

The execution was issued and handed to the Sheriff 26th June, 1880, and returned by him the 5th July. 180

By our Practice Act an execution is to be made returnable either in sixty days or the first day of the next succeeding term, but in no case to be made returnable in less than sixty days, and to fix the Bail must have lain in the Sheriff's office the last four days. The practice in this case had not been followed; the execution was irregular, as was bringing the action on it against the Bail.

The question here arises, how is the irregularity to be taken advantage of. This point, though not mooted at the trial, I have looked into with some care. Chitty on Pleadings lays it down that matter founded solely on the rules or practice even of a court of law, or being mere irregularities, is not in general pleadable; and I gather from the numerous cases I have looked into that matters that go to the very merits of the case are pleadable, but that matters of practice are only the subject of motions to set aside pleadings for irregularities. See 1, D. & R., 50; 5, Moore 172, &c., and 2 Kidd, 1128. 190

If writ be merely irregular, as if it has not lain four days in Sheriff's office, or been made returnable a day out of term, Bail cannot take advantage of the irregularity by pleading. Bail may plead that no *capias ad satisfaciendum* was sued out and returned against the principal; or that the *veniri* was laid in a wrong county may be pleadable as going to the merits; but mere irregularities such as suing out *casu* after a year without a *sciri facias* to revive judgment; or if made returnable a day out of term, or had not lain four days in Sheriff's office, cannot be taken advantage of by pleading, though it may be made the subject of motion. Peters on Bail, 366. 200

The matter here is merely an irregularity as contrary to the practice of the Court, and does not touch the merits, and cannot therefore be pleaded, and the plaintiff is consequently entitled to recover.

Judgment for plaintiff for penalty of Bond, \$177.58.

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"E."

HALIFAX, SS.

*Victoria, by the Grace of God, of the United Kingdom of Great Britain and Ireland,*  
[L. S.] *Queen, Defender of the Faith, &c.*

TO THE SHERIFF OF OUR COUNTY OF HALIFAX, OR TO ANY OTHER OF OUR SHERIFFS: 210

Whereas, John A. Watson, by consideration of our Justice of our County Court, at the City of Halifax, on the 23rd day of June last, recovered judgment against William R. Heney, of Halifax, for the sum of one hundred and twenty-seven dollars and fifty-nine cents, debt or damage, and the sum of forty-nine dollars and thirty-seven cents, costs of suits, as appears to us of record, whereof execution remains to be done. We command you therefore, that of the goods, chattels, lands, or tenements of the said William R. Heney, within your precinct you