REX *versus* HELLING ET AL. Friday, 9th May, 1766. Order made on Easter Wednesday for appointing overseers good.

Mr. Coxe and Mr. Dunning shewed cause against quashing an order made upon Easter Wednesday 1766, by two justices (Luke Robinson and Joseph Girdler, Esqrs.) appointed the defendants overseers of the poor of St. Andrews Holborn above the Bars, and St. George the Martyr.

It has been objected, that this is not an appointment under the statute of 43 Eliz. c. 2, being "for this present year 1766."

Answer—But this is the usual form in this parish. And the order says, "and to do all such things as their duty requires;" that is, (amongst other things) to stay in their office till others are appointed.

Sir Fletcher Norton and Mr. Walker, contra, argued for quashing the order.

They admitted, they could not go out of the order. But by 43 Eliz. c. 2, sect. 1, the overseers are to be nominated yearly, and this Act giving a jurisdiction, they are obliged to conform exactly to it. Consequently, they can nominate only for a year; (neither more nor less).

Whereas this appointment being made on Easter **[1905]** Wednesday, and appointing them for the year 1766, they were not obliged nor authorized or intitled to continue any longer than the end of the year 1766. It is not an appointment for a year.

Lord Mansfield—The real objections, I take it for granted, are not before the Court.

The only question before us is "whether the order is good upon the face of it, or not."

Now this order plainly means the overseer's year: and that year is from Easter 1765, to Easter 1766. You would make it bad, by understanding it to mean the year of our Lord. But you can not construe this order to be a bad one, by understanding it so: for it manifestly means quite another sort of year.

Mr. Justice Wilmot was silent, being a parishioner.

Mr. Justice Yates was absent.

Mr. Justice Aston concurred with Lord Mansfield; and said, that if the construction may be taken two ways: one of them making the order good, the other making it bad; he should take it in the sense that would make it good. Wherefore

Per Cur.—Rule discharged.

Order affirmed.

REX *versus* INHABITANTS OF ECCLESALL BIERLOW IN SHEFFIELD. Monday 11th May, 1766.

See this case at large in the quarto-edition of my Settlement-Cases, No. 180, pa. 562.

CARTER *versus* BOEHM. 1766. [S. C. 1 Bl. 593.] Concealment will avoid a policy of assurance.

[Discussed and approved, *Bates* v. *Hewitt*, 1867, L. R. 2 Q. B. 608. Principle applied, *Harrower* v. *Hutchinson*, 1870, L. R. 5 Q. B. 590. Observation adopted, *Gandy* v. *Adelaide Assurance Company*, 1871, L. R. 6 Q. B. 756. Dictum discussed, *Davenport* v. *Charsley*, 1886, 54 L. T. 344. Referred to, *Rowley* v. *London and North-Western Railway Company*, 1873, L. R. 8 Ex. 231. Dictum adopted, *Bristol, &c., Aerated Bread Company* v. *Maggs*, 1890, 44 Ch. D. 622. Referred to, *Seaton* v. *Heath* [1899], 1 Q. B. 790; [1900], A. C. 135. Adopted, *Gedge* v. *Royal Assurance Corporation* [1900], 2 Q. B. 222.]

This was an assurance-cause, upon a policy underwritten by Mr. Charles Boehm, of interest, or no interest: without benefit of salvage. The insurance was made by the plaintiff, for the benefit of his brother, Governor George Carter.

[1906] It was tried before Lord Mansfield at Guildhall: and a verdict was found for the plaintiff by a special jury of merchants.

On Saturday the 19th of April last, Mr. Recorder (Eyre,) on behalf of the defen-

dant, moved for a new trial. His objection was, "that circumstances were not sufficiently disclosed."

A rule was made to shew cause: and copies of letters and depositions were ordered to be left with Lord Mansfield.

N.B. Four other clauses depended upon this.

The counsel for the plaintiff, viz. Mr. Morton, Mr. Dunning and Mr. Wallace, shewed cause on Thursday the first of this month. But first,

Lord Mansfield reported the evidence—That it was an action on a policy of insurance for one year: viz. from 16th of October 1759 to 16th October 1760, for the benefit of the Governor of Fort Marlborough, George Carter, against the loss of Fort Marlborough in the island of Sumatra in the East Indies, by its being taken by a foreign enemy. The event happened: the fort was taken, by Count D'Estaigne, within the year.

The first witness was Cawthorne, the policy-broker, who produced the memorandum given by the governor's brother (the plaintiff) to him: and the use made of these instructions was to shew that the insurance was made "for the benefit of Governor Carter, and to insure him against the *taking of the fort by a foreign enemy*."

Both sides has been long in Chancery: and the Chancery-evidence on both sides was read at the trial.

It was objected, on behalf of the defendant, to be a fraud, by concealment of circumstances which ought to have been disclosed; and particularly, the weakness of the fort, and the probability of its being attacked by the French: which concealment was offered to be proved by two letters. The first was a letter from the governor to his brother Roger Carter, his trustee, the plaintiff in this cause: the second was from the governor to the East India-Company.

[1907] The evidence in reply to this objection consisted of three depositions in Chancery, setting forth that the governor had 20,000l. in effects: and only insured 10,000l. and that he was guilty of no fault in defending the fort.

The first of these depositions was Captain Tryon's: which proved that this was not a fort proper or designed to resist European enemies: but only calculated for defence against the natives of the island of Sumatra; and also that the governor's office is not military, but only mercantile; and that Fort Marlborough is only a subordinate factory to Fort St. George.

There was no evidence to the contrary. And a verdict was found for the plaintiff, by a special jury.

After his Lordship had made his report,—

The counsel for the plaintiff proceeded to shew cause against a new trial.

They argued that there was no such concealment of circumstances (as the weakness of the fort, or the probability of the attack,) as would amount to a fraud sufficient to vitiate this contract: all which circumstances were universally known *to* every merchant upon the exchange of London. And all these circumstances, they said, were fully considered by a special jury of merchants, who are the proper judges of them.

And Mr. Dunning laid it down as a rule—"that the insured is only obliged to discover facts; not the ideas or speculations which he may entertain, upon such facts."

They said, this insurance, was in reality, no more than a wager; "whether the French would think it their interest to attack this fort; and if they should, whether they would be able to get a ship of war up the river, or not."

Sir Fletcher Norton and Mr. Recorder (Eyre) argued, contra, for the defendant (the under-writer).

They insisted, that the insurer has a right to know as much as the insured himself knows.

They alledged too, that the broker is the sole agent of the insured.

[1908] These are general, universal principles, in all insurances.

Then they proceeded to argue in support of the present objection.

The broker had, they said, on being cross-examined, owned that he did not believe that the insurer would have meddled with the insurance, if he had seen these two letters.

All the circumstances ought to be disclosed.

This wager is not only "whether the fort shall be attacked:" but "whether it shall be attacked and taken."

Whatever really increases the risque ought to be disclosed.

Then they entered into the particulars which had been here kept concealed. And they insisted strongly, that the plaintiff ought to have discovered the weakness and absolute indefencibility of the fort. In this case, as against the insurer, he was obliged to make such discovery, though he acted for the governor. Indeed, a governor ought not, in point of policy, to be permitted to insure at all: but if he is permitted to insure, or will insure, he ought to disclose all facts.

It can not be supposed that the insurer would have insured so low as 4l. per cent. if he had known of these letters.

It is begging the question to say, "that a fort is not intended for defence against an enemy." The supposition is absurd and ridiculous. It must be presumed that it was intended for that purpose: and the presumption was "that the fort, the powder, the guns, &c. were in a good and proper condition." If they were not, (and it is agreed that in fact they were not, and that the governor knew it,) it ought to have been disclosed. But if he had disclosed this, he could not have got the insurance. Therefore this was a fraudulent concealment: and the under-writer is not liable.

It does not follow, that because he did not insure his whole property; therefore it is good for what he has judged proper to insure. He might have his reasons for insuring only a part, and not the whole.

Cur. advisare vult.

[1909] Lord Mansfield now delivered the resolution of the Court.

This is a motion for a new trial.

In support of it, the counsel for the defendant contend, "that some circumstances in the knowledge of Governor Carter, not having been mentioned at the time the policy was underwrote, amount to a concealment, which ought, in law, to avoid the policy."

The counsel for the plaintiff insist, "that the not mentioning these particulars, does not amount to a concealment, which ought, in law, to avoid the policy: either as a fraud; or, as varying the contract."

1st. It may be proper to say something, in general, of concealments which avoid a policy.

2dly. To state particularly the case now under consideration.

3dly. To examine whether the verdict, which finds this policy good although the particulars objected were not mentioned, is well founded.

First. Insurance is a contract upon speculation.

The special facts, upon which the contingent chance is to be computed, lie most commonly in the knowledge of the insured only: the under-writer trusts to his representation, and proceeds upon confidence that he does not keep back any circumstance in his knowledge, to mislead the under-writer into a belief that the circumstance does not exist, and to induce him to estimate the risque, as if it did not exist.

The keeping back such circumstance is a fraud, and therefore the policy is void. Although the suppression should happen through mistake, without any fraudulent intention; yet still the under-writer is deceived, and the policy is void; because the risque run is really different from the risque understood and intended to be run, at the time of the agreement.

The policy would equally be void, against the under-writer, if he concealed; as, if he insured a ship on her voyage, which he privately knew to be arrived: and an action would lie to recover the premium.

[1910] The governing principle is applicable to all contracts and dealings.

Good faith forbids either party by concealing what he privately knows, to draw the other into a bargain, from his ignorance of that fact, and his believing the contrary.

But either party may be innocently silent, as to grounds open to both, to exercise their judgment upon. Aliud est celare; aliud, tacere; neque enim id est celare quicquid reticeas; sed cum quod tuscias, id ignorare emolumenti tui causa velis eos, quorum intersit id scire.

This definition of concealment, restrained to the efficient motives and precise subject of any contract, will generally hold to make it void, in favour of the party misled by his ignorance of the thing concealed.

There are many matters, as to which the insured may be innocently silent—he

need not mention what the under-writer knows—Scientia utrinque par pares contrahentes facit.

An under-writer can not insist that the policy is void, because the insured did not tell him what he actually knew; what way soever he came to the knowledge.

The insured need not mention what the under-writer ought to know; what he takes upon himself the knowledge of; or what he waves being informed of.

The under-writer needs not be told what lessens the risque agreed and understood to be run by the express terms of the policy. He needs not to be told general topics of speculation: as for instance—The under-writer is bound to know every cause which may occasion natural perils; as, the difficulty of the voyage—the kind of seasons —the probability of lightning, hurricanes, earthquakes, &c. He is bound to know every cause which may occasion political perils; from the ruptures of States from war, and the various operations of it. He is bound to know the probability of safety, from the continuance or return of peace; from the imbecility of the enemy, through the weakness of their counsels, or their want of strength, &c.

If an under-writer insures private ships of war, by sea and on shore, from ports to ports, and places to places, any where—he needs not be told the secret enterprizes **[1911]** they are destined upon; because he knows some expedition must be in view; and, from the nature of his contract, without being told, he waves the information. If he insures for three years, he needs not be told any circumstance to shew it may be over in two: or if he insures a voyage, with liberty of deviation, he needs not be told what tends to shew there will be no deviation.

Men argue differently, from natural phenomena, and political appearances: they have different capacities, different degrees of knowledge, and different intelligence. But the means of information and judging are open to both: each professes to act from his own skill and sagacity; and therefore neither needs to communicate to the other.

The reason of the rule which obliges parties to disclose, is to prevent fraud, and to encourage good faith. It is adapted to such facts as vary the nature of the contract; which one privately knows, and the other is ignorant of, and has no reason to suspect.

The question therefore must always be "whether there was, under all the circumstances at the time the policy was under-written, a fair representation; or a concealment; fraudulent, if designed; or, though not designed, varying materially the object of the policy, and changing the risque understood to be run."

This brings me, in the second place, to state the case now under consideration.

The policy is against the loss for Fort Marlborough, from being destroyed by, taken by, or surrendered unto, any European enemy, between the 1st of October 1759, and 1st of October 1760. It was under-written on the 9th of May 1760.

The under-writer knew at the time, that the policy was to indemnify, to that amount, Roger Carter the Governor of Fort Marlborough, in case the event insured against should happen. The governor's instructions for the insurance, bearing date at Fort Marlborough the 22d of September 1759, were laid before the underwriter. Two actions upon this policy were tried before me in the year 1762. The defendants then knew of a letter written to the East India Company, which the Company offered to put into my hands; but would not deliver to the parties, because it contained some matters which they did not think proper to be made public.

[1912] An objection occurred to me at the trial, "whether a policy against the loss of Fort Marlborough, for the benefit of the governor, was good;" upon the principle which does not allow a sailor to insure his wages.

But considering that this place, though called a fort, was really but a factory or settlement for trade: and that he, though called a governor, was really but a merchant —considering too, that the law allows the captain of a ship to insure goods which he has on board, or his share in the ship, if he be a part-owner; and the captain of a privateer, if he be a part-owner, to insure his share—considering too, that the objection did not lie, upon any ground of justice, in the mouth of the under-writer, who knew him to be the governor, at the time he took the premium—and as, with regard to principles of public convenience, the case so seldom happens, (I never saw one before,) any danger from the example is little to be apprehended—I did not think myself warranted, upon that point, to nonsuit the plaintiff; especially too, as the objection did not come from the Bar.

Though this point was mentioned, it was not insisted upon, at the last trial: nor has it been seriously argued, upon this motion, as sufficient, alone, to vacate the policy: and if it had, we are all of opinion "that we are not warranted to say it is void, upon this account.

Upon the plaintiff's obtaining these two verdicts, the underwriters went into a Court of Equity; where they have had an opportunity to sift every thing to the bottom, to get every discovery from the governor and his brother, and to examine any witnesses who were upon the spot. At last, after the fullest investigation of every kind, the present action came on to be tried at the sittings after last term.

The plaintiff proved without contradiction, that the place called Bencoolen or Fort Marlborough is a factory or settlement, but no military fort or fortress. That it was not established for a place of arms or defence against the attacks of an European enemy; but merely for the purpose of trade, and of defence against the natives. That the fort was only intended and built with an intent to keep off the country blacks. That the only security against European ships of war, consisted in the difficulty of the entrance and navigation of the river, for want of proper pilots. That the general state and condition of the said fort, and of the strength thereof, was, in general [1913] well known, by most persons conversant or acquainted with Indian affairs, or the state of the Company's factories or settlements; and could not be kept secret or concealed from persons who should endeavour by proper inquiry, to inform themselves. That there were no apprehensions or intelligence of any attack by the French, until they attacked Nattal in Feb. 1760. That on the 8th of February 1760, there was no suspicion of any design by the French. That the governor then bought, from the witness, goods to the value of 4000l. and had goods to the value of above 20,000l. and then dealt for 50,000l. and upwards. That on the 1st of April 1760, the fort was attacked by a French man of war of 64 guns and a frigate of twenty guns under the Count D'Estaigne, brought in by Dutch pilots; unavoidably taken; and afterwards delivered to the Dutch; and the prisoners sent to Batavia.

On the part of the defendant—after all the opportunities of inquiry, no evidence was offered, that the French ever had any design upon Fort Marlborough, before the end of March 1760; or that there was the least intelligence or alarm "that they might make the attempt," till the taking of Nattal in the year 1760.

They did not offer to disprove the evidence, that the governor had acted, as in full security, long after the month of September 1759; and had turned his money into goods, so late as the 8th of February 1760. There was no attempt to shew that he had not lost by the capture very considerably beyond the value of the insurance.

But the defendant relied upon a letter, written to the East India Company, bearing date the 16th of September 1759, which was sent to England by the "Pitt," Captain Wilson, who arrived in May 1760, together with the instructions for insuring; and also a letter bearing date the 22d of September 1759, sent to the plaintiff by the same conveyance, and at the same time, (which letters his Lordship repeated).*

They relied too upon the cross-examination of the broker who negotiated the policy, "that, in his opinion, [1914] these letters ought to have been shewn, or the contents disclosed; and if they had, the policy would not have been under-written."

The defendant's counsel contended at the trial, as they have done upon this motion, "that the policy was void."—

1st. Because the state and condition of the fort, mentioned in the governor's letter to the East India Company, was not disclosed.

2dly. Because he did not disclose, that the French, not being in a condition to

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* The former of them notifies to the East India Company, that the French had the preceding year, a design on foot, to attempt taking that settlement by surprize; and that it was very probable that they might revive that design. It confesses and represents the weakness of the fort: its being badly supplied with stores, arms and ammunition: and the impracticability of maintaining it (in its then state) against an European enemy.

The latter letter (to his brother) owns that he is "now more afraid than formerly, that the French should attack and take the settlement; for, as they can not muster a force to relieve their friends at the coast, they may, rather than remain idle, pay us a visit. It seems, that they had such an intention, last year." And therefore he desires his brother to get an insurance made upon his stock there.

relieve their friends upon the coast, were more likely to make an attack upon this settlement, rather than remain idle.

3dly. That he had not disclosed his having received a letter of the 4th of February 1759, from which it seemed that the French had a design to take this settlement, by surprize, the year before.

They also contended, that the opinion of the broker was almost decisive.

The whole was laid before the jury; who found for the plaintiff.

Thirdly—It remains to consider these objections, and to examine "whether this verdict is well founded."

To this purpose, it is necessary to consider the nature of the contract, at the time it was entered into.

The policy was signed in May 1760. The contingency was "whether Fort Marlborough was or would be taken, by an European enemy, between October 1759, and October 1760."

The computation of the risque depended upon the chance, "whether any European power would attack the place by sea." If they did, it was incapable of resistance.

The under-writer at London, in May 1760, could judge much better of the probability of the contingency, than Governor Carter could at Fort Marlborough, in September 1759. He knew the success of the operations of the war in Europe. He knew what naval force the English and French had sent to the East Indies. He knew, from a comparison of that force, whether the sea was open to any such attempt by the French. He knew, or might know every thing which was known at Fort Marlborough in September 1759, of the general state of affairs in the [1915] East Indies, or the particular condition of Fort Marlborough, by the ship which brought the orders for the insurance. He knew that ship must have brought many letters to the East India Company; and, particularly, from the governor. He knew what probability there was of the Dutch committing or having committed hostilities.

Under these circumstances, and with this knowledge, he insures against the general contingency of the place being attacked by an European power.

If there had been any design on foot, or any enterprize begun in September, 1759, to the knowledge of the governor, it would have varied the risk understood by the underwriter; because not being told of a particular design or attack then subsisting, he estimated the risk upon the foot of an incertain operation, which might or might not be attempted.

But the governor had no notice of any design subsisting in September, 1759. There was no such design in fact: the attempt was made without premeditation, from the sudden opportunity of a favourable occasion, by the connivance and assistance of the Dutch, which tempted Count D'Estaigne to break his parol.

These being the circumstances under which the contract was entered into, we shall be better able to judge of the objections upon the foot of concealment.

The first concealment is, that he did not disclose the condition of the place.

The underwriter knew the insurance was for the governor. He knew the governor must be acquainted with the state of the place. He knew the governor could not disclose it, consistent with his duty. He knew the governor, by insuring, apprehended at least the possibility of an attack. With this knowledge, without asking a question, he underwrote.

By so doing, he took the knowledge of the state of the place upon himself. It was a matter as to which he might be informed various ways: it was not a matter within the private knowledge of the governor only.

But, not to rely upon that—The utmost which can be contended is, that the underwriter trusted to the fort being in the condition in which it ought to be: in like manner as it is taken for granted, that a ship insured is sea-worthy.

What is that condition? All the witnesses agree "that [1916] it was only to resist the natives, and not an European force." The policy insures against a total loss; taking for granted "that if the place was attacked it would be lost."

The contingency therefore which the under-writer has insured against is, "whether the place would be attacked by an European force; and not whether it would be able to resist such an attack, if the ships could get up the river."

It was particularly left to the jury, to consider, "whether this was the contingency in the contemplation of the parties:" they have found that it was.

And we are all of opinion, "that, in this respect, their conclusion is agreeable to the evidence."

In this view, the state and condition of the place was material only in case of a land-attack by the natives.

The second concealment is—his not having disclosed, that, from the French not being able to relieve their friends upon the coast, they might make them a visit.

This is no part of the fact of the case: it is a mere speculation of the governor's from the general state of the war. The conjecture was dictated to him from his fears. It is a bold attempt, for the conquered to attack the conqueror in his own dominions. The practicability of it in this case, depended upon the English naval force in those seas; which the underwriter could better judge of at London in May, 1760, than the governor could at Fort Marlborough in September, 1759.

The third concealment is—that he did not disclose the letter, from Mr. Winch, of the 4th of February, 1759, mentioning the design of the French, the year before.

What that letter was; how he mentioned the design, or upon what authority he mentioned it; or by whom the design was supposed to be imagined, does not appear. The defendant has had every opportunity of discovery; and nothing has come out upon it, as to this letter, which he thinks makes for his purpose.

The plaintiff offered to read the account Winch wrote to the East India Company: which was objected to; and therefore not read. **[1917]** The nature of that intelligence therefore is very doubtful. But taking it in the strongest light, it is a report of a design to surprise, the year before; but then dropt.

This is a topic of mere general speculation; which made no part of the fact of the case upon which the insurance was to be made.

It was said—If a man insured a ship, knowing that two privateers were lying in her way, without mentioning that circumstance, it would be a fraud—I agree it. But if he knew that two privateers had been there the year before, it would be no fraud, not to mention that circumstance: because, it does not follow that they will cruise this year at the same time, in the same place; or that they are in a condition to do it. If the circumstance of "this design laid aside" had been mentioned, it would have tended rather to lessen the risque, than increase it: for, the design of a surprise which has transpired, and been laid aside, is less likely to be taken up again; especially by a vanquished enemy.

The jury considered the nature of the governor's silence, as to these particulars: they thought it innocent: and that the omission to mention them did not vary the contract. And we are all of opinion, "that, in this respect, they judged extremely right."

There is a silence, not objected to at the trial nor upon this motion; which might with as much reason have been objected to, as the two last omissions; rather more.

It appears by the governor's * letter to the plaintiff, "that he was principally apprehensive of a † Dutch war." He certainly had, what he thought, good grounds for his apprehension. Count D'Estaigne being piloted by the Dutch, delivering the fort to the Dutch, and sending the prisoners to Batavia, is a confirmation of those grounds. And probably, the loss of the place was owing to the Dutch. The French could not have got up the river without Dutch pilots: and it is plain, the whole was concerted with them. And yet, at the time of underwriting the policy, there was no intimation about the Dutch.

The reason why the counsel have not objected to his not disclosing the grounds of this apprehension, is, because it must have arisen from political speculation, and **[1918]** general intelligence; therefore, they agree, it is not necessary to communicate such things to an underwriter.

Lastly—Great stress was laid upon the opinion of the broker.

But we all think, the jury ought not to pay the least regard to it. It is mere opinion; which is not evidence. It is opinion after an event. It is opinion without the least foundation from any previous precedent or usage. It is an opinion which, if rightly formed, could only be drawn from the same premises from which the Court

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* Dated 22d Sept. 1759.

† His words are—"And in case of a Dutch war, I would have it (the insurance) done at any rate."

and jury were to determine the cause: and therefore it is improper and irrelevant in the mouth of a witness.

There is no imputation upon the governor, as to any intention of fraud. By the same conveyance, which brought his orders to insure, he wrote to the company every thing which he knew or suspected: he desired nothing to be kept a secret, which he wrote either to them or his brother. His subsequent conduct, down to the 8th of February 1760, shewed that he thought the danger very improbable.

The reason of the rule against concealment is, to prevent fraud and encourage good faith.

If the defendant's objections were to prevail, in the present case, the rule would be turned into an instrument of fraud.

The underwriter, here, knowing the governor to be acquainted with the state of the place; knowing that he apprehended danger, and must have some ground for his apprehension; being told nothing of either; signed this policy, without asking a question.

If the objection "that he was not told" is sufficient to vacate it, he took the premium, knowing the policy to be void; in order to gain, if the alternative turned out one way; and to make no satisfaction, if it turned out the other: he drew the governor into a false confidence, "that, if the worst should happen, he had provided against total ruin;" knowing, at the same time, "that the indemnity to which the governor trusted was void."

There was not a word said to him, of the affairs of India, or the state of the war there, or the condition of Fort Marlborough. If he thought that omission an objection at the time, he ought not to have signed the policy **[1919]** with a secret reserve in his own mind to make it void; if he dispensed with the information, and did not think this silence an objection then; he cannot take it up now, after the event.

What has often been said of the Statute of Frauds may, with more propriety, be applied to every rule of law, drawn from principles of natural equity, to prevent fraud—"That it should never be so turned, construed, or used, as to protect, or be a means of fraud."

After the fullest deliberation, we are all clear that the verdict is well founded: and there ought not to be a new trial: consequently, that the rule for that purpose ought to be discharged.

Rule discharged.

The end of Easter term, 1766, 6 G. 3.

[1920] Trinity Term, 6 Geo. 3, B. R. 1766.

Rex *versus* Inhabitants of Frome Selwood. 1766.

See this case at large, in the quarto-edition of my Settlement-Cases, No. 181, p. 565.

Campbell *versus* Daley. Tuesday, 17th June, 1766. Special bail on appearing on an outlawry.

The question was "whether, in a case originally requiring special bail, and the defendant standing out to an outlawry,(*a*) he can come in and appear to the outlawry without putting in special bail."

See the stat. of 31 Eliz. c. 3, § 3; and 4, 5 W. & M. c. 18, § 4.

Per Cur.—There ought to be special bail; it would be very unreasonable, that the defendant should gain an advantage, by standing out till process of outlawry. He certainly ought not to be in a better case then, than if he had appeared at first. And accordingly, the direction given was "that the filacer should not issue a supersedeas, till the defendant had put in special bail. And a week was given him for that purpose.

(*a*) Lege Exigent, vide 1 Tidd's Prac. 130, in notes, and see ante, 1484.