as a separate document or endorsed on the copy of the demurrer filed with the clerk. In substance such pleadings followed the form of the pleadings contained in the *Liber*. It is apparent that the entries as to pleadings in the *Liber* were made up from file papers of this nature.

In only two actions did defendant demur to the declaration. In *Tracey* v. *Warner*, at the August 1697 court, the demurrer was sustained, apparently on the ground that plaintiff sought to recover on a naked promise, not setting forth the consideration upon which the debt became due. In *Hide's Executors* v. *Baker*, at the October 1699 court, the declaration was held good despite the demurrer of Joshua Cecil who urged as authorities in support *The Compleat Attorney* and several precedents in Brownlow, *Declarations and Pleadeings* (presumably Brownlow, *Declarations, Counts and Pleadings in English*). [25]

In a few cases pleas in abatement were entered. In *Hine* v. *Harrison* in November 1698 defendant prayed abatement of the writ and declaration on the ground of variance between the writ and the prescript of the declaration, the plaintiff being described as administratrix in the former but not in the latter. Counsel for defendant urged that "by reason of which variance between the writt and Declaration afforesaid noe Certaine Judgement can be given for the Count or Declaration must be agreeable to the writt the Barr to the Count etc. and, the Judgements to the Counts for none of them must be narrower or broader than the other Cookes Institutes Follio 303 etc." The court gave judgment that the writ be quashed and plaintiff take nothing by her writ. In *Cullver* v. *Small* in the same term another plea in abatement was made for variance between the writ and the prescript of the declaration, with the same reason urged, and the writ quashed by the court. [26]

In *Kinton* v. *Wapple*, an action of debt upon a bill obligatory under seal, defendant's attorney in his plea prayed that the declaration might abate, since defendant "never did pass any Such bill or ever had any dealings with Edward Kinton as the plaintiff in his Declaration aforesaid hath Sett forth or did ever know any Such person . . ." This plea was certainly not an orthodox plea in abatement nor was it a demurrer. It seems more fitting matter to have been raised by a plea of the general issue in debt on a specialty—*non est factum*. As far as the entries indicate, no replication or further pleading was put in by plaintiff. In any event, the court gave judgment for plaintiff. [27]

As noted earlier, in most actions which reached the pleading stage defendant pleaded the general issue. The form of such pleas followed English practice in the main. As a typical example, in an action of trespass on the case (*Tracey* v. *Westry*) the "not guilty" plea was entered in the *Liber* in the following manner:

> And now here att this day Came the Said William Westry by William Bladen his Attorney and further Defendeth the aforesaid force and Injury when etc: And Saith that the Said William Westry is not guilty in manner and forme as the plantiffe in his Decleration aforesaid hath Complained and of this he putts himselfe upon the Court. [28]

In *Towgood* v. *Ludell*, designated as trespass on the case, actually trespass on the case in assumpsit, the entry of the plea of the general issue (*non assumpsit*), typical in such cases, read as follows:

> Whereupon the Said William Ludell by Cleborne Lomax his Attorney Cometh and de-

25. *Infra* 227–29, 577–79. There are indications that 27 Eliz. I, c. 5 was regarded as being in effect in the province. See Kilty, *op. cit. supra* 235.

26. *Infra* 413–14. The reference is to Coke, *First Inst.* (*Commentary upon Littleton*), f. 303a.

27. *Infra* 334–35.

28. *Infra* 104.