II. Provided always, and be it further enacted by the Authority aforesaid, That this Act, or any Thing therein contained, shall not extend to any Writ, Declaration, or Suit of Appeal of Felony or Murder, nor to any Indictment, or Presentment of Felony, Murder, Treason, or other Matter, nor to any Process upon any of them, nor to any Writ, Bill, Action or Information upon any popular or penal Statute; any Thing aforesaid to the contrary notwithstanding.

I. This Act extended to Writs of *Mandamus*, &c., by 9 Ann. c. 20, sect. 7. After Verdict given in a Court of Record, there shall be no Stay of Judgment, or Reversing thereof for Want of Form, false Latin, Variance, &c. when an Attorney shall deliver his Warrant of Record, 1 Bulstr. 130, 152; 2 Bulstr. 67; 3 Bulstr. 278, 224, 228, 301. Moor. 402, pl. 535; 465, pl. 657. 1 Leon. 30, 175, 329; 2 Leon. 74. March. 121. Savil. 37, 130. 1 Roll. 22, 295, 338; 2 Roll. 124, 161, 168, 247, 255, 285, 382. Godbolt. 107, pl. 127. Golsb. 126, 188. Hob. 49, 64, 70. Jones, 301. 5 Co. 35, 36, 37, 41. 8 Co. 163. Cro. El. 57, 339, 574. Cro. Jac. 188, 236, 674. Cro. Car. 92, 223, 278, 282, 295. Hob. 38.

II. To what Things this Statute shall not extend.

The wants of form remedied under this Statute are said in Playter's case, 5 Rep. 34, to be such matters of course as the Clerk might have supplied and amended without any information of the party; and in that case, which was trespass *q. c. f.* and for taking the plaintiff's fishes, and the declaration omitted to state the number and nature of the fish, it was held after verdict, that the omission was matter of substance, and not of form to be aided by the act; but this, it seems, would not be law at this day, see Taylor v. Wells, 2 Wms. Saund. 74, *in notis*, where the subject is fully discussed; Cook v. England, 27 Md. 14. It must be remembered that the doctrine of original writs here is entirely different from the English practice. There the Courts would not grant *oyer* of an original, and consequently no advantage could be taken of a variance between it and the declaration, Boats v. Edwards, Doug. 227; and where there was a defective original, the Master of the Rolls could, on error brought, grant a new original or order an amendment, Carr v. Shaw, 7 T. R. 299; Tidd Prac. 1171. But, with us, the original was formerly *always* inserted in the record, as it may be now under the 7th of the New Rules of the
413 Court of *Appeals,[1] and until the Act of 1852, ch. 177, Code, Art. 75, sec. 23,[2] was not permitted to be amended further than for clerical misprisions. With respect to judicial writs, although the want of one is helped by the Statute, a vicious one is not, see Lee v. Lacon, Yelv. 69. An insufficient return or a misreturn is also aided, but it was decided in

[1] Code 1911, Art. 5, sec. 13.

[2] Code 1911, Art. 75, sec. 35, (as now amended).