in five weeks from the feast-day of *Easter* twelve good and lawful men of the body of his county, every one of whom to have 10*l.* at least by the year in lands, tenements or rents, by whom the truth of the matter may be better known, and who neither are any ways related to the said *R. R.* plaintiff, nor to the said *C. L.* defendant, to recognize whether the said *C. L.* is guilty of the premisses, as the said *R.* above complaineth, because as well the said *R.* as the said *C.* between whom the contention thereupon is, have put themselves upon their country.

*Award of the Venire.*

Middlesex, *to wit,* The jury between *R.* *Jurata.*  
*R.* plaintiff, and *C. L.* late of the parish of *St. John Baptist* in the precinct of the *Savoy* in the *Strand* in the county aforesaid, gent. in a plea of trespass and ejectment of the farm, is respited here until on the morrow of the *Holy Trinity*, unless *Sir John Eardley Wilmot*, knt. chief justice of our lord the king of the bench here assigned, by form of the statute in that case made and provided, on *Tuesday* the 8th day of *May* at *Westminster* in the great hall of pleas there, commonly called *Westminster-hall*, in the said county, shall first come for the default of the jury, because none came, therefore let the sheriff have

have the bodies of the several persons mentioned in the panel to the writ of *Habeas corpora juratorum* annexed; and be it known, **Le sciendum.** that the justices thereupon here in court in the same term delivered a writ to the deputy of the Sheriff of the county aforesaid, to be executed according to due form of law, &c.

**Postea.**

Afterwards the day and place within contained, before Sir *William De Grey*, knt. chief justice within written, having *John Higham*, gent. for his associate, by form of the statute, and so forth, cometh the within named *R. R.* by his attorney within contained, and the within written *C. L.* altho' solemnly called, cometh not; therefore let the jury, whereof mention is within made, be taken against him by default; and the jurors of the said jury being called come, who to speak the truth of the within contained being elected, tried and sworn, say upon their oath, that the said *C.* is guilty of the trespass and ejection within mentioned, as the said *R. R.* within complaineth against him; and they assess the damages of him the said *R.* on occasion thereof, over and above the costs and charges which he has been put to about his suit in this behalf, to 1*s.* and for the said costs and charges to 20*s.* Therefore, &c.

			<i>l.</i>	<i>s.</i>	<i>d.</i>
Damages	—————	—————	0	1	0
Costs	—————	—————	1	0	0
Increase	—————	—————	15	15	8
			<hr/>		
In all	—————	—————	16	16	8

Signed 30 *May* 1777.

It

It is not usual to grant new trials in ejectment, where the verdict is for the defendant, because the plaintiff may bring a new ejectment, and no other disadvantage happens to him. But where the verdict is for the plaintiff it is otherwise, and new trials have been granted; for there the consequence of not granting a new trial is the alteration of the possession of the premises in question. See *Barnes* 440. *Of new trials in ejectment.*

Where a verdict in ejectment is for the defendant, or the plaintiff becomes nonsuited upon evidence, a *Ca. sa.* must be made out against the plaintiff, and shewed to his lessor, and the costs must be demanded thereupon of the lessor. See *Barnes* 182. *Of costs in ejectment.*

Where the plaintiff is nonsuited by reason of the defendant's not confessing lease, entry and ouster, the costs are taxed on the rule by consent, and judgment signed against the casual ejector. *Barnes* 182.

Rule to tax plaintiff his costs in ejectment, against one of the defendants, who did not appear on the trial, and confess lease, entry and ouster. *Barnes* 149.

Proceedings stayed, till good plaintiff be named, or security to be approved by prothonotary be given by infant lessor, for securing costs to defendant, in case of a nonsuit or verdict for him. *Barnes* 183. Lord chief justice *Willes* said, he thought the court should extend the rule for making a good plaintiff, or giving security for defendant's

dant's costs, to other (a) cases besides those, wherein lessor of plaintiff is abroad, or an (b) infant, which are within the ordinary practice and common course of the court. *Barnes* 189.

*When a lease must be actually sealed on the premises.*

If there be no person in the house, or on the premises, to deliver a declaration in ejectment, to, a lease of ejectment must be sealed at the house, or on the premises, and the lessee left in possession, and some person appointed to enter and eject him; and then an action may be brought against such ejector, and the possession recovered. See *Barnes* 177.

*Where fixing the declaration to the door of the house, &c. shall be legal service.*

Where half a year's rent shall be in arrear, the landlord, having a lawful right to re-enter for non-payment, may serve a declaration in ejectment without a formal demand or re-entry, or, in case the same cannot be legally served, *affix such declaration on the door of the demised messuage, or some notorious place of the lands, which shall be deemed a legal service*; and on proof that half a year's rent was due before the said declaration was served, and no sufficient distress on the premises, the lessor shall recover judgment and execution as fully as in case a formal re-entry had been made; and if the lessee shall suffer judgment to be recovered on such ejectment and execution, without pay-

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(a) Extended to the case of *death* of lessor of plaintiff. *Barnes* 147.

(b) *Barnes* 177, 178.



ing the arrears and costs, and without filing a bill within six months after execution, he shall be barred from all relief in law or equity, other than by writ of error, and the lessor shall hold the demised premises discharged from such lease. *Stat. 4 Geo. 2. c. 28.*

Rent was due to lessors of plaintiff both as devisees and executors; proceedings stayed on payment of the rent due to them as devisees only with costs, tho' rent was also due to them in each (c) capacity. *Barnes 184.*

But if the tenant before trial will either tender to the lessor, or bring into court, the rent in arrear, together with all costs, all further proceedings shall cease. *Same stat.* *Rent and costs brought into court, proceedings to stay.*

Recognizances to be entered into, pursuant to *Stat. 16 & 17 Car. 2. chap. 8.* by plaintiff in error, are to be taken in the value of two years profits, and double costs, and accordingly stayed defendant's proceedings for want of better bail, such recognizances having been entered into. *Barnes 103.*

If an ejectment be brought on a vacant possession upon this act of parliament, the plaintiff may move for judgment against the casual ejector at any time in the term; the rule of *Trin. 32 Car. 2. antea. fol.* relating only to an ejectment, where the declara- *On vacant possession may move for judgment any time in the term*

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(c) They not being intitled to bring ejectment as executors. *Barnes 184.*

tion is delivered to the tenant in possession.  
*Barnes 172.*

*Tenant secreting declaration in ejectment forfeits three years improved rent.*

A tenant, to whom a declaration in ejectment shall be delivered for any lands, tenements or hereditaments, shall forthwith give notice thereof to his landlord, or his bailiff or receiver, under penalty of forfeiting the value of three years improved or rack-rent of the premises so holden in possession of such tenant, to the person of whom he holds.  
*Stat. 11 Geo. 2. c. 19.*

*Landlord empowered to make himself defendant.*

The court where such ejectment shall be brought may suffer the landlord to make himself defendant, by joining with the tenant to whom such declaration shall be delivered, in case he shall appear; but in case such tenant shall refuse to appear, judgment shall be signed against the casual ejector for want of such appearance; but if the landlord of any part of the lands, tenements or hereditaments, for which such ejectment was brought, shall desire to appear by himself, and consent to enter into the like rule, that by the course of the court the tenant in possession, in case he had appeared, ought to have done, then the court shall permit such landlord so to do, and order a stay of execution upon such judgment against the casual ejector, until they shall make further order therein. *Same statute.* The word *landlord* means not every person claiming (*d*) title, but

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(*d*) Court refused to make a person, who claimed title, defendant, instead of the late tenant, who had quitted the possession. *Barnes 195, ad calcem.*

a person who is in some degree of possession, as receiving rent, &c. *Barnes* 193, 194.

Motion that landlord might be *made* defendant without tenant in possession, who refused to appear, denied, but common rule granted to *add* landlord to tenant. *Barnes* 172.

Motion that tenant in possession might shew cause why he should not (*e*) appear and defend his title, his landlord having tendered him an indemnity, refused, but enlarged the time for appearance. *Barnes* 173.

In cases where landlord is permitted to defend without tenant, reason of judgment against casual ejector, by *Stat: 2 Geo. 2. chap. 19.* is, that under it, after end of suit, plaintiff may obtain (*f*) possession of premises sued for, which he could not do by virtue of a judgment against a person out of possession. *Barnes* 208.

Landlord by *Stat. 2 Geo. 2. chap. 19.* is to enter into common rule by consent, before that statute, he might have been added defendant; he is to be considered in all respects, in same case as tenant in possession. *Barnes* 187.

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(*e*) Motion for landlord to defend cannot properly be made till after judgment signed against the casual ejector, and affidavit produced of the tenant's refusal or neglect to appear. *Barnes* 179.

(*f*) But when a writ of *error* is brought, there is not the least reason to give plaintiff leave to take possession, till after determination in error, *Barnes* 208.

Landlord moved to add himself to tenants; they not entering appearance, plaintiff signed judgment against casual ejector; landlord afterwards, without disclosing to court, what had been previously done, applied for conditional rule, as matter of course, and by virtue thereof appeared alone without tenants; court gave leave to take out execution on the (g) judgment. *Barnes* 186, 187.

Rules for leave to take out execution by plaintiff against casual ejector, after verdict against landlord made defendant instead of tenant in possession pursuant to *Stat. 2 Geo. 2. chap. 19.* be absolute in first instance, and not to shew cause. *Barnes* 185. *in calcem.*

If the plaintiff is nonsuited by default of the landlord's not appearing to confess lease, entry, &c. or obtains a verdict, the court, on producing the *postea*, will make an absolute rule to take out execution against the casual ejector, and not a rule to shew cause. *Barnes* 182, 183.

Rule *nisi* for setting aside *Non pros*, for not confessing lease, entry and ouster, ordered by court, on payment of costs, though regular; defendant did not confess lease, &c. because of a material variance between the

(g) Plaintiff offered to waive his judgment, if landlord, who resided at *Jamaica*, would give his security for the costs, but his council would not consent. *Barnes* 187.

iusse



issue and record; court observed, that confession would not have been a defence, and defendant might afterwards have moved to set aside the verdict for the variance. *Barnes* 175.

Writ of restitution ordered for late tenants in possession; judgment being set aside for irregularity, possession ordered to be restored, and lessor of plaintiff, who held the possession, absconding, rule became ineffectual. *Barnes* 178.

Lessor of plaintiff and his attorney prevailing upon tenant in possession, by undue practices, to deliver possession of the premises, (which defendant claimed as tenant's landlord) pending the suit, after rule obtained by defendant to be at liberty to defend his title, pursuant to *Stat. 2 Geo. 2. chap. 19.* (tenant refusing to appear) and entering into common consent rule, held no contempt of the court, but a fraud, which (*b*) ought to be prevented, and is not remedied by said act. *Barnes* 180.

*Hab. (i) corp.* is the proper process to remove a plaintiff from the mayor's court in London, and not a *certiorari*. *Barnes* 421.

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(*b*) Tenants should be bound not to change the possession. *Barnes* 180.

(*i*) Under which defendant must appear in this court, and enter into the common rule, and plaintiff must declare *de novo*. *Barnes* 421.

Habere facias  
possessionem.

Signing 1 4  
Seal 0 7  
—  
1 11

*if on a double  
or treble de-  
mise, you pay  
8d. for each  
demise after  
the first.*

GEORGE the third, &c. To, &c. greeting. Whereas J. M. lately in our court, before our justices at *Westminster*, by the consideration of the said court, recovered his term yet to come of and in the manor of S. with the appurtenances, and 10 messuages, 500 acres of land, 100 acres of meadow, 300 acres of pasture, with the appurtenances in S. in your county, against L. C. late of, &c. which J. C. gentleman, on the 1st day of *October* in the — — year of our reign, demised to the said J. M. to hold and enjoy to the said J. M. and his assigns, from the feast of *Saint Michael* the archangel then last past, unto the full end and term of seven years thence next ensuing, and fully to be complete and ended, which is not yet past; and whereupon the said L. put out and amoved the said J. M. from his possession, and ejected him from his said farm: Therefore we command you, that you cause the said J. M. to have his possession of his said term yet to come of and in the said manor and tenements aforesaid, with the appurtenances; and how you shall execute this our precept make appear to our justices at *Westminster* in eight days of the Purification of the blessed *Mary*; and have there this writ. Witness, &c.

Habere facias  
possessionem,  
and a Fi. fa.'

GEORGE the third, &c. To, &c. greeting. Whereas W. D. gentleman, lately in our court before our justices at *Westminster*, by the consideration of the said court recovered against S. F. late of, &c. his term yet

to come of and in one messuage and 14 acres of land, with the appurtenances, in *L.* in your county, which *S.* 7. and *E.* 7. on the first day of *October* in the year of our Lord —, at *L.* aforesaid, demised to the said *W.* to hold and enjoy the said tenements with the appurtenances, to him and his assigns, from the — day of — then last past, unto the end and term of three years thence next ensuing, and fully to be complete and ended, which is not yet past; and whereupon the said *S.* put out and removed the said *W.* from his possession, and ejected him from his said farm, therefore we command you, that without delay you cause the said *W.* to have his possession of his term aforesaid of and in the said messuage and tenements, with the appurtenances; and how you shall execute this our precept make appear to our justices at *Westminster* in eight days of the Purification of the blessed *Mary*. We also command you, that of the goods and chattels of the said *S.* in your bailiwick, you cause to be made eleven pounds, which were adjudged to the said *W.* in our said court for his damages, which he had by reason of the trespass and ejection aforesaid, and have that money before our justices at *Westminster* at the said time, to render to the said *W.* for his damages aforesaid, whereof the said *S.* is convicted; and have there this writ. Witness, &c.

*GEORGE* the third, &c. To, &c. greet. Habere facias  
ing. Whereas *A. G.* lately in our court be- possessionem  
fore <sup>for executor</sup>

after a Sci.  
fa.'

fore our justices at *Westminster*, by the consideration of the said court recovered his term of and in one messuage, 28 acres of land, five acres of meadow, and 17 acres of pasture, with the appurtenances, in C. in your county, against D. B. late of, &c. merchant, which W. N. on the 1st day of *April* in the ——— year of our reign, at C. aforesaid, demised to the said A. to hold and enjoy to him and his assigns from the feast of the Annunciation of the blessed virgin *Mary* then last past, unto the end and term of three years thence next ensuing, and fully to be complete and ended, which is not yet past; and whereupon the said D. put out and amoved the said A. from his possession, and ejected him from his said farm therein, which said A. after the said judgment was given, died, after whose death it is considered in our said court, that C. W. and R. S. executors of the testament and last will of the said A. have execution against the said D. of the term aforesaid yet to come of and in the said tenements with the appurtenances, by the default of the said D. We therefore command you, that without delay you cause the said C. and R. to have possession of the said term yet to come of and in the said tenements, with the appurtenances: And how you shall execute this our precept make appear to our justices at *Westminster* from the day of the Holy *Trinity* in three weeks; and have there this writ. Witness, &c.

Sci. fa.'

Rule *Nisi*, why writ of *Hab. Fac. Poss.* should not be set aside, and possession restored,



stored, &c. discharged; it appearing, that after plaintiff had obtained judgment, defendant brought writ of error, which was allowed, but entered into no recognizance, nor put in any (k) bail thereon, plaintiff previous to his procuring (l) costs to be taxed on the final judgment, for want of defendant's entering into recognizance, required by (m) *stat. 16 & 17 Car. II. chap. 8.* or bail within four days, took out writ of *Hab. Fac. Poss.* and by virtue thereof, took possession of premises late in question, which the court held to be regular. *Barnes 212.*

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(k) Writ of error is no *Superfedeas* without bail, which judge would have taken, if applied to. *Barnes 212.*

(l) Defendant should have applied to stay execution, and the court would have obliged plaintiff to have procured his costs to be taxed, without which the measure or quantum of the recognizance could not be ascertained. *Barnes 212.*

(m) See 2 *Ventr.* 170.

## COSTS FOR DEFENDANT IN EJECTMENT.

	Out of pocket			Agent			Attorney		
	<i>l.</i>	<i>s.</i>	<i>d.</i>	<i>l.</i>	<i>s.</i>	<i>d.</i>	<i>l.</i>	<i>s.</i>	<i>d.</i>
Instructions	0	0	0	0	2	2	0	4	4
Appearance	0	2	0	0	3	8	0	5	4
Searching if judgment moved for	0	0	0	0	1	8	0	3	4
Copy declaration fol. 7	0	0	0	0	1	8	0	3	4
Common rule	0	0	0	0	0	6	0	1	0
General issue and rule	0	0	0	0	2	2	0	4	4
Paid for issue per sheet be- sides duty and warrant	0	0	4	0	0	4	0	0	4
Half consent rule	0	2	6	0	2	6	0	2	6
Copy issue fo. 9	0	0	0	0	1	6	0	3	0
Instructions for brief	0	0	0	0	3	4	0	6	8
Term fee	0	0	0	0	2	6	0	5	0
Letters	0	0	0	0	1	0	0	2	0

*Of writs of Scire facias.*

**A** *Scire facias* is a judicial writ, and properly lies where one has recovered debt or damages, and has not sued out execution within the year and a day. It also lies on a recognizance of bail; and in many other cases it is called a *Scire facias*, because of the words of the writ to the sheriff, *viz. Quod Scire facias præfat. D. the defendant, quod sit coram, &c. ostensurus si quid pro se habeat aut dicere sciat quare, &c.* so as by this writ it appears that the defendant is to be warned to plead any matter in bar of execution; and therefore although it be a judicial writ, yet, because the defendant may plead thereto, this *Scire facias* in law is accounted in nature of an action.

*GEORGE* the third, by the grace of *Sci. fa.' after*  
 God, of *Great Britain, France, and Ireland, a year and a*  
 king, defender of the faith, &c. To the *day.*  
 sheriff of *Middlesex*, greeting. Whereas *J. Duty* s. d.  
*R.* lately in our court, *to wit,* in the term *Signing* 2 0  
 of *St. Hilary* in the — year of our reign, *Seal* 1 4  
 before Sir *John Eardley Wilmot*, knight, and  
 his companions, then our justices of the  
 bench at *Westminster*, by the consideration of  
 the same court recovered against *H. N.* late  
 of, &c. otherwise called, &c. as well a certain  
 debt of forty pounds as sixty-three shillings,  
 which were adjudged to the said *J. R.* in our  
 same court for his damages which he had by  
 occasion of the detaining that debt, whereof  
 the

the said *H.* 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 *J. J.* we have been given to understand; and because we are willing that those things which in our same court 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 *H.* 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 *J.* 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 *William De Grey*, knight, at *Westminster*, the ——— day of, &c.

*Note;* If the plaintiff has within the year and day sued out an execution, got it returned and filed, and continued it on the roll by *Vic' non misit breve*, it is sufficient to warrant an execution after the year and day.

In this case one *Scire facias*, with a *Nil* returned, is sufficient.

This writ is to be signed by the prothonotary; then it is to be delivered to the sheriff, and when returned, it must be entered on the  
protho-



prothonotary's remembrance, and a rule must be given; after the rule is out, you sign and docket the judgment, and enter it up in manner following:

Middlesex, *to wit*, The sheriff was com-  
 manded, whereas J. R. lately in the court  
 of our lord the now king, *to wit*, in the term  
 of St. Hilary in the twelfth year of the reign  
 of our said lord the king, before Sir Eardley  
 Wilmot, knight, 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 H. N. late of, &c. otherwise called,  
 &c. as well a certain debt of 40*l.* as 63*s.*  
 which was adjudged to the said J. in the  
 same court for his damages which he had by  
 occasion of the detaining that debt whereof  
 the said H. 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 ap-  
 peareth; Yet execution of the said judgment  
 still remaineth to be made, as on the infor-  
 mation of the said J. the king hath been  
 given to understand; and because, &c. That  
 by good, &c. he make known to the said  
 H. that he be here at Westminster at this day,  
*to wit*, [the return] to shew, if any thing,  
 &c. why the said J. ought not to have exe-  
 cution 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 J. by L. R. his attorney,  
 and

Entry of judg-  
 ment on a  
 Scire facias.

and offered himself on the fourth day against the said *H.* 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 *J.* have execution against the said *H.* for the debt and damages aforesaid, by default of the said *H.* &c.

			s.	d.
Duty	—————	—————	2	0
Signing writ	—————	—————	1	4
Seal	—————	—————	0	7
Return	—————	—————	1	0
Rule and duty	—————	—————	1	6
Signing judgment	—————	—————	2	0
Filing warrant	—————	—————	0	4
			<hr/>	
			8	9

Scire facias in  
debt for an ad-  
ministrator.

**GEORGE** the third, &c. To, &c.  
Whereas *H. S.* lately in our court, *to wit*, in the term of *St. Hilary* in the 13th year of our reign, before Sir *John Eardley Wilmot*, knt. and his companions, then our justices of the bench at *Westminster*, by the consideration of the same court, recovered against *N. C.* late of, &c. otherwise called, &c. as well a certain debt of 200*l.* as 63*s.* which in our said court were adjudged to the said *H.* for his damages which he had by occasion of the detaining that debt whereof the said *N.* is convicted, as by the record and proceedings thereof remaining in our said court manifestly appeareth; Yet execution of the said judgment still remaineth to be made, and the said *H.* is dead,

dead, as on the information of *W. S.* widow, administratrix of all the goods and chattels which were of the said *H.* 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 *N.* 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 *W.* ought not to have execution against him, &c. *ut antea*, fol. 376.

—*to wit*, The sheriff was commanded, *Entry of a Scire facias in debt by an executor.* [ut antea, fol. 377.] yet execution still remaineth to be made, and the said *W.* is dead, as on the information of *R. W.* executor of the testament of the said *W.* the king hath been informed; and because, &c. by good, &c. make known to the said *B.* [ut antea, fol. 377, 378.] And now here at this day came the said *R.* by *J. S.* his attorney, and offered himself on the 4th day against the said *B.* in the plea aforesaid, and the said *B.* being solemnly demanded came not; and the sheriff now returneth, that he hath nothing, &c. nor is he found, &c. And upon this the said *R.* bringeth here into court the letters testamentary of the said *W.* by which it sufficiently appeareth to the court here, that the said *R.* is executor of the testament of the said *W.* and thereof hath the administration, &c. and he prayeth execution against the *Nihil return'd.* *Profert.*

*Judgment.*

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

*Entry of a Scire facias in case against an administrator.*

——to wit, The sheriff was commanded, whereas *R. G.* lately in the court of our lord the king here, to wit, in the term of *St. Hilary* in the first year of his reign, before *Sir John Eardley Wilmot*, 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 *P. G.* late of *Southwark* in the county of *Surrey*, dyer, 18*l.* which to the said *R.* 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 *P.* in his life-time to the said *R.* whereof the said *P.* 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 *P.* is dead, as on the information of the said *R.* the king hath been informed; and because, &c. that by good, &c. he should make known to *A. G.* widow, administratrix (*n*) of the goods and

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(*n*) Held upon argument of demurrer, that the calling defendant administrator in the declaration is a sufficient averment of his being so, without setting out, that administration was committed to him. *Barnes* 159.



chattels which were of the said *P.* 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 *R.* ought not to have execution against her of the damages aforesaid, of the goods and chattels which were of the said *P.* at the time of his death, being in the hands of the said *A.* to be administered, 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 *R.* by *L. R.* his attorney, and offered himself on the 4th day against the said *A.* in the plea aforesaid, and she being solemnly demanded came not; and the sheriff now *Return Nihil.* returneth that she hath nothing, &c. nor is she found, &c. Therefore, *as before*, the *Alias sci. fa.* sheriff was commanded, that by good, &c. he should make known to the said *A.* 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 *R.* by his said attorney; and hereupon the said *A.* on the 4th day of the plea being solemnly demanded came not; and the sheriff, *as before*, *Return Nihil.* returneth that she hath nothing, &c. nor is she found, &c. and upon this the said *R.* saith that after the judgment aforesaid rendered the said *P.* died intestate, and that administration of the goods and chattels which were of the said *P.* at the time of his death, after the death of the said *P.* was committed to the said *A.* at *Southwark* aforesaid; and the said *R.* prayeth execution against the said *A.* of the damages aforesaid, of the goods and chattels

*Judgment.*

chattels which were of the said *P.* at the time of his death, being in the hands of the said *A.* to be administered, if she hath so much thereof in her hands. It is therefore considered that the said *R.* have execution against the said *A.* of the damages aforesaid, of the goods and chattels which were of the said *P.* at the time of his death in the hands of the said *A.* to be administered, if she hath so much thereof in her hands, &c. by the default of the said *A.* &c.

*Entry of a  
Scire facias  
in debt against  
executors, and  
two Nihilis re-  
turned.*

London, *to wit*, The sheriffs were commanded, 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. J.* 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 *W. E.* 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,

manded, 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. *ut antea.*

In case of the death of either party judgment must be revived by *Scire facias*. In case of the death of the defendant you must have a *Scire feci* or two *Nibils* return'd; but in case of the plaintiff's death one *Nihil* is sufficient.

*Where one Sci-  
fa, return'd  
Nihil is suffi-  
cient.*

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 *Scire facias* against the defendant, his executors or his 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

*Where if  
plaintiff or de-  
fendant dies  
after interlocu-  
tory, and before  
final judgment,  
proceedings may  
be received by  
Scire facias.*



warned, or upon two writs of *Scire facias* 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. *Stat. 8 & 9 W. 3. c. 9. sect. 6, 15.*

*A Scire facias where the plaintiff died after interlocutory judgment, and before final judgment.*

*Recital of the interlocutory judgment.*

*And award of inquiry.*

*GEORGE* the third, &c. To the sheriffs of *London*, greeting. Whereas *G. K.* in his life-time, lately in our court, *to wit*, in the term of *Easter* in the 7th year of our reign, before *Sir John Eardley Wilmot*, knight, 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 holy *Trinity* in the 6th and 7th years 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.



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 day of *St. Michael* in three weeks then next following, under the seal, &c. and the seals, &c. 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 morrow of *St. Martin*, 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

*Death of plain-  
riff, executrix  
proves his  
will.*

*Profert.*

*Sci. fa.?*

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 Eardley Wilmot*, knight, at *Westminster*, the 20th day of *October* in the 7th year of our reign.

If a *Nilil* be returned, according to the above statute, an *Alias scire facias* must issue; you must enter them *verbatim* in the prothonotary's remembrance roll, and give a rule.

*Entry of the above Scire facias.*

*First Scire facias roll.*

London, *to wit*, The sheriffs were commanded, whereas *G. K.* lately in the court of our lord the now king, *to wit*, in *Easter* term the 7th year of the reign of our said lord the king, before Sir *John Eardley Wilmot* 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.*] And it was proceeded in the same court of our said lord the king in such manner, that in the term of the holy *Trinity* in the 6th and 7th years of the reign of our said lord the king, by the same court it was considered, that the afore-said *G.* ought to have recovered his damages against the said *M.* occasioned by not performing the premises and undertakings afore-said :

said: But because its 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 the not performing the promises and undertakings aforeaid, 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* aforeaid, from the day of Saint *Michael* in three weeks then next following, under the seal, &c. and the seals, &c. as by the record, and process thereof in the same court of our said lord the king here, *to wit*, at *Westminster* aforeaid remaining, may plainly appear. The inquiry nevertheless of the damages aforeaid yet remaineth to be made, and the said G. at *London* aforeaid made his testament and last will, and thereby constituted and appointed *E. K.* his wife sole executrix thereof; and afterwards, and after the judgment aforeaid given at *London* aforeaid, died, after whose death the said *E.* proved the said testament in due form of law, and took the burden of the execution of that testament upon her, as by the letters testamentary thereof here, *to wit*, at *Westminster* aforeaid, 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 he should be here at this day, *to wit*, on the morrow of *St. Martin*, 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 this case lately made and provided, *if*, &c. And now here at this day, *to wit*, on the morrow of *St. Martin* aforesaid, cometh the aforesaid *E.* by *W. T.* 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 do 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 eight days of *St. Hilary*, to shew in manner aforesaid.

*Return Nihil.*

*Second Scire  
facias roll.*

London, *to wit*, Heretofore, as it appeareth in this same term, in the roll it is thus 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 *W. T.* her said 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 sheriffs, as before, do return, that she hath nothing, &c.

*Return Nihil.*

no:



nor is to be found, &c. And hereupon 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: There-  
*Judgment that damages be assessed.*  
fore 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  
*Inquiry awarded.*  
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 the lord the king here, to wit, at *Westminster* aforesaid, in eight days of the purification of the blessed *Mary*, under the seal, &c. and the seals, &c. At which day here cometh the said *E.* by her  
*Return of inquiry.*  
said attorney, and the sheriffs, to wit, Sir *George Champion*, knight, and *Robert Cater*, esq; now return here a certain inquisition taken before them at *Guildhall* in the parish of *St. Lawrence Jewry* in the ward of *Cheap* of the same city, on the 4th day of *February* last past, by the oath of 12, &c. by which

*Judgment  
signed 17 Apr.  
1737.*

it is found, that the said G. by reason of the premisses sustained damages, besides his costs laid out by him about his suit in that behalf to 105*l.* and for his costs and charges aforesaid to 27*s.* 4*d.* Therefore it is considered, that the said E. as executrix aforesaid, do recover against the said M. the said damages to 106*l.* 7*s.* 4*d.* found by the said inquisition in manner aforesaid; and also 11*l.* 2*s.* 8*d.* adjudged by the court here to the said E. at her request, for the increase of the costs and charges aforesaid; which said damages amount in the whole to 117*l.* 10*s.* And the said M. in mercy, &c. — *H. 11. G. 2. Ro. 341.*

*Mercy.*

*Entry of Scire  
facias against  
bail.*

*Note; the first  
writ is made  
out by the filacer.*

*The second  
Sci. fac. is  
signed by the  
prothonotary.*

Middlesex, *to wit*, The sheriff was commanded, whereas J. H. of, &c. and S. A. of, &c. lately, that is to say, in *Michaelmas* term in the 7th year of the reign of our sovereign lord the now king before Sir *John Eardley Wilmot*, 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 H. D. the sum of 110*l.* which said sum of 110*l.* they the said J. and S. 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 land, and chattels, and to be levied to the use and behoof of the said H. And whereas J. H. of, &c. lately, that is to say, in the same *Michaelmas* term in the 7th year aforesaid, in the said