

"The judgment appears to have been in several other respects obtained contrary to the practice required by the Court, which practice had it been followed or enforced, would have afforded some protection against undue advantages and surprise. The following rules was not observed:—

"*Elmsley, C. J.* } "RULE 8. It is ordered that in future the note or bond is to
 "Powell, J. } be produced for the inspection of the Judges when a motion
 "Alcock, J. } is made to refer them to the master."
 "Michaelmas, }
 "48th Geo. III. }

"The Court require the note and bond to be produced for the inspection of the Judges, a rule which it is presumed was intended to prevent fraud and maintain unsullied the character of public justice. And when Your Committee consider the irregularities disclosed in these proceedings, and an attempt to justify them by their frequency, they cannot but feel that the rule was as necessary as it was well intended.

"The following rule of Court was also obviously intended to prevent undue advantages and surprise, by the violation of which rule Mr. Boulton had an execution against the Petitioner's lands and tenements before he could by a legal and regular course have obtained a rule absolute to sanction his proceedings.

"Hilary, 47 } *Scott, C. J.* } "RULE 21. It is ordered that in future in all cases
 "Geo. III. } *Thorp, J.* } by judgment by default on bonds conditioned for the payment of money, a rule nisi to refer the bond to the master for taxation shall not be necessary; but in lieu thereof a notice of motion for the peremptory rule shall be given in writing to the Defendant or his Attorney, at least thirty-one days before Hilary and Easter Terms, and twenty-one days before Trinity and Michaelmas Terms, respectively, which rule shall accordingly be made absolute in the first instance, on an affidavit having been made of the service of such notice."

"The execution was also obtained with the same irregularity, and in defiance of the known rules of Court, as appears from the following rule.

"Easter, 40 } *Elmsley, C. J.* } "RULE 10. It is ordered that from and after the
 "Geo. III. } *Powell, J.* } end of this Term, the Clerk give no writ of execution on a judgment by default, on any bond,
 "Alcock, J. } without an order of Court, in Term time, or the fiat of a Judge in vacation."

"Mr. Boulton, however, dispensed with any order of Court in Term time, or fiat of Judge in vacation.

"The bond upon which the action was in part founded, was a mortgage bond, a copy of which is annexed. It appears on the face to be collateral security, and how far, therefore, Mr. Boulton was bound to suggest breaches according to the Statute, Your Committee have not enquired.

"It appears that several applications have been made to the Court of King's Bench for relief, without avail. The refusal of the Court to interfere, was not on the ground that the application had no merits, but on the principle that the objection came too late. Your Committee, however, think it right to observe, that from the course pursued by Mr. Boulton, the Petitioner was deprived of those notices to which he was entitled by the written law of the land, and the rules of the Court.

"Irregularities may be waived after notice of them by delay, or by taking a step in the defence; but it would be productive of incalculable injustice if all notices could be suppressed, and a suit be clandestinely carried through all its stages at the sacrifice of all law: and the ruined Defendant should be precluded from relief, while the Plaintiff sheltered himself under his own wrong. If this can be law, Your Committee would recommend a Legislative provision against it, for no Defendant should be deemed guilty of irremedial neglect when the Plaintiff keeps him in the dark by his own wrong.