


ANNO QUARTO & QUINTO

# GULIELMI IV. REGIS.

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## CAP. LXII.

### An Act for improving the Practice and Proceedings in the Court of Common Pleas of the County Palatine of *Lancaster*. [13th *August* 1834]

WHEREAS various Alterations and Improvements have recently been made, by the Authority of Parliament and otherwise, in the Practice and Proceedings in the superior Courts of Common Law at *Westminster*; and it is expedient that certain Alterations and Improvements should be effected in the Practice and Proceedings of the Court of Common Pleas at *Lancaster*: Be it therefore enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That the Process in all personal Actions hereafter to be commenced in the Court of Common Pleas at *Lancaster*, where it is not intended to hold the Defendant to Special Bail, shall, whether the Action be brought by or against any Person entitled to the Privilege of Peerage or of Parliament, or of the said Court, or of any other Court, or to any other Privilege, or by or against any other Person, be according to the Form contained in the Scheduly to this Act annexed marked Number 1, and shall be called a Writ of Summons; and in every such Writ, and Copy thereof, the Place and Residence or supposed Residence of the Party Defendant, or wherein the Defendant shall be or shall be supposed to be, shall be mentioned; and such Writ shall be issued by the Prothonotary of the

Serviceable Process for the Commencement of personal Actions.

the said Court, or his Deputy, and shall be served in the Manner heretofore used in the County Palatine of *Lancaster*, and not elsewhere, and the Person serving the same shall and is hereby required to indorse on the Writ the Day of the Month and Week of the Service thereof.

Mode of Appearance to serviceable Process.

II. And be it further enacted, That the Mode of Appearance to every such Writ or under the Authority of this Act shall be by delivering to the said Prothonotary or his Deputy a Memorandum in Writing, dated on the Day of Delivery thereof, according to the Form contained in the said Schedule and marked Number 2.

Appearance may be enforced by a Writ of Distringas, in case a Defendant cannot be served with the Writ of Summons.

III. And be it further enacted, That in case it shall be made appear by Affidavit to the Satisfaction of the said Court or One of the Judges thereof that any Defendant has not been personally served with any such Writ of Summons as herein-before mentioned, and has not, according to the Exigency thereof, appeared to the Action, and cannot be compelled so to do without some more efficacious Process, then and in any such Case it shall be lawful for such Court or Judge, by Rule or Order, to order a Writ of Distringas to be issued, directed to the Sheriff of the said County of *Lancaster*, (or to any other Officer to be named in such Rule or Order,) to compel the Appearance of such Defendant, which Writ of Distringas shall be in the Form and with the Notice subscribed thereto mentioned in the Schedule to this Act marked Number 3, which Writ of Distringas and Notice, or a Copy thereof, shall be served on such Defendant, if he can be met with, or if not, shall be left at the Place where such Distringas shall be executed; and a true Copy of every such Writ and Notice shall be delivered together therewith to the Sheriff or other Officer to whom such Writ shall be directed, and every such Writ shall be made returnable on a Day certain, to be named therein, not being less than Fifteen Days after the Teste thereof; and if such Writ of Distringas shall be returned Non est inventus and Nulla bona, and the Party issuing out such Writ shall not intend to proceed to Outlawry or Waiver, according to the Authority herein-after given, and any Defendant against whom such Writ of Distringas issued shall not appear at or within Eight Days inclusive after the Return thereof, and it shall be made appear by Affidavit, to the Satisfaction of the said Court or One of the Judges thereof, that due and proper Means were taken and used to serve and execute such Writ of Distringas, it shall be lawful for such Court or Judge to authorize the Party suing out such Writ to enter an Appearance for such Defendant, and to proceed thereon to Judgment and Execution.

Bailable Process for the Commencement of personal Actions.

IV. And be it further enacted, That in all Actions wherein it shall be intended to arrest and hold any Person to Special Bail who may not be in Custody of the Keeper of the Gaol of the said County, the Process shall be by Writ of Capias according to the Form contained in the said Schedule and marked Number 4; and so many Copies of such Process, together with every Memorandum or Notice subscribed thereto, and all Indorsements thereon as there may be Persons intended to be arrested thereon or served therewith, shall be delivered therewith to the Sheriff or other Officer or Person to whom the same may be directed.

directed, or who may have the Execution and Return thereof, and who shall, upon or forthwith after the Execution of such Process, cause One such Copy to be delivered to every Person upon whom such Process shall be executed by him, whether by Service or Arrest, and shall indorse on such Writ the true Day of the Execution thereof, whether by Service or Arrest; and if any Defendant be taken or charged in Custody upon any such Process, and imprisoned for Want of Sureties for his Appearance thereto, the Plaintiff in such Process may, after the Detainer or Arrest of such Defendant, declare against such Defendant, and proceed thereon according to the Practice of the said Court, as against a Defendant in Custody on Mesne Process: Provided always, that it shall be lawful for the Plaintiff or his Attorney to order the Sheriff or other Officer or Person to whom such Writ shall be directed to arrest One or more only of the Defendants therein named, and to serve a Copy thereof on One or more of the others, which Order shall be duly obeyed by such Sheriff or other Officer or Person; and such Service shall be of the same Force and Effect as the Service of the Writ of Summons herein-before mentioned, and no other.

Proceedings to Outlawry.

V. And be it further enacted, That upon the Return of Non est inventus as to any Defendant against whom such Writ of Capias shall have been issued, and also upon the Return of Non est inventus and Nulla bona as to any Defendant against whom such Writ of Distringas as herein-before mentioned shall have issued, whether such Writ of Capias or Distringas shall have issued against such Defendant only, or against such Defendant and any other Person or Persons, it shall be lawful, until otherwise provided for, to proceed to outlaw or waive such Defendant by Writs of Exigi facias and Proclamation, and otherwise, in such and the same Manner as may now be lawfully done upon the Return of Non est inventus to a Pluries Writ of Capias ad respondendum issued after an Original Writ: Provided always, that every such Writ of Exigent, Proclamation, and other Writ subsequent to the Writ of Capias or Distringas shall be made returnable on a Day certain in Term; and every such first Writ of Exigent and Proclamation shall bear Teste on the Day of the Return of the Writ of Capias or Distringas, and every subsequent Writ of Exigent and Proclamation shall bear Teste on the Day of the Return of the next preceding Writ; and no such Writ of Capias or Distringas shall be sufficient for the Purpose of Outlawry or Waiver if the same be returned within less than Fifteen Days after the Delivery thereof to the Sheriff or other Officer to whom the same shall be directed.

Proceedings to Outlawry may be had after Judgment given under the Authority of this Act.

VI. And be it further enacted, That after Judgment given in any Action commenced by Writ of Summons or Capias, under the Authority of this Act, Proceedings to Outlawry or Waiver may be had and taken, and Judgment of Outlawry or Waiver given, in such Manner and in such Cases as may now be lawfully done after Judgment in an Action commenced by Original Writ: Provided always, that every Outlawry or Waiver had under the Authority of this Act shall and may be vacated or set aside by Writ of Error or Motion, in like Manner as Outlawry or Waiver founded on an Original Writ may now be vacated or set aside.

VII. And

Mode of detaining a Prisoner in Gaol.

VII. And be it further enacted, That when it shall be intended to detain in any such Action any Person being in the Custody of the Keeper of the Gaol for the said County of *Lancaster*, the Process of Detainer shall be according to the Form of the Writ of Detainer contained in the said Schedule and marked Number 5, and a Copy of such Process, and of all Indorsements thereon, shall be delivered, together with such Process, to the Keeper of the said Gaol, who shall forthwith serve such Copy upon the Defendant personally, or leave the same at his Room, and the Declaration thereupon shall and may allege the Prisoner to be in Custody in the said Gaol; and the subsequent Proceedings shall be as against Prisoners in Custody upon Mesne Process, according to the Practice of the said Court, unless otherwise ordered by some Rule to be made by the Judges of the said Court.

Duration of Writs.

VIII. And be it further enacted, That no Writ issued as aforesaid by Authority of this Act shall be in force for more than Four Calendar Months from the Day of the Date thereof, including the Day of such Date; but every Writ of Summons and Capias may be continued by Alias and Pluries, as the Case may require, if any Defendant therein named may not have been arrested thereon or served therewith:

Proviso as to Statute of Limitations.

Provided always, that no first Writ shall be available to prevent the Operation of any Statute whereby the Time for the Commencement of the Action may be limited unless the Defendant shall be arrested thereon or served therewith, or Proceedings to or towards Outlawry shall be had thereupon, or unless such Writ, and every Writ (if any) issued in continuation of a preceding Writ, shall be returned Non est inventus, and entered of Record within One Calendar Month next after the Expiration thereof, including the Day of such Expiration, and unless every Writ issued in continuation of a preceding Writ shall be issued within One such Calendar Month after the Expiration of the preceding Writ, and shall contain a Memorandum indorsed thereon or subscribed thereto, specifying the Day of the Date of the first Writ, and Return to be made, in bailable Process by the Sheriff or other Officer to whom the Writ shall be directed, or his Successor in Office, and, in Process not bailable, by the Plaintiff or his Attorney suing out the same, as the Case may be.

Proceedings on Writs served or executed at certain Times.

IX. And be it further enacted, That when any Writ of Summons, Capias, or Detainer issued by Authority of this Act shall be served or executed, all necessary Proceedings to Judgment and Execution may be had thereon, without Delay, at the Expiration of Eight Days from the Service or Execution thereof:

Proviso for Sunday, &c.

Provided always, that if the last of such Eight Days shall in any Case happen to fall on a *Sunday*, *Christmas Day*, *Good Friday*, or any Day appointed for a Public Fast or Thanksgiving, in any of such Cases the following Day shall be considered as the last of such Eight Days.

Indorsement on Writs of the Name, &c. of the Attorney or Party suing.

X. And be it further enacted, That upon every Writ to be issued as aforesaid by Authority of this Act the Name or Firm and the Place of Business or Residence of the Attorney or Attornies issuing such Writ shall be indorsed thereon, and where such Attorney or Attornies shall be Agents only, then there shall be further indorsed thereon the Name or Firm and Place of Business or Residence of the

principal Attorney or Attornies, but in case no Attorney or Attornies shall be employed for that Purpose, then a Memorandum shall be indorsed thereon, expressing that the same has been sued out by the Plaintiff in Person, mentioning the City, Town, or Parish, and also the Name of the Hamlet, Street, and Number of the House of such Plaintiff's Residence, if any such there be.

Service of Writs of Summons on Corporations, and on Inhabitants of Hundreds and Towns.

XI. And be it further enacted, That every such Writ of Summons issued against a Corporation Aggregate may be served on the Mayor or other Head Officer, or on the Town Clerk, Clerk, Treasurer, or Secretary of such Corporation; and every such Writ issued against the Inhabitants of a Hundred or other like District may be served on the High Constable thereof, or any One of the High Constables thereof; and every such Writ issued against the Inhabitants of the County of *Lancaster*, or the Inhabitants of any Franchise, Liberty, Town, or Place, not being Part of a Hundred or other like District, on some Peace Officer thereof.

Proceedings in default of Appearance.

XII. And be it further enacted, That all such Proceedings as are mentioned in any Writ, Notice, or Warning to be issued as aforesaid under this Act shall and may be had and taken in default of a Defendant's Appearance or putting in Special Bail, as the Case may be.

Attorney to declare whether Writ issued by his Authority and Name, &c. of his Client, if ordered; if Writ not issued by Authority of the Attorney, Defendant may be discharged.

XIII. And be it further enacted, That every Attorney whose Name shall be indorsed on any Writ issued as aforesaid by Authority of this Act shall, on Demand in Writing made by or on behalf of any Defendant, declare forthwith whether such Writ has been issued by him, or with his Authority or Privity, and if he shall answer in the Affirmative, then he shall also, in case the said Court, or one of the Judges thereof, shall by Rule or Order so order and direct, declare in Writing, within a Time to be allowed by such Court or Judge, the Profession, Occupation, or Quality, and Place of Abode of the Plaintiff, on pain of being guilty of a Contempt of the said Court; and if such Attorney shall declare that the Writ was not issued by him, or with his Authority or Privity, the said Court, or any Judge thereof, shall and may, if it shall appear reasonable so to do, make an Order for the immediate Discharge of any Defendant or Defendants who may have been arrested on any such Writ, on entering a common Appearance.

Proviso for Persons privileged from Arrest.

XIV. Provided always, and be it further enacted, That nothing in this Act contained shall subject any Person to Arrest, Outlawry, or Waiver, who, by reason of any Privilege, Usage, or otherwise, may now by Law be exempt therefrom, or shall extend to any Cause removed into the said Court by Writ of Pone loquelam, Accedas ad curiam, Certiorari, Recordari facias loquelam, Habeas corpus, or otherwise.

As to Writs for Commencement

XV. And be it further enacted, That from the Time when this Act shall commence and take effect the Writs herein-before authorized

of personal Actions.

rized shall be the only Writs for the Commencement of Personal Actions in the said Court in the Cases to which such Writs are applicable.

Power to state a Special Case without proceeding to Trial.

XVI. And be it further enacted, That it shall be lawful for the Parties in any Action depending or to be depending in the said Court of Common Pleas at *Lancaster*, after Issue joined by Consent, and by Order of One of the Judges of the same Court, to state the Facts of the Case in the Form of a Special Case for the Opinion of the said Court, or of One of the Superior Courts of Common Law at *Westminster*, and to agree that a Judgment shall be entered for the Plaintiff or Defendant by Confession or of Nolle prosequi, immediately after the Decision of the Case, or otherwise, as the Court before which such Case shall be heard may think fit, and Judgment shall be entered accordingly.

Judges may make Rules for altering and regulating the Mode of pleading and transcribing Records, and touching the Admission of Documents.

XVII. And be it further enacted, That it shall and may be lawful for the Judges of the said Court of Common Pleas at *Lancaster* for the Time being, or any Two of them, from Time to Time to make such Orders, Rules, and Regulations for altering and regulating the Mode of pleading in that Court, and for altering the Mode of entering and transcribing Pleadings, Judgments, and other Proceedings in Actions at Law therein, and touching the voluntary Admission, upon any Application for that Purpose at a reasonable Time before the Trial of any Action of one Party to the other, of all such written or printed Documents, or Copies of Documents, as are intended to be offered in Evidence on the said Trial by the Party requiring such Admission, and touching the Inspection thereof before such Admission is made, and touching the Costs which may be incurred by the Proof of such Documents or Copies on the Trial of the Cause, in case of the omitting to apply for such Admission, or the not producing of such Documents or Copies for the Purpose of obtaining Admission thereof, or of the Refusal to make such Admission, as the Case may be, and as to the said Judges of the said Court for the Time being, or any Two of them, shall seem meet.

Writs of Inquiry under the Statute 8 & 9 W. 3. c. 11. to be executed before the Sheriff, unless otherwise ordered.

XVIII. And be it further enacted, That all Writs of Inquiry of Damages hereafter to be issued by the Court of Common Pleas at *Lancaster*, under and by virtue of the Statute passed in the Session of Parliament held in the Eighth and Ninth Years of the Reign of King *William* the Third, intituled *An Act for the better preventing frivolous and vexatious Suits*, shall, unless the said Court, or One of the Judges thereof, shall otherwise order, direct the Sheriff of the said County of *Lancaster* to summon a Jury to appear before him, instead of the Justices or Justice of Assize of and for the said County, to inquire of the Truth of the Breaches suggested, and assess the Damages that the Plaintiff shall have sustained thereby, and shall command the said Sheriff to make Return thereof to the said Court on a Day certain in such Writ to be mentioned, and such Proceedings shall be had after the Return of such Writ as are in the said Statute in that Behalf mentioned, in like Manner as if such Writ had been executed before a Justice of Assize or Nisi Prius.

XIX. And

Return of other Writs of Inquiry.

XIX. And be it further enacted, That every other Writ of Inquiry to be issued by the said Court of Common Pleas at *Lancaster* shall be made returnable on any Day certain to be named in such Writ.

Power to direct Issues joined in certain Actions to be tried before the Sheriff or any Judge.

XX. And be it further enacted, That in any Action depending in the said Court of Common Pleas at *Lancaster* for any Debt or Demand in which the Sum sought to be recovered and indorsed on the Writ of Summons shall not exceed Twenty Pounds it shall be lawful for the said Court or any Judge thereof, if such Court or Judge shall be satisfied that the Trial of the said Action will not involve any difficult Question either of Law or Fact, and such Court or Judge shall think fit so to do, to order and direct that the Issue or Issues joined shall be tried before the Sheriff of the said County Palatine of *Lancaster*, or any Judge of any Court of Record for the Recovery of Debt in such County, and for that Purpose a Writ shall issue, directed to such Sheriff or Judge, commanding him to try such Issue or Issues by a Jury to be summoned by him, and to return such Writ, with the Finding of the Jury thereon indorsed, at a Day certain to be named in such Writ, and thereupon such Sheriff or Judge shall summon a Jury, and shall proceed to try such Issue or Issues.

Upon the Return of Inquiry or Writ for Trial of Issues, Judgment may be signed, unless, &c.

XXI. And be it further enacted, That at the Return of every Writ of Inquiry, or Writ for the Trial of such Issue or Issues as aforesaid, Costs shall be taxed, Judgment signed, and Execution issued forthwith, unless the Sheriff or his Deputy before whom such Writ of Inquiry may be executed, or such Sheriff, Deputy, or Judge before whom such Trial shall be had, shall certify, under his Hand, upon such Writ, that Judgment ought not to be signed until the Defendant shall have had an Opportunity to apply to the said Court of Common Pleas at *Lancaster*, or One of the Judges thereof, for a new Inquiry or Trial, or the said Court, or One of the Judges thereof, shall think fit to order that Judgment or Execution shall be stayed till a Day to be named in such Order; and the Verdict of such Jury on the Trial of such Issue or Issues shall be as valid and of the like Force as a Verdict of a Jury at the Assizes; and the Sheriff or his Deputy or Judge presiding at the Trial of such Issue or Issues shall have the like Powers, with respect to the Amendment on such Trial, as are given to Judges at Nisi Prius by an Act passed in the Third and Fourth Years of the Reign of His present Majesty, intituled *An Act for the further Amendment of the Law, and the better Advancement of Justice.* 3 & 4 W. 4. c. 42.

Judgment may be vacated, Execution stayed, and new Trial granted.

XXII. Provided always, and be it further enacted, That notwithstanding any Judgment signed or Execution issued as aforesaid by virtue of this Act, it shall be lawful for the said Court of Common Pleas at *Lancaster* to order such Judgment to be vacated and Execution to be stayed or set aside, and to enter an Arrest of Judgment, or grant a new Trial or new Writ of Inquiry, as Justice may appear to require; and thereupon the Party affected by such Writ of Execution shall be restored to all that he may have lost thereby in such Manner as upon the Reversal of a Judgment by Writ of Error or otherwise, as the Court may think fit to direct.

XXIII. And

Defendant to be allowed to pay Money into Court in certain Actions.

XXIII. And be it further enacted, That it shall be lawful for the Defendant in all personal Actions, except Actions for Assault and Battery, false Imprisonment, Libel, Slander, malicious Arrest or Prosecution, Criminal Conversation, or debauching of the Plaintiff's Daughter or Servant, by Leave of the said Court of Common Pleas at *Lancaster* or One of the Judges thereof, to pay into Court a Sum of Money by way of Compensation or Amends, in such Manner, and under such Regulations as to the Payment of Costs and the Form of pleading, as the Judges of the said Court shall, by any Rules or Orders by them to be from Time to Time made, order and direct.

Power to appoint additional Judges.

XXIV. And whereas it would tend to further the Administration of Justice in the said Court of Common Pleas at *Lancaster* if more of the Judges of the superior Courts at *Westminster* were appointed Justices for all manner of Pleas within the said County Palatine of *Lancaster*; be it therefore enacted, That it shall and may be lawful to and for the King's most Excellent Majesty, in right of His Duchy and County Palatine of *Lancaster*, from Time to Time to nominate and appoint all or any of the Judges of the superior Courts at *Westminster* to be Judges of the Court of Common Pleas for the County Palatine of *Lancaster*: Provided nevertheless, that the Judges before whom the Assizes for the said County Palatine of *Lancaster* shall from Time to Time be held, and their respective Officers, shall alone be entitled to the Fees and Emoluments heretofore received by the Judges of the said County Palatine and their Officers.

Judges of superior Courts at Westminster may regulate Fees to be taken in Court of Common Pleas at Lancaster.

XXV. And be it further enacted, That the Judges of the superior Courts of Common Law at *Westminster*, or any Eight or more of them, of whom the Chief of each of the said Courts shall be Three, may, by any Rule or Order to be from Time to Time after this Act shall take effect, make such Regulations as to the Fees to be charged by all and every or any of the Officers of the said Court of Common Pleas at *Lancaster* and the Attornies thereof as to them may seem expedient, and to alter the same when and as it may seem fit and proper, so as such Fees shall not exceed the Fees now received; and all such Regulations shall be binding and obligatory on the said Court of Common Pleas at *Lancaster*, and all the Officers and Attornies of the said Court.

Rules for new Trials to be moved before any of the Courts at Westminster.

XXVI. And be it further enacted, That it shall be lawful for any Party in any Action now depending or hereafter to be depending in the said Court of Common Pleas at *Lancaster* to apply by Motion to any One of the superior Courts at *Westminster* sitting *in Banco*, within such Period of Time after the Trial as Motions of the like Kind shall from Time to Time be permitted to be made in the said superior Court, for a Rule to show Cause why a new Trial should not be granted or Nonsuit set aside, and a new Trial had or a Verdict entered for the Plaintiff or Defendant, or a Nonsuit entered, as the Case may be, in such Action, which Court is hereby authorized and empowered to grant or refuse such Rule, and afterwards to proceed to hear and determine the Merits thereof, and to make such Orders thereupon as the same Court shall think proper; and in case such Court shall order



a new

a new Trial to be had in any such Action the Party or Parties obtaining such Order shall deliver the same, or an Office Copy thereof, to the Prothonotary of the said Court of Common Pleas at *Lancaster*, or his Deputy, and thereupon all Proceedings upon the former Verdict or Nonsuit shall cease; and the Action shall proceed to Trial at the next or some other subsequent Session of Assizes holden for the County of *Lancaster*, in like Manner as if no Trial had been had therein; or in case the Court before which any such Rule shall be heard shall order the same to be discharged, the Party or Parties obtaining any such Order may, upon delivering the same or an Office Copy thereof to the said Prothonotary, or his Deputy, be at liberty to proceed in any such Action as if no such Rule Nisi had been obtained; or if a Verdict be ordered to be entered for the Plaintiff or Defendant, or a Nonsuit be ordered to be entered, as the Case may be, Judgment shall be entered accordingly.

Judgment and Execution not to be stayed, unless the Party moving enter into Recognizance with Sureties.

XXVII. Provided always, and be it further enacted, That the entering up of Judgment in any Action in the said Court of Common Pleas at *Lancaster*, and the issuing of Execution upon such Judgment, shall not be stayed unless the Party intending to apply for such Rule as last aforesaid shall, with Two sufficient Sureties such as the last-mentioned Court shall approve of, become bound unto the Party for whom such Verdict or Nonsuit shall have been given or obtained, by Recognizance, to be acknowledged in the same Court, in such reasonable Sum as the same Court shall think fit, to make and prosecute such Application as aforesaid, and also to satisfy and pay, if such Application shall be refused, the Debt, or Damages and Costs adjudged and to be adjudged in consequence of the said Verdict or Nonsuit, and all Costs and Damages to be awarded for the delaying of Execution thereon.

Not to take away Power of Court to grant a new Trial.

XXVIII. Provided also, and be it further enacted, That nothing herein contained shall prevent the said Court of Common Pleas at *Lancaster* from granting any new Trial, or setting aside any Nonsuit, or entering a Nonsuit, or altering a Verdict as heretofore.

Service of Subpœna on Witnesses in any Part of England and Wales shall be valid to compel Appearance.

XXIX. And be it further enacted, That the Service of every Writ of Subpœna hereafter to be issued out of the said Court of Common Pleas at *Lancaster*, and served upon any Person in any Part of *England* or *Wales*, shall be as valid and effectual in Law, and shall entitle the Party suing out the same to all and the like Remedies, by Action or otherwise howsoever, as if the same had been served within the Jurisdiction of the said Court of Common Pleas at *Lancaster*; and in case such Person so served shall not appear according to the Exigency of such Writ, it shall be lawful for the same Court or One of the Judges thereof, upon Oath or Affirmation to be taken in open Court, or upon an Affidavit, of the personal Service of such Writ, to transmit a Certificate of such Default, under the Hand of One of the Judges of the same Court, to the Court of King's Bench in *England*; and the said last-mentioned Court shall and may thereupon proceed against and punish, by Attachment or otherwise, according to the Course and Practice of the same Court, the Person so having made Default, in such and the like Manner as they might

have done if such Person had neglected or refused to appear in obedience to a Writ of Subpœna issued to compel the Attendance of Witnesses out of such last-mentioned Court.

Expence of Attendance on Writs of Subpœna shall be tendered to Witnesses.

XXX. Provided always, and be it further enacted, That the said Court of King's Bench shall not in any Case proceed against or punish any Person, nor shall any such Person be liable to any Action, for having made Default by not appearing to give Evidence in obedience to any Writ of Subpœna or other Process for that Purpose issued under the Authority of this Act, unless it shall be made to appear to the Court that a reasonable and sufficient Sum of Money to defray the Expences of coming and attending to give Evidence, and of returning from giving such Evidence, had been tendered to such Person at the Time when such Writ of Subpœna was served upon such Person.

Where final Judgment shall be obtained in the Court, and the Person or Effects cannot be found within its Jurisdiction, any of the superior Courts at Westminster may issue Execution, &c.

XXXI. And be it further enacted, That whenever a Plaintiff or Defendant in any Action or Suit in which Judgment shall be recovered in the said Court of Common Pleas at *Lancaster* shall remove his Person or Goods or Chattels from or out of the Jurisdiction of the said Court of Common Pleas at *Lancaster*, it shall and may be lawful for any of the superior Courts at *Westminster*, upon a Certificate from the Prothonotary of the said Court of Common Pleas at *Lancaster*, or his Deputy, of the Amount of final Judgment obtained in any such Action, to issue a Writ or Writs of Execution thereupon for the Amount of such Judgment, and the Costs of such Writ or Writs and Certificate, to the Sheriff of any County, City, Liberty, or Place, against the Person or Persons or Goods of the Party or Parties against whom such final Judgment shall have been obtained, in such Manner as upon Judgments obtained in any of the said Courts at *Westminster*.

If Rules of the Court cannot be enforced, they may be made Rules of one of the superior Courts at Westminster.

XXXII. And be it further enacted, That in case any Rule of the said Court of Common Pleas at *Lancaster* cannot be enforced by reason of the Non-residence of any Party or Parties within the Jurisdiction thereof, it shall be lawful, upon a Certificate of such Rule by the Prothonotary of the said Court, and an Affidavit that by reason of such Non-residence such Rule cannot be enforced as aforesaid, to make such Rule a Rule of any one of the said Courts at *Westminster*, if such Court shall think fit, whereupon such Rule shall be enforced as a Rule of such Court.

Test and Date of Writs and Returns of Executions.

XXXIII. And be it further enacted, That all Writs issued out of the said Court of Common Pleas at *Lancaster* shall be tested in the Name of the Chief Justice of that Court, or, in case of a Vacancy of such Office, in the Name of One of the other Judges thereof; and that every Writ of Venire facias juratores, issued out of the same Court, shall bear Date on the Day next preceding the First Commission Day of each Assizes, unless such Commission Day shall be on a *Monday*, and then on the *Saturday* preceding; and that every Writ of Habeas corpora juratorum shall bear Date on the Day of the Return of the Venire facias juratores; and that all other Writs, except Writs of Exigent and Proclamation, shall respectively bear

Date on the Day on which the same shall be issued; and that all Writs of Execution may, if the Party suing out the same shall think fit, be made returnable immediately after the Execution thereof.

Power to adopt Rules to be made for the superior Courts at Westminster.

XXXIV. And be it further enacted, That whenever by any Act of Parliament, or by or under the Authority of any Act of Parliament, or by any Rule or Order of any of His Majesty's superior Courts at *Westminster*, or of any of the Judges of the same, any Rules, Orders, or Regulations shall be made for the Purpose of framing, regulating, or amending the Proceedings, Practice, or Pleadings of any of the said superior Courts at *Westminster*, it shall be lawful for the Judges of the said Court of Common Pleas at *Lancaster*, or any Two of them, by Rule or Order to be made in that Behalf, to adopt, *mutatis mutandis*, all or any of such Rules, Orders, or Regulations, or any Part or Parts thereof, as to the said last-mentioned Judges shall seem fit.

Costs of preparing Pleadings.

XXXV. And be it further enacted, That the Costs to be from Time to Time allowed for preparing Pleadings in Actions in the said Court of Common Pleas at *Lancaster* shall be the same as shall be allowed for preparing Pleadings of a like Description in Actions in the superior Courts at *Westminster*.

Commencement of Act.

XXXVI. And be it further enacted, That this Act shall commence and take effect on the First Day of *September* One thousand eight hundred and thirty-four.

Act may be altered this Session.

XXXVII. And be it further enacted, That this Act may be amended, altered, or repealed during the present Session of Parliament.

SCHE-

## SCHEDULE to which this Act refers.

No. 1.

### WRIT OF SUMMONS.

WILLIAM THE FOURTH, *et cetera.*

To *C. D.* of, *et cetera*, in the County of Lancaster, Greeting: WE command you [*or* as before, *or* often We have commanded you], that within Eight Days after the Service of this Writ on you, inclusive of the Day of such Service, you do cause an Appearance to be entered for you in Our Court of Common Pleas at Lancaster, in an Action on Promises [*or as the Case may be*] at the Suit of *A.B.*; and take notice, that in default of your so doing the said *A.B.* may cause an Appearance to be entered for you, and proceed therein to Judgment and Execution.

Witness at Lancaster, the Day of in the Year of Our Reign.

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*Memorandum to be subscribed on the Writ.*

*N.B.*—This Writ is to be served within Four Calendar Months from the Date thereof, including the Day of such Date, and not afterwards.

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*Indorsement to be made on the Writ before Service thereof.*

This Writ was issued by *E.F.* of Attorney for the Plaintiff or Plaintiffs within named.

*or,*

This Writ was issued by of Agent for *G.H.* of Attorney for the Plaintiff or Plaintiffs within named.

*or,*

This Writ was issued in person by the Plaintiff or Plaintiffs within named who resides or reside at [*mention the City, Town, or Parish, and also the Name of the Hamlet, Street, and Number of the House of the Plaintiff's Residence, if any such.*]

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*Indorsement to be made on the Writ after Service thereof.*

This Writ was served by me *X. Y.* on on the Day of One thousand eight hundred and

*X. Y.*

No. 2.

FORMS OF ENTERING AN APPEARANCE.

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|---|---|
| *A. B.* Plaintiff against *C. D.*<br>*or*<br>against *C. D.* and another,<br>*or*<br>against *C. D.* and others. | The Defendant *C. D.* appears in person. *E. F.*, Attorney for *C. D.*, appears for him. *G. H.*, Attorney for the Plaintiff, appears for the Defendant *C. D.* according to the Statute. |

Entered the Day of One thousand eight hundred and .

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No. 3.

WRIT OF DISTRINGAS.

WILLIAM THE FOURTH, *et cetera.*

To the Sheriff of Lancashire, Greeting:

WE command you, that you omit not by reason of any Liberty in your Bailiwick, but that you enter the same and distrain upon the Goods and Chattels of *C.D.* for the Sum of Forty Shillings, in order to compel his Appearance in Our Court of Common Pleas at Lancaster, to answer *A.B.* in a Plea of Trespass on the Case [*or* Debt, *as the Case may be*]; and how you shall execute this Our Writ you make known to Our Justices at Lancaster on the Day of now next ensuing.

Witness at Lancaster, the Day of in the Year of Our Reign.

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*Notice to be subscribed to the foregoing Writ.*

In the Court of Common Pleas at Lancaster:

Between *A. B.* Plaintiff,
and
*C. D.* Defendant.

M^r *C. D.*

Take notice, that I have this Day distrained upon your Goods and Chattels in the Sum of Forty Shillings, in consequence of your not having appeared in the said Court to answer to the said *A. B.*, according to the Exigency of a Writ of Summons bearing Teste on the Day of and that in default of your Appearance to the present Writ within Eight Days inclusive after the Return hereof, the said *A. B.* will cause an Appearance to be entered for you, and proceed thereon to Judgment and Execution; *or* (*if the Defendant be subject to Outlawry*) will cause Proceedings to be taken to outlaw you.

No. 4.

WRIT OF CAPIAS.

WILLIAM THE FOURTH, *et cetera.*

To the Sheriff of Lancashire,
*or*
To the Coroners of the County of Lancaster,
*or*
[*as the Case may be*], Greeting:

WE command you [*or* as before, *or* often We have commanded you], that you omit not by reason of any Liberty in your Bailiwick, but that you enter the same and take *C.D.* of
if he shall be found in your Bailiwick, and him safely keep until he shall have given you Bail, or made Deposit with you, according to Law, in an Action on Promises [*or* of Debt, *et cetera*,] at the Suit of *A.B.*, or until the said *C.D.* shall by other lawful Means be discharged from your Custody: And We do further command you, that on Execution hereof you do deliver a Copy hereof to the said *C.D.*: And We do hereby require the said *C.D.* to take notice, that within Eight Days after Execution hereof on him, inclusive of the Day of such Execution, he should cause Special Bail to be put in for him in Our Court of Common Pleas at Lancaster to the said Action, and that in default of his so doing such Proceedings may be had and taken as are mentioned in the Warning hereunder written or indorsed hereon: And we do further command you the said Sheriff [*or* Coroners, *or as the Case may be*], that immediately after the Execution hereof you do return this Writ to Our said Court, together with the Manner in which you shall have executed the same, and the Day of the Execution hereof; or that if the same shall remain unexecuted, then that you do so return the same at the Expiration of Four Calendar Months from the Date hereof, or sooner, if you shall be thereto required by Order of the said Court or by any Judge thereof.

Witness at Lancaster, the
Day of in the Year of Our Reign.

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*Memoranda to be subscribed to the Writ.*

*N.B.*—This Writ is to be executed within Four Calendar Months from the Date thereof, including the Day of such Date, and not afterwards.

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*A Warning to the Defendant.*

1. If a Defendant being in Custody shall be detained on this Writ, or if a Defendant being arrested thereon shall go to Prison for Want of Bail, the Plaintiff may declare against any such Defendant on or before the Third Commission Day of the Assizes (exclusive of a Sunday) next after such Detainer or Arrest, and proceed thereon to Judgment and Execution.



2. If

2. If a Defendant being arrested on this Writ shall have made a Deposit of Money, according to the Statute Seventh and Eighth of George the Fourth, Chapter Seventy-one, and shall omit to enter a Common Appearance to the Action, the Plaintiff will be at liberty to enter a Common Appearance for the Defendant, and proceed thereon to Judgment and Execution.

3. If a Defendant having given Bail on the Arrest shall omit to put in Special Bail, as required, the Plaintiff may proceed against the Sheriff, or on the Bail Bond.

4. If a Defendant, having been served only with this Writ, and not arrested thereon, shall not enter a Common Appearance within Eight Days after such Service, the Plaintiff may enter a Common Appearance for such Defendant, and proceed thereon to Judgment and Execution.

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*Indorsements to be made on the Writ of Capias.*

Bail for Pounds by Affidavit;

*or,*

Bail for Pounds by Order of [*naming the Judge making the Order*]. Dated the Day of .

This Writ was issued by *G. H.* of Attorney for the Plaintiff [*or* Plaintiffs] within named.

*or,*

This Writ was issued by of Agent for *E. F.* of Attorney for the Plaintiff [*or* Plaintiffs] within named.

*or,*

This Writ was issued in Person by the Plaintiff or Plaintiffs within named, who resides or reside at [*mention the City, Town, or Parish, and also the Name of the Hamlet, Street, and Number of the House of the Plaintiff's Residence, if any such there be.*]

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No. 5.

## WRIT OF DETAINER.

WILLIAM THE FOURTH, *et cetera.*

To the Sheriff of Lancashire, Greeting:

WE command you, that you detain *C. D.* if he shall be found in your Custody at the Delivery hereof to you, and him safely keep in an Action on Promises [*or* of Debt, *et cetera, as the Case may be,*] at the Suit of *A. B.*, until he shall be lawfully discharged from your Custody: And We do further command you, that on Receipt hereof you do warn the said *C. D.* by serving a Copy hereof on him, that within Eight Days after Service of such Copy, inclusive of the Day of such Service, he do cause Special Bail to be put in for him, in Our Court of Common Pleas at Lancaster, to the said Action; and that in default of his so doing the said *A. B.* may declare against him on or before the Third Commission Day of the Assizes (exclusive of Sunday) next after

after his Detainer, and proceed thereon to Judgment and Execution: And We do further command you the said Sheriff, that immediately after the Service hereof you do return this Our Writ, or a Copy hereof, to Our said Court, together with the Day of the Service hereof.

Witness at Lancaster, the
Day of in the Year of Our Reign.

*N.B.*—This Writ is to be indorsed in the same Manner as the Writ of Capias, but not to contain the Warning on that Writ.

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LONDON: Printed by GEORGE EYRE and ANDREW SPOTTISWOODE,
Printers to the King's most Excellent Majesty. 1834.