

THE *W. G. A. Ho*
Attorney's Practice
IN THE *W. G. A. Ho*
Court of Common Pleas:
OR, AN
INTRODUCTION

TO THE
KNOWLEDGE of the PRACTICE of that
COURT, as it now stands on the Regulation
of several late ACTS of PARLIAMENT,
RULES, and DETERMINATIONS of the
said COURT.

WITH
Variety of useful and curious PRECEDENTS in
English, drawn or perused by Counsel; and a
Complete INDEX to the Whole.

By ROBERT RICHARDSON, Gent.

The Fifth Edition, with Large Additions.

In TWO VOLUMES.

VOL. I. 8^o

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For B. TOVEY, J. RIVINGTON and SONS, P. URIEL,
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T H E
P R E F A C E.

THE *Attorney's Practice* in the *Court of King's Bench* having met with a very favourable reception, and being universally allowed to be the most useful book of the kind hitherto published, the author of it was induced to compile the following work, which he formed on the same plan with the former; here-

in are set forth under their proper heads the several acts of parliament relating to the practice, such rules of court as are now in force, adjudged cases on most points of practice, and a great variety of useful precedents.

The statutes and rules of the court are not set forth in a brief or summary way, but the enacting and ordering parts generally at large, so that the reader will scarce ever have occasion to apply to the statutes or rules themselves.

To the acts of parliament, rules of court and adjudged cases, the author has chiefly confined himself in this work, chusing rather to be silent, than to
say

P R E F A C E.

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say any thing for which he had not sufficient authority, and being cautious of nothing more than leading the young practicer into a mistake.

The precedents, of which the greatest part were drawn or perused by counsel, are such as will be most frequently wanted in the general course of business.

To render this book the more useful, a very copious index is added, drawn under a great variety of heads, so that the reader may with ease apply to any particular point of practice he shall want to be informed of.

To the second edition was added a new volume of pleadings,

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a thing

a thing desired by many, and, it is hoped, will be acceptable to all who are willing to attain a competent knowledge in their profession; for it is a certain truth, that he can never be an able attorney who is not a good entering clerk, and tolerably well skilled in special pleading. Formerly all attornies drew their own pleadings, and never had occasion for any assistance but the advice of the most learned. This kind of learning, which is now too much neglected, led them into the very reasons of the practice, and into a knowledge of the common law, which none but a special pleader can be said to be thoroughly master of: An attorney, without being acquainted with special pleading, can

can have no other, than a confused knowledge of such particular instances of practice only as have passed through his own hands, and upon the least variation is as much at a loss as if he never knew any thing of the matter; hence spring demurrers, motions, expence and endless delays to the suitors, and discredit to the practicer; for which reasons the loss of this branch of learning among the generality of the profession is greatly to be lamented, and the retrieving of it can't be too much recommended.

In the third edition were added instructions for levying fines, and suffering common recoveries, with some directions touching replevins.

In

In this fifth edition, besides a great variety of new acts of parliament and rules of court, and also adjudged cases from *Barnes, Wilson, &c.* are many additional notes and observations, and the following entire new heads, to take them alphabetically:

1. Action for criminal conversation.
2. Inrolling deeds.
3. Motions.
4. Mutual debts and credits.
5. Proceedings against peers and members of parliament.
6. Proceedings in order to save the statute of limitations.
7. References from court. And
8. Summonces.

See the Index:

The following order of the chief justice not being published

till that part of this volume was printed off, in which, it could with any degree of propriety be introduced, it is here inserted.

Under the printed papers of sittings in and after *Hilary* Term, 1778, is the following notice given, *viz.*

The Lord Chief Justice to obviate a great expence and inconvenience to defendants and their witnesses, in causes entered for the *first* day of sittings *after* term, through the plaintiff's not passing the records in proper time, hath thought fit to order, that all records in such causes, be passed and left with his marshal, on the preceding evening of such sitting, by the hour of seven.

T H E

sonal and mixt (*c*) actions, this court and the court of *King's Bench* have a concurrent jurisdiction.

The jurisdiction of this court is general, and extendeth itself throughout all *England*.

Generally all actions (*d*) in this court are founded upon original writs issuing out of the *Chancery*, and returnable in this Court, whereupon the plaintiff proceeds either to arrest the defendant, outlaw him, or serve him with a copy of process, pursuant to the statutes 12 G. 1. c. 29. 5 G. 2 c. 27. Perpetuated by 21 G. 2. c. 23.

them or damages for wrong done to his person, and is properly that which in the civil law is called *actio in personam*, which is brought against him who is bound in covenant or default to give or grant any thing. “*Terms of the law*,” Tit. “*Actions personal*.”

(*c*) A mixt action is a suit given by the law to recover the thing demanded, and damages for the wrong done; as in assize of novel disseisin, which writ (if the disseisor makes a feoffment to another) the disseisor shall have against the disseisor and the feoffee, or other tertenant, and thereby shall recover his seisin of the land, and his damages for the mesne profits, and for the wrong done him; and so is an action of waste and *quare impedit*; but an action of *detinue* is not called an action mixt, altho' by it the thing withheld is demanded, and shall be recovered if it may be found, and damages for the withholding, and if it cannot be found, damages for the thing and the detaining; but still an action of *detinue* is called only an action personal, because it should be brought only for goods and chattels or charters.

(*d*) An action is the form of a suit given by law to recover a thing, as an action of debt, &c. or as it is in 8 Rep. 151. a. an action is a right of prosecuting to judgment that which is due unto any one; *actio est jus prosequendi in iudicio, quod alicui debetur*.

But

But this court may hold plea on writ of privilege issuing originally out of this court at the suit of any attorney, officer, minister, or clerk of the court intitled to such writ.

It may also hold plea by bill, which is in the nature of a petition to the court, against any attorney, officer or minister, intitled to the privilege of the court; and expresses either the grievance or wrong which the plaintiff has suffered by the defendant, or else some fault by him committed against some law or statute of the realm.

A knight, citizen, burghers, or other person intitled to privilege of parliament, may be sued in this court by original bill, in manner as directed by the statute 12 & 13 *W. 3. c. 3.*

This court may, upon proper suggestions, grant prohibitions to keep, as well temporal, as ecclesiastical courts, within their proper bounds and jurisdictions, without any original writ or plea depending; for the common law, which in these cases is a prohibition of itself, stands instead of an original. 12 *Co. 108.*

Actions are also removed into this court out of inferior courts of record by writ of *Habeas corpus cum causa*, or (*e*) *Certiorari*; and out of inferior courts not of record, by

(*e*) *Certiorari* is a writ that lies to remove a record into a superior court from an inferior court of record, where the party supposes he may not have equal justice done him.

(*f*) *Pone*, (*g*) *Recordari*, (*h*) *Accedas ad curiam*, or writ of false (*i*) judgment.

This court hath also jurisdiction for the punishment of its own officers and ministers, and all other persons guilty of contempts against the rules and orders of court.

Sir John
Walter refused
to surrender
his patent
without cause
of misbehavior
shewn, the
same being
granted dur-
ing good be-
havior.

Notwithstanding king Charles I. commisioned Sir John Walter, a profound learned man, a grave and able (*k*) judge, and of great integrity and courage, by his royal letters patent, to exercise his office, during his good behaviour, yet, he being in the king's (*l*) displeasure, was in the beginning of Mich. (*m*) term, 5 Car. 1. A. D. 1630, before he set in court, (*n*) required, by command from his majesty, to forbear to come to Westminster (*o*) Hall, for the purpose of exercising his judicial place in (*p*) court, and, in obedience to the said command, he did

(*f*) Is a writ whereby a cause depending in the county court is removed into this court.

(*g*) Commonly called a *refalo*, taking its name from the first syllable of each word in the name of the writ, viz. *recordari facias loquulam*.

(*h*) This writ lies to remove a cause out of the court baron into this court.

(*i*) If a false judgment be given in a court not of record, as in a county-court, hundred, or court baron, the party injured may have a writ of false judgment, returnable in this court.

(*k*) Whitl. Mem. Engl. Af. 16. Col. 1, Cr. Car. 147:

(*l*) Whitl. Mem. ib.

(*m*) Cr. Car. 153.

(*n*) The king discharged him from his service by message, Whitl. ib. see id. 14. Col. 1.

(*o*) W. Jo. 230.

(*p*) Cr. Car. 147, 153.

(*q*) forbear,

(*q*) forbear, and never exercised his office, after the king forbad (*r*) him; but yet he still retained his (*s*) post; and because his judicial office was conferred on him, *quam diu se bene gesserit*, he would not leave his place, nor surrender his patent, but by the legal proceeding of *Sci. Fa.* to try, whether he did *bene se gerere* or (*t*) not; and that the king might shew what cause he had, for determining his patent, or for him to forfeit it; so he continued a judge to the time of his death (*u*).

After the passing the votes against the judges, for their opinion in case of ship money, 16 December 1640, and transmitting them to the house of peers, and their concurring with the house of commons therein, an address was made to the king shortly after, that his majesty for the future would not make any judge by patent (*w*) *during pleasure*, but that they might hold their places hereafter, *quam diu se bene gesserint*; and his majesty did readily grant the same; and in his speech to both houses of parliament, at the time of his giving his royal assent to two bills, one to take away the high (*x*) commission court, and the other the court of star (*y*) chamber, and regulating

Commissions of the judges during good behavior, instead of during pleasure,

(*q*) W. Jo. 230.

(*r*) Whitl. Mem. Engl. Af. 16. Col. 1.

(*s*) Id. ib.

(*t*) Whitl. Mem. 16. Col. 2.

(*u*) Cr. Car. 147.

(*w*) Clar. Hist. Rebel 121.

(*x*) Stat. 16 Car. 1. Chap. 11.

(*y*) Stat. 16 Car. 1. Chap. 10.

the power of the council table, he hath this passage "If you consider what I have done this parliament, discontents will not fit in your hearts; for I hope you remember that I have granted that the judges hereafter shall hold their places, *quam diu se bene (z) gesserint.*"

Sir John Archer refused to surrender his patent without cause of misbehavior shewn, the same being granted during good behavior.

As king Charles II. observed the same rule and method, in granting patents to judges, *quam diu se bene gesserint*, as his royal father did, as appears upon record, in the rolls of the court (a); so he did in removing a judge, notwithstanding his solemn grant inrolled on record to the contrary; for Sir John Archer, one of his justices of the court of common pleas, after having sat in this court, nine years, was, during the vacation after Mich. (b) term, 24 Car. 11. (being then senior (c) judge,) required to forbear the exercise of his office, either in court or elsewhere; and was amoved from sitting therein, for reasons unknown to Mr. Justice (d) Raymond; but Sir John having his patent,

(z) 3 Ruther. Histor. Collect. 1366.

(a) Clar. Hist. Rebel. 121. Mr. Justice Croke observes, that the judges of both benches are made only during the king's pleasure, so that they are removeable at the king's will, Cro. Car. 147. and Mr. Justice Jones observes, that Sir Humphry Davenport's patent (Sir John Walter's immediate successor in the chief baronship in the Exchequer) was during pleasure, and that of Sir Walter's, during good behavior. W. Jo. 230. 3 Ruther. Histor. Collect. fol. 1366.

(b) T. Jo. 43.

(c) T. Raym. 217. T. Jo. 43.

(d) T. Raym. 217.

quam diu se bene (e) gesserit, refused to surrender the same, without a *Scire Facias*: so that he continued a justice of this court, though prohibited to sit (*f*) therein; and, notwithstanding his removal, enjoyed his patent, and received a share in the profits of the said court, as to fines and other proceedings, by virtue of his patent; and his name was used in those fines, &c. as a judge of that (*g*) court.

By Stat. 20 *Edward III.* chap. 1. the *Judges salaries* king's justices are to take no fee, but of ^{*ries.*} the king.

The ordinary allowances of the judges, were, in *Edward I.*'s time, very (*b*) liberal, according to (*i*) *Whitlock*.

By stat. 10 *Hen. VI.* stat. 2. the salaries of the judges were to be paid them half yearly, in *E.* and *M.* terms, by the lord high (*k*) treasurer of *England*; but it appears by the year (*l*) books, that they were to be paid

(*e*) T. Jo. 43. T. Raym. 217.

(*f*) T. Raym. 217.

(*g*) 3 Ruser. Histor. Collect. 1364.

(*b*) The salary of the judges was liberal anterior to the reign of *Edward I.* according to Sir *William Dugdale*, for he informs us, the chief justice of England received 1000 marks a year, for his support in that great employment, so early as 44 *Hen. II.* Dugd. Orig. Jur. 20.

(*i*) Whitl. Mem. Engl. Af. 344.

(*k*) The treasury is now and hath been in commission, a great number of years.

(*l*) 10 *Hen. VI.* fol. 1 *Hen. VII.* fol. 3, 4, 5.

out of the (*m*) arrears of the customs, by the customers and comptrollers of *London*; and that it was enacted by the said statute, that they should pay to the justices, out of the first monies arising out of the customs; and that they should have their proportion by the day, and it was held that the customers were liable, though the king granted a licence to some merchants, to retain the customs, in their hands, for the judges met at *White-Fryars*, and agreed to sue, but the customers (*n*) complied.

From the death of king *Hen. VI.* to the date of their patents, in king *Richard III.*'s time, the judges had a privy seal to receive their salaries; as they had from the mean time, between the death of *Richard III.* and the date of their patents, in *Henry (o) VII.*'s time.

Sir *William (p) Dugdale*, is of opinion, that the salaries of the judges were more cer-

(*m*) By stat. 1 *Geo. III.* chap. 23. sect. 3. the salaries of the judges are payable out of the annual sum granted for the support of his majesty's household, and the honor and dignity of his crown; and by sect. 4. they are, after the demise of his majesty, to be charged upon and paid out of the duties granted for the use of his majesty's civil government, as shall be subsisting after such demise, until some other provision be made by parliament for the expences of the civil government; and until the making such provision, and securing the continuance thereof, such salaries shall be paid out of the monies applicable to the said uses and expences.

(*n*) See Year book, 1 *Henry VII.* fol. 3.

(*o*) See Year book, 1 *Henry VII.* fol. 4, 5.

(*p*) See Orig. Jur. 105.

in the Court of Common Pleas.

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tain after 18 *Henry VI.* because in that year the judges of all the courts in *Westminster Hall*, together with the attorney general, and king's serjeants at law, exhibited a petition to the parliament, in *French*, a copy whereof may be seen in *Sir William's Origines (q) Juridicales*; soon after which their salaries were (r) encreased.

Oliver's (s) Parliament provided that every judge should have a competent supply, according to his great pains and quality, for their better encouragement and support.

By stat. 12 & 13 *William III.* chap. 2. stat. 13. the salaries of the judges were ascertained and established; during which reign, and until the accession of his present majesty's great grandfather, king *George I.* the salaries of all the judges (the chiefs as well as the puisne) were equal, viz. 1000 *l.* a year, upon whose accession they were increased by distinct patents from those, by which they were appointed judges, viz.

The salary of the chief justice of this court, to double his former salary, and those of the rest of the judges, to half as much again, as their former salaries. See 2 *R. Raym.* 1319.

By stat. 32 *George II.* chap. 35. sect. 18. the salary of every of the puisne judges is augmented 500 *l.*

(q) *Id.* ib.

(r) *Id.* 109, 110.

(s) *Whitl. Mem. Engl. Af.* 344.

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By stat. 1 *George III.* chap. 23. sect. 3, 4. such salaries as are settled by act of parliament upon, or granted by his majesty to any judge, shall be paid him as long as his patent and commission continue in force.

The salaries of the judges of this court seem now not only to be ascertained but also established, as follows: The lord chief justice 2500 *l.* (1) *per annum*, every of the puisne judges 2000 *l.* *per annum*.

At common law the patents of the judges were determined by the demise of the crown, but by stat. 7 and 8 *William III.* chap. 27. sect. 21. and 1 *An. stat.* 1. chap. 8. sect. 1, 2. no patent or grant of any office shall cease or be void, by reason of the demise of the crown, but shall remain in force for six months, unless superseded by the successor, and by stat. 12 and 13 *Wil. III.* chap. 2. the commissions of the judges are to be made *quam diu se bene gesserint*, but upon the address of both houses of parliament, they may be removed.

The court consists of a chief justice and three puisne judges, created by letters patent; but no one can be constituted a judge of this court, unless he be a serjeant of the degree of the coif.

(1) This judge's salary was increased from 2000 *l.* to 2500 *l.* a year, by his present majesty; and the reason it is not equal to other chiefs is, because all fines and recoveries are levied and passed in this court only, and the fees thereof are almost the sole perquisites of the chief.

The present judges are Sir *Thomas De Grey*, chief justice; Sir *Henry Gould*, second; Sir *William Blackstone*, third; and Sir *George Nares*, puisne justice.

Officers of the Court of Common Pleas.

THE *custos brevium* is the first or principal officer of the court of *Common Pleas*, and holds his place by grant from the crown; the present patentees are *John Browning*, Sir *Robert Eden*, *Frederick Young*, and *Edward Gore*, who execute the said office by *John Walton*, esq; their deputy.

Custos brevium.
His appointment.

The duty of this officer is to record and file in his office all original and judicial writs, and inquisitions taken by virtue of any such writs, all postea after verdicts, and fines, with the concords signed by the parties acknowledging the same; and the writs of *De dimus potestatem* issued for taking the acknowledgment of such fines, with the transcripts thereof, &c. which fines are by him entered in a book of the same term the respective writs of covenant are returnable, and the proclamations of such fines are by him indorsed, upon the captions, according to the statute. He is also to record and file all writs of entry and summons, writs of *Dedimus potestatem* for taking warrants of attorney thereupon, and writs of seisin to support recoveries suffered in the said court; to make copies and exemplifications of the said writs and records when required, and to return writs of *Certiorari*, directed to him, for the removing

And duty.

removing any writs or other records into the court of *King's Bench*.

Prothonotaries.

Their appointment, &c.

There are three prothonotaries of this court, who hold their offices for their respective lives, and (a) are admitted by the chief justice of the court for the time being. The second prothonotary is admitted on the nomination of the *custos breviarum*, who, in right of his office, has the appointment of the second prothonotary. Each of the three prothonotaries has, belonging to his office, one secondary, one clerk of the judgments, and one clerk of the dockets. The present prothonotaries are *William Mainwaring*, *Anthony Dickens*, and *Henry Earle*; their office is No. 2. in *Tanfield* court, *Inner Temple*; and their hours of attendance from 9 in the morning to 1 in the afternoon, both in term and vacation; and from 4 in the afternoon to 8 at night in term time; and to 6 in the evening in vacation.

(a) *Memorandum*. That the office of chief prothonotary in the Common Pleas, being vacant, after the last term, by the death of *Nicholas Rockwood*; and lord *Brook*, chief justice of the Common Pleas, gave the said office to *Gibson* his wife's brother; and, because he was not qualified, revoked it, and conferred the same on *Whitley*, contrary to the pleasure of the other justices, who thought *Bill* a fitter person. *Mich. 4 & 5 P. & M. Dy. Rep. 150 b. pl. 1. K. & Ent. 443.* See the oath of a prothonotary. *Reg. Ent. 442.* See the admission of a second prothonotary, and the admission of a third prothonotary. *Nicole's Entr. fo. 3.*

The chief prothonotary administers the oaths to the officers and attornies of the court; enters on record the patents of the justices, and the patents, surrenders and admissions of the other officers of the court. He enters on a remembrance roll the names of all attornies sworn in court, and makes certificates thereof to the clerk of the warrants, who thereby enter their names in the roll of attornies. He enters all writs of adjournments of the terms; he draws up the general rules of the court, made for regulating and settling the practice in the proceedings therein, and causes the same to be ingrossed and hung up in the treasury chamber at *Westminster*, and gives copies thereof to the judges, and to the other prothonotaries and officers of the court, if required, without any fee. He administers the oaths and declarations taken to the government; and keeps an alphabetical list of the names of the persons taking the same; and files in his office the certificates brought in by them; and also the rolls on which they subscribe their names. He has the custody of the court-book, in which are entered the names of all causes on demurrers, special verdicts, and other matters that are to be argued in court, and of causes that are to be tried at bar, with the respective terms, number-rolls, and offices in which they are entered, and takes minutes of the judgment of the court in all causes argued therein.

The duty of the chief prothonotary.

The chief prothonotary is also attorney for the city of *London* within this court, and hath

hath from the city yearly four yards of black cloth to make him a gown; and a livery fee of *1l. 13s. 4d.* is paid yearly to him by the secondaries of *London*, as deputy-sheriff.

*Duty of the
three prothono-
taries.*

The three prothonotaries, in term-time, attend the sitting of the court at *Westminster*, for the dispatch of such matters as arise from causes entered in their respective offices, and to inform the court of the state of such causes, and to certify the court in matters of practice when required. Each of the prothonotaries has a publick office in one of the inns of court, at which they respectively attend every afternoon, in term-time, and out of term every day (sundays and holidays excepted) from nine in the morning till one or two, and from four in the afternoon till eight or nine.

It is their duty to enter on record all declarations, pleas, replications, and pleadings subsequent, demurrers, joinders in demurrers, and judgments. To enter all bills filed against attornies and other privileged persons, and forejudgers thereon for want of appearance. To sign writs of attachment, *Habeas Corpus*, *Procedendo*, *Certiorari*, *Venire facias*, *Subpœna*, *Scire facias*, *Capias ad satisfaciendum*, *Fieri facias*, *Elegit*, *Habere facias possessionem*, *Habere facias seisinam*, &c. To strike special juries, and to sign records of *Nisi prius*. They are to see that all common recoveries be carefully ingrossed on rolls of the court, examined, docketted, and placed in their proper offices, and the writs belonging to the same filed with the *custos breviarum*,

brevium, and to examine all exemplifications of such recoveries.

Persons committed by the court for contempt are examined on interrogatories by the prothonotaries, who make reports thereon, and on other matters referred to them by the court, and tax bills of costs, and state the debts and costs on bills, bonds, mortgages, and other securities, on references made to them by the court, pursuant to the act made in the 4th and 5th years of queen *Anne*, for the amendment of the law. Stat. 4 & 5 Ann. c. 16.

The prothonotaries have the custody of all common and plea rolls, and deliver the same out, and keep an account of the persons names to whom the rolls are delivered, that they may be able to call for a return of them, and make caret papers, certifying defaulters, in order to a prosecution, pursuant to several rules of the court. They keep an account of all rolls received into their offices, after proper entries are made thereon, and keep dockets of all judgments, entries of writs, and other entries, which they carefully examine with the rolls, before they are delivered into the office of the clerk of the *essoins*, or clerk of the warrants, and the writs into the office of the clerk of the *custos brevium*, which are afterwards by the said officers carried into the treasury of the court, but the dockets remain in the prothonotaries offices. The prothonotaries likewise keep remembrance rolls, on which all rules made in court are entered, and on which all recognizances of bail, appearances, *Scire facias*'s

cias's and *Præcipe's* taken at the bar on common recoveries, are entered.

Secondaries.

Their appointment.

There are three secondaries in this court, one belonging to each prothonotary, who has the nomination and appointment of such secondary; which appointment has been usually for the joint lives of the prothonotary and secondary. The present secondaries of the court are, *Henry Fothergill*, *Alexander Gerrard*, and *William Skinn*.

And duty.

The secondaries in term-time attend the court and the judges in the treasury, to read all the records, writings, affidavits, petitions, papers, and exhibits; to take minutes of all rules and orders, and draw up the same, and take recognizances in court. They enter all commitments of prisoners, discontinuances, and satisfactions acknowledged upon record, and amend records by order of court. They administer the oaths to prisoners taking the benefit of the late act made for the relief of debtors, with respect to the imprisonments of their persons, prepare assignments of their prisoners estates and effects, and draw up rules for their discharge. On trials at bar they act as associates, that is, call the jury out of and in court, read the record, call the defendant, read all written evidence, call the jury before a verdict given, and record the verdict, take minutes of all special verdicts, and draw up the same, and make copies thereof for the plaintiff, defendant, and judges. They take an account of all fines, and recoveries passed, and suffered at bar. And in term-time, after the
rising

rising of the court, attend at their offices to draw up the rules and orders made by the court, or by the judges in the treasury, and enter them on the remembrance rolls, and makes copies of them, when required. They enter all rules to declare, plead, reply, re-join, sur-rejoin, rebut, sur-rebut, and join in demurrer, and give rules for the attornies, and other officers of the court to appear to bills filed against them. And file and copy all affidavits, papers, and exhibits produced on motions, taxations of costs, or otherwise, and suggestions and proceedings in spiritual courts, when prohibitions are applied for; and copy interrogatories and examinations of persons committed for contempts. On complaints made by the prisoners of the *Fleet Prison* against the warden, the secondaries attend the judges at such places as they appoint, and file, read, and copy all affidavits and exhibits produced on such complaints, and draw up all orders made thereon.

The present clerk of the judgements *Lick-* Clerk of the
barrow Rowland. judgments.

His appoint-
ment.

And duty.

It is the duty of this officer to draw up all final judgments after inquisitions taken, verdicts obtained, or nonsuits had at *Nisi prius*, and on demurrers, and issues joined upon *Nul tiel record*; and to draw up and enter all continuances necessary in the afore-said judgments. To draw up the award of every *Decem tales*, and enter the same on the roll; to make out writs of *Distringas decem tales*, and *Distringas juratores*; and to draw

up the awards of writs of *Elegit*, and writs of partition, and enter the same, with the return thereof, upon the roll. To enter all satisfactions to judgments, when the same is done by the order of a judge, and not in open court; and to exemplify any of the abovementioned judgments, if applied for within a year after the signing of such judgments. And by the statute 4 & 5 *W. & M.* c. 20. they are to deliver over to the clerk of the effoins notes in writing of all judgments entered by them respectively on verdicts, writs of inquiry, demurrer, and every other judgment for debt or damages.

*Clerk of the
dockets.*

*His appoint-
ment.*

And duty.

Mr. *Samuel Underwood* is the present clerk of the dockets and declarations.

He enters upon remembrance all appearances to writs of attachment of privilege, writs of *Scire facias*, bills, and other process, issued out of, and filed in the offices of their respective prothonotaries. They deliver out to the attornies the rolls whereon pleadings are entered, and put them into a numerical order, when brought back, and make out papers, called caret papers, of such as are wanting, and the attornies names to whom the same were delivered, and deliver copies thereof to the clerk of the warrants, and clerk of the effoins, to enable them to inform the court thereof. They prepare bail-pieces or recognizances entered into, to attachments of privilege, and otherailable writs issuing out of the prothonotaries

aries offices, and attend the court, or a judge, when such recognizances are taken, and when such bails are justified, or additional bail is put in, and also, when the defendant surrenders himself in discharge of his bail. They make copies of all special juries struck by the prothonotaries for the plaintiffs and defendants; and, when required, make copies of bills of costs, and papers produced before the prothonotaries on references, and of reports made in court by the prothonotaries. They make copies of rules of court from the remembrance rolls of terms that are past. They also make out certificates of declarations not being filed according to the rules of the court against prisoners, in order to their being discharged out of custody for want of proceedings; and also certificates of writs of *Recordari*, and writs of false judgment, not being filed according to the course and practice of the court. And as clerks to the prothonotaries they make out copies of all the special verdicts for the judges, and attornies concerned therein; and in the absence of the prothonotaries they perform the common business belonging to the prothonotaries offices.

Rowland Lickbarrow is the present clerk of the reversals, and is jointly and verbally appointed by the three prothonotaries.

*Clerk of the reversals.
His appointment.*

They draw up and enter the reversals of outlawries, and enter the *præcipe's* thereof on remembrances, and draw up certificates thereof to the outlawry office; and draw up and

And duty.

ingross the bail-pieces, or recognizances, in order to such reversals, and attend the court and judges therewith, and make out the *Supersedeas* when necessary.

Clerk of the treasury.

His appointment.

Clerks of the jurats, or under-clerks of the treasury, and treasury keeper.

Thomas Jefferey's holds the place of clerk of the treasury by parol appointment from the lord chief justice.

Henry Brougham is clerk of the jurats, or one of the under clerks of the treasury, for the counties of *Middlesex, Kent, Oxford, Hereford, Southampton, Wilts, Somerset, Westmoreland, and Northumberland*, cities of *London, Bristol*, and town of *Southampton*.

Richard Brook is clerk of the jurats, or one of the under-clerks of the treasury, for the counties of *Cornwall, Bucks, Surrey, Hertford, Cambridge, Norfolk, Leicester, Derby, York, Bedford, Huntingdon, Monmouth, Warwick, Cumberland, Berks, Gloucester, Salop, Dorset, Northampton, Nottingham*, and town of *Nottingham*, counties of *Suffolk and Sussex*, cities of *York, Coventry, Norwich*, towns of *Newcastle upon Tyne, Kingston upon Hull*, and borough of *Leicester*.

And Mr. ——— is clerk of the jurats, or one of the under-clerks of the treasury for the county of *Devon*, city of *Exeter*, county of *Lincoln*, and city of *Lincoln*, county of *Worcester*, and city of *Worcester*, counties of *Essex, Stafford, Rutland*, and city of *Gloucester*.

Their appointment.

The clerks of the jurats, or under-clerks of the treasury, are admitted by the lord chief justice of the court, for the several counties,

counties, cities, and towns in their respective divisions, and hold their places for their lives; Mr. *George Stubbs* is the treasury-keeper, and holds his place also by the parol appointment of the lord chief justice.

The duty of the clerk of the treasury is *And duty.* to have the care and custody of the treasury of the said court, which doth contain the records of the same court of all common recoveries, entries of the money which the king hath upon fines; all judgments and issues, with the pleadings and verdicts thereon, inrolments of deeds, warrants of attorney filacers, and exigenters rolls, containing the entries of writs issuing out of their respective offices, from the first year of king *Henry* the eighth inclusive, down to the present time, bound up in distinct bundles, and digested in their due order and course of time. He is also to sign all copies taken from the rolls, and all records of *Nisi prius* in the said court, and to keep a file of all rules and orders relating to the said rolls. And no exemplifications, (except exemplifications of fines and common recoveries of the present or next precedent term) are to be sealed, unless they are first signed and examined by the clerk of the treasury. *Mich. 1654.*

The duty of the clerks of the jurats is to make and examine copies of the said records in their respective counties; and to amend records on receipt of orders for that purpose; to write and examine the jurats of the records of *Nisi prius* in the said court, and to

exemplify verdicts, judgments, and old recoveries.

The duty of the treasury-keeper is to bind up the records in distinct bundles every term, and keep them in their proper order and series of time, and shew them when required.

Filacers.

The present filacers of this court, are,

John Willes for *London* and *Middlesex*. The office is executed by Mr. *John Chambers*.

Thomas Lawes for the counties of *Southampton*, *Wilts*, and town and country of *Southampton*. Both offices are executed at Mr. *John Roberts's* chambers, No. 7. *Clifford's-Inn*.

Mr. *Dawson* for the counties of *Westmorland*, *Cumberland*, *Northumberland*, and town and county of *Newcastle upon Tyne*. Office executed by — *Gale*, *Boswell-court*.

Thomas Sibthorpe for the county and city of *Lincoln*. N^o. *Barnard's Inn*.

Mr. *Bard* for the counties of *Essex* and *Hertford*; his deputy is Mr. *Lawrence Gray*, *Cliffords Inn*.

John Staples, at N^o. 2. in *Essex Court* in the *Middle Temple*, for the counties of *Gloucester*, *Worcester*, *Hereford* and *Cornwall*, and the cities of *Gloucester* and *Worcester*.

Thomas Lee for the county and city of *York*, and county of the same city, and town of *Kingston upon Hull*, and county of the same town. The office is executed by him in *Staple's Inn*.

Rig. Peyton for the counties of *Surrey, Sussex, Kent* and the city of *Canterbury*. The office is executed by *Mr. Gray*.

John Heberden for the counties of *Somerset, Dorset*, city of *Bristol* and town of *Pool*; executes it himself at the *K. B.* office.

Lawrence Gray for the counties of *Bedford, Berks, Buckingham* and *Oxford*.

Mr. Roberts for the counties of *Salop, Stafford, Northampton* and *Rutland*, and city of *Litchfield*.

George Green, N^o. 8. *Staples Inn*, for the county of *Norfolk*, city of *Norwich*, and county of the same city.

Henrit. Lenton, for the county of *Suffolk*. His deputy is *Mr. Mitchell, Cooke's Court, Searle Street*.

R. Batten, for the county of *Devon*, city of *Exeter*, and county of the same city. This office is executed at N^o. 4. *Hare Court, Inner Temple*.

William Ward for the counties of *Cambridge* and *Huntingdon*; the office is executed at No. 8. in *Staple's Inn*.

John Keepe for the counties of *Derby, Leicester, Nottingham, Warwick*, city of *Coventry*, and town of *Nottingham*. This office is executed by *Mr. Steele* in *Fetter Lane*, near the *Rolls Buildings*.

Francis Gwyn, esq; for the county of *Monmouth*. The office is executed by *Mr. Warry*, in *New Inn*.

The several persons above-named, (except *Their appointments* the filacer for *Monmouth, vide postea fol. 26*) have been appointed, and are seized of their

said offices by grants from the respective chief justices of the court for the time being, to hold for their natural lives as their freehold.

And duty.

Their duty is to make out mesne process upon original writs returnable in this court.

They also enter appearances, and file and enter bails, and attend the judges or the court on putting in, and justifying bail, and on defendants surrendering in discharge of their bails; and also take affidavits of debts in order to hold the defendants to bail; and affidavits of the service of process; and file bills brought against persons having privilege of parliament, and make out the subsequent process thereon before appearance.

*Clerk of the
warrants, &c.*

*His appoint-
ment.*

And duty.

The clerk of the warrants, inrolments, and estreats is *Keane Fitzgerald*, esq; who is admitted into the said office by the lord chief justice of this court.

He files all warrants of attorney upon judgments and issues; and all warrants in outlawries, and writs of covenant; and on receiving the warrants of attorney he stamps all paper judgments, *Pluries capias*, and writs of covenant, and enters *Ne recipiatur* against filing such warrants.

All the common rolls, or records of judgments, and issues on trials by *Nisi prius* of every term, are delivered by the several prothonotaries into this office, the latter end of the subsequent term, that the clerk of the warrants may inspect the same, and estreat all fines and amerciaments upon sheriffs, and others, that he shall find amongst the said records, and the rolls are delivered by him

to the clerk of the effoins. Every deed acknowledged in this court is inrolled in this office, and docketted in books for the benefit of searches, and then delivered to the clerk of the effoins. The king's silver rolls, or post-fines of every term are brought the subsequent term to this office, and are estreated; and the last day of every term the clerk of the warrants delivers the estreat to the puisne judge of the court, and attends him to the court of *Exchequer*, when the said judge delivers the estreats to the lord chief baron, and the clerk makes oath before the court, that they are rightly estreated and examined. All common recoveries are brought to this office from the prothonotaries, and are docketted for the benefit of searches. There is a roll also kept in this office of the names of all persons that are admitted attornies of this court, with an account by what judge each attorney was admitted, and at what time and place, and the place of his abode. This roll is wrote over every *Michaelmas* term, in order to keep an account of all forejudgers against attornies, that are sued for debts, or otherwise, and of their being restored again to their privilege by rule of court, or judge's order. And all persons have recourse to the roll without fee or reward. He also stamps attachments and writs of privilege for attornies. The clerk of the warrants is also one of the officers appointed by the statute for the public registering of deeds, &c. in the county of *Middlesex*.

*Clerk of the
essoins.*

*His appoint-
ment.*

His duty.

The office of clerk of the essoins is in the appointment of the lord chief justice, and has usually been granted for life. The present clerk is Mr. *Wright*.

Essoins are entered in this office in all real actions, and other actions, wherein, by the practice of the court, (b) essoins lie; and in case the defendant doth not essoin by the time limited by the rules of the court, the plaintiff may enter in this office a *Ne recipiatur* essoin. And after an essoin is cast by the defendant, it is the plaintiff's business to adjourn the essoin, in default whereof, and a rule being given for that purpose, the defendant may sign a *Non pros*; which rule and *Non pros* are given in this office on rolls kept for that purpose.

In this office all judgments in the court of *Common Pleas* are docketted, pursuant to stat. 4 & 5 *W. & M. c.* 20. and all rolls belonging to the several officers of the said court, are mark'd, number'd, and delivered out to them; and when the proper entries are made thereon they are returned into this office, and carried by the said clerk of the essoins to the treasury at *Westminster*, and there bound up in proper bundles. He also provides parchment for the said rolls, and the chief justice of the court for the time being pays him for the same.

(b) An *Essoin* cannot be cast by *Attorney*. By *Camden* C. J. 2 *Wils.* 164.

The office of the clerk of the juries is in *Clerk of the*
the gift and nomination of the *Custos bre-juries.*
vium for the time being. The present clerk *His appoint-*
is Mr. *Thomas Bever.* Mr. *Harrison,* at N^o. 8, *ment;*
in *New Inn,* is his deputy.

The duty of this officer is to make out *And duty:*
writs of *Habeas corpora juratorum,* for trials
of issues in *London* and *Middlesex,* and at
the assizes in the country.

The return office and office of inrolment of *The return of-*
writs for fines and recoveries, is in the nomina- *fice, and office*
tion of the three puisne judges of this court, by *of inrolment of*
virtue of an act of parliament made in the 23^d *writs for fines*
year of the reign of queen *Elizabeth.* *Rowland* *and recoveries.*
Lickbarrow is the present clerk of this office. *Officer's ap-*
pointment.

By the statute 23 *Eliz. c. 3. §. 1.* Every writ *His duty as*
of covenant, and other writ, whereon any *clerk of the*
fine shall be levied, the return thereof, the *inrolment of-*
Dedimus potestatem for acknowledging such *fice.*
fine, the return thereof, the concord, note,
and foot of every such fine, the proclama-
tion, and king's silver, and every original
writ of entry in the *Post,* or other writ
whereon any common recovery shall be suf-
fered, or passed, the writs of summons *ad*
warrantizandum, every warrant of attorney
to be had, as well of every demandant and
tenant, as vouchée, that shall be extant, and
in being, may, upon request of any person,
be inrolled, and the inrolment shall be of as
good force in law, for so much as shall be in-
rolled, as the same being extant ought to be.

§. 6. There shall be an office for the in-
rolment aforesaid, which shall be an office
for ever, called *The office of inrolment of writs*
for fines and recoveries; and the justices of
the

the *Common Pleas* (other than the chief justice) shall have the care and charge of the inrolments aforesaid, and shall enjoy the said office, and the disposition thereof, and carefully see to the execution thereof, and in consideration of their charges, pains, &c. shall have the sums following, *viz.* for the inrolment and examination of every fine, and the parts thereof, 6s. 8d. For the inrolment of the several parts of a recovery, and examination thereof, 6s. 8d. For the exemplification of the inrolment of a fine 5s. For the exemplification and return of every writ of entry, summons *ad warrantizandum*, and warrants, 5s. For the search of the rolls for one year 4d. And for the copy of one sheet of paper, containing fourteen lines, 4d.

*As clerk of the
return office.*

Mr. *Lickbarrow* returns all writs of covenant, entry, summons, and seisin, in the names of the sheriffs of the several counties, cities, and vills in *England*; and makes regular entries in books, provided at his own charge for that purpose, of the counties, cities, vills, parties names, and places where the premisses lay which are contained in such writs; and also the several returns of all such writs, except writs of covenant, together with the names of the attornies concerned in prosecuting the same, according to the antient method used in the said office.

But the applying for inrolments and exemplifications in this office hath been disused many years.

*Clerk of the
king's silver.*

The clerk of the king's silver is *William Daw*, esq; who was admitted into this office

office by Sir *Peter King*, late lord chief justice of this court, on the surrender of *Henry Ludlow*, esq; his deputy is *Richard Hussey*. *His appointment;*

This officer claims it to be his duty, to inspect and see that all fines passed in his office have regularly passed through the several offices, conformable to the usage and custom of the court; to enter the whole of all fines, together with the post-fine paid thereon, into books which remain in the office as records, for the benefit of such as have occasion to search for fines; and also to indorse the post-fines on the writs of covenant, and ingross the entries of all fines on record, with the post-fines thereof; which records are estreated into the court of *Exchequer*, in order to collect the post-fines. He is also to stop all such fines, against the passing of which caveats are entered, and file such caveats, with all rules of court, judges orders, and affidavits of the cognisors being alive, where captions have been taken above twelve months before the fines are brought to his office. *And duty.*

All caveats, and orders for stopping any fines, shall be renewed every term, and copies thereof left with the clerk of the king's silver, for which he is to demand only his antient fee of 3 s. 4 d. the term. And in default thereof all caveats that shall not be so renewed shall lose their force and effect.

Pajch. 29 Car. 2.

Where a rasure in the day or year shall appear in the caption of a fine, it shall not pass

pass this office without an *Allocatur* from a judge. *Pasch. 9 Annæ.*

Chirographer. The office of chirographer is held by letters patent from the crown, and Sir *George Colebrooke*, bart. is the present patentee, under whom *James Garth*, esq; is appointed secondary to officiate in the said office. There is a register and record-keeper belonging to the said office, and the chirographer appoints certain clerks, for the several counties in *England*.

His appointment ;

And duty. The chirographer draws up, and makes out, from all parts of the fine, the final concord, properly called the fine itself, and ingrosses a record thereof, called the chirograph, or foot of the fine ; and one other record thereof, called the note of the fine ; and from the said chirograph, or foot of the fine, the chirographer's clerks ingross two indentures, one whereof is intended for the conusee, and the other for the conusor, each of which records and indentures contain the whole of the fine, and are both examined, with all the parts of the fine, by the chirographer's secondary ; and the parts of the fine, and also the records, are openly read and proclaimed in court the same term the fine is brought into the chirographer's office, and also in the three following terms, the chirographer enters every fine in a publick book, and upon rolls of parchment which are hung up in the court of *Common Pleas* on the first day of the next term, after the fine is brought into the said office, and which continue hung up in the court during the whole

whole term, for every person's inspection. The same fines are also entered in another book kept by the chirographer's register, for publick inspection, and after proclamation of such fines he ingrosses the four proclamations on each chirograph, and delivers the same with the *Dedimus* and concord of the fine to the *Custos brevium*, to be filed by him; and files the writ of covenant, and the other records of the fine in his own office. Stat. 23 *El. c. 3. §. 7.*

The office of exigenter is executed by *Exigenter.* Mr. *James Meadowcroft*, but under what appointment I have not been able to learn.

It is his duty to make exigents and proclamations upon *Pluries capias's* in order to proceed to the outlawry. *His duty.*

The office of clerk of the outlawries is incident to the office of his majesty's attorney general, and always executed by some person appointed by the attorney general for the time being, The present clerk of the outlawries is *John Way, esq;* *Clerk of the outlawries. His appointment;*

It is the duty of this officer to make out all writs of *Capias utlagatum*, sequestrations of ecclesiastical benefices in all personal actions in the said court, after the return of the exigent, a short note whereof is entered in a book kept for that purpose, expressing the plaintiff's and defendant's names, and the defendant's addition, with the cause of action and return. And therein are likewise made entries of all reversals of outlawries, and the time thereof, in which books all persons may search for outlawries, and see which
are

are in force or reversed, and have certificates thereof, in order to discharge a seizure of lands made by virtue thereof; or satisfy any court or person touching the same, and may have a copy of the *Præcipe* of any outlawry, to plead to, and reverse the same. Inquisitions taken on special writs of *Utilegatum* are transmitted into this office, and are here exemplified upon rolls signed by the clerk of the outlawries, and then carried into the office of the king's remembrancer of the court of *Exchequer*, and there filed of record, and the inquisitions themselves and writs of exigent are filed with the *Custos breviarum*.

*Prothonotary,
&c. for Monmouth.*

His appointment:

The offices of prothonotary, secondary, clerk of the judgments, clerk of the dockets, exigenter, clerk of the juries, filacer and clerk of the reversals for the county of *Monmouth*, were by his late majesty king *William III.* by letters patent under the great seal, granted to *Francis Gwynn*, esq; who, or his representative, executes the same by *Mr. Warry* his deputy in *New Inn*.

End duty.

He does the same duty as the like officers in this court do for the rest of the counties in *England*.

*Seal office.
His appointment:*

End duty.

The most noble *Augustus Henry* duke of *Grafton* is seized in fee-tail of this office, and claimeth the receipt of the revenue arising for the sealing of writs, exemplifications, and other things whatsoever sealed with the seal of this court. *Samuel Rogers*, esq; is his grace's deputy, to take care of the said office, and receive the profits thereof.

The

The office of clerk of the errors is in the nomination of the chief justice of the court for the time being, and has been usually granted by verbal appointment to hold during the pleasure of the chief justice. *Stephen Hough, esq;* is clerk of the errors to the right honourable the present lord chief justice.

Clerk of the errors.

His appointment;

The clerk of the errors, as deputy or clerk to the lord chief justice, has the allowance and receipt of all writs of error brought up on judgments given by this court, and gives certificates thereof, and marks the judgment roll, that a writ of error is allowed, and makes out writs of *Superfedeas* when required, and enters and inrols recognizances of bail taken on writs of error, and makes out writs of *Scire facias* thereon, and gives rules for putting in, and justifying bails, and gives certificates of the neglects thereof; and also gives rules for plaintiffs in error to certify the records, and makes transcripts of the records and judgments, and transmits the same into the court of *King's Bench*, and enters *Mittiturs* on the rolls, importing that such records are removed into the *King's Bench*, and signs, and enters *Non-proffes* for defaults of plaintiffs in error, certifying their records. He hath also the allowance and return of all *Certiorari's* directed to the lord chief justice, for certifying records from this court into any other.

And duty.

The judges clerks are verbally appointed by their respective judges, to continue during pleasure.

J. dges clerks.

The duty of these clerks is to ingross bail-pieces on writs of *Habeas corpus*; and in-

And duty.

dorse commitments on the back of the return, and to draw up surrenders of persons surrendering themselves in discharge of their bail, and to ingross bail-pieces on writs of *Certiorari*; to enter all such bail-pieces, as likewise to enter the commitments and surrenders in books kept for that purpose, (which books persons are at liberty to inspect without fee or reward;) to take recognizances of bail acknowledged before their respective judges; to read over to the parties the contents of all fines and warrants of attorney for suffering common recoveries, and admissions of infants to sue or defend by prochein amy, or guardian, and to write the captions thereon, to ingross the returns of writs of *Dedimus potestatem* directed to their respective judges; to write the *Allocatur* of a fine taken before commissioners upon oath of the due caption thereof, and to write the captions of deeds acknowledged in or out of court to be inrolled, and to administer the oaths to persons making affidavits, or bail justifying, and to draw up summonses and orders made by their respective judges.

The clerks to the lord chief justice make out commissions for taking affidavits and special bails, and file the approbations signed by the puisne judges, in order for such commissions and enter the names of the commissioners so appointed in a book kept for that purpose.

*Associate at
Nisi prius in*

The office of associate at *Nisi prius* in *London* and *Middlesex* is in the appointment of

the lord chief justice, and has been generally granted by parol, to hold during pleasure only. The present associate is Mr. *Thomas Lloyd.* London and Middlesex. His appointment ;

The duty of this officer is to wait on the lord chief justice, when he appoints the days of sittings at *Nisi prius*, and to make copies thereof, which are stuck up in the prothonotaries offices, and in *Westminster Hall*, to attend the court during the sittings, and draw out of the box the names of the jurors, and record their appearances and defaults, and return the same. To read the record, and all written evidence, and to take down the minutes of facts and enter the records in a book ; record verdicts, return *Posteas*, and draw up orders of the court of *Nisi prius*, and make copies for each side, to attend with the jury to take a private verdict, and draw up and enter the same on the *Postea*, and make out copies thereof. And duty.

The office of marshal at *Nisi prius* in *London and Middlesex* is also in the nomination of the lord chief justice, and has been time immemorial granted by parol appointment, to hold during the pleasure of the lord chief justice. The present marshal is *Stephen Hough*, esq. Marshal at Nisi prius in London and Middlesex. His appointment ;

This officer is to attend the lord chief justice of this court, at all such times as his lordship sits to try issues depending in this court, by writ of *Nisi prius*, either in the county of *Middlesex* or city of *London*. He enters the names of all causes set down to be tried for the said city and county, in a book And duty.

kept and provided by him for that purpose, which he carries down with him every day in term-time, to *Westminster*, that all attornies may have recourse to it to enter their causes, to inspect and see what causes are entered, and at proper times to enter *Ne recipiaturs*; and in the afternoon this book is kept at the lord chief justice's chambers for the same purpose. During the time appointed for trials in the said causes he personally attends the court during the whole time of their sitting, to receive the records and writs, and mark them. The marshal first calls the name of the cause, and then delivers up the record to the lord chief justice, and sits under him, to be ready, upon all occasions, to receive his commands, to receive and withdraw records and writs, and to mark any that are left untried, as *Remanets* to be tried at the next sitting.

Cryer at Nisi prius in London and Middlesex.

His appointment;

And duty.

The office of cryer at *Nisi prius* in *London* and *Middlesex* is also in the gift of the lord chief justice for the time being, and has been usually granted by parol appointment, to hold during pleasure. Mr. *Avis* is cryer to the present lord chief justice.

His duty is to call the jurors, and swear them, and all witnesses produced on such trials.

*Chief proclama-
tor.*

*His appoint-
ment;*

Heneage Walker, esq; hereditary proclama-
tor of this court, granted to *John Walker*,
esq; the office of marshal proclama-
tor, and barrier of this court, with all fees, &c. to
hold to him and his heirs for ever. There
are four persons who act as cryers of the court,

one

one of which is also court-keeper, and another porter of the court: Which cryers, court-keeper, and porter, are deputies to the chief proclamator.

The duty of the proclamator and barrier *And duty.* is by himself, or deputies, to attend the court of *Commons Pleas* at *Westminster*, and make proclamations, &c.

The cryers are appointed by deputation *The four cryers* from the chief proclamator. *Their appointment ;*

Their duty is to attend the court, to ad- *And duty.* minister the oaths to juries, witnesses, bails, and persons making affidavits; to hand rules affidavits, &c. from the serjeants to the proper officers, to bring records into court as they are wanted, to call attornies on bills being filed against them, to take recoveries from the bar, and get them entered in the proper prothonotaries offices to which they belong, proclaim the essoins on the return-days, make proper adjournments, &c.

The court-keeper is appointed by the chief *Court-keeper.* proclamator. *His appointment ;*

His duty is to take care of the court, and *And duty.* that the tapestry and cushions be kept clean, the court washed, matted and cleaned, and to take care of the acts of parliament, and other books made use of in court.

The porter of the court holds his place *Porter of the* by the appointment of the chief proclamator. *court.*

His duty is to attend the judges in court, *His appointment ;* hang out of the fines every day, take care of *And duty.* them;

them; and to do other business as occasion requires.

Warden of the Fleet

His appointment;

And duty.

The warden of the *Fleet* prison is *John Eyles*, esq; appointed by letters patent to hold during pleasure.

His duty is to receive, and have the custody of all prisoners committed by this court to the *Fleet* prison.

Clerk of the papers and rules of the Fleet prison.

His appointment;

And duty.

The present clerk of the papers and rules of the *Fleet* prison is *Mr. Low*, who holds his place by grant or appointment of the warden of the *Fleet*.

It is his business to receive and enter, in books kept for that purpose, the commitments of prisoners committed to the said prison by this court, to enter declarations delivered to the turnkey of the prison against prisoners, and to enter and file the discharges of prisoners, and to give certificates thereof, and return writs of *Habeas corpus*, and other writs directed to the warden, and enter the same in a book kept for that purpose, and also to give certificates of charges against prisoners, and certificates of day-rules granted to prisoners by the court.

Tipstuffs.

Their appointment,

And duty.

There are two tipstuffs attendant on this court, who are admitted by deputation from the warden of the *Fleet*.

They attend the judges whilst sitting in court, and in the afternoon at their chambers, and out of term they attend there morning and afternoon. One of them also attends the chief justice at the sittings of *Nisi prius* at *Westminster* and in *London*, and on the circuits. Their duty is to receive all prisoners

prisoners committed in court, or at a judge's chambers, and from thence to carry them to the *Fleet* prison, and deliver them to the turnkey there; and also to bring up prisoners to the court, or before a judge, on a *Habeas corpus*, or rule of court for that purpose.

The judges of this court, or any two of them, whereof the chief justice to be one, shall and may, by one or more commission or commissions, under the seal of this court, from time to time, as need shall require, impower what and as many persons as they shall think fit and necessary in all and every the several shires and counties within the kingdom of *England*, dominion of *Wales*, and town of *Berwick upon Tweed*, to take and receive all and every such affidavit and affidavits as any person or persons shall be willing and desirous to make before any of the persons so impowered, in or concerning any cause, matter, or thing depending, or any wise concerning any of the proceedings in the said court, as masters of *Chancery* in extraordinary do use to do. And any judge of assize in his circuit may take and receive any affidavit or affidavits as any person or persons shall be willing and desirous to make before him in or concerning any cause, matter or thing depending or in any wise concerning any proceedings in the said court: Which said affidavits, taken as aforesaid, shall be filed and then read and made use of in the said court to all intents and purposes as other affidavits taken in the said court now are; and

Commissioners for taking affidavits, concerning matters in this court, to be appointed by the judges.

And judge of assize in his circuit may take such affidavit.

Affidavit to be filed, and then read and used, &c.

all and every affidavit and affidavits, taken as
 aforeſaid, ſhall be of the ſame force as affida-
Penalty of per- vits taken in the ſaid court now are; and all
jury in ſuch af- and every perſon and perſons for ſwearing
fidavits. him, her, or themſelves in ſuch affidavit or
 affidavits, ſhall incur and be liable unto the
 ſame penalties as if ſuch affidavit or affida-
 vits had been made and taken in open court.
Stat. 29 Car. 2. c. 5. §. 2.

Fee for taking For the taking of every ſuch affidavit, the
ſuch affidavits. perſon or perſons ſo impowered and taking
 the ſame, ſhall for ſo doing receive only the
 ſum or fee of 12 *d.* and no more. *Same*
Stat. §. 3.

Commissioners The Juſtices of this court or any two of
for taking bail's them, whereof the chief juſtice to be one,
in any ſuit in may by one or more commiſſion or com-
this court, to miſſioners under the ſeal of this court, from
be appointed by time to time, as need ſhall require, impower
the judges. ſuch and ſo many perſons, other than com-
 mon attornies and ſolicitors, as they ſhall
 think fit and neceſſary, in all and every the
 ſeveral ſhires and counties within the king-
 dom of *England*, dominion of *Wales*, and
 town of *Berwick upon Tweed*, to take and
 receive all and every ſuch recognizance or re-
 cognizances of bail or bails, as any perſon or
 perſons ſhall be willing and deſirous to ac-
 knowledge or make before any of the per-
 ſons ſo impowered in any action or ſuit de-
 pending in this court, in ſuch manner and
 form, and by ſuch recognizance or bail piece
 as the juſtices of this court have uſed to take
 the ſame, which ſaid recognizance or recog-
 nizances of bail or bail-piece ſo taken as
 aforeſaid

Recognizances
to be trans-
mitted to a
judge of the
court.

aforesaid shall be transmitted to some or one of the justices of this court, who upon affidavit made of the due taking of the recognizance of such bail or bail-piece, by some credible person present at the taking thereof, such justice shall receive the same upon payment of such fees as have been usually received for the taking of special bails by the justices clerks, and other the officers of this court; which recognizance of bail or bail-piece so taken and transmitted, shall be of the like effect as if the same were taken *de bene esse*, before any of the said justices; for the taking of every which recognizance or recognizances of bail or bail-piece, the person or persons so impowered shall receive only the sum or fee of 2 s. and no more.

Affidavit of the due taking, &c.

Fee for taking, &c.

Stat. 4 W. & M. c. 4. §. 1.

The justices in this court shall make such rules and orders for the justifying of such bails, and making the same absolute, as to them shall seem meet; so as the cognizor or cognizers of such bail or bails be not compelled to appear in person in this court to justify him or themselves: But the same may and is hereby directed to be determined by affidavit or affidavits taken before the said commissioners, who are hereby impowered and required to take the same, and also to examine the sureties upon oath touching the value of their respective estates; unless the cognizor or cognizers of such bail do live within the cities of *London* and *Westminster*, or within ten miles thereof. *Same Stat. §. 2.*

Judges to make rules for justifying, &c.

The same to be by affidavit taken before a commissioner.

Unless, &c.

Any

*Any judge of
assize in his
circuit may
take such bail.*

Any judge, of assize in his circuit may take and receive all and every such recognizance and recognizances of bail or bails, as any person shall be willing and desirous to make and acknowledge before him, which being transmitted in like manner as aforesaid, shall (without oath) be received in manner as aforesaid, upon payment of the usual fees. *Same Stat. §. 3.*

*Acknowledging
bail in the
name of any
other not privy
or consenting,
felony.*

Every person who shall acknowledge, or procure to be acknowledged, any fine, &c. recognizance or recognizances, bail or bails, &c. in the name of any other person not privy or consenting to the same, and being thereof convicted, shall be adjudged to be a felon, and suffer death, &c. without benefit of clergy. *Stat. 21 Jac. 1. c. 26. 1 H. H. P. C. 696. Et vide Stat. 4 W. & M. c. 4. §. 4.* Whereby personating another before those who have authority by that act to take bail, so as to make him liable to the payment of any sum of money in that suit or action, is made felony.

Attornies of the court.

*No one to act
as an attorney,
unless served
five years
clerkship.*

BY the statute (a) 2 Geo. 2. c. 23. sect. 5. no person shall be admitted to act as an attorney, sue out any process, or defend any action in this court, unless he shall have been bound by contract in writing to serve as a

(a) Perpetuated by Stat. 30 Geo. 2. c. 19. sect. 75.
clerk