

action was commenced, proceeded to sign not only Interlocutory but *final* judgment within four days after demand of plea, and that put up or fyled in a District where he well knew your Petitioner did not reside.

That your Petitioner is informed by professional gentlemen, that in no instance upon judgment by default, on a promissory note, can execution be issued, until the note has either been to a jury to assess the damages, or been sent by a rule of Court to the proper officer, to compute the principal and interest; but that notwithstanding this rule of law, execution after judgment by default was at once issued on the promissory note so given by your petitioner to the said Henry John Boulton.

That by a general rule of the Court of King's Bench, in the 40th year of the late King, it is expressly ordered, that in future, the note or bond is to be produced for the inspection of the judges, "when a motion is made to refer them to the master," but that the said Henry John Boulton, not only did not produce either the note or bond to the judges, but did not even move the Court to have them referred to the master.

That by another general rule of the said Court made in the same year, it is expressly "ordered, that from and after the end of this (Michaelmas) Term, the clerk give no writ of execution on default, without an order of the Court in Term time, or flat of a judge in vacation." That notwithstanding this rule, then in full force, the said Henry John Boulton proceeded to sue out execution against your Petitioner, on a judgment by default without either an order from the Court or flat from the Judge.

That by another Rule of the said Court made in Hilary Term, in the 47th year of the same King, it is also expressly "ordered, that in *all* cases of 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 a notice of motion for the peremptory rule shall be "given in writing to the Defendant, or his Attorney, at least thirty 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 affidavit of such notice. That notwithstanding this rule was in full force at the time of signing the judgment against the Petitioner, he never received, nor did the said Henry John Boulton ever give the above required notice to your Petitioner, or to any Attorney for him.

Your Petitioner further represents, that as the said condition of the said Bond recited the said Mortgage, and professing therefore to be only collateral security, your Petitioner was entitled to the benefit of an Act of the Legislature of the Mother Country and in force in this Province, requiring in behalf of such Defendants, that the Plaintiff shall set forth on record, the condition of such Bond, assign breaches thereof, and assess damages before a jury, and your Petitioner is informed that according to law no execution can in such case issue till such assessment has taken place. But in the suit against your Petitioner, the condition of the Bond is wholly suppressed and does not appear on the record.

Your Petitioner found in the course of the applications made by him to the Court of King's Bench for relief, that the following rule was insisted upon as a vindication of the judgment secretly obtained as aforesaid.

Michaelmas Term, SCOTT, C. J. |
THORP, J. |

It is ordered, that from and after the first day of Hilary Term next, in all cases where the Defendant has not appeared either in person or by his Attorney, judgment for default shall not be signed, without an affidavit first made and fyled of a demand of plea having been served upon the Defendant personally, or by being left at his usual place of abode, if the same be in the district where the action is brought; and if the Defendant's place of abode be not in such district, that then the demand of Plea shall be entered in the office, accompanied by an affidavit stating that the Defendant's place of abode within such district is not known to the Deponent, and that Judgment by default in such case shall not be signed till 4 days after such service or entry respectively:—By the Court.

(Signed,)

JOHN SMALL,
Clerk of the Crown.