

tody, the process upon it when allowed is a *scire facias*. But if grounded on a matter of fact, or the party be not in custody, the process appears to be a *venire facias* and on default a *distringas ad infinitum* (*Langston v. Grant*, 1 Salk. 92; *Clerk v. Moore*, Ib. 92; Anonymous 92; Anonymous 93). Where execution is actually issued there must be a writ of *supersedeas* (*Giles v. Hutt*, 1 Ex. 59). In the case last mentioned, a writ of *audita querela* having issued, a motion was made for a writ of *supersedeas* to the sheriff to stay execution, and also for a writ of *venire facias* and the Court made the following rule: "upon the motion of the counsel for George Giles, the plaintiff above named, and upon reading the writ of *audita querela* issued herein, with the allowance thereof endorsed thereon, and the rule made in the case of *Hutt and another v. Giles*, whereby execution was stayed for a month on the terms of the defendant undertaking within that time to issue a writ of *audita querela*, it is ordered that the said George Giles, the plaintiff above named, be at liberty to issue a *supersedeas* to the sheriff to stay execution, together with a writ of *venire facias* thereon (1 Ex. 59, note).

7. *Subsequent proceedings.* If the defendant appears upon the *scire facias*, *venire facias*, or *distringas*, the plaintiff declares, in which declaration the whole writ of *audita querela* is recited in the same manner as in a declaration in *scire facias*. The declaration ought to comprehend only one gravamen; or at least if it mentions several, it ought to rely upon one only, otherwise it will be double. The plaintiff should show himself aggrieved. The declaration should conclude with the prayer of relief that defendant be discharged, &c. If the defendant confesses the matter alleged the plaintiff has judgment by confession; but if the defendant denies it the parties proceed to issue in fact or in law as the case may be, as in other cases. If the plaintiff be nonsuited, though he may have a new writ of *audita querela*, he shall have no writ of *supersedeas* to stay execution (*Sellon's Prac.* 287).

8. *Damages and Costs.* It has been held that at common law there can neither be damages nor costs—no costs under Statute of Gloucester, because no damages—in a proceeding by *audita querela* (2 Tidd's Prac. 976, 1132; 2 Sellon's Prac. 256; Burton's Ex. Prac. 299; *Gascoine v. Whalley*, 2 Dyer, 193 b.), but under some recent statutes whereby costs are recoverable, independently of the Statute of Gloucester, it may be held that costs are recoverable in this mode of proceeding. It may be mentioned that in a recent case where plaintiff was without the jurisdiction of the court, proceedings were stayed till security for costs was given (*Holmes v. Pemberton*, 5 Jur. N. S. 727; S. C. 7 W. R. 160).

LAW SOCIETY OF UPPER CANADA.

MICHAELMAS TERM, 1861.

FOR CERTIFICATES OF FITNESS.

STATUTES AND PLEADINGS AND PRACTICE.—(EQUITY.)

1. State the statutory alteration in the law of merger.
2. State the statutory alteration concerning *lis pendens*, and the class of cases to which the alteration does not apply.
3. State the various modes by which a plaintiff may bring his cause to hearing.
4. State the classes of cases in which it is proper to move for a decree.
5. Draft that part of an answer setting up the plea of a purchase for valuable consideration without notice.

WILLIAMS ON REAL PROPERTY.

1. State the proceedings upon a common recovery.
2. State the classes of persons not possessing the ordinary rights of alienation of real estates.
3. State the classes of objects in respect of which these rights are restricted.
4. Define a contingent remainder.
5. Define an executory interest.
6. State the difference between a will of lands and a will of personal estate regarding them as documents of title.

STORY'S EQUITY JURISPRUDENCE.

1. State the three great heads of jurisdiction, and shortly define each.
2. State the several divisions of the subject matter which are discussed in the first volume, beginning with "Accident."
3. Define "constructive frauds," and give an example.
4. What are bills *quia timet*? and give an example.
5. Define implied, as contra-distinguished from express, trusts.
6. What is the vendor's lien? State the probable origin and present extent of the doctrine.

ADMISSION FOR ATTORNEY.

BLACKSTONE'S COMMENTARIES—Vol. I.

1. Give the different sources of the law of England.
2. What subject is treated of in the first book of Commentaries? and give briefly the different heads.
3. Mention some of the rights, capacities and incapacities of persons.
4. What are some of the duties of persons in their private relations?
5. What are artificial persons? and how may they be created?

SMITH'S MERCANTILE LAW.

1. When may notice of dishonour to the drawer of a bill be dispensed with?
2. Mention some of the peculiarities of the contract of hiring and service.
3. What are the requisites of a guarantee?
4. In what contracts must a consideration exist and be proved, and in what is it presumed?