15th. That all notices be served on the Attornies for the parties, except notices of exception to Bail, which may be served on the Defendant or his Attorney, or on the person who serves the notice of Bail.

HILARY TERM, 26TH GEO. III.—1786.

Special Bail.

ORDERED, That in all Process where an Affidavit is made and filed of the cause of Action, (*u*) the Sheriffs of the different Counties, at the time of taking the Bail Bond, shall serve the sureties therein with a copy of such process, subscribed with the following notice:

"A. B.

"Take notice, that unless Special Bail is put in above by the Defendant in this cause within *twenty* (*v*) days after the return of this Process, the condition of the Bail Bond you have entered into will be forfeited;" and upon affidavit made and filed, together with a return of the Process by the Sheriff, of the service of such copies as aforesaid, the Declaration may be filed *De Bene Esse*, at the return of the Process, with notice to plead in *twenty* days; (*w*) and if Defendant puts in Special Bail, and doth not plead within time, Judgment may be signed: provided such Declaration be filed in the

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(*u*) By Act 26, Geo. 3, C. 25, no person is to be arrested on any Process issued out of the Supreme Court, unless the cause of action amounts to £10. Section two provides that an affidavit of the cause of action shall be made and filed, and the amount indorsed on the writ, otherwise the Defendant is not to be arrested. In *Sherar* v. *Baker*, at Chambers, Chip. MS. 12, an order for bail was made on an affidavit sworn before a Judge of Gaspe, in Lower Canada, with a certificate of two Justices of the Peace, verifying his hand-writing and certifying that he was a Judge of that Province, and that no Notary Public resided in that district; and also an affidavit made in this Province, that he was a Judge. But it seems that the signature of the Judge should also have been verified by an affidavit made in this Province, see *Kirk* v. *Ansley*, 1 Kerr 301, *Fraser* v. *Harding*, 2 Do. 290.

(*v*) Extended to thirty days by rule Mich. T. 59 Geo. 3. The same time is allowed in summary actions, by the Act 1 Vict. c. 13. s. 2.

(*w*) There is an inconsistency between this rule and that of Mich. T. 59 Geo. 3, which allows the Defendant thirty days to put in bail. Suppose the declaration should be filed at the return of the writ, and bail should not be put in till after the expiration of the twenty days, would the Defendant then have a right to plead? Until bail is put in, the Plaintiff cannot proceed in the action, nor can he take an assignment of the bail bond till the thirty days have expired, because before that there is no breach; but when the Defendant has appeared, or in other words when bail is entered, the tenth rule of Easter T. 25 Geo. 3 requires that a copy of the declaration shall be served upon his Attorney, to which declaration he has twenty days to plead.—*Fawcett* v. *Nethery*, 2 Kerr 81. It is submitted therefore that this rule ought to be read in connexion with the rule of Easter T. before alluded to, and taking them both together, the construction is that on putting in bail within thirty days from the return of the writ, the Defendant is entitled to receive from the Plaintiff a copy of the declaration, to which he is bound to plead within twenty days, and cannot be required to plead sooner. In summary actions the Defendant is allowed thirty days from the return of the writ, to put in bail and plead.—1 Vict. c. 13, s. 2.