remedy for the plaintiff is, if the plea is bad in law, to demur to it.

The following order was then granted: "That the tenant have leave to plead the several matters mentioned in the abstract hereto annexed, and that the tenant have leave to deliver to the demandant or her attorney, interrogatories in writing pursuant to the statute in such case made and provided, to the effect of the interrogatories hereto annexed, as amended by me."

### STARRATT v. MANNING.

*Service accepted by attorney—Time for appearance.*

Defendant's attorney accepting service of summons has the same time within which to appear as if the service of the writ of summons had been served on defendant himself.

[Oct. 8, 1856.]

*Jones and Flanagan*, for defendant, obtained a summons on the 4th October inst., to show cause why declaration and service should not be set aside, with costs, as irregular, on the ground that the said declaration was filed and served before the time for entering an appearance for defendant had expired and before an appearance had been entered. Order granted in terms of summons.

Plaintiff argued that defendant's attorney, by accepting service of writ of summons, undertook to appear immediately, that, in fact, the acceptance was an appearance for defendant.

BURNS, J.—The defendant's attorney, by accepting service of the writ of summons for his client, undertakes to appear for him; but the attorney has the same time allowed him within which to appear for the defendant, as if the service of the writ of summons had been made on the defendant himself.

### TAYLOR v. MCKINLAY.

*Pleading several matters.*

Upon an application under 130th section of the C. L. P. Act, 1856, for leave to plead in denial of a deed or agreement, and at the same time in confession and avoidance of it, it should be shown that something material may turn upon the construction of such deed or agreement.

[Oct. 18, 1856.]

On the 16th October, 1856, defendant obtained a summons for leave to plead the pleas mentioned below, under the 130th section of the C. L. P. Act, 1856.

*Declaration*—That defendant, in consideration &c., agreed by writing under his hand to make and deliver to plaintiff a good deed in fee simple, of a certain lot of land, and that although plaintiff had paid said consideration, yet defendant had failed to make said deed. And for money paid by plaintiff to defendant on common counts.

*The Pleas* desired to be pleaded by defendant were:

1st. That he did not agree as alleged.

2nd. That plaintiff did not pay the consideration in first count mentioned.

3rd. That the agreement in first count mentioned was obtained from him by plaintiff, by means of fraud and covin.

4th. As to residue of declaration, that he is not indebted.

*Blevins* showed cause on 18th October.

BURNS, J.—I will allow the 2nd, 3rd and 4th pleas; but the defendant should not ask leave to deny his deed, and at the same time to plead in confession and avoidance of it, without showing that something material may turn upon the construction of it. I shall therefore disallow the 1st plea.

### TAYLOR v. CARROLL.

*Pleading several matters.*

In an action against Sheriff on his bond, and also for neglecting to arrest a party against whom plaintiff had issued a Capias, and for a false return of such Capias, defendant will be allowed to traverse such party's indebtedness to plaintiff, and at the same time to plead "not guilty," and also to traverse the separate allegations of the declaration upon an affidavit of the matters required by 130th section of the C. L. P. Act, 1856, and further stating good reason for denying the indebtedness of such party to plaintiff.

[Oct. 22, 1856.]

The first count of declaration was upon the covenant of the defendant as Sheriff of the county of Oxford, given in pursuance of 3 Wm. IV, cap. 8, and alleged that defendant had wilfully misconducted himself in his office of Sheriff, by voluntarily allowing one, Sprague, who had been arrested at the suit of plaintiff, to escape.

The second count alleged that said Sprague being indebted to plaintiff, plaintiff placed a writ of Capias for his arrest in the hands of defendant; that though defendant had ample opportunity to take said Sprague, he had failed to do so, to the injury of plaintiff.

The third count alleged that Sprague, being indebted to plaintiff, plaintiff placed a writ of Capias for his arrest in defendant's hands; and that defendant falsely returned that said Sprague was not found in his county.

On the 21st October, 1856, defendant obtained a summons, under the 130th section of the C. L. P. Act, 1856, for leave to plead:

1st, to 1st count—That Sprague was not, at the time of issuing the writ in 1st count mentioned, indebted to plaintiff.

2nd, to 1st count—Traverse of arrest.

3rd, to 1st count—That defendant did not wilfully misconduct himself in his said office, to the damage of plaintiff, as alleged.

4th, to 1st count—That defendant did not voluntarily permit said Sprague to escape *modo et formâ*.

5th, to 2nd count—That Sprague was not indebted to plaintiff.

6th, to 2nd count—Not guilty.

7th, to 2nd count—That defendant could not during the currency of writ, arrest said Sprague.

8th, to 2nd count—Plaintiff not damnified.

9th, to 3rd count—Not guilty.

10th, to 3rd count—Sprague not indebted to plaintiff.

An affidavit of defendant's attorney was put in, which stated the matters required by the 130th section, and also his reasons for believing the 1st, 5th and 10th of the proposed pleas to be true in substance and in fact.

On the 23rd October, plaintiff showed cause.

BURNS, J., granted the defendant leave to plead as above.

Summons absolute accordingly.

### BRETT v. SMITH ET AL.

*Writ of trial.*

The affidavit on which an application is made for a writ of trial should show where the venue in the action is laid.

[Nov. 7, 1856.]

Plaintiff obtained a summons from HAGARTY, J., calling on defendants "to show cause why the issues joined in this cause should not be tried before the Judge of the County Court of the united counties of York & Peel, and why a writ should not issue directed to the said Judge, commanding him to try such issues, and to return the same to this honorable court, together