

hundred Ninety and Seven whereof hee was Convict as by the records and proress thereof in our Said Court remaineth to be done as by the insinuation of the Said Brooke our Sovereigne Lord the King is given to understand and because etc. that by Law etc. he make knowne unto David Small administrator of the Said Charles Treacy that hee bee and appear here the 4th Tuesday in March to Shew Cause if etc. wherefore the Said James Brooke his Execution against him the Said David Small as administrator of all and Singular the goods Chattles and Creditts of Charles Treacy Deceased against him ought not to have according to the recovery thereof: And now here at this Day (to witt) the 26th of September Annoque Domini 1699 came here as well the Said James Brooke as the Said David Small and the Said James Brooke by William Stone his Attorney Prayeth that the Said David Small to his writt of Scire facias may answer.

And the Said David by Joshua Cecell his attorney comes and Defends the force and Injury when etc. and Saith that the Said writt and Matter in the Same Contained is not Sufficient in Law to Meinteine the writt aforesaid So as aforesaid Prosecuted and that he hath noe need Neither by the Law of the Land is held to answer to the Said writt etc. and for Causes of Demurer according to the forme of the Stattute Saith that in the Same writt it is not Contained upon whom or upon what Execution in the Said writt Should be Leavied whether upon the body of the Said David Small or upon the goods and Chattles of the Said Charles Treacy Deceased for noe Execution can be ewarded upon the body or goods of and Executor or administrator Debonis propriis untill a writt of devestavitt have been Legally returned against the Executor or administrator that they have wasted the Esteat of the Deceased or that the Executor or administrator have pleaded Some falce plea to the perpetuall barr of that Plaintiff's Debt Sued for and if the Judgement to be affirmed in the Same writt of Scire facias aforesaid Supposed to be made upon the Goods and Chattles of the Said Charles Treacy Deceased as it must [467] be if any obtained the writt of Scire facias Should have mentioned why the Said James Brooke Sought not to have his Execution against the Said Defendant of the Debt and Damages aforesaid to be Leavied of the Goods and Chattles which ware of the Said Charles Treacy at the time of his death etc. which this writt makes noe mention off for which uncertainty in the writt of Scire facias aforesaid noe Certaine Judgement cann be Entred for the Count or Declaration must be agreable and Conforme to the writt the bar to the Count or Declaration etc. and the Judgements to the Count or Declaration for none of them must be narrower or Broader then the other, Cookes Institutes: folio 303 A wherefore for want of a sufficien writt of Scire Facias to warrant and maine-teine a Judgment to be affirmed by the Said wright Supposed aforesaid the Defendant prayeth Judgment for his Damages and Costs etc. Joshua Cecell for the Defendant.

And the Said James by William Stone his attorney Saith that by any thing alleadged in the Defendants Plea aforesaid he ought not to be barrd of haveing his Scire Facias aforesaid and for replication Saith etc.

That the Scire Facias aforesaid is well brought by mentioning therein the Said David Small to be the administrator of the Said Charles Treacy and that Execution may Safely be awarded against the goods and Chattles of the Said Charles Treacy Deceased and not against the David Small as Executor Or administrator Debonis Propriis or that the Said David Small hath wasted the Esteate of the Deceased or that the Said David hath wasted the Esteate of the deseasd hath pleaded any Falce Plea to the perpetuall Barr of the Said Plaintiffs Debt Sued for are but meer Niceyties in Law and alltogether contrary to the Cusome and Prac-