

*The form of an affidavit of a debt in order to hold the defendant to bail.*

*Common Pleas.*

*H. H. of, &c. maketh oath, that G. W. late of, &c. is (k) justly and truly indebted to this deponent in the sum of 200 l. on one bond or obligation under the hand and seal of the said G. W. bearing date, &c. whereby the said G. W. is bound to this deponent in the penal sum of 400 l. conditioned for the payment of 200 l. and interest to this deponent, on the            day of            last past.*

*Sworn, &c.*

Plaintiff, tho' convicted of perjury, may make an affidavit of debt, sufficient to hold defendant to bail, tho' he cannot be a witness. *Barnes 116.*

Affidavit of debt on a single sheet made in three causes not applicable to any one; there should be an affidavit on stamps in each cause, to hold defendant to bail; and therefore common appearances ordered to be excepted. *Barnes 115.*

This affidavit may be made before any judge of this court, or commissioner authorised to take affidavits in this court, or before the officer, who issues the writ or his de-

*The form of the affidavit.*

*Before whom the affidavit to be made.*

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(k) *In for is, common appearance ordered, 2 Wils. 224.*

puty;

puty; and for which affidavit 1 s. above the stamp-duties shall be paid, and no more. *Stat. 12 Geo. c. 29. 5 Geo. 2. c. 27. 21 Geo. 2. c. 3.*

Affidavit by administrator, that defendant is indebted in 40*l.* as plaintiff believes, and as appears by note; judge who had ordered a common appearance, to be re-attended. *Barnes 74.*

Affidavit made by a third person must be (l) positive. *Barnes 87, 91.*

Affidavit by a third person, that defendant was indebted, as appears by a stated account, (m) insufficient. *Barnes 100.*

Affidavit that defendant was indebted if the ship *Suffex* was not *unavoidably* lost, *prima facie* sufficient, but affidavits read on both sides controverting the fact. *Barnes 87.*

Affidavit that defendants were indebted jointly, not sufficient to hold them to bail severally. *Barnes 70, 71.*

Affidavit of one convicted of felony, not sufficient to hold to bail, and not to be supplied by subsequent affidavits. *Barnes 79. Pract. Reg. C. P. 49. 2 Wils. 225.*

In case of bankruptcy affidavit of the debt must be *positive*, unless it appears that bankrupt refuses to make the same. *Barnes 91.*

(l) But in the case of an executor *belief* is sufficient. *id. ib.*

(m) But made *good* by another affidavit, that defendant owned the account. *id. ib.* So in case of a bond. "That money *appears* due, and that defendant *owned* the debt a year and a half ago." *Barnes 82.*

Obligee,

Obligee, in a bond conditioned to pay obligor, rent due from lessee, held to bail, upon obligor's affidavit, that the lessee was indebted to him in 2300*l.* for arrears of rent. 3 *Wils. Rep.* 154.

By the general rule and practice of this court, affidavits taken before attornies (as commissioners) in causes, wherein they were concerned for the parties in whose behalf such affidavits were made, have been deemed insufficient. See *Barnes* 45.

But an affidavit made in order to hold the defendant to bail before process sued out, or an affidavit of service of process where only a common appearance is required, may be sworn before the plaintiff's attorney, being a commissioner, and may be made use of for the purpose aforesaid. *Pas.* 13 *Geo.* 2. See *Barnes* 60. *Pract. Reg. C. P.* 12.

Notwithstanding the plaintiff makes an affidavit of his debt, or other cause of action, yet the matter of bail is examinable by the court. *Matter of bail examinable by the court.*

On defendant's affidavit, that he *believed* the whole debt would appear to be paid, common appearance was allowed. *Barnes* 72.

Plaintiff leased to *Steven* lands in *Ireland*, defendant became bound to plaintiff by bond in penalty of 5000*l.* conditioned for *Steven's* payment of rent to plaintiff; upon failure he made affidavit, that 2300*l.* was due to him for arrears of rent under said lease; it was by three judges, sufficient to hold defendant to bail. 3 *Wils.* 154.

The

The next thing is to make out a *Præcipe* for the filacer, which you must suit to the nature of your action, according to the following precedents.

*A Præcipe in debt.*

*Middlesex.* Command G. W. late of *Westminster* in your county, esq; (n) otherwise called G. W. of *Westminster* in the county of *Middlesex*, esq; that he render to H. H. 400*l.* which he owes him, and unjustly detains.

*Ret. on the morrow of All Souls.*

J. B. [*the attorney*]

19 Aug. 1777.

Affidavit for 200*l.*

*The Capias thereon.*

GEORGE the third, by the grace of God, of *Great Britain, France, and Ireland*, king, defender of the faith, &c. To the sheriff of *Middlesex*, greeting. We command you, that you take G. W. late of *Westminster* in your county, esq; (o) otherwise called, (&c.)

*Alias dict' not necessary.*

(n) The *Alias dict'* is used where the debt arises by specialty, but it is said not to be necessary to be inserted, and that it may be and is better left out, and was so adjudged in this court in lord chief justice *Eyre's* time, in an action upon a bail bond, *Darby* against *Minshull*.

*On a Latin bond the Alias dict', if used, must be in Latin.*

If the action be in debt on a bond, and the Obligation is in *Latin*, the *Alias dict'* (if inserted) must be also in *Latin*; as thus, Command *John Doe*, late of *London*, gentleman, otherwise called *Johannem Doe de London* gentrosam. *Barnes* 241. *Pract. Reg. C. P.* 322. *Rep. & Cas. of Pract. C. P.* 91.

(o) See the note in the former page.

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 morrow of *All Souls*, to answer *H. H.* of a plea, that he render to the said *H. H.* four hundred pounds which he owes him, and unjustly detains, as it is said; and have there this writ. Witness Sir *William De Gray*, knight, at *Westminster*, the 7th day of *July* in the seventeenth year of our reign.

*Middlesex.* Command *W. C.* late of the parish of *St. Clement Danes* in your county, tallow-chandler, that he render to *W. D.* 30*l.* which he owes him, and unjustly detains. Command *C. M.* late of, &c. that he render to the said *W. D.* 56*l.* which he owes him, and unjustly detains.

*Præcipe in debt against two defendants.*

*Officina brevium 22.*

*Ret. &c.*

*J. R.*

10 Jan. 1777:

Affidavit against  $\left\{ \begin{array}{l} W. C. \text{ for } 30l. \\ C. M. \text{ for } 56l. \end{array} \right.$

On all *Præcipes quod reddat*, if the sum exceeds forty pounds, a fine is payable to the king in the following proportions: *Fines payable to the king.*

	l.	s.	d.
From 40 pounds to 100 marks	0	6	8
From 100 marks to 100 pounds	0	10	0
From 100 pounds to 200 marks	0	13	4
From 133. 6. 8. to 166. 13. 4.	0	16	0
From 166. 13. 4. to 200 pounds	1	0	0

And so consequently for every } 0 6 8  
 100 marks more — }  
 And for every 100 pounds more 0 10 0

Wherefore, if you would avoid the fine, draw out a *Præcipe* for a *Capias* in trespass with an *Acetiam*, in debt, in this manner:

*Præcipe for a Capias in trespass with an Acetiam in debt.* Middlesex. *Capias* for T. D. against A. S. late of the parish of St. Martin in the Fields in your county, surgeon, broke the Close at Westminster; and also in a certain plea of debt upon demand for 80 l.

Ret' &c.

I. E. by I. R. }  
 26 May 1777. } Affidavit for 40 l.

Common appearance ordered, to be accepted for want of an *Acetiam* in the *Præcipe* for the writ left with the filacer, tho' inserted in the *Cap: ad respond.* which was indorsed for bail. Barnes 117.

*Capias thereon.*

GEORGE the third, &c. To the sheriff of Middlesex, greeting. We command you, that you take take A. S. late of, &c. 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 to answer T. D. of a plea, wherefore with force and arms he broke the close of the said T. at Westminster, and did other wrongs to him, to the great damage of the said T. and against our peace; and also, that the said A. answer to the said T. according

according to the custom of our court of the bench, in a certain plea of debt upon demand for forty pounds; and have there this writ. Witness, &c.

*Middlesex. Capias* for *L. R.* against *L. K.* late of the parish of *St. James* in the liberty of *Westminster* in your county, widow, broke the close at *Westminster*; and also in case upon promise for 50*l.* Præcipe in trespass, with an Acetiam in case upon promise.

*Ret'*

*GEORGE* the third, &c. To the sheriff of *Middlesex*, greeting. We command you, that you take, &c. (as before); and also, that the said *L. K.* may answer the said *L. R.* according to the custom of our court of the bench, in a certain plea of trespass on the case upon promise, to the damage of the said *L. R.* fifty pounds; and have there this writ. Witness, &c. Capias thereon.

*London. Capias*, for *T. W.* against *J. M.* late of *London*, gent. and *S. C.* late of *London*, esq; trespass; and also against the said *J.* for 90*l.* upon promise; and also against the said *S.* for 30*l.* upon promise. Præcipe in case against two defendants.

*Ret'*

*Lincoln. Capias* for *J. P.* against *H. B.* late of *Stamford* in your county, grocer, in a plea of trespass and assault. Præcipe in assault.

*Ret'*

Upon a dangerous assault and battery that may require bail, an affidavit must be made of On a dangerous battery bail may be

*had on an  
affidavit and  
a judge's order.*

of the fact at large, whereupon a judge will make an order for holding the defendant to bail in such sum as on the circumstances of the case he shall think reasonable; and then you sue out a *Præcipe* for a common *Capias*, with an *Acetiam*.

*Præcipe in  
assault with  
an Acetiam.*

*London. Capias* for *W. H.* against *J. B.* late of *London, Cabinet-maker*, broke the *Close* at *London*; and also in trespass and assault, to the damage of the said *W.* 200*l.*

*Ret'*

*J. W.*

Bail by order, on  
Affidavit for 100*l.*

*Præcipe in  
covenant.*

*Middlesex. Capias* for *E. L.* against *G. C.* late of *Westminster* in your county, gentleman, otherwise called (as in the indenture) in a plea, that he perform to the said *E.* the covenant made between them, according to the force, form, and effect of a certain indenture made between them.

*Ret.'*

*Præcipe in  
account as re-  
ceiver.*

*Southampton. Capias* for *T. D.* against *J. W.* late of, &c. that he render to the said *T.* his reasonable account for the time in which he was receiver of the money of the said *T.* &c.

*As bailiff.*

If as a bailiff, then as before, to — for the time in which he was bailiff of the said *T.* in *L.* &c.

If



If as a bailiff and receiver, then ——— for *Bailiff and*  
the time he was his bailiff in *L.* and re-<sup>receiver.</sup>  
ceiver of the money of the said *T.* &c.

*Lincoln.* Command *J. P.* late of *C.* in *Præcipe in*  
the county aforesaid, gentleman, that he <sup>annuity.</sup>  
render to *O. R.* 60*l.* which are in arrear to  
him for a certain annuity of 30*l.* which he  
owes him, and unjustly detains, &c.

If the defendant lives not in the county *Where a Te-*  
wherein you intend to try the action, and *statum capias*  
the cause of action requires bail, you make <sup>necessary.</sup>  
out a *Præcipe* for a *Testatum capias*, which  
you carry to the filacer for that county in  
which you intend to try the cause; as, sup-  
pose the defendant lives in the city of *York*,  
and you would try the cause in *London*, you  
make out a *Præcipe* in the following form,  
which you carry to the filacer for *London*.

*London.* *Capias* for *H. P.* against *R. J.* *Præcipe for a*  
late of the city of *York*, bookseller, broke *Testatum ca-*  
the close at *London.* *pias.*

*Returnable on the octave*  
*of St. Hilary.*

*City of York.* *Testatum capias*, and also  
for 200*l.* upon promise.

*Returnable on the octave*  
*of the Purification.*

*J. R.*  
Affidavit for 100*l.* 31 Dec. 1777.

Testatum ca-  
pias.

*GEORGE* the third, by the grace of God, of *Great Britain, France, and Ireland*, king, defender of the faith, &c. To the sheriffs of the city of *York*, greeting. We command you, that you take *R. J.* late of the city of *York*, bookseller, 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 to answer *H. P.* of a plea, wherefore with force and arms he broke the close of the said *H. P.* at *London*, and did other injuries to him, to the great damage of the said *H.* and against our peace: And also, that the said *R.* answer the said *H.* according to the custom of our court of the bench, in a certain plea of trespass upon the case on promise, to the damage of the said *H.* of two hundred pounds. And whereupon our sheriffs of *London* returned to our justices at *Westminster*, at a certain day now past, that the said *R.* was not found in their bailiwick, whereas it is testified in our said court, that the said *R.* doth lie hid, and run from place to place in your county; and have there this writ. Witness, &c.

Acetiam.

If the defendant lives in any liberty which the sheriff cannot enter, you may get the filacer to make out a *Non omittas*, whereupon the sheriff may enter.



*s. d.* saying, "*Capias* for *T. D.* you say, *Capias*  
*Cap. by* "by continuance for *T. D.*" But the writ  
*cont.* 0 10  
*Duty* 2 0 is exactly the same as the first, without the  
*Seat* 0 7 distinction of *Alias* or *Pluries*.

As the filacer makes out all these writs, I  
 think it needless to trouble the reader with  
 any more precedents of them.

*The day of  
 signing the  
 writ to be set  
 down on the  
 writ.*

Every officer or clerk of this court, who  
 shall sign any writ or process before judg-  
 ment, to arrest any person thereupon, shall,  
 before the signing thereof, set down, upon  
 such writ or process, the day and year of his  
 signing the same, which shall be entered on  
 the remembrance upon the forfeiture of 10*l.*  
*Stat. 5, 6 W. & M. c. 21. §. 3. and 9, 10*  
*W. 3. c. 25. §. 42. Stat. 9 Geo. 2. c. 35. §.*  
*32. Pract. Reg. C. P. 440, 441. Barnes*  
*420.*

*Sum sworn to,  
 to be indorsed  
 on the writ.*

Where the plaintiff's cause of action shall  
 amount to the sum of 10*l.* or upwards, and  
 affidavit be thereof made, the sum specified  
 in such affidavit shall be indorsed on the  
 back of the writ or process, for which sum,  
 so indorsed, the sheriff or other officer to  
 whom such writ or process shall be directed  
 shall take bail, and for no more. 12 *Geo.*  
*c. 29. 5 Geo. 2. c. 27. 21 Geo. 2. c. 3.*

*The name of  
 the attorney to  
 be subscribed  
 on every writ  
 for arresting  
 the body, exe-  
 cution and  
 warrant  
 thereon.*

Every writ for arresting the body, writ of  
 execution, and every warrant that shall be  
 made out on any such writ or execution,  
 shall, before the service thereof, be sub-  
 scribed or indorsed with the name of the at-  
 torney, in a common legible hand, by whom  
 such writ, execution or warrant, shall be  
 sued forth; and if such attorney shall not be  
 the

the attorney immediately retained by the plaintiff, then also with the name of the attorney so immediately retained. *Stat. 2 Geo. 2. c. 23. §. 22.*

Every copy of any writ or process, that shall be served on any defendant, shall before the service thereof be in like manner subscribed or indorsed with the name of the attorney, who shall be immediately retained by the plaintiff in such writ or process. *Same stat. Vide antea fo. 76.*

*And on every copy of any writ to be served on the defendant.*

In case the attorney's name be not put to the writ, the act of parliament doth not make the process void; and tho' the attorney may be punished for not putting his name to it, the party ought not to suffer. *Barnes 412, 414. Rich. Pract. Reg. 441. but see Barnes 415, which seems contra.*

*But the act doth not make the process void for want thereof.*

The not subscribing or indorsing the name of the attorney on any warrant that shall be made out upon any writ, process or execution, shall not vitiate the same; but such writ, process and execution, and all proceedings thereon, shall be as valid and effectual, notwithstanding such omission, as if the act of 2 Geo. 2. had not been made; *Provided* the writ whereon such warrant is made out be regularly subscribed or indorsed according to the said act. *Stat. 12 Geo. 2. c. 13. §. 4.*

*The not subscribing the attorney's name on a warrant doth not vitiate the writ.*

*Cap. ad respond.* tested in *Trinity*, and returnable in *Hilary* term following, missing *Michaelmas* term, is void; and plaintiff is liable to an action of trespass and false imprisonment, for he cannot justify under a void or irregular process. *3 Wils. 341.*

*Of*

*Of common appearances.*

*Appearance to  
be entered with  
filacer.*

COMMON appearances to writs made out by the filacers are entered with the filacers, for which you pay 2 s. if one defendant, viz. 1 s. for the king's duty, and 1 s. for entering the appearance, and 4 d. for every defendant more than one.

*Defendant to  
appear in  
eight days.*

Where a defendant is served with a copy of a process, he must cause a common appearance to be entered on the return, or within eight days after such return. *Stat. 5 Geo. 2. c. 27.*

*Or plaintiff  
may on affida-  
vit of service  
appear for  
him and  
proceed.*

And in case the defendant shall not appear within eight days after the return of such writ or process, the plaintiff, upon making and filing an affidavit of the personal service of such writ or process, may enter a common appearance for the defendant, and proceed thereon, as if such defendant had entered the same. *Stat. 12 Geo. 1. c. 29.*

*In the Common Pleas,*

*John Doe,*

against

*Richard Roe, late of Petersfield, in  
the county of Southampton,  
sadleer.*

*The form of  
the affidavit.*

J. S. of, &c. gentleman, maketh oath, that he, this deponent, did, on the day of                      at *Petersfield* in the said county of *Southampton*, personally serve the defendant *John Doe* with the writ or process hereunto

hereunto annexed, by shewing him the said annexed writ or process, and at the same time delivering to him a true copy thereof, on which copy was an *English* notice in writing of the intent and meaning of such service, as by the statute in that case made is required.

*Sworn, &c.*

*J. S.*

This affidavit is to be filed *gratis*, and may be made before any judge of the court, or commissioner authorised to take affidavits, or before the proper officer for entering the appearance, or his deputy. *Stat. 12 Geo. 1. c. 29. 5 Geo. 2. c. 27. 21 Geo. 2. c. 3. vide antea. fol. 78. the rule of Pas. 13 Geo. 2.*

*Before whom the affidavit is to be made.*

An appearance entered by plaintiff for the defendant, according to the statute, by a *wrong name amended after declaration. 3 Wils. Rep. 49.*

The defendant has eight days to enter his appearance, exclusive of the return day, *e. g.* if the writ be returnable on the octave of *St. Hilary*, which is the 20th day of *January*, the plaintiff cannot enter an appearance for the defendant, according to the statute, until the 29th day of *January*.

*The eight days to appear exclusive of the return day.*

If the plaintiff enters an appearance for the defendant before the time the defendant has to enter his appearance is expired, the defendant must complain of this irregularity before judgment is signed. *Co. Cas. 31, 69, 70, 92, 105, 115, 145. Rich. Pract. Reg. 32, 127, 242, 355. Barnes 242, 255, 296.*

*Irregularity in plaintiff's entering appearance for defendant to be complained of before judgment.*

An

An appearance cures all errors and defects in process. *Barnes* 163, 167, 424, 451. 3 *Wils.* 141. S. P.

### Of bail.

*In London or Middlesex 4 days to put in bail.*

*In any other city or county eight days.*

*If in town, to put in bail before a judge at his chambers.*

*To be entered with the proper filacer.*

*How on a Testatum capias.*

**I**N *London and Middlesex* the defendant has four days, exclusive of the appearance day of the return of the writ, to put in bail; and in any other city or county he has eight days exclusive of the appearance day. *Hil. 9 Ann.*

If the bail be to be put-in in town, the filacer, or other officer who issued out the writ, is to attend, with the attorney and bail, on one of the judges at his chambers, who will take the recognizance, and the filacer or other officer will make an entry of it in his book, which entry he will afterwards draw up in a proper form, if there be occasion to sue the bail.

But care must be taken to apply to the proper filacer or officer, in whose office the bail ought to be entered; for if the bail be entered in a wrong office, the plaintiff may proceed on the bail-bond, and the defendant, before he shall be admitted to plead, shall pay full costs to the plaintiff. *Trin. 1 W. & M.*

And in case of a *Testatum capias*, bail must be entered, and filed with the filacer of that county wherein the action was first laid, and not with the filacer of that county wherein the defendant was arrested; for otherwise the bail-bond may be assigned; and it is not to be presumed



presumed or expected, that the plaintiff's attorney will search with a wrong filacer.

In case the proper filacer or officer cannot attend, the recognizance may be taken without him, on a piece of parchment properly stampt, viz. with a double twelve-penny stampt.

And in such case you make the entry in this manner :

London. Capias, against T. M. late of London, Carpenter, at the suit of W. D. for 100l. upon promise, returnable on the morrow of the Holy Trinity.

*Affidavit for 50l.*

Bail, W. S. of Pall Mall in the parish of Saint James in the liberty of Westminster and county of Middlesex, esq;

C. S. of the same place apothecary.

*The defendant bound in 100l.  
Each of the bail in 50l.*

Taken and acknowledged  
the      day of  
Etc. before

J. S. Attorney for  
the defendant,

*The form of a  
recognizance of  
bail taken be-  
fore a judge.*

If

*The Attorney's Practice*

If the defendant be not present, and does not enter into the recognizance, then the bail are bound in double the sum the cause of action is sworn to amount unto.

When bail is put in, you give notice thereof in writing to the plaintiff's attorney, as follows:

*W. D.* plaintiff  
against  
*T. M.* defendant.

*S. I. R.,*

*Notice of bail  
put in.*

Take notice, that *W. S.* of [*naming the street and parish particularly as in the bail-piece or filacer's book*] esq; and *C. S.* of, &c. apothecary, were this day put in as bail for the defendant in this cause.

*Your humble servant,*

*To Mr. S. T. at-  
torney for the  
plaintiff.*

*J. R.  
Attorney for the def.  
10 June 1777.*

If the plaintiff's attorney excepts to the bail, he marks the exception in the filacer's book or on the bail-piece, and gives notice thereof in writing to the defendant's attorney.

If the plaintiff doth not mark the exception on the bail-piece, or in the filacer's book, the bail will become absolute in 20 days, notwithstanding he has given notice of exception within the 20 days.

The bail, if excepted to, must justify in four days, or other bail must be added, who

can

can justify within that time, *vide postea*, fol. *Rule Trin. 3 & 4 Geo. 2.*

Bail excepted to, and not justifying, are as no bail, and cannot render the defendant in their discharge. *3 Wils. Rep. 59.*

The defendant's attorney must give notice of adding or justifying, or both, as the case shall be, &c.

*W. D.* plaintiff  
against  
*T. M.* defendant.

*S I R,*  
This day

*R. H.* of, &c. in the county of *Middlesex*, victualler, was added to the bail already put in for the defendant in this cause, and, on *Saturday* morning next, the said *R. H.* and also *C. S.* one of the bail before put in for the said defendant in this cause, will justify themselves as bail in court. *Notice of bail added, and of justifying.*

*Your humble servant,*

To *Mr. S. T.* attorney for the plaintiff.

*J. S.*  
attorney for the def.  
11 June 1778.

He must make an affidavit of the service of the notice, and get a serjeant to move for leave to justify in our court.

*Common Pleas.*

*W. D.* plaintiff  
against  
*T. M.* defendant  
*A. S.*

Affidavit of  
the service of  
the notice.

A. S. clerk to Mr. J. S. attorney for the defendant in this cause, maketh oath, that he, this deponent, did on *Wednesday* last, being the eleventh day of *June* instant, serve Mr. S. T. the attorney for the plaintiff in this cause, with the notice hereunto annexed, by delivering a true copy of the said notice to the said Mr. T.

Sworn, &c.

A. S.

The expence out of pocket is generally as follows :

Putting in bail before a judge.

	l.	s.	d.
Duty —————	0	2	0
Filacer in some counties	0	6	0
Judge's clerk, in term	0	12	0
5s. in vacation			
			1 0 0

Adding,

Filacer —————	0	5	4
Judge's clerk —————	0	2	0
	—————	0	7 4

Justifying in court,

Affidavit of notice ———	0	2	0
Serjeant's fee ———	0	10	6
Filacer —————	0	5	4
Secondary —————	0	1	0
Cryers —————	0	2	6
	—————	1	1 4

2 8 8

The

The judges of this court, or any two of them, whereof the chief justice to be one, may by commissions under the seal of the court, from time to time, impower such persons, other than attornies or solicitors, as they shall think fit, in any of the counties of *England*, to take such recognizances of bail as any person shall be willing to make before them, in any action or suit depending in this court, in manner and form as the judges of the court have used to take the same; which recognizance shall be transmitted to one of the judges, who upon affidavit made of the due taking thereof shall receive the same, upon payment of the usual fees: Which recognizance shall be of the like effect as if taken *de bene esse* before any judge of the court. *Stat. 4 W. & M. c. 4. Vide antea fo. 34.*

*Judges may appoint commissioners to take bail.*

*The recognizance to be transmitted to one of the judges.*

For taking this recognizance the commissioner is to take 2 s. and no more.

*Fee for taking recognizance*

The judges of assize may take recognizances of bail, which shall be transmitted and received as aforesaid, without oath.

*2 s Judges of assize may take the recognizance of bail.*

The bail may justify themselves by affidavit before the commissioner, unless they live in *London* or *Westminster*, or within ten miles thereof.

*Where bail may justify by affidavit.*

Bail put in before a judge must justify in person, and cannot justify by affidavit.

*Bail put in before a judge*

Upon this act for taking bail by commissioners in the country the court has made several rules, viz.

*must justify in person.*

*Of putting in  
bail before a  
commissioner.*

Before any bail shall be taken by virtue of this act, a true copy in parchment of the writ, to which the defendant is to put in bail, shall be brought to the commissioners, and on the said copy the recognizance or bail-piece shall be ingrossed in this or the like form, as the case shall be.

*The recogni-  
zance.*

Bail, *John Denn* of *Blackbarnsley* in the parish of *Settle* in the county of *York*, gentleman, and *Richard Fenn* of the same place, gentleman.

The party himself in 20*l.*  
Each of the bail in 10*l.*

Taken and acknowledged on the  
day of \_\_\_\_\_ in the year of our  
Lord \_\_\_\_\_ conditionally (or *de bene  
esse*) before me *A. B.* one of the commis-  
sioners.

The condition of the recognizance.

*Condition.*

You (*naming the defendant, if present*) do acknowledge to owe unto the plaintiff 20*l.* You (*naming the bail*) do severally acknowledge to owe unto the plaintiff the sum of 10*l.* a-piece, to be levied upon your several goods and chattels, lands and tenements, upon condition, that if the defendant be condemned in the said action, he shall pay the condemnation money, or render himself a prisoner to the *Fleet* for the same; and if he fail so to do, you (*naming the bail*) do undertake to do it for him.

*Affidavit to be  
made of the  
taking such  
bail.*

Affidavit of the due taking such bail shall be made before some judge of this court to  
whom

whom the bail shall be transmitted, or before some person having power to take affidavits in causes depending in this court. *Pas. 5 W. & M.*

All bails taken by any commissioner within the distance of 40 miles from the cities of *London and Westminster*, shall be transmitted to the lord chief justice, or one of the judges of the court, within ten days after the taking thereof; and all bails taken by any commissioner above the distance of 40 miles from the said cities of *London and Westminster*, shall be transmitted within twenty days after the taking thereof, unless the justices shall be on the circuits, and then as soon as one of them shall return to *London* out of his circuit. *Same rule.*

*Bail taken by a commissioner within 40 miles of London, to be transmitted in 10 days; above 40 miles in 20 days; unless, &c.*

And after such transmission shall be forthwith filed with the proper officer to be entered upon record, otherwise shall be as no bail, and the plaintiff to be at liberty to proceed on the bail-bond as if no such bail had been put in; and the defendant, in case he be admissable to plead to the original action, shall not be admitted so to do, unless he first pay the full costs to the plaintiff for the prosecution on the bail-bond, and plead as of the time when the bail should have been duly entered. *Hil. 6 Geo. 1.*

*And filed with the proper officer, or plaintiff to proceed on the bail-bond.*

*And defendant not to be admitted to plead to original action, but on payment of costs, &c.*

Bails taken before commissioners and transmitted to and allowed by a judge, shall be delivered to the clerk of the judge, who shall allow the said bail, which clerk shall take the fees due to the proper officer for

*On bail transmitted, judge's clerk to take the fees for the entry.*

the entry thereof, and forthwith deliver the same to be filed. *Mich. 13 Geo. 1.*

*No bails to be received or filed, unless transmitted within the times aforesaid.*

All bails taken before commissioners in the country shall be transmitted and filed with the proper officer, according to the rule *Hil. 6 Geo. 1.* And no such bail shall be received or filed, unless transmitted within the respective times appointed by the said rule, without leave of the court. *Mich. 6. Geo. 2.*

*If not filed in time, application to the court; no leave in the treasury.*

If the bail be not filed within the times above directed, application must be made to the court; the judges in the treasury will not give leave to file it, the rule saying it shall not be filed without leave of the court.

*Notice of such bail to be given within 4 days.*

Every defendant's attorney shall give notice to the plaintiff's attorney of the taking such bail within four days after the caption thereof. *Mich. 13 Geo. 1.*

*Name of defendant and his bail to be entered in commissioner's book.*

Every commissioner is to have a book for entering the names of the defendant and his bail, and of the plaintiff, as in the bail-piece, and the time of taking thereof; and the name of him by whom such bail shall be transmitted.

*Where plaintiff's attorney to search.*

The plaintiff's attorney may repair to such book for the names; of the bail, to the end he may inquire of the sufficiency of them; and if they are found insufficient, may except against them within twenty days after the said bail is transmitted, and notice to the plaintiff or his attorney of taking thereof; and in that case the defendant must

*Exception to be within twenty days after bail transmitted, and notice.*

*And then better bail, or bail to justify.*

either put in better bail, or the cognisors of such bail must justify themselves in open court,



court, by affidavit made before the commissioner that took the said bail, or by oath made in court, or before one of the judges.

*Pas. 5 W. & M.*

If special bail be excepted to, the defendant shall perfect his bail within four days after exception taken, and in default thereof the plaintiff may proceed on the bail-bond.

*Bail excepted to, to be perfected within 4 days.*

*Trin. 3 & 4 Geo. 2.*

If the plaintiff excepts to the bail, and the defendant adds further bail, the additional bail must justify themselves in court within the four days, without waiting for the plaintiff's excepting to them, for the plaintiff is not bound to except to additional bail; and in default of justifying, as aforesaid, he may proceed on the bail-bond.

*Additional bail are to justify, tho' not excepted to.*

If the plaintiff except to bail in the vacation, and will not be satisfied with justification before a judge, the bail must justify within the first four days of the next term at least. It has been held, that a justification before a judge was no justification but by the plaintiff's consent. That by the general rule of this court, requiring bail to be perfected within four days after exception, must be meant the next four days in term. The fair way is to give notice of a justification in court within four days after exception, but 'tis not requisite. See *Barnes* 111, 112, 115.

*Bail excepted to in the vacation to justify within the first four days of the next term.*

Notice to justify must be given two days before the day of justification; and a Sunday shall not be reckoned as one of the two days;

*What notice to be given of justifying.*

notice on the *Saturday* to justify on the *Monday* is sufficient.

Bail cannot justify themselves in court, unless they became bail before notice of their justification was given. *Mich. 18 Geo. III.*

*No attorney to be bail.*

No attorney of this or any other court, or any person practising as such, shall be bail in any suit or action depending in this court. *Mich. 6 Geo. 2.*

*No sheriff's officer.*

No sheriff's officer, bailiff, or other person concerned in the execution of process, shall be permitted or suffered to become bail in any action or suit depending in this court. *Same term.* It has been held that this rule extends to marshal court officers, and all officers executing the process of this and all other courts. *Barnes 110.*

*Of assigning the bail-bond.*

In case the defendant does not put in bail by the time limited by the course of the court, the plaintiff may take an assignment of the sheriff's bail-bond, if he approves of the sufficiency of the obligors.

*Sheriff on request to assign bail-bond to plaintiff.*

The sheriff, at the request and costs of the plaintiff or his lawful attorney, shall assign to the plaintiff the bail-bond by indorsing the same, and attesting it under his hand and seal in the presence of two or more credible witnesses, which may be done without any stamp, provided the assignment so indorsed be duly stamped before any action brought thereon. *Stat. 4 & 5 Ann. c. 16. §. 20.*

*Whomay bring an action in his own name.*

And if the bail-bond be forfeited, the plaintiff may after such assignment bring an action

action thereupon in his own name, and the court may by rule give such relief to the plaintiff and defendant in the original action, and to the bail on the said bond, as shall be agreeable to justice and reason, and such rule of court shall have the effect of a defeasance to such bail-bond. *Same stat.*

The assignee of a bail-bond must bring his action thereupon, in the same court in which the original action was commenced, for that court only hath jurisdiction and can take cognizance of the action. 3 *Wils.* 348. *Barnes* 117.

Proceedings on bail-bond not stayed, where plaintiff has been delayed. *Barnes* 112. Stayed *without* costs, defendant having surrendered before put in suit. *Barnes* 117.

Bail-bond not void, penalty thereof exceeding double the sum due. *Barnes* 159.

No bail-bond taken in *London* or *Middlesex* shall be put in suit till four days exclusive of the appearance-day of the return of the writ on which the bail-bond was taken; and no bail-bond taken in any other city or county shall be put in suit till after eight days exclusive of the appearance-day of the return of the process, and all proceedings to the contrary thereof shall be set aside with costs. *Hil. 9. Ann.*

*When bail-bond may be put in suit.*

If the writ, for example, in a country cause be returnable on the morrow of *All Souls*, defendant has to 14 *Nov.* to put in bail; and the bail-bond cannot be put in suit, till 15 *Nov.* See *Barnes* 77, 78.

*Rule for sheriff to return the writ,*

*And like to bring in the body.*

*Sheriff not returning a writ within six days after rule, to pay costs.*

*An action lies against him for a false return.*

*If the same bail be put in above as given to the sheriff, the plaintiff may except.*

If the plaintiff does not approve of the bail taken by the sheriff, he may give the sheriff a rule to return the writ, and on his returning a *Cepi corpus* he may give him a like rule to bring in the (a) body, and in default thereof may have an attachment against him.

If any sheriff, under-sheriff, or his deputy, or any other officer having the return of any process issuing out of this court, or of any precept or warrant thereupon, shall neglect or refuse to return the same within six days after service of a rule of this court for that purpose, such sheriff, under-sheriff, &c. shall be liable to pay the costs occasioned by such neglect. *Hil. 8 Geo. 1.*

And if the sheriff returns, that the defendant *Non est inventus* in his bailiwick, when he had really arrested him, an action may be brought against him for a false return.

Formerly, If the bail taken by the sheriff was put in above, the plaintiff could not except against such bail; but the same stood good and absolute: But now,

In all cases wherein bail-bonds shall be taken, and the same bail shall be put in above, the plaintiff may except against such bail. *Mich. 6 Geo. 2.*

---

(a) Where a sheriff takes a bail-bond, by a rule to bring in the body is meant perfecting bail above; court never expects sheriff to bring defendant's body into court, by virtue of the common rule. *Barnes 400.*

And

And unless the bail so excepted against shall justify themselves, or other bail be added, who shall justify themselves within the time limited by the rules of the court, the plaintiff may take an assignment of the bail-bond, and proceed thereon, notwithstanding he excepted to the same persons when put in as bail above. *Barnes* 63, 74.

*And proceed on the bail-bond, notwithstanding, if they don't justify.*

Declarations in actions on bail-bonds amended as well as any other. *Barnes* 26, 114.

Where proceedings on a bail-bond are staid upon consent that it shall stand as a security for the plaintiff, if he recovers in the original action, it is always intended and should be so expressed, that judgment be given upon the bail-bond, and that only execution thereon shall be staid; and without such consent, the court will not so stay proceeding upon the bail-bond, where the plaintiff has been delayed of a trial. But if such delay is through his own neglect, it is otherwise. Where the defendant dies before judgment could be obtained against him in the original action, the court will stay proceedings on the bail-bond; but if the defendant lives so long after the arrest, that if he had put in bail in time the plaintiff could have obtained judgment and execution against him, the court will not stay proceedings on the bail-bond. In like manner, if the defendant becomes a bankrupt and obtains his certificate, the court will stay proceedings on the bail-bond.

*Of staying proceedings on bail-bond.*

One bail e-  
steemed as no  
bail.

Whether de-  
fendant can  
surrender till  
bail is com-  
plete.

Two persons at least must become bail for the defendant; the putting in one bail only is esteemed 'as no bail, not even sufficient to ground a surrender upon, tho' it be done immediately; and the plaintiff in such case may proceed on the bail-bond notwithstanding the surrender; for the defendant cannot be surrendered until the bail is complete. *Barnes* 60, 61, 67, 105. *Pract. Reg. C. P.* 84, 85. *Plowd.* 69. *Cr. El.* 672. pl. 31.

But where a defendant, after having obtained a judge's order for time to put in and perfect bail, put in bail and surrendered himself to the *Fleet* in discharge of his bail, without previously perfecting his bail by a justification; the court held it to be regular. Before a surrender defendant is delivered to his bail, and supposed to be in their custody; by the surrender the custody is altered, and the defendant is in prison; the worth and substance of the bail, who by the surrender are discharged, is totally immaterial. *Barnes* 111, 117. but 5 *Wils. Rep.* 59. which seems *contra*.

Debt on recog-  
nizance of  
bail, writ to  
be served four  
days before  
return.

What time to  
surrender  
thereon.

No action on  
recognizance  
of bail, pend-

If an action of debt be brought on a recognizance of bail, the writ must be served four days before the return; and the bail may surrender the principal on the *Quarto die post* of the return *sedente curia*, but not after the court is risen. *Rep. & Cas. Pract. C. P.* 18.

Though an action of debt on a judgment may be brought pending a writ of error in the original action, and the court will let the

the plaintiff proceed to judgment, and only stay execution till the writ of error is determined; yet if an action of debt be brought on a recognizance of bail pending a writ of error in the original cause, the court will stay proceedings in such cause without the bail giving judgment, for by the judgment the bail would be barred from surrendering the principal. *Pract. Reg. C. P.* 83.

If the plaintiff proceeds by *Scire facias* against the bail, in case of one *Scire facias* returned *Scire feci*, the bail may surrender the principal on the appearance day of the return of the *Scire facias*; and in case of two *Scire facias*'s with *Nibils* return'd, the surrender must be on the appearance-day of the return of the last *Scire facias*, *sedente curia*. See *Barnes* 75, 76.

If the defendant dies after a *Ca. sa.* returned, though before either a *Sci. fa.* or an action of debt be brought, the bail are bound and not relievable; for after the *Ca. sa.* returned, the recognizance is forfeited by law, and all further time allowed for surrendering the principal, as is above mentioned, is merely *ex gratia*, and where there is a possibility of surrendring the principal, which by his death is become impossible. See *Barnes* 107.

A *Capias ad satisfaciendum* against the principal in order to charge the bail, should be left with the sheriff four days before the return. *Barnes* 64.

Such *Capias ad satisfaciendum* should have fifteen days between the *Teste* and return; Such *Capias ad satisfaciendum* should have fifteen days between the *Teste* and return; *Barnes*

*ing a writ of error in the original cause.*

*When bail may surrender on Sci. fa'.*

*Bail bound by death of defendant if Ca. sa. returned.*

*Ca. sa. in order to charge the bail should lie in the sheriff's office four days, and have fifteen days be-*

*tween Teste  
and return.*

*Barnes 76. See Rep. and Cas. of Pract. C. P. 114. Pract. Reg. C. P. 377. Vide antea fol. 79.*

Plaintiff shall loose his bail in case he declares differently from his writ. 2 *Wils.* 93  
3 *Wil. Rep.* 61. See *id.* 141.

*Bad returnable  
pending a writ  
of error.*

A *Capias ad satisfaciendum* returnable at a time when a writ of error is depending, is not a sufficient foundation to proceed against the bail. *Barnes 83.*

*Bail can't be  
witness for the  
defendant.*

One who is bail cannot be a witness in the cause for his principal; therefore if the defendant should have occasion to examine one of his bail has a witness at the trial, he must make an affidavit that such bail is a material witness for him in the cause, and thereupon move the court that such bail may be struck out of the bail-piece, on adding and justifying another in his stead. See *Barnes 69.*

*Bail jointly  
and severally  
for 140l. ver-  
dict for 300l.  
each shall pay  
140l.*

In an action of assault and battery the plaintiffs procured a judge's order to hold the defendant to bail for 140*l.* whereupon the defendant became bound in 280*l.* and the bail jointly and severally in 140*l.* The plaintiffs had a verdict for 300*l.* and brought separate actions on the recognizance against the bail. The bail moved the court that on payment of one sum of 140*l.* and costs, proceedings might be stayed, and compared this to an action on a bond; but the plaintiffs insisted, that there is a difference, for in a bond the condition is to pay the money; and if one obligor pays it, the other shall be discharged, for the condition is complied with; but in a recognizance the con-  
dition



dition is not satisfied till the damages recovered be paid, or the defendant surrendered. And it was held, that the bail being jointly and severally bound, the actions against them could not be discharged unless the condition of the recognizance was performed, viz. that the defendant should pay what was recovered, or surrender himself to the *Fleet*. *Calvera* 9. *Et Ux. v. Pinbero*, Mich. 12 G. 2. *Pract. Reg. C. P.* 88. *Barnes* 76, 77.

*Of Declarations.*

THE next thing the plaintiff's attorney has to do, is to prepare his declaration:

And note, That if the Action be in

*Summonitus*  
and *attachia-*  
*tus.*

*Debt,*  
*Detinue,*  
*Covenant,*

*Account,*  
*Annuity, or*  
*Replevin,*

It must be said in the Declaration, the defendant was summoned to answer, &c.

If the action be in

*Case*  
*Trespas,*

*Trover, or*  
*Ejectment,*

Then the declaration is, that the defendant was attached to answer, &c.

On a common *Clausum fregit*, the plaintiff may declare in any county, or for any cause of *On a Clausum fregit may declare in any*

county, or for any action.

of action, for that process is only to bring the party into court. *Pract. Reg. C. P.* 136, 138. *Rep. and Cas. of Pract. C. P.* 75.

The like on a Clausum fregit, with an Acetiam.

On a *Clausum fregit* with an *Acetiam* in debt, case, or any other action, the plaintiff may declare in any county, or for any cause of action whatsoever, but then he will lose his bail. *Rep. and Cas. of Pract. C. P.* 58. *Pract. Reg. C. P.* 137.

Plaintiff shall loose his bail, when he declares differently from his writ, as for instance, if he sues out a writ in his own right, and declares as executor, the court will vacate and discharge the bail, and order plaintiff to accept of a common appearance. *3 Wils.* 61.

On a *Præcipe quod reddat* must declare in debt, except it be by the by.

In a *Præcipe quod reddat* in debt the plaintiff can declare in no other action but debt, except he deliver a declaration by the by, and in that case he must first deliver a declaration in the original action. *Id. ib.*

The like on an attachment of privilege.

On an attachment of privilege *de placito debiti*, the plaintiff cannot declare in case, or for any cause of action but debt, unless the declaration be delivered by the by, and in that case the plaintiff must first declare in debt, for an attachment of privilege is in the nature of a special original.

On declaration by baron and feme, the husband can't declare by the by at his own suit.

If an action be brought by baron and feme, and a declaration be delivered, in that action, the husband cannot thereupon deliver a declaration by the by at his own suit.

Declaration by the by when to be delivered.

A declaration by the by cannot be regularly delivered after the term in which the writ was returnable.

When

When you have drawn the declaration, for your assistance, wherein you may have recourse to the following precedents, you ingross a copy of it on treble penny stamped paper, and deliver it to the defendant's attorney, who must pay you for the same at the rate of 4 *d.* per sheet, (reckoning seventy-two words to a sheet) besides the king's duty, and eightpence for filing his warrant of attorney, and then you give a rule for the defendant to plead, with the secondary of that prothonotary with whom you enter your proceedings; for this rule you pay 1 *s.* 10 *d.* viz. 1 *s.* 6 *d.* for the king's duty, and 4 *d.* to the secondary for the rule.

*Of delivering the declaration.*

Notice to plead given to defendant, after delivery of declaration without such notice, was held good, though not given at time of delivery of declaration, or endorsed thereon. 2 *Wils.* 137.

Where the defendant's attorney, after a diligent inquiry could not be found, it hath been held sufficient to leave the declaration in the office, and to give notice thereof to the defendant himself. *Pract. Reg. C. P.* 126.

*Of delivering declaration where defendant's attorney cannot be found.*

Where neither the defendant nor his attorney can be found, the court on application will order notice, &c. in the office to be good, unless the bail, if any, shew cause to the contrary. *Barnes* 308.

Before the plaintiff's attorney can sign judgment, he must by note in writing demand a plea of the defendant's attorney, except where the plaintiff has entered an appearance for

*Plea to be demanded in writing.*

for the defendant. Notice in the office, *Mich. 1 Geo. 2.*

*Plaintiff has till the end of the second term, to deliver his declaration.*

*Defendant after second term may give a rule to declare.*

*Declaration to be demanded in writing.*

*And for want thereof Non prof. to be signed.*

*Declaration to be demanded of the agent, and not of the country attorney.*

*Where no rule, the plaintiff has till the effoin-day of the 3d term to declare.*

Upon process returnable the first, or any other return of a term, the plaintiff has time to the end of the next ensuing term to deliver his declaration to the defendant's attorney, or to leave the same in the office; and the defendant's attorney (having entered his appearance) may, at the end of the ensuing term, or in four days after, give a rule for the plaintiff to declare, and having demanded a declaration by note in writing of the plaintiff's attorney, may at any time in the vacation of such ensuing term, after the rule for declaring is out, sign his *Non prof.* for want of a declaration, and not afterwards; and the plaintiff shall not, without leave of the court, have any longer time to declare than as aforesaid, other than the time limited by the defendant's rule.

*Hil. 9 Annæ.*

On a rule given to declare, a declaration was demanded of the attorney in the country, by his own agreement, but the *Non prof.* signed for want of a declaration was held to be irregular, for the declaration should have been demanded of the agent in town. *Pract. Reg. C. P. 124. Barnes 311.*

Where the defendant at the end of the second term does not give a rule for the plaintiff to declare, the plaintiff has till the effoin-day of the third term to deliver or file his declaration. *Rep. and Cases of Pract. C. P. 12. Pract. Reg. C. P. 121.*

After

After *Superedeas* ordered for want of plaintiff's proceeding to judgment within *three* terms after declaration, and before defendant could be discharged, same plaintiff caused him to be charged with a new declaration, which court held regular, being for a different cause of action. *Barnes 500.*

It has been held, that the plaintiff has two terms to declare in, after bail is put in and perfected. *Pract. Reg. C. P. 121.*

*Plaintiff has two terms to declare after bail complete.*

Where a copy of a process is served on any defendant, and an appearance is entered for such defendant by the plaintiff's attorney, pursuant to the late act \* for preventing frivolous and vexatious arrests, the plaintiff's attorney shall leave a copy of the declaration in the office, and give notice thereof to the defendant, by delivering an *English* notice written in a secretary-hand to such defendant, or by leaving the same at his last or most usual place of abode, signifying the nature of such action, at whole suit it is prosecuted, and in whose office such declaration is left; and from the time of giving such notice such declaration shall be deemed well delivered to such defendant. *Mich. 1 Geo. 2.*

*Where the plaintiff appears for the defendant.*

*Declaration to be left in the office.*

*And notice left for def. at his last place of abode.*

*Declaration well delivered from time of notice.*

And in case such defendant, after such notice given, shall not plead by the time the rule for pleading is out, the plaintiff in such case may sign his judgment (a rule to plead being first given) without any other or farther calling

*And if def. don't plead may sign judgment without farther calling so a plea.*

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\* 12 Geo. c. 29. perpetuated by 21 Geo. 2. c. 3.

ther calling for a plea. *Same rule. See Tit. Inquiry.*

*Where the plaintiff appears for the def. he may proceed without taking notice of any attorney the def. may have employed.*

Where the defendant fails to enter his appearance, and the plaintiff enters it for him, he may proceed according to the above rule, tho' the defendant may have employed an attorney to appear and plead for him, and have given the plaintiff notice of it, and the plaintiff need not call on such attorney for a plea. *Rep. and Cas. of Pract. C. P. 50, 116. Barnes 249, 250.*

*When the def. shall plead in four days.*

On all process returnable the first, second or third return of any term, if the plaintiff declares in *London* or *Middlesex*, and the defendant lives within twenty miles of *London*, the defendant shall plead within four days after such declaration delivered, with notice to plead accordingly; without any imparlance. *Mich. 3 Geo. 2. Trin. 8 Geo. 3.*

*When decl. may be delivered de bene esse.*

*When the def. has eight days time to plead.*

And in case the plaintiff declares in any other county, or the defendant lives above twenty miles from *London*, the defendant shall plead within eight days after the declaration delivered with notice to plead, without imparlance; and in default of pleading as afore-

*The four or eight days to plead are inclusive, and the notice may be given accordingly.*

Though by the word *after* in the above rules they seem to exclude the day of the delivery of the declaration, the construction of them must be governed by the rule to plead, which is inclusive of the day on which it is given. And therefore if a declaration be left in the office *de bene esse* on the first day of a term, notice thereof may be given on the same day to plead within the first four days of the term, (or first eight days of the term, if the defendant has eight days to plead) and not say within the first four (or eight) days after the declaration delivered.

said,

said, the plaintiff may sign his judgment, and all such declarations may be delivered *de bene esse*. Same rules.

And all declarations in *London* and *Middlesex* delivered pursuant to the above rule, on process returnable the first or second return of any term, where the defendant lives within twenty miles of *London*, shall be delivered, with *notice* to plead to such action within four days *after* such declaration delivered; and all declarations where the plaintiff declares in any other county, or the defendant lives about twenty miles from *London*, shall be delivered with *notice* to plead within eight days *after* such declaration delivered. *Pasch. 3 Geo. 2.*

Such declarations to be delivered with notice when to plead.

The plaintiff may deliver a declaration *de bene esse*, before the time the defendant has to put in bail, or enter a common appearance, is expired, but not afterwards.

Decl. may be delivered *de bene esse* before time for bail or appearance expired.

It seems a doubt, whether notice of a declaration being filed is necessary, where bail is put in. See *3 Wils. 147.*

Held that delivering a declaration, after the time for putting in bail is expired, as a declaration *de bene esse*, is no waiver of the exception to bail; but demanding a plea thereupon is a waiver of the exception; it is admitting the defendant to be in court, and in a condition to plead. *Trin. 16 & 17 Geo. 2. C. B. Lister v. Wainhouse. Barnes 92.*

Whether declaration *de bene esse*, and proceeding thereon, will be waiver of exception to bail.

In an action which requires only a common appearance, if a declaration be delivered *de bene esse*, the plaintiff can't sign judgment for want of a plea, till the time the

On declaration *de bene esse* judgment can't be signed till appearance entered.

defendant had to enter his appearance is expired; as suppose the *capias* is returnable *Octab. Hilar.* and a declaration is left in the office *de bene esse* on the 23d of *January*, and notice and a rule to plead is given the same day, the rule will be out on the 26th, but as the defendant has eight days to appear, exclusive of the return-day, the plaintiff can't sign judgment for want of a plea, till the 29th of *January*, and then an appearance must be first entered, either by the defendant or the plaintiff for him.

*Indorsement on declaration de bene esse.*

Where a declaration is left in the office *de bene \* esse*, there should be an indorsement on it, signifying that it is left conditionally, or *de bene esse.* *Barnes 257.*

*Decl. to be delivered four days exclusive before the end of the term.*

To have a plea the same term, the declaration should be delivered four days (exclusive of the day of the delivery) before the end of the term.

All declarations and pleadings must be delivered, and all demands thereof, and all notices given, before nine of the clock in the evening. *Mich. 3 Geo. 2.*

*Decl. delivered to def. his attorney being known, is bad.*

A copy of a declaration delivered to the defendant, his attorney being known, is a bad delivery of the declaration.

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\* But on the court's looking into the general rules of *Mich. 3 Geo. 2.* and *East. 3 Geo. 2.* they held that it was not necessary to indorse notice to plead on the declaration where it is filed *de bene esse*, and notice thereof given to defendant. *Barnes 303.*



If the attorney be not known, the declaration may be left in the office, and notice given to the defendant. *Barnes* 308. See *Id.* 335.

Where a country attorney is concerned for the defendant, the declaration or notice of its being left in the office (as the case shall be) must be given to the agent, and not the country attorney, but where the declaration has been accepted in the country, and Oyer of the bond demanded and given there, and a plea demanded there, the court has refused to set aside the judgment for want of a plea, the defendant having agreed to this method of proceeding by accepting the declaration, &c. in the country. *Must be delivered to the agent, and not to the country attorney. Barnes* 306.

The declaration is only well delivered from the time of notice, and therefore if notice of the declaration be given after the rule to plead is given, it is irregular. *Pract. Reg. C. P.* 131. *Rep. & Cas. Pract. C. P.* 111. *Barnes* 304. *Declaration is only well delivered from the time of notice.*

If such defendant has eight days to plead, and the declaration be delivered with notice to plead in four days, it is irregular, though judgment be not signed till the eight are expired. *Barnes* 302, 303. *Pract. Reg. C. P.* 135. *Notice to plead in four days when it should be eight, irregular.*

Two declarations, one against husband and wife, and the other against wife only, cannot be consolidated. *2 Wils.* 227.

On a motion to set aside judgment, for that the notice of the declaration mentioned, that the declaration was for goods sold and delivered, and materials found, whereas there was a count in the declaration for money *Notice need not set forth the whole declaration.*

lent, which was not mentioned in the notice. Upon reading the rule of court, which is, that the plaintiff shall give notice of the nature of the action, the notice was held to be good; and it was said, that it is not necessary to set forth the whole declaration. *Turner, administrator, v. Bourns, Pasch. 2 Geo. 2. Pract. Reg. C. P. 132.*

And it was held, that it is only necessary to set forth the nature of the action, as in debt or in case, without mentioning for what, for that will appear by the declaration itself. *Skin against Gwinel, Pasch. 5 Geo. 2. Pract. Reg. C. P. 133. Barnes 299. S. P.*

But where the notice was a declaration *in an action of trespass on the case* without further description, it was held insufficient; the intent of the rule being that the defendant should know what he was sued for. Actions in the case for contracts, and for torts are widely different; on several undertakings and promises, or at least on promise should have been added. *Hil. 29 Geo. 2. Taylor against Oxley. Barnes 498. 2 Wils. 84.*

*Irregularity in delivering declaration to be complained of two days before executing inquiry.*

If there be any irregularity in the delivery or notice of the declaration, the defendant must apply to the court two days before the day appointed for executing the writ of inquiry. *Pract. Reg. C. P. 127.*

Declaration under peculiar circumstances amended on payment of costs, and terms put on defendant, tho' leave to withdraw declaration, and declare *de novo* refused. *Barnes 25, 26.*

*Prece-*

*Precedents of Declarations.*

In the Common Pleas.

(a) *Easter Term in the seventeenth year  
of the reign of king George the third.*

Middlesex, *P. F.* late of *Westminster* in the *On a bond.*  
*to wit.* said county of *Middlesex*,  
doctor of physic, (b) otherwise called *P. F. de*  
*paroch. sancti Martini in Prat. Westmonasterii,*  
*Medicinæ Doctor*, was summoned to answer  
*J. H.* of a plea, that he render to him seventy  
pounds which he oweth to him, and unjustly  
detaineth, and so forth. And wherefore the  
said *J.* by *A. B.* his attorney saith, that where-  
as the said *P.* on the nineteenth day of *April*  
which was in the year of our Lord one thou-  
sand seven hundred and fifty-eight, at *West-*  
*minster* aforesaid in the county of *Middle-*  
*sex* aforesaid, by his certain writing obliga-  
tory acknowledged himself to be bound to  
the said *J.* in the aforesaid sum of seventy  
pounds, to be paid to the said *J.* when he the  
said *P.* should be thereunto required, Never-  
theless the said *P.* although often required,  
hath not paid the said seventy pounds to the

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(a) Title of declaration made agreeable to truth of  
fact. 2 *Will.* 256.

(b) As to the *Alias dict.* Vide antea fo. 80.

said J. but hath hitherto refused, and still doth refuse to pay the same to him; wherefore the said J. saith that he is injured, and hath damage to the value of twenty pounds; and thereof he bringeth suit, and so forth. And he bringeth here into court the aforesaid writing, which testifieth the said debt in form aforesaid, the date whereof is the day and year above-mentioned, and so forth.

### In the Common Pleas.

*Michaelmas Term in the seventeenth year of king George the third.*

*On a Mutu-  
atus.*

London, *W. S.* late of *London*, esq; was  
to wit, *W. S.* summoned to answer *R. F.*  
gent. of a plea, that he render to him 50*l.*  
which he oweth him, and unjustly detaineth,  
*&c.* And whereupon the said *R. F.* by *L. R.*  
*R.* his attorney, saith, that whereas the said  
*W. S.* on the                    day of                    in  
the year of our Lord one thousand seven hun-  
dred and fifty-seven, at *London* aforesaid in  
the parish of *St. Mary le Bow* in the ward of  
*Cheap*, borrowed of the said *R. F.* the said  
50*l.* to be paid to the said *R. F.* when he the  
said *W. S.* should be thereunto required; yet  
the said *W. S.* although often required, hath  
not yet paid the said 50*l.* to the said *R. F.*  
but hath hitherto intirely refused, and still  
doth refuse, to pay him the same; wherefore  
the said *R. F.* saith, that he is injured, and  
has

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

You seldom declare in debt for money borrowed, but where judgment for a debt without bond is confessed by virtue of a warrant of attorney, but declare in case on an *Indebitatus assumpsit*.

In the Common Pleas.

*Hilary Term in the seventeenth year of the reign of king George the third.*

Middlesex, *T. T.* late of *Westminster* in the county of *Middlesex*, dealer in coals, was attached to answer *T. D.* in a plea of trespass on the case: And whereupon the said *T. D.* by *L. R.* his attorney complaineth, that whereas the said *T. T.* on the first day of *January* in the year of our Lord one thousand seven hundred and fifty-seven, at the parish of *St. Clement Danes* in the county of *Middlesex*, was indebted to the said *T. D.* in the sum of 100*l.* lawful money of *Great Britain*, for the like sum of money before that time lent by the said *T. D.* to the said *T. T.* at his special instance and request, and being so indebted, he the said *T. T.* in consideration thereof, afterwards, that is to say, on the same day and year aforesaid, at the parish aforesaid in the county aforesaid, undertook, and then and there faithfully promised

Breach.

mised the said *T. D.* that he the said *T. T.* would well and truly pay the said 100*l.* to the said *T. D.* when he the said *T. T.* should be thereunto afterwards requested: *Nevertheless* the said *T. T.* not at all regarding his said promise and undertaking so made in form aforesaid, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said *T. D.* in this behalf hath not paid the said sum of money, or any part thereof, to the said *T. D.* (although to pay the same to the said *T. D.* he the said *T. T.* afterwards, that is to say, on the same day and year aforesaid, at the parish aforesaid, in the county aforesaid, was requested by the said *T. D.*) but the said *T. T.* hath hitherto intirely refused, and still doth refuse, to pay the same, to the said *T. D.* to the damage of the said *T. D.* of 120*l.* And thereof he bringeth suit, &c.

Indebitatus  
assumpsit for  
money had  
and received to  
the plaintiff's  
use.

*As before, to* — For that whereas the said  
O. B. on the                      day of  
in the                      year of his present majesty's  
reign at the parish of  
in the county of *Middlesex*, was indebted to  
the said *S. A.* in 30*l.* lawful money of *Great  
Britain*, for so much money by the said *O.  
B.* before that time had and received to the  
use of the said *S. A.* and being so indebted,  
he the said *O. B.* in consideration thereof, af-  
terwards, that is to say, on the same day and  
year aforesaid, at the parish aforesaid in the  
county aforesaid, undertook, and then and  
there

there faithfully promised the said *S. A.* that he the said *O. B.* would well and truly pay the said 30*l.* to the said *S. A.* when he the said *O. B.* should be thereunto afterwards requested: *Nevertheless, &c. as before.*

*As before, to* — For that whereas the said *T. M.* on the \_\_\_\_\_ day of \_\_\_\_\_ in the \_\_\_\_\_ year of his present majesty's reign, at the parish of \_\_\_\_\_ in the county of \_\_\_\_\_ was indebted to the said *C. M.* in 20*l.* lawful money of *Great Britain*, for so much money by the said *C.* for the use of the said *T.* and at his special instance and request before that time paid, laid out and expended, and being so indebted, he the said *T.* afterwards, that is to say, on the same day and year aforesaid, at the parish aforesaid in the county aforesaid, undertook, and then there faithfully promised the said *C.* that he the said *T.* would well and truly pay the said 20*l.* to the said *C.* when he the said *T.* should be thereunto afterwards requested: *Nevertheless, &c.*

*Indebitatus  
assumpsit for  
money laid out.*

**In the Common Pleas.**

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

London, *T. M.* late of *London*, merchant,  
*to wit.* *T.* was attached to answer *J. S.* in  
a plea of trespass on the case: And whereup-  
on the said *J. S.* by *M. C.* his attorney com-  
plaineth, 44, 55, 90.

*On an inland  
bill of exchange  
by the drawee  
against the  
drawer.  
Lilly's Ent.  
44, 55, 90.*

plaineth, that whereas the said *T. M.* on the 17th day of *May* in the year of our Lord 1763; at *London* in the parish of *St. Mary Le Bow* in the ward of *Cheap* (he being then a person trading, merchandizing, and using commerce at *London* aforesaid) according to the usage and custom of merchants from the time to the contrary whereof the memory of man is not, made his certain first bill of exchange in writing subscribed with his own hand, bearing date the same day and year aforesaid, and directed the said bill of exchange to one *J. H.* (the said *J. H.* then being a person trading, merchandizing, and using commerce to foreign parts, namely, at ) by which said bill of exchange the said *T. M.* required the said *J. H.* twenty-one days after sight thereof, to pay his said first bill of exchange to the said *J. S.* (by the name of *J. S.* merchant at *London*) or order, 112*l.* 5*s.* value of him, with or without advice from the said *T. M.* which said bill of exchange afterwards, that is to say, on the 15th day of *May* in the year of our Lord aforesaid, at aforesaid, was shewn to the said *J. H.* for his acceptance thereof, and the said *J. H.* did not accept the said bill, but then and there refused to accept the same, of which the said *T. M.* afterwards, that is to say, on the fifteenth day of *June* in the year of our Lord last mentioned, at *London* aforesaid in the parish and ward aforesaid, had notice, and by reason of the premises, and also according to the usage and custom of merchants, he the said *T. M.* was and became liable to

pay

*Bill not  
accepted.*



pay unto the said J. S. the said sum of 112 l. 5 s. in the said bill of exchange mentioned; and being so liable, he the said T. M. afterwards, that is to say, on the same day and year last mentioned, at *London* aforesaid in the parish and ward aforesaid, undertook, and to the said J. S. then and there faithfully promised, that he the said T. M. would well and faithfully pay and satisfy to the said J. S. the said 112 l. 5 s. in the said bill of exchange mentioned: *Nevertheless, &c.*

It is usual and necessary to lay diverse counts in one declaration, where the plaintiff hath various demands against the defendant, as on a promissory note, for goods sold, money lent, &c. and even where he hath but one demand; as, suppose for goods sold and delivered, it will be proper to lay two counts, as an *Indebitatus assumpsit*, and a *Quantum valebant*, whereupon if he fails of proving the price agreed on, he may prevail on the *Quantum valebant* upon proving the delivery of the goods, and the value of them at that time; and as to the promise in such cases there is no occasion to prove it; the law implies it upon proof of the debt.

### In the Common Pleas.

*Hilary Term in the seventeenth year  
of the reign of king George the  
third.*

Middlesex; *D.* G. late<sup>ly</sup> of the parish of St. On a promissory Note,  
to wit. *R.* Andrew, Holbourn, in the  
county of Middlesex, druggist, was attached  
to

to answer *S. N.* of a plea of trespass on the case: And whereupon the said *S. N.* by *L. R.* his attorney complaineth, that whereas the said *R. G.* on the tenth day of *December* in the seventh year of his present majesty's reign, at *Westminster* in the county of *Middlesex*, made his note in writing subscribed with his own hand, commonly called a promissory note, bearing date the same day and year, by which said note the said *R. G.* promised to pay to the said *S. N.* or his order, *ten days after* the date of the said note, the sum of fifty pounds, *for value received by* him the said *R. G.* By reason whereof, and also by force of the statute in such cases made and provided, the said *R. G.* became liable to pay to the said *S. N.* the said sum of 50*l.* in the said note mentioned, according to the tenor and effect of the said note; and being so liable, he the said *R. G.* in consideration thereof, afterwards, that is to say, on the same day and year aforesaid, at *Westminster* aforesaid in the county aforesaid, undertook, and then and there faithfully promised the said *S. N.* that he the said *R. G.* would well and truly pay to the said *S. N.* the said 50*l.* in the said note mentioned, according to the tenor and effect of the said note. *And whereas also* the said *R. G.* afterwards, that is to say, on the first of *January* in the year aforesaid, at *Westminster* aforesaid in the county aforesaid, was indebted to the said *S. N.* in 100*l.* of lawful money of *Great Britain*, for diverse goods, wares and merchandizes, by  
the

Indebitatus  
assumpsit for  
goods sold and  
delivered.