Rules to Plead.

7th. That all Defendants have twenty (*l*) days to plead from the day of the notice in writing delivered of the filing such Declaration, except where the Defendant is returned in custody; in which case the Defendant shall have twenty days to plead, from the time of serving a copy of the Declaration, and of the rule to plead, to be served on the Sheriff or Defendant. (*m*)

Interlocutory Judgment.

8th. That on filing a Declaration in any action, the Plaintiff be entitled to Judgment, if the Defendant doth not plead in twenty days after notice of Declaration being filed in the Clerk's Office, (*n*) the Rule to plead being first entered; and if the Defendant hath not entered his appearance in such action, the Plaintiff may file a common appearance, and enter an Interlocutory Judgment (*o*) for want of a Plea as of the preceding term, without any imparlance, and proceed to a Writ of Inquiry (*p*) as if the same Interlocutory Judgment had been rendered and entered the same preceding Term; and the like proceeding to entry of Judgment and executing Writ of Inquiry, where a Defendant in custody neglects to plead, pursuant to a rule served on himself, or the Sheriff as aforesaid. (*q*)

(*l*) The day of service is to be computed one of the twenty days.—*Clowes* v. *Scoullar*, 2 Kerr, 627. But see post note to Rule 10.

(*m*) See post Rules of Hilary T., 1 Vict., for the mode of proceeding against prisoners.

(*n*) It is not usual in practice to serve this notice.—*Johnston* v. *Cornwall*, 1 Kerr, 197. And see post Rule of Easter T. 26 Geo. 3.

(*o*) By Rule 1, Trinity T., 3 Vict., interlocutory judgment is not to be signed till the process and affidavit of service is filed.

(*p*) A judgment by default admits the validity of the contract stated in the Declaration: therefore where in an action of covenant a deed was declared on purporting to be executed in Birmingham, it was held that it was correctly admitted to be read in evidence by the Sheriff on the execution of a Writ of Inquiry, though it was not stamped.—*Hasluck* v. *McMaster*, Chip. MS. 4. But in an action on the common counts, the Defendant, on the execution of a Writ of Inquiry, may shew that he contracted merely as the agent of a third person.—*Falls* v. *Sargent*, Mich. T., 1846. (Not yet reported.) If the Jury give no verdict upon a Writ of Inquiry, a second Writ may be issued and damages assessed, without leave of the Court.—*Ward* v. *Dow*, Bert. R. 21. Where a Writ of Inquiry is ordered to be executed before a Judge at Nisi Prius, the Judge sits only as an assistant to the Sheriff, and the Writ should be directed to the Sheriff, and the inquisition returned by him and the Jurors, as in ordinary cases; therefore a Writ directed to the Sheriff and Judge, and an inquisition returned under the seal of the Judge was held a nullity, which could not be waived.—*Fowlie* v. *Stronach*, Bert. R. 57. If, when the writ is to be executed before a Judge, the damages are assessed by the Jury summoned to try the issues at the assizes, it is sufficient.—*Wheeler* v. *Gove*, 1 Kerr 580. By the Act 26 Geo. 3, c. 21, the Court is authorized to assess Damages in all actions on the case, where there is judgment by default: this power is extended to actions on bonds and covenants for the payment of money, by the Act 8 Geo. 4, c. 4; and to all actions of debt, covenant and case, where judgment is given on demurrer, by 7 W. 4, c. 14, s. 6. The Act 5 W. 4, c. 37, s. 9, gives the same power to a Judge in vacation. See also post Rule 7, Mich. T. 6 W. 4.

(*q*) For the mode of proceeding against prisoners, see post Rules of Hilary T., 1 Vict.