corollory from that proposition, I think that when the attorney is present it is not absolutely necessary that he should inform his client of the nature and effect of the warrant of attorney."

The language of the same very learned judge is not quite as strong, and might perhaps have a modified construction in a much later case—Powell v. Pickering, 18 Q. B. 789.

Joel v. Daiks, 5 D. & L. 1, is a very strong case in favour of supporting the plaintiffs' case here. Hall v. Dale, 8 Dowl. 599, is also much to the point.

I am of opinion that the facts disclosed in affidavits show that, in the words of Tindal, C. J., "there was a clear and express adoption by the defendants of the party as their attorney." Most of the English cases turn on the form of the attestations, which is not here in question.

I think that Mr. Merrill, or any other attorney so called in, would have acted much more prudently by fully explaining the whole matters to the defendants, and making them clearly adopt or refuse him as their attorney in express terms. I am somewhat surprised at the several affidavits filed on each side by Mr. Merrill; they certainly bear very different interpretations, and warrant almost opposite inferences.

On the whole I consider the defendant Raymond has failed to make out a case to set aside confessions formally attested as the law requires, and the nature of which I believe he fully understood; if he did not, it was by neglecting to avail himself of the advice of the professional gentlemen whom the law wisely provided to be present for his assistance.

It is a peculiar feature of the case that he admits he executed documents vesting all these properties in the plaintiffs, and to them he makes no objections whatever, but the confessions for the same debts to the same parties are thus strongly assailed.

As the rule charged fraud and collusion and asked for costs, I think it should be discharged with costs, to be paid by defendant Raymond.

Arnold v. Jenkins and Bradley.

Arrest—Judgment—Costs—Practice.

When one of two or more defendants is arrested for an amount greater than the verdict afterwards obtained, an order will be granted, under 49 Geo. III., disallowing this plaintiff his costs against him solely.

(July, 1857.)

Hagarty, J.—This is an application to deprive the plaintiff of costs, under statute 49 Geo. III., cap. 4.

The plaintiff arrested defendant Jenkins for £225, and recovered against both defendants £84 2s. 2d.

As to merits, I am clearly of opinion that the case is within the statute. The plaintiff chose to arrest Jenkins, as he says, without referring to his books containing the accounts between them, which were some 10 miles off when the affidavit was made. For about £25 of the amount sworn to, and not recovered, he may have had some probable cause, but for the balance I see no valid excuse.

The objection chiefly urged to this rule is, that the statute does not apply to a case in which only one defendant is held to bail, and that the effect might be that the action being against defendants as joint contractors, and they appear and plead together; the other defendant, who was not arrested, might thus be practically exonerated from costs, and the plaintiff loose them improperly as against him.

I am surprised to find that the point does not seem to have arisen heretofore under our statute, nor as far as I can learn under the similar rule of statute 43, Geo. III.

The apparent silence of English authorities on this head may be easily accounted for by a consideration of the nature both of their former and present laws of arrest.(*a*)

The 49 Geo. III. says, "In all actions wherein the defendant or defendants shall be arrested and held to bail, and wherein the plaintiff or plaintiffs shall not recover the amount, &c., &c., such defendants shall be entitled to costs of suit," &c., &c.

I cannot see why in a proper case a defendant, who comes clearly within the spirit and letter of this wholesome statute, should be deprived of the privilege thereby conferred upon him, by the fact of the plaintiff choosing to arrest him in a cause jointly with another defendant.

I foresee that a serious difficulty may arise as to the costs as against the defendant who was not arrested, and that the latter possibly may escape payment of costs; I make no division on that point.

If such an inconvenience arise it is wholly caused by the plaintiff's own act. The rule to show cause must be made absolute as moved, except that it is to be expressed as applicable throughout to defendant Israel Jenkins.

The legal operation of such rule can, if any difficulty arise, be disposed of hereafter.

Wengol v. Huff.

Practice—Writs of Trial—Signature of defendant.

Writ of Trial refused in actions to recover £75 for breach of contract to obtain a joint maker or endorser to a promissory note.

This was an action brought for the sum of £75 for breach of a contract, whereby the defendant engaged to procure a joint maker or endorser on a promissory for money lent and advanced by the plaintiff to the defendant.

The plaintiff applied for an order for a writ of Trial to issue.

The defendant objected that this is not the kind of action provided for by the statute, and that the amount is not ascertained by the signature of the defendant within meaning of the clause relative thereto.

Hagarty, J., discharged the summons: costs to be costs in the cause.

Thompson v. Welch.

Ejectment—Notice of Title—Irregularity.

In actions of Ejectment, irregularity or want of notice of claim of defendant to be served on appearance, will not entitle the plaintiff to an order to set aside the appearance and to enter judgment, unless the defendant refuse to amend his notice or to serve a proper notice.

(July 7, 1857.)

The plaintiff in this cause applied to have the appearance of the defendant filed in this cause struck out, and to be allowed to sign judgment against him on the ground that, this being an action of Ejectment, the notice of claim served was not *addressed* to the plaintiff pursuant to sec. 224 C.L.P. Act, 1856, or that the defendant be ordered to amend his notice.

(*a*) Har. C. L. P. Act, 1856, sec. 23, note *o*.