

he the said (c) S. N. before that time sold and delivered to the said R. G. at his special instance and request; and being so indebted, he the said R. G. in consideration thereof, afterwards, that is to say, on the day and year last above mentioned, 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 the said 100 l. to the said S. N. when he the said R. G. should be thereunto requested. *And whereas also* afterwards, that is to say, on the day and year last above mentioned, at *Westminster* aforesaid in the county aforesaid, in consideration that the said S. N. had before that time sold and delivered to the said R. G. at his like special instance and request, diverse other goods, wares and merchandizes, he the said R. G. undertook, and then and there faithfully promised the said S. N. that he the said R. G. would, when he should be thereunto requested, well and truly pay to the said S. N. so much money as the goods, wares and merchandizes last above mentioned were at the time of the sale and delivery thereof reasonably worth. And the said S. N. in fact

*Quantum
valebant
thereon.*

(c) After verdict where the defendant's name is put in the declaration, instead of the plaintiff's name, as for instance, "by the said R. G. before that time sold and delivered to the said R. G. instead of the said S. N." the court will reject the defendant's name, as being surplusage. 3 *Wils. Rep.* 43. *Com. Rep.* 557. *S. P.* See *Skin* 591. *Sid.* 135. *Stat.* 16 & 17 *Car. II. chap.* 8.

faith,

Infimal com-
putasset.

faith, that the goods, wares and merchandizes last above mentioned were, at the time of the sale and delivery thereof, reasonably worth other 100*l.* of like lawful money of *Great Britain*, that is to say, at *Westminster* afore-
said in the county afore-
said, whereof the said *R. G.* afterwards, that is to say, on the same day and year last above mentioned, there had notice. *And whereas also* the said *R. G.* afterwards, that is to say, on the day and year last above mentioned, at *Westminster*, afore-
said in the county afore-
said, accounted together with the said *S. N.* concerning diverse other sums of money before that time due, and unpaid by the said *R. G.* to the said *S. N.* and the said *R. G.* was upon the said account then and there found in arrear to the said *S. N.* in 76*l.* 12*s.* 6*d.* of like lawful money of *Great Britain*; and the said *R. G.* being so found in arrear, in consideration thereof afterwards, that is to say, on the day and year last above mentioned, at *Westminster* afore-
said in the county afore-
said, undertook, and then and there faithfully promised the said *S. N.* that he the said *R. G.* would well and truly pay the said 76*l.* 12*s.* 6*d.* to the said *S. N.* when he the said *R. G.* should be thereunto requested: *Nevertheless* the said *R. G.* not at all regarding his said several promises and undertakings so made afore-
said in form afore-
said, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said *S. N.* in this behalf, hath not paid to the said *S. N.* the said several sums of money, or any

Breach.

of them, or any part thereof, (although to pay the same to the said S. N. he the said R. G. afterwards, that is to say, on the same day and year last above mentioned at *Westminster* aforesaid in the county aforesaid, was requested by the said S. N.) but the said R. G. hath hitherto intirely refused, and still doth refuse to pay the same to the said S. N. to the damage of the said S. N. of 200*l.* and thereof he bringeth suit, &c.

It is said, that in an *Insimul computasset* the plaintiff must in his declaration lay the very day of the account, and the sum agreed upon by both parties to be due.

In the Common Pleas.

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

Middlesex, **L.** K. late of *Westminster* in the county of *Middlesex*, widow, was attached to answer *J. B.* esq; of a plea of trespass upon the case, &c. and whereupon the said *J.* by *S. H.* his attorney complaineth, that *whereas* the said *L.* on the first day of *January* in the year of our Lord one thousand seven hundred and fifty-seven, at *Westminster* aforesaid, was indebted to the said *J.* in the sum of eight pounds and fifteen shillings of lawful money of *Great Britain*, for the use, occupation and enjoyment of one messuage,

Indebitatus
assumpsit for
the use and oc-
cupation of a
house.

Quantum me-
ruit thereon.

messuage, with the appurtenances, of the said *J.* situate, standing and being in *Westminster* aforesaid, for a long space of time then past, that is to say, for the space of one quarter of a year then past, by the said *L.* by the permission of the said *J.* and by, from and under the said *J.* at the special instance and request of the said *L.* had and enjoyed, and being so indebted, she the said *L.* in consideration thereof, afterwards, that is to say, on the same day and year aforesaid, at *Westminster* aforesaid, undertook, and to the said *J.* then and there faithfully promised to pay to him the said sum of money, when she the said *L.* should be thereunto afterwards required: *And whereas also* the said *L.* afterwards, that is to say, on the same day and year aforesaid, at *Westminster* aforesaid, in consideration that the said *J.* at the special instance and request of the said *L.* had permitted and suffered the said *L.* to have, occupy, possess and enjoy a certain other messuage, with the appurtenances, of the said *J.* situate, standing and being in *Westminster* aforesaid, for a long space of time then past, that is to say, for the space of one quarter of a year then past, undertook, and to the said *J.* then and there faithfully promised to pay to him so much money as he had reasonably deserved to have from the said *L.* for the same; and the said *J.* in fact saith, that he had reasonably deserved to have from the said *L.* for the same, another sum of eight pounds and fifteen shillings of like lawful money, that is to say, at *Westminster* aforesaid, where-
of

of the said *L.* afterwards, that is to say, on the same day and year aforesaid at *Westminster* aforesaid had notice: *And whereas also* the said *L.* afterwards, that is to say, on the same day and year aforesaid at *Westminster* aforesaid, was indebted to the said *J.* in the further sum of ten pounds of like lawful money, for the like sum of money by the said *J.* before that time, at the special instance and request of the said *L.* and to the use of the said *L.* paid, laid out and expended; and being so indebted, she the said *L.* afterwards, that is to say, on the same day and year aforesaid, at *Westminster* aforesaid, in consideration thereof undertook, and then and there faithfully promised the said *J.* that she would well and truly content and pay him the said ten pounds last mentioned, when afterwards she the said *L.* should be thereto required: *Nevertheless* the said *L.* not regarding her said several promises and undertakings so made as aforesaid, but contriving and fraudulently intending to deceive and defraud the said *J.* in this behalf, hath not paid to him the said several sums of money, or any of them, or any part thereof, although to pay the same to him the said *J.* she the said *L.* afterwards, that is to say, on the same day and year aforesaid, at *Westminster* aforesaid, was requested by the said *J.* but the said *L.* to pay the same to him, hath hitherto refused, and doth yet refuse, to the damage of the said *J.* of ten pounds; And thereof he bringeth suit, &c.

Indebitatus
assumpsit for
money laid out.

Breach.

In the Common Pleas.

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

Indeb. ass. for
work done and
materials
found.

London, *W. H.* late of *London*, woollen-
draper, was attached to answer
J. B. of a plea of trespass on the case; and
whereupon the said *J. B.* by *J. W.* his at-
torney complaineth, that whereas the said *W. H.*
on the twenty-first day of *February* in the
seventh year of his present majesty's reign,
at *London* in the parish of *St. Mary Le Bow*
in the ward of *Cheap*, was indebted to the
said *J. B.* in 30*l.* of lawful money of *Great
Britain*, as well for work before that time
done and performed by the said *J. B.* for the
said *W. H.* at his special instance and request,
as for divers materials and necessary things
used in and about the said work before that
time found and provided by the said *J. B.* at
the like special instance and request of the
said *W. H.* And the said *W. H.* being so in-
debted, in consideration thereof, afterwards,
that is to say, on the same day and year afore-
said, at *London* afore said, in the parish and
ward afore said, undertook, and then and
there faithfully promised the said *J. B.* that
he the said *W. H.* would well and truly pay
the said 30*l.* to the said *J. B.* when he the
said *W. H.* should be thereunto required:

Quotum me-
riti dicitur.

And whereas also afterwards, that is to say,
on the same day and year afore said, at *Lon-
don*

don in the parish and ward aforesaid, in consideration that the said J. B. had before that time done and performed other work for the said W. H. at his like special instance and request, and had found and provided, at the like special instance and request of the said W. H. diverse other materials and necessary things used in and about the said last mentioned work, he the said W. H. undertook, and then and there faithfully promised the said J. B. that he the said W. H. would, when he should be thereunto required, well and truly pay to the said J. B. so much money as he therefore reasonably deserved to have: And the said J. B. in fact saith, that he did therefore reasonably deserve to have of the said W. H. other 30 l. of like lawful money of *Great Britain*, that is to say, at *London* aforesaid in the parish and ward aforesaid, whereof the said W. H. afterwards, that is to say, on the same day and year aforesaid, there had notice: *Nevertheless, &c.*

In the Common Pleas.

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

Southampton, J. S. late of *Croudall* in the *For not re-*
to wit. J. said county of *Southamp-* pairing
ton, yeoman, was attached to answer *R. D. fences.*
in a plea of trespass on the case, and where-

upon the said *R. D.* by *J. L.* his attorney complaineth, That whereas the said *R. D.* on the first day of *October* in the sixth year of his present majesty's reign, was seised, and is still seised in his demesne as of fee, of and in one close called the kitchen-garden, situate, lying and being in *Croudall* aforesaid in the said county of *Southampton*, to which said close called the kitchen-garden, another close in the possession, tenure or occupation of the said *J. S.* called the hop-garden, at *Croudall* aforesaid in the said county of *Southampton*, lieth next and contiguous adjoineth, between which said close of the said *R. D.* called the kitchen-garden, and the said close in the tenure or occupation of the said *J. S.* called the hop-garden, there is now, and time out of mind hath been, certain pales or fences, which part and divide the said closes the one from the other. *And whereas* the said *J. S.* and all occupiers and possessors of the said close called the hop-garden, for the time being, time out of mind were used and accustomed and ought to make, repair and amend the said pales, and fences between the said close of the said *R. D.* called the kitchen-garden, and the said close of the said *J. S.* called the hop-garden, with all necessary reparations and amendments, as often as need should be or require, lest any cattle out of the said close called the hop-garden into the said close called the kitchen-garden should escape and enter, and do damage there: *Nevertheless* the said *J. S.* not ignorant of the premisses, but contriving and fraudulently intending the said *R. D.* in
this

this behalf unjustly to damnify, and to deprive him of the whole benefit, profit and advantage of the said close called the kitchen-garden, afterwards, *to wit*, on the said first day of *October* in the said sixth year of his present majesty's reign, and from thence to the first day of *January* in the said sixth year of his said present majesty's reign, the pales and fences separating and dividing the said close called the kitchen-garden, and the said close called the hop-garden one from the other as aforesaid, permitted to remain and continue ruinous, broken, and in decay for want of repairing the same; by means whereof the cattle, hogs and sheep of the said *J. S.* and of diverse other persons to the said *R. D.* unknown, on the said first day of *October*, and on several days and times between the said first day of *October* and the said first day of *January* in the said sixth year of his said present majesty's reign, out of the said close of the said *J. S.* called the hop-garden, into the said close of the said *R. D.* called the kitchen-garden, broke and entered, and the grass, corn, barley, beans, pease, turnips, carrots and cabbages, there then lately growing and being, to the value of nine pounds and nineteen shillings, eat, trod down, and consumed; by means whereof the said *R. D.* the whole benefit, profit and advantage of his said close called the kitchen-garden, for all that time, *to wit*, from the said first day of *October* in the said sixth year of his said present majesty's reign to the said first day of *January* in the said sixth year of his said present ma-

jesty's reign, wholly lost and was deprived of; whereupon the said *R. D.* saith, that he is wronged, and hath damage to the value of nine pounds and nineteen shillings; And therefore he bringeth suit, &c.

Trespass.
Breaking
plaintiff's
close, &c.
Andrews's
Rep. 21, 284.

Southampton, *T. W.* late of *Christ-Church* in the county of *Southampton*, gentleman, was attached to answer *J. P.* of a plea, wherefore with force and arms he broke the close of the said *J. P.* at *L.* in the county aforesaid, and his grass and herbs, to the value of 20 *l.* there lately growing, with certain cattle grazed, trampled on and consumed, and did him other injuries, to the great damage of the said *J. P.* and against the peace of our lord the present king; and whereupon the said *J. P.* by *J. G.* his attorney complaineth, that the said *T. W.* on the first day of *June* in the sixth year of his present majesty's reign, with force and arms, &c. broke the close of the said *J. P.* at *L.* in the county aforesaid, and the grass, corn, barley, beans, pease, turnips, carrots and cabbages, to the value of 10 *l.* there then lately growing, with certain cattle, that is to say, with horses, oxen, cows, hogs and sheep, grazed, trampled on and consumed, and other injuries, &c. to the great damage, &c. and against the peace, &c. and whereupon the said *J. P.* saith that he is injured, and hath damage to the value of twenty pounds; And thereof he bringeth suit, &c.

In the Common Pleas.

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

Middlesex, *J. M.* late, of, *Essex*. was attached *Affault.*
to wit. *J.* to answer *J. H.* of a plea,
wherefore with force and arms he assaulted
the said *J. H.* at *Westminster* in the county of
Middlesex, and beat, wounded and ill-treated
him, so that his life was despaired of, and
other injuries did to him, to the great da-
mage of the said *J. H.* and against the peace
of our lord the present king, *Essex*. And
whereupon the said *J. H.* by *J. C.* his attor-
ney, complaineth, that the said *J. M.* on the
day of in the
year of his present majesty's reign, with force
of arms, that is to say, with swords, staves
and knives, assaulted the said *J. H.* at *West-*
minster in the county of *Middlesex*, and beat,
wounded, and treated him ill, so that his life
was despaired of; and other injuries, *Essex*. to
the great damage, *Essex*. and against the peace,
Essex. wherefore the said *J. H.* saith, that he is
injured, and hath damage to the value of 50*l.*
And thereof he bringeth suit, *Essex*.

Surrey, *J. T.* late of, *Essex*. brewer, was at- *Trover.*
to wit. *J.* tached to answer *W. B.* of a plea
of trespass on the case; and whereupon the
said *W. B.* by *L. R.* his attorney complain-
eth, that whereas the said *W. B.* on the tenth
day

day of *December* in the seventh year of his present majesty's reign, at *Kingston* in the county of *Surry*, was possessed of the following goods and chattels, that is to say [*here insert the goods*] to the value of one hundred pounds, as of his own proper goods and chattels; and being so thereof possessed the said *W. B.* casually lost the said goods and chattels out of his hands and possession; which said goods and chattels afterwards, *to wit*, on the said tenth day of *December* in the seventh year aforesaid, at *Kingston* aforesaid in the county aforesaid, came by finding to the hands and possession of the said *J. T.* Nevertheless the said *J. T.* knowing the said goods and chattels to be the goods and chattels of the said *W. B.* and to him of right to belong and appertain, yet contriving and fraudulently intending craftily and subtilly to deceive and defraud the said *W. B.* of the said goods and chattels, hath not delivered the said goods and chattels to the said *W. B.* (altho' often required) but afterwards, that is to say, on the tenth day of *January* in the seventh year aforesaid, at *Kingston* aforesaid in the county aforesaid, converted the said goods and chattels to his own proper use, to the damage of the said *W. B.* of 200*l.* And thereof he bringeth suit, &c.

A count cannot be added to a declaration after the second term of the delivery or filing thereof in the office. *Barnes 500.*

See further precedents among the pleadings at the end of the book, &c.

Money, &c. brought into court.

THE intent and consequence of bringing money into court, will appear by the following rule.

In the Common Pleas.

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

S. Against *R.* Wednesday the 28th of November. It is ordered, That the defendant shall pay to the plaintiff, or to his attorney, ten pounds, together with costs to be taxed by Mr. prothonotary *Cooke*, if the plaintiff will accept thereof, and that thereupon all further proceedings in this action shall be stayed; but if the plaintiff will not accept thereof, the defendant shall immediately bring the said ten pounds into this court, and plead the general issue; and if upon the trial of the issue between the said parties the plaintiff shall become nonsuit, or the jury shall not assess damages to the plaintiff exceeding the said ten pounds, then the plaintiff shall have no costs, but shall pay to the defendant, or to his attorney, costs to be taxed by the said prothonotary; which costs shall

Rule for paying money into court.

shall be paid out of the money so brought into court, if sufficient for that purpose, and the residue, if any, shall be paid to the plaintiff. But if the money so paid into court be not sufficient to pay the said costs, the deficiency shall be made good by the plaintiff. But if upon the trial of the said issue the jury shall assess damages to the plaintiff exceeding the said ten pounds, then judgment shall be entered for the plaintiff upon the verdict with costs, and the plaintiff shall have the said ten pounds out of court towards satisfaction of such judgment, and may take out execution for the residue.

Entered on the motion of
serjeant *Agar* for the
defendant.

By the court.

*Money not to
be brought into
court where
the plaintiff is
an executor or
administrator.*

Where the plaintiff is an executor or administrator, money may not be brought into court; See *Barnes* 280, 286. *Pract. R. C.* p. 250. but as the reason given is, that an executor or administrator is not by law to pay costs. And *Barnes* 287, and *Pract. Reg. C. P.* 249. All seem *contra*. Therefore *quære*, Whether money may not be brought into court, if the action brought by the executor or administrator be such an action as he might have brought in his own right, and in which he need not have named himself executor or administrator; for in such an action he will be liable to pay costs on a nonsuit, or the like.

[In

In debt for rent money may be brought in- *May in debt*
to court. *Barnes 280. Pract. Reg. C. P. for rent.*

257.

In replevin and avowry for rent the plain- *In replevin.*
tiff was allowed to bring money into court.

In covenant, in which the breach was as- *In covenant,*
signed in a sum certain, viz. 11 l. for not *for a sum cer-*
dressing corn, leave was given to bring in the *tain.*
11 l. upon the common rule. *Hil. 15 Geo. 2.*
C. B. Walnouth v. Houghton, Barnes 284.

In debt on a bond, conditioned for good *In debt on a*
behaviour and paying money, motion for *bond denied.*
leave to bring in the money and plead per-
formance to the rest of the condition denied.
Hil. 18 Geo. 2. C. B. Atkins v. Taylor, Barnes
285.

In debt for the penalty of a charter-party, *And in debt*
motion to bring in the money denied. *Pas. on a charter-*
19 Geo. 2. C. B. Yeoman v. Ross. Id. ib. party.

In debt on a bond conditioned for the per- *And in debt*
formance of covenants in a lease, and breach *on a bond for*
assigned for non-payment of 10 l. for half a *performance of*
year's rent, the like motion denied. *Hil. 22. covenants, and*
Geo. 2. C. B. Wright v. Benington, Barnes breach in a
286. sum certain.

In trover, goods not being ponderous have *Trover.*
been allowed to be brought into court; this
is discretionary in the court, and where they
have been ponderous, the plaintiff has been
ordered to shew cause why he should not ac-
cept them. *Barnes 281. Pract. Reg. C. P.*
260. Rep. and Cas. of Pract. C. P. 130.

The court will not give the defendant li- *Defendant*
berty to bring money into court on some of *shall not bring*
the

money in to part, and demur to the rest of the declaration.

the counts in the declaration, and demur to the rest; for the reason of making the rule for bringing money into court, is to prevent vexation, and make an' end of the cause. *Pract. Reg. C. P.* 256.

In an action for mesne profits after recovery in ejectment, defendant shall not pay money into court. *2 Wils.* 115.

But leave to bring in money as to some counts, and plead several pleas to the rest.

But the court gave leave to bring 5*l.* 5*s.* into court upon the common rule, with respect to the 7th and 8th counts, there being 9 counts in the declaration, and as to the rest to plead the general issue, the statute of limitations and a set-off. *Trin.* 21 & 22 *Geo.* 2. *C. B. Hellier v. Hallet*, administratrix. *Barnes* 286.—Leave to plead bankruptcy to the count, and to bring in money on the common rule, and plead the general issue to the other counts. *Pas.* 16 *Geo.* 2. *C. B. Hall v. Lane*, *Barnes* 350.

To bring in money, and plead plene administravit, and the general issue to the whole.

Leave granted to bring money in on the common rule, and plead *plene administravit*, and the general issue to the whole. *Hil.* 23 *Geo.* 2. *C. B. Austin v. Ross*, executor. *Barnes* 287.

When money may be brought into court.

It has been said the defendant may be admitted to bring money into court after the rule to plead is out, but not after he has pleaded, without the plaintiff's consent. *Barnes* 281. But *Hil.* 29 *Geo.* 2. between *Phillips* and *Barker*, leave was given to withdraw the general issue, to bring 42*s.* into court and plead the same again on taking notice of trial for sitting after term, no delay having been occasioned by the defendant's having omitted

omitted to bring the money in before plea pleaded. *Barnes* 289.

If a regular judgment be set aside on payment of costs, pleading an issuable plea, &c. the defendant shall not have leave to bring money into court. *Barnes* 281. *Pract. Reg. C.* 85, 262. Nor after a regular judgment set aside.

The defendant had brought money into court on the common rule; the plaintiff would not accept the money, but proceeded to trial, and upon the trial was nonsuited; and the defendant moved in the treasury, that in regard the plaintiff was out of court by the nonsuit, he might have the money back, and produced the *Postea*. The judges on consideration were of opinion, that the defendant by bringing the money into court had admitted the plaintiff to be intitled to it at all events, and that therefore the defendant could not have the money back again: Afterwards the plaintiff brought a new action, and the court made a rule, that the plaintiff might have the money if he thought fit; but if not, that it should remain in court on the common rule in the new action. *Lane v. Wilkinson, Mich. 1. Geo. 1. Pract. Reg. C. P.* 250. *Rep. and Cas. of Pract. C. P.* 36. Tho' plaintiff nonsuited, defendant cannot have the money back.

The like resolution, and leave for the defendant to bring in more money on a new action being brought. *Dickenson v. Tallwin, Trin. 3 Geo. 2. Pract. Reg. C. P.* 252. *But see the rule antea.* On a new action leave for plaintiff to have the money, or let it lie on the common rule.

Where the plaintiff has refused the money and proceeded, the court has admitted him to take the money out of court on paying the Plaintiff admitted to take the money, tho' defen-

bad refused it, and proceeded. defendant his costs subsequent to the bringing the money into court. *Barnes* 280, 282.

If judgment arrested, money to be paid to plaintiff. The judgment was arrested, and consequently no costs payable on either side; the court ordered 20*l.* brought into court by the defendant to be paid to the plaintiff. *Pas.* 16 *Geo.* 2. *C. B. Fisher v. Kitchingman, Barnes* 284.

Plaintiff's attorney paid his bill out of money brought into court. On the common rule 37*l.* being paid into court, the plaintiff proceeded to trial and recovered a greater sum, and afterwards became a bankrupt, the assignees moved to have the 37*l.* paid to them; but the plaintiff's attorney insisting, that as he had been the means of obtaining the verdict, he ought to be first paid his bill of costs, it was ordered that his bill should be taxed, and that what was due to him should be paid out of the 37*l.* and the residue to the assignees. *Trin.* 27, 28 *Geo.* 2. *C. B. Owston v. Obrian, Barnes* 245.

What sum on a treasury motion. 5*l.* or under may be brought in on a motion in the treasury.

Rule absolute for leave to withdraw plea of general issue, on payment of costs, pay 2*l.* 2*s.* into court, on common rule, and plead the same plea again; the defendant taking notice of trial for the sitting after term in *Middlesex*; the court observed, that no delay had been occasioned to plaintiff, by defendant's omitting to bring money into court, before plea pleaded. *Barnes* 269.

As to laying of actions, and changing the Venue.

ALL real and mixed actions, as waste, *Local actions,*
Ejectione firmæ, &c. are local, and must
 be laid in the county where the land lies; and
 actions of trespass *Quare clausum fregit* must
 be laid in the county where the wrong was
 done.

Actions of debt, detinue, assault, annuity, *Transitory*
 account, &c. are transitory, and may be laid *actions.*
 in any county where the plaintiff pleaseth.

But by a rule of this court, actions upon *Case, trespass,*
 the case, trespass for goods, assault or im- *assault or im-*
 prisonment, arising in any *English* county, *prisonment, to*
 are to be laid in their proper counties, unless *be laid in*
 they arise where the justices of *Nisi prius* sel- *their proper*
 dom come. And because trespass or trover *counties, un-*
 for goods, battery, imprisonment and slander *less, &c.*
 must needs be notorious in what county they *Attornies lay-*
 arise, the attorney knowingly laying them *ing actions of*
 out of their proper county (unless in the cases *trespass, &c.*
 before expressed, or such other cause as shall *in foreign*
 be allowed by a judge of the court) shall be *counties, un-*
 severely punished. *Mich. 1654.* *less, &c. to be*
severely pu-
nished.

In a transitory action, *before the defendant* *Venue may be*
has pleaded, on motion and affidavit made, *changed before*
 (That the plaintiff's cause of action (if any) *plea, on motion*
 arose in the county of *A.* and not in the coun- *and affidavit.*
 ty of *B.* as laid in the declaration, or else-
 where out of the county of *A.*) the court will
 change the *Venue* to the proper county; and *Defendant to*
 the defendant must plead to the new action *plead as b. jure.*

Venue may be changed tho' the defendant comes in on the exigent.

Venue can't be changed before appearance.

May move to change the Venue at any time before plea.

Where a plea shall be no waiver of a rule Nisi for changing the Venue.

as he should have done to the former without delay; and the *Venue* may be changed in this manner though the defendant comes in on the exigent. *Same rule.*

The defendant cannot move to change *Venue* in any action, until his appearance be entered. *Pas. 24 Car. 2.*

Any defendant may move to change the *Venue* at any time before plea pleaded, in all such actions where the *Venue* may be changed by the course of this court, notwithstanding such defendant may have applied for and obtained further time to plead before such motion made. *Mich. 16 Geo. 2.*

The defendants having put in their plea, after a rule for shewing cause why the *Venue* should not be changed, and before it was made absolute; the court held, that the putting in the plea by inadvertency was no waiver of the rule, and gave the defendants leave to withdraw their plea on payment of costs, and made the rule for changing the *Venue* absolute. *Trin. 24 & 25 Geo. 2. C. B. Herbert v. Flower et al. in trover. Barnes 360.*

Rules *Nisi* for changing the *Venue* from *London* into *Essex* were discharged; the defendant on obtaining a judge's order for time to plead having consented to rejoin *gratis*, and to take notice for trial at the sitting after term in *London*; for though an order for time to plead is generally no reason against changing the *Venue*, yet if the defendant's attorney will consent to take notice of trial in the county where the action is laid, that consent shall bind him; if the judge had known

the

the defendant's intention of moving to change the *Venue*, he would have made his order without prejudice to such motion. *Trin.* 28 *Geo.* 2. *Hunter* against *Gray*, and *Smith* against *Gray*, *Barnes* 493.

Action on the case on a custom of the bo-
rough of *Leicester*, for exercising the trade of
a watch-maker there, not being a freeman.
The *Venue* was changed from *London* to *Lei-*
cestershire, without the usual affidavits. *Note*;
there is a commission of goal-delivery every
assises for this borough, but no commission of
Nisi prius. *Trin.* 19 & 20 *Geo.* 2. *C. B.*
Mayor, &c. of *Leicester* v. *Green*, *Barnes*
492.

Venue changed on reading declaration without the usual affidavits.

If it be moved the last day of the term,
the court will not make a rule; for the plain-
tiff has no time to shew cause. *Pract. Reg.*
C. P. 426, 427.

Not to be moved the last day of term.

But if the declaration be delivered so
late, that the plaintiff cannot move before
the last day of term, he may move it then.
Barnes 489.

Unless, &c.

The *Venue* may not be changed from a
county at large to a city and county, as from
the county of *Middlesex* to the county of the
city of *York*. *Barnes* 477.

The Venue not to be changed from a county to a city.

But the *Venue* has been changed from a
county at large into *London*. *Id. ib.*

Except London.

It may be changed from one city and coun-
ty to another city and county, as from the
city of *Norwich* to the city of *London*. *Pract.*
Reg. C. P. 429.

But may from one city and county to another.

The court will not change the *Venue* into a
county palatine, as from *Middlesex* to *Lanca-*
shire.

Not to be changed into a

county palatine. *shire. Rep. and Cas. of Pract. C. P. 91. Barnes 478, 488. Pract. Reg. C. P. 428, 429.*

Of changing the Venue in to cities and counties where assizes are seldom held, or but once a year. The Venue cannot be changed into *Hull, Canterbury, &c.* because it is not known when an assize will be held there; nor into the city of *Worcester* or *Gloucester*, out of the county at large, because the assizes for the city and the county at large are held at the same place. In *Easter* or *Trinity* term, the Venue may be changed into a city or county where the assizes are held but once a year, as *Bristol, Cumberland, &c.* In *Michaelmas* and *Hilary* term there is no certain rule, but the court should change the Venue then, if it can be done without manifest inconvenience.

Nor in an action of Scandalum magnatum, or on a bond or promissory note. The court will not change the Venue in an action of *Scandalum (a) magnatum*, nor where the plaintiff sues on a bond, or other specialty, nor on a bill (b) of exchange or promissory (c) note. See *Rep. and Cas. of Pract. C. P. 119. Pract. Reg. C. P. 317.*

But where there is a declaration on a note with other counts, as for goods sold and delivered, &c. the court will change the Venue, unless the plaintiff will undertake, at the peril of a nonsuit, to give evidence on the promissory note. See *Barnes 491, 492.*

(a) *Rep. and Cas. of Pract. C. P. 132. Pract. Reg. C. P. 417. Barnes 482.* (b) 2 *Barnes 491.* (c) *Pract. Reg. C. P. 417, 418. Barnes 480, 483, 485. Rep. and Cas. Pract. C. P. 152.*

If a serjeant (d) at law, or an (e) attorney, be plaintiff, and sues by *Capias*, and not by writ of privilege, the *Venue* may be changed, for he has thereby waived his privilege, and is to be considered only as a common person.

If a serjeant or attorney sues by Capias, the Venue may be changed.

Action retained in *Middlesex*, on motion to change the *Venue* into *Worcestershire*, in right of plaintiff's privilege as an attorney, though attachment was not *Test.* out of *Middlesex*. *Barnes* 493.

If an attorney be defendant, his privilege alone is not a sufficient cause to change the *Venue*. *Rep. and Cas. of Pract. C. P.* 135. *Pract. Reg. C. P.* 419. *Barnes* 482.

An attorney defendant not intitled to have the Venue changed.

Venue changed from *Middlesex* to *Monmouthshire*. *Barnes* 493.

Pleas.

IF the defendant answers the plaintiff's declaration, it is either by plea or demurrer, of both which there are two sorts, general and special.

Pleas.

A general plea, commonly called the general issue, is a concise direct answer to the declaration.

General.

A special plea contains some particular matter, either by way of excuse, justification, or the like.

Special.

(d) *Rep. and Cas. of Pract. C. P.* 145. *Pract. Reg. C. P.* 420. *Barnes* 346. (e) *Rep. and Cas. of Pract. C. P.* 132. *Pract. Reg. C. P.* 419. *Barnes* 479, 480.

General issues.

Non est factum to a debt on a bond.

And the said *P.* by *L. R.* his attorney cometh and defendeth the wrong and injury, when, &c. and saith, that he ought not to be charged with the said debt by virtue of the said writing, because he saith, that that writing is not his deed; and of this he putteth himself upon the country.

Non est factum to a bill or indenture.

The same as before, only, instead of the word *writing*, say *bill*. The like of an indenture, *mutatis mutandis*.

Non est factum testatoris.

And the said *J. P.* by *T. B.* his attorney, cometh and defendeth the wrong and injury, when, &c. and saith, that he ought not to be charged with the said debt by virtue of the said writing, because he saith, that the said writing is not the deed of the said *W. P.* and of this he putteth himself upon the country.

10 Co. 120.

Nil debet.

And the said *R.* by *M. S.* his attorney cometh and defendeth the wrong and injury, when, &c. and saith, that he doth not owe to the said *H.* the said 100*l.* or any part thereof, in manner and form as the said *H.* hath above declared against him; and of this he putteth himself upon the country.

Nil debet in debt qui tam. Lilly's Entries 223.

And the said *H.* by *J. B.* his attorney cometh and defendeth the wrong and injury, when, &c. and saith, that he the said *H.* doth not owe to our said lord the king, and to the said *J. B.* who as well, &c. the said 400*l.* or any part thereof, in manner and form as the said *J.* who as well, &c. hath above

above declared against him; and of this he putteth himself upon the country.

And the said *C. D.* by *E. F.* his attorney cometh and defendeth the wrong and injury, when, &c. and saith, that he doth not detain from the said *A. B.* the said thirty pounds nor any part thereof, in manner and form as the said *A. B.* above complaineth against him; and of this he putteth himself upon the country.

Non detinet
in debt.
Brownl. 170.
Lilly's Entries
215.

And the said *C.* by *K. P.* his attorney cometh and defendeth the force and injury, when, &c. and saith, that he did not undertake in manner and form as the said *G.* above complaineth against him; and of this he putteth himself upon the country.

Non assump-
sit.

And the said *A. B.* and *C. D.* by *E. B.* their attorney, come and defend the force and injury, when, &c. and say, that the said *J. W.* [*the testator*] in his life-time did not undertake in manner and form as the said *R.* above complaineth against them; and of this they put themselves upon the country.

Non assumpsit
by executors.

And the said *T. W.* by *J. S.* his attorney cometh and defendeth the force and injury, when, &c. and saith, that he is not guilty of the premisses above laid to his charge, as the said *H.* above complaineth against him; and of this he putteth himself upon the country.

Not guilty in
case.

And saith, that he is not guilty of the said trespass, as, &c. (*ut supra*).

In trespass.

And saith, that he is not guilty of the said trespass and assault, as, &c.

In assault.

*Replication to
the general
issue.*

The replication to each of these general issues is this; and the said *D.* doth so likewise, *i. e.* likewise puts himself upon the country.

Special pleas.

*Non assumpsit
infra sex an-
nos.*

And the said *W.* by *J. C.* his attorney cometh and defendeth the force and injury, when, &c. and saith, that the said *E.* ought not to have her said action therefore against him, because he saith, that he did not undertake at any time within six years next before the day of * suing forth the original writ of the said *E.* in manner and form, as the said *E.* above complaineth against him; and this he is ready to verify: Wherefore he prayeth judgment, whether the said *E.* ought to have her said action therefore against him, &c.

Replication.

And the said *E.* saith, that she by any thing before alledged ought not to be barred from having her said action against the said *W.* because she saith, that the said *W.* at some time within six years next before the day of suing forth the original writ of the said *E.* undertook in manner and form, as the said *E.* above complaineth against him; and this she prayeth may be inquired of by the country; and the said *W.* doth so likewise, &c.

Rejoinder.

* If at the suit of an attorney say, *suing forth the said writ of privilege.*—If against an attorney say, *exhibiting the said bill.*

And

And the said *S.* by *K. M.* his attorney, cometh and defendeth the force and injury, when, &c. and saith, that the said *V.* ought not to have his said action against him, because he saith the said several causes of action did not accrue, nor did any of them accrue to the said *V.* within six years next before the day of the obtaining the original writ of him the said *V.* and this he is ready to verify: Wherefore he prayeth judgment if the said *V.* ought to have his said action thereof against him the said *S.*

*Actio non
accrevit infra
sex annos.*

And the said *V.* saith, that he by any thing above alledged ought not to be barred from having his action aforesaid against him the said *S.* because he saith, that the said several causes of action did accrue to the said *S.* within six years next before the day of obtaining the original writ of him the said *S.* to wit, on the aforesaid 12th day of *August* in the year of our Lord 1758, at the parish aforesaid in the county aforesaid; and this he prayeth may be inquired of by the country; and the aforesaid *S.* doth so likewise, &c.

Replication:

Rejoinder.

And the said *T.* by *J. W.* his attorney cometh and defendeth the force and injury, when, &c. and as to the coming with force and arms, and whatever is against the peace of our now lord the king, the said *T.* saith, that he is not guilty thereof; and of this he putteth himself upon the country; and the said *R.* doth so likewise, &c. And as to the residue of the said trespass above supposed to be done, the said *T.* saith, that the said *R.* ought not to have or maintain his said action thereof

*Son assault
demesne.*

thereof against him, because he saith, that the said *R.* at the time in which the said trespass is above supposed to be done at *L.* in the county aforesaid, with force and arms, &c. assaulted the said *T.* and then and there would have beaten, wounded, and evilly treated the said *T.* if he the said *T.* had not then and there immediately defended himself against the said *R.* by which the said *T.* then and there defended himself against the said *R.* and so the said *T.* saith, if any damage or hurt then and there happened to the said *R.* it was from the assault of the said *R.* and in defence of the said *T.* and this the said *T.* is ready to verify: Wherefore he prayeth judgment, if the said *R.* ought to have or maintain his said action against him, &c.

*Replication
de injuria sua
propria.*

And the said *R.* saith, that he by any thing by the said *T.* above by pleading alledged ought not to be precluded from having his said action against the said *T.* for the residue of the trespass, because he saith, that the said *T.* on the day and year above mentioned, at *L.* aforesaid in the county aforesaid, of his proper injury, without the cause by the said *T.* above by pleading alledged, assaulted the said *R.* and beat, wounded and evilly treated him in manner and form as the said *R.* above complaineth thereof against the said *T.* And this he prayeth may be inquired of by the country; and the said *T.* doth so likewise, &c. Therefore as well to try the said issue, as the said other issue above joined between the said parties, the sheriff is commanded, &c.

*Rejoinder.
Venire
awarded.*

And

And the said *R. J. G.* and *A.* by *T. F.* their attorney come and defend the force and injury, when, &c. and as to the coming with force and arms, and also the whole trespass aforeaid, except the assault and imprisonment aforeaid, they say they are Not guilty thereof; and of this they put themselves upon the country; and the said *N.* doth so likewise; and as to the rest of the trespass aforeaid above supposed to be done, they the said *R. J. G.* and *A.* say, That the said *N.* ought not to have his said action thereupon against them, because they say that before the said time in which that assault and imprisonment is supposed to be done, to wit, in the term of *St. Hilary* in the — year, &c. one *A. B.* duly sued out of the court of our lord the king, before the king himself, (the said court then being at *Westminster* in the county of *Middlesex*) a certain writ of our said lord the king of *Latitat* against the said *N.* by the name of *F. N.* gent. and against *V. E. J. C.* and *J. C.* in the said writ also named, directed to the then sheriff of the county of *Devon*; by which said writ the said sheriff of the said county of *Devon* was commanded to take the said *N. F. V. E. J. C.* and *J. C.* if they should be found in his bailiwick, and to keep them safely, so that he might have their bodies before our said lord the king at *Westminster*, on *Monday* next after the morrow of the *Ascension* of our Lord then next ensuing, to answer the said *A. B.* in a plea of trespass, and also to a bill of the said *A.* against the said *N.* for 60*l.* of debt, according

*Justification
in assault and
imprisonment.*

*Writ sued out
of B. R.
against the
plaintiff.*

*Directed to
the sheriff of
Devon.*

*Writ delivered
to the sheriff.*

*Warrant
thereupon to
defendants.*

*By virtue
whereof they
arrested the
plaintiff.*

according to the custom of the court of our
said lord the king, before the king himself
to be exhibited; which said writ afterwards,
and before the return thereof, to wit, on the
ninth day of *May* in the ——— year, &c. the
said *A. B.* at *S.* aforesaid delivered to one Sir
E. S. bart. then sheriff of the said county of
D. to be executed in due form of law. By
virtue of which said writ, the said Sir *E. S.*
then sheriff of the county aforesaid afterwards,
to wit, on the ——— day of ——— in the ——— year
aforesaid, and before the return of the said
writ, at *S.* aforesaid made his certain warrant
in writing, sealed with the seal of his office,
directed to the said *R. J. G.* and *B.* and to
one *R. E.* by which said warrant the said then
sheriff, on the behalf of our lord the king,
commanded the said *R. J. G. B.* and *R.* and
each of them, that they should take the said
N. F. if he should be found in his bailiwick,
and that, &c. so that the said sheriff might
have his body before our said lord the king
at *Westminster*, on the said *Monday* next after
the morrow of the *Ascension* of our Lord, to
answer the said *A. B.* of the plea and bill afore-
said, which said warrant afterwards, to wit,
on the said ——— day of ——— in the ——— year
aforesaid, at *S.* aforesaid, was delivered to
the said *R. J. G.* and *B.* to be executed ac-
cording to law; by virtue of which said war-
rant they the said *R. J. G.* and *B.* afterwards,
and before the return of the said writ, to wit,
on the ——— day of ——— in the ——— year afore-
said, at *S.* aforesaid, took and arrested the
said *N. F.* and then and there had him in
their

their custody by virtue of the said warrant, and detained the said *N.* as it was lawful for them to do, by the time in the said declaration above specified, which said taking and arresting the said *N.* in form aforesaid, and for the cause aforesaid, are the same assault and imprisonment, whereof the said *N.* above complaineth; without this, that they the said *R.* *J.* *G.* and *B.* or either of them, are guilty of any assault and imprisonment, otherwise, or in any other manner before or after the said—day of—in the—year aforesaid; and this they are ready to verify: Wherefore they pray judgment if the said *N.* ought to have his action thereupon against them, &c.

Traverse:

Sed vide as to this plea, 3 Lev. 62, 63.

And the said *T.* by *R. R.* his attorney cometh and defendeth the force and injury, when, &c. and saith, that at the time of making the said several promises and undertakings he was within the age of twenty-one years; and this he is ready to verify: Wherefore he prayeth judgment, if the said *W.* ought to have his said action thereupon against him, &c.

Infra ætatem,

And the said *W.* saith, that he by any thing before alledged ought not to be barred from having his said action against the said *T.* because he saith, that the said 20*l.* expended and laid out by him the said *W.* for the said *T.* and the taylor's work done and performed by him the said *W.* together with the materials and necessary things used in and about the said work, and in form aforesaid found

Replication, for necessary apparel suitable to defendant's degree.

and

and provided by the said *W.* for the said *T.* were laid out and expended, done and performed, found and provided by the said *W.* at *London* aforesaid, in the parish and ward aforesaid, for the necessary apparel and cloathing of the body of the said *T.* his degree requiring the same; and this he is ready to verify: Whereupon he prayeth judgment, and his said damages by occasion of the premisses, to be adjudged to him, &c.

*Rejoinder, not
for necessary
apparel, &c.*

And the said *T.* saith, that the said 20*l.* expended and laid out by the said *W.* and the said taylor's work done and performed by the said *W.* together with the materials and things necessary, used in and about the said work, and in form aforesaid found and provided by the said *W.* for the said *T.* were not for the necessary apparel and cloathing of the body of the said *T.* in manner and form as the said *W.* has thereupon above by replying alledged; and of this he putteth himself upon the country; and the said *W.* doth so likewise, &c.

*Durefs to a
bond.*

And the said *H. J.* by *S. A.* his attorney cometh and defendeth the force and injury, when, &c. and saith, that the said *S. C.* ought not to have or maintain his said action against him, because he saith, that he, at the time of making the writing aforesaid, was imprisoned by the said *S. C.* and others by his contrivance, *to wit,* at *T.* aforesaid in the county aforesaid, and was there detained in prison until he the said *H. J.* by force and durefs of imprisonment then and there made the said

saïd writing to the saïd S. C. wherefore he prayeth judgment if the saïd S. C. ought to have or maintain his saïd action aforesaïd, &c.

Mich. 10 Geo. 2.

- 1 Count. *Indeb. ass.* for serving defendant as a hired servant.
- 2 *Indeb. ass.* for work and labour.
- 3 *Quantum meruit*, for nursing defendant's daughter.
- 4 *Insimul computasset.*

And the saïd *John Carter* by *J. S.* his at-
torney cometh and defendeth the force and
injury, when, &c. And as to the first pro-
mise and assumption in the saïd declaration
mentioned, except as to 3s. 6d. part of the
saïd sum of 10*l.* therein mentioned; and as
to all the other promises and assumptions
mentioned in the saïd declaration, the saïd
John saith, that he did not assume upon him-
self in manner and form as the saïd *Margaret*
above thereof complaineth against him; and
of this he putteth himself upon the country;
and as to the saïd 3s. 6d, part of the saïd
sum of 10*l.* in the saïd first promise and as-
sumption in the saïd declaration mentioned;
and as to the saïd first promise and assump-
tion in that behalf, the saïd *John* saith, that
the saïd *Margaret* ought not to have or re-
cover against him any more damages by rea-
son of the not paying thereof, than the saïd
3s. 6d. because he saith, that after the saïd
first promise and assumption above supposed
to be made, and before the suing out the
original writ of the saïd *Margaret*, to wit, on
the

Plea of tender of 3s 6d.

Lilly's Ent.

476.

Pract. Reg.

562, 565.

1 *Lutw.* 368.

the first day of *January* in the year of our Lord 1753, at *Westminster* aforesaid, he the said *John* was ready and offered to pay, and tendered to the said *Margaret* the said 3 s. 6 d. which the said *Margaret* then and there refused to accept from the said *John*. And the said *John* further saith, that from the time of making the said first promise and assumption hitherto he hath been always ready, and still is ready, to pay the said 3 s. 6 d. to the said *Margaret*, and he bringeth the same here into court, ready to be paid to the said *Margaret* if she is willing to receive the same; and this he is ready to verify: Wherefore he prayeth judgment, if the said *Margaret* ought to have or recover against him any more damages than the said 3 s. 6 d. &c.

W. Chapple.

The money to be paid into court to the prothonotary when the plea is left, which sh^d be pleaded in four days.

Replication.

And as to the said plea of the said *John* as to the first promise (except as to 3 s. 6 d. part of the said sum of 10 l.) and as to all the other promises mentioned in the said declaration, the said *Margaret* saith, that the said *John* did promise and undertake in such manner and form as the said *Margaret* hath above complained against him the said *John*; and of this she likewise putteth herself upon the country; and as to the said 3 s. 6 d. part of the said 10 l. in the said first promise mentioned, and in bar pleaded to be tendered as
above

above, she the said *Margaret* saith, that by reason of any thing by the said *John* above in pleading alledged, she ought not to be precluded from having her said damages therefore against him the said *John*, because she saith that he the said *John* did not at any time before the suing out of the said original writ of the said *Margaret*, offer to pay or tender unto the said *Margaret* the said sum of 3s 6d. as the said *John* hath above in his pleading alledged; and this she prayeth may be inquired of by the country, &c. And the said *John* doth so likewise, &c. Therefore, &c.

And *Thomas Merriton*, who is impleaded by the name of *Thomas Moreton*, in his proper person cometh and defendeth the force and injury, &c. and saith, that he is now, and always was called and known by the surname of *Merriton*, and not *Moreton*, as by the said writ and declaration is above supposed; and this he is ready to verify: Wherefore he prayeth judgment of the said writ, and that the said writ may be quashed, &c.

Plea of misnomer.

And *John Smith*, late of the parish of *St. James* within the liberty of *Westminster* in the county aforesaid, yeoman, against whom the said *Ralph Bigland* hath brought his said writ, by the name of *John Smith* late of the parish of *St. James* within the liberty of *Westminster* in the county aforesaid, cheesemonger, in his proper person cometh and defendeth the force and injury, &c. and saith, that on the day of suing out the said original writ, and long before, he was, and yet is a yeoman, and not of any mystery, trade or profession;

Abatement. Defendant a yeoman, and not a cheesemonger.

Defendant ought regularly to shew his mystery, not his degree, but being of no

trade these words are intended to answer that objection.

without this, that the said *John Smith* on the day of suing the said original writ, or at any time before or since, was a cheesemonger; and this he is ready to verify: Wherefore he prayeth judgment of the said writ, and that the said writ may be quashed. [See more pleas in abatement, *Vol. 2. fo. 1. to 17.*]

Plea to be delivered in writing to the plaintiff's attorney. When to be left in the office.

The defendant is to deliver his plea in writing [on paper stamped with a treble penny stamp] to the plaintiff's attorney. *Mich. 1654.*

And if there be no such attorney to be found, or being found refuseth to accept it, then the plea may be left in the office. *Same rule.*

Rule to plead, and an order for time. Plaintiff need not give a new rule.

Where a rule to plead has been given, and the defendant obtains an order for time to plead till the first day of the next term, the plaintiff may sign judgment in default of the defendant's pleading, without giving a new rule. *Rep. and Cas. of Pract. C. P. 67, 141.*

The like where delayed by an injunction.

Where the plaintiff has given a rule to plead, and has been delayed from signing judgment by an injunction out of *Chancery*, after the injunction is dissolved he may sign judgment without giving a new rule. *Barnes 238.*

Plea can't be delivered in the country.

A plea delivered to the attorney in the country is irregular, it must be delivered to the agent in town or left in the office. *Sed vide antea.*

Nil debet to assumpsit, Plt. may sign judgment.

If the defendant pleads a false plea, as *Nil debet* to an action on the case upon *assumpsit*, the plaintiff may sign judgment.

A plea of tender ought regularly to be pleaded in the same manner as a plea in abatement, *viz.* in four days after the declaration delivered, if delivered four days before the end of the term; and if the declaration be delivered before the effoin-day of a term, then it must be delivered within the four days of that term, as a plea of the last term. See *Barnes* 361. But this is to be dispensed with upon particular circumstances, as if the defendant lives at a distance in the country, so that his attorney cannot deliver this plea in due time, the court will upon such reasonable cause give further time to plead a tender, as of the term in which the declaration was delivered, but such application should be within the four days, or at least as soon as possible it can be without any delay on the defendant's part. See *Barnes* 351, 352.

Tender when to be pleaded.

No dilatory plea shall be received unless the party offering the same do by affidavit prove the truth thereof, or shew some probable matter to the court to induce them to believe that the fact of such dilatory plea is true. *Stat. 4 & 5 Annæ.*

No dilatory plea to be received without affidavit.

There must be an affidavit to verify the fact, in a plea of *antient demesne*. 3 *Wils. Rep.* 51.

A plea of *Infra ætatem* ought to have an affidavit annexed, to verify the truth of the plea. *Pract. Reg. C. P.* 5.

Affidavit to verify the truth of the plea of infancy.

A plea in abatement must be pleaded within the first four days after the declaration is delivered or left in the office, although no rule

Plea in abatement to be pleaded in four days.

rule to plead be given, or else the defendant must within that time procure a special imparlance; and a plea in abatement otherwise pleaded is a mere nullity, and the plaintiff may sign judgment. *Rep. and Cas. of Pract. C. P.* 64. *Pract. Reg. C. P.* 286. *Barnes* 331, 334.

For want of affidavit to plea in abatement plaintiff may sign judgment.

If a plea which ought to be verified by affidavit, has not an affidavit annexed, the plaintiff may *instanter*, without applying to the court for leave, sign judgment as though no plea had been delivered. *Pract. Reg. C. P.* 4, 282. *Rep. and Cas. of Pract. C. P.* 38.

And if a plea which ought to have a serj. hand, be delivered without.

If a plea, which ought to be signed by a serjeant, be delivered without a serjeant's hand, the plaintiff may sign judgment as if no plea had been delivered. *Id. ib.*

What pleas do not require a serj. hand.

The following pleas do not require a serjeant's hand, viz.

Comperuit ad diem,
Son assault demefne,
Plene administravit,
Riens per discent,
Nul tiel record,

Per minas,
Solvit ad diem,
Ne unques executor,
Infra etatem.

Rep. and Cas. of Pract. C. P. 41. *Pract. Reg. C. P.* 282. *Barnes* 365.

Nec do

Ne unques administrator,
Non est factum,
Nil debet.

Non Assumpit,
Not guilty. Barnes
365. Per Dures.

Wherever the plea is signed by a serjeant, the replication must likewise be signed. *Barnes* 365.

The

The demand of a plea must be in writing, and the demand of a plea indorsed on the back of the declaration is insufficient, except where a prisoner is defendant. See *Tit. Prisoner postea.* Demand of a plea to be in writing.

The plaintiff cannot sign judgment for want of a plea, 'till the afternoon of the day after the rule to plead is out. When to sign judgment.

Where the defendant obtains a judge's order for time to plead, the plaintiff cannot sign judgment 'till the afternoon of the day after the time given by the order is expired; as if by the order the defendant has till *Monday* to plead, the plaintiff can't sign judgment before *Tuesday* in the afternoon. *Pract. Reg. C. P. 287. Rep. and Cas. of Pract. C. P. 67.* When on a judge's order for time to plead.

A summons for time to plead ought not to be taken out after the rule to plead is out; and if such summons be taken out and served, 'tis no stay of proceedings. *Rep. and Cas. of Pract. C. P. 137. Barnes 254.* No summons to be taken out after rule to plead is out.

If the defendant takes out a judge's summons for time to plead, the plaintiff cannot sign judgment 'till the summons is discharged. *Rep. and Cas. of Pract. C. P. 144. Barnes 240, 255.* After summons no judgment till summons discharged.

A plea of tender is not an issuable plea within the meaning of a judge's order for time to plead, on pleading an issuable plea. *Rep. and Cas. of Pract. C. P. 134.* Plea of tender.

Nor that plaintiff was an infant, and ought to sue by *prochein amy*, and not by attorney; for this is a plea in abatement, and consequently null and void. *Barnes 263.*

Nor a recovery in another court, for although this be an issuable plea within the letter of the judge's order, yet it is not within the true intent and meaning of it. *Wils. Rep. C. B. 117. 3 Wils. Rep. 33 S. P.*

Nor a general performance of covenants, not signed by council. *Barnes 354.*

Defendant obtained an order for time to plead, pleading an issuable (a) plea, rejoining (b) *gratis*, and taking short (c) notice of trial within term; defendant pleaded accordingly, and plaintiff replied; and then defendant, instead of rejoining, demurred, merely for delay; plaintiff not having time to set down demurrer to be argued within term, signed judgment; which defendant moved to set aside, but upon hearing council on both sides, court considered defendant's practice a mere trick, and therefore denied the motion. *Barnes 271.*

Stat. of limitations.

If judgment be set aside on payment of costs, and pleading an issuable plea, the defendant cannot plead the statute of limitations; for it is not an issuable plea within the meaning of the rule, for setting aside the judgment, the rule should be on pleading the general issue.

(a) Viz. a plea in chief, upon which plaintiff may take issue. *Barnes 263.*

(b) By which is meant rejoining without the common four-day rule. *Barnes 271.*

(c) On order for *short* notice, two days is the least. *Barnes 301.*

Defendant

Defendant cannot plead, "That no such letters of administration, as set forth in declaration, were ever granted to plaintiff," without craving oyer thereof, and setting them out in his plea. *2 Wils. 413.*

If the defendant crave oyer, he shall have as many days to plead after oyer given, as he had to plead at the time oyer was demanded. *Pract. Reg. C. P. 26, 28, 300. Rep. and Cas. of Pract. C. P. 81. Barnes 238, 254.*

What time the defendant has to plead after oyer.

If oyer be demanded after rule to plead is out, the plaintiff may sign judgment notwithstanding; but if the defendant has eight days to plead, he may demand oyer at any time within the eight days, notwithstanding the four-day rule to plead is expired. *Barnes 268. See 2 Wils. 413.*

If the defendant prays oyer and a copy of a bond, he is intitled to inspect it and have a copy of the whole, with the witnesses names, and all memorandums subscribed and indorsed. *Barnes 327.*

On oyer defendant intitled to witnesses names and all indorsements.

If the defendant prays oyer, and afterwards delivers a plea without making the oyer part of it, the plaintiff may make up the issue with oyer; for the pleadings are supposed to be *Ore tenus* at the bar, and a record is to be made of what is done there. *Barnes 327.*

If defendant makes the oyer no part of his plea, plaintiff may make it part of the issue.

The defendant pleaded a release, with a *Profert hic in curia*; on the 12th of November the plaintiff craved oyer, and on the 14th signed judgment, for want of oyer being given him; and it was held that this judgment was regularly signed, that from the 12th to

Within what time the defendant ought to deliver oyer of a deed pleaded by him.

the 14th was a reasonable time for the defendant to give the plaintiff oyer, and that the plaintiff had no need to apply to the court to set aside the plea; for, after oyer craved by the plaintiff, the defendant is bound to verify his plea. *Blexland* against *Burgis*, *Mich. 7 Geo. 2. Pract. Reg. C. P. 301. Barnes 245. Rep. and Cas. of Pract. C. P. 95.*

Def. may waive his special plea, and plead the general issue.

The defendant may waive his special (d) plea, and plead the general issue the same term, without payment of costs or application to the court. *2 Wils. 391.* but not *vice versa*, unless under special circumstances. See *2 Wils. 253, 254.*

Sed. Q. If the plaintiff has replied, whether the defendant must not apply to the court and pay costs? See *Barnes 127.*

Can't withdraw a plea of tender.

After a plea of tender, and money brought into court, the court will not admit the defendant to withdraw his plea, and plead the general issue. *Barnes 349.*

Plea refused to be amended, though the application was before argument; defendant having likewise pleaded another plea in which issue was joined, trial had, and verdict for plaintiff. *Barnes 25.*

Plea of *plene administravit*, amended on payment of costs. *Barnes 25.*

(d) Not, if it be a sham plea. *2 Wils. 369.*

Of double pleas.

D OUBLE pleas allowed, viz.—*Non assumpsit*, and *Non assumpsit infra sex annos*. *Barnes* 329. denied *Pract. Reg. C. P.* 307, 308, 309. *Double pleas allowed.*

Non assumpsit, and a discharge under the insolvent debtors act. *Pract. Reg. C. P.* 312. *Barnes* 343.

In replevin, leave given to avow two matters, viz. a justification of the distress under a lease for years, and that the goods distrained were not the property of the plaintiff. *Barnes* 338. *Pract. Reg. C. P.* 184.

In trespass *Non cul.* and *Liberum tenementum alterius*. *Barnes* 336, 340. *Pract. Reg. C. P.* 315. *Barnes* 351, 356. *Vide infra.*

Solvit ad diem, and a mutual debt. *Barnes* 340.

Tender to part, and *Non assumpsit* to all the rest. 3 *Wils.* 145.

Damage feasant, and under a demise from the defendant to the plaintiff. *Barnes* 339. *Pract. Reg. C. P.* 315.

Damage feasant and for rent in arrear. *Pract. Reg. C. P.* 316. *Barnes* 340.

Non assumpsit, a set-off, and a tender, as of last term. *Barnes* 353, 357, 360, 366.

Non cepit. Cattle property of another person, not of plaintiff; and *liberum tenementum*. *Barnes* 364.

A tender to the first count, and *Non assumpsit* to the residue. *Barnes* 362.

Non

Non assumpsit, and *Plene administravit*.
Barnes 348. Pract. Reg. C. P. 311, 312.

Plene administravit, and a set-off. Pract.
Reg. C. P. 313. Barnes 347.

Ne unques executor, and *Plene administravit*.
Barnes 355, 365.

Non est factum, and *Ne unques executor*.
Barnes 352.

Non est factum, and *durefs*. Barnes 359.

Not guilty and a general release. Barnes
347, 348.

Not guilty, and 4 guineas paid in satisfac-
tion of all trespasses to such a time. Barnes
349.

Not guilty, *Sen assault*, and satisfaction
for all trespasses. Barnes 352.

Not guilty, *Sen assault*, and *Molliter ma-
nus imposuit*. Pract. Reg. C. P. 315. Barnes
351, 352, 355.

Not guilty, and a justification in trespass.
Barnes 355, 356, 365.

Non cepit, and to avow the taking. Barnes
365.

Not guilty, and a tender of amends.
Barnes 366.

*Double plea
denied.*

Double pleas denied, *viz.*—*Non assumpsit*,
and a release, as contradictory. Barnes 328.
Pract. Reg. C. P. 311.

Non assumpsit, *Non assumpsit infra sex an-
nos*, and leave to bring money into court.

Non assumpsit, and infancy; because it may
be given in evidence. Barnes 363.

Solvit ad diem, and *Riens per discent*, the
like. Barnes 332.

Non est factum, and *Solvit ad diem*. Barnes 363.

Liberum tenementum, and a justification, the like. Barnes 329.

Nil debet, and *Nil habuit in tenementis*, the latter may be given in evidence. Barnes 333. *Pract. Reg. C. P.* 314.

Not guilty, and *Liberum tenementum*, denied as (e) contradictory, and no affidavit being produced to verify that the defendant's case required both pleas for his defence. Barnes 350.

In trover Not guilty, and that plaintiff became a bankrupt and his effects assigned. Barnes 360.

Non assumpsit, and a tender. Barnes 366. 3 *Wils.* 145.

Not guilty, and a licence, Barnes 349, 364. without an affidavit, denied: where the pleas are contradictory, the defendant should make it appear by affidavit, that it is necessary for his defence to insist upon both. If the trespass be by cattle, the nature of the case is sufficient; an affidavit is not necessary, because the fact may not be in the party's knowledge; if by the party himself, he must move upon affidavit. Barnes 351.

Not guilty, and a release of a particular trespass, is never admitted, but a Not guilty and a general release has been admitted where

(e) Court, upon motion to plead *double*, never gives leave to plead *contradictory* matters. Barnes 290.

an affidavit has been produced. *Barnes* 351.

Leave to plead double any time before judgment.

The defendant may have leave to plead double any time before judgment signed, though the rule to plead be out, but not before appearance. *Barnes* 329, 331.

Not after single plea.

After the defendant has pleaded a single plea, he can't have leave to add another. *Barnes* 361.

Nor after money brought into court.

After the defendant has paid money into court, he can't have leave to plead double. *Barnes* 339. *Pract. Reg. C. P.* 317.

Defendant cannot plead several matters in a *Quitam* action. *Barnes* 365.

On double plea, if plt. hath judgment in one, he can't enter a Noli prosequi as to the other.

The defendant, with leave of the court, pleaded *Non assumpsit*, and *Non assumpsit infra sex annos*; to the latter the plaintiff replied an original: Issue was joined on *Nul tiel record*, and judgment for the plaintiff; whereupon he executed a writ of inquiry, but did not proceed on the issue of *Non assumpsit*. The defendant moved to set aside the writ of inquiry; the plaintiff insisted he might enter *Noli prosequi* on the issue of *Non assumpsit*, and take his execution on the issue that was found for him. The defendant insisted both pleas went to the whole declaration; and if any one issue was found for the defendant, the plaintiff was barred of his demand. *Cur'*: It is a judgment only as to part, and not upon the whole proceeding, and the inquiry could not be executed before the other issue was tried. The defendant has a double defence given him, and if any one be found for him, he shall be excused, therefore this writ of inquiry

quiry is wrong; and if this way of proceeding was to be allowed, there is an end of pleading double. *Prior v. Com. Hay Exec. Hil. 7 G. 2. Pract. Reg. C. P. 320.*

Action on a promissory note, double plea, *viz. Non assumpsit, and Non assumpsit infra sex annos*: To the latter the plaintiff replied an original, and on *Nul tiel record* had judgment; but on trial upon the *Non assumpsit* was nonsuited. On the issue in which he had judgment he executed a writ of inquiry, which the defendant moved to have set aside, and said, that the two pleas go to the whole; and if either be found for the defendant, the plaintiff cannot recover. It was urged for the plaintiff, that by the statute for the amendment of the law, where several matters are pleaded by the defendant, if any be found for the plaintiff, he shall recover. *Cur'*: This is a consideration. Adjourned. *Postea* writ of inquiry set aside. *Prior v. Com. Hay Exec. Mich. 8 Geo. 2. Id. ib.*

If either found for the def. the plaintiff can't recover.

When issue is joined, the plaintiff delivers the defendant's attorney a copy thereof on treble penny stamped paper, he paying for the same after the rate of 4 *d.* a sheet, besides the duty; and for the entry of his plea, according to the length, if the general issue, only 2 *s.* and for filing his warrant of attorney 8 *d.* *v. postea fol.* But note, if the issue be of the same term with the declaration, and the defendant has paid for one copy of the declaration, he is only to pay for a copy of the pleadings subsequent to the declaration, for

Def. to pay for a copy of the issue, and entering his pleadings.

for he is not obliged to pay for two copies of the declaration in the same term.

Where plt. appears for the def. he may charge it on the back of the issue.

Def't's attorney, if copy of issue overcharged, may tender what really due.

How if def. be a prisoner, and no attorney concerned.

Method of making up the issue.

If the plaintiff enter the appearance for the defendant, he may charge for it on the back of the issue, and if the defendant's attorney will not pay it, he may sign judgment.

The practice was formerly, that the defendant's attorney must pay for the copy of the issue at all events, or the plaintiff might sign judgment; and if it be overcharged, the defendant might apply to the court. But now it is held, that if the defendant's attorney is ready to pay, and tenders what is really due, it is sufficient. Where the defendant is a prisoner, and no attorney appears to be concerned for him, the plaintiff cannot sign judgment for not paying for the copy of the issue.

The method of making up the issue in this court is the same with the method used in the court of *King's Bench*, when the proceedings are by original; and when the proceedings in this court are by bill, the issue begins with a memorandum, as in the *King's Bench* on proceedings by bill. An issue by original begins thus:

In the Common Pleas.

Trinity term (the term the issue is joined) in the year of king
George the third.

Middlesex, *A.* B. late of *Westminster* in the
to wit. county of *Middlesex*, gentleman, was attached to answer C. D. of, &c.

[to the end of the declaration] And thereof he bringeth suit, and so-forth.

Then begin a new line, and enter the plead- **Venire facias**
ings to the end of the issue, after which fol- **awarded.**
lows the award of the *Venire* in this form.—
Therefore it is commanded to the sheriff, that
he cause to come here from the day of, &c.
(some return before the day of trial) Twelve,
&c. By whom, &c. And who neither, &c.
To recognize, &c. Because as well, &c.

In the Common Pleas.

*Trinity term in the seventeenth year
of the reign of king George the
third.*

HERETOFORE as it appeareth in the *Entry of an*
term of *Easter* last past in the 864. roll it *issue on a bill*
is thus contained. *Middlesex, to wit,* Be it re- *against an at-*
membred, "that on the 25th day of *May* in this *torney, where*
same term *R. L.* came here into court by *L.* *the issue is*
R. his attorney, and exhibited to the justices *joined in a*
of our lord the king of the bench here his bill *term subse-*
against *M. U.* gent. one of the attornies of *quent to that*
the court of our said lord the king of the *in which the*
bench here present, here in court in his pro- *bill was filed.*
per person, in a plea of trespass on the case,
the tenor of which said bill followeth in these
words, *to wit,* To the justices of our lord
the king of the bench. *Middlesex, to wit,* *R.*
L. by *L. R.* his attorney complaineth against
M. U. gent. one of [set forth the whole bill
verbatim

verbatim to] And thereupon he prayeth relief, &c. Pledges of prosecuting *John Doe* and *Richard Roe*.

Imparlance.

And the said *M.* in his proper person cometh and defendeth the force and injury, when, &c. and prayeth leave to imparl thereupon here, until *Friday* next after the morrow of the *Holy Trinity*; and hath, &c. The same day is given to the said *R.* here, &c. And now here at this day cometh as well the said *R.* by his attorney aforesaid, as the said *M.* in his proper person. And upon this the said *R.* prayeth, that the said *M.* may answer to his said bill, &c. And the said *M.* as before defendeth the force and injury, &c. And saith, that he did not undertake and promise in manner and form as the said *R.* above declareth against him; and of this he putteth himself upon the country, &c. And the said *R.* doth so likewise, &c. Therefore the sheriff is commanded* that he cause to come here on _____ next after _____ Twelve, &c. By whom, &c. And who neither, &c. To recognize, &c. Because as well, &c.

See more of this among the pleadings at the end of the book.

In country causes issues to be delivered to the agent in town, and not to the country attorney.

In country causes the issue must be delivered to the agent in town, and not to the attorney in the country; and where it has been agreed between the country attorneys, that the issue should be delivered in the country, and has been afterwards tendered to the agent in town, and not paid for, judgment has been signed,