

Clerk's Office with notice thereon within *twenty* (x) days after the return of the Process.

EASTER TERM, 26TH GEO. III.—1786.

*Declaration De Bene Esse.*

IT IS ORDERED, That upon all Process where no Affidavit is made or filed of the cause of action, the Plaintiff may file or deliver the Declaration *De Bene Esse* at the return of such Process, with notice to plead in twenty days; and if Defendant doth not enter an appearance or file common Bail, and plead within the said twenty days, Plaintiff having first filed common Bail (y) for Defendant, may sign Judgment (z) for want of a Plea, provided that such Declaration be delivered or filed in the Clerk's Office with notice thereon, within *twenty* (a) days after the return of such Process, and a rule to plead be duly entered.

TRINITY TERM, 26TH GEO. III.—1786.

*Assessment of Damages.*

ORDERED, That in causes where Interlocutory Judgments have been signed, and the causes of action appear to be upon complicated accounts, the same shall be referred to a Jury of Inquiry, (b) and

(x) By rule 2, Hilary T., 7 W. 4., the Plaintiff is allowed thirty days after the last return day of the term to file the writ and enter the rule and return; it would seem that this is an implied extension of the time of filing the declaration.

(y) In *Johnson v. Cornwall*, 1 Kerr 197, it was held that an Interlocutory Judgment signed before common bail filed, was only an irregularity which might be waived: there the Defendant's Attorney had given notice that he had appeared and filed common bail.—*Davis v. Hughes*, 7 T. R. 206, and *Williams v. Strahan*, 1 N. R. 309, are to the same effect. But in *Roberts v. Spurr*, 3 Dowl. 551, it was held that a judgment signed without any appearance was a nullity, because without it, there is no person before the Court against whom a judgment could be signed, and perhaps, because the Uniformity of Process Act requires the appearance to be in a prescribed form; for generally where a proceeding is expressly directed to be taken by a statute, its omission renders the proceedings null. Thus in *Langley v. Huestis*, 2 Kerr 4, a plea in a summary action pleaded after the expiration of thirty days from the return of the writ was held to be a nullity. see also *Mortimer v. Pigott*, 2 Dowl. 616, and the Act 26 Geo. 3, c. 25, s. 1, authorising the Plaintiff to file common bail for defendant.

(z) A judgment by default obtained upon a mutilated paper is bad; thus, in *McLoon v. Lowell*, Chip. MS. 18, the parties had referred certain differences to arbitration giving mutual notes to each other, which were intended to hold to abide the event of the award. An award for a small sum was made in favor of the Plaintiff, and indorsed on his note; the lower part of the paper containing a statement of the reference, and a part of the indorsement was torn off; the judgment was set aside as fraudulent. Applications to set aside proceedings for irregularity must be made within a reasonable time after the irregularity took place.—*O'Regan v. Berryman*, 1 Kerr 167. If the irregularity occurs in vacation, and there is time during the course of that vacation to apply to a Judge at Chambers, it is the duty of the party complaining to do so, if by delaying to move till the next Term, he is likely to change the situation of the other party.—*Cox v. Fullock*, 2 Dowl. 47, *Holmes v. Russell*, 5 Dowl. 488.

(a) Extended to thirty days by rule 2, Mich. T., 6 Geo. 4.

(b) See Act 5, W. 4, c. 37, s. 9, also note (p) ante page 3.