



This is a digital copy of a book that was preserved for generations on library shelves before it was carefully scanned by Google as part of a project to make the world's books discoverable online.

It has survived long enough for the copyright to expire and the book to enter the public domain. A public domain book is one that was never subject to copyright or whose legal copyright term has expired. Whether a book is in the public domain may vary country to country. Public domain books are our gateways to the past, representing a wealth of history, culture and knowledge that's often difficult to discover.

Marks, notations and other marginalia present in the original volume will appear in this file - a reminder of this book's long journey from the publisher to a library and finally to you.

### **Usage guidelines**

Google is proud to partner with libraries to digitize public domain materials and make them widely accessible. Public domain books belong to the public and we are merely their custodians. Nevertheless, this work is expensive, so in order to keep providing this resource, we have taken steps to prevent abuse by commercial parties, including placing technical restrictions on automated querying.

We also ask that you:

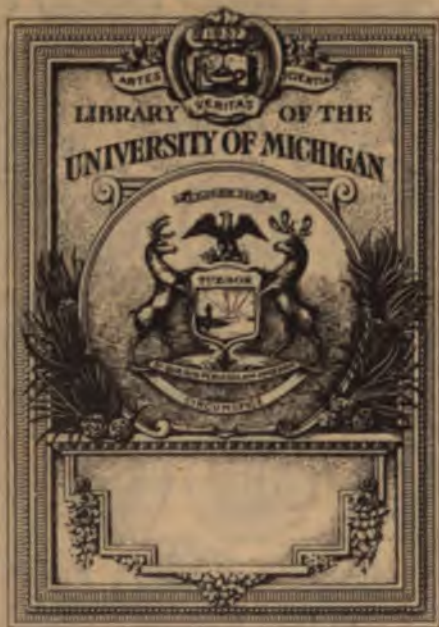
- + *Make non-commercial use of the files* We designed Google Book Search for use by individuals, and we request that you use these files for personal, non-commercial purposes.
- + *Refrain from automated querying* Do not send automated queries of any sort to Google's system: If you are conducting research on machine translation, optical character recognition or other areas where access to a large amount of text is helpful, please contact us. We encourage the use of public domain materials for these purposes and may be able to help.
- + *Maintain attribution* The Google "watermark" you see on each file is essential for informing people about this project and helping them find additional materials through Google Book Search. Please do not remove it.
- + *Keep it legal* Whatever your use, remember that you are responsible for ensuring that what you are doing is legal. Do not assume that just because we believe a book is in the public domain for users in the United States, that the work is also in the public domain for users in other countries. Whether a book is still in copyright varies from country to country, and we can't offer guidance on whether any specific use of any specific book is allowed. Please do not assume that a book's appearance in Google Book Search means it can be used in any manner anywhere in the world. Copyright infringement liability can be quite severe.

### **About Google Book Search**

Google's mission is to organize the world's information and to make it universally accessible and useful. Google Book Search helps readers discover the world's books while helping authors and publishers reach new audiences. You can search through the full text of this book on the web at <http://books.google.com/>

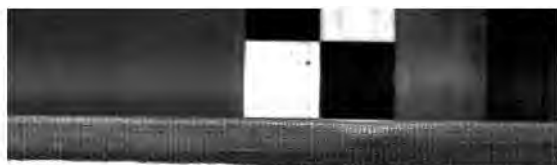
**A** 456165





THE GIFT OF  
*Prof. J. S. Reeves*













350.942  
F55<sup>u</sup>  
1718



W. B. Gibson

W. B. Gibson  
June 21. 1858

1858





*Rd* <sup>1750</sup> THE NEW *Rutson*  
**Natura Brevium**

OF THE

Most Reverend J U D G E,

*Mr. Anthony Fitz-Herbert.*

*Wherunto are added,*

The Authorities in L A W, and some  
other C A S E S and N O T E S collected  
by the Translator out of the Year-  
Books and Abridgments.

*Rd* WITH *Rutson*  
A New and Exact T A B L E of the  
most Material Things contained therein.

---

The Sixth Edition, *carefully corrected from the Errors  
of the former Impressions.*

---

In the S A V O R:

Printed by Eliz. Nutt, and R. Gosling, (Assigns of  
*Edw. Sayer Esq;*) for W. Lintott at the Cross-Keys,  
R. Gosling at the Mitre and Crown, in Fleet-street; and  
T. Ward in the Inner-Temple-Lane. M D C C X V I I I.

[REDACTED]

119

[REDACTED]

---

THE  
P R E F A C E

Composed by the Reverend Judge,

*Mr. Anthony Fitz-Herbert.*

---

**I**N every ART and SCIENCE there are certain Rules and Foundations to which a Man ought to give Credit, and which he cannot deny.

In like manner there are divers Maxims and Fundamentals in the Knowledge of the Common Laws of the Land, which a Man ought for to believe very necessary for those who will understand the same Law, especially at the beginning of their Studies; for upon those Fundamentals the whole Law doth depend. For which Purpose, in Time past there



## The P R E F A C E.

*was composed a very profitable Book, called The Register, which doth contain sundry Principles, by which he must be well instructed who would study the Law. And also for that Purpose was there composed by a Learned Man, a Book called Natura Brevium, which Book doth declare and set forth the Diversities and Natures of many Original Writs, with their Process; which Book helped much to the understanding not only of the Register, but also of the Law of the Land. But because of late Time that Book hath been translated into the English Tongue, and many Things are therein which are not according to the Law of the Land, and many other Things are omitted which are very profitable and necessary for the understanding of the Law; for that Cause is this Work composed and published, wherein if there be any Thing against the Opinion of the Sages who have the Administration of the Laws, the Request of him who hath taken the Pains to make the Treatise is, That they would correct and amend the same, as they shall see good, according to the Law.*

T H E

THE  
**T A B L E**  
 OF THE  
**W R I T S**

Contained in the ensuing Treatise.

<i>A.</i>		<i>Audita Querela</i>	226
<b>A</b>	<i>Ccedas ad Curiam, Pag.</i> 40	<i>Audiendo &amp; Terminando</i>	243
	<i>Accompt</i>	257	<i>Auxilium ad filium militem faciend. vel filiam maritand.</i> 183
	<i>Admeasurat. Pasturae</i>	276	
	<i>Admensuratio Dotis</i>	331	
	<i>Ad admittendum Clericum</i>	84	
	<i>Ad quod dampnum</i>	493	
	<i>Alienation sans Licence de Roy.</i>	598	
	<i>Annuitiy</i>	339	
	<i>Annua Pensio</i>	513	
	<i>Aiel ou Besaiel</i>	491	
	<i>Apostata capiend*</i>	519	
	<i>Assise de Novel Disseisin</i>	393	
	<i>Assise de Darrein Presentment</i>	68	
	<i>Assise de Mort d'Auncestor</i>	433	
	<i>Assise de Nusance</i>	407	
	<i>Association in Assise</i>	42	
	<i>Attaint</i>	233	
	<i>Attornat. fac. vel recipiend.</i>	349	
	<i>Attachment</i>	6	
			<i>C.</i>
		<b>C</b> <i>Ausa Matrimonii prelocuti</i>	455
		<i>De Cautione admittenda</i>	141
		<i>Cessavit</i>	463
		<i>Certificate sur Assise sue</i>	403
		<i>Certiorari a remover Record.</i>	537
		<i>Champerty</i>	382
		<i>Clerici non eligant. in Offic. Balivi, &amp;c. pro terris suis</i>	390
		<i>Contra formam Collationis</i>	468
		<i>Commissio pro etate probanda</i>	569
		<i>Common de Pasture, Turbary or Piscary</i>	399
		<i>Compoto</i>	257
		B 3	Con-











# The TABLE to the Book of Fitz-Herbert's *Natura Brevium*.

## Abatement.

**W**Here the Writ of Replevin abates, the Writ of Recaption shall abate 160 L

If a Man uses his Common pendent his Writ it shall abate it, 402 M

Where for want of *Pi & Armis*, and when, if it is put in, 190, 191, 192 H

*Non-tenure* shall not abate a *Nuper obiit* 438 D

A Writ of Disceit shall not abate for Form 211 E

Where an *Audita querela* shall abate 231 R

In Debt, when it is in the *Debet* and *Detinet* 263

When in *Quod permittat* 274, 275 C

*Nonsuit* in the first Action shall not abate a *Warrantia Charta*, 300 L

Where the Writ of Covenant shall abate, and where not, 325 E  
*Accedas ad Curiam*.

To remove a Writ of Covenant out of a Hundred Court, 323, 324

Abbot, see Corporation.  
Actions.

When in Actions brought the King sendeth his Writ not to proceed, *Rege inconsulto*, 344 D, 345 E

A *Decies tantum* is a Popular Action 380 A

Actions upon the Case; vide *Trespas* upon the Case.

Lies against the Arch-Deacon for refusing to give Introduction, 106 H

Lies against a Man for falsely indicting another 256 L

Lies upon a verbal Covenant 324 G

It lies for a Damage received by a Nufance 393

## Accompt.

The Forms of the Writ, 258, 259  
In what Cases it lies, 257 P, Q,

A, B, C, 258, 259, 260  
Where may be sued 258 D

It lies against one that was not actually Bailiff 257 Q

Against him that receives the Profit of my Land *ibid.* A

For the Infant against his Father, or Guardian in Socage, 257 B, 260 A, B

Against one that enters without his Consent 960 B

The Executors may have this Action 257 C, 258

It lies not against Executors, 257 C

It lies between Merchants that occupy in Common, 258 D, E, 261 G

For the Successor 258

Where the Plaintiff may remove it by *Pons*, and where the Defendant 259 G

The Writ of *Monstravit* upon the Statute, and where it lies, 259 H, 260

Process of Outlawry lies in Account 259  
Debt

## The TABLE.

Debt lies for Arrearages of Accounts	261 C	<i>Admeasurement de Dower.</i>	
It lies against a Woman, but not against an Infant	261 F	The Form of the Writ	331 G
Against a Prior	<i>ibid. C</i>	Where to be brought	<i>ibid. F</i>
Against Baron for the Receipt of his Feme	<i>ibid. F</i>	Where it lies, and for whom	331 F, G, H, 332
It lies for Goods deliver'd beyond the Seas	<i>ibid. G</i>	It may be removed	331, 332
Where Goods are deliver'd upon Condition	<i>ibid.</i>	Where to be made	331 H, 332
Lies not against a Deputy Receiver	262 B	It lies not of an Improvement	332 C
Lies not against an Apprentice, but it lies against a Servant who is sent to receive Money	<i>ibid. D</i>	Upon a Possession in Law	<i>ib. D</i>
Where against Collectors	<i>ib. F</i>	<i>Admeasurement de Pasture.</i>	
Where the Writ of <i>Ex parte</i> lies for the Accountant	286 J	The Form of it	276, 278, 279
<i>Ad Clericum admittendum.</i>		What it is, and where it lies	276 B, C, 280 H
The Form of it	84 B	Lies not for the Lord	276 D, 279 D
For whom it lies, and to whom to be directed	<i>ibid.</i>	Nor against him, but an Assise only	276 D, 277
Where it lies for the King's Patentee	85 D	Commoners by Vicinity shall have it	272 E
Where to the King <i>ex Officio</i>	<i>ibid. E</i>	It may be removed	277 F, G
For the Patron after the six Months	<i>ibid. F.</i>	The Count in it	278 A
The Defendant shall not have it upon the Abatement of the Writ	85 H, 86 M	The Form of the Writ to the Sheriff to make it	279 B, 279 C
The Defendant must make Title	86 H, L, 87 A	Where the Writ <i>de Secunda Superoneratione</i> lies, and the Form of it	279 E, 280
When the Plaintiff shall have it without making Title	<i>ibid. N</i>	Out of what Court	280 F
It may be directed to the Bishop or his Vicar General, against whom the Recovery was	<i>ibid. Q</i>	The Forfeitures upon the Judgment	280 G
Distress against two	87 A	<i>Ad quod dampnum.</i>	
For a Stranger not Party to the Writ	<i>ibid. C</i>	The Form of the Writ where the Lands are given in Mortmain	493 A, 494, 495
Upon Agreement to present by Turns	<i>ibid. E, F.</i>	Where a Chaplain or Woman gives Land	494
		For a Chaplain and Lay man	494 C
		Where, notwithstanding the King's Licence to alien, there must be an <i>ad quod dampnum</i>	495 B
		The Form of the Writ where the King grants the Abbot Licence to purchase	496 F



## The TABLE.

To an Abbot or Bishop to appropriate a Church	497 H	<i>Aid le Roy.</i>	Upon <i>Aid trover</i> the Action shall stay until a <i>Procedendo in loquela</i> out of the Chancery	342 E, F, G
They must be made according to the Letters Patents of Licence	497 C, D		How the Writ ought to be	342 F, G
It lies where an Hospital or Prebendary is to be founded	498 E		It must appear that the King is concerned, otherwise a <i>Procedendo</i> lies.	344 G
Where the King's Tenant aliens, there ought to be an <i>ad quod damnum</i>	498 H			
The Form of it	498 H, 499		<b>Aiel or Besaiel.</b>	
Where the King gives Leave to make a Ditch near to one of his Ponds	500 D, 501 E		The Form of the Writ of Aiel	491
Upon granting the Assise of Bread, &c.	501 F		What it is, and where it lies, and for whom	<i>ibid.</i>
Where Lands are given to the King to be given to a Religious House	501 A		The Aunt and Niece shall join in it	<i>ib. H</i>
Upon granting of a Pardon for Intrusion	502 D		<i>Alienation sans Licence.</i>	
For a Forester upon granting over his Office	502 E		The King's Tenant ought not to alien his Lands until an <i>ad quod damnum</i> sued out, and the King's Licence for it	498 H
For cutting down Trees, and making Assart of the Wood in the Forest	502 F		The Form of the Writ of <i>Ad quod damnum</i>	<i>ibid.</i>
For enclosing part of a Forest	502 F		In what Cases a Licence under the Great Seal must be sued out	498 H, 499 B, 500 C
Where a Patent is granted, <i>absque aliquo brevi de ad quod damnum</i>	503		Upon Alienation without Licence the King seisseth the Lands	501 C
			<b>Amercement.</b>	
<b>Advowson.</b>			In what Cases, and upon what Amercements a Writ <i>de Moderata Misericordia</i> lies	167, 168, 69, 170
The King seized of an Advowson, and during the Avoidance grants this over, he shall not present	74 N		What Persons are to be amerced, and how	170 B
Where the Executor shall present upon an Avoidance	<i>ibid.</i>		<b>Annuity.</b>	
			Debt lies not where it continues	268 H, I
<b>Aid.</b>			It lies for Executors for Arrears of an Annuity	267 C, 266 L, 268 I
Between Parson, Patron, and Ordinary	109 R		The Form of the Writ	339 B, 340 C
Between the Lord and his Servant	159 E		Where	

The TABLE.

Where to be brought	340 E	Affise, because the Defendant is	
In what Cases it lies	339	in his Service	242 H
In what Courts	339 B, C	Where new Judges are made	
Where the Heir shall be charged	340 F	after Verdict, and before Judgment	340 I
It lies upon a Grant by a Corporation	340 G, 341 H, I, K	That they do not proceed <i>Rege inconsulto</i> , in what Cases it shall be	344 D, 345 E
Upon the King's Grant	341 L	When an Affise may be put off for some time	345 F
By Patron and Ordinary's Grant	341 K		
<i>Annua Penso.</i>			
Where this Writ lies, and for whom	513 G	<i>Affise de Novel Disseisin.</i>	
The Form of it	513	Where it lies, and for whom, and in what Courts	393 A, B
The Form of the Grant of a Deacon	514 H	For what Things,	396, 397 H, 398
What Abbies or Priories ought to have Pensions and Corrodies,	514	The Days of the Returns	393 G, 394
<i>Appeal.</i>			
Lies not after Judgment in <i>Quare Impedit</i>	96 A, B	The Justices of Affise may take it without Patent	394 E, 395 A
<i>Appendant.</i>			
An Hospital may be appendant to a Manor	94 B	The Forms of it	394 F
<i>Apostata Capiendo.</i>			
In what Cases it lies	519 C	If before other Justices	394 G, H, 395 I, K
The Form of the Writ.	<i>ib.</i>	The Form of it in the King's Bench or Common Pleas	395 B
There must be a Certificate in Chancery	519, 520	The Demandant must find Sureties	395 C
<i>Arrest.</i>			
The Body of a Clergy-man not to be taken in Execution upon a Statute	290 I	Where there may be a Voucher	396
<i>Affise.</i>			
An Attaint lies not in an Affise except before Justices of Affise or Common Pleas	241 H	It lies for Tenant by <i>Elegit</i> , &c.	396 G, 397
Against the Lord for surcharging the Common	276 D, 277	The Form of the Patent where there are several Affises depending between two Persons	397 L
The King cannot prorogue an		What shall abate it	397 B
		A Patent directed to Justices	400
		Of what Seisin	397 A, C, 398 F, H, 401 I
		There may be several Things in one Writ	398 D
		Who shall be Disseisors, and who not	398 G, H
		Where the Writ of Affise of Common of Pasture, &c. lies	399 L
			The



## The TABLE.

<p>The Forms of it, 399            In what County, and where to            be brought 399, 400</p> <p style="text-align: center;"><i>Affise de Mort d'Auncesflor.</i></p> <p>In what Courts to be brought            393 C            The Days of the Return 393 C,            394            The Form of the Writs, 433 E,            434, 435            The Process in it 435 O            In what Cases it lies 433, 434            435, 436            The general Patent will serve            433, 434            The Form of the Writ of Sum-            mons 434 G            The Aunt and Niece may join            in it 434            A Certificate, Writ of Asso-            ciation, and <i>si non omnes</i>, will lie            upon it 435 D            It lies for the Heir against the            Guardian 435            Voucher lies in it <i>ibid.</i>            Lies not for Lands devifable by            Will 436 H            It lies against Strangers, and            not Privies in Blood, 436 L            It lies for a younger Brother,            where the elder hath been gone            18 Years 436, 437</p> <p style="text-align: center;"><i>Affise de Nusances.</i></p> <p>The Form of the Patent 407 L,            408            Where, in what Cases, and for            whom it lies 407 I, K, 408 X, 409 A            In what Counties it shall be            sued 407, 408            Setting up a Fair, where it shall            be a Nusance 409 A</p>	<p style="text-align: center;"><i>Affise de Darrein Presentment.</i></p> <p>The Form of the Writ 68 F            Where and for whom it lies            69 G, H, I            Tenant for Years 69, 70 H            Usurpation upon an Infant 70            Coparceners <i>ib.</i> A            Where it may be <i>per</i> Journeys            Accounts 70 G</p> <p style="text-align: center;"><i>Affise de fresh Force.</i></p> <p>No Writ of false Judgment lies            in it 41 L</p> <p>Association in Assise, &amp; <i>si non</i>  <i>Omnes.</i> See Commission.</p> <p>What it is, and where it lies,            412 E, 415 H            The Form of it 412            For several Assises 415 H            The Form of the Writ to Justi-            ces new assigned 413 F, 415 A, 416            For the Associate 413, 415, 416            The Form of the Writ of <i>Si</i>  <i>non omnes</i>, 414 H, 241 H, 225 C,            416            An Association after an Asso-            ciation lies not 414 D            A general Patent to take all            Assises <i>ibid.</i>            The old Justices shall deliver            their Records to the new ones            415 G            Where one of the two Justices            cannot come, and another is added            415 A, 416            The King may make an Asso-            ciation in Juries, as well in Assises            as Attaints 416            So likewise to the Sheriff in a            Rediffession 417 D, 418 K            Although the Assise is discon-            tinued, yet the Associations and            Writs</p>
--	--

The TABLE.

Writs of <i>Si non omnes</i> continue all the Assises	417 A	Lies for proceeding to Judgment after a <i>Pone</i> allowed	264
Attachment.		Lies against the Sheriff if he will not make Admeasurement of Common upon a Writ directed to him	277 F
Against the Lord that refuseth to hold his Court, so that his Tenant cannot proceed upon his Writ of Right	6 E	Lies against a Mayor that will not certify a Statute	289 C, 291 D
For distraining after a <i>Ne injuste vexes</i>	21 D	Against the Sheriff for not executing an Execution upon it	295 B
Lies against the Lord in <i>Ancient Demesne</i> that refuseth to hold his Court	26 D, E	Lies against a Commissioner that will not certify the Conuifance of a Fine	328 B
Attachment lies against the Sheriffs that refuse to execute a <i>Recordari</i>	26 E, 27 A, B, D	It lies for proceeding after a <i>Procedendo ad Judicium</i>	342 C
Attachment against the Lord for distraining after a <i>Manstraverunt</i>	32 B, C, 33 F, G, H, I	It lies not against Justices upon Record	344 A
For not doing Execution upon a Writ de <i>Executione Judicii</i>	43 B	It lies against the Lord for distraining after a Writ de <i>Exoneracione Scilicet ad Cur. Com. vel Baron.</i>	356 D
Lies upon an <i>Admittendum Clericum</i>	84 C	So likewise against the Sheriff or his Bailiff	357 A, 358
Attachment lies upon the Bishop's Refusal to admit the Clerk upon a <i>Quare non admisit</i>	105 C	It lies when more Services are distrained for than are due	363 F, A
When it lies against the Sheriff in Title <i>Excommunicato capiendo</i>	140 O, B	Against the Sheriff for not returning right Persons Jurors	371
For not executing a <i>Homine Replegiando</i>	150 B	Upon a Writ de <i>Tolneto quiet. Effend.</i>	503
Lies against the Sheriff for not executing a <i>Pluries</i> in Replevin	152 E	It lies for not obeying the Writ de <i>Corrodio habendo</i>	511 E
Upon a <i>Moderata Misericordia</i>	167 A, B, C, 170 D, 171	It lies for proceeding after a Writ de <i>Pulchre Placitando</i> sued out	596 C
After a Writ <i>De securitate Pacis</i>	178 A	Attachment sur Prohibition.	
Lies against the Sheriff for not delivering the Person that brings his <i>Audita querela</i>	232 F	When and where the King may have it	90 F, 95 M, N, 96 A
For not executing a Writ of Conspiracy	236 N, 257	Where the Party sued in the Spiritual Court may have it,	90 H, 1. 96 B
	2	Where	



*The TABLE.*

Where it lies against the Judge	In what Court	233 G, 237 M, 238 O, 239 H
For Suit for Trespas	It lies for that which toucheth	
For illegally Excommunicating	the Freehold	233 I
	In Trespas	<i>ibid.</i> K. L
Where it lies for proceeding	For Damages unpaid	<i>ibid.</i> M
after a Prohibition	Upon a <i>Nisi prius</i>	233 N, 234 A
Where it lies after Judgment	In a Liberty or Corporation	233 O
in <i>Quare Impedit</i>	Upon a Complaint without a Writ	234 A, 546 F
For citing the King's Chaplains	Within the Verge	234 C, 546 F
for Non-residency	The Prosecutor may be bailed	
For suing out of the Realm	out of Prison to prosecute his	
So likewise upon a Citation	Writ	234 D
from <i>Rome</i>	When the Heir shall have it	238 B, 239 F, G
For suing out of the Jurisdiction	It lies for Vouchee	235 E, 238 A
	For him in Reversion	235 E, 238 A
For suing for above 40 s. in a	It lies not where the Witnesses	
County Court	affirm the Verdict	235
For dividing an entire Debt	Where it lies although the Ver-	
Into several Plaints	dict is true	235, 236 A
For suing in Trespas <i>Vi &amp; Ar-</i>	Upon an Enquiry in Waste	236 C
<i>mes</i>	It lies for the King	236, 238 Q
For Charters which concern the	Where there are two Enquests	236 E
Inheritance	In an Assise	237 F
For proceeding after a <i>Non Po-</i>	It lies before Execution sued	237 G, H
<i>mond in Assis</i>	The Judgment in Attaint,	237 H, 242 L, 243
<b>Attainder.</b>	It lies against the Tenant,	237
Who shall have the Estate of a	It lies not upon an Appeal, <i>ibid.</i>	
Person attainted, and when	Nonfuit after Appearance is	
	peremptory	238 D
The Pernor of the Profits shall	Where the Writs must be se-	
answer the King	veral	239 E
<b>Attaint.</b>	Lies	
The Form of the Writ		233 H, N, 234 A, C, D
In an Assise		239 I, K, L, 240, 241 H
Where it lies		233 G, 235, 237 M, 238 O
What is a good Bar to it		237 G



## The TABLE.

Lies not upon a false Verdict given in an Assise, except it be before Justices of Assise or Common Bench 241 H Upon a Redisseisin 241, 242 The Punishment of the Jurors when convicted 242 L	Where Debt for Rent lies for the Reversioner without Attornment, and where it must be 268 N The Mesne not compellable to attorn 302 L, 303 Where a <i>Disfranchis ad Attornandum</i> lies 328
--	---

### *Attornato faciendo & recipiendo.*

The Form of the Writ, 349, 350 When it lies, and for whom 349 D, 350, 351, 352 When the Tenant is in Ward 350 A To do Suit in a Hundred Court, &c. 351 To the Bailiffs to receive an Attorney 351 C	
---	--

### Attorney.

Their Powers, and who may make them. (See in Title <i>Dedimus potestatem.</i> ) An Action lies against him for covinous Practice 213 D, 227 A Where he may plead <i>Non sum Informatus</i> 217 I May bring Debt against his Clients upon his Bill 268 L May be made in a <i>Quid juris clamat &amp; per que servitia</i> 328 The Tenant may make Attorney to do Suit at the Lord's Court 350 So likewise in the Hundred or other Court 351 They are to be admitted to execute their Authority 351, 352	
---	--

### Attornment.

Grantee of a Reversion by Fine shall not bring Waste until Attornment 133 I	
---	--

### *Audita Querela.*

The Form of the Writ 227 Where it lies, and for what, 226 H, 227 A, 228, 229, 230, 231 B, 346 A Out of what Court 231 S, B To whom directed 227, 231 S, B Where an Attorney covinously makes Default 227 A One Feoffee may have it against another 228 B, 230 G Upon a Defeasance 229 C, 232 C It lies upon a Release after a Verdict 229 A, 230 I, 231 B Against the Grantee of an Estate 229 E It lies for the Heir 229 B When a Stranger may have it 230 G Upon a forged Statute 229 G, 230 H It lies not after a Summons returned upon a <i>Scire facias</i> 230 I It lies for an Infant 230 K, 232 D For one <i>in Daresse</i> 230 L Upon a Release to one Obligor 230 M It is a <i>Superfideas</i> 230 O It may comprehend two Marters 231 R Where it shall abate <i>ibid.</i> The Process in it <i>ibid.</i> Where	
---	--

## The TABLE.

Where out of the Common Pleas,  
and where out of the Chancery

231 B, 232

For the Peoffee of Part of the  
Land which did belong to the Re-  
cognizor

332 E

Where the Money upon a Sta-  
ture or Recognizance is entred in-  
to, and an Acquittance given

231 F

### Ancient Demefne.

What Lands are ancient De-  
mesne

30 D, 35 D, E

When a Tenant is ousted or dif-  
feised, what Remedy the Law al-  
lows him

23 F

The Manor and the Demefnes  
which is called ancient Demefne,  
is under the Jurisdiction of the  
Common Law; but the Lands  
which are holden of the Manor  
are suable no where but in the  
ancient Demefne Court

24 M, 216  
A

What Remedy a Copyholder  
hath to recover his Land

25 B  
26

The Tenant may bring an Affize  
against his Lord

26 E

What Acts done make ancient  
Demefne Frank-fee

28

None but Socage Lands are an-  
cient Demefne

28, 30 B

In what Cases they may have  
their VVrit of *Monstraverunt*

30 D, 31 F, G, 359 C, 371 F

The Privileges of ancient De-  
mesne

30 E, F, 359 C, 371 F, 504  
A

Disceit lies upon a Fine levied  
at the Common Law

216 A

Not compellable to appear at  
any Leet or Torn

359 G

Nor to serve upon Juries

371  
F

Not to pay Toll, Pontage, &c.

505 A

They shall not contribute to the  
Expences of Knights in Parlia-  
ment

507 G

*Breve de Auxilio ad filium mili-  
tem facere vel ad filiam mari-  
tand'.*

The Form of it

183 A

VVhen it lies, and for whom

183 B, 184 G, H

How much must be paid

183  
C, F

It was at the Common Law

183  
D

To whom directed

183 E, 184  
H

For the King's Tenant

183  
F

The Lord may distrain for it

183 E

Bail, vide Title *Bain-  
pize.*

Bailly in Account, vide Tit.  
Account.

Bailiff of a Manor.

**I**N what Cases the Lord of the  
Manor shall bring a VVrit of

Rescous, for a Rescous done to  
the Bailiff

225

He shall have an Action of Trefa  
pafs for the Loss of his Service

225 B

**C**

Bailiff

## The TABLE.

<p><b>Bailiff of a Franchise.</b></p> <p>In what Cases he shall maintain a Writ of <i>Rescous</i> 224 G, 225 A B, 226 D</p> <p>Where the Lord shall have it 225 B</p> <p>The Plaintiff upon an Execution shall have it 226</p> <p>Where compellable to admit an Attorney 351, 352</p> <p>Must have sufficient Lands within the County 365 A</p> <p>A Clergy-man must not be elected 390</p> <p style="text-align: center;"><b>Baron &amp; Feme.</b></p> <p>A Feme-covert may be Attorney for her Husband 59 C</p> <p>She ought to present within six Months 76 T</p> <p>Feme excused from Waste by her Husband's Death 132 I</p> <p>The Writ <i>de Securitate Pacis</i> lies for the Wife against the Husband 179 F</p> <p>Where they shall join in a Writ of <i>Dilceit</i> 216 C</p> <p>Conspiracy lies not against them because but one Person 256 K</p> <p>Account lies against Baron upon the Receipt of his Feme 261 F</p> <p>Debt (during Coverture) lies a-</p>	<p>gainst Baron and Feme for the Debt of the Feme 265 F, 267 C</p> <p>Against the Husband upon the Wife's Contract 255 G, 260</p> <p>The Husband after the Wife's Death shall not bring an Action for a Debt due to her 267 C</p> <p>Where the Wife shall have a <i>Restitucibili parte bonorum</i> 270 C</p> <p>May join in a Writ of <i>Mesne</i> 300</p> <p>The Wife may have a Detinue against her Husband after Divorcement 308 A</p> <p><i>Quod ei desercent</i> Kes for them 347 F, 348 A</p> <p>They may be retained Servants 375 C</p> <p>Where she shall be a <i>Disseisor</i> and where not 398 C</p> <p>Where they may have a <i>damnum fuit infra etatem</i> 427 K, L</p> <p>Where the Wife shall have a <i>Cum in vita</i> 428, 429</p> <p>Where she shall have her <i>ad litem minam qui prateritis</i> 448 A</p> <p>The Wife may have a <i>Supplicavit</i> against her Husband 530 C</p> <p style="text-align: center;"><b>Beau plead: r.</b></p> <p>Where the Writ <i>de Pulchre Placitando</i> lies, and to whom to be directed 596 A, B</p> <p>The Form of it 596 B</p> <p>An Attachment lies upon it 596 C</p>
---	--

*Caus.*

## The TABLE.

### *Causa Matrimonii pralocuti.*

**T**HE Form of it 455 B  
 In what Case and for whom  
 it lies 455, 456  
 It lies in the *Per & Cui* 455 B  
 and *Per, Cui & Post* E  
 The Aunt and Niece may join  
 in it 455 F  
 The Husband and Wife may sue  
 it 456 I  
 It may be sued without any  
 Writing to prove it 456 L

### *Causae admittend.*

The Form of it, 141. and  
 where it lies G  
 To the Sheriff to deliver a Per-  
 son excommunicated 141 D  
 Bishop's Certificate of Absolu-  
 tion 141 F, 142  
 Excommunication by the Chan-  
 cellor of Oxford 142 C  
 A *Superfideas* granted to the Sher-  
 riff, to discharge one taken upon  
 an *Excom. Capiendo* 143 D  
 So likewise upon an Appeal  
 from a Sentence 144 E  
 Bishop's Certificate of Excom-  
 mungement 144 F, 145 B, C, D  
 Court of Rome and their Bulls  
 145 B  
*Superfideas* during an Appeal  
 145 C, 146 E  
*Scire facias* 146  
 For a Person convicted of Felony  
 147 A  
 For Restitution to a Church or  
 Sanctuary 147 C  
 Vagrant, Monk or Friar 148

### *Causa de Remover.*

In a Writ of Right Patent 6 F,  
 7 A, 8 C, D.

In a Writ of Right of Dower  
 15 E, 16  
 For the Petty-Jury in Attaint  
 after Conviction 242 L

### *Certiorari.*

What it is, and from whence it  
 issues 543 A  
 To certify the Proceedings in  
 the ancient Demesne (which were  
 sent into the Common Bench) in-  
 to the Chancery 29 A  
 To certify Waste 131 A  
 To remove the Sureties and  
 Recognizance upon a *Supplicavit*  
 181 C  
 Who may have it 184 B  
 To certify it into Chancery  
 179 G, 181 D  
 For the Petty Jury in Attaint  
 242 L  
 To the Executors of Commis-  
 sioners of Oyer and Terminer 250  
 A  
 All Statutes may be certified in-  
 to the Chancery, before Execu-  
 tion can be sued upon them 289 C,  
 290 E, F, 291 D, 1273 B  
 In a *Perambulatione faciend.* 298  
 C, 297  
 To certify the Consuance of a  
 Fine 328 B, 329 D  
 It lies to remove the Record to  
 the new Judges after Verdict, and  
 before Judgment in Assise, 343 I,  
 345 G, 539 D  
 To certify Records from one  
 Court to another 345 I, 540 H  
 To Remove a Prisoner Convict  
 of a *Redisseisin* into the King's  
 Bench to be fined 422 E, 423,  
 537

To remove the Record of a *Re-  
 disseisin* 537 B, C



## The TABLE.

<i>Post Disseisin, or Assise De Novel</i>	be a Pardon	548 F
<i>Disseisin</i> 538 D, 546 D, E, 548 D		
Upon an Attaint sued 538 E, G	Certificate of the Bishop.	
For Damages upon the Re-	In what Cases 115 L, 121 D, E.	
moval of an Assise of Novel Dis-	140 N	
seisin 538 A, 541 B	Upon a <i>Vi laica Removenda</i> 121	
Where the Recovery is in an In-	D, E	
ferior Jurisdiction to certify it into	The Form of the Bishop's Cer-	
the King's Bench to make Execu-	tificate 122 B	
tion 538 B, 545 B, 546, 547 L	Before the Writ of <i>Excommuni-</i>	
Where there are new Judges	<i>cato Capiendo</i> can issue forth 140	
539 D	In Bastardy 345 G	
Upon a Voucher to Warranty		
in an Assise 539 G, 540	Certificate sur Assise, Attaint,	
To certify all Pleas before Ju-	<i>Moxt W'ancestoz, &amp;c.</i>	
stices in Eyre, when they come		
into the Country 540 K	Where the Writ of Certificate	
To remove a Record from the	upon Assise sued lies 403, 404, F,	
Common Pleas into Chancery, and	407 D, E	
from thence into the King's Bench	Where it ought to be sued 403	
by <i>Mittimus</i> 541 A	Before whom 406 B, 407 F	
To stay Proceeding where the	To whom directed 403	
Record cannot be had 542 D	The Judges shall have a Patent	
To the Mayor of the Staple, to	403, 404 A	
certify a Statute 522 D	The Form of the Patent and	
To certify an Indictment taken	Certificate 403, 404	
before the Justices in Eyre, and o-	Where the Bailiff pleads a	
ther Justices 544 G, 546 C, H, 547	wrong Plea 404 F, 405 G	
K	Upon new Matter there may be	
To the Mayor and Sheriffs of	a special Patent 405 B	
London 544 E	Where the Release is left in	
To certify an Outlawry 545 G,	Court after it is pleaded 406 D	
546 I, 549 G	Upon a Certificate sued there	
To the Barons of the Exchequer,	may be a <i>Si non omnes</i> , and an Af-	
to certify a Debt due to the King	sociation 406 A	
546 G		
To a Bishop to certify how ma-		
ny Admissions to a Church since		
1 E. 4. 547 M		
To the <i>Custos Brevium</i> 547 N	Cessabit.	
For a Peer of the Realm that	The Form of the Writ 453	
is suing to an Outlawry 547 C, 548	For Services to be done in the	
To the Escheator 549 H, 550 A	Church 465	
To certify a Record upon <i>Se de-</i>	In the <i>Per, Cui, and Post</i> 463	
<i>sendendo</i> found, that there may	In what Cases, and for whom it	
	lies	

## The TABLE.

lies	463 H, 464, 465, 466, 467, 468 D, E	Where the Writ of <i>Si non omner</i> lies	241 H, 245 C, 414 A
Lies not between Dower and Tenant in Tail	454 I	<i>Vide Titulo</i> , Oyer and Terminer	243, 244, 245, 246
The Quantity of the Services, nor Seisin not traversable	464 F, G	To repair a decayed Wall or Bridge	281 E
Where the Aunt and Niece shall join, and where not	464 H	To take a Fine	326 G, 327
Several Persons	465	To certify the Bishop's Fealty	378 B
It lies upon a Cesser for two Years	<i>ibid.</i>		
What is a good Plea to it	465 I		
For Service to be done in the Church, and also for charitable U- ses	465, 466		
Where Land is given to find E- flowes, or the fourth Part of the annual Profit, there the Writ will lie if there is a Failer	466 A		
It will not lie but where there is a Tenure	467		

### Champerty:

What it is	332 A, C, 383 K, L
The Form of the Writ	382
In what Court it lies	382 B
Who shall be punished	383 D, K, L
What shall not be Champerty	383 D, F, H
False <i>Latin</i> shall not abate it for the King	383 I
Against Officers	383 N

### Churchwardens.

May have Trespafs for taking  
the Goods of the Church in their  
own, or Predecessors Time 203 K

### Commission.

To levy Escuage	187 E
-----------------	-------

Common.

If a Man be disseised of his Common, he shall have an Assise	309, 400
<i>Quod permittat</i> lies of Common,	272 G, 273 H, L
An Admeasurement of Pasture lies between the Tenants when the Common is surcharged	276 B, G, 277 E
But the Lord may distrain	276 D
But if the Lord surcharge, the Tenants may bring an Assise	276 D, 277
What Commoners shall be stint- ed	<i>ibid.</i>
Where the Writ <i>De secunda su- peroneratione</i> lies, &c.	279
Where brought	279 E, 280
He cannot have a <i>Curia Clauden- da</i>	283 C
Where Common is claimed in Land of another, he may have his Writ of <i>Quo Jure</i>	284
Where the Tenant may improve against the Lord	398 E
Common appendant cannot be used but with those Cattle that soil the Land	400 B, 401 C, 402 K
But if a Man claim Common without Number, or for twenty Cattle, then it is otherwise	401, 402 M
	Who



## The TABLE.

Who may claim Common of Vicinage	401 D, E	One found Guilty, and the other Not guilty	254, E, F
Common of Estovers must be to the old Houses	401 H.	Lies not where there is an Act of general Pardon	254 G
And his appurtenant	402 N	Shall recover treble Damages	254 G, 255
<i>Consimili Casu.</i>		Where there is a Conspiracy against a Man's Estate	255 B
Where it lies	109 D, 110 F	It lies upon an Indictment for Trespas	255 C, 256 F
<i>Conge D'estrier.</i>		For forging of Deeds	255 D
In what Cases it must be, and what it is	376, 377, 378 C. 379	For finding a false Office of my Land	256 H
The Form of the Writ	379, 380	An Action upon the Case lies against one Person for falsely indicting another	256 L
<i>Contra Formam Feoffamenti.</i>		<b>Consultation.</b>	
The Form of the Writ	363	The Form of the Writ	119 L,
In what Cases it lies	<i>ib.</i>		120 A
Who shall have it	<i>ib.</i> 364	In what Cases it lies	112 N, O,
Against whom it lies	364 H		113 P, Q, R, S, A, B, 114 D, 115 G,
<b>Conspiracy.</b>			115 L, 116 B, C, 117 F, G, H,
The several Forms of the Writ	253, 255, 256 N		K, L, 118 M, A, B, C, D, 119 K, L
Where to be brought	256 M	To whom to be directed	114 E,
What it is, and for what it lies	252 D, E, F, 253, 255, 256		F
It lies against two Persons at the least	256 K	Where two Consultations shall be granted	114 F
It lies not for an Acquittal upon an Appeal, except there is an Indictment	252 F	Lies in all Cases of Tithes	115 G, H
It lies not against Baron and Feme because but one Person	256 K	Lies <i>Pro Silvis Cadua</i>	<i>ibid.</i>
The Accessary shall have it	253 A	In some Cases for Slander	<i>ibid.</i> K,
The Form of the Writ	255		119 F
Upon Indictments before any who have Gaol-Delivery	253 B	No Damage to be recovered in the Spiritual Court	115 K
It lieth not against the Indictors	253 C, D, 254	Illegal Oath	116 A
		It lies where a Duty is payable to the Church	116 C, 117
		Lies after an Appeal	116 D
		For forbidding the Friars to hear Confession	117 I
		For taking and detaining another Man's Wife	117 K

By

## The TABLE.

<p>By what Courts to be granted 118 D</p> <p>The Endorsement of the Libel 118 E</p> <p>It ought not to be granted but where a Man cannot recover at the Common Law 119 H</p> <p>For the Parson, Parishioners, where 119 L, 120</p> <p>Upon a Devise to repair the Church, &amp;c. 120 A</p> <p>To proceed <i>ita quod de Cedula tantum</i> <i>ib. B</i></p> <p><i>Scire facias quare Consultationem non, &amp;c.</i> 121 C</p> <p>Upon <i>Indicavit</i> 115 L</p>	<p>Where they shall have a <i>fine assensu Capitali</i> 431, 432</p> <p>Where an Abbot and Convent aliens, the Donor or his Heir may bring a <i>Contra formam collationis</i> 463 F, A, 469, 470</p> <p>It lies for the Donor or his Heir only 469 C, D</p> <p>The Form of the Writ <i>ib. D</i></p> <p>Cannot purchase Lands without an <i>Ad quod dampnum</i> 493 A, 494</p> <p>May bring a Writ to be discharged from Payment of Toll, Pontage, &amp;c. 504 E</p> <p>May have a Writ <i>de Libertatibus allocandis</i> 409, 410</p>
---	--

### Contribution.

The Form of the Writ	361 B
Where it lies, and for whom	361 B, 362
The Process in it	362 D

### Coparceners, vid. Tit. Partition.

### Copyholders.

If a Copyholder in ancient Demesne is ousted, what Remedy to recover his Land	25 B, 26
All Copyholders were originally Villains	26 C

### Coroners.

The Form of the Writ <i>de Coronatore Eligendo</i>	364 M
Where it lies	364, 365
By whom to be chosen	364 F
How to be discharged	364, 365

### Coverture.

May be a Disseisor	346 A
--------------------	-------

### Corrody, Pension.

Where the Writ <i>de Corrodio habendo</i> lies	510 A, 511 C, D
For the King only	510 A, B
The Form of the Writ	510 B
An Attachment lies for not obeying it	511 E
Upon the Death of the Party admitted, the King shall present again	512 B
But in Case of a Chaplain it is otherwise	512 B
Where it may be granted to several Persons, and where to but one	513 C
The Difference between the King's Letter, and his Request	513 E

What Tenures are not Chargeable with it	513 F
A List of the Priors and Abbies that ought to have Corrodies and Pensions	514, 515, 516

### Cousinage.

The Form of the Writ	492 K
C 4	What



## The TABLE.

What it is, where, and for whom it lies 492 *I L, M, N, O, P*  
It lies not between Privies in Blood 492 *O*

### Covenant,

The Form of the Writ 223 *B*  
For Executors 324 *F*  
Against Executors *ib. H*  
The several Natures of Covenants 323 *A*  
VVhere the Action to be laid 325 *E*  
It cannot be without Deed 323 *G*, Except in London 325 *A*  
Lies for and against Executors 324 *F, H*, 323 *D*, 325 *D*  
In what Courts 323 *D*, 324  
VVhen to be brought 324 *I*  
Eigne Tith 324, 325 *M*  
May be removed 323, 324  
It lies for an Assignee of a Lease 325 *G*.  
VVhere Covenant of an Infant shall bind him 374 *D*

*Covenant de Fine levier, vid. Tit. Fines.*

### Courtesy of England.

VVhere Tenant *per Courtesy* loseth his Privilege 125 *D*  
The Heir shall not be in VVard during the Life of Tenant *per Courtesy* 319 *L, O*  
He may bring a VVrit of *Elect* 322 *M*  
It shall not be upon a Possession in Fact 332 *D*  
May bring his *quod ei de forceat* 346 *B*

**Courts.** See in Tit. Prohibition, Superfeudum.

The Jurisdiction of the Marshalsea Court, and of what Things they ought to hold Plea, and of what not 535, 536, 537

### *Cui ante Divortium.*

The Form of the Writ 454  
In what Cases, and for whom it lies 254 *F, G, I, K, L, M*  
In the *Per, Cui*, and *Post* 454  
The Aunt and Niece shall have it *ib. L*

### *Cui in Vita.*

In what Cases, and for whom it lies, and where 428, 429, 430  
It lies where the Husband and Wife lose by Default the Wife's Land 349 *G*  
The Forms of the Writ 428, 429  
It lies where Lands are lost by Default 429 *I*  
Where there is a Joint-tenancy 429 *E*, 430 *B, K*  
The Aunt and Niece may have it 431 *D*  
Of a Rent *ib. G*

### *Curia Claudenda.*

The Form of it 282  
Where to be sued 282 *G, H*  
When, and for whom it lies 282 *H*, 283 *B*  
It lies not for a Commoner 283 *C*  
How the Count must be 283 *E*

Custom

## The TABLE.

### Custom and Services.

<p>The Form of the Writ 337 D          The Nature of it, and for whom          it lies 337 B, C, D, E, 338, 339          In what Courts it lies 337 B, E          Several Tenants may be sued in          one Writ 337 F, 338</p>	<p>It may be in the Right only 338 G          How the Count shall be <i>ib.</i> G, I, M,          When Homage is demanded 338 L          The Mife shall be joined 338 N,          339</p>
---	---

### Damages and Costs.

**I**N Replevin, when Plaintiff shall recover Damages and Costs, and when not 154 F, G, 155 H, L  
 Shall be recovered upon a Recaption 158 E, 160 B  
 Upon a Writ *de Securitate Pacis* 178 A

Damages are recoverable in a Writ of *Disceit* 217 M, 218  
 How to be assessed when two Defendants sever in pleading, and are found guilty upon two several Inquests 236 E

### Damage feasant.

What Beasts, and whose may be distrained for it 158 E, 159  
*Vid. in titulo Parco fracto* 121, 122, 123  
*Vid. in titulo Refens* 223, 224, 225, 226  
 Where a Commoner may distrain Damage-feasant 383 C

### Darein Presentment.

For whom, and in what Cases this Writ lies 110 I

### *D. c. i. s. tantum.*

The Form of the Writ 381  
 In what Cases it lies and for whom 386 A, B, C, D, E, 381 F

### *Dedimus Potestatem.*

Formerly all Persons ought to appear in Person, and not by Attorney 55 C  
 The King may Licence a Man to make his Attorney 55 C, 56 E, F, A, B  
 The Chancellor shall make Letters Patents thereof 56 E, 57 C

Plaintiff or Defendant may make their Attorney now by Warrant 57 D, 58 I, K, O, P, 59  
 Where the Judges will refuse such Attorney 58 E, G, H, L, M, N, 59 D, E, F  
 By an Infant, when and how to be made 53 H, I, K  
 For Vouchee 60 P  
 Where there is interpleading *ib.* S  
 For him in Reversion *ib.* T  
 For Sheriffs or Escheators 61 V, A  
 De-

## The TABLE.

<p style="text-align: center;"><b>Default.</b></p> <p>In what Cases, and upon what Defaults the Writ of <i>quod deserviat</i> lies 346, 347, 348</p> <p style="text-align: center;"><b>Debt.</b></p> <p>In what Cases it properly lies, 262, 263, 264, 265, 266</p> <p>Lies not in the Spiritual Court, but in Cases of Marriages or Wills 340 C</p> <p>It lies against the Heir or Executors for not paying Aid <i>par faire fits Chevalier, &amp;c.</i> 184 I, 269 G</p> <p>Against the Sheriff upon an Escape 205 G, 206, 266 A, 268 P</p> <p>It may be brought for 10 l. in Money, and 10 Quarters of Corn 340 C</p> <p>It lies upon Arrearages of Accounts 367 C</p> <p>The Form of the Writ of Debt, 263 H, I, 340 C</p> <p>In what Courts it may be brought 262, 263</p> <p>When in the <i>Detinet</i> only, and when in the <i>Debet</i> and <i>Detinet</i> 263, 264 M, D, 265</p> <p>Foreign Plea 263 I</p> <p>Where it is brought against the Heir 264 B, C, 266 I</p> <p>By an Abbot as Executor 264 A</p> <p>It lies against the Ordinary till Administration granted 264 D</p> <p>But it lies not for him 265 E</p> <p>For a Duty to be done beyond the Seas 265 E</p> <p>It lies (during the Coverture) against Baron and Feme for the Debts of the Feme 265 F, 267 C</p>	<p>It lies against the Master upon the Servant's Contract 265 G</p> <p>It lies notwithstanding a Re-entry 266 H</p> <p>Debt upon Bond lies not for the Heir, but for the Executors or Administrators 266 I</p> <p>It lies for the Arrears of an Annuity 266 L, 267 C, 268 I</p> <p>Where Executors shall bring Debt for Rent 267 E</p> <p>It lies upon an Arbitrement 267 G</p> <p>If a <i>Liberate</i> is directed to the Customer of the King, at what Time soever he hath Assets in his Hands, Debt lies thereupon against him 267 F</p> <p>It lies not upon an Annuity where it continnes 268 H</p> <p>For Bailiff and Receiver for Surplusage 268 I</p> <p>It lies for an Attorney, 268 L</p> <p>It lies not where the Contract is dissolved 268 B</p> <p>It lies for Devisee of a Reversion without Attornment 268 N</p> <p>It lies against Lessee after the Surrender of his Term 269 A</p> <p>It lies upon a Judgment 269 C</p> <p>Lies between two Partners upon a Promise for Equality of Partition 269 H</p> <p>It lies upon a becoming Pledge, without Writing 270</p> <p>It lies not upon a Bond payable at several Days, till all the Days are past 290 I</p> <p style="text-align: center;"><b>Detinue.</b></p> <p>The Form of the Writs 306 B 307</p> <p>In what Courts they lie 306 B In</p>
---	---

## The TABLE.

<p>In what Cases it lies 306 <i>A</i>, 307 <i>E</i>            Where a Prohibition lies in it 307 <i>C</i>            For what Charters 307 <i>F</i>, <i>G</i>, 308 <i>H</i>            For the Heir in Tail 308 <i>H</i>            The Heir shall bring it, though he hath not the Land 308 <i>I</i>, <i>K</i>, <i>L</i>            After a Disseisin 308 <i>L</i>            Where Bailment pending the Action, is a good Cause 308 <i>M</i>            The Wife shall have it after Divorce <i>ib.</i> <i>A</i></p>	<p style="text-align: center;"><b>Disceit.</b></p> <p>The Form of the Writ 211 <i>E</i>            The Process in it 221 <i>D</i>            In what Cases it lies 211 <i>E</i>, 212, 215, 216, 217, 218            Where to be brought 217 <i>L</i>, 219 <i>G</i>            No <i>Vi &amp; armis</i> in it 211 <i>E</i>            For suing Writs in the Name of Attorney without Leave 211 <i>E</i>, 212 <i>A</i>, 221 <i>B</i>            Upon a Forgery 212 <i>B</i>, <i>C</i>, 218 <i>O</i>, 220 <i>K</i>            Against an Attorney for Covin 213 <i>E</i>, 219 <i>I</i>, 227 <i>A</i>            For personating another, and confessing the Action 214 <i>A</i>, 217 <i>H</i>, 220 <i>A</i>, 221 <i>B</i>            Where a Protection is purchased for one which never was beyond the Seas 214 <i>B</i>            Against the Sheriff for a false Return 215 <i>C</i>, 216 <i>B</i>, 217 <i>D</i>, <i>G</i>            It lies for levying a Fine of ancient Demesne Lands 216 <i>A</i>, 218 <i>P</i>, 219 <i>E</i>            For Baron and Feme 216 <i>C</i>, 218 <i>B</i>            For imbezilling a Writ 217 <i>E</i>            For not performing a Bargain <i>ib.</i> <i>F</i>            Where a Summons is returned where <i>de facto</i> there was none 216 <i>B</i>, 217 <i>D</i>, <i>G</i>            Where an Attorney may plead <i>Non sum informatus</i> 217 <i>I</i>            It lies upon a Warranty 217 <i>K</i>            It lies for suing a troublesome Action 218 <i>N</i>            It lies for the Heir 218 <i>Q</i>            For the Executors 218 <i>R</i>  <span style="float: right;">For</span></p>
<p style="text-align: center;"><b>Devise.</b></p> <p>The Writ of <i>ex gravi querela</i> lies to execute the Devise of Lands in Fee or in Tail, where Lands are devisable by Custom 441 <i>L</i>            Where Lands or Goods in London are devised 443 <i>H</i></p> <p style="text-align: center;"><b><i>Diem clausit extremum.</i></b></p> <p>What it is, and where it lies 558 <i>K</i>, <i>A</i>, <i>B</i>, 559 <i>C</i>, <i>D</i>, <i>F</i>            The Form of it 558, 559, 560            Upon the Death of an Idiot 560 <i>H</i>            It must be executed by the Effector <i>ib.</i> <i>A</i>            It must be sued out within the Year 561 <i>C</i>            For the Wife where the Husband is outlawed 563 <i>D</i></p>	<p style="text-align: center;"><b>Disclaimer.</b></p> <p>It lieth for the Tenant in a Writ of Customs against the Demandant 338 <i>H</i></p>



## The T A B L E.

For the Vouchee	218 A	<i>Par Aid par fair fits Chevalier</i>	183 E
The Summoners and Pledges to be examined	218 C	Cattle distrained ought not to be impounded in an unknown Place or foreign County	198 N, O
It lies for him in Reversion	218 D, 219 E		199
It lies against the King	219 F	It must not be in the King's Highway	199 A, 386 E
For suing out Execution without a Summons	219 H	What Cattle are not distrainable	199 B, 386 E
It lies against an Escheator	221 D	Where upon Distresses a <i>Parco frallo</i> lies	221, 222, 223

### Distress.

Before the Statute of the 18 E.		What Things are distrainable	224 E
3. the Right of the Tithes were determined in the Temporal Courts, but that Statute hath altered the Law	67 F	Upon a Distress taken, and a Rescous made, see what Remedy	223, 224, 225, 226
For Sheep, Calves, Kine, Milk, &c. how payable, and when	115 G	The Lord may distrain for Suit to his Mill	271 M
Of what Things Tithes shall be	118 E, 119 G	He may distrain those that surcharge the Common	276 D

### Disseisin.

Where a Usurpation shall not hurt the Disseisee	80 F	A Writ of Annuity will not lie after a Distress	339
A Corporation may be a Disseisor	346 A	Where upon a Distress by the Lord, the Writ of <i>Exoneracione Solle ad Curiam Com. vel Baron.</i> lies	352 A, 353, 354, 355
When an Infant or Feme shall not be Disseisors	398 G	Distress must not be made upon Glebe	387
When a Man shall be said to be a Disseisor	ib. G	Where several Persons are to do one Service; if the Sheriff distrains any one of them, he may have his Writ of <i>Deonerando pro rata portione</i>	521 H

### Distress.

The Lord in ancient Demesne not to distrain his Tenant after a <i>Monstraverunt</i>	32 B, C	<i>Dote Assignanda.</i>	
Although for the King's Debt, lies not against Tenant in Dower	102 G	The Form of the Writ, and for whom, and in what Cases it lies	582 C
For two Distresses a Recaption lies	158 E, 159 E, G	Oath must be first made in Chancery	

## The TABLE.

Chancery	582 D, 586 C	as Guardian in Socage	334 N
Security to be given that the marry not without Licence	583	Not of a Reversion <i>ex assensu Patris</i>	334 A
Where Lands are holden of a Subject	583 A	For the Wife of the Mesne	334 C
She may have a <i>Dedimus</i> to take her Oath	584 C	The Heir must assign it	334 E, 360 E
Where she must bring her Writ of Dower against the Heir	585	Where she elopes she shall lose it	334 H
The Heir may (upon Surmise that too much is assigned for Dower) have a new Inquisition, and the Matter is re-examined	585 B	Where the Husband is attained	335 I
		Lies not where there was a Joint tenancy	<i>ib.</i> K
		<i>Ex assensu Patris, Matris, &amp; Fratris</i>	<i>ib.</i> L, M
		<i>Ad ostium Camere, ad ostium Ecclesie</i>	<i>ib.</i> M, N
<b>Dower.</b>		Of Gavelkind Lands	<i>ib.</i> O
Tenant in Dower shall not be distrained for her Husband's Debts	102 G, 335 Q, 336	Free Bench	<i>ib.</i> P
Tenant in Dower may have a <i>Sella ad molendinum</i>	272	She may bring a <i>Quod ei de force</i>	at 545 B
What her <i>Quarentine</i> is, and what Remedy for it	360 E	Where she may have her Writ <i>pro Exoneracione Sella ad Cur. Com. vel Baron.</i>	353
She may bring a Writ of Escheat	322 M	Tenant in Dower of <i>Capite</i> Land must not marry without the King's Licence	388, 389
The Forms of the Writs <i>Unde nihil habet</i>	330		
Where it lies, and for whom	329 E, 330	<b>Droit de Dower</b>	
In what Courts	330	What it is, where to be sued, and how to be directed	15 E
Of what she shall be endowed	330, 333 E, I, K, 334	How to be removed, and into what Courts	15 E, 16
It may be of a Possession in Law	332 D	When to be brought against the Feoffee	16 F
Not of her own Land	333 E	When, and how against Tenant in Tail	<i>ib.</i> A
Nor when the Estate is determined in her Husband's Life-time	333 F, G	When to be brought in the Heir's Court	<i>ib.</i> F, A, 17 B
It shall be of a Tenancy in Common	333 I	How, and where to be brought against the Lessee for Life	17 B
At what Age she shall have it	334 L	It lies for Part of her Dower	<i>ib.</i> C
Upon an Exchange	<i>ib.</i> N	If she loseth her Land by Default	
Where she may endow her self			



## The TABLE.

fault in a *Præcipe*, yet she may have this Writ 17 D  
 But if she loseth it by Action tried, she hath no Remedy but Attaint 18 E

This Writ lies for a Moiety, according to the Usage of Gavelkind *ib.* K

### Droit Close

What it is, and in what Cases it lies 23 F, 24 M

It lies for Common of Pasture, stopping of a Way, &c. 24 H, I, K, L

The Entry of the Writ *ib.* N

The Form of it, and Proceedings thereupon 24 N, 25

Protestation to prosecute 24 N 25

Where the Lord is a Party E 27

Voucher or Foreign Plea 29 G, H

*Droit in the debet and follet*, where it lies 273 H

### Droit de Garde.

The Forms of the Writ 209 C, D F, H

Where it lieth, and for whom 308 B, 309 D, H, 318, 319, 320

Where it may be sued 309 F

It may be removed *ib.* G

For Guardian in Socage 309 H 310

Upon a Feoffment by Collusion 317 K

The Wife within Age shall be a Ward 318

The Woman's Age *ib.*

The Judgment 320

### Droit Patent.

The Form of the Writ for Lands, &c. 26, H, I

For Land-Rent, and Passage over the River of *Thames* 3 L

For a Knight's Fee 3 B

*Quia dominus remisit Curiam* 5 A

For what it lies, and by whom to be brought 1 B, C, D, E, 30 C, D

To whom to be directed 2 F, H, 3 A, 4, E

It may be brought by several Tenants 4 D

### Droit Patent.

It may be brought in the Kings Courts by the Lord's Licence 5 F

The Form of the Licence 5 A

The Form of a Writ to compel the Lord to hold a Court that he may proceed upon his Writ of Right 6 E

Where Right is delayed or denied, the Party grieved may remove his Plaint by a Tolt 7 F

When to be removed, by whom, and to what Courts 6 F, 7 A, 8 B, C, D

Upon joining the Mife a Prohibition lies, until the Justices in Eyre come into the County 9 E, F

How to lay the Seisin in a Writ of Right 10 D

### Droit en London ou autre City.

Who may have this Writ, and to whom to be directed 12 B, C, D, 13 F

How to proceed if the Tenant voucheth a Foreigner 13 E

What

## The TABLE.

What Writs lie in London, and how to be directed 14 G, A

A Recovery in a real Action in the Common Bench is good, if the Mayor and Sheriffs do not demand Conscience 15 D

*Droit de Rationabili parte, Vid. Tit. by the Rationabili parte.*

*Droit D'adwoufon.*

For whom it lies 66 B, C, D, 67 H, 68, B, C, D.

Esplees must be alledged 66 B

Trial by Grand Assise 66 C

*De medietate Advocatienis* 68 B

Tender de Demy mark 68 D

*Dum fuit infra atatem.*

The Form of the Writ 426 H, I

In what Cases it lies 426 G, I, 427 K, L, 449 D

*Dum non fuit Compos Mentis.*

The Form of the Writ 449 C

In what Cases, and for whom it lies 449, 450

Where it is a good Plea in Debt upon Bond 450

For the Heir 450 B

*Ejectione firme.*

**T**HE Form of the Writ 489 G, 590

In what Cases, and for whom it lies 489 F, 490 I, A, B, C

What shall be recovered in it 490 H

*Ejectione Custodie.*

The Form of the Writ 311, 440

What it is, and when it lies 310 L, 439, 440

When for a Guardian in Socage 311 C

What shall be recovered in it 439 T

What is traversable in it 441 K

*Electio de un Verderor d'un Forest.*

The Form of the Writ 366 C

When it lies, and how to be chosen 366 C

Where he may have a Writ of Restitution 366 D

*De un Evesque, Abbot, Prior, &c.*

How it shall be, and by whom, and when 376, 377

The Election of Archbishops, and Bishops, &c. 378 A

*Elegit.*

Waste lies against him 130 H

Tenant by *Elegit* may bring an Assise 396 G, 397

May have a Redissein 421 F

The Form of an *Elegit* upon a Recognisance 588 B

In what Cases it lies, and upon what grounded 588 B

When the Year and Day is past, there must be a *Scire facias* before *Elegit* 588 C

Executors cannot sue out an *Elegit*



## The TABLE.

<i>legit</i> without a <i>Scire facias</i>	59 I	Shall be in Ward, though ried	318 G, 3
<b>Embaceoz.</b>		An Infant at twelve Years shall be bound by Covenā serve in Husbandry	3
A <i>Decies tantum</i> will lie against him	380 A, C, D	His Command to enter, not make him Disseisor	3
What he is	380 B	Where he shall have a <i>D</i> <i>suit infra E. stem</i>	426, 427 K, L
<b>Enditment.</b>		What Acts done under Ag avoidable, and what not	4
Lies against him that takes the Goods and Lands of a Person pro- tected by the King	203 B, 204	<i>Entre ad Communem Legem.</i>	
<i>Vide in Titulo Oyer and Terminer</i>	143	Where this Writ lies, and whom	109 D, 113 F, 4
<i>Usque</i>	251	<i>Entre ad Terminum qui preter</i>	
For not repairing a Bridge or Wall, &c.	281 E, 282 G	The Form of it In what Cases, and for w it lies	446, 447, 448, 4
An Enditment lies against forcible Entry into Land, which a Man hath a Title to	551 H	In the <i>Per, Cai,</i> and <i>Post</i>	4
<b>Enfant.</b>		The Aunt and Niece shall in it	4
If he commit Felony at four- teen Years of Age, he shall be hanged	449 D	<i>Entre ad Communem Legem.</i>	
He shall sue <i>per Prochein amie</i> , but defend <i>per Guardian</i> only	59 H	The Form of the Writ	4
Shall not remove his Guardian	59 K	In what Cases and for who lies	461,
But by Writ he may	59 M	It may be in the <i>Per, Cai,</i> <i>Post</i>	4
Ought to present within six Months	76 T	<i>Entre in le Quibus.</i>	
Where he shall be ousted by Usurpation	68 M	The Form of the Writ	4
May bring his <i>Audita Querela</i> upon a Statute acknowledged by him	230 K	In what Cases it lies	4
May bring an Account against Guardian in Socage	260 A, B,	<i>D, E, F,</i> 425 G, H, I, K,	
	257 B	Count, how it shall be	4
Account will not lie against him	361 D		

## The TABLE.

<p>For a Corporation 424 F          Where the Entry in <i>le Poſt</i> lies 425 C</p> <p style="text-align: center;"><i>Entre in Caſu Proviſo.</i></p> <p>The Form of the Writ 456, 457          In what Caſes it lies, and for whom 456, 457, 458          In the <i>Per, Cui</i> and <i>Poſt</i> 456 M          Where the Aunt and Niece may join in it 458 D</p> <p style="text-align: center;"><i>Entre in Conſimili Caſu.</i></p> <p>The Form of the Writ 458, 459, 460          In what Caſes, and for whom it lies 458, 459, 460, 488 G</p> <p style="text-align: center;"><b>Erroꝝ.</b></p> <p>When it lies, and where 44 D, 47, K, L, M, N, 48 A, 54 D, 55 B          The Proceedings, and aſſigning Errors upon it 44 E, 44 G, 45 A, B          The Record it ſelf muſt be removed 44 F  <i>Quod coram vobis reſidet</i> 44 G          If Tenant for Life loſe by Default, he in Reversion ſhall have this Writ 45 C          Diminution certified upon a Writ of Error 54 A, B          Error in Law, how to be aſſigned 45 D          Where the Tenant admits the Writ to be good, he ſhall not take Advantage of it in Error 46 B          Error ſhall not be aſſigned for any Thing which was for a Man's Advantage 46 F          Upon a Judgment in the County Palatine of <i>Durham</i> 46 G          It lies againſt the King, and</p>	<p>the Proceeding upon it 46 H          For a Fault in the Proceſs in the King's Bench, or Common Bench 47 I          It lies for an Executor or Administrator 47 N          Upon a Bill of Exceptions 47 A          Upon a Judgment in <i>Ireland</i>, where to be brought 48 E, 53 B          For making an Attorney, where it ought not 48 D          Upon an Aſſiſe in the Country . . . in <i>London</i> . . . 54 D, E, A, B</p> <p style="text-align: center;"><b>Eſcheat.</b></p> <p>Writ of Eſcheat returnable out of <i>London</i> into the King's Bench 14 B</p> <p style="text-align: center;"><b>Eſcape. Vide titulo Sheriff.</b></p> <p>The Form of the Writ 321 E, F          In what Caſes, and for whom it lies 320, 321 H, 322 M          In what Caſes it will not lie, but only in Intruſion 320 B          It lieth againſt the Diſſeiſor 421 C, D          The King ſhall have it in <i>London</i> 321 G, 322 M          In what Courts 321 G          For the Lands of a helon 321 H          It lies not after Homage accepted 323</p> <p style="text-align: center;"><b>Eſcheatoꝝ.</b></p> <p>May make an Attorney to make their Proffers 61 V          May have an under Eſcheator 221 C          The Writ <i>De Reſtitutione Temporalium</i>, muſt be directed to him 376</p> <p style="text-align: center;"><b>D</b> <span style="float: right;"><b>Eſtrepe.</b></span></p>
--	--

## The TABLE.

### *Estrepment.*

The several Sorts of the Writs, and their several Natures	135 <i>U, X,</i> <i>T,</i> 336 <i>D</i>
Directed to the Sheriff	X 135
Or Party	136 <i>T</i>
It lies where Damages are to be recovered	135 <i>T</i>
The Writ to the Sheriff	135 <i>A</i> 136
Who may sue in	135 <i>B</i>
It lies in an Assise and real Actions	136 <i>C</i>
It lies in a Writ of Right	136 <i>E</i>
Who shall be punished for it, and when	135 <i>G, H,</i> 137 <i>K</i>
It lies upon a <i>Scire facias</i>	137 <i>I</i>
Upon a Writ of Waste	137 <i>N</i>
Upon an Attraint	137 <i>O</i>
Upon a <i>Juris Utrum</i>	132 <i>P, Q</i>
Between Verdict and Judgment, and before Execution	137 <i>N, K,</i> 136 <i>G</i>

### *Estate Probanda.*

Where this Writ is to be sued	562
When to be sued out	563 <i>A</i>
The Form of it	596 <i>D</i>
The Form of this Writ com- manding the Sheriff to impanel a Jury	569
<b>Excommungement and Excom- municato Capiendo.</b>	
Not to be issued forth until a Certificate made by the Bishop into Chancery	140 <i>N</i>
Or the Vicar General	<i>ib.</i>
After Satisfaction and Certifi- cate made, then this Writ shall issue forth to absolve him	140 <i>A</i>

### **Execution.**

Execution of a Writ of Dis- ceit	215 <i>B,</i> 216
When a Recovery is in an in- feriour Jurisdiction, the Party may remove the Record in the King's Bench, and have Execution upon it	545 <i>B,</i> 546, 538 <i>B</i>

### **Execution sur Statute-Mer- chant.**

The Mayor ought to certify it into Chancery, under his Seal	289 <i>C</i>
If he refuseth, how compella- ble	<i>ib.</i>
How to be certified	290 <i>E, F</i>
For Executors	290 <i>B</i>
The Form of the Writ of Exe- cution	290
Where returnable	290 <i>H</i>
Lies before all the Days are past	290 <i>I</i>
The Form of a Writ against a Clerk	<i>ib.</i>

### **Sur Statute-Staple.**

The Form of the Execution upon it	291 <i>D</i>
In what Cases it lies	<i>ib.</i>
What the Sheriff may do upon it	292
The Liberate upon it	<i>ib.</i>
To a County-Palatine.	
Where, and in what Cases it lies	292 <i>A,</i> 293
The Form of the Writ	293
Certificate into Chancery	293 <i>B</i>
Upon the Removal of the Chancellor	293 <i>B</i>
Upon a Recognizance in the County before the Sheriff.	
Where it lies	294
The Form of the Writ	<i>ib.</i>
When the Recognizance to be made	294 <i>A</i>
<b>Attachments</b>	



## The TABLE.

Attachment for not doing Execution 295 B

Except the Recognizor deny the Debt *ib.*

A Prisoner in Execution must be allowed Bread and Water *ib.* C

### *Executio Judicii.*

The Form of the Writ 43 C  
Where it lies, and in what Cases 42 A, 43 B  
To whom to be directed 43 B

### Executors and Administrators.

Where they may bring their Writ of Trespas 193 E, 203 M

An Action of Account lies not against Executors 257 C

They may bring Debt for Arrears of Annuity in Fee 266 L

When they may bring Debt for Rent 267 E

May have Execution upon a Statute 290 B

May bring a Writ of Covenant 323 D, 324 F

A *Certiorari* lies to them to certify the Conuance of a Fine 328 B

Executors in London compellable to bring in the Will 444

### *Ex gravi Quærela.*

The Form of the Writ 442

What it is and in what Cases it lies 441, 442, 443, 444, 445, 446

To whom to be directed 442 C  
The Count upon it *ib.* C

### *Ex parte talis.*

The Forms of it 287 G, H, I  
For whom, and in what Cases it lies 286 F  
Where returnable 287 H, 288 A  
Where upon putting in of Sureties 287 I, 288 A

### Error in London.

From what Court it comes, and in what Court and Cases it lies 49 N, 51 E, 52 G

To whom to be directed 50 A, B

The Form of the Writ *ib.* G

A *Superfedeas* thereupon to the Sheriff 51

*Si non omnes* in the Commission 51 E, 52

A Writ to hinder the Party from removing his Goods 53 B

### *Pro Exoneracione Scilicet ad Curiam Baron.*

The Form of the Writ and where it lies 352 A, B, 353, 354, 355

To whom to be directed 354

Attachment lies against the Lord for proceeding after it 356 D

### Faits and Grants.

**H**OW far the Words *dedi & concessi* in Deeds shall make a Warranty 298 H

### Faux Judgment.

It lies upon Judgment given in

a Writ of Right close 25 A

The Form of the Writ 40 B

In what Cases it lies 40 I, A, D

41 E, 42 H, I, K, L

Copyholder shall not have it upon a Judgment given against him 39 A, 40

D 2 15

The TABLE.

It will not lie but where there are Suitors	40	fined and imprisoned	242, 243
The Proceedings upon it	41 E	When the Defendant pleads <i>Non est Factum</i> , and it is found against him, he shall be fined	268 P
For Baron and Feme	42 H		
<b>Fecalty.</b>		<b>Forcible Entry.</b>	
The new elected Bishop, &c. must do Fealty to the King for his Bishoprick	376 B, 378	What it is, and where the Writ lies	550 C, D, 552 B, C
When to be certified, and where	378 B, C	Who only can have it	551 E
It is not recoverable in a <i>Cessavit</i>	465 I	The Form of the Writ,	551 F, 552 F
<b>Free-simple.</b>		It lies not where a Man hath a Title	551 H
When to bring his Writ of Right	1 B, C, D	What shall be recovered in it	552 A, B, D
<b>Free-tentment.</b>		What shall be a good Plea	<i>ib.</i> D
The Feoffor shall keep the Charters	307 G, 308 I	Where the Defendant shall pay treble Damages	<i>ib.</i>
By an Idiot, or <i>Non sane memory</i>	450 E, F		
<b>Fines.</b>		<b>Forcedon in Reverter.</b>	
Forms of the Writs of Cove- nant to levy Fines	326 E, 327, 329 C	Where it lies	320 A, 487 E, F, 488 G, A, B, 489 E
The Form of a <i>Dedimus</i> to take a Fine	326 G	Where the Lord shall have it	428 B
For a Judge of the King's Bench	327	The Form of the Writ	487 E, F, 488 G, A, B
For several Writs of Covenant	<i>ib.</i>	In the Count the Esplees must be laid in the Donor and Donee	489 C
How to be levied for him in Reversion	<i>ib.</i>	Where the eldest Son is to be mentioned, although he was not seised	489 D
<i>Quid Juris clamat, per qua ser- vitiis</i>	327, 328	Where he is not to be men- tioned	489 D
A <i>Certiorari</i> lies to certify the Conscience	328 B		
A Fine for Lands in <i>Capite</i>	339 C	<b>Forcedon in Descender.</b>	
<b>Fines le Roy.</b>		Where the Heir shall bring it upon an Alienation by the Hus- band of his Mocher	428 B
Upon the Writ <i>de Securitate Pa- cis</i>	178 A	In what Cases, and for whom it lies	471, 472, 473, 474, 475
What Fines are paid upon suing out of Writs	212	For the Heir of a Parccner or Tenant in Gavelkind	476 B
The Jurors in Attrait shall be		Of what, and against whom it lies	471 L, A, B 472, 473, &c. 481 B
			The



The TABLE.

The Form of the Writ, and how the Heirs in Tail are to be named in it 472 D, 473 A, B, C; with the Pedigree 474 D, E, F, G, H, 475 I, K, 478 B, 479

For the Heir of a Parcener, or Gavelkind Tenant 476 B

The Aunt and Niece may join in it 474 A

The Grantee of the Reversion may have it 475 A

Where it lies for the Heir of a Coparcener and Tenant in Gavelkind 476 B, 477, 478

The Form of the Writ 476, 477  
The Formedon in Descender, called *Infirmul tenuit*, see in tit. *Infirmul tenuit*

Fozzels and Chales.

When and by whom the Verderors are chosen 366

Fresh Force.

For whom, and where it lies 15 C, 28, 29

Protestation to sue in the Nature of what Writ he will 15 C

Gard. See tit. Liberty.

**O**NE in Ward to the King shall not during his Wardship do Suit and Service to any Lord 352 A, B

Guardian in Socage.

May grant the Wardship over to a Stranger 319

May have a *Droit de Gard* 309  
H, 310

Account lies against him 257 B, 260 A, B

Gavelkind.

The Writ of *Nuper obiit* lies betwixt Coheirs in Gavelkind 437 C

A Writ of *Mort d'Ancestor* doth not lie between them because of the Privy 436 L

Where the Writ of *Infirmul tenuit* lies upon an Alienation made by one of them 480, 481, 482

Garranty de Charters. See tit. *Warrantia Charta.*

Garranty de Jour. See tit. *Warrantia diei.*

Grants. Vide tit. *Faits.*

Grants le Roy.

How the King must grant an Annuity, otherwise it is void 341 L

The Grant of a Stewardship 597

The King's Covenant by Indenture upon borrowing of Money *ib.*

Grant of the next Avoidance 597, 598

A Grant of a Pension to a Chaplain *quousque, &c.* 593 A

A Grant of a Pardon to the King's Enemies *ib. B*

Glebe.

The Parson is not to be distrained upon his Glebe, or in the Highway 386, 387

Heir.

**D**Ebt lies against a Man as Heir 264 B, C, 266 I

But Debt upon Bond, as Heir,

will not lie 266 I

Where the Heir shall bring Debt *ib. M*

Where he shall bring his *Quod permittat*

The TABLE.

<i>permittat</i>	276 A	Upon what Conviction, and before whom	595 D
Where he must acquit the			
Mefne	303 T		
When the Heir in Tail shall bring Detinue of Charters	308 H		
He shall have the Charters, and not the Executors	308 I, K, L		
When and where he shall be in Ward	See from fol. 309 to 320		
Where chargeable in a Writ of Annuity, and where not	340 F		
During his Wardship he shall not do Suit and Service to any Lord	352, 353, 354		
Where he shall have his <i>Sur Cui in vita</i>	428 B		
Where he shall have his <i>Mort d'Ancestor</i>	433, 434 H, 435 A, B, E, F		
The Heir of one of <i>Non sane memory</i> , may have his Writ of <i>Dum non fuit compos mentis</i>	450 F		
May have his <i>Sur cui ante divorcium</i>	454 K		
May have a <i>Causa matrimonii prolocuti</i>	455 C		
May have a Writ of <i>Entre in casu previso</i>	457 A		
May have a Writ of <i>Entre in consimili casu</i>	460 B, D, 461 F		
Where he shall have a Writ of <i>Entre ad communem Legem</i>	461 A, B 462		
Shall have a Writ of <i>Contra formam collationis</i>	469, 470		
Where he shall have his Forfeiture in Descender	471		
Where the Heir in Tail shall be liable to pay the King's Debt	481, 482, 483		
<i>Heretico comburendo.</i>			
Where this Writ lies, and in what Cases	594 B		
The Form of it	ib.		
		<i>Homage, &amp; Homagio respectuando.</i>	
		Homage Ancestrel doth of it self imply a Warranty	297 F
		Acceptance of Homage is a good Bar to a Writ of Escheat	323
		It is recoverable in a Writ of Customs and Services	338 L
		It is not recoverable upon a <i>Cessavit</i>	465 I
		Where the Writ of <i>Homagio respectuando</i> lies	563 A, 594 A
		The Form of it	ib.
		Where it must be done by a Woman	569 F
		<i>Hemine Replegiando.</i>	
		What it is, who may have it, and when	148 E, F
		The Forms of the Writ	ib. F.
		Where the Party is claimed to be a Villain	149, 151 F, G, B
		So if the Defendant claim the Plaintiff for his Ward	149
		To the Constable of the <i>Cinque Ports</i>	ib. A
		To the Keepers of a Forest	156 E
		Offences in the Forest	ib. B, C, D, E
		To a Park within a Forest	ib. E
		Recognizance, how long to continue	151 A
		Upon an <i>Essoiner</i> returned by the Sheriff, a <i>Capias in Withernam</i> shall issue forth to take the Defendant's Body, although a Peer, and upon a <i>Non est inventus</i> a <i>Capias</i> against his Goods	151 C, 152
			F. Idiot.



The TABLE.

- I**diot.  
**W**Hat Person shall be taken to be an Idiot 519 B  
 In what Cafes the Writ *de Idiota inquirendo* lies 517 A  
 The Form of the Writ, and to whom directed 517 B, 518 A  
 The Idiot may, after Inquisition found, have a Writ to come into Chancery, or before his Majesty in Council, where the Business shall be re-examined. The Heir of an Idiot, if he be of full Age, may sue out Livery 567 D  
*Idemptitate nominis.*  
 In what Cafes, and for whom it lies 591 E  
 The Form of it *ib.*  
 To the Sheriff and Escheator *ib.*  
 To the Barons of the Exchequer 592 A  
 To whom to be directed 593 B  
 It lies where the Process is upon an Indictment 593 C  
**I**mprisonment.  
 Where the Writ of Trespafs and false Imprisonment lies, and the Form of it 190 K  
*Indicavit.*  
 What it is, where it lies, and for whom 66 E, 67 E, G, 100 B, 101 E, D  
 The Form of a Writ of *Indic.* 101  
 It must be sued before Judgment given *ib.*  
 It lies not until a Libel exhibited in the Spiritual Court, &c. *ib.* D.  
 For what it lies *ib.* D.  
**I**nduction.  
 Induction is a Temporal Act 106 H.  
*Infimus tenuit.*  
 The Form of the Writ 480 A, B, 481  
 In what Cafes, and for whom it lies *ib.*
- Upon what Alienations 481  
 C, D, E, F, A  
 How the Count shall be 481 A  
**I**ntrusion de Bard.  
 The Form of the Writ 313 B  
 What it is, and where it lies 313 A, B, C, 314 D  
 It lies against the Heir 314 D, E  
**I**ntrusion.  
 Where it lies for the Lord upon an Escheat 320 B, 321  
 Where it lies, in what Cafes, and for whom 451 E, F, 452, 453  
 The several Forms *ib.*  
 Aunt and Niece may join in it 452 H  
 Lies only for him that hath the Fee-simple 453 D  
**J**ointenants and Tenants in Common.  
 Cannot have a *Quare Impedit* against each other 76 V  
 Waste lies betwixt Tenants in Common 131 D  
 Where one Tenant in Common may bring Trespafs against the other 202 H  
 One Merchant may bring an Accompt against his Companion 258 D, E, 261 G  
**A** Writ *de Reparatione faciend.* lies between them where they do not agree to repair 281, 282, 361 B  
 The Wife of a Tenant in Common shall be endowed 333 I  
 But the Wife of a Jointenant shall not 335 K  
 How they shall do Suit and Service 356 D, 361 B  
 Where the Writ of Contribution for Repairs lies between them 281, 282, 361 B  
 Where they purchase of the King by Licence, the other shall have an *Ouster le main* 570 C  
 D 4 **J**our

## The TABLE.

<b>Journeys-Accounts.</b>	
It lies in an <i>Allise of Darrain</i>	lies, and when 109 R, A, B, C, D, E
<i>Presentment</i> 70 C	A Parson or Vicar may have it
<b>Justice del Deace.</b>	
May commit Vagrants to Prison	against those which are several
374 B	Tenants 110 M
<b>Judgment.</b>	
Judgment in Attaint 237 H,	The Form of it <i>ib. N</i>
242 L	Two Prebendaries may have it
<b>Justicies.</b>	
The Form of a Justicies in Account	111 O, 432 L
257 C, 358	Where there are Moieties <i>ib. P</i>
In Debt in the County-Court	Upon Alienation with Warranty
263 H	<i>ib. A</i>
<i>In sc'ha ad Molendinum</i> 271 A	For the Vicar against the Parson for the Glebe
In <i>Droit de Gard</i> 309 F	<i>ib. B, E</i>
In Dower <i>Unde nihil habet</i> 330	Bar by Judgment by Default
In a Writ of Customs and Services	111 D
337 B	Recovery in <i>Cessavit</i> no Bar
In a Writ of Annuity 339	112 F
<b>Juris Utrum.</b>	
For whom and in what Cases it	For the Chapel of a Chantry
	<i>ib. G</i>
	How to be named in the Writ
	<i>ib. I</i>
	Where the Jury to be taken, and what to enquire of
	112 K, L, M
<hr/>	
<b>Laches.</b>	
<b>M</b> AY be in an Infant and Feme Covert 76 T	Who may be retained Servants
<i>Lapse. Vide tit. Presentment.</i>	<i>ib. C, D, E, N, O</i>
If Infants or Feme Coverts do not present within six Months there will be a Lapse 76 T	What Retainers are good according to the Statute 375 F, H, K
Upon a Resignation it cannot be until Notice 78 H	Who shall be compelled to serve
Or upon Refusal for Non-ability, &c. <i>ib. I</i>	<i>ib. I</i>
<b>Labourers.</b>	
The Forms of the Writs upon the Statute of Labourers 372 B, 373, 374	What are good Causes of Departure
373, 374	<i>ib. L, Q</i>
In what Cases it lies, and for whom 372 B, 373 C, 374, 375	Leases, Lessors, Lessee.
He that serves in the Winter must serve in the Summer 374 A	What Remedy the Lessee hath to recover his lost Possession
	439, 440, 441
	Where the Lessor shall have his <i>Ad terminum qui praeceit</i>
	446, 447
	<b>Leet.</b>
	The Form of the Writ to discharge a Man from coming out of one Leet into another
	357 B
	Attach-



The TABLE.

Attachment lies against the Party that distrains after it	358	the Forest	512
Who are not compellable to come	358 C, 359 B, C	It lies for a Corporation	509, 512
How often compellable	360		
<i>Leproso amovendo.</i>			
What it is, and where it lies	520 D, 521	<b>Liberty.</b>	
The Form of the Writ	520 E	The Heir shall have his Livery as well upon a Commission, as a <i>Diem clausit extremum</i>	562
For what Lepers only it lies	521 G	Before Livery the Heir shall have a Writ to the Escheator to prove his Age	<i>ib. E</i>
<i>Levari facias.</i>			
The Form of it, and in what Cases it lies	586	The Form of it	<i>ib.</i>
When it ought to be sued	587 G	Where the Ward dies, and his Heir is within Age	565 E
<i>A Sicut alias levari facias, where it lies</i>			
Directed to the Bishops against a spiritual Person	<i>ib. A</i>	The Form of it	<i>ib.</i>
To the Sheriff where he hath purchased Lands	558 B	Where the Heir of the King's Tenant in Socage ought to sue out his Livery	578, 579, 566 C
<i>Libertate probanda.</i>			
The Form of the Writ	172, 177	For the Heir of an Idiot	567 D
Upon what it lies, and how to count thereupon	173 G	How, and when the Heir shall sue out his Livery	568 E, 580 C
Where to enter his Plaint	<i>ib. A</i>	That Coparcener which first comes of Age shall sue out Livery	568 F
It must be removed before the Justices	173 A, B, 174 E	Where the Heir shall be in Ward to the King and a Subject at one Time	<i>ib. B</i>
Two may join in it	174 C, 175	Where <i>Livery post mortem Patris &amp; Matris</i> lies, and for whom	570 I
Where he shall be enfranchised	174 F, G, 175 A, 176	The Form of it, and to whom directed	<i>ib.</i>
Abatement of the Writ	175 H	The Form of the Writ of Livery after the Death of Tenant <i>per le Courtesie</i>	570 A, 571, 578
The Process	<i>ib. N</i>	For whom, and in what Cases it lies	570, 571
The Form of the Writ to bring the King's Villains back to his Manor	176, 177 E	The Form of the Writ of Livery after the Death of Tenant in Dower	572 B
<i>Libertatibus allocandis.</i>			
What it is, and where it lies, and for whom	109 B	After the Death of Tenant in Tail, and for Life	<i>ib.</i>
The Form of the Writ	509	For the Heir in Tail	573 A
May be sued to the Justices of		For Lands by Petit Serjeanty	<i>ib. B</i>
		For the Aunt and the Niece to make Partition	574 A
			To

*The TABLE.*

To make void a former Livery	375	For the Lands in Socage	<i>ib.</i>
A Writ of Livery and Partition		London.	
to the Escheator upon a Partition		Where Wills made by a Citizen	
made in the Chancery	576	of London shall be proved	443 H. 446 A
After the Death of Tenant by		A Writ to compel the Executors	
the Courtsey	578 B	to bring them in	444

*Mainprize.*

**B**Ail must be put in, Body for  
 Body, upon allowing an  
*Audita querela* 232 F, 557 D  
 It may be put in for him that  
 sues an Attaint 234 D  
 Where the Demandant in an  
 Assise must find Sureties 395, 396  
 What the Writ of Mainprize is,  
 and where it lies 553 G, 554 G  
 The Form of it 553  
 Where a Person of good Fame is  
 accused by an Approver 555 D, E  
 For the Accessory, until the  
 Principal is convicted *ib. E*  
 Where a Felon is in Custody by  
 the King's Commission, he shall  
 have it upon putting in Bail in  
 Chancery, Body for Body *ib. F*  
 Upon an Indictment before Ju-  
 stices of the Peace 555 G, H, I, K  
 556 C 557 F  
 It lies upon an Appeal of Rob-  
 bery 556 A  
 What Persons are not bailable  
 556 B, 557 H, E  
 For the Conuzor of a Statute-  
 Merchant where the Money is  
 paid 557 D  
 It lies not where a Person is  
 condemned in an Action *ib. E*  
 Two Justices of the Peace may  
 Bail a Felon *ib. F*  
 The Marshal of the King's  
 Household cannot Bail his criminal  
 Prisoners *ib. I*

*Bandamus.*

The Form of the Writ 561  
 It lies where the King's Tenant  
 in Capite dies, and no Writ is a-  
 warded against the Heir within  
 one Year after his Death *ib. B*  
 Warhalsea.  
 The Jurisdiction of the Mar-  
 shal's Court, and what Actions  
 only, and against whom are de-  
 terminable there 535 B, C  
 A Prohibition to it 536  
 Where the Plea is discontinued  
 by the King's Removal *ib. D*  
 Affirming the Jurisdiction of  
 that Court shall be no Estoppel  
 537 A  
**Master and Servant.**  
 Where the Servant is disturbed,  
 and the Master shall bring the  
 Action 202 E, G  
 Where Cattle are rescu'd from  
 the Servant, the Master shall bring  
 the Action 221 E, 224 F  
 Account lies not against an  
 Apprentice, but it lies against a  
 Servant 262 D  
 Where the Servant's Contract  
 shall bind the Master 265 G  
 The Punishment of the Ser-  
 vant, that will not serve his Mas-  
 ter 269 B, 372, 373  
 See the Exposition and Writts  
 upon the Statute of Labourers  
 372, 373, 374, 375  
 What

## The TABLE.

<p>What Covenants shall bind Infants and other Servants 374 <i>D, E</i>          What is a good Cause of Departure for the Servant 375 <i>Q, L</i></p> <p style="text-align: center;"><i>Melior Inquirend.</i></p> <p>In what Cafes, and for whom it lies 565 <i>D</i>          The Form of it <i>ib. A</i></p> <p style="text-align: center;"><i>Refine.</i></p> <p>The Form of the Writ 301 <i>N</i>          Only one Efcuage shall be paid for Lord, Mesne and Tenant 186 <i>K, 187 D</i></p> <p>The Procefs in it 304 <i>A, B</i>          For whom it lies, and in what Cafes 300 <i>M, 301 N, A, B, C, D, 302, 303, 304</i></p> <p>In what Courts 301 <i>N</i>          It may be removed <i>ib. A</i>          The Causes of Acquittal 301 <i>A, B, C, D, 302 E, 303 T</i></p> <p>Where he shall not recover Damages 302 <i>E</i>          Where Damages shall be recovered <i>ib. H</i>          Where againft him in Reversion 302 <i>G, 303 M</i>          What is a good Bar in it 302 <i>H, I</i></p> <p>It lies for Husband and Wife <i>ib. I</i>          Againft the Heir <i>ib. L</i>          For the Tenant 303 <i>M</i>          Where a <i>Disfring. ad acquietandum</i> lies <i>ib. R, S, V</i>          Forejuder 303 <i>V, 304 A, B</i></p>	<p>Who shall have the Wardship of the Mesne 310 <i>K</i></p> <p style="text-align: center;"><i>Moderata Misericordia.</i></p> <p>The Form of the Writ 167 <i>A, 170 B, D</i>          What it is, against whom it lies, in what Cafes, and out of what Court it issues 167 <i>A, B, C, 170 B</i>          The Amercement must be affeered 168 <i>G, 169 K, 120 D</i>          Why <i>Misericordia</i> 168 <i>H, 169 K</i>          Where divers Defendants 168 <i>I, G, 169 K</i>          Estreats 169 <i>K, A</i></p> <p style="text-align: center;"><i>Monfraverunt.</i></p> <p>The Form of it 31 <i>G</i>          In Account 259 <i>H</i>          The Nature of it, in what Cafes, and where it lies 30 <i>D, E, 31 F, 32 D</i>          It lies in Account 259 <i>H</i>          The Lord not to distrain after a <i>Monfraverunt</i> 32 <i>B, C</i>          Count upon the <i>Monfraverunt</i> 34 <i>A, B</i></p> <p>There must be Certificate of it out of Domefday Book 35 <i>C, D</i>          The Form of the Certificate <i>ib. C</i></p> <p style="text-align: center;"><i>Mortmain.</i></p> <p>Lands cannot be alienated in Mortmain without a Writ of <i>Ad quod dampnum</i> 493, 494          In what Cafes there may be Alienations in Mortmain, and where not, and the Manner thereof 493, 494, 495, 496</p>
---	--

*Nativus habendo.*

**T**HE Form of the Writ 172 *E*  
 Where it lies, and for whom 171 *A, B*  
 The Writ *De libertate probanda*

is a *Superfedas*; to this Writ 172 *D*  
 What the Sheriff may do upon this Writ 171  
*Ne admittas.*  
 The Form of it 83 *G*  
 What



## The TABLE.

What it is, and where it lies, and for whom	83 F, H	In what Cases it lies, and for whom	368 A
It lies as well for the Defendant as the Plaintiff	<i>ib.</i> H	By whom it may be sued	368
The Writ against <i>Ne admittas</i>	84	C, 369 D, E, A, 370 B, 372	
Negative and Affirmative.		Who are not to be returned upon Juries	
Witnesses cannot prove a Negative	235		
<i>Ne injusto vexes.</i>		Non-tenure.	
The Form of the Writ	21 F	It is a good Bar in Attaint	
In what Case it lies, and where	21 C, 23 C, D	237 G	
It is always Auncestrel	22 G	<i>Nuper obiit.</i>	
The Count upon it	<i>ib.</i> H	Where it lies	
The Defendant's Defence and Count	<i>ib.</i>	19 G, 437, 438,	
The Wife shall be joined in it	<i>ib.</i>	439	
<i>Ne exeat Regnum</i> 188. (23 A)		The Form of the Writ	
<i>Nisi prius.</i>		437	
An Attaint lies upon it	233 N,	<i>Non-tenure</i> shall not abate	
	234 A	<i>ib.</i> D	
Where it shall be granted in a Certificate <i>sur Assize</i>	407 H	The Aunt and Niece shall not join in it	
Not to be granted where the King is a Party, without a War- rant from himself or his Attorney	535 A	439 R	
Upon Issues joined in the King's Bench and Common Pleas	534 E	Voucher and View doth not lie in it	
They must have an Associate	<i>ib.</i> E	<i>ib.</i> Q	
<i>Nolle prosequi.</i>		Nuisance. Vide Assise de Nu- sance.	
Nonfuit after Appearance in Attaint is <i>peremptorie</i>	238 D	A Proclamation against Nu- sance in Ditches and Rivers	
<i>Non ponend. in Assis &amp; Juratis.</i>		392 B, 411 D	
The Forms of the Writ	368,	Where an Action of the Case lies, and where a Writ of Nu- sance	
369, 370, 371, 372		393, 410 G	
		What Writs of Nuisance are	
		Vicontiel	
		410	
		The Form of the Writ	
		<i>ib.</i> C	
		Where a <i>Quod permittat</i> lies for it	
		<i>ib.</i> C	
		In what Cases an Assise of Nu- sance lies	
		<i>ib.</i> D, E	
		Lies not for Tenant for Years	
		<i>ib.</i> G	
		To cleanse the Highways	
		411	



## The TABLE.

### Oath.

**W**Here requisite upon a Writ  
*de Securitate Pacis*, and  
where not 177 H  
The Sheriff shall give the Cor-  
oner his Oath 364 N

### Obligation.

How the Bond for Surety of  
the Peace taken before the Sheriff  
becomes a Recognizance 181 D,  
182

The taking of a Bond dissolves  
a simple Contract 268 M

An Obligation not made in  
Writing upon Parchment or Pa-  
per is void 270

How the Clerk must be quali-  
fied that takes Obligations upon  
Statute-Merchant 367 E

### Office and Officers.

An Entry *in le Quibus* lies for  
an Office 426 E

### Ordinary.

May bring Trespass for those  
Goods he hath to administer as  
Ordinary 203 N, 265

Debt lies against him and his  
Executors 264 D, 265

Debt lies not for the Ordinary  
265

### Orphan.

The Mayor and Aldermen of  
*London* shall have the Custody of  
the City Orphans 317 G

They may commit the Custody  
to a Guardian 317 G

He may bring a *Ravishment de*  
*Gard* 317 G

### Oyer and Terminer.

What it is, and where it lies  
243 B, 246 E, A, B, C

The Form of it 244, 248, 249  
251

Of what Offences it may en-  
quire 247 D

The Form when directed to the  
Sheriff 244 A

It lies against a Merchant-  
Stranger, that seized the Goods  
of one of our Merchants 251 C

The Form of the Writ of ASSO-  
ciation to the Justices of Oyer and  
*Terminer* 244 B, 245

The Form of the Writ of *Si*  
*non omnes* 245 C

Association may be made after  
Association \* 245 D, 246

The Death of any of the Com-  
missioners, doth not discontinue  
their Commission 245 D, 246

It lies to bring Collectors of  
Toll to account 262 F

Where Trespass is done in the  
Confines of two Counties 246 E  
For Trespasses 246 B, 248 H

It lies where Goods are taken  
out of a Ship broken by Tempest,  
and not wreck'd 246 C, 247

And where Goods are wrong-  
fully taken from any Person, he  
may have it, and a Writ to the  
Sheriff to take the Goods into his  
Custody 247 F

Against him that hunts in the  
Park of a Bishop in the Time of  
Vacation 247 G, 248 H

Where the Sea-wall is broken,  
and the Sewers and Gutters want  
scouring 248, 249

A Commission *ex parte talis*  
251

### Pardon.

## The TABLE.

<p style="text-align: center;"><b>Pardon.</b></p> <p><b>B</b>Efore a Pardon can be granted in a <i>Se defendendo</i>, the Record must be removed in Chancery by <i>Certiorari</i> 548 F</p> <p>Upon an Outlawry after Judgment in Assise, the Party cannot have his Pardon without a <i>Certiorari</i> 549 G</p> <p><b>P</b>arceners, and <b>P</b>artitione faciend'. See more in title <i>Fo2-medon</i> in <i>Descender</i>, fol. 476.</p> <p>Where they may have a Writ of <i>pro Exoneracione sekte ad Curiam Com. vel Baron.</i> so long as they hold under the King 354 A, 355 C</p> <p>Which of the Parceners shall do Suit 355 C, 356 E, 362</p> <p>Where they shall have a Writ of <i>Contributions faciend.</i> against each other 361, 362</p> <p>Cannot have a <i>Mort d'Ancestor</i> against each other 436 L</p> <p>But they shall have a <i>Nuper obiit</i> 437, 438, 439</p> <p>They may join in a Writ of Intrusion 452 H</p> <p>The Form of the Writ 137 R</p> <p>The Procefs in it 132 M</p> <p>One Parcener shall have a <i>Rationabili parte</i> against the other 18 B, 19, 20, 21 A, B</p> <p>That one shall have Fee-simple, and the other entailed Lands or Goods 139 M</p> <p>Two Coparceners of an Advowson 72 A, B</p> <p>The eldest Sister shall have the first Presentation 47 M, 76 P</p>	<p>Two Partners of an Advowson where <i>Scire facias</i> lies after Partition 80 C</p> <p>Usurpation upon them <i>ib. D</i></p> <p>The Form of the Writ where they are in by several Titles 138 S</p> <p>In London, and to whom directed <i>ib. B</i></p> <p>For Jointenants, or Tenants in Common <i>ib. G</i></p> <p>By Deed 139</p> <p>It may be made in Chancery <i>ib. 138, 139, 576</i></p> <p>Of an Advowson or Reversion 139 D</p> <p>Shall bind the Wives, if equal <i>ib. E</i></p> <p>Upon a Partition in Chancery the Infant may bring her <i>Scire facias</i> <i>ib. H</i></p> <p>One Parcener to have it one half Year, and the other another, and held good <i>ib. I, K</i></p> <p>They may make it for Life or Years <i>ib. K</i></p> <p style="text-align: center;"><b>Parson and Vicar.</b></p> <p>The Successor of the Parson may bring Error or Attaint 110 G</p> <p>He shall have a Prohibition against his Partner to hinder Waste <i>ib. I</i></p> <p>What Writs a Parson may have, and <i>e contra</i> 110 L, M, 112 H, 386, 387, 390</p> <p>Where he may bring Debt for Arrears of an Annuity 268 I</p> <p>Patron and Ordinary may in the Vacation charge the Church with an Annuity 341 K</p> <p>Not compellable to come to Court-Leets or Torns 358 C</p> <p style="text-align: right;">Clerks</p>
---	---



## The TABLE.

Clerks may be returned upon Juries	370 B	To remove a Writ <i>de Droit de Gard</i>	309 G
Must not be distrained upon his Glebe, or in the Highway	386	A Writ of Admeasurement of Dower	331, 332
Is not to be elected into the Office of a Bailiff	390 B	To remove a Writ of Nufance	410 C
Shall not be charged for their Spiritual Goods to Fifteenths	391 A	<b>¶</b> <i>Doff Disseisin.</i>	
Spiritual Persons ought not to pay Toll, Pontage, &c.	505 F	The Form of the Writ	421
<i>Perambulatione faciend.</i>		Where it lies, in what Cases, and for whom	421, 422 D, E, 423 A
The Form of the Writ	296 E	Double Damages	421
Where it lies	296 D	The same Punishment as in Reddisseisin	421, 422 E, 423 A
Where returnable	296 A	<i>Non-tenure</i> , is no Plea in it	423
Certificate	296 C, 297	Where the Inquest shall be taken by his Default	424
<i>Pone.</i>		<i>Præcipe quod reddat in Capite.</i>	
To remove a Writ of Right	8 G, D	How to set in Order whatsoever is demanded in a <i>Præcipe</i>	3 G
To remove a Writ of Right of Dower	15 E	If the Tenant will shew forth a <i>Præcipe in Capite</i> of Lands not holden of the King, the Party grieved may have his <i>Superfideas</i> in Chancery	6 D, 9 B
The Form of a Writ to remove a Replevin	155 M	What it is, and where it lies	19 E, F, G, H, I, 11, 12 A
Out of what Court it comes, and in what Cases it lies	155 M	What to plead, and how	11 L
Form of the Writ for the Defendant in the Replevin	155 A, 156	How to count and alledge <i>Sciſin</i>	11 M
Must shew some Cause in his Writ	155 A, 156	It lies after the Demandant is barred in an Assize or other real Action	11 N
What Cause the Plaintiff must shew	156	It may be in a <i>Seſſa ad Molendinum</i>	271 A
It lies for the Plaintiff in a Writ of Accompt without Cause shewn, but not for the Defendant	259 G	<b>¶</b> <i>Prærogative.</i>	
So likewise in Debt	263 F	Where those that hold under the King shall not be distrained, to do Suit and Service to other Lords	352, 353, 354, 355
Lies to remove a Writ of Admeasurement of Pasture	277 E, G	Where the King's Tenant shall not alien without Licence	389 A
To remove a Writ of Mesne	301 A	Where a Woman endowed of <i>Capite</i>	
To remove a Writ of Detinue	307 D		

The TABLE.

Capite Land shall not marry without Licence 388, 389

The King by his Prerogative shall have a Corrody in an Abbey, of his own Foundation 510 A, B

Presentment.

Who may present, and when 74  
Guardian in Socage cannot 74 S  
Where the Monks shall present 74 V

By whom the Vicar ought to be presented 74 A

The King may repeal his Presentation, but a common Person cannot 75 C

Where the King may present 74  
O, S, N, 75 F, G, H, K, 76 R, 77 A

Usurpation between Coparceners shall not prevent a *Quare Impedit* 75 I

Two Benefices without a Dispensation is an Avoidance 76 L

The third Part of an Advowson is the third Presentment 76 Q

Baron and Feme by Purchase, suffer a Usurpation 76 S

Infants and Feme Coverts must present within six Months 76 T

Presentment by a Stranger 78 F

The Chancellor shall present to the King's Livings under twenty Marks 78 K

*Procedendo ad Judicium.*

The Form of the Writ 341 B, 533 D

In what Cases, and for whom it lies 341 B, 342 C, D, E, F, 343, 344 C, D, 533 D, 534

In what Courts returnable 342 D

After Aid-Prayer of the King 342 E, F, G

In Assise after new Judges are made, and before Judgment given, 343 I

Upon Aid-Prayer if the King hath no Title there shall be a *Procedendo* 344 C

*Rege inconsulto* 344 D, 345 E

*Parco Fratris.*

The Form of it 222 F  
Where it lies 221

Who shall have it 221 E, 222  
It is *Vi & Armis* 222 F

The Form of the Writ upon a Distress by the Servant 222 G

When the Distress is for an Amercement 222

Form of the Writ for the Queen 223

Baron and Feme 223 B

*Pledges & Plegiis acquietandis.*

If the Heir bring an Assise of *Mort d'Aunceffor*, he shall not find Pledges 434

The Form of the Writ 305 D

Where it lies 304 C, 305, 306  
Without Specialty 304 C

In what Courts 305 D  
To discharge a Man of an Account 305 E

The Surety not to be distrained so long as the Principal is able 305 F

The Surety may plead it 306

Debt lies upon a becoming Pledge without Specialty 270

Process.

The Process in *Audita Querela* 231 R

Process to be awarded upon a Writ of *Oyer and Terminer* 250

Process



## The TABLE.

Process to Outlawry lies in	The Writ to make Proclamation, that none cast filth in
Accempt	259 H
Process in a <i>Secta ad Molendinum</i>	Ditches, or Rivers near Cities,
	272 C, D
In a <i>Quod permittat</i>	275 F
In a Writ of Mesne	304 A, B
In a Writ of Ward	320
In a Writ of Escheat	323
In Dower, <i>Unda nihil habet</i>	330
In an Admeasurement of Dower	331 H, 332
In a Writ of Annuity	341 A
In a <i>Contributione faciendâ</i>	362 D
In a <i>Decies tantum</i>	381 F
In a Writ of Champerty	382 B
Upon a Proclamation not to	
commit a Nuisance.	393
In a Certificate <i>sur Assise</i>	407 G
In a Writ of Assise of Nuisance	411 A
The Process in a <i>Sine Assensu Capituli</i>	432
In a <i>Mort d'Ancestor</i>	435 G
In a <i>Quare ejecit infra Terminum</i>	439 V
In a <i>Cui ante Divortium</i>	454 M
In a <i>Causa Matrimonii prolocuti</i>	456 L
In a Writ of <i>Entre in Casu pro-</i>	
<i>viso</i>	458 E
In a <i>Contra formam collationis</i>	470 H
In a Writ of Aiel	491
Upon a Writ <i>De Tolnet. quiet.</i>	
<i>Essend.</i>	503 A
Upon a Writ of forcible Entry	51 G
In a Writ <i>de admesuratione Pasture</i>	278, 279 C
<b>Proclamation.</b>	
The King may by it command any Person to stay within his Kingdom	189 C
	392 B, 411 D
	<b>Prohibition.</b>
	Upon the Mife joined upon a Writ of Right in a Court-Baron
	20 D, E, F
	Against the Lord, <i>Quod ne injuste Vexat</i> his Tenant
	21 E, F
	Where the Writ of <i>Indicavit</i> lies
	66 E
	What it is, and where it lies, and against whom
	88 H, 89 A, B, C, 386 E
	When directed to the Sheriff
	89 B, A
	For the Tenant against the Lord, and Lord against the Tenant
	89 A, B, C, D
	Against the Bishop, if he does not hold Plea of an Advowson
	89 D
	Where the King shall have it
	90, 94 D
	It lies upon a Suit in the Spiritual Court, <i>pro Catallis &amp; debitis</i>
	90 H
	Or for a Lay-Fee
	40 I, 93 I, 95 I, 97 G, H
	Or for Trespafs, &c.
	90 M, 93 K, 95 H, 97 G, H, 98 A
	Where the King's Tenant shall have it
	91
	It lies to the Sheriff that he hinder the Spiritual Court from exacting Things contrary to Law, of the King's Subjects
	91 A
	Although a Debt is acknowledged in the Spiritual Court, that Suit ought not to be brought there, for it excepts in Case of Marriage, or a Will
	92 C, D, F, G
	It lies upon a <i>Modus decimandi</i>
	90 G
	<b>E</b>
	Where

The TABLE.

Where a second Prohibition shall be granted	93 H	Where there is a Citation after a <i>Quare Impedit</i> sued	98 I
Upon a Composition	93 L	Where it lies upon a <i>Modus</i> , but not upon a Grant	98 K
For the King to the Ordinary, that he shall not visit his Hospitals	93 A	Where upon a matrimonial Contract, and where not	98 A
So where a common Person is Founder	94 B	It lies not for Executors when they are sued	98 B, D
It lies after a Recovery in <i>Quare Impedit</i>	94 C	Where there is a Suit between two Parsons	98 E
It lies upon a Citation <i>De violenta manuum injectione in Clericum</i>	94 E	It lies for the King's Chaplains when they are cited by the Ordinary to be resident upon their Benefices	99 G
For Defamation	94 F	It lies against him that sues another out of the Realm	100 H
It lies where a Man is excommunicated for suing out a Prohibition without any legal Cause	94 G, 9	And against him that purchaseth a Citation from the Court of Rome	100 I
It lies for the Clerks or any other Officer in Chancery, that they shall not be sued elsewhere	95 H	If an inferior Court arrests or attacheth the Goods of a Person out of their Jurisdiction, this Writ lieth	102 F
Where two Patrons present	95 K	The Form of the Writ	102 F
Where the Patron is disturbed by a Stranger	95 L	That Tenant in Dower shall not be distrained for the Debt of her Husband	102 G
Where the King recovers his Collation to any Church, and is afterwards disturbed by Appeals, &c. this Writ lieth	95 M, N	The Form of the Writ	<i>ib.</i>
So if the King hath a Writ to remove the Incumbent and he appeal	96 A	It lies where in the County-Court the Debt, &c. is above	40 1.
If a common Person recovereth his Presentment, and afterwards there is an appeal, it lieth for him	96 B		103 A, 104
For citing the King's Incumbent to Rome	96 B, 97	The Form of the Writ	<i>ib.</i>
Upon Suit for Breach of Oath	97 D, 95 I	So where there is <i>5 l.</i> due, and several Plaints are sued upon it, this Writ lies	<i>ib.</i> 104
It lies for not granting a Copy of the Libel	97 E	It lies after Judgment and Execution	104
To stay a Suit upon a Devise for Lands	97 F	Where the Plaint is of <i>Trespass, Vi &amp; Armis</i> , this Writ lies	104 B
		The Form of it	<i>ib.</i>
		Upon a Suit for Charters which concern the Inheritance	105 B
		The Form of the Writ	<i>ib.</i>
		For suing a Detinue for Charters (which concern Land) in the	



## The TABLE.

the County-Court	307 G	All Clergy-men may sue them
To the Marshal's Court	536	out for themselves and Fermors
		65 A
<b>Protection.</b>		
The several Sorts of Protections, and in what Cases they are allowed	62 B, C, D, E, F, G, 63 H, I, A, D	That the Tenant in the King's Service is not sufficient to Pro- rogue an Assise
		343 H
<b>Description.</b>		
Who may cast it	62 G	A Man may prescribe to have
In what Courts to be allowed	63 K	Common Appurtenant 401, 402 N
For Infant or Feme Covert	L	A Prescription to be discharged
For Merchants or Collectors, &c.	63 D, E, F, G	of Toll, Murage, Pontage, &c. and held good
		503 I, 504 D

### Quare Ejecit infra Terminum.

**T**HE Form of the Writ 440  
 In what Cases, and for whom it lies 439, 440  
 What shall be recovered in it 439 T

### Quare Incumbzabit.

Where to be sued 107 D  
 In what Court *ib. F*  
 Where it lies *ib. E, H, 108 O*  
 What it is *ib. G*  
 A new Writ may be sued after a Nonfuit 108 O  
 The Form of a *Quare Incumbzabit* 108 M  
 How the Writ and Count shall be 108 K  
 A good Bar in that Action 108 N

### Quare non Admissit.

The Form of it for the King 105 C  
 When, where, and for whom it lies 105 C, 106 F, L  
 What shall be recovered by it 106 G

Good bar to it *ib. H, 107 M, B*  
 It lies against the Bishop for the Refusal of the Archdeacon, &c. 106 F  
 Where it lies for the King *ib. L*  
 Lies against the Bishop's Official 107 N

### Quarentine.

Where the Writ *de Quarentina habend.* lies 360 E, 361  
 The Form of it 360 E  
 The Proceedings thereupon 361 A  
 It is Vicontiel 360 E

### Quare Impedit.

The Form of it for the King 71 E, F, 72, 73 E, F, 79 P  
 The Form of the Writ where the King joins with another 72 O  
 The Form of it, *pro Ecclesia Vicaria capella, &c.* 72 H  
 How it shall be between Coparceners 72 A, B  
 It lies for a Donative 72 C  
 For a Bishop, where he ought to collate 73 D  
 Where it may be without alledging

*The TABLE.*

ledging Presentment	73 H	Against whom to be brought	<i>ib.</i> F
Presentment in a Proctor al-		Where the Vouchee makes	D e-
ledged	73 I, 79 O	fault	348 B
It lies for Disseisee	74 Q	Departure in despite of Count	<i>ib.</i>
It lies of an Hermitage	75 E	For Baron and Feme	347 F, 348 A
Usurpation between Coparce-		The Form of the Count	349 C
ners shall not prevent this Writ	75 I, 80 D	The Defence	<i>ib.</i> C
It lies for the Founder of a			
Priory	76 O	<i>Quod permittat.</i>	
It may be sued by the Defen-		Where it lies, and of what	
dant against the Plaintiff if he be		Things	112 H, 272 F, G, 273 H
not admitted and instituted	77 C	The Forms of the Writ	272, 273, 274
If one that hath a Donative		In what Courts	272 F
presents his Clerk to the Ordinary,		It lies of Common	272 G, 273 H, L
he shall never after collate	78 P	It lies against the Lord to suf-	
Prior and Convent	79 Q	fer his Villains, to do Suit to his	
It must be brought within the		Mill	273 M
six Months	79 Q	For Estovers	274
How the Count shall be after a		<i>Erigere secalas</i>	<i>ib.</i>
Writ of <i>Droit de Advowson</i>	79 A	It lies for a Corody	<i>ib.</i>
Where a Usurpation shall not		For a Way	<i>ib.</i>
hurt the Disseisee	80 F	Good Flea in Abatement	274 G, 275
The Sheriffs Return upon it	86 O	For a Nuisance in erecting a	
		Wall, House, &c.	275 H, 410 C
<i>Quid Juris clamat.</i>		Of a Fair or Market	276
Where it lies	337, 328	In the Nature of a Formedon	472
<i>Quæ plura.</i>		<i>Quo Jure.</i>	
What it is, and where it lies		The Form of it	284
The Form of it	<i>ib.</i>	Where, and for whom, and	
<i>Quod ei deforceat.</i>		when it lies	284 F, H, I, K, L
The Forms of it	346, 347	What Defence the Tenant shall	
For whom it lies, and in what		make	<i>ib.</i> I
Cases	346 B, 347, 348	Esplices	<i>ib.</i> I
Upon Default in a Writ of		The Wife shall be joined upon	
Right	347 E	it	284 I, K, L
Where to be sued	<i>ib.</i> F, G		
		Ratio	



## The TABLE.

### Rationabili parte.

**B**etwixt whom, and for what  
 it lies 18, B, 19 C, 20 I, 21 B  
 When it lies 19 C, D, E, 20 I  
 What it is, and to whom di-  
 rected 19 F, G  
 May be removed by Tolt *ib. G*  
 The Wife not to be joined in  
 it 19 G, 21 A  
 The Form of it *ib.*  
 To be brought against all the  
 Coparceners 20 M  
 Non tenure is no Plea in it *ib. N*  
 When to alledge the Seisin *ib. P*

### Rationabili parte bonorum.

The Forms of the Writ 270  
 The Nature of it, and in what  
 Cases it lies, and for whom 270,  
 271

### Rationabilibus divitiis.

The Forms of the Writ 285 N  
 The Form of the Count 285 R  
 286 A  
 The Nature of it, and for what  
 it lies 285 M  
 For whom 285 O, 286 A, B, C,  
 D, E  
 When to be removed 215 Q  
 The Defendant may join the  
 Wife *ib. Q*  
 Esplees 286 A  
 Bar *ib. D, E*

### Ravishment de Gard.

The Writ was given by the  
 Statute of *West. 2.* 310 I  
 The Forms of the Writ 312 F  
 Where it lies, and when 312  
*E, F, 313, 317 G*  
 For Guardian in Socage 313 G

It lies for an Orphan of London

317 G

### Recaption.

The Form of the Writ 161 B,  
 162 A, 163 E  
 For whom it lies, and in what  
 Cases 158 E, 159 F, G, H, 160 M, D, E,  
 161 F, G, H, 162 A, 163 B, C, D  
 Lies not where the Cattel of a  
 Stranger are distrained a second  
 Time 159 H  
 When two Men's Cattel are di-  
 strained *ib. I*  
*Rien arre* pleaded 160 M  
 Lies before Avowry *ib. A*  
 Shall not avow but justify *ib. B*  
 A second Distress may be after  
 a Nonfuit *ib. D*  
 To whom only to be directed  
 163 G  
 When amerced, and render Da-  
 mages only upon a Conviction,  
 and when fined *ib. D*  
 Abatement of the Writ 160 L

### Recognizance.

To keep the Peace, may be ta-  
 ken by the Sheriff 181 D, 182  
 What other Recognizances he  
 may take, and how to be executed  
 294, 295  
 How Executions to be sued, and  
 what Executions, and when to be  
 sued out upon a Recognizance  
 586, 587, 588, 589, 590

### Recordari.

To remove a Writ of Right in-  
 to the Common Pleas 7 A, 8 G  
 To remove a Writ of Right *de*  
*Dore* 15 E, 16  
 To remove a Plaint of a Court  
 of

## The TABLE.

of ancient Demefne	26 B, 27 A, B, C, 29 H	It muft be pleaded to a <i>Scire facias</i>	230 I
The Form of the Writ	157	A Release to one Obligor dif- chargeth both	ib. M
In what Cafes it lies, and to whom directed	ib. B, 237 K, 263 I	Remainder.	
The Plaintiff may bring it without fhewing Cause, but the Defendant cannot	157 B	He in Remainder fhall have an <i>Ex gravi querela</i>	441 M, 443 F, G, 446 C
It lies after a Difcontinuance in the County-Court	158 A	Shall take Advantage of a Con- dition broken	446 C
To an ancient Demefne Court	ib. B	He may have his Writ of In- trufion	454 D, 455
When it bears Date before the Entry of the Plaint	ib. D	May have a Writ of <i>Entre in con- fimili casu</i>	460 B, 461 F
It fhall not be fued againft the Tertenant	237 K	Remitter.	
It lies in a Writ of Debt, with- out fhewing Cause	263 I	A Man <i>de non sana memoria</i> made a Feoffment, and took back an Eftate for Life, and adjudged a Remitter	450 F
To remove a Writ of Covenant	323 D	Replevin.	
Rediffifin.		The Form of the Writ	152 D, E
The Form of it	417 C	For what it lies	ib. D, E
In what Cafes, and what Court it lies	417 B, 418 D, E, F, G, 419 L, A, 420 C, D, E, F	How to count upon it	ib. D
Against Baron and Feme	418 H	County-Court	152 F, 154 G
A Writ of Affociation lies in it	417 D, 418 I	Returns of the Sheriff, for a <i>W- thernam</i> to be granted	153 G
Shall recover double Damages	420 C	The Sheriff may command a Replevy by Word	154 E
One Rediffifin lies after ano- ther	ib. D	The Lord fhall have it for his Villeins Cattel	ib.
It lies not upon a <i>Droit clofe</i>	ib. G	Tender of Amends	154 G
There muft be two of the old Jurors at the leaft	ib. H	In any County	155 I
Tenant by <i>Elegit</i> , &c. fhall have it	421 I	By the Sheriff	154 E
His Punifhment	420 C, 422 E	Where the Sheriff muft enter a Liberty and make Deliverance	152 F
Releafes.		By what Writ to be removed, and into what Courts	155 M, 157 B
Where a Release is a good Bar to a Judgment	229	The Form of the Writ of Re- caption in Replevin, and in what Cafes	

## The TABLE.

Cases it lies 161 H, F, G, 163 C

### Recous.

The Form of the Writ 223 D,  
224 E, G, 225

Where it lies, and for whom  
223 C, 224 E, 225, 226 F

For the Master, upon a Distress  
made by his Servant 224 F

For a Collector of Taxes 224  
F, G

Upon an Arrest 224 G

In whose Name to be brought  
224 F, G, 225

The Plaintiff upon an Execu-  
tion, shall have it 226

It lies not where a Distress is  
made, and nothing due *ib. E*

### Restitution.

To the Petty Jury in Attaint,  
after they have satisfied their Fine  
and Imprisonment 242 L, 243

Of Goods which are seized for  
a Wreck 246 C

### Retorn.

The several Retorns to ground  
a *Wishornam* upon 151 C, 153 G,  
164 A, 165 B

Retorns not good in Replevin  
152 A

How the Sheriff is punishable  
for a false Retorn 216 D

### Retorn. Habend.

The Defendant shall have a *Wishornam*  
against the Plaintiff, upon  
a *Retorn. habend.* 166 F

### Reversion.

Reversioner may make an At-  
torney 60 T

He may bring an *Ex gravi que-  
rela* 441 M

The Grantee may have an *Ad  
Terminus qui prateriit* 448 B

When he shall have a Writ of  
Intrusion 451, 452

He shall have a Writ of *Entrie  
in casu proviso* 456 M, 457 B

Where he shall have his Writ  
of *Entrie in consimili casu* 458, 459,  
460

Where he shall have his Writ  
of *Entrie ad communem Legem* 461,  
462

### Reidifficin.

Attaint lies upon a false Ver-  
dict given in it 241 I, 242

### Reparatione faciend.

The Forms of it 281 B, C, D,  
282 F

What it is, and for whom it  
lies 281 A, C, D

For not repairing a Bridge 281  
D, E

### Roy and Revene.

Where Lands entailed are liable  
to pay the King's Debts 481, 482,  
483

Upon every Grant to be made  
by the King, of Lands, Tene-  
ments, Liberties, or other Things,  
a Writ of *ad quod dampnum* must  
first issue out to the Escheator  
501 F, 502 H

In what Cases the Writ issues,  
see in title *Ad quod dampnum* 493

The King by the Law of Right  
is to defend his Subjects 517 A

The King by his Prerogative  
may distrain any one of the Te-  
nants upon an Alienation, to pay  
the intire Duty 522 A, B



## The TABLE.

<b>Scire facias.</b>	
<b>I</b> n a <i>Quare Impedit</i>	79 A, B, 80 B
<i>Quare consulationem non</i>	121 C
To execute a Fine and Summons returned	216 D
<i>Audita querela</i> lies not after a Summons returned upon a <i>Sci. fac.</i>	230 I
Where it lies against the Heir for the Mesne to acquit him	30, T
After the Year and Day of Payment upon a Recognizance	588 C
Against the Tennants	589, 590 D
It lies upon a Defeazance upon a Recognizance	598 D
Several <i>Scire Facias</i> may be sued where two are severally bound	597 C
Against the Heir and Tennants	16 D
The Executors cannot sue out an <i>Eligit</i> until a <i>Scire Facias</i>	591
<b>Scutagio Militum.</b>	
What it is, and where it lies	186 A, B, E, 188 F
Knight's Service, what	187 E, F
The Form of the Writ	186
The King's Tenant against his Tenants	16 G, H, I
One Service for Lord, Mesne, and Tenant	185 K, 187 D
The Commission to Levy Licence	187 E, 188
<b>Securitate inveniend. ne creat regnum sine Licentia.</b>	
The several Forms of the Writs	189 B, D
In what Cases they lie	188 A, 191 F
From whence they issue	188 A, 189
<b>To whom directed 189 B, 190 E</b>	
<b>They may pass with a Passport</b>	
	190 F
<b>The King's Proclamation is sufficient</b>	
	189 C
<b>Secda ad Molendum.</b>	
<b>The Form of the Writ 271 A</b>	
<b>What it is, and where it lies, and for whom</b>	
	271, 354
<b>It may be sued in the County-Court, or Common Pleas</b>	
	171 A, 272, 354
<b>Tenant in Dower, or for Life may have it</b>	
	272 B
<b>The Count in it</b>	
	272 D
<b>Serbices. Vide titulo Suit.</b>	
<b>Service de Chevalier.</b>	
<b>The Widow of a Tenant in Capite must not marry without Licence</b>	
	388 C
<b>The Form of the Writ</b>	
	16.
<b>Her Marriage may be granted</b>	
	388 D, 389
<b>Where the Alienation shall not be without the King's Licence</b>	
	389
<b>Severance.</b>	
<b>Summons and Severance lies not in <i>Liberate probanda</i></b>	
	175 I
<b>Summons upon the Land, how to be tried</b>	
	215 C, 217 D, 218 B, C
<b>Summons and Severance lies in a <i>Quo Jure</i></b>	
	284 K
<b>Sheriff.</b>	
<b>May have an Under-Sheriff</b>	
	221 C
<b>May make an Attorney to make the Offers</b>	
	61 F
<b>What he ought to do upon a <i>Visita remouenda</i></b>	
	102 G
<b>What he ought to do upon an <i>Exem-</i></b>	

## The TABLE.

*Excommunicato capiend. & Cautions admittend.* 140, 141, 142, 143

May command a Replevin to be made by Word 154

What Returns to make, and what to do in Replevins 152, 153, 154, 155, 164A, 165 B

What he must do upon a *Nativo habend.* 171, 172

What he must do upon the Writ *de securitate Pacis* 177, 178, 179, 180

*Ex officio* may bind to the Peace 281 D, 282

To enquire when any Damage is done to any Person protected by the King 203 B, 204

May be sued for an Escape 205 G, A, C, 206, 266 A, 288 B

For a false Return 205 B, 215 C, 216 D, 217 D, 219 H

May bring his Writ of Rescous 225

To attend upon and execute the Process of Commissioners of *Oyer and Terminer* 250, 251

He shall make Admeasurement of Pasture 277 G

What Recognizances he may take, and how execution to be done upon them 294, 295

What he ought to do when a *Non ponend. in Affis* is directed to him 368, 369, 370, 371

Whom he ought to return upon Juries, and whom not 369, 370, 371, 372

### Spoliation.

What it is, where it lies, and for whom 80 G, 81 K, 82

Lies against him only that hath Institution 81 I

Lies not where the Right of the Patronage is to be tried 82 B

It lies by one Parson against another 82 E

### Statute.

How the Clerk must be qualified that is to take Obligations upon Statutes-Merchant 367 E

### Superstices.

When to be granted to the Lord's Court in ancient Demefne 29 G

Upon a Writ of Right where there is foreign Voucher 88 H, 530 A

To discharge a Man from an *Excommunicato capiend* 143 D, E, 530 B, 531

It lies upon a *Nativo habendo* 172 D

It lies upon putting in Surety to a *Supplicavit* 180 A, 529 E

It lies upon an *Audita querela* 230 G, 532 A

Upon an Appearance to an *Exigent* 524 A

The Form of the Writ *ib. A*

Where Sureties are found in Chancery 524

In what Cases to be granted 524A, 525B, C, D, 526, 527, 528

To be awarded out of the Chancery 526E, A, B, C, D

Not allowable to an *Exigent* after Judgment 526 C, 527 E

Where an Attaint is sued 527 F, G, 528 C

Upon a Writ *de Homine replegiando* 531 C

Where the Suit is in the Sheriff's Court, *Vi & Armis &c.* 531 D

Upon a Writ of Error in London &c. 532 E

Where the Sheriffs hold Plea of 40 s. *ib. A*

To the Constable of Dover *ib. B*

Super-

## The TABLE.

<b>Superfedeas.</b>	
To the Barons of the Exchequer, where they award Distress against one who hath none of the Lands of him who was the Accountant	532 F, G
<b>Surety.</b> Vid. tit. <i>Plegiis acquietand.</i> <i>Bayn</i> 213e.	
<b>Surety of the Peace.</b>	
The Form of the Writ	177 G
Where it lies, and for what	ib. G, H, 178 B, 179 G
Where upon Oath made, and where not	177 H
Attachment upon it	178 A
Damages and Fine	ib. A
Lies to the <i>Cingus Ports</i>	ib. B
The Form of the Writ directed to the Justices of the Peace and Sheriff	178 C, 179 D
Where returnable	180 B
When it may be superseded	ib. H
Must enter into Recognizance	181 D, 182
When, and where to be certified	179 G, 180 B, 181 C, D
For the Wife against the Husband	179 F
Where, upon Sureties being found in Vacation-time, a <i>Superfedeas</i> ought to issue out of the Chancery	524, 525, 526, 527, 528
<b>Suit.</b>	
Who must do Suit and Service at the Lord's Courts	355 B, C
The King's Ward nor Tenant not to do Suit to any Lord	352, 353, 354
<b>How to be done by Parceners</b>	
By Feoffees	355 C
Nor by Tenants in ancient Demesne at Court Leets	359 C
Distress must not be taken for more Services than are due	363, 364
The Writ <i>de Deonerando pro rata portionis</i> lies where part of the Lands for which an entire Fealty and Rent was reserved is aliened	521 H
<b>Significabit.</b>	
What it is, and where it lies	
Pope's Bull	144 F
By a Bishop upon another Bishop's Certificate	ib.
<b>Supplicabit.</b>	
What it is, and where it lies	
Sureties must be found upon it	179 G, 190 E
Removed by <i>Certiorari</i>	181 C, D
Where returnable	180 A, 190 E
For the Wife against her Husband	530 F
The Form of it	ib.
<b>Spiritual Persons.</b>	
Where the Successor shall have a <i>Sine assensu capituli</i>	
Upon the Alienation of their Predecessor	431, 432
The several Forms of the Writ	ib.



## The TABLE.

<p><b>Tail.</b></p> <p><b>T</b>enant in Tail may bring a <i>Quod ei deservias</i> 347</p> <p>Where the Heir in Tail shall bring his <i>Quod permittas</i> 472</p> <p>In what Cases the Heir in Tail shall bring his Formedon in Descender 471, 472, &amp;c.</p> <p>Where Lands in Tail are liable to pay the King's Debt 481 B, 482, 483</p> <p>In what Cases the Formedon in Reverter lies 487, 488, 489</p> <p style="text-align: center;"><b>Tenure.</b></p> <p>Upon what Tenures the Writ of <i>Exonerations Scilicet ad curiam com. vel Baron</i>, lies 352 A, B, 353, 354</p> <p>What shall be Tenure in <i>Capite</i> 666 A</p> <p>Where Tenant in Socage must sue out his Livery 578 C</p> <p style="text-align: center;"><b>Testament.</b></p> <p>In <i>London</i>, where to be proved 443, 444, 446 A</p> <p>In <i>Oxford</i>, where to be proved 444</p> <p>A Writ lies to the Ordinary to compel him to prove a Will 445</p> <p style="text-align: center;"><b>Toll.</b></p> <p>No Toll to be paid for Lands in ancient Demefne 30 E, 505 A, 506, 507 D</p> <p>Account lies against Collectors of Toll. 262 F</p> <p>Where the Writ <i>de Effend. quiet. de Tolnato</i> lies, and for whom 503 I, 504 D, E, 555 F</p> <p>The Form of the Writ, and to whom directed 503</p>	<p>Where returnable 503 A</p> <p>For spiritual Persons 505 F</p> <p>For the Lord in ancient Demefne 506 B</p> <p>For Merchant Strangers to be discharged of Murage, Pannage and Pontage, &amp;c. 504 D</p> <p style="text-align: center;"><b>Torn de Vic.</b></p> <p>The Form of the Writ commanding the Sheriff not to come out of another Liberty to his Torn 357</p> <p>When the Sheriff ought to hold his Torn 357</p> <p>What Persons are not compellable to come to it 358 C, 359 C, D</p> <p>How often compellable 360</p> <p style="text-align: center;"><b>Traverse.</b></p> <p>The Sale mentioned in the Writ of <i>Ejectio firme</i> is not traversable, but only the Ejectment 441 K</p> <p>The Quantity nor Seisin of the Services are not traversable in a <i>Cessavit</i> 464 F, G</p> <p style="text-align: center;"><b>Writs.</b></p> <p><i>De muliere abducta cum bonis viri</i> 117 K</p> <p>It lies for a second Distress made by the Sheriff 159 H</p> <p>The several Sorts and Forms of the Writs 190, 191 B, 192, 193, 194, 195, 196, 197, 198, 199</p> <p>Where it lies, and in what Cases, and for whom 190 A, 191 B, C, D, E, F, G, H, 192 I, 193, 194, 195, 196, 197, 198, 199</p> <p>To whom directed, and where returnable 191 G, H</p> <p style="text-align: right;">When</p>
---	---

## The TABLE.

When <i>Vi et Armis</i> is not to be in the Writ 190 A, 191	<i>de passio</i> 196
When it must be in the Writ 191 H	<i>Pro lapide molari</i> 196 L
Good Cause of Abatement 191 H, 192	For a Mill-Pool broken 196 M
Where it is returnable in the King's Bench, and where in the Common Pleas 192 I	For taking and Sheering his Sheep 196 O
<i>de Impositione</i> 192 K, 193 P, 201 G	For breaking his Sluices 197 B, C
One Writ lies for several Tres- passes 192 L, 193 G, 196 I	For putting out an Eye 197 F
For a Hawk 192 L	For a Corporation 197 G, H
For hunting in a Warren 192 M	<i>Oves cum cane fugavit</i> 198 L
In a Close 193 A, 198 K	For diverting a Water-course 198 M
Park 193 A	For carrying Cattel distrained to unknown Places 198 N
The Form of it 194	The Forms of the Writs 198 O, 199 P, A, B
<i>De solo fossis &amp; Carbonibus asportan- tis</i> 193 B	The Sheriff shall make Delive- ry upon these Writs 199 B, 200 E
<i>De equo Capt. quousq; finem fecit</i> 193 C	For taking his Oxen and Barges, &c. 199 C
<i>De domo fracti. &amp;c.</i> 193 D, 194 A, 196 I	For taking a Monk out of the Monastery 200 G
For Executors, where it lies, and the Form of it 193 E, 200 D	For taking and marrying his Son, or Daughter 200 H
Against a Corporation 193 F	For the King 200 I
For fishing in his Piscary, &c. 193 G, 195 G, 196 H, I, K	<i>Quare sensur. frater</i> 201 K
<i>De navi abdulla</i> 194 I	For taking away a Waif or Stray, &c. 201 B
<i>De bladis &amp; graminibus bosci Ca- dvi de passio.</i> 194 K	For taking away a Wreck 201 D
<i>De flagno fracti.</i> 194	Where the Servant is disturb- ed, the Master shall bring the Action 202 G, E
For molesting his Servants, and impounding his Cattel 194 N, 196 I	Between two Tenants in Com- mon 202 H
The Form of the Writ for a live Thing 195 B, 196 M	For taking his Apprentice 203 I
For dead Things 195 B, 196 M	Church-wardens <i>pro bonis Eccle- siae</i> 203 K
For releasing a Villain out of the Stocks 195 D, E, 197 D, 202 E	With a <i>Continuando</i> 203 L
For taking of his Doves, &c. 196 I	It lies for the Ordinary until Administration 203 M
<i>Pro bladis in garbis &amp; Fano</i>	It lies for taking the Lends and Goods during the King's Pro- tection 203 A, B, 204
	It shall be by <i>Pone per Vadies, &amp;c.</i> 250 G
	Ic

## The TABLE.

It lies for the succeeding Bishop, for Trespafs done in the Vacancy	248 H	For taking Toll where none is due	209 F
It lies upon a Disseisin	472	For distraining Tenants against a Prescription	209 F
<b>Trespafs upon the Case.</b>		For making a Gulph in the Water	210 A
The Form of the Writ, and where it lies	191 B, 204 E, 205 F, G, A, 206, 207, 208, 209	Against the Sheriff for entering a Liberty	210 B
And for what	191 B, C, 205 G, B, C, 206, 207, 208, 209	For the Gaoler against the Prisoner for Escaping	210 C
It shall be by Summons	204 G, 205 C, 206	Against him that playeth with false Dice	211 D
Against the Sheriff for an Escape	205 G, A	<b>Trial.</b>	
For a false Return	203 B	The Mife shall be joined in a Writ of Right	9 E, F
Where against the Bailiff of a Liberty for a Distress taken	206 E, F	So likewise in a Writ of <i>Ne in-juste vexes</i>	23 A
For not cleansing his Ditches	206 G	Whether Summons or no, how to be tried	215 C, 217 D
For a Prisoner against the Gaoler, for abusing of him	207 H	In a <i>Quo Jure</i> shall be put upon the meer Right or Battail	284 I
For distraining a Prelate's Horse whereon he is riding	207 H	So likewise upon a <i>Rationabilibus distris</i>	285 Q
Or upon their Church-Lands	208 E, 209	The Mife shall be joined in a Writ of Customs	339 N
For Nonfeazance	207 A	<b>Toll.</b>	
Against an Inn-keeper, when Goods are stoln from thence	208 B	The Form of the Writ where the Party is denied Justice, or his Suit upon a Writ of Right	6 F, 7
Upon a Warranty	208 C	To remove a Writ of Right of Dower	15 E
For a Mal-feazance	208 D, 209 F, 219 A		



The TABLE.

Ualozę Paritagii.

THE Form of the Writ  
 314 F, G, 315 K  
 What it is, and where it lies  
 314 F, G, 315 I, A, B  
 Against the Heir of the Mesne  
 315 L

Uiew.

It shall be granted in a *Seffa ad  
 Molendinum* 272 C  
 In a *Curia claudenda* 383  
 Shall be in an Assise of Nu-  
 sance 410 F  
 Lies not in a *Nuper obiit* 439 Q

Uicar. Vide Parson.

Uil Laica remouenda.

What it is, where it lies, and  
 for whom 121 D  
 The Form of the Writ upon  
 the Bishop's Certificate *ib. E*  
 When directed to the Sheriff,  
 and the Form thereof *ib. F*  
 What the Sheriff ought to do  
 122 G  
 The Form of the Bishop's Cer-  
 tificate *ib. B*

Uillenage.

In a *Homine Replegiando* 149,  
 151, F, G, A, B

Uictuallers.

No Person shall be a Victualler  
 during the Time that he is Mayor  
 or Sheriff, &c. of any Town 384  
 O, A, B  
 The Form of the Writ against  
 them 385  
 The Forfeiture *ib. B*

Uoucher.

Where a Man may vouch and  
 doth not, he shall not have a  
*Warrantia Chartę* 298 I, 299 D  
 What Lands of the Vouchers  
 are liable *ib.*  
 A Man cannot vouch in an  
 Assize 299 A  
 When he may in an Assise of  
 Novel Disceisin 396  
 May vouch at large in a *Mort  
 d'Ancestor* 396 F, 435, 436  
 Lies not in a *Nuper obiit* 439 Q

Uurpation. Vid. tit. Present-  
 ment and Quare Impedit.

Utlawry.

Process to Utlawry lies in a  
 Writ of Accompt 259 H

Uaste.

The TABLE.

Waste.

THE Nature of it, and against whom, for whom, and what it lies	130 I, 131, 133 K, 134	By Grantee of a Remainder	129 C, D, 133 B
The Form of the Writ against Tenant in Dower	123 C, 124 A	For the Lord by Escheat	130 G
Against Tenant for Life, or Years	123 C, 128 F	Against Tenant by <i>Elegit</i> , and the Executors	<i>ib. H</i>
Where it is brought by an Abbot	123 D	Against Escheators and Guardians	131 A, B, C
Where by the Heir, and when	<i>ib. 131 A, B, 132 E, 134</i>	Betwixt Tenants in Common	<i>ib. D, 134</i>
Against whom to be brought	123 E, F, 124 A, 125 B	By Guardian in Socage	132 G, 134
By the King's Grantee in Reversion	124 H	What shall not be accounted Waste	132 K, L, M
The Form of the Writ against Tenant by Courtesy	125 C	Feme excused by the Husband's Death	<i>ib. I</i>
Where the Heir grants the Reversion in Fee	<i>ib. D</i>	For not repairing of Banks	<i>ib. N</i>
Where it lies against Tenant per Courtesy	<i>ib. D, E</i>	To plough a Meadow	133
The Form of the Writ against Tenant for Life or Years	126 G, H, I, 133 D, 134	Lies not against Tenant in Tail	<i>aptes Possibility ib. P</i>
The Form of it for an Abbot, or his Predecessor	126 A	What Trees shall be Waste	<i>ib. A, C</i>
The Form of the Writ against Executors	<i>ib. B</i>	Waste done by a Stranger	<i>ib. G</i>
Against Baron and Feme	<i>ib. C</i>	For Tenant in Tail	<i>ib. H</i>
For the Heir against Baron and Feme	127	When, against whom, and by whom to be brought	133 K, 134
For one which was a Copartner after Partition	<i>ib. D</i>	Destruction of Villeins	134
For Coparceners	134	No Waste nor to repair ruinous Houses	<i>ib.</i>
Against Grantee for Tenant for Life	127 E	By the Heir against Guardian in Socage	134, 135
Against Lessee of a Parson, Prebendary, &c.	128 F, 133 O	Attaint lies upon an Enquiry in Waste	236 C
By Grantee of, or he in the Reversion	128 G, H, 129 A, B, C, D, 130 E, H, 131 C, 133 I		

Withernam.

<i>Capias in Withernam</i> against Body and Goods in a <i>Homine replegiando</i>	151 C, 152
The Form of the Writ	153 A, 164 F
In what Cases it lies, and for whom	153 G, 164 E
Now omitted to a Liberty	154 B
It may be awarded out of the County-Court	<i>ib. C</i>

The

## The TABLE.

<p>The Sheriff's Return to be reheard 164 G</p> <p>The Sheriff's Return to ground the Writ <i>ib. A</i> 165</p> <p style="padding-left: 2em;"><i>Non omittas</i> 165</p> <p>The Form of the Writ out of the Chancery <i>ib. B</i></p> <p>Process to the Usherly lies upon a <i>Withernam</i> returned in the King's Bench or Common Pleas 166 D</p> <p style="padding-left: 2em;"><i>Auria elongata</i> <i>ib. D, E</i></p> <p style="text-align: center;"><b>Warrantia dicti.</b></p> <p>What it is, and where it lies, and in what Cases 36 A, B, C, D</p> <p>The Form of the Writ 36 D</p> <p>Grantable by the King only, and to whom to be directed 37 E</p> <p style="text-align: center;"><b>Warrantia Chartæ.</b></p> <p>Of Lands in ancient Demefne 29 H, 300 K</p> <p>The Form of the Writ 297 E</p> <p>Where it lies, and for whom 297 D, 298, 299, 300</p> <p>Where it lies where there is no Charter 297 F, 298 G</p>	<p>It lies upon the Words <i>dedi &amp; concessi</i> against the Grantor, but not against his Heir 298 H</p> <p>It lies not where a Man may vouch, and will not <i>ib. I</i></p> <p>It may be sued out before he is impleaded 298, 299 D</p> <p>What Lands of the Vouchee's are liable <i>ib.</i></p> <p>It lies not upon an Exchange 299 B</p> <p>It lies against none but Tenant of the Land <i>ib. C</i></p> <p>In what County to bring it <i>ib. F</i></p> <p>By what it shall be determined 300 G</p> <p>Divers Writs <i>ib. H</i></p> <p>What shall not abate it <i>ib. L</i></p> <p>How the Recovery shall be when the Demandant is not impleaded 302 E</p> <p style="text-align: center;"><b>Wreck.</b></p> <p>The Lord may bring Trespafs for taking of it away 201 D, B</p> <p>What shall be a Wreck 426 C</p>
---	--

FITZ.



FITZ-HERBERT

HIS

Natura Brevium.

Writ of Right Patent.

A THE Natures of the Original Writs are to be shewed and declared, according to the Manner and Form as they are in Order written and set down in the Register, which shall be expressed and specified in Form following :

And first, because the Writ of Right Patent is in its Nature the highest Writ in Law, the Nature of that Writ shall be first declared, and where it lieth.

B This Writ ought to be brought of Lands or Tenements, and not of Advowson, or of Common ; and lieth only of an Estate of Fee-simple, and not from him who hath a lesser Estate. as Tenant in Tail, Tenant in Frank-marriage, or Tenant for Life: For these Tenants shall not have a Writ of Right Patent. 40 E. 3. 8.

C And this Writ lieth properly where a Man is seised in Fee-simple, and another recovereth the Land against him by Default in a Praeceptum quod reddat: Now he, who hath lost by Default, ought to sue this Writ. Or if a Man seised in Fee-simple die seised of such Estate, and a Stranger doth abate, and entereth into the Land, and deforceth the Heir; the Heir may sue this Writ against the Tenant of the Freehold of the same Land, or an Assise of Mortdauncester. 11 Aff. 17. per Curiam a Man recovered against the Heir by Default, and he brought a Mortdauncester.

E And this Writ ought to be brought against him who hath a Freehold at least in the Land, and not against Tenants for Years, Tenants by Statute-merchant, Tenants by Elegit, nor Tenants by Statute-staple; but ought to be brought against those Tenants who have an Estate in Fee-simple in the Lands, or an Estate-tail, or for Term of Life at the least.

F

And

## Writ of Right Patent.

And this Writ is always Patent, and not Close, as other Writs are. And if the Lands be holden of other Persons than of the King, or of the Queen, then this Writ shall be directed unto the Lord himself, of whom the Lands or Tenements are so holden, if the Lord be not out of the Realm; for then it shall be directed unto the Lord's Bailiff; and then the Chancellor of England ought to be certified thereof. And if a Man be elected Bishop, and a *Writ of Right Patent* is to be used in the Court of the Manor of the said Bishop, the Writ shall be directed unto the Bailiff of the Elect, and not unto the elect Bishop himself. And this Writ is as a Commission unto the Lord, or unto the Bailiff of the Manor, that they shall do Right. And the Form of the Writ directed unto the Lord himself is such:

*Henricus Dei gratiâ, &c. Henrico Comiti Lanc. salutem. G*  
*Præcipim' tibi, quôd sine dilatione plenum redditum teneas A. de B. de uno messuag. & xx. acris terr' cum pertin' in I. quæ clamat tenere de te per liberum Servitium unius denarii per ann', pro omni Servitio, quod W. de T. ei deforceat; & nisi feceris, Vic' Nottingham faciat, ne amplius inde clamorem audiamus pro defectu reddit. Teste, &c.*

And if the Lord be out of the Realm, then the Form of the Writ which shall be directed unto his Bailiffs shall be such:

*Rex Bailivis H. Comitis Derby. Honor. de P. in Com. Derby. salutem. Præcipimus vobis, quôd sine dilatione plenum reddit' teneatis A. de B. de uno messuag. & xx. acris terra cum pertin' in I. quæ clamat tenere de dicto Dom. vestro per liberum Servit. faciend', scilicet ad Curiam præd' Domini vestri Honor. præd', in Comitatu præd', de tribus septimanis in tres septimanas, pro omni Servitio, &c. ut supra.*

And by that it appeareth, that in a *Writ of Right Patent* he must express by what Services the Lands are holden, &c. And if the Lands are holden of the King, or of the Queen, as of an Honour, or in Burgage, then the Writ shall be directed unto the King's, or Queen's Bailiffs, and the Writ shall be such:

*Henricus Dei gratiâ Rex, &c. Bailivis suis Lincoln' salutem. Præcipimus vobis, quôd sine dilatione plenum redditum teneatis A. de B. de uno messuagio cum pertin' in Lincoln', quod clamat tenere de vobis per liberum Servitium unius denarii per annum pro omni Servitio, quod W. de B. ei deforce', ne amplius inde clamorem audiamus pro defectu reddit. &c.*

And if a Man sue a *Writ of Right Patent* of Lands or Tenements which are holden by a Knight's Fee, then the Form of

*Writ of Right Patent.*

of the Writ shall be: *De uno mesuag. & x. acr. terræ, &c. que clamat tenere de te per Servic' feod' unius Militis pro omni Seruicio.*

**L** And the Writ of Right lieth of a Passage over the Water of Thames, and of Pasture for 100 Sheep, and of the Rent of 1 l. of Ginger, thus: *De uno mesuag. decem acris terra, novem solidat. redd', & passagio ultra aquam Tamisicæ, & pastura ad cent. oves, cum pertin' in W. & de redditu unius libræ zinziberis, unius libræ canell. unius rose, unius paris calcarium deauratorum, & de tertia parte unius gardini, cum pertinenc. in N. que clamat tenere de nobis per liberum Seruitium, inveniend. nobis una cum participibus suis quinque naves ad transitum nostrum ad mandatum nostrum pro omni Seruicio, &c.*

**A** And if the Lands of any Lord be in the King for the Nonage of the Heir, and a Writ of Right is to be brought in the Court of the Manor, where the King hath committed the Wardship of the Lands to another; the Writ of Right shall be directed unto the Bailiffs of the Guardian to whom it is committed, or unto the Guardian himself, if he hath the Land in Ward in his own Right, and by Reason of the Seigniori that the Heir is in his Ward. And the Forms of the Writs in the Register are thus: *Rex Ball. custod. terræ & hered. A. de B. Or thus: Ballivis custod. terræ A. de B. And this Writ is where the Guardian hath only the Wardship of the Land, and not of the Heir, &c.* And unto the Guardian himself the Writ is, *Rex custod. terræ & hered. B. salutem. Præcipim tibi &c. quod clamat tenere de prædict. her', &c.* And if the Heir hath no Court for the Poorness of the Land, that it is of so small Value, then the Writ shall be directed unto the chief Lord, as chief Lord, and not as a Guardian; and then the Writ shall say, *Et quæ de ipso clamat tenere, &c.* and shall not say as Guardian.

And it appeareth that a Man shall have a Writ of Right of a Knight's Fee; and the Writ shall be such:

**B** *Rex A. de B salut', &c. Præcipimus tibi, quod &c. W. &c. de Seruicio unius feod. Militis cum pertin. in W. quod clamat tenere, &c. per Seruicium unius paris calcarium deaurator', pro omni Seruicio, &c. or per Seruicium inveniend. hominem equitem vel peditem, ad eundem tecum in exercitu Walliæ, ad sumptum tuum & ad costum, &c. pro omni Seruicio. Or thus: Per liberum Seruicium, portand. Breuia tua ad sumptum tuum & ad costum tuum infra Com', pro omni Seruicio.*

**C** And there is an Order set in the Register, when a Mandameth divers Parcels of Land in his Writ which are of divers Natures, which Parcel shall be first specified in the



## Writ of Right Partent.

Writ, and what Parcel shall be next unto that, and then what Parcel shall be next to that, and so of all the Parcels; and that appeareth by the two Verses following:

*Junium, un, leudinum, lombare, dinum, ra, tum, tura, cus, ra,  
Mes tost ma co gar ter pra pas bos brue mira,  
ria, cus, tum, caria, ditus*

*Junca maris alne pis ved seffare priora.*

8 Aff: 24. in  
which Af-  
file (Bifino)  
was put be-  
fore, yer  
good, 2. 7.  
e. 4. Dy. 11.  
34.

And if a Man in his Writ will demand 20 Houses, and 10 Acres of Land, and 10 Acres of Meadow, and 10 Acres of Pasture, and divers other Parcels; and afterwards in the same Writ he will demand the Moiety, or the third Part of one House, or of one Acre of Land, or of Meadow, or of Pasture; then the Form of the Writ is, to put in the Beginning of the Writ the whole Parcel, and in the End of the Writ the Moiety, or the third Part, &c. thus: *Quod plenum redditum, &c. de uno mesuagio, uno molendino, uno giardino, iudicatum unius mesuagii, unius acre terre, cum pertinentiis exceptis 1. acra terra in N. &c.* so as the Exception shall always be in the End of the Demand.

And a Writ of Right may be brought against divers Tenants who hold their Lands severally; and then the Form of the Writ is, *Rex A. B. &c. Praecipimus tibi, quod, &c. plenum redditum tenentis A. de xx. acris terre cum pertinentiis in N. quare clamat, &c. unde E. xi. acra, & S. tres acras, & C. vii. acras ter. et desore.* And so the Word [Land] shall be in the End to him that shall be supposed last Defendant, &c.

And if a Writ of Right be brought in the Court of any Bishop, or Abbot, it shall be then directed to the same Bishop thus: *Rex, &c. venerabili in Christo Patri Gulielmo eadem gratia Archiepiscopo Cantuariensi, totius Anglie Primate, salutem.* Mandamus vobis, quod sine dilacione, &c. quod clamat tenere de vobis per liberum Servitium, &c.

And if it be directed unto an Abbot, then the Writ shall say, *Quod clamat tenere de te, &c.*

And if in the Time of the Vacation of any Bishoprick a Writ of Right shall be brought in the Court of any Lande which are of the Bishoprick, which are in the King's Hands by Reason of the Vacation of the Bishoprick, then the Writ of Right shall be directed unto the King's Bailiff, or unto the Bailiff of him who is the Bishop elect; and the Form of the Writ is such: *Rex Bellivis Archiepiscopat. Ebor. de C. salutem.* Or thus: *Rex Ballivis H. Lincol. de H. salutem.* Praecipimus vobis, &c. quod clamat tenere de prelati Archiepiscop. Or thus, if it be directed unto the Bailiffs of the Bishop elect: *Quod clamat tenere de prelati Domino vestro per Servitium, &c.*

But

**F** But the Lord may give Licence unto his Tenant to sue his Writ of Right in the King's Court, or the Common Pleas, before the Justices; and that as well after the Writ purchased and returned into the Common Pleas, as before the Writ purchased and sued. And the Form of the Writ when it shall be sued in the Common Pleas by Licence of the Lord shall be such: *Rex Vic', &c. Præcipe A quò juste, &c. redd. C unum mesuag cum pertin in M. quod clamat esse jus & hereditatem suam. & unde querit: quòd præd. A. ei injuste deforceat; & nisi fecerit, & prædict' C. fecerit se securum de clamore suo prosequend' tunc summ. per bonos Sum. prædict' A. quòd sit coram justic. nostris apud Westm. in quindecim Sanctæ Trinitat', ostens. quare non fecerit: & habeas ibi Sum', & hoc Breve. T. &c. quia I. capital Dominus Feod. illius nobis inde remisit Cur. suam.* And so this Clause shall be put in the Writ after the *Teste, &c.* And if this Clause be omitted, and the Lord after the Purchase of the Writ send his Letter to the King that he is contented therewith, it is sufficient.

And if such Clause, *quia Dominus remisit Cur. suam*, were in the Writ, it is not material whether there were any Letter of the Lord in the Chancery, proving his Assent, or not. And the Form of the Letter of Licence, which shall be certified unto the King, is thus:

[ 3 ]

**A** *Excellentissimo Principi Domino H. Dei gratiâ Regi Angl', Domino Hibern', & Duci Aquitanix, Dunelm Episcopus salutem in eo per quem Reges regnant, & Principes dominantur. Quia K. de S. in Curia vestra, coram Justitiar. vestris de Banco, per B eve vestrum de Resto, W. de uno mesuagio cum pertin. in I. quod de nobis tenatur, nostrâ licentiâ mediante proposuit implacit' vestre Celsitudini Regiâ tenor. pres. intimamus nos nostram Cur. vobis inde hinc vice remisisti, salvo nobis aliâs jure domini nostri in casu consimili, si acciderit. In cujus rei testimonio has literas nostras fieri fecimus Patentes. Dat' apud London', die, a. no, &c.*

**B** But if the Tenant of any Lord sue such a Writ of Right in the King's Court without such Letter, and recover, it seemeth the Recovery is good, and the Lord shall not void the same nor the Tenant. Also it seemeth to stand with Reason, that if a Man hold of any Lord, as of a Seigniority in grofs, which is not any Manor, for which Seigniority he cannot keep any Court; that then the Tenant ought to sue such Writ as before in the King's Court, and that the Lord shall not have Action, or other Means to annul this Act, because he hath not any Court to hold Plea for that there. In the End of the Writ may be these Words: *Quia Dominus remisit Curiam, &c.* But if the Tenant will sue forth the Writ of *Præcipe in Ca-*

## Writ of Right Patent.

ple in the King's Court for such Lands as are holden of another Lord, then the Lord shall have a Writ out of the Chancery directed unto the Iudices of the Common Pleas, commanding them, that if it doth not appear unto them that the Lands are holden of the King, but of another, they shall proceed no farther on that Plea. For by this Writ the Plea supposeth the Lands to be holden of the King, and therefore He and his Heirs shall be concluded against the King for the Tenure, and the same shall be prejudicial unto the Lord of whom the Lands are holden: But by the other Writ he doth not suppose any Tenure in the Writ, and therefore there is great Diversity. *Tamen quare.*

And if a Man sue a Writ of Right directed unto the Lord of whom the Lands are holden, and he will not hold his Court to proceed upon the Writ; then the Demandant in the Writ of Right shall have a Writ directed unto the Lord, commanding him to hold his Court, &c. and if he will not receive the Writ, nor do Right unto him, he may sue forth a Writ commanding him to do Right, and thereupon he may have an *Alias*, and a *Pluries*, and *Attachment*; and the Form of the Writ of *Attachment* is such:

*Rex Vie', &c. Si A. fecerit, &c. tunc pmo, &c. B. quod sit, &c. ad responsa tam nobis quam prefato A. quare cum eidem B. per Breve nostrum de ReHo precipimus, quod sine dilatione plenum rectum teneat pref. A. de uvo mesung. cum pertin' in N. quod T. ei d'forcent; idem B. Mandat' nostrum in hac parte parvi pendens, Breve nostrum pradict' in favorem pradict' T. malitioso suppressit. Or thus. Pradict' Breve nostrum recipere, & Curiam suam tenere, & eidem A. in premiss. justiciam facere recusavit, in nostri & Mandati nostri pradict' contempit & ipsius A. gravi damnum, ac exheredationis periculum manifestum; & habeat, &c. And upon that if the Defendant appear he shall be put to Answer, &c.*

But if the Lord of the Court hold his Court, but the Lord, or the Bailiff, or Officer will not do him Right, or delay him to have Right, or to make Process, &c. then the Demandant may shew unto the Sheriff of the County how he is delayed, &c. and pray the Sheriff to award such a Precept or Writ which is called a *Tolt*, directed to his Bailiffs, by his Precept to remove the Plea before him into his County; and upon that the Sheriff ought to award such a Precept to his Bailiff, &c. and to go unto the Lord's Court, and there remove the Matter before the Sheriff in his County. And the Form of the Precept is such:

Robertus



Robertus A. Vicecomes Norf. Edmundo C. Bal. Domini Regis Ducat. sui Lancast. de F. salutem. Quia ex querela Joh. B. ad Com. meum, scilicet, die Luna proxima, &c. anno regni, &c. apud Norwic. in le Shire-house tentum, personaliter accedentis accipi, quod, licet ipse Brevis Domini Regis de Reito patens, Ball. dicti Domini Regis Ducat. sui Lancast. de F. in dicto Com. meo, directus, de eo, quod ipse plenum rectum tenent dicto Joh. B. de maner. de F. cum pertin., quod Joh. S. defore. at, detulisset J. P. & J. B. Ball. dicti Domini Regis Ducat. predicti de F. predicti tamen pro eo quod dicti Ballivi favent dicto J. S. in ea parte, & plenum rectum secundum exigentiam ejusdem Brevis hucusque distuler. facer; tibi ex parte Domini Regis precipio, firmiter injungens, quod in propria persona tua accedas ad Curiam Domini Regis Ducat. sui predicti de F. & loquelam que est ibidem int. pres. Joh. B. & Joh. S. per dictum Brevis in Com. meo proxima tenend. tollas, & summoncas per bonos Sum. predicti Johannem S. quod sit ad Com. meum Norf. die Luna proxima futur. apud N. in le Shire-house tenend., presato Johanni B. inde responsurus: & habeas ibi loquelam predicti, Sum. & hoc Præcept. Dat. in Com. meo apud N. in le Shire-house, die Luna proximo, &c. anno supradicto.

And by this it appeareth, that the Demandant may remove the Matter out of the Lord's Court into the County-Court: And it seems reasonable that the Tenant may also remove the Matter by a *Tolt* made by the Sheriff, supposing that the Bailiffs of the Court do favour the Demandant in the Matter: *Tamen Quare*; for the Rule in the Register is, that the Tenant may remove the Plea out of the Lord's Court for good Cause before the Justices in the Common Pleas; but the Demandant cannot so do, because he may have a *Tolt* from the Sheriff, to remove it out of the Lord's Court into the County-Court.

**A** And when it is in the County, he may remove it by a *Recordare* before the Justices in the Common Pleas. And by this Rule it seems, that the Tenant cannot remove the Plea by a *Tolt* out of the Lord's Court into the County, but he ought to remove it into the Common Pleas by a *Recordare*, &c. and that for good Cause shewed in the Writ. And the Writ of *Recordare* is such: *Rex Vic. &c. salut. Præcipimus tibi, quod assumptis tecum quatuor discret. & legal. Mililibus de Comitatu tuo, in propria persona tua accedas ad Cur. A. de B. & in plena Cur. illa recordari fac. Loquelam qua est in eadem Curia per Breve nostrum de Reito, inter W. Petentem & S. Tenentem, de uno mesuag. cum pertin. in B. & Record. illud habeas coram Justiciariis nostris apud Westm. in xv. Januarii Mich. sub sigillo tuo, & sigill. quatuor legalium hominum ejus-*

## Writ of Right Patent.

dem Cur qui Record, illi interfuerunt, & partibus eundem dictis prefatas, quod tunc sint ibi, in Loquela illa prout iustum fuerit processus, & habeas ibi nomina predicta. quatuor hominum, & hoc Breve. Tunc, &c. And in the End of the Writ of Recordare, the Cause of the Removal shall be put in thus: *Quia misuag. predicti T. Ballivo Cur' predicti, qui tenet Placita ejusdem Cur' tanquam consanguineo & proximo heredi predicti W. descendere debuit post mortem ejusdem T. si idem W. sine hered. de se obiisset, & idem W. illud versus prefatus T. in Cur' predicti. discretionasset, propter quod idem Ballivus faveret ipsi W. in Loquela predicta, ut dicitur; fiat Executio istius Brevis, si causa sit vera, & predicti. S. hoc petat, & aliter non.*

And there are many other Cases put in the Register of **B** Remover of this Plea into the Common Pleas at the Suit of the Tenant. As if the Lord take upon him for to maintain the Matter, to have Part of the Land. Or if the Tenant alleges Bastardy, or plead a Foreign Plea, or joyn the Wife upon the Grand Assise, &c. And when the Demandant hath removed the Plea by *Tolt* into the County, then the Demandant may remove the same into the Common Pleas by a *Pone*, without expressing any Cause in the *Pone*. But the Tenant cannot remove it, without a Cause be expressed in the *Pone*.

And it is a Rule, that a *Recordare* is not given to remove **C** any Plea in a Writ of Right, but for the Tenant. But *Pone* is given for the Defendant, but that ought to be out of the County-Court. And the Form of the *Pone* for the Demandant is such:

*Rex Vie', &c. salutem. Pone, ad petitionem Petent', coram Justiciariis nostris apud Westm. in O'habis Sancti. Trin. proxim. futur', Loquelam que est in Com. tuo per Breve nostr. de Resto inter A. Petent', & T. Tenent', de uno misuag. cum pertin. in T. & summo. per bono Summ. prad. T. quod tunc sit tibi, pref. A. inde responsur': & habeas ibi Sum', & hoc Breve.*

And here is not said [and another Writ,] because the Original *Writ of Right Patent* doth remain with the Demandant, and not with the Sheriff, &c. as do other Original **D** Writs.

And if the Tenant will remove the Plea out of the County by *Pone*, he ought to shew some Cause in the Writ; and the Writ is such: *Rex Vie', &c. Pone coram Justiciariis nostris apud Westm. in xv. Sancti. Trin. proxim. futur', Loquelam que est in Com. tuo, &c. ut supra; & a. c. pref. A. quod tunc sit ibi, Loquelam suam versus prad. T. inde possideat; si voluerit:*

V. 3. H. 4.  
14. 12 H. 4.  
13 & 17.  
1 H. 7. 30.  
1 & 2 P. &  
Ma. Dyer.  
111.

*voluerit: & habeas ibi hoc Breve. T. sic, &c. Quia prad. A. duxit in uxor. W. Consanguineum: Vic', &c. propter quod idem Vic. savet, &c. fiat Executio, &c. ut supra.*

And in a Writ of Right in a Court-Baron, if a foreign Plea be pleaded, or the Mife is joined to be tried by the Grand Assise, now if the Bailiffs will proceed, the Tenant may have a Prohibition directed unto them, which shall inhibit the Bailiffs to hold the Plea. Or he may inhibit the Lord himself, that he shall not hold the Plea, &c. And also such Writ shall be directed unto the Sheriff, forbidding him to hold Plea in the County-Court upon the Writ of Right after such Pleas pleaded; and if they do proceed, he may sue forth an *Alias*, and a *Pluries*, and an *Attachment* against them.

And it is to know, that if the Lord or Bailiffs do cease to proceed in the Plea by Reason of such Writ of Prohibition, then when the Justices in Eyre come into the County for all Pleas, the Demandant may come into the Chancery by the Record of the Writ of Prohibition, which issued before out of the Chancery, which is always enrolled in the Chancery; and thereupon he shall have a Writ directed unto the Sheriff, to summon four Knights to chuse the Grand Assise upon the Writ of Right, which is in the Lord's Court, or in the County. And the Writ of choosing the Grand Assise shall be such:

*Rex Vic', &c. salus', Summ. per bonos Summ. iiii. legales Milites de Com. tuo, quod sint coram Justic. nostris ad primam Ass. cum in partes illas venerint, ad ligend. super sacram. suam xxi. de legal. Militibus de visn de N. qui melius sciant & velint dicere veritas. ad faciend. Recogn. magne Assis nostre, inter A. Petent. & B. Tenant', de uno mesuag. cum pertin. in N. unde idem B. qui tenens est, p'stat se in magnam Assis. nostram, & petit Recognitionem fieri, inter eorum majus jus habeat in mesuag. predict': & summ. per bonos Summ. predict'. B. quod tunc sit ibi, auditurus illum election': & habeas ibi nomina predict'. Militum, & hoc Breve.*

And when the Plea is in the Common Pleas, then this Writ of *Magna Assisa eligenda* shall issue out of the Common Pleas, and is Judicial: But in the Case before, it shall issue out of the Chancery, without paying a Fine. And if the Demandant sue a Writ of *Præcipe in Capite* in the Common Pleas for Lands holden of another Lord than of the King, then the Lord of whom the Lands are holden may sue forth a Writ directed unto the Justices of the Common Pleas, rehearsing how that the Land is holden of him, commanding them to proceed no farther, &c. And



*Writ of Right Patent.*

And as before is said, none can sue or maintain such *Writ of Right Patent*, but they who have an Estate in Fee-simple, as Tenant in Fee-simple, or Abbot, or Prior, or Bishop, or Master of an Hospital; and a Body politick, as Mayor and Commonalty, or Bailiffs and Commonalty, &c. and such Bodies politick may have such Writs for their Possessions. But Parsons, Vicars, or Chantry Priests, or Prebendaries, who have Patrons and Ordinaries over them, cannot maintain this *Writ of Right Patent*, but another Writ which is called *Juris Utrum*; the Nature of which Writ shall be after expressed.

If a Man bring a *Writ of Right Patent* as Heir unto his Ancestor, he ought to lay the Seisin and Esplees as in *Permanency* of the Profits of the Lands in his Ancestors. And if an Abbot, Bishop, or such Body politick, bring such Writ, he ought to lay the Seisin of the Esplees as in *Permanency* of the Profits in themselves, or in their Predecessors. And for the Residue of this Matter touching the *Writ of Right Patent*, and the Count, and the Bars, and all the Circumstances thereof, see the Title of *Droit* in the Abridgments.

And note, That a Writ of Right, which is called *Præcipe in Capite*, is no *Writ of Right Patent*, but is a Writ of Right Close, and shall be directed unto the Sheriff of the County, and lieth where the King's Tenant, who is seised in Fee-simple of Lands holden of the King in chief as of his Crown, and not of the King as of any Honour, Castle, or Manor, but merely of the King as of his Crown, who is a Lord in gross, (because it is holden of him who is always King) is deformed, &c. And this Writ is as high in its Nature as the *Writ of Right Patent*; and no Person can sue this Writ, if he hath not an Estate in Fee-simple of his own Possession and Seisin, or of the Seisin of his Ancestor or Predecessor.

§1 H.8. Dy  
er 34, 45.

And it lieth also where Tenant in Fee-simple of any Lands or Tenements, who holdeth such Land or Tenement of the King in chief as of his Crown, and not of the King as of any Honour, Castle, or Manor, loseth his Lands or Tenements by Default in a *Præcipe quod reddat*: Now He or his Heir may have this Writ of Right, of *Præcipe in Capite*, against the Tenant of the Freehold of those Lands or Tenements. And this Writ shall be Close, and shall be directed unto the Sheriff, and returnable in the Common Pleas before the Justices there; And in this Writ he ought to lay the Seisin in himself, or in his Ancestor or Predecessor,

Predecessor, in the false Form as he shall do in a Writ of Right

I *Rex Viz. Not. &c. Præc. A. quod iuste, &c. redd. B. unum mesuag. cum pertin. in D. quod clam. esse jus & hereditat. suam, & tenere de nobis in capite, & unde queritur quod prædict. A. et iniuste deservit, &c. Et nisi fecit, & prædict. B. fecit te secur. de clam. suo prosequend., tunc summ. per bonos Sum. prædict. A. quod, &c.* Or thus, if an Abbot or other Spiritual Persons sue the Writ; *Quod clam. esse jus Ecclesie sue Sancte Marie de N. & tenere de nobis in capite, & unde queritur, &c.*

K And by this Writ it fully appears, that Lands which are holden of the King as of an Honour, Castle, or Manor, are not holden <sup>V. 21 E. 3. B. Tenures.</sup> in *Capite* of the King, because that the Writ of Right in such Case shall be directed unto the Bailiff of the Honor, or Castle, or Manor, to do Right, &c. But when the Lands are holden of the King as of the Crown, they are not holden of any Manor, Castle, or Honour, but merely of the King as King, and of the King's Crown as of a Seigniority by it self in gross, and in chief above all other Seigniorities. And thereof it followeth, that there are many Errors and erroneous Opinions at this Day in the suing of Liveries, and finding of Offices, and determining which Lands shall be taken to be holden of the King in chief, and which not; and therefore *Quære* to know the Truth.

L In *Præcipe in Capite* the Tenant shall not plead that the Tenements are not holden of the King, although the Writ doth so suppose; but he ought to take the same by Protestation, and plead other Matter in Bar, if he have any Matter to plead. <sup>38 E. 3. 13. Br. Droit d. resu. 9.</sup>

M And in a Writ of Right he ought to count of his own Seisin, or of the Seisin of his Ancestor: And if he count of the Seisin of his Ancestor, he may allege the Seisin in the Time of King Richard the First, but the Seisin is not traversable: But the Tenant may tender a Demy-Mark to enquire of this Seisin, &c. And if it be found with the Tenant, that the Ancestor was not seised, the Demandant shall be barred. But if the King be party Demandant, the Tenant cannot tender the Demy-Mark to enquire of the Seisin, but ought to plead in Bar; and there the Tenant shall have no Imparlance without the Assent of the King's Serjeants. And it seems reasonable, if the Tenant in a *Præcipe quod reddat* lose by Action tried, that yet he shall have a Writ of Right.

N And so if the Demandant be barred in an Assise of *Mortuance* brought by him, or other Real Action, as a Writ



12  
 for 292/12/  
 211 [6.]  
 246:152/56  
 C. 5. par. 88.  
 If the Te-  
 nant after  
 the Mife  
 joined ma-  
 ketb De-  
 fault. final  
 Judgment  
 upon that  
 Default shall not be given, but a Verit Cape shall Issue, for peradventure he may  
 save his Default: But Judgment final, where it ought not to be in a Writ of Right,  
 shall bind until it be reversed.

*Writ of Right in London.*

Writ of Entry *sur Dissessu*, &c. or such Writ, and is barred by Action tried, yet he shall have a *Writ of Right Patent*, or *Præcipe in Capite*, if the Lands be holden of the King in chief: And so it seemeth, If a Man lose by Default in a Writ of Right before the Mife joined, yet he shall have a Writ of Right against him who recovereth. But after a Mife joined it is otherwise; for then upon Default after Issue joined, the Judgment shall be final, as well against the Demandant by his Nonsuit, as against the Tenant if he make Default after.

And a Man shall have a Writ of Right Patent of a Rent as well as of Land.

*Writ of Right in London.*

**W**RIT of Right Patent in London lieth of Lands, or Tenements within the City, &c. by him who claims an Estate in Fee-simple in the Lands and Tenements, and not by him who claims an Estate for Life, or in Tail, or in Dower, or by the Courtesie. For if Tenant in Fee-simple loseth his Lands in London by Default, or by Verdict, it seemeth that he shall have a Writ of Right of those Lands directed unto the Mayor and Sheriffs, and it shall be in the Nature as a *Writ of Right Patent*. And the Form of the Writ is such:

*Rex Majari & Vicecom. Lond. salut' Præcipimus vobis, quod sine dilatione plenum veltum tenatis E. de N. de uno mesuag. & duobus shoppis cum pertin. in Lond', que clamat tenere de vobis per liberum servic', &c. que W. ei deservcat, ne amplius inde clamoriam audiamus pro deserv. velt. Teste, &c.* And it shall not be said in this Writ, *Ex nisi feceris, Vicecomes talis Com. facies, &c.* because the Writ is as well unto the Sheriff of the said City as unto the Mayor.

And the *Writ of Right Patent*, which shall be directed unto another City or Barough, shall be of like Form as the Writ aforesaid is, as appeareth by the Register, thus:

*Rex Majari & Ballivis suis Oxon. salut' Præcipimus vobis, quod sine dilatione plenum veltum, &c. E. de C. de viginti solid. redditus, & pastur. ac servitium bovum cum pertin. in N. que A. de B. ei deservcat, &c.*

And



D And because that the Lands and Tenements within Cities and Boroughs are holden of the King in Burgage Tenure, it behoveth that the *Writ of Right Patent* be directed unto the said Mayor and Sheriffs, or Bailiffs, or Officers of the King, as if Lands were holden of the King as of an Honour, or Castle, or Manor.

E And also upon a Writ of Right sued in London the Plea shall not be removed by *Tolt*, or *Pone*, or *Recordare*, as another Writ of Right sued in the Court of another Lord shall be. But if the Tenant, in the *Writ of Right in London*, vouch a Foreigner to Warranty, the Demandant shall come into the Chancery, and shall sue a *Sum. ad warrantizandum* in the Common Pleas before the Justices at a certain Day, and another Writ unto the Mayor and Sheriffs, to send the Record before the said Justices at the same Day, &c. and then the Mayor and Sheriffs do adjourn the Parties before the Justices of the Common Pleas at a certain Day; and also, at the same Day, shall send the Record which is before them before the said Justices; and when the Justices have determined the Warranty, they shall send back the Record by Writ which shall issue out of the Rolls of the Justices, directed unto the Mayor and Sheriffs, commanding them to proceed in the Plea within the said City. And the same is by the Statute of *Gloucester de Forins. vocat. ad Warrannum. cap. 12.* And so shall it be done if the Tenant plead a Foreign Plea, the Plea shall be removed as aforesaid, and when the Matter of the Plea is determined, then shall it be sent back unto the Mayor and Sheriffs, as aforesaid, by the Equity of the said Statute.

And by the Rule in the Register, every *Praecipe quod reddat* of Plea of Lands or Tenements in London shall be directed unto the Mayor and Sheriffs jointly: But every other Writ shall be directed unto the Sheriffs only.

F And now it is a common Opinion, That if a Man hath Title to have a *Formedon* of Lands or Tenements in London, or any other Action real, as a Writ of *Entry sur Disseisin*, or other Writ whatsoever of Lands or Tenements, he ought to sue this Writ of Right Patent directed unto the Mayor and Sheriffs of London, that they shall do Right, &c. and that the Demandant, upon this Writ, shall make his Protestation to sue it in the Nature of what Writ he will, as a Man shall do upon a Writ of *Droit Close* sued in Ancient Demesne. But it seemeth the Law shall not be so; for this Writ is a *Writ of Right Patent*, which is directed unto the Mayor and Sheriffs, as other Writs directed unto another City

City or Borough are. And I have not heard that a Man shall make Protestation to sue such Writ Patent in the Nature of what Writ he will. But the City of *London*, by their Custom, have Power to hold Pleas of Lands within the City by other the King's Writs as well as by *Writ of Right Patent*, and that appeareth by the Register.

7 H. 6. 32.  
ac. 37 H. 6.  
27. But  
Plov. 124  
Stanford,  
contrary.

And it appeareth, that *London* is not ancient Demesne; C for then the Writ of Right, which shall be directed unto the Mayor and Sheriffs, should be Close, and not Patent. And it appeareth by the Register, in the Title of *Juris Utrum*, that a *Juris Utrum* was sued of Tenements in *London* returnable before the Justices of the Common Pleas.

And also it appeareth in the Register, in the Title of Writs of Waste, in the End of the Title, that a Writ of *Partic. facienda* was directed unto the Mayor and Sheriffs of *London*, to make Partition of Tenements in *London*; and also there followeth a Writ of *Essempment*, sued and directed unto the Sheriffs of *London*, upon a Writ of *Juris Utrum* depending before the Justices of the Common Pleas, of Tenements in *London*.

And it appeareth in the Register, a Writ of *Justiciis of Doxer* sued in *London* for Lands in *London* was directed unto the Mayor and Sheriffs of the City, and a Special Writ for the Heir in Tail for Lands in *London* directed unto the Mayor and Sheriffs there, upon a Devise made of the Lands unto his Ancestors in Tail, &c. And the like Writ for him in the Remainder in Tail, and also for him in the Reversion. And the like Writs upon Devises made in other Cities and Boroughs by some Persons to others, &c. And these Writs are in the Register after the Writ of *Formedon* in the Remainder, Fol. 244.

And by these Writs it appeareth, that a *Writ of Right Patent*, which is directed unto the Mayor and Sheriffs of *London*, is not such a Writ as a Man shall declare thereupon in the Nature of what Writ he will, &c. as it shall be upon a Writ of *Droit Close* sued in ancient Demesne; but that it behoveth to sue in *London* his Writ in the Nature of such Writ as his Case requireth, &c. But *Quere veritatem* of that which was used in ancient Times in *London*.

And it appeareth in the Register, that the King shall have a Writ of Escheat returnable into the *King's Bench*, for Lands in *London* escheated unto the King; and by the same Reason another Man shall have a Writ of other Nature, there, returned in the Common Pleas. But the King hath a Prerogative in this Matter before others, to sue in what Court he



he will; but he cannot alter or change the Nature of the Writ, otherwise than the Law giveth the same to him and others, and therefore *Quere* of this Marter.

C There is also another Suit which lieth in a City or Borough for Lands or Tenements, by Usage and Custom of the City, and that is by Bill without any Writ out of the Chancery; and the same is called a Bill of *Fresh Force*, or an Assise of *Fresh Force*, and lieth only where a Man is disseised of his Lands or Tenements in any City or Borough, or De-forsed of any Lands or Tenements after the Death of his Ancestor, or after the Death of his Tenant for Life, or in Tail, or in Dower, or the like; now with'n xl Days after the Title accrued unto him, he may sue this Bill of *Fresh Force*, and shall make Protestation to sue in the Nature of what Writ he will, as Assise *de Mortdauncestor*, or Assise of *Novel Disseisen*, or *Intrusion*, or of *Farmedon*, or in the Nature of any other Writ, as his Case doth require: But after the xl. Days past after the Title accrued unto him, he ought to sue a Writ out of the Chancery, directed to the Mayor and Sheriffs of *London*, as the Case lieth.

D And also it appeareth by the ancient Treatise of *Natura Brevium*, that if a Foreigner sue an Assise, or other *Præcipe quod reddat* of Lands in *London* in the Common Pleas, &c. that the Mayor and Sheriffs, &c. may demand Conufance, &c. And therefore it seemeth, if they do not demand Conufance of the Plea, but suffer the Recovery to pass in the Common Pleas before the Justices, that then the Recovery is good in the Common Pleas for the Lands in *London*. And when the Mayors and Bailiffs shall demand Conufance of Pleas, and when not, and when they have surceased their Times appeareth in the Title *Conufance*. In the Abridgments more at large; and therefore see there.

*Writ of Right of Dower.*

E THE *Writ of Right of Dower* is Patent, and shall be directed unto the Heir, to sue in the Court of the Heir as it appeareth by *Britton*. And where the Writ is directed unto the Heir of the Husband, and the same Heir is seised of the Land whereof the Wife demandeth Dower, then if he will not assign Dower unto the Feme, the Feme who is Demandant may remove the same by a *Tolt* into the County, and also may remove the same out of the County into the Common Pleas by a *Pone*, &c. without shewing of any Cause in the Writ, as the Demandant shall do in a Writ of Right



Right Patent. But the Tenant in a Writ of Right Patent shall not remove the Plea out of the Country into the Common Pleas, without shewing of Cause in the *Pone*. And the Tenant in a *Writ of Right Patent*, or in a *Writ of Right of Dower*, may remove the Plea into the Common Pleas by a *Recordare* out of the Court of the Lord, upon Cause shewed in the Writ. And what Causes are sufficient and good to remove the Plea out of the Lord's Court, or out of the County, and what not, does appear in the Register; and therefore see the Causes there. But the Demandant cannot remove the Plea out of the Court of the Heir by a *Pone*, because he ought first to remove it by a *Tolt* into the County, and from the County he may remove it into the Common Pleas by a *Pone*, without shewing of Cause in the Writ, as before is said.

And in a *Writ of Right Patent* the Plea may be removed at the Tenant's suit by a *Recordare*, out of the Lord's Court, into the Common Pleas, before the Justices there: And by the same Reason it seemeth that it may be removed at the Suit of the Tenant, in a *Writ of Right of Dower*, out of the Heir's Court into the Common Pleas, before the Justices there, by *Recordare*, for good Cause. But *Quere*.

And if the Husband do enfeoff a Stranger of all his Lands, and dieth, and his Heir hath nothing by Descent; now if the Feme be to sue forth a *Writ of Right of Dower*, it seemeth that she shall sue her *Writ of Right of Dower* directed unto the same Feoffee, &c. for after the Endowment the Feoffee shall be her Lord, and she shall hold this Dower of him by Fealty. But before the Statute *de Quibus Emptores terrarum*, if the Husband enfeoff a Stranger of Parcel of his Lands, &c. to hold of him, then if the Feme be to sue a *Writ of Right of Dower* against the Feoffee, the Writ shall be sued in the Heir's Court, and the Writ shall be directed unto the Heir, for the Seigniority that remaineth in him.

[ 8. ]

And so if the Husband at this Day giveth Parcel of his Manor in Tail to hold of him, and dieth, the Feme shall sue her *Writ of Right of Dower* in the Court of the Heir of her Husband against the Donee in Tail, and the Writ shall be directed unto the Heir: But if the Husband make a Gift in Tail of all the Lands that he hath, and dieth, and the Feme is to sue a *Writ of Right of Dower* of that Land; then the Husband's Heir cannot have any Court, because he hath but a Seigniority in gross; and therefore it stands with Reason that she should have her *Writ of Right of Dower* against the Donee in Tail directed unto the Sheriff, returnable in

the Common Pleas, and she shall have this Clause in the Writ: *Quia B. capitalis Dominus Fodi illius, nobis inde remisit Curiam suam.*

**B** And so if the Husband make a Lease of all his Lands unto a Stranger for Life, and dieth, and the Feme is to bring a Writ of Right of Dower against the Lessee for Life; then it seemeth reasonable that the Feme have her Writ of Right of Dower against the Lessee for Life in the Common Pleas, because that he in the Reversion hath not any Court. And although that this Clause, *viz. Quia B. capitalis Dominus, &c.* be put in the Writ, if the Lord have not any Court to hold, because it is a Seigniorie in Gros, and not any Demesne Land to hold a Court, &c. then, although the Lord did never remit his Court, and that there is not any Matter apparent or remaining in the Chancery, to prove the Lord's Will and Assent to remit his Court, yet the Writ returned into the Common Pleas, before the Justices there, is good; and they shall proceed thereupon, if the Lord hath not any Court to hold Plea for this Matter. And it seemeth that the Lord shall not have his Action against the Demandant for suing the Writ in the Common Pleas, if he hath no Court to hold Plea thereupon, and to do Right unto the Party. But if the Lord hath a Court to hold Plea, then he may have a Prohibition to the Justices of the Common Pleas, that they do not proceed upon the Plea, otherwise not. *Quest* of this Matter.

**C** And this Writ of Right of Dower lieth where a Feme is endowed of Parcel of her Dower; and she would demand the Residue against the same Tenant, and in the same Town, then she ought to shew this Writ of Right of Dower; for the Words of the other Writ will not serve, *viz. unde nihil habet*, because that she hath received Part of her Dower; and therefore of Necessity it behoveth her to sue this Writ of Right of Dower, to recover the Residue; and the Writ shall be directed unto the Heir, or unto his Guardian, if he be in Ward, as a Writ of Right Patent shall be, &c.

**D** And if a Feme lose her Land which she holdeth in Dower by Default in a *Præcipe quod reddat*; yet, according to the Opinion of some Men, she shall have a Writ of Right of Dower. But it seemeth, by the Equity of the Statute of *West. 2. cap. 4.* that if a Feme lose by Default the Land whereof she hath had Dower, that by that Statute she shall have a *Quod ei deferretur* to recover the Land; and before that Statute she had no Remedy for to recover the Land, but only an Action of *Disseisin*, if she were not summoned in this Writ of Right of Dower.

G

And



*Writ of Right de rationabili parte.*

And if a Feme hath Dower, and lose the same by Assise, E  
 or Action tried, it seemeth she hath not any Remedy but  
 only by Attaint; for it seemeth that she shall not have Re-  
 medy to recover by a *Writ of Right of Dower*, because she  
 had the Land once assigned unto her in Dower, and she was  
 in Possession of the same, so that the Title was executed,  
 and she ought to sue an Action of her own Possession, if  
 she be afterwards deforced. *Tamen Quere.* And after the F  
 Plea removed unto the Common Pleas, the Process is then  
*Grand Cape* and *Petit Cape*. And in the Heir's Court the man-  
 ner is to make a Precept in the Nature of Summons, and of  
*Grand Cape* and *Petit Cape*, and the Writ directed unto the  
 Heir is such:

*Rex A. salutem. Præcipim tibi, quod sine dilacione plenum G*  
*rectum teneas B. que fuit uxor C. de tertia parte decem acr. terr.*  
*cum pertin. in W. quam clamat tenere de te in dote, per libe-*  
*rum Servic. tertie partis unius denarii per annum pro omni Ser-*  
*vie, quam C. ei deforceat, &c.*

And also a Feme may have a *Writ of Right of Dower* H  
 of the Moiety, according to the Usage of *Gavelkind*, where she  
 hath received Part, and is deforced of Part. And also it ap-  
 pareth by the Register, that the Feme shall have a *Writ* I  
*of Right of Dower* directed unto the Heir himself, where  
 he himself deforceth her of the Profits of an Office; and  
 the Writ is such:

*Rex A. salutem. Præcipimus tibi, quod plenum rectum teneas K*  
*A. & R. uxor ejus, de tertia parte cœlitium provenient. de custodia*  
*Goale Abbacie Westm. & de tertia parte trium rodarum*  
*terre, unius rode prati, & redditus tot panum, & tot lagenarum*  
*cerviſ. vel tot ferculorum per diem, vel per septimanam, vel per*  
*annum, cum pertin. in Vill Westm. quas clamat pertinere*  
*ad liber. Tenementum suum, quod tenet in dote ipsius R. in ead.*  
*Vill. & tenere de te per liber. Servic, invenient. tibi tertiam par-*  
*tem custod. pro custodia Goal. pradiæ, & parte ipsius Abbacie,*  
*pro omni Servic, qu. tu ipse eis defore, &c.*

[9.]

And by this it appareth, that a Feme shall have a A  
*Writ of Right of Dower* of that Thing which is appen-  
 dant or Appurtenant unto the Land which she holdeth in  
 Dower, &c. if she be deforced thereof.

*Writ of Right de rationabili parte.*

A *Writ of Right de rationabili parte* always lieth betwixt B  
 Privies in Blood, as betwixt Brothers in *Gavelkind*,  
 or betwixt Sisters and other Coparceners, as Nephews and  
 Nieces,



Nieces, and lieth for Lands in Fee-simple: As if the Ancestor lease his Lands for Term of Life, and dieth, and hath issue two Daughters, and afterwards the Tenant for Life dieth, and one Daughter entreth into the whole Land, and deforceth her Sister of the Land; her Sister shall have this Writ of Right *de rationabili parte*: And so if the Ancestor were disseited of Lands, and dieth, and one Sister entreth into the Land, and deforceth her Sister thereof; the Sister who is deforced shall have this Writ against her other Sister.

- And so two or three may sue this Writ against the fourth Sister, or the Aunt, and the Niece may sue this Writ against that Sister which deforceth her of her Part, &c. And this Writ lieth as well upon a dying seised of the Ancestor, if one Sister enter upon all, and deforce the other Sisters, as where the Ancestor doth not die seised: And the Writ is a *Writ of Right Patent*, and shall be directed unto the Lord of whom the Lands are holden, as other *Writs of Right Patent* shall be, and shall be removed by *Tolt* and other Writs, as the Common *Writ of Right* shall be. But Grand Assise, nor Battail shall be joined in this Writ, for the Privy of the Blood that is betwixt them. Neither shall this Writ be sued against a Stranger, and if it be it shall abate. And if the Ancestor die seised, and one Sister entreth into all the Land, and forceth her Sisters, the others may sue this Writ of Right *de rationabili parte*, or a *Writ of Nuper obiit*, at their Election. And so it is for Lands in *Gavelkind*; if one Brother entreth into all the Lands, and deforceth his Brethren, they may sue this Writ of Right *de rationabili parte*, or a *Nuper obiit*, if the Ancestor die seised: But if the Ancestor doth not die seised, then they ought to sue this Writ *De recho de rationabili parte*. But against a Stranger, it behoveth to sue *Assise de Mordancester*, upon the Death of their Ancestor, or other Writ (as their Case shall require) of the Seisin of their Ancestor. And the Form of the Writ of Right *de rationabili parte* is such:

- H *Res A. B. salutem. Præcipim. tibi, quod sine dilatione plenum redditum teneas W. F. de decem aeris terra cum pertin. in B. quas clamat esse rationabilem partem suam, que cum contingit de libero tenemento quod fuit I. patris, vel matris, a vinculi, vel amice, consanguinei sui, in ead. villa, & tenere de te per liberam Servic. tertie partis, vel quart. partis unius denarii per annum pro omni Servitio, quas B. & S. ei deforcent.*

And by the Register in this Writ a Man may see what Rent and Services all the Land which is partible betwixt the Sisters shall yield and pay unto the chief Lord, and accord-

*Writ of Right de rationabili parte.*

ingly put every one of the Heirs to her Part. So if there be one Demandant, and two Deforceants, then thus: *Quod clamat tenere de te per liberum Servitium tertie Partis tanti per Annum.* And if there be two Demandants, and two Deforceants, then thus: *Quod clamat tenere de te per liberum Servitium medietatis;* or, *Duarum Partium tanti per Ann. pro omni Servitio.* And if the Land be holden by *4 d. per Annum* and Fealty, and there are two Demandants, and two Deforceants, then the Writ may be: *Quod clamat tenere de te per liberum Servitium duorum denar. per Ann. pro omni Servitio,* &c.

And if there be two Sisters, and after the Death of the Ancestor they enter and occupy in common as Coparceners, and one of them deforce the other Sister to occupy that which is appendant or appurtenant to the Tenement which they have in Coparcenary; then she who is deforced shall have a Writ of Right *de rationabili parte*, against her Sister, of that which is so appendant or appurtenant, and the Writ for that shall be such: *Quod clamat pertinere ad liberum Tenementum suum quod de te tenet in eadem villa, & tenere debet de te per liber. Servitium, tanti pro omni Servitio, quod W. &c.* And in this Writ he shall make his Demand of a certain Portion of Land, as to so much as his Plea doth amount unto, to hold in Severalty; as if the Ancestor die seized of twenty Acres, and hath two Daughters, and one entereth into the Whole, and deforceth her Sister; the other Sister shall demand by her Writ, ten Acres of the twenty Acres, because that such is her Part; and by this Writ if she recover, she shall have Judgment to recover ten Acres, to hold in Severalty, as her Part doth amount unto.

And this Writ of Right *de rationabili parte* ought to be brought against all the Coparceners that hold the Land, &c. and by all those that are deforced of the Land, as it appeareth by *Britton*: And Voucher and View do not lie in this Writ, because of the Privy of Blood; but in a *rationabili parte* the View was granted *H. 15 H. 5.* because that the Ancestor did not die seized, &c. And Nontenure is no Plea in this Writ by *Britton*, &c. And the Process in this Writ, after it is removed into the Common Pleas, is *Sum. Grand Cape* and *Petit Cape*; and in the Lord's Court the Manner is to make Process in the Nature of *Grand Cape* and *Petit Cape*, &c.

[10.]

And the Heir of one Coparcener may sue this Writ of Right *de rationabili parte* of the Seisin of the common Ancestor, which was of the Seisin of his Ancestor in the Time of King *R. 1.* or *H. 3.* or of the Seisin in the Time of King *John*, or other Kings after that Time, if he can prove it. As a Man shall



Writ of Ne injuste vexes.

A shall have a Writ of Right Patent of the Seisin of his Ancestors in such Times, &c. But if one Coparcener claim the Land by a Feoffment made unto her by her Ancestor in Fee; now if the other Coparcener desorce her of the Lands, she may have a Writ of Right Patent against her Sister for the Land, and shall join the Mife by Grand Assize, or by Battail, because she doth not there claim the Land as Heir to her Ancestor, as it seemeth: *Tamen Quare.*

Com. 306.  
No Batrail  
lieth be-  
twixt them.

B And if a Man hath Issue two Daughters, and dieth seized of Lands in Tail, and one Daughter entereth into the Whole, and desorceth her Sister; there the Sister may have a *Formedon* against the other Sister, and not a *Nuper obiit*, nor this Writ of Right *de rationabili parte*, for this Writ lieth properly for the Lands in Fee-simple.

Writ of Ne injuste vexes.

C WRIT of *Ne injuste vexes* lieth in Case where Lord and Tenant are, and the Tenant hath holden of the Lord and his Ancestors by Fealty, and 20s. Rent yearly, and of late Time the Lord hath gotten Seisin of greater and more Rent of the Tenant, by Payment of the Tenant of his own Agreement without Coercion of Distress: Now if the Lord will distrain the Tenant for this Surplusage of Rent, the Tenant cannot avoid the Lord in an Avowry, for the Seisin which the Lord hath had by the Payment of the Tenant of this Rent of his own Agreement. But the Tenant may sue this Writ of *Ne injuste vexes* directed unto the Lord; which Writ is in it self a Prohibition unto the Lord, that he do not distrain his Tenant to do other Services than of Right he ought to do. And this Writ in its Nature is a Writ of Right, and shall be Patent; and this Clause, *Et nisi feceris, Vicecomes, &c.* shall be put into the Writ. And the Process in this Writ is, *Prohibition, Attachment, and Distress* against the Lord, commanding him that he shall not distrain, &c. And this Writ is founded upon the Statute of *Magna Charta, cap. 10.* which willeth, *Quod null. distring. ad faciend. majus Servic. de Feodo Militis, nec de alio libero Tenemento, quam inde debetur.* And the Form of the Writ is such:

C. 4  
Part. 11.  
Bevil's  
Case.

F Rex A. Salutem. Præcipimus tibi, Ne injuste vexes, vel vexari permittas B. de libero Tenemento suo, quod de te tenet in I. nec inde ab eo exigas, vel exigi permittas Consuetud. vel Servitia quæ inde facere non debet, nec solet: Et nisi feceris, Vic. Lincoln. idem fieri faciet, ne amplius inde clamorem audiamus pro defectu recti.



But other-  
wise in Af-  
fise of Rent,  
or in a Writ  
of Rescous,  
or Cellavit;  
for the Ten-  
ant is tra-  
versable in  
those Writs.  
12 E. 4. 7.  
22 Aff. 63.  
Thorpe.

10 H. 7. 11.  
26 Hen. 8.  
6. Com. 43.  
86. 94.

And this Writ is always Ancestrel, viz. where the Tenant and his Ancestors have holden of the Lord and his Ancestors by Fealty and 20 Shillings Rent, or other Rent and Service; and of latter time the Lord hath encroached divers other Services or Rents, by Payment of the Tenant, or doing of other Services which he ought not to do unto the Lord; then the Tenant may sue this Writ: For by Encroachment of Rent by the Lord by Payment of the Tenant, the Tenant shall not avoid the same in an *Avowry* by the Lord for that Rent which is so encroached. But if the Lord do encroach other Services which the Tenant of Right ought not to do unto him, as *Homage* or *Escuage*; then the Tenant may avoid this Encroachment in *Avowry* by the Lord for these Services, because the Tenant may traverse the Manner of the Tenure in that Case, as to say, that he holdeth of the Lord by Fealty and 20 s. Rent only, without that he holdeth by *Homage*, Fealty, and Rent, in Manner and Form as the *Avowry* is made: Or the Tenant may sue this Writ of *Ne injuste vexes* in that Case if he will. And if the Lord do disdain to do other Services after the Prohibition delivered unto him, or to pay more Rent than of right he ought to pay, then the Tenant shall have an Attachment against the Lord returnable in the Common Pleas, or in the King's Bench. And when the Lord cometh upon the Attachment, then the Tenant shall count against him in this Manner:

*B.* sheweth unto you, That whereas he holdeth of the aforesaid *A.* &c. as of his Manor of *C.* 20 Acres of Land, with the Appurtenances in *W.* by *Homage*, Fealty, and by the Service of the twentieth Part of a Knight's Fee, and by the Services to render to the said *A.* half a Pound of Pepper yearly at the Feast of *All-Saints*, for all manner of Services; yet the aforesaid *A.* over the Services aforesaid, vexeth the said *B.* and suffreth him to be vexed, and of him demandeth and distraineth, and suffreth him to be distrained for 9 s. per Ann. of Rent, for which he is damnified unto his Damage of 20 l. And so note, that he shall declare of Damages in this Writ; and then upon this Count, the Lord who is Defendant shall make his Defence, and shall defend the Wrong and Force, &c. and shall count against the Plaintiff, and shall say that he doth not tortiously demand the said Rent of 9 s. over the other Services, &c. for he shall say, that the said *B.* holdeth the said 20 Acres of Land, &c. of him by the said Rent and Services, &c. and that he the said *A.* was seised as well of the said Rents of 9 s. as of all the other Services aforesaid,

aforesaid, by the Hands of the aforesaid B. as by the Hand of his very Tenant for the said 20 Acres of Lands with the Appurtenances, as of Fee, and of Right in Time of Peace, viz. in the Time of King Edward, late King of England, &c. in taking of the Esplees, viz. Rents, &c. And that such is his Right, he is ready to make good by his Body, &c.

[11.]

A And thereupon he who is Plaintiff in the *Ne injuste vexes* shall defend this Count, and thereof shall put himself upon the Grand Assise, and so the Mise shall be joined betwixt them in this Writ, which is at first but a Prohibition, &c.

B And Judgment final shall be given upon this Writ after the Mise joined, if it pass against any of the Parties; or if any of them be Nonfuit, or make Default after the Mise joined. And see the Form of the Count, and of the Defence in this Writ in the Book of *Entries of Pleas*, f. 90. on the first Page.

C And it appeareth *M. 18. E. 2.* that the Feoffee shall not avoid Seisin of Rent had by Encroachment of his Feoffor, nor shall he have a Writ of *Ne injuste vexes*; nor a Man shall not have a Writ of *Ne injuste vexes* against the Grantee of the Seigniori, as appeareth *p. 10. E. 3.*

14 H. 4. 5.  
ac. by Thir-  
ning, and  
after 163.

D And *Trin. 20. E. 3.* it appeareth that Tenant in Tail shall not have *Ne injuste vexes*, &c. but he shall plead, and shew the Matter, and shall not be estopped by the Payment and Seisin had by the Hands of his Ancestors; but by a Seisin had by his own Hands he shall be bound during his time in Avowry, as it seemeth. But after the Mise joined in a Writ of

E *Ne injuste vexes* sued, if the Parties imparle until another Term and Day, and after at this Term at the Day the Lord who is the Defendant in the *Ne injuste vexes* make Default, now what Process shall be awarded thereupon, or if Judgment shall be given upon this Default without any Process, *Quere.* And so if the Plaintiff at another Term after the Mise joyned, and Day given, &c. make Default, it seemeth he shall be Nonfuit, &c.

## Writ De Recto clauso.

F WRIT of *Droit Close* is a Writ which is directed unto the Lord of ancient Demesne, which lieth for those Tenants within ancient Demesne, who held their Lands and Tenements, by Charter in Fee-simple, or in Fee-tail, or for Life, or in Dower; if any of them be ousted of his Lands or Tenements, or disseised, &c. he, or his Heir, may sue this Writ of *Droit Close* directed unto the Lord of ancient Demesne, commanding him to do right, &c. in his Court; and the Form of the Writ is such:

G 4 Henricus



## Writ de recto clauso.

*Henricus Dei Gratia, &c. Ballivis suis de I. salut'. Præcipimus G vobis, quod sine dilatione, & secundum Consuetud. Manerii nostri de I. plenum rectum teneatis A. de uno Messuagio cum pertin. in I. quod B. ei desore', ne amplius inde clamorem audiamus pro defectu vestri. Teste, &c. And another Writ thus:*

*Rex Ballivis suis Castri de Bamberg. salut'. Præcipimus, &c. quod, &c. secundum Consuetud. Manerii Castri de Bamberg, plenum rectum teneatis de duabus partibus piscariæ aqua de I. in Bamberg, quas B. ei desore', &c. And the Order of putting H the Parcels of Houses, Lands, Meadows and Pasture, &c. shall be observed and used as shall be done in a Writ of Right Patent. And this Writ may be sued of Common of I Pasture, and for stopping of a Way, and such like. And the Writ for the Common is such:*

*Rex, &c. Præcipimus tibi, quod plenum rectum teneas, &c. de K Comm. Pastura in T. que pertinet ad unum Messuag', & x. acr. terra, que secund. Consuetud. Manerii, præz. tenet in eadem Villa, quas B. C. & D. ei desore'. And for Stopping of a Way the Writ is such:*

*Rex Ball. Episcopi Covent. & Litch. de Maner. de C. salutem. L. Questus est nobis R. quod W. injuste & sine iudicio, obstruxit quandam Viam in D. que est infra prædictum ejusdem Maner. ad incrementum unius Messuagii, quod idem R. secund. Consuetud. Maner. præz. tenet in eadem Vill': Et ideo vobis Præcipimus, quod venitis coram vobis partibus prædictis, auditisq; hinc inde rationibus, eidem R. in præmiss. debitum & festinum iustitia complementum fieri faciatis prout secundum Consuetudinem Manerii prædicti fuerit faciend', &c.*

And note, that the Demesne Lands of a Manor, and the Manor it self, which is called ancient Demesne, is pleadable at the Common Law; and a Man ought to sue his Action for the Manor, and for the Lands, which are Parcel of the Manor, at the Common Law, and in the Common Pleas. But if a Man will sue for the Lands which are holden of the Manor, which are in the Hands of a free Tenant who holdeth of the Manor, for these Lands he ought to sue this Writ of *Dreit close*, directed unto the Lord of the Manor, and there he shall make his Protestation to sue in that Court, the same Writ, in the Nature of what Writ he will declare. And the Form of Entry when such Writ is brought in Court is such:

*Ad hæc Cur. venit R. N. per Nich. B. Attornatum suum, per N Literas Patentes ipsius R. & liberavit præfatis Ballivis quoddam Breve Domini Regis nunc clausum, eidem Ballivis directum, in forma juris secundum Consuetud. Manerii præd', cuiusmodi cuius tenor sequitur in hæc verba:*

Hen-



Henricus, &c. Ballivus J. de S. salutem. Præcipimus vobis quod  
*juste & sine dilatione, & secundum Consuetudinem Manerii de G. de S. plenum rectum teneatis Robert. N. de duobus mesuagiis, &c. in W. & H. quæ P. & C. ei deforceant, ne amplius inde clamorem audiamus pro defectu recti, &c. Et super hoc præd. Robertus N. invenit Pleg. de proseguendo Breve suum præd', seil. T. & W. & protestatur prosequi illud Breve in eadem Cur. in forma & natur. Brevis Assise novæ Disseisina ad Communem Legem, secundum Consuetud. Manerii præd', dicens quod præd. P. & C. injuste & sine judicio disseisiverunt eum de libero Tenem. suo in W. & H. viz. de Tenementis præd. cum pertin. post primam, &c. Et pet. inde processum fieri secundum Consuetud. ejusd. Man. præd', &c. Ideo secundum Consuetud. ejusd. Man. præcept. est T. H. subballivo Man. illius, & ministr' hujus Cur', quod facer. Tenementa illa refecti. de cantallis quæ in ipso capta fuer', & ead. Tenementa cum pertin. esse in pace usque ad proxim. Cur', coram præfatis Ballivis & selectatoribus ejusdem Cur', viz. die Jovis proxim. futur. hic. se. apud S. tenenda'; & interim faciat xii liberos & legales homines de visu. de W. & H. præd. infra prædictum Manerii prædicti videre Tenementa præd', & nomina eorum imbrevari facere. Et quod summ. eos per bonos Summ', quod tunc sint hic, seil. apud S. parati inde facere Recognitionem: Et quod ponat per vadios & salvos plegios prædicti. P. T. Ballivum suum, si ipse inventus non fuerit, quod tunc sit hic apud S. ad audiendum illam recognitionem, &c. Et quod tunc habeat ibidem nomina Pleg. Summ', & dictum præceptum sibi inde direct. Et idem dies datus est præf. R. N. hic, &c.*

[12.]

See all this Form to make Protestation in the Book of Entries of Pleas, fol. 115. And then at the Day of the Precept and Process returned, the Defendant ought to appear and plead in Bar, or unto the Writ, or other Matter, in such Form as shall be in an Assize at the Common Law. And if the Protestation be made in the Nature of another Writ, then the Precept shall be according unto the Nature of the Process which is given in such Writ; and the Tenant when he cometh in shall plead as he shall do in such Writ sued against him at the Common Law, for the Nature of the Protestation doth alter and change the Manner of Pleading for the Tenant.

A And if false Judgment be given in this Writ, the Party Tenant or Demandant may sue a Writ of false Judgment thereupon.

B But he who holdeth Land in Ancient Demesne by Copy of Court-Roll, at the Will of the Lord, who is called Tenant by base Tenure, if he be ousted of his Lands or Tenements there

Lit. 6. ac.  
14 H. 4. 74.  
7 E. 4. 19.

there in ancient Demesne, he shall not have this Writ of *Droit Close*, but he ought to sue by Bill in the Court of the Lord of the Manor, and shall make Protestation to sue there in the Nature of what Writ he will. But if false Judgment be given against him in that Court, he shall not have a Writ of false Judgment thereupon at the Common Law, nor other Remedy; but to sue unto the Lord by way of Petition, as it appeareth in 14 H. 4. For those who hold their Lands in base Tenure in ancient Demesne, or by the Rod, hold them in Villenage, and they shall not have such Writ of *Droit Close*, nor a Writ of false Judgment, &c. See the Stat. of 1 R. 2. cap. 6. of that Matter.

And this Term, which is now at this Day called Copy-tenants, or Copy-holders, or Tenants by Copy, is but a new found Term, for of ancient Times they were called Tenants in Villenage, or of base Tenure; and that appeareth by the ancient Tenures that those who held by the Rod, or in base Tenure, or by Copy of Court-Roll, were then called and named Tenants that held in the Villenage: For Tenants by Copy of Court-Roll are not specified, nor named by such Name; but yet at that time there were such Tenants, but then they were called Tenants in Villenage, or of base Tenure.

And when the Writ of *Droit Close* cometh unto the Lord, or unto his Bailiffs, the Lord ought for to hold his Court, and to proceed thereupon according to Law, &c. And if the Lord will not hold his Court, then the Demandant may sue a Writ out of the Chancery directed unto the Lord, commanding him to hold his Court, &c. And if he will not hold it, then the Demandant may sue an Attachment against the Lord directed unto the Sheriff, returnable in the Common Pleas, or King's Bench, and thereupon the Demandant shall recover his Damages.

And if the Writ of *Droit Close* be directed unto the Bailiffs, &c. and they will not hold the Court, then he may sue such a Writ unto the Bailiffs, commanding them to hold their Court; and if they will not so do, he may sue an Attachment against them directed unto the Sheriff, returnable as aforesaid, &c.

And if the Lord himself oust his Tenant of Lands which are holden of the Manor by Charter in Fee, the Tenant who is ousted shall have this Writ of *Droit Close* directed unto the Lord himself, if he will, &c. Or in this Case he may have an Assise, or other Writ at the Common Law against the Lord of those Lands. But it appeareth by a Rule in the Register, that if the Demandant be defeated of Justice in

in the Lord's Court, that then the Demandant may sue a Writ directed unto the Sheriff, commanding the Sheriff that he go unto the Court in ancient Demesn, and that he take with him four discreet Knights in their proper Persons, to see that Right be done unto the Party demandant in this Writ; and if the Sheriff refuse so to do, he may have an *Alias* and *Pluries*, and Attachment against the Sheriff in the Common Pleas or King's Bench. But it seemeth that this Writ which shall be so sued directed unto the Sheriff, that he see Right done to the Demandant, is of little Effect; for by Vertue of this Writ he cannot compel the Lord to do Right unto the Demandant, as it seemeth, *tamen Quare*: For if he cannot cause the Lord to do Right unto the Demandant in a Writ of *Droit Close*, then it shall be in vain to sue such Writ directed unto the Sheriff, to go unto the Lord's Court, and to see that Right be there done. And the Demandant may sue such Writ directed unto the Bailiffs, or unto the Lord himself, commanding them that they do him Right, &c. and that they do not delay the Matter, &c. And thereupon an *Alias*, a *Pluries*, and *Attachment* if need be.

[13.]

A And if a Plea be removed in the County, the Demandant may sue such Writ directed unto the Sheriff, that he proceed in the Plea, unto Judgment, and to do Right; and upon that he shall have an *Alias*, a *Pluries*, and *Attachment* against the Sheriff, if he will not do accordingly.

B And note, That the Demandant in a Writ of *Droit Close* cannot remove the Plea out of the Lord's Court for no Cause, &c. nor the Tenant remove the Plea out of the ancient Demesn, if not for Causes which prove the Land to be Frank-fee, and not ancient Demesn; and the Form of the Writ of *Recordare*, to remove the Plea out of ancient Demesn is such:

34 H. 6. 35.  
6 H. 4. 1.  
50 E. 3. 24.  
1 H. 7. 30.

D Rex Vic. Lincoln. salut'. Precipimus tibi, quod assumptis tecum quatuor discretis & legalibus Militibus de Com. tuo, in propria persona tua accedas ad Cur. B. de C. & in plena Curia illa recitari. facias Loquelam qua est in eadem Cur. per parvum Breve nostrum de Recto, inter, &c. de uno mesuagio cum pertin. in I & Record. illud habeas exram Justic. nostris, &c. & partibus, &c. & habeas ibi nomina predict. quatuor hominum, & hoc Breve, & aliud Breve, &c. Qui predict. A. in placitand. in Cur. predict. protulit Chartam Domini Hen', quendam Regis Angliæ, progenitoris proavi noster, per quam idem proavus noster feoffavit W. patrem predict. A. (cujus Hæres ipse est) de mesuagio predict. ut dicitur, per quod idem A. dicit se non debere nec posse sine nobis respondere: Fiat executio istius Brevis, si causa sit vera, & predict.



*prad. A. hoc petas, & aliter non.* There is another Cause in the Register thus: *Quia clamat tenere Tenementa predicta ad Communem Legem, &c.* But then in the Common Pleas, when

*A Writ of Right Closo is brought, and pendens the Writ the Tenant accepts a Fine, Sur conuſance de droit come ceo que il ad, &c. yet the Land remains ancient Demefn as to that Action, becauſe he hath affirmed his Plaint before the Fine; and ſo was it holden, 12 H. 7. Rot. 103.*

the Record is removed, he ought there to ſhew ſome ſpecial Matter to prove the Lands and Tenements to be Frank-fee, and not ancient Demefn, otherwiſe the Plea ſhall be ſent back unto the Lord's Court: But to ſhew a Fine levied in the King's Court of the ſame Land; or

a Recovery had in the King's Court in a *Præcipe quod reddat, &c.* is a good Cause to prove the Lands to be Frank-fee; and if he claim the Land by the Feoffment and the King's Charter, or by the Feoffment of Charter of the Lord of the Manor; or if he claim to hold them of the King, as of another Manor of the

21 E. 3. Cause de remover, Plea 16. *If the Cause assigned may be tried in ancient Demefn, it ſhall not be removed.*

Honour, &c. and not to hold them of the ſame Manor; or if he ſay, that in an Aſſize brought before

of the ſame Lands or Tenements at the Common Law againſt another Tenant, that the Tenant ſaid that they were ancient Demefn, and that they were Frank fee, &c. whereupon it was found by the Aſſize that they were Frank-fee, &c. And another Cause appeareth in the Register, becauſe that there are not any Suitors in the Lord's Court of ancient Demefn to do right, &c. But *Quere* if this be a ſufficient Cause or not.

Register 11.  
Br. Remove  
de Plea 25.  
vid. en 17 E.  
3. Cause de  
remov. 1.  
Becaufe  
there were  
but ſix Suitors, and one Plaintiff. and the other Def. therefore removed: So four not ſufficient.

26 H. 8. 4. *If a Frank-Tenant of ancient Demefn, who holdeth his Tenements by Knights Service and in Fee, be ouſted and diſſeiſed of his Lands or Tenements, he ſhall ſue at the Common Law, and not in ancient Demefn, for no Lands are ancient Demefn, but Lands holden in Socage.*

26 H. 8. 4. *And a Man ſhall have a Bill of fresh Force within forty Days in the Lord's Court of ancient Demefn for the Lands after the Diſſeiſin, and without ſuing any Writ thereupon; as a Man ſhall have of Lands in a City or Borough: And there in that Caſe, if the Tenant hath any Matter to prove the Lands to be Frank-fee, he ſhall have a Recordare to remove the Plea out of ancient Demefn into the Common Pleas, &c.*

3 H. 6. 34. *And although the Plea in ancient Demefn be there without Writ, &c. if the Tenant remove the Plea out of ancient Demefn*

Demefn by a *Recordare*, and for Cause fhewed in the Writ; 34 H. 6. 35.  
 if the Cause be not good, the Tenant in the Common Pleas or 44 E. 3.  
 fhall not fhew any new Cause to retain the Plea in the Com- 10.  
 mon Pleas: But if the Cause in the Writ be, *which he claims* 21 E. 3. 31.  
*to hold at the Common Law*, then in the Common Pleas he B. ancient  
 may fhew what Cause he will to retain the Plea there; which Demefn 18.  
 Cause fhall prove the Tenements to be Frank-fee. or 34 H. 6.

G. And in ancient Demefn if the Demandant and Tenant 35.  
 put themselves upon the Grand Affize, or the Tenant vouch 50 E. 3. 24.  
 a Foreigner, or plead a Foreign Plea, which cannot be tried in the Lord  
 the Lordfhip there; then a *Superfedas* fhall be granted out made a  
 of the Chancery, directed unto the Lord of ancient De- Leafe for  
 mefn, or his Bailiffs, if the Writ were directable to the Life, that  
 Bailiffs, that they fhould furceafe, &c. And the Party Defend- is a good  
 vant fhall fue his Writ of *Warranty of Charter* againft the Caufe.  
 Vouchee, &c. 1 H. 7. 30.  
per Tounf-  
end.

And if the Sheriff do remove the Record in ancient

Demefne by *Recordare* in the  
 Common Pleas, and afterwards  
 the Bailiffs in the Court of an-  
 cient Demefne proceed in the Plea  
 (notwithftanding the removing  
 of the Record) then the Tenant  
 may fue a *Certiorari*, directed un-  
 to the Juftices of the Common

12 H. 7. Rot. 103. It is holden, that if  
 they proceed after the Record removed,  
 and award Execution, that it is not  
 void. 16 E. 3. 3. Procefs 167. The Par-  
 ty had Audita querela againft the  
 Judges upon that Cafe: And 17 E. 3  
 ibid. 186. it was holden that the Sher-  
 riff fhall be punifhed for his Contempt.

Pleas to certify the Tenor of the Record into the Chancery,  
 and of this Removement; and upon the Certificate into  
 the Chancery, the Tenant fhall have an *Attachment* againft  
 the Bailiffs, who proceeded in the Plea, directed unto the  
 Sheriff, for to arreft them, returnable in the Common Pleas,  
 to answer unto the King, and alfo unto the Tenant who  
 fued forth the *Recordare*. But in ancient Demefn, if the Ten-  
 ant vouch a Foreigner to Warranty, then the Tenant ought  
 to fue his Writ of *Warrantia Chartae* returnable in the Com-  
 mon Pleas againft the Vouchee, and upon this Writ fhall  
 to purchafe a *Superfedas*, directed unto the Bailiffs of an-  
 cient Demefn, commanding them to furceafe until the Plea  
 in the *Warrantia Chartae* be determined in the Common  
 Pleas. And if the Bailiffs proceed after fuch Writ fued  
 forth and directed unto them, the Tenant who fued the  
 Writ may have an *Attachment* of them directed unto the  
 Sheriff, &c. that he do attach them to answer in the Com-  
 mon Pleas at a certain Day, &c. as well unto the King as unto  
 the Party, for the Contempt, &c. But if the Plea of *Warrantia*  
*Chartae* be difcontinued in the Common Pleas, then the

[14.]

A

Deman-



## Writ De Monstraverunt.

Demandant in the Writ of *Droit Close* may sue a Writ out of the Chancery directed unto the Justices of the Common Pleas, to certify the King in the Chancery if the Plea of *Warrantia Charta* be pendant or discontinued, or nor, so that if it be discontinued, &c. or determined, he may send unto the Bailiffs of ancient Demesne, that they proceed in the Plea.

V. 13. D.  
29 R. 2. an-  
cient De-  
mesne 41.

And if the Tenant claim to hold the Lands of the Lord in ancient Demesne by Knights Service, &c. the same is a good Cause for to remove the Plea, because that Lands which are holden of the Manor, which shall be taken ancient Demesne, shall not be holden of the Lord by other Services than Socage; for the Tenants in ancient Demesne are called *Sokemans*, that is to say in *English* Tenants of the Plough.

50 E. 3. 6.  
per Siden-  
ham, contr.  
if he refer  
but Socage  
Tenure.

And therefore if the Lord of a Manor in ancient Demesne, before the Statute of *Quia Emptores terrarum*, maketh a Feoffment in Fee of the Parcel of the Lands of the Manor, to hold of him by Knights Service, such Tenant shall not have a *Monstraverunt*, if he be distrained for other Services than of Right he ought to do, because his Lands are not ancient Demesne of the King, and yet they are holden of the Manor which is ancient Demesne: But it is intended of such Tenures which shall do the Services of the Plough, viz. to plough and till the Lord's Lands, to mow the Lord's Meadows, or other such like Services as are for the maintaining of the King's Sustainance or Victuals, and his Subjects; and for such Services such Tenants have such Liberties and Privileges in the Law, that they may the more quietly use their Husbandry, and do their Services.

## Writ de Monstraverunt.

THE Writ of *Monstraverunt* lieth for the Tenants of ancient Demesne who hold by free Charter, and not for those Tenants that hold by Copy of Court-Roll, or by the Rod, according to the Custom of the Manor, or the Will of the Lord. And these Tenants ought to be Tenants which hold of a Manor which was in the Hands of *S. Edward*, the King and Confessor, or in the Hands of King *William* the Conqueror; which Manors are called ancient Demesne of the King, or the ancient Demesne of the Crown of *England*. And to these Tenants (who hold of such Manors) there are many and divers Liberties, Gifts and Grants by the Law :

49 E. 3. 22.



as, to be quit of Toll, and Passage, and such Impositions which

Men shall demand of them for the Goods or Chattels sold or bought by them in Fairs or Markets; and to be quit of Taxes and Tallages granted by Parliament; if not, that the King lay a Tax upon ancient Demesne, as he may for some great Cause, whensoever it seemeth good unto him. And also Tenant in ancient Demesne ought to be acquitted of the Payment of the Expences of the

Knights which came to Parliaments, and also they ought not to be impanelled or put upon Juries or Inquests in the Country out of their Manor or Seigniorie of ancient Demesne, if they have not other Lands at the Common Law for which they ought to be charged, &c. And if such Tenants, or any of them who hold of the Manor of ancient Demesne, be distrained to do unto their Lords other Services or Customs than they, or their Ancestors have used to do, then they may sue this Writ of *Monstraverunt* directed unto the Lord, commanding him that he do not distrain them to do other Services or Customs than they have used to do: Or they may have this Writ of *Monstraverunt* directed unto the Sheriff; and that is where the Writ of *Monstraverunt* is first sent unto the Lord, and that he do not distrain his Tenants, &c. Or they, upon this Writ sued and directed unto the Lord, may have and sue another Writ directed unto the Sheriff, rehearsing, That where he hath sent his Writ unto the Lord of ancient Demesne, that he should not distrain his Tenants, &c. and if the Lord will not do it, and suffer the Tenants to be in peace, that then the Sheriffs shall do it, and cause the Lord to suffer the Tenants to be in peace, and that he do not distrain them for other Services than of Right they ought to do. And the Form of the Writ directed unto the Lord is such:

G Rex Abbati de C. salutem. Monstraverunt nobis homines tui de Manerio de I. quod est de antiquo Dominico Corona Anglie, ut dicitur, quod tu exigis ab eis alias Consuetud. & alia Servitia, quam facere debent, & antecessores sui Tenentes de eodem Manerio facere consueverunt temporibus quibus Manerium illud fuit in manibus progenitorum nostrorum quond. Reg. Ang. vel in Discret. mana nostra. Et ideo tibi precipimus, quod a pref. hominibus non exigas, seu exigi permittas, alias Consuet. & alia Servitia

19 H. 6. 66. per Newton, Tenants in ancient Demesne shall be quit of Toll of Things which they sell which are arising of their Lands, and so of all Things which they buy, which are for the Maintenance of the Land; but Quere if they shall be quit for all Things bought and sold.

Vide 161. they shall be quit of Suit to Lets and Hundreds. Vide 22. El. Dyer 377. Register 181. Br. ancient Demesne 44. 7 H. 6. 35. Martin. ac.

40 E. 3. 41.

Quere if they shall have this Writ without being distrained.

40 E. 3.

these Words prove that they may have this Writ before [15.]

quam

## Writ de Monstraverunt.

quam facere debent, & Antecessores sui præditi. facere consueverunt temporibus præd. Et nisi ad mandatum nostrum hoc feceris, A. Vicecom. nostr. Linc', id fieri præcipimus. Teste, &c. And upon this Writ they may sue another Writ of Monstraverunt, directed unto the Sheriff, which shall be in this Form: Rex Vic. Lincoln', &c. Monstraverunt nobis homines Abbatis de Manerio de I. quod est de antiquo Dominico Coronæ Angl', ut dicitur, quod idem Abbas exigit ab eis alias Consuetud. & alia Servitia quam facere debent, &c. [usque ibi, in manu nostra:] per quod eidem Abbati præcipimus, quod à præf. hominibus non exigeret, vel exigi permitteret, alias Consuetud. vel alia Servitia quam facere debent, & Antecess. sui præd. facere consuever. tempor. præditi. Et ideo tibi præcipimus, quod nisi idem Abbas ad mandatum nostrum hoc feceris, tu id fieri fac', ne amplius iude clamorem audiamus pro defectu Justic', &c.

And it seemeth that by this Writ directed unto the Sheriff, the Sheriff may charge the Lord, that he do not demand nor distrain them for other Services than they ought to do, and that the Sheriff may make Resistance and Rescous unto the Lord, if he distrain the Tenants for other Services, &c. and that the Sheriff may take the Power of the County to resist the Lord in such Case, or the Sheriff may command the Neighbours, who dwell next to the Manor, that they resist and do Rescous unto the Lord, if he will distrain his Tenants, &c. And it seems they may justify the same by the Commandment of the Sheriff, if he have such a Writ sent unto him, &c. And after the Writ directed unto the Sheriff, if the Lord distrain, the Tenants may sue an Attachment against him, returnable in the Common Pleas, or the King's Bench, to answer to them for this Contempt; and if it be found for them, they shall recover their Damages.

Com. 119.  
2 H. 6. 26.

And note that the Writ of Monstraverunt shall be sued by many of the Tenants, without naming any of them by their proper Names, but generally, Monstraverunt nobis homines, &c. But in the Attachment against the Lord by the Tenants, the Tenants ought to be named by their proper Names, thus;

Rex, &c. Si A. de B. C de F. & homines Abb. M. de Manerio de I. quod est de antiquo Dominico Coronæ Angliæ, ut dicitur, fecerint, &c. tunc pone, &c. præditi. Abbas' quod sit coram nobis, &c. ubicunque, &c. ostensus quare exigit a præfat. hominibus alias Consuetud. & alia Servitia quam facere debent, & Antecess. sui Tenentes de eodem Manerio, facere consuever. temporibus quibus Manerium illud fuit in Manibus progenitor. nostror.



*nostror. quond. Reg. Angliæ, vel in manu nostra, si casus sic fuerit, contra Prohibitionem nostram. Et habeatis ibi nomina Pleg, & hoc Breue. Teste, &c.*

E And there is another Writ of *Monstraverunt*; where the Tenants of any Hamlet, which Hamlet is Parcel of a Manor of ancient Demesne, are distrained by the Lord, they shall have such Writ:

*Rex, &c. Monstraver. nobis homines tui de Hamleto de I. quod est membrum Manerii de B. quod est de antiquo Dominico Coron. Ang. ut dicitur, &c.*

F And it seems that in the Writ of *Attachment* he ought or may name all those Tenants by their proper Names which are distrained after the Prohibition delivered unto the Lord; and it behoveth not to name other Tenants by their

G proper Names, but in the Generality, *Et homines, &c.* And if one of those, who is named by his proper Name, will not sue, *&c.* he shall be severed, *&c.* And he that is *Nonsuit* shall not grieve his Companions. And it seemeth that every one shall recover his Damages severally, because they are severally distrained, and one may be more damnified than another, *&c.*

H And one Tenant may sue the Writ of *Attachment* in his own Name by his proper Name, and in the Name of the other Tenants by general Words, *&c. Et homines, &c.*

I And if the Tenants do sue an *Attachment* against the Lord, because he distrained them after the Writ of *Monstraverunt* delivered unto him, and pending the Writ of *Attachment* the Lord distrain them again by their Goods; then the Tenants shall have a special Writ of *Attachment* against the Lord, rehearsing the Matter; and in the same Writ the Sheriff shall be commanded to re-deliver unto the Tenants their Goods, if the Lord have taken them, *&c.* And this Writ shall be sued only in the Name of those Tenants which are again distrained pendant the Suit, and not in the Name of them all, as the other Writ is sued; and the Writ shall be such:

*Rex Vic, &c. Si A. & B. homines Abb. de C. de manerio de N. quod est de antiquo Dominico, &c. fec, &c. tunc pone, &c. præd. Abbatem, &c. ostensur. quare cum nuper ad Prosecution. dict. hominum nobis suggerent. præfat. Abbat. exigisse alias Consuetud. & alia Servitia quam facere debent, & antecess. sui Tenent. de eodem Man, &c. (usque ibi, Reg. Angliæ) tibi præcipimus, quod pones per Vad. & salvos Pleg. prædict. Abbatem, quod esset coram nobis à die Pasche proxim. præterito in quindecim dies, ubicunque, &c. ad respondend. præfat. homini-*

[ 16. ]



## Writ de Monstraverunt.

bue de præmiss. idem Abbas (pendens, eorum nobis placito Attachament. præd.) prædict. homines eo gravius distrinxit, & omnia bona, catalla ac averia sua in eodem Manerio inventa eis abstulit, & ea eis adhuc detinet, quo minus ipsi placit. Attach. præd. pro paupertate prosequi possint, in nostri ac mandatorum nostrorum prædict. contempnum, & præd. hominum dispendium non modicum, & prosecutionis juris sui retardat, & status sui depressionem manifestam. Et averia, bona & catalla præd. eisdem hominibus per sufficientem securitatem interim doliberari facias. Et habeas ibi nomina Pl g, & hoc Breve. Teste, &c.

And in this Writ of Monstraverunt, the Plaintiffs in the Writ of Attachment may count severally, and then they shall recover several Damages. But they may count together in one Count, and declare how they were severally distrained, &c. and it is not necessary to alledge in the Count the Day or the Place where the Lord distrained them. And the Form of the Count or Declaration is such:

39 E. 3. 6.  
ret. Monfr.  
2. 49 E. 3.  
per Belknap.

A. B. summ. fuis ad respondendum C. D. & F. & hominibus præd. A. de Manerio de S. quod est de antiquo Dominico Corone Angl', &c. de placito, Quare exigit ab eis alias Consuetud. & alia Servitia quæ facere debent, & eor. antecessores, Tenentes de eodem Manerio, facere consueverunt temporibus quibus Manerium illud fuit in manibus progenitorum, &c. Regum Angl', ad grave damnum ipsorum C. D. & F. &c. Et unâ iidem homines per T. S. Attorn. suum queruntur, quod cum eorum antecess. Tenent. de eodem Manerio tempore quo Manerium illud fuit in manibus Domini Henrici quondam Regis Angl', proavi eisdem avo Domini Regis nunc, tenuissent Tenement. sua per certâ Servic', scil. quilibet eorum tenebat unam virgat. terr. de eodem Maner', &c. per fidelitatem & servic. quinque solidâ, & faciend. Scil. ad Cur. dicti Maner. de S. bis in anno, viz. ad festum sancti Mich. & ad Festum Pasche; & si contigisset Breve de ReSo fuisse in eadem Cur. placitand', faciend. Scil. in eadem Cur. de tribus septimanis in tres septim', &c. quamdiu Breve illud pendens fuit in eadem Cur'; & quando Dominus Rex burgos suos & Dominica sua talliavit, &c. pro omnibus Servitiis; & qui plus Terra tenuissent de prædict. Maner', plus redditus redderent, &c. Et iidem Tenentes hujusmodi statum continuassent a tempore ejusd. Hen. proavi, &c. de Rega in Regem progenitorum, &c. usque ad tempus præd. Domini Regis Edwardi avi, &c. Quod prædictus A. Dominus Manerit prædicti, distrinxit ipsos C. D. & F. & alios homines, &c. ad Scilicet faciend. ad præfatam Curiam de tribus septim. in tres septimanas per totum annum, &c. & tallianda ipsos alto & basso pro voluntate sua, exigend. ab eis pro filiis & filiabus suis mariand. & alia Servitia & Consuetud. Villanis, quæ facere non debent,

*debent, nec solebant, unde dic. quod deteriorati sunt & damnum habent ad valentiam C. l. & inde prodic. Seftam, &c.*

**B** And whether they shall recover severally Damages upon the joint Count, it is a Doubt; yet it seemeth reasonable that they may, because it is several in its Nature, because they count upon their several Tenures. &c. and how that he hath distrained them severally; by which it seems but reasonable that the Jury do enquire of the Damages severally, if they pass for the Demandants, or that several Writs of Enquiry of Damages be awarded in that Case, if the Matter be adjudged with the Demandants. But it seems no Tenant shall recover Damages, but those who are specially named in the Writ of Attachment sued upon the *Monstraverunt*, and not the other Men.

**C** And note, that the Lord of ancient Demesne shall not be put to answer to the Writ of Attachment sued against him upon the *Monstraverunt*, before the Court be certified by the Treasurer and Chamberlains of the Exchequer, whether the Manor be ancient Demesne. And therefore it behoveth the Plaintiffs in the *Monstraverunt* to sue forth a special Writ unto the Treasurer and Chamberlains of the Exchequer to certifye the same: And the Writ is such.

*Rex Theſaur. & Camerariis ſuis ſalutem. Quia quibusdam certis de cauſis certiorari volumus, utrum Manerium de I. in Com. C. ſit de antiquo Dominico Corone Angliæ necne, vobis mandamus, quod ſerutato Libro noſtro de Domeſday, de eo quod inde inueneritis nos, ſub ſigillo noſtro Scaccarii noſtri, diſtincte & aperte ſine dilacione redd. certiores, remittentes nobis hoc Breue Teſte, &c.*

**D** And note, that the Book which is called *Doomſday-Book* was made in the Time of *S. Edward*, and all the Lands which were in the *Seisin*, and in the Hands of the ſaid *S. Edward* at the Time the ſaid Book was made are ancient Demesne, and the Lands which were in other Hands, and are not named in

**E** the ſaid Book, are Frank-fee: And thoſe Tenants which held in baſe Tenure, as by Copy of Court-Roll, or by the Rod, cannot ſue nor maintain this Writ againſt the Lord: And the Death of one Tenant, nor his Non-suit, ſhall not abate the Writ. And if the Frank-Tenants, and the Tenants by baſe Tenure join in a *Monstraverunt*, the Writ ſhall not abate, but for the Tenants by baſe Tenure.

2 R. 3. 1.  
39 E. 3. 6.



## Writ de Warrantia Diei.

[17.] **W** RIT of *Warrantia Diei* lieth in Case where a Man hath A Day in any Action brought against him to appear in proper Person, and the King at or before the Day send him in or about his Service, so as he cannot appear in Court at the Day; then may he sue forth this Writ directed to the Justices, reciting the whole Matter, commanding them that they do not record his Default for that Day, for the Cause before mentioned: And it is not material whether the Cause be true or not, when the King doth certify that the Party is in his Service. For it seemeth by the Words of the Writ, that the King by his Prerogative may warrant this Default for a Day: And so it seemeth, that if the Tenant in a *Præcipe quod reddat* at the *Grand Cape*, or the *Petis Cape* returned, make Default, that before Judgment upon this Default the King may send such a Writ unto the Justices, rehearsing that the Party is in his Service, and commanding them that his Default do not prejudice him: And it standeth with Reason that the King may so do, because that every one is bounden to serve the King in his Business. But what Process shall the Court award if the Tenant will not appear at the Day of the Default recorded, nor after, when the Writ of *Warrantia Diei* comes unto the Justices? It seemeth a new Summons shall issue out of the Common Pleas, to summon the Tenant anew, because that his Default at his Return is excused by the Writ of *Warrantia Diei*. But if the Writ *Warrantia Diei* do not excuse the Default at the *Grand Cape*, then it seems a new *Grand Cape* shall go forth upon the first Default returned at the Summons of the *Præcipe quod reddat*. *Quare* of that. And the King may grant such Writs to save two Defaults at two several Days, &c. *Quare* of these Matters, because they are out of Use at this Day. And the Form of the Writ is such:

*Rex Justiciar. suis de Banco salutem. Sciatis quod A. fuit in D servitio nostro per Præceptum nostrum die Lune in Crastin. xv. Pasch. proxim. præterit', ita quod eo die interesse non potuit Loquel. qua est coram vobis per Breve nostrum inter B. petent', & præd. A. Tenentem, de uno Mesuagio cum pertinent. in N. unde idem A. C. versus prædict. B. inde vocavit ad Warr' ut dicit: Et ideo vobis mandamus, quod præd. A. propter absentiam suam ad illum diem, non ponatur in defaultu, nec in aliquo sit perdens, quia diem illum quoad hoc warrantizabim. Teste, &c.*

The Form of the Writ to sue two Defaults is: *Rex, Sec. ut supra,*



*Supra. Sciatis quod A. fuit in servicio nostro per Præceptum nostrum die Jovis in Oſtabis S. Hill', & die Luna in Craſtin. Annularum proxim. præteritis, ita quod diebus ill. interesse non potuit Loquel. quæ eſt coram vobis per Breve nostrum inter, &c. Et ideo vobis mandamus, quod præd. A. propter absentiam suam ad dies illos non penatur in defectu, quia dies illos quoad hoc ei warrantizabimus, Teste, &c.*

**E** And these two Writs are not granted but by the King himself by the Rule of the Register; and the King may grant such Writs unto the Mayor and Sheriffs of London, or unto the Bishop of Durham in the County Palatine, or unto the Justices of Assise, or in the Eyre, or unto the Sheriff: And these Writs may be granted as well for the Demandant and Plaintiff as for the Tenant; and then the Writ is such:

**F** *Rex, &c. Sciatis quod A. fuit in servic. nostro die Luna in Craſtino Quinden Pasch. proxim. præterit, ita, &c. inter ipsum A. Petentem, & B. Tenentem, &c. And there it shall be said in Craſt. Quind. Pasch. because that the Pleas cannot be holden Quind. Pasch. because that is Sunday, which is the Sabbath-day. And the King may grant this Writ by Testimony of his Steward thus:*

*Rex, &c. Quia A. fuit coram Sen. & Mareſcallo nostro die Lun. in Quindena ſancti Johannis Baptist' proxim. præterit. in divers. inquisit', quæ coram iisd. Senesc. & Mareſc. prædict. die sum. fuer. apud E. sicut idem Sen. noster. coram nobis testificatus est: Vobis mandamus, quod præd. A. pro eo quod non venit coram vobis in aliis inquis. quæ coram vobis eod. die summon' fuer', non amerciemini, nec exitus, si in quos coram vobis ea occasione inciderit, perdere permittat'. Teste, &c.*

**G** And it seems by this Writ, that the Justices ought to make a special Entry thereof, and to save the Issue of this Juror, and also to make a special Estreat of this Matter, and to levy no Issues upon these Jurors, for whom such Writs come unto the Justices.

**H** And if a Man be essoined of the K. Service in any Action, &c. whereas in Truth he is not in the King's Service, then the Plaintiff or Demandant may sue forth a special Writ out of the Chancery, directed unto the Justices, rehearsing that he is not in the King's Service, commanding them to proceed. But by the Statute of Gloucester, if he do not bring his Warrant at the Day given, he shall lose 20 s. for the Journey; and shall be in the King's Mercy, and the Essoin dissolved. And if the Plaintiff purchase such Writ directed to the Justices, that he is not in the King's Service, then the Essoin shall not be adjourned, but shall be presently quashed, and he shall

## Writ of False Judgment.

not have Day by Adjournment to bring in his Warrant to warrant the Essoin.

## Writ of False Judgment.

[18.] **W**RIT of False Judgment lieth where False Judgment is given in the County, or in the Hundred, or in other Court-Baron which is not a Court of Record, in a Plea Real or Personal, as if in a Writ of Right Patent, or in other Plea; there the Party Plaintiff or Defendant which is grieved shall have this Writ, and the Writ shall issue first out of the Chancery: And if the False Judgment be given in the Sheriff's County-Court, then the Writ shall be directed unto the Sheriff himself, and shall be such:

*22. Aff. 64. Br. Error 120. If the Freeholders be recorded by Plea, where it ought to be by Writ, it is Error, and not void, & coram non iudice: But where Judgment is given of Lands, Contracts, or Covenants, which is out of their Jurisdiction, it is void, & coram non iudice.*

*Henric', &c. Vic. Linc. salut. Si A. fecerit, &c. tunc in pleno Com. tuo record. fac. Loquelam qua est in eod. Com. per Breve nostr. de Resto inter A. Petent. & B. Tenent', de uno mesuag. Et cont. ac. terra cum pertin. in C. unde idem A. queritur falsum sibi factum fuisse judic. in eod. Com'; & Record. illud habeas coram Justic. nostr. apud Westm. tali die sub sigillo tuo, & per quatuor legal. Milit. ejusdem Com. ex illis qui Record. illi interfuerunt: & Summ. per bonos Sum. pradiet. B. quod tunc sit ibi, auditurus Record. illud. Et habeas ibi Summ', nomina quatuor Militum, & hoc Breve.*

*Vide 4 & 5 Ma. Dyer. 164. the Writ was challenged because it was sub sigillo tuo & sigillis quatuor legalium hominum ejusdem Curie, and good, ut semble.*

And if the Tenant hath aliened the Land after Judgment given against the Demaudant, then the Summons shall be made in the Writ against him who is Tenant of the Land, and against him who was Tenant at the Time of the Judgment given, by these Words. *viz. & summ. per bonos Summ. pradiet. B. & C. qui mesuag. & terram illam nunc tenem, quod tunc sint ibi, audituri, &c.*

And if the False Judgment be given in another Court-Baron than in the Sheriff's Court, then the Writ of False Judgment is called a Writ of *Accedas ad Curiam*, and shall be directed unto the Sheriff; and the Writ is such:

*Rex Vic. Linc salutem. Si A. fecerit te sicurum de clam. sua, prosequend. tunc assumptis tecum quatuor discret. & legalibus Militibus de Com. tuo in propria person. tua acced. ad Curiam B. de C. & in plena Curia illa record. fac. Loquelam qua fuit in eadem Curia per Breve nostrum de Resto inter A. Petent. & B. Te-*



nenr', de uno mesug. &c. unde A. queritur falsum sibi factum fuisse iudicium in ead. Curia; & Record', &c. sub sigillo tuo, & per quatuor legales homines ejusdem Curie ex illis qui Recordo illi interfuerunt; & sum'm', &c. & habeas ibi nomina predicta. quatuor hominum, & hoc Brevis.

E And in this Writ of *Accedas ad Curiam* he shall take with him four Men, but it needeth not that they be Knights: But so shall it not be in the other Writ of *Recordari facias Loquelam*, which is in the County. But both Writs shall be returned under the Sheriff's Seal, and the Seals of four of the Sutors of the same Court. And in the Writ of False Judgment which is *Accedas ad Curiam*, it is a good Return for the Sheriff for to say, that after the Receipt of the Writ, and before the Return thereof, no Court was holden; and also that he required the Lord to hold his Court, and he would not, so as he could not execute the same. And thereupon the Justices shall award a *Distringas* directed unto the Sheriff, to distrain the Lord to hold his Court; and *Sicut Alias*, &c.

F In a False Judgment against an Abbot the Plaintiff was Nonsuit, and the Abbot had a *Scire facias* against the Plaintiff, to shew why he should not have Execution, and to have the Judgment executed returnable at 15 *Pasc.* at which Day the Plaintiff appeared, and assigned his Errors, and tendered Sureties to sue with effect, and prayed a *Scire facias* against the Abbot to hear Errors. And the Opinion of the Court was, that he might assign the Errors against the Abbot, without suing any *Scire facias* against him, because they had Day by the Roll.

G If the Writ of False Judgment abate for Default in the Writ, then the Plaintiff shall not have a *Scire facias ad audiend. Errores* upon the Record certified, because it cometh without an Original, when the Original abateth. But if the Plaintiff die, it seems that if the False Judgment be given in the base Court upon a Writ of *Droit Patent*, that then his Heir shall have a *Scire facias ad audiend. Errores* against him who recovereth upon that Record which is removed into the Common Pleas. And if the Plaintiff in the Writ of False Judgment be Nonsuit, whether the other Party shall sue Execution upon this Record so removed against the Plaintiff, without suing forth a *Scire facias*, is a Question. But *Hil. 23 H. 6.* the Opinion was, that he shall have Execution without suing forth a *Scire facias*.

H And Tenant at Will according to the Custom of the Manor, which is Tenant by Copy of Court-Roll, shall not have a Writ of False Judgment upon a Judgment given against him



34 H. 6. 48. him: But where False Judgment is given upon a Writ of  
*contrary, if Justices, directed unto the Sheriff, the Party grieved shall*  
*the Justices have a Faux Judgment, and not a Writ of Error, although*  
*be removed in the King's Bench by a*  
 21 E. 4. 4. And a Man shall not have a Writ of False Judgment but  
 21 E. 3. 45. in the Court where there are Suitors; for if there be no Sui-  
 35 E. 3. 1. tors, there the Record cannot be certified by them. And  
*ac. therefore*  
*it seemeth*  
 Error lieth  
 in a Court  
 of Pipow-  
 aer. Vid.  
 13 E. 4. 18.  
 6 E. 4. 43.  
 7 E. 4. 23.

upon False Judgment given in Court before Bailiffs, or  
 others who hold Plea by Prescription, in every Sum in Debt  
 by Bill before them, he shall not have a *Faux Judgment*, but  
 a Writ of Error thereupon. *Quod vide M. 4. E. 4. in Title*  
*Trespas.*

In False Judgment upon a Writ of Right Parent, or a  
 Writ of *Droit close*, the Plaintiff shall not assign Errors be-  
 fore the Records certified, as well the Original as the Resi-  
 due of the Record. And the Writ of False Judgment lieth  
 against a Stranger to the Judgment, if he be Tenant of the  
 Land, without naming him who was Tenant and Party to  
 the Judgment. Otherwise it is of a Writ of Error, for there  
 he ought to name him who was Party to the Judgment, be  
 he Tenant or not.

And where the Tenant loseth his Land by False Judgment  
 in a Writ of Right in a Court Baron, he shall not have  
 a Writ of False Judgment before that the Demandant hath  
 entered upon him, &c. *Quod Vid. M. 38. E. 3.*

And where the Defendant in *Faux Judgment*, after Ap-  
 pearance by him maketh Default, a Grand Distress shall issue  
 out against him. And if he again make Default, or cometh  
 and will not save his Default, the Plaintiff in the Writ of  
 False Judgment shall have Judgment to recover Seisin of the  
 Land against him: *Quod vide M. 13 E. 2.* And the Writ  
 of False Judgment given in ancient Demesne is such:

*Rex' Vic. salut' Si A. fecerit, &c. accedas ad Cur. B. &c. & C*  
*recordari fac. Loquelam quæ est in eadem Cur. per parvum Breve*  
*nostrum de Riis inter A. Petentem, &c. & habeas ibi nomina*  
*prediæ. quatuor hominum, hoc Breve, & aliud Breve, &c.*

And in a Writ of *Droit close*, if the Writ of the Deman-  
 dant be abated, whereupon he bringeth his Writ of False  
 Judgment in the Common Pleas, and there the Judgment is  
 reversed, and the Writ awarded good; then he shall hold  
 Plea in the Common Pleas, and a Judicial Writ shall issue  
 from the Common Pleas, in Nature of Protestation made in  
 the first Writ; and if the Protestation were in the Nature  
 of Assise of *Mortdaucesher*, the Justices shall direct a Writ  
 unto the Sheriff to summon the Jurors to come out of an-  
 cient

[19.]  
 21 H. 4. 23.  
 cmtr. and  
 21 H. 6. 34.  
 the Party  
 had a Scire  
 fac. to have  
 Execution  
 out of the  
 Common  
 Pleas.

cient Demefn thither, and all the Matter shall be tried and detemined in the Common Pleas: And although the Judgment be given of the Land in the Common Pleas, yet the Land shall be ancient Demefn. *Quod vide M. 3. E. 3. in Title of Faux Judgment.*

E And upon the Writ of *Faux Judgment*, which is an *Accedas ad Curiam*, if the Sheriff return that the Writ *ades tarde vñ, quod Executionem ejusdem facere non potuit*; then he shall have a *Sicut alias* directed unto the same Sheriff: And if he return not that at the Day, then he shall have a *Pluries* to the same Sheriff. And he may have these Writs of *Alias* and *Pluries* out of the Common Pleas, where the first Writ was returned *tarde*, if he will, or he may have them out of the Chancery, &c. See for this Matter in the Book of *Entries*, f. 114, & 115. And upon the *Accedas ad Curiam*, if the Sheriff return, that he will go unto the said Court, &c. and there pray the Lord to hold his Court, that he may do Execution of the Writ, and that the Lord refuseth to hold his Court, &c. by Reason whereof he cannot do Execution of the Writ; then a *Distringas* shall issue out of the Common Pleas, directed to the Sheriff, to distrain the Lord, so that he distrain him to hold his Court at a certain Day appointed by the Sheriff; *Et quod Vice, assumpt. secum quantum discretis Militibus, &c. de Comitatu, &c. accedat ad Curiam, &c. & Seire fac. hic in xv. Pasche, &c. & Record. illud tunc habeat, &c. & quod summ. præd. I. quod sit ibi, auditurus Record. illud, &c. Quod vide Lib. Intrae' f. 117.*

F There is another Writ of *Faux Judgment*; when there is a Plaint in the County of Debt or Trespas without any Writ, then the Writ of *Faux Judgment* in the County shall be thus: *Recordar. fac. Loquelam quæ fuit in eadem Curia sine Brevis nostro, inter, &c. de quadam transgr', &c. unde idem A. querit. falsum sibi fact. fuisse judic', &c.* And where *Faux Judgment* is given in another Court than the County, upon a Plaint, or upon a Writ, then the Writ shall be thus:

*Rex Vic. salut'. Si A. fecerit, &c. tunc accedas ad Hundr. A. de B. vel ad Curiam A. de C. & in pleno Hund. vel Curia recordari fac. Loquelam quæ est in eodem Hund. vel Curia per Breve nostrum, vel sine Brevis nostro, de eo quod idem A. teneat præfat. B. conventionem inter eos factam de uno Misuagio cum pertin. in F. unde queritur, &c.*

G And if a Baron and Feme be sued in a Court-Baron by a Writ of Right, and the Feme is received for the Default of the Husband, and plead there, and false Judgment is given against him, she and the Husband may have a Writ of False Judgment, as appeareth by the Register. And



## Writ de Error.

**A** Writ of Error properly lieth where False Judgment is given in any Court which is a Court of Record, as in the Common Pleas, or in London, or other City, or other Place where they have Power to hold Plea by the King's Charter, or by Prescription, in any Sum in Debt or Trespass over the Sum of 40s. And if False Judgment be given in London, or other Place, which is a Court of Record, the Party grieved shall have a Writ of Error, and this Writ may be returned into the Common Pleas, or in the King's Bench, at the Pleasure of him who sueth the same.

*23 H. 6. 11. The Form of Writ of Error to the Justices of the Common Pleas, Joh. Pri. for Capital. Just. & locis suis, & non Capital. Just. tantum; for the Records there are not before him alone. But in the Exchequer the Writ is not Tneaurario & Baronibus, but Baronibus tantum. 34 H. 6. 27. Error was brought 3 die from the Return, where the Judgment was the first Day, and well, because after the Judgment. 15 E. 4. 18. If a Record be removed out of the Exchequer into the Exchequer-Chamber by Error, when Judgment is given, all shall be remanded into the Exchequer, and Execution shall be awarded there; but that is by the Statute of 31 E. 3. cap. 12. otherwise it is of other Courts.*

And when the Record is removed by Writ of Error into the Common Pleas or King's Bench, then the Plaintiff ought to assign his Error, before he have a *Scire facias* against the Defendant *ad audiendum errores*. And if he assign divers Things for Errors, which the Court thinketh to be no Errors, he shall not have a *Scire facias* upon this Assignment. But after Errors assigned, and a *Scire facias* awarded against the Defendant upon that Assignment, he shall not assign *an Error* in Fact, as to say, that the Plaintiff was dead at the Time of the Judgment, or before the Judgment, &c. But he may assign as many Errors as do appear in the Record, and it shall not be said a double Assignment. But he shall assign for Error, but one Error in Fact, because this Error in Fact shall be tried by the County, and the Errors in the Record shall be tried by the Justices.

And upon a Writ of Error the Record it self shall be removed, and not the Transcript of the Record; for upon a Transcript of a Record a Man shall not assign Errors, if it be not upon a Writ of Error sued upon Transcript of a Fine, there he shall assign Errors upon the Transcript of the Note of the Fine; and if the Justices do conceive it Error, then they shall send for the Note of the Fine, and shall reverse the same.

In a Writ of Error, when the Record cometh in Court, if the Plaintiff all that Term do not assign his Errors; and although

202 (107)  
C: B:  
270:26  
1:250

37 Aff. 17.  
for Assign-  
ment of ma-  
ny Errors in  
Law.  
42:147  
376:252  
72,  
16:219

*38 H. 6. 30. Note, that the Party assigned Error upon an Issue, and the Court saw the Original that it was not good, for it was ex assignatione, where it ought to be ex divisione, and therefore the Court ex officio did abate the Writ.*



though that he do assign his Errors, if he do not sue a *Scire fac. ad audiendum Errores* against the Defendant, returnable the same Term, or the next Term; all the Matter is discontinued, and the next Term he ought to sue a new Writ of Error out of the Chancery, upon that Record directed to the Justices before whom the Record is removed, to proceed upon the Record *qua coram vobis residet*.

The Form to assign Errors is to put a Bill into the Court, and to say in the Bill, *in hoc erratum est*, &c. and to shew in certain in what Things; and *in hoc erratum est*, and shew in certain another Thing; and so of the rest in which he will assign the Errors. But to say *in omnibus erratum est*, is not good, because of the Incertainty.

A And in a Writ of Error he ought to assign his Error in proper Person, and not by Attorney, where he is in Execution by Force of the Judgment. And in a Writ of Error upon Judgment given in the Common Pleas, the Plaintiff cannot assign for Error, that the Justices of the Common Pleas did not give that Judgment, but the Clerks of their own Heads; neither can he assign for Error, that the Jurors gave their Verdict for the Defendant, and that the Justices entered it for the Plaintiff, and gave Judgment for him, because that this Assignment is contrary to that which the Court doth as Judges, &c.

C And if a Man be vouched, and entereth into Warranty and loseth, he may have a Writ of Error, and assign the Errors which happened betwixt the Demandant and the Tenant, or betwixt the Demandant and the Vouchee. And so he in the Reversion who prayeth to be received upon the Default of Tenant for Life, or for his faint Pleading, if he be received, and pleadeth, and loseth, he shall have a Writ of Error, and assign the Error betwixt the Demandant and the Tenant, or between the Demandant and him who prayeth to be received. And if Tenant for Life loseth by Default, he in the Reversion shall have a Writ of Error, although he were not received, nor prayed to be received, and shall assign for Error the Matter which was betwixt the Demandant and the Tenant who lost by Default. 8 H. 4. 55, 56.

D A Man shall assign an Error in Law as the Case is: As if the Husband and Wife levy a Fine of the Lands of the Wife unto a Stranger, the Wife being within Age, they shall have a Writ of Error during the Nonage of the Wife, and shall assign that for Error, and that is an Error in Law of the Court. *ment shall be reversed, and that Execution shall be awarded, or shall cease during the Life of the Husband.*

2 H. 7. 12.  
15 H. 6. 12.  
If the Writ of Error hath longer Day of Return than it ought to have, the Justices of the Common Pleas may shorten the Day.

5 H. 7. 3.  
8 H. 7. 10.  
7 H. 7. 4.  
21 H. 6. 43

[21.]  
yol. 33. 24  
15 Dy. 1

Hard.  
36

59 E. 3. Aff.  
The Reversion was granted to one, pendant the Writ against the Lessee for Life; or if the Tenant in Fee pray in Aid of a Stranger.

Quere, for in these Cases be in the Reversion shall have Error.

50 E. 3. 5.  
But Quere, if the Judgment shall be reversed, and that Execution shall be awarded, or shall cease during the Life of the Husband.

20 Aff. 2. Also in a Writ of *Entria sur Disseisin*, if the Original Writ  
 ac. 21 E. 3. want these Words in the Writ, *Quam clamat esse jus & heredi-*  
 Fitz. Error *tatem suam*, if the Tenant admit of the Writ, and plead to  
 4. 7 H. 6. the Action, and loseth, he shall not assign this Fault in the  
 39. *Matter* Writ, because he hath admitted the Writ to be good by his  
*in Fait must* Plea. And so in a Writ of *Desineus of Charters* concerning  
*be pleaded,* Plea. And so in a Writ of *Desineus of Charters* concerning  
*and shall not* certain Lands, if the Plaintiff in his Count do not declare  
*be assigned* the Certainty of the Land in the Count, if the Defendant  
*for Error.* do admit the Count good, and pleadeth unto the Action,  
 3 E. 4. 19. and loseth by Judgment given in a Writ of Error sued by  
 By Pigot him, he shall not assign for Error the Fault in the Count;  
 and Choke, because he hath admitted the same to be good by his Plea.  
*in Joint-tenancy, General-tenancy, Misnomer, taking of Husband pendant the Writ, and the like, which prove the Writ abatable; there if the Party plead other Matter, and admit the Writ, he shall not have Error: Contra of Death or other Things, which prove the Writ abated.*

2 H. 5. 2. And a Man shall not assign for Error a Thing which is for  
 his Advantage: As to say and assign for Error that he had Day,  
 and that the Day was for longer time than the common Day;  
 and so he shall not assign for Error that he was not effoined;  
 40. E. 3. 15. where he ought not to be effoined, or had Aid granted  
 vid. 31. E. 3. unto him, where he ought not to have had Aid; because  
 620. 46. Br. Er. 65. and these things are for his Advantage.

11. / 3) If false Judgment be given before the Justices of the Bi-  
 60. 59. shop of *Durham* in the County Palatine, the Party grieved  
 shall have a Writ of Error there before the same Bishop M.  
 19 H. 6. 12. And if he give false Judgment, then the Writ of  
 False Judgment in Wales before Justices, Error shall be sued in the Common Pleas, or in the King's  
 14 E. 3. Bench.  
 Errors there shall be reversed in B. R. if there be Justices there; but by Fortescue it shall be reversed in  
 Parliament, 19 H. 6. 12. Error in County Palatine shall be reversed in B. R.  
 21 H. 7. 33. per Fineux. Erroneous Judgment in County Palatine shall be reversed  
 there by Commission, 37 H. 6. 13. Error in Chancery reversed in Parliament. But  
 see 14 El. Dyer. 315. That Error upon a Scire facias upon a Recognisance was re-  
 versed in B. R. which seemeth contrary to 37 H. 6. 13.

7 H. 4. 37. And if a False Judgment be given for the King in any Suit  
 1 H. 7. 13. or Action, the Party grieved shall have a Writ of Error, and  
 assign his Errors, without suing forth any *Scire facias* against  
 the King *ad audiendum Errores*, because that the King is al-  
 ways present in Court; and that is the Cause of the Form  
 of Entries of Suits for the King is such: Christopher' Hales,  
*Artorn. Domini Regis, qui pro Domini Rege sequitur, &c. ven. hic*



Writ de Error.

in Car', &c. and not, *Dom. Rex per C. H. Attorn. sum. ven. hic* H. 7. 13.  
*in Cur'*, because that the King is always present in Court. It is said, if  
any be to  
reverse Utlary in Felony, when he cometh in upon the Indictment, he shall assign  
his Error before he prosecuteth his Writ of Error.

- I Error in the King's Bench in the Procefs where it is the Default of the Clerks, shall be reversed in the same Court by a Writ of Error sued by the Party before the same Justices: But not without suing of a Writ of Error, although it be the same Term. But in the Common Pleas, after Judgment given the same Term the Justices may reverse their own Judgment upon Error in the Procefs, or for Default of the Clerks, without any Writ of Error sued forth; but in another Term, the Party ought to sue forth a Writ of Error thereupon returnable into the King's Bench. But of an Error in Law which is the Default of the Justices, the same Court cannot reverse the Judgment by a Writ of Error, nor with a Writ of Error, but this Error ought to be redressed in another Court before other Justices by a Writ of Error.
- K And he which confesseth the Demandant's Action shall have a Writ of Error to reverse that Judgment, against his Confession upon Erroneous Judgment given.
- L In Plea of Land against the Tenant, and the Tenant dyeth, he who is Heir of the Tenant to that Land shall have a Writ of Error, and not he who is his Heir at the Common Law: As in Borough-English if the Tenant lose the Land by Erroneous Judgment, the youngest Son shall have the Writ of Error. And so he which is Heir unto the Special Tail shall have the Writ of Error, if the Land be lost by Erroneous Judgment: The Tenant may have one Writ of Error, and the Vouchee another Writ of Error upon the same Judgment; and so the Tenant, and the Vouchee by Recit, and all depending at one time. And an Executor or Administrator shall have a Writ of Error upon a Judgment given against the Testator for Debt or Damages. And so the Heir shall have a Writ of Error to reverse an Outlawry of Felony pronounced against his father, to restore the Blood betwixt him and the Father. And if a Man plead in any Action, and the Justices will not allow thereof, and the Party makes his Bill upon it, and prayeth that the Justices will
- Seal

Vide 4 E. 4. 41. 7 H. 6. 28. Hide-  
brad's Case 19 H. 6. 2. 15 E. 4. 78.  
37 H. 6. 17. per 3 Justices. If a Man be  
Utlage notwithstanding a Superfedas  
and appear and plead in the Common  
Pleas, the Utlary shall be reversed in  
the same Place, altho' it be another Term;  
but contra, if it be in another Term, but  
Defendant doth not appear and plead.

3 H. 4. 19.  
The Daugher  
to the Tail  
brought Er-  
ror, altho'  
a Son were  
Heir at  
Common  
Law. Vid.  
1 Ma. Dyer  
89. 90.  
20 E. 3. Fitz.  
Error 2.  
11 H. 4. 65.



[21.] Seal this Bill of his Acceptance or Plea, and if they do according as is contained in the Statute of *West. 2. cap. 3.* the Party grieved shall have a Writ of Error, and may assign Error upon that Bill so sealed, and also in the Record, or in one of them at his Pleasure: But this Bill ought to be sealed by the Justices before Judgment given by them, and not after, as it appeareth *An. 11 H. 4. 52, 65, 92.*

Vid. 3 H. 3. the last Case, Vid. devant 21 L.M.N. The Successor of an Abbot, Prior, or Parson, or such Bo A dies Corporate, shall have a Writ of Error of a Judgment given against their Predecessor; of all Things which touch the Succession or Corporation. But if a Man recover against a Parson or a Bishop, Debt or Damages by Judgment or Action Personal, their Executors shall have the Writ of Error upon that Judgment, and not their Successors, because that Matter doth not concern the Corporation.

18 E. 3. 25. If a Man sue forth Execution erroneously against the B Recognisor upon a Recognisance, the Feoffee of the Recognisor shall have a Writ of Error. If a Man purchase his Pardon of an Outlawry, yet he may have a Writ of Error to reverse the Outlawry. *H. 18 E. 3.* But if a Man do disclaim in a *Præcipe quod reddat* of Land, and the Demandant doth recover, the Tenant shall not have a Writ of Error against his own Disclaimer: But if he plead *Non-tenure*, and the same be found against him, for which the Demandant recovereth, the Tenant shall have a Writ of Error, *H. 6. E. 3.* A Man condemned shall not assign Error in the Process; but in the Original Writ he may.

It is no Error to suffer one to make Attorney in an Action D in which he ought not to make any Attorney.

Upon false Judgment given in the Common Pleas in *Ireland* the Writ of Error ought to be sued there; and returnable in the King's Bench in *Ireland*; but upon a Judgment given in the King's Bench in *Ireland*, the Writ of Error shall be sued and returned in the King's Bench in *England*.

*Justice of the King's Bench in Ireland. And note that it is said, That there is no Original here, but the same remains there; and so is 37 Ass. 5. Fitz. Ass. 328.*

When the Record cometh into Court by a Writ of Error, F the Plaintiff shall assign his Error, and shall have a *Scire facias* before the Record shall be entered; for the same shall not be entered before the Parties have Day by the *Scire facias*.

And the Process in this Writ is *Alias* and *Pluries*, and upon that Attachment shall be awarded against the Judge, who ought to return the Record, to whom the Writ was directed: G

sted: And the *Pluries* may be returned into the Common Pleas, or in the Chancery, if the *Pluries* issueth to the Justices of the Common Pleas to remove the Record; and if the Writ issueth to another base Court, the *Pluries* ought to be returned into the Chancery, or into the same Court where it is made returnable. And if it be returned into the Chancery with the Record, the Chancellor himself with his own Hands may put the Record into the Common Pleas without any Writ of *Mittimus* thereunto, and that as well as if he had sent a *Mittimus* with the Record.

## Error in London.

**N**OTE that if any erroneous Judgment be given in the Courts before the Sheriffs of London, the Party grieved shall have a Writ of Error out of the Chancery, directed unto the Sheriffs, to bring the Record before the Mayor and Aldermen in the Hustings of London, which Hustings is a Court holden before the Mayor, &c. And there the Record shall be examined: And if there be Error, they shall reverse the Record there by the Custom of the said City. And if the Sheriff, after the Record is removed before the Mayor, &c. in the Hustings, will award Execution upon the Record against the Party, the Party against whom the Execution is awarded shall have a special Writ out of the Chancery, directed unto the Sheriffs, that they take sufficient Sureties of the Party to satisfy the King, and also the Party, of that which appertaineth unto them, if the Judgment be affirmed, and that they surcease to do Execution; and if they have taken the Party in Execution, that they deliver him out of Prison. And the Form of the Writ is such:

*A Feme Covert was received in the Common Pleas to acknowledge a Deed inrolled, where they have not Power to examine her without a Writ, Quære if Error; for it is not adjudged if it be Error, or not Quære the Usage at this Day. So of an Infant. 21 E.*

3. 29. Br. Error 62. *vid.* 32 H. 8. That a Statute nor Deed inrolled shall not be taken by the Common Law, of an Infant or Feme Covert. Contr. by the Custom of London, per 29 H. 8. 23. & 7 E. 4. 5. Lis.

**I** Rex Majori & Vic. London. salut'. Ex parte R. Sec. nobis est ostensum, quod cum secundum Consuetud. in Civitate predicta, in casu quando aliquis, sive Querens, sive Defendens, queritur, quod in Loquela quae fuerat in Curia nostra coram Vic. Civitatis predictae. Errores aliqui interven', & record. & process. Loquularum illarum causa erroris intervenientis venire faceret in Hustingo Civitatis predictae, ad Errores illos corrigendos, Vicecom Civitatis illius execution. prioris judicij coram eis raddit. faciend. supersed. debeant, pendentibus in Hustingo Recordis & processibus Loquularum illarum indistassarum; ac nos nuper ad prosecutio-



nam pref. R. suggerentis Errorcm in Recordo & processu Loquela, que fuit eam vobis prefat. Vic. in Curia nostra Civitatis prædictæ. per Breve nostrum, inter A. & prædictum R. de eo quod idem R. &c. intervenisse manifestum, vobis præcipimus quod Recordum & processum ejusdem coram vobis in Hustingo prædictæ venire faceretis ad Errorcm, si quis fuerit, corrigend' ; vos nihilominus Viccom. (pendente in Hustingo prædictæ. dicta Loquela de Errorc indiffusa) executionem prioris judicii fieri faciatis minus juste, in ipsius R. dispendium non modicum & gravamen: Vobis igitur præcipimus, quod si ita sit, quod idem R. invenerit vobis sufficientem Secur. de satisfac tam. nobis, de eo quod ad nos in hac parte pertinet, quam prefat. A. de arrengiis & damnis sibi in hac parte adjudicatis, si contigerit primum judicium affirmari, & ad faciendum ulterius & recipiend. quod Curia nostra consideraverit in hac parte; tunc execut. prioris judicii faciendo superseceatit, pendente in Hustingo prædictæ. Loquela de Errorc supradictæ. Et si idem R. occasione judicii illius captus sit, & in prisona nostra detentus, tunc ipsum R. a prisona illa, si occasio prædictæ, & non alia, detineatur in eadem, per securitat. prædictæ. interim deliberat. faciatis, ut dicta. Loquelam suam de Errorc prosequi possit. Teste, &c.

[10.]

And it appeareth by this Writ, that a Man shall have an **A** Action against any Person in London, by Original out of the Chancery directed unto the Sheriffs of London, and that they shall hold Plea thereof. And a Man shall have the like **B** Writ of Error upon a Judgment given in London before the Sheriffs by Plaint sued there before them, without any Writ Original sued, &c. And the Writ of Error shall be directed unto the Mayor, and also to the Sheriffs, although that the Judgment be given in the Sheriffs Court before them, to remove the Record into the Hustings to reverse it there, if, &c. And the Form of the Writ shall be thus:

Re: Majori & Vic. Lond' salutem. &c. Quia in Recordo & **C** processu, ac etiam in redditione judicii Loquela que fuit in Curia nostra Civitat. prædictæ coram vobis pref. Vicecomitibus sine Breve nostro, secundum Consuetud. ejusdem Civitatis, inter A. & R. de quadam transgr. eidem A. per pref. R. illata ut dicitur, Error intervenit manifestus, ad grave dampnum ipsius R. sicut in querela sua accepimus; Nos Errorcm (si quis fuer.) modo debito corrigi, & partibus prædictæ. plenam & celerem justitiam fieri volentes in hac parte, Vobis præcipimus, quod si judic' inde reddit. sit, tunc Record. & process. Loquela prædictæ coram vobis in proximo Husting. nostro ejusd. Civitatis venire, eaque in presentia partium præd. per vos pref. Vicecomites super hoc præsententia, si interesse voluer', recitari, & diligenter examinari, &

Errorem



*Errorem (si quis fuerit) in hac parte modo dabit. corrig. & partibus predictis plenam & celerem justitiam inde fieri faciatis, ut de jure & secundum Consuetud. Civitatis predictae fuerit faciendum. Teste, &c.*

**D** And the Writ of *Supersedeas* unto the Sheriff, to cease to do Execution pendant the *Writ of Error*, may be made and contained in the same *Writ of Error* which is directed unto the Mayor and Sheriffs to remove the Record into the *Hustings*.

**E** And if Erroneous Judgment be given in the *Hustings* in London before the Mayor and the Sheriffs there, then the Party who will sue to reverse the Judgment shall come into the Chancery, and there sue a Commission, directed to Persons to examine the Record, and Proses, and the Errors, and thereupon to do Right. And the Commission shall be thus: 34 H. 6. 41.  
When Error is sued upon a Judgment before the Mayor, it shall be at S. Martins, of their Records, and the Recorder shall record the same, Ore tenus.

*Rex dilectis, &c. R. & S. salutem. Ex parte B. accepimus, quod in Recordis & processu, ac in redditione iudicii Loquelae quae fuit coram Majore & Vic. Lond. in Hustings nostro ibidem sine brevi nostro, int. C. & praed. B. de quadam transgressione illata, ut dicitur, Error intervenit manifestus: Nos, in defectu eorundem Majoris & Vicecomitum volentes Errorem illum (si quis fuerit) debito modo corrigi, & partibus inde fieri Justitiae complementum, assignamus vos Justitios nostros, una cum iis quos associavimus, ad praed. Recordum & processum examinandum, & Errorem (si quem in eis, aut in redditione iudic. Loquelae praed. inveniri contigerit) corrigendum, & ad plenam & celerem Justitiam inde partibus faciendam, secundum Consuetud. Civitatis praed. Et ideo vobis mandamus, quod ad certum diem, quem ad hoc provideritis, usque Sancti Martini magnum Lond. accedatis, & in defectu praed. Majoris & Vic. praemissa fac. in forma praed. factur &c. secundum legem & cons. regni nostri, & Civitatis praed.; salvis, &c. Mandamus &c. eisdem Majori & Vic. quod ad certum diem, quem eis sciri fac. Recordum & processum Loquelae praed. cum omnibus ea tangentibus, & partes praed. coram vobis ad locum praed. venire fac. In cuius, &c. Teste, &c.*

And upon this Commission the Justices shall award a Precept unto the Mayor and Sheriffs, to send the Records and Proses before them at a certain Day, and to warn the Parties to be before the Justices at the same Day, &c. And the King shall send another Writ unto the Mayor and Sheriffs, to have the Record and Proses before the said Justices at the Day

## Error in London.

assigned by the Justices by their Precept made unto the Mayor and Sheriffs. And upon this Commission the King may make Association, and another Writ *si non omnes* directed unto the Justices to proceed, although that some of them do not come, as he shall do in an Assise, or in Oyer and Terminer, &c.

And a Man shall have a Commission to examine the Errors, G and Judgment given in the Hustings in the Time of another King, and in the Time of another Mayor, and other Sheriffs; and the Form of the Commission is such :

*Res dilectis, &c. Quia ex parte B. accepimus, quod in Recordo & processu, &c. [usque ib. justitiæ complementum] assignavimus vos tres, & duos vestrum Justiciar. nostr', ad Recordum & processum Loquela prædicti. in præsentia nunc Majoris & Vic. Civitatis præd', per vos super hoc præmuniend', si interesse voluerint, ad Ecclesiam sancti Martini magni Lond. supervidend. & examinanda', &c. [ut supra usque ib. Civitat. prædicti.] Et ideo vobis mandamus, quod ad certum diem, &c. provideritis, usque dictam Ecclesiam sancti Martini magni Lond. accedatis, & præmissa omnia & singula fac. & explicet. in forma prædicti factur', &c. secundum Legem & Consuetudinem Civitatis prædicti; salvo, &c. Mandamus etiam eisdem nunc Majori & Vicecom', quod ad certum diem quem vos, &c. eis fieri fac. Record' & processum Loquela præd', cum omnibus ea tangentibus que penes ipsos resident, ut dicitur coram vobis, &c. ad locum prædicti venire fac'; præfatisque Vic. quod ipsi scire fac. præf. B. quod tunc sit ibi, Error si quis in Recordo & processu prædicti, &c. ut supra in præmissis, &c. Tiste, &c.*

[24.]

And upon this Commission the King shall send another Writ unto the Mayor and Sheriffs of London, to send the Record and Process before the said Justices, &c. And the Writ in the Beginning thereof shall rehearse the Effect of the Record and Process, and also it shall rehearse the Commission which he hath made to be directed unto certain Justices, to examine, &c. and to do Justice thereupon : And then he shall say in the End of the Writ, *Et ideo vobis præcipimus, quod ad certum diem, quem iidem R. F. & S. vel duo eorum, vobis scire fecerint. Record' & process. Loquela prædicti, cum omnibus ea tangentibus, que penes vos resident, ut dicitur, coram eis vel duobus eorum ad locum prædicti venire fac', vosque præfat. Vic. scire fac. præf. A. quod tunc sit ibi, Errorem illum (si quem in Recordo & process. prædicti. aut in redditione judic. Loquela prædicti. intervenire contigerit) audiat', & ulterius factur'. & receptur. quod Curia nostra consideraverit in hac parte. Et habeat. &c.*

And if a Man hath Judgment given for him in London be- A  
fore



fore the Sheriffs in their Courts, or before the Mayor and Sheriffs in the Hustings of London, and the Defendant, to delay the Execution of the Judgment, sueth a Writ of Error to remove the Record before the Mayor, &c. and after the Party Defendant who sued that Writ of Error will by subtil Means convey his Goods out of the City, or otherwise waste them, to the Intent that the Plainant may not have Execution of his Goods; then the Plainant who had Judgment to recover shall have a special Writ directed unto the Mayor and Sheriffs, that they provide that the Goods amounting unto the Value of what is recovered be safely kept to satisfy the Plaintiff, if the Judgment be affirmed for him; so that Execution may be done of the first Judgment upon the same Goods.

**B** And if Judgment be given before the Sheriffs of London for the Plaintiff, and the Defendant sueth a Writ of Error, and removeth the same before the Mayor and Sheriffs in the Hustings, and when he hath removed it by a Writ of Error, if he will proceed no further upon the Writ, &c. then the Plainant who recovered shall have a Special Writ unto the Mayor and Sheriffs that they proceed unto the Examination of the Errors, and to do Execution, if the Judgment be affirmed. And upon that Writ he shall have an *Alias*, and a *Pluries*, *vel causam nobis significet* in the *Pluries*, if he will not proceed, &c. And this Writ was devised by *Parving* then Lord Chancellor, and by him diligently examined, as it appeareth by the Register.

**C** And if False Judgment be given in Ireland, the Party may sue a Writ of Error in the King's Bench in England; and the Writ shall be such:

*Rex dilect. & fidel suo A. Justic. suo Hibern', salutem. Quia in Recordo & processi, &c. Error, &c. ad grave dampnum ipsius B. sicut ex gravi querela sua accepimus: Nos, &c. quod Record. & process. Loquel. præd', cum omnibus ea tangentibus nobis sub sigillo vestro distincte & aperte mittatis, & hoc Breve, ita quod ea habeamus tali die, &c. prout inspicit. Record. & process. præd', ulterius inde fieri faciamus quod de jure fuerit faciend'. Et scire fac. præf. S. quod tunc sit ibi, ad procedend. in Loquela præd', & ad faciend. & recipiend. quod Curia nostra consideraverit in premiss. Teste, &c.*



## Error.

**R**EX dilectis & fideli suis I. de T. salutem. Quia in Recordo **D**  
 & processu ac in redditione iudicii Loquela quæ fuit coram  
 vobis & sociis vestris Iudic. nostris de Banco per Breve nostrum,  
 inter A. & B. de Record. & processu Assise Novæ dis-  
 seissimæ, quæ inter eos summ. fuit & capta apud S. coram dilectis  
 & fidelibus nostris I. de L. & sociis suis justic', &c. Assign', de Te-  
 nementis in W. quæ quidem Recordum & process. coram vobis  
 certis de causis venire fecimus, Error intervenit manifestus, ad  
 grave dampnum ipsius A. sicut ex querela sua accepimus: Nos Er-  
 rorem (si quis fuerit) in hac parte modo debito corrigi, & par-  
 tibus prædict. justitiam inde fieri volentes, prout decet, Vobis  
 Mandamus, quod si iudic. inde redd. fit, tunc tam Record.  
 & process. Loquela præd. coram vobis sic habit', quam etiam Re-  
 cord. & process. Assise præd. coram vobis missa, cum omnibus ea  
 tangent', nobis sub sigill. vestro, &c. ita quod ea habeamus, &c. ut  
 his inspectis, &c.

And this Writ of Error lieth where the Assise passeth in **E**  
 the County before the Justices of Assise, and afterwards it  
 is removed into the Common Pleas, and there is Judgment  
 given: Now the Party may sue this Writ of Error if there  
 be any Error in the matter; and upon that he may have an  
*Alias*, and a *Pluries*, if the Justices will not rectifie the Re-  
 cord, &c.

And if the Justices of that Bench, or other Justices upon **A**  
 the Writ of Error will not certifie all the Record, then the  
 Party who sueth the Writ of Error may alledge Diminution  
 of the Record, and pray a Writ unto the Justices who cer-  
 tified before the Record, to certifie all the Record; and the  
 Writ shall be such:

[17.]

Rex dilectis & fideli suo W. de T. salut'. Cum nos nuper ad **B**  
 prosecutionem I. de H. nobis suggerentis, in Record. & processu,  
 ac etiam in redditione iudicii Loquela quæ fuit coram vobis &  
 sociis vestris Iudic. nostris de Banco per Breve nostrum, inter  
 W. de T. Petentem & I. de R. Tenentem, de xv mesuagiis cum per-  
 tinen. in S. Errorem intervenisse manifestum, vobis mandaverim,  
 quod si iudic. inde redditum esset, tunc Record. & process.  
 sum Loquela præd. cum omnib. ea tangentibus nobis sub sigil-  
 lo vestro distincte & aperte mitteratis, & Breve nostrum quod vo-  
 bis inde venit, ita quod ea haberemus in Crastin. sancti Mar-  
 tini proximi. præterit, ubicunque tunc essemus in Anglia: Ac  
 jam ex parte præd. I. de H. nobis est ostensum, quod licet vos præ-  
 textu Brevis nostri præd. Record. & processum præd. in aliqua  
 sui

fat parte coram nobis ad dictum Crastin. misivitis, aliqua tamen eorumd. Record. & process. necnon quedam alia ea tangentia adhuc restant coram vobis mittenda, in ipsius L. de H. dampnum non modicum & gravamen: Ideo vobis Mandamus, quod si ita est, tunc residuum Record. & process. præd, necnon omnia alia ea tangentia, quæ ut præd. est restant coram vobis, mittenda nobis sub sigillo vestro distincte & aperte mittatis, & hoc Breve; ita quod ea habeamus, ut ulterius in præmiss. &c.

## Dedimus potestatem de Attornato faciendo.

**C** IT seemeth that before the Statutes which gave Power unto a Man to make an Attorney, the Justices would not suffer that the Plaintiff, or the Defendant, or the Demandant, or the Tenant, should make Attorney in any Action, Suit, or Bill, in any Court of Record, nor in any other Court which was not a Court of Record, because the Words of the Writ do command the Defendant for to appear, &c. and that was always taken to be in proper Person.

The Form of Entry in every Action for the Plaintiff, or Demandant, is; *Et præd. Quer. obtulit se iiii. die, &c. & prædict. Def. non venit; ideo præceptum est Vic;* quod &c. by which it is taken, that the Plaintiff was to appear in proper Person. But now by the Statutes he may make Attorney in a Court-Baron, or other Courts; and may make Attorney for Suit Personal at the Hundred, or other Court-Baron; but for Suit Real at the Leet, or at the Sheriff's Torn, he cannot do it by Attorney, but he ought to do the same in proper Person. But it seemeth that the King by his Prerogative, and before the Statutes, might give Warrant unto a Man to make Attorney in every Action or Suir, and that as well unto the Demandant, or Tenant, as unto the Plaintiff, or Defendant; and that he may direct his Writs, or Letters, unto the Judges of Courts, commanding them to admit and receive such Persons by their Attorney, and that the Judges are bound to do the same. And it seemeth one Cause is, because it shall not be Error, if the Judge do admit any Plaintiff, or Defendant, to make Attorney in any Suit or Action in which by the Law he ought not to make Attorney: *Quod vide* in Title of Error H. 36. E. 3. and Title Attorney T. 37. H. 6.

And if Tenant for Life be impleaded in a *Præcipe quod reddat*, he in the Reversion may pray to be received to defend his Right upon the Default of the Tenant, or upon his faint Pleading, and there he cannot pray to be received by his Attorney. But if he bring a Writ unto the Justices out



of the Chancery, testifying that he hath made Attorney there, and rehearse the Cause whereof, that is to say, because he is sick, or other reasonable Cause, and commanding them to receive such Person by Attorney for him in the Reversion; the Court ought and is bound to receive him by his Attorney. And it is not material whether the Cause put in the Writ be true or not, for it is not traversable, &c.

Allice 27 H.  
8.

And the King by his Letters Patent may Licence a Man E to make a general Attorney *in omnibus placitis motis & mwendis, & in quibuscunque Cur'*: And by his Letters Patent he may expref who shall be Attorney, &c. or may grant to make Attorney whom or who he will, without naming any Attorney by his Special Name.

And the King by his Writ may send to any Person to receive Attorney for another, such Person generally as the other will name, or such Persons specially; and that may be as well for the Demandant or Plaintiff, as for the Defendant or Tenant.

Register  
9 B. Attor-  
ney 84. That  
is intended  
of the King's  
Court; for  
it doth not  
extend to  
base Courts,  
as Court-  
Baron, &c.

And the King may give Authority unto one Person to receive Attorney for another in all Pleas, and in all Courts, for two or three Years. And the King may grant a *Dedimus potestatem* to receive Attorney for another, for a special Cause recited in the Writ, because he is languishing, or lame, or decrepit, &c. or such other like Special Cause. Or he may grant a *Dedimus potestatem* in the Generality to receive Attorney for another in all Pleas, without expressing any Cause in certain wherefore he doth so.

Vide 32 H.  
6. 22.

And also it appeareth by the Register, that the King by F his Letters Patent may grant unto the Prior of St. John's of Jerusalem, that he may make two of his Friars, and name them, &c. in his Place, which is in the Place of a Proctor; that the two Friars shall make Attorney for the Prior in every Action which is pendant, or to be brought against him in any Court, &c. and for to challenge his Liberties, and for to defend them.

[26.]

And also the King by his Letters Patent may grant unto A an Abbot, for the Devotion that he oweth to the House, that he may make a General Attorney for all Pleas, and in all Courts; and the said Abbot may remove him and put others in his Room as often as it shall seem good and needful for him so to do: And so by this it doth appear that the King may grant unto all his Subjects to make Attorneys in the same Manner, without putting or shewing any Cause in the Letters Patent.

And it appeareth by the Register, that the King may B grant



*Dedimus potestatem de Attornato faciendo.*

grant the same as well by Letters Patent under his Privy Seal, as by Letters Patent under his Great Seal.

And when the King makes a general Grant unto an Abbot, or unto any other, to make such general Attorneys, then it seems the Abbot shall come into the Chancery, or shall send his Deed under his Seal unto the Chancellor, witnessing that he hath made such and such Persons his Attorneys, &c. And thereupon the Chancellor shall make Letters Patent unto the Abbot, testifying that he hath made such and such Persons his Attorneys in all Pleas and Courts, and upon these Letters Patent shewed unto the Court, the Judge ought to admit and receive those Persons for Attorneys for the Party; and these Letters Patent shall be entered upon Record in the Chancery.

**C** And the King may send his Writ unto the Justices of the Common Pleas, or unto the Justices in Eyre, or other Justices whatsoever, testifying that such a one hath made his general Attorney in all Pleas and Quarrels moved against him or by him, and also to challenge his Franchises or to defend his Franchises, commanding the Justices by the Writ that they receive him for Attorney, &c.

There is another Writ also in the Register, That the King by his Writ shall command his Justices in Eyre, that they admit and receive the Claim of such a one to certain Liberties, which he shall make and claim before them by his Attorney, because himself cannot be personally before them at the Day.

**D** There is another Form of Writ to the Justices, that they admit such a one by his Attorney, whom the said Party shall make his Attorney by Letters Patent under his Seal.

And a Man may make his Attorney before the Justices, without making an Attorney in Chancery, or without suing any Writ unto the Justices, commanding them to admit any Attorney for the Party, Plaintiff or Defendant; as the common Course is at this Day for an Attorney for every Party to appear in every Manner of Action, that they can appear by Attorney and put in their Warrants without any such Writs, if not that they be in Writs of Entry in the *Post*, or Writ which is by Covin between the Parties, or a Writ of Right: Then the Justices in Discretion do not admit any Man to appear an Attorney for the Party Defendant, unless the Defendant do before some Justice confess him to be his Attorney, and that the Justices do record the Warrant, or otherwise that he bring a Writ out of the Chancery testifying that he hath there made Attorney,

57.  
videtur  
Sicut Bal  
the law  
notio of  
2 (o. 1) b.

ney, commanding them for to receive him for his Attorney.

But there are divers Cases in which the Justices will not admit the Defendant by Attorney; as if he came in by *Cepi Corpus*, they will not admit him by Attorney until he hath pleaded some Plea, and then in Discretion they use to suffer the Defendant to make Attorney. But if the Defendant come by *Cepi Corpus* upon the Exigent, the Justices will not admit him to make Attorney, but give him Day by Bail from Term to Term until the Matter be determined; and that Vid. 9 E. 4 seems to be at their Discretion for his Contumacy, for in that Case if they do admit him to make Attorney, and to go without Bail, it is no Error; as it seemeth unto me.

At the *Grand* or *Petit Caps* returned, the Tenant may appear by Attorney, and tender to wage his Law, and take Day to wage the same; at which Day he ought to appear and make his Law.

And a Man shall not make an Attorney against the King in any Action sued by the King.

Upon a Rescous returned by the Sheriff, and an Attachment awarded upon it against him, the Defendant shall not make Attorney; but upon his appearance shall be presently committed unto the Fleer. But if the King send a Privy Seal unto them commanding them that they admit Attorney for him, the Court ought to receive the Attorney without Appearance in proper Person.

And a Man shall sue a Writ of Error by Attorney if he be not in Ward.

In an Appeal the Plaintiff shall make Attorney against the Abettors, if he sue against them a *Disfringus*, &c.

In a *Quem redditum reddit* the Defendant shall not make Attorney but with Assent of the Parties.

In a *Quid juris clamat*, or *Per qua servitia*, after a Plea pleaded the Defendant shall make Attorney. It seemeth likewise in a *Quem redditum reddit*.

In a *Pramunire* the Defendant shall not make Attorney without a special Writ directed to the Justices.

After a *Capias ad computandum* awarded, the Defendant shall not make Attorney.

A Man may demand Conusans of Pleas by Attorney.

The Plaintiff after Appearance shall make Attorney in an Appeal by the Statute of *H. 7.*

He who pleads *Misusmeser* shall not make Attorney; *Quod* vide *P. 41 E. 3. & M. 45 E. 3. Fitz. Attorney 52.*

In a *Suave factas* upon a Charter of Pardon, the Plaintiff

in



- in the *Scire facias* shall not make Attorney, but with the Assent of the other Party he may. 41 E. 3. Attorney 50.
- C A Feme Covert may be Attorney for her Husband. 2 R. 3. 9.
- D At the *Sequatur sub suo periculo*, the Vouchee shall not enter into the Warranty by Attorney. Perkins 41. 11 H. 4. 28. Newtonac.
- E In *Attaint* the Petit Jury shall make no Attorney. 21 H. 7. 39. cont.
- F The Defendant shall not make an Attorney in *Maisem*.
- G An Idiot shall not be received to sue or defend in any Action by Guardian, or by *prochein amy*, but ought to be always in proper Person. P. 33. H. 6. f. 20. 21 E. 4. 73. 33 H. 6. 18.
- H An Infant shall sue by *prochein amy*; but if the Infant be Defendant in any Action, he shall make his Defence by Guardian, and not by *prochein amy*. And the Court shall assign the Guardian for the Infant Defendant, and that is commonly one of the Officers of the Court. 40 E. 3. f. 16. 29 Aff. 67. 2 C. 0. 64. Affi. 273. 3 H. 6. 17. Markham.
- An Infant sued a Writ of *Waste* against his Guardian, and made Attorney in that Action. 48 E. 3. 10.
- An Infant was received to sue an Action of *Debt* by his Guardian, 16 H. 7. 5. 34 H. 6. 32. *It ought to be sued in proper Person by one of full Age.* 34 Aff. 5. ac.
- I And a Man shall not answer as Guardian unto an Infant who is Plaintiff or Defendant without a Warrant; but as *prochein amy* to an Infant he shall sue an Action without a Warrant.
- K The Infant shall not remove his Guardian, nor disavow an Action sued for him by *prochein amy*. Anno 43 E. 3. Lib. Ass. & Anno 27 E. 3. Lib. Ass. 53.
- L And the King by his Letters Patents may make a general Guardian for an Infant to answer for him in all Actions or Suits brought or to be brought in all manner of Courts. Or may make two or three Guardians jointly and severally to answer for him, or to bring any Action for him; and at the Request of the Infant may grant by the said Letters Patents, that the same Guardians may make other Guardians jointly or severally in their Places, to sue or defend for the same Infant in all Actions and Suits which are brought or sued, or shall be brought or sued after.
- M And the Infant shall have a Writ in the Chancery for to remove his Guardian directed unto the Justices, and for to receive another, &c. and the Court at their Discretion may remove the Guardian, and appoint another Guardian.
- N And see in the Register after the Writ of *Protection cum clausula Nolumus*, Writs directed unto the Bailiffs of Hund. to receive and admit such Persons by Attorney in Court. 3 H. 6. 16. *An Infant appeared by Guardian, although it be in a Personal Action; but Quare if he can sue Personal Action by Prochein amy,* 2 H. 6. 8. Alhton,

which



which the Party will make under his Seal, or otherwise: And also Writs of *Dedimus potestatem* to remove Attorneys made, and to put others in their Places, or to remove any of the Attorneys, and to put another in his Place. And if a Man make Attorneys in Chancery to answer and defend in other Courts, he may come in Chancery and remove him, and make others his Attorneys: And thereupon he shall have a Writ unto the Justices of the Court where the Attorney is, testifying that he hath removed him, and made another his Attorney, commanding them for to receive him, &c.

H. 4. 18.  
Feme proceeded to be received and plead, which was not by Attorney.  
21 H. 6. 48.  
cont.  
before 25. c.

There is a *Dedimus potestatem* granted in the Register to receive an Attorney for him who is Vouchee, because he is received for the Default of Tenant for Life: And a Writ directed unto the Justices to receive an Attorney for a Woman, who prayed to be received for the Default of her Husband, before she be received. And another Writ unto the Justices, to receive Attorney for one Defendant, and Guardian for another Defendant.

In *Quale jus* awarded, where a *Scire facias* shall be awarded against the Lords mediate and immediate, they shall have a Writ directed to other Persons to receive Attorneys for them to appear to this *Quale jus* to defend their Right; and upon Certificate thereof in the Chancery he shall have a Writ to the Justices before whom the *Quale jus* is to be tried, to admit him who is received Attorney, and so returned in the Chancery, for Attorney for the Lords in that Action.

In Detinue, or Ward, where shall be Interpleading, they ought to appear in proper Person and interplead, &c. And yet upon reasonable Cause he may make Attorney in the Chancery, and shall have a Writ unto the Justices to receive him for his Attorney, and rehearse the Cause wherefore; yet it seemeth it is not material whether the Cause be true or no.

Also there is another Writ in the Register directed unto the Justices for him in the Reversion, where Tenant for Life is impleaded, commanding them for to admit Attorney for him in the Reversion, if the Tenant for Life make Default, as he conceived he will, and testify in the same Writ, that he in the Reversion hath made such and such his Attorneys jointly and severally, commanding the Justices to receive them for Attorneys, because that he in the Reversion hath such an Infirmity that he cannot pray to be received, in proper Person. And the like Writ for a Feme Covert, who hath a Reversion, and the Tenant for Life is impleaded, and she

she conceiveth that her Husband will not pray to be received, &c. But in the Writ it shall be mentioned that the Feme is decrepit, or hath some other Infirmity, that she cannot conveniently come to be received in proper Person.

V There is another Manner of Writ for the Sheriff, or for the Escheator, to cause the Barons of the Exchequer to admit Attorneys for them to make their Proffers in the Exchequer; and yet they are commonly bound in Recognisance to do the same in proper Person. And the Writ is such:

A *Rex Thesaurario & Baronibus suis de Scacc. salut'. Quia dilectus nobis B. Vic. noster Suff. circa præd. ardua negotia nostra, de quibus ipsum specialit. oneravimus, in tantum est intendens, quod coram vobis ad Scaccar. nostrum ad instans Crastin. S. Mich', vel ad instans Oñ. Pasc. proxim. futur', ad Proffrum suum tunc ibidem, prout moris est, personalit. interesse non potest; Vobis mandamus, quod R. & I. Cleric', quos idem Vic. ad Proffrum suum præd. coram vobis ad dictum Crast. faciend. coram nobis in Canc. nostra loco suo attornavit, vel alterum ipsorum, si ambo interesse non possint, loco ipsius Vic. ad hæc recipiat, hac vic. de gratis nostra speciali, ipsam Vic. propter abs. suam ad diem illum, vel ad Oñ. præd', non molestans, in aliquo, seu gravant'. Teste, &c.*

[28.]

And the Escheator may have the like Writ for his proffers to make Attorney. But it seemeth this is not a Writ of Course, but upon a special Commandment directed unto the Chancellor by the King to make such Writ, &c. And the King may send a Writ unto the Treasurer and Barons of the Exchequer, to respit the Account of the Sheriff, and of the Escheator; and the Writ shall be such:

*Rex Thesaur. & Baron', &c. salut', Quia dilectus nobis W. de H. Vic. noster Wiltes', circa quadam, &c. ut supra, est intendens, quod coram vobis ad Scaccar. nostrum ad instans Crast. S. Mich. proxim. futur', ad Compotum suum de exitibus Cam. præd., venire non potest; dedimus ei respect. de Compoto suo præd. reddendo usque ad Oñtibus S. Hilar. proxim. futur': Et ideo vobis mandamus, quod ipsum Vic. respectum illum interim habere permittatis. Teste, &c.*

Pro



## Protection.

**P**rotections are in divers Forms, and of divers Effects, and the King may grant them for divers Causes. And there are four Manners of Protections with the Clause *Voluntur*. One is a Protection called, *Quia profecturus*. And another Protection, *Quia moratur*. And the third is a Protection which the King by his Prerogative may grant; and the same is where a Man is Debtor unto the K. the K. may grant unto him that he shall not be sued nor attached, but taketh him into Protection until he hath paid the King his Debt. But now by the Statute of 25 E. 3. 19. it is ordered, That the Creditor shall have an Action against the King's Debtor, and shall have Judgment against him notwithstanding such Protections. But he shall not have Execution against the King's Debtor who hath such Protection, unless he take upon him to pay the Debts which the King's Debtor owed unto the King; and then he shall have Judgment and Execution against the King's Debt, or for both Debts, &c.

There is another Protection *cum clausula voluntur*: And that is, when the King sendeth a Man in his Service into the Wars beyond the Seas, or into the Marches of Scotland, and there he is detained and kept Prisoner; he shall have a special Protection reciting the whole Matter; and in the End of the same Protection shall be such Clause: *Presentibus minime valituris post deliberation. præd. R. a pris. præd, si conting. ipsum iterum liberari ab eadem.* And the Form of divers of these Protections doth appear in the Register. But as the Law is now, every Protection cast shall not be allowed: For if the Protection be to endure for two or three Years, the Justices will not allow the same; and therefore the Form of the Protection at this Day is to endure for one Year and a Day after the Date thereof, and then to sue forth a new Protection if need be. And a Protection may be cast for the Party by a Stranger as well as by the Party himself.

39 H. 6. 39.

And Protection *Quia profecturus* shall not be allowed if it be presented hanging the Plea, if he be not in a Voyage Royal; and a Voyage Royal is, where the King goeth to the War, or his Lieutenant, or his Deputy-Lieutenant, and not otherwise.

And the Plaintiff cannot cast a Protection, for the Protection is always for the Defendant, and shall be cast for him; if it be not in special Cases, where the Plaintiff becometh Defendant. But when a Protection shall be allowed,

and



and when not, appeareth more plainly in the Title of *Protection* in the great Abridgment of the Years, and therefore it is not needful to shew it here.

And by the *Register* a Man shall be by Protection when he stayeth *super salvo custodia West-marchie Angl. versus Scotiam*. Yet *Anno 22 E. 4.* such Protection was disallowed. But I am of Opinion with the *Register*.

A Protection *Quia Moratur* upon the Sea was disallowed, *Trin. 36 H. 6.* because that the Sea cannot stay, and by Consequence he cannot stay upon the Sea.

And a Protection shall be allowed in a Court of ancient Demesne, or in other Court of Record, as *London*, &c. And when the Plea is removed, the Protection may be allowed: And a Protection allowed for one Defendant doth put the Plea without Day for all the rest; if not that it be in special Cases, as in Trespass, where they plead several Pleas, and he shall sue several *Venire facias* upon the Issue joined against them, &c.

7 H. 6. 21.  
cont. if they  
plead. Vide  
Plea in Tres-  
15 E. 4. 27.  
4 H. 4. 4.  
3 P. 4. 5.

And a Protection shall be sometimes disallowed for Variance betwixt the Writ and the Protection: But see that in the Title *Protection* in the Abridgments.

Protection shall be allowed for an Infant, but there are divers Opinions amongst the Justices, if it shall be allowed for a Feme-Covert.

And how a Protection shall be made void, see Title *Protection*, and in the Title *Repeal* in the Abridgments.

[29.]

There is another Manner of Protection, *cum clausula Nolumus*, as appeareth in the Register: And that is, where an Abbot, or a Prior, or other Spiritual Person be in fear or doubt, that his Goods, or Chattels, or his Cattel shall be taken by the King's Officers for the King's Service; they may purchase this Manner of Protection *cum clausula Nolumus*. And by the Register appeareth, that the King may grant unto a Secular Man this Writ as well as unto a Spiritual Man; and if he do so, the same is good, &c.

And a Man may excuse his Default at the Grand Cape, or Petty Cape, by casting of a Protection.

And if a Man be Essoined of the King's Service, the Plaintiff may have a Special Writ directed unto the Justices to disallow of the Essoin, if he be not in the King's Service, commanding them for to proceed, &c.

And it appeareth by the Register, *f. 280.* that there are divers Manners of Forms of Protections: Where a Man feareth to travel the Country with his Merchandises, or to collect the Alms for the Poor of an Hospital, or of the Church, then

then they may purchase Letters Patent of the King's Protection, commanding the King's Subjects for to defend them, and to maintain, aid, and assist them: And the Form is such,

*Rex omnibus Ballivis & fidelibus suis ad quos, &c. salutem. E*  
*Supplic. vobis A. ut cum ipse diversa negotia sua in diversis Cur. nostris, & alibi infra regnum nostr. Angliæ, prosecuit. ac idem A. occasione prosecutionis hujusmodi timeat tam sibi quam hominibus & servien. suis in personis & rebus suis, per quosdam emulos suos, & eorum procuracionem, dampn. or thus, dampn. de corpore suo & iacturam de bonis suis de facili, &c. & periculum de facili posse evenire, volumus securitati sua in hac parte prospicere gratiose; Nos pacem & tranquillitatem ubicunque in regno nostro conservare volentes, suscipimus ipsum A. & negotia sua præd. in dictis Cur. nostris, & alibi infra regnum nostrum Angliæ præsequenda, ibidem morando, & exinde ad propria redeunda, necnon homines & servien. suos, ac res & bona sua quæcunque in protection. & defension. nostras speciales: Et ideo vobis mandamus, quod ipsum A. dicta negotia sua in Cur. nostris, & alibi infra regnum nostrum præd. (ut præmittitur) præsequendo, ibidem morando, & exinde ad propria redeunda. necnon homines & servien. suos, ac res & bona sua quæcunque, manencatis, protez, & defendatis, non inferentes eis, seu quantum in vobis est, ad alios inferr. permittentes injuriam, molestiam, dampnum, violentiam, impedimentum aliquod, seu gravamen. Et si quod eis forefallum seu injuriat. fuerit, id eis sine dilatione fac. emendar: Dum tamen idem A. quicquam quod in nostri seu populi nostri præjudicium, aut contra Ordination. per Dominam E. nuper Regem Angliæ avum nostrum, & Consil. suum nuper inde fact. enervation. cedere poterit, non prosequat, aut attemptet, vel attemptare seu prosequi præsumat ullo modo. In cujus rei testimonium, &c.*

And these Letters may be made and directed to Sheriffs, F Admirals, Mayors and all other Officers, &c. And thereby it appeareth that they ought to see and provide, that such Persons who have purchased such Letters, have by Reason of such Letters Favour and Right done unto them, because it appeareth the King's Will so to be, &c. And there is the like Protection for those who go with Pardons, or to make Collection for Bridges or High-ways; and the like for Spiritual Persons; and the like Protection for Merchants, Strangers, which go into the Country to gather their Debts; or to sue for them, &c. There is another Form of Protection, which is such:

*Rex universis & singulis, Vic, Escaet. Majoribus, Ballivis, G*  
*Mini.*



*Ministris, ac omnibus fidelibus ligeis nostris quibuscunque, tam Communibus Vill. nostræ de Southwark, quam aliis infra Libertates & extra, presentes Literas nostras visuris vel audituris, salutem. Sciatis, quod suscepimus in protect. nostram specialem T. W. ac homines & servien. suos, maneria, terras, & tenementa, bona & possessiones suas in London, Southwark, Hatham, & H. in Com. Surr', ac in S. C. & D. in Com. K. existent', necnon hæc scripta & munimenta sua quæcunque. Et ideo vobis mandamus, quod ipsum T. W. ac homines servientes, maneria, terras, tenementa, bona, possessiones, literas, scripta, & munimenta præd. manutent', protegatis, & defendatis, non inferentes eis, aut eorum alicui inferr. permittentes injur', molestiam, dampnum, violentiam, vastum, destruēt', seu domorum vel aliorum bonorum & catall. suar. incendium, seu aliud impediment. aliquod vel gravamen: Et hæc in fide, dilectione & ligeantia quibus nobis tenemini, sub gravi forisfact. nostra, nullatenus omittatis, nec aliquis vestrum omittat. In cuius, &c. per unum ann. dur'. Teste, &c.*

- H** And another Protection for the Prior of St. John's, and for his Priory, &c. And those are of divers Forms, as appeareth in the Title of Protection in the Register, and therefore see them there. But these Protections are by the King granted of Grace; for every Man who is a Loyal Subject is in the King's Protection; but these Protections are granted to move and excite the King's Subjects to aid and comfort those who have such Protections, in their Business which they have to do in the Countries for the Causes mentioned in the Protections. And it appeareth by the Register, that every spiritual Person may sue forth a Protection for him and for his Goods, and for their Fermors of their Lands for their Goods, that they shall not be taken by the King's Purveyor's, nor their Carriages or Chattels taken by other the King's Officers. And it appeareth by the same Protection, that King Edward in the fourteenth of his Reign by special Statute did grant such Privilege to the Clergy, whom he took into his Protection with their Goods and Carriages. And they may have a special Commission directed unto certain Persons to arrest such Purveyors or Officers, and to send them before the King's Council, there to answer their Misdoings in such Case; and for the same Protection see the Register, fol. 289.

[ 30 ]



## Writ de Droit de Advowson.

**A** Writ of Right of Advowson lieth only for him who hath an Estate in the Advowson to him and his Heirs in Fee-simple, or Right of Estate to him and his Heirs in Fee-simple in the Advowson; and if he be disturbed to present, then he shall have the Writ. But if a Man have an Advowson to him and the Heirs of his Body begotten, and for Default of such Issue, &c. the Remainder unto him and his Heirs in Fee-simple; if he be disturbed, he shall not have this Writ, but a *Quare impedit*, because he hath not Title to the Advowson but in Tail, and he ought to maintain the Action by that Title that he claimeth the Possession of the Advowson, and that is of an Estate in Tail. And in this Writ he ought to count of his own Possession, or of the Possession of his Ancestor, otherwise the Writ doth not lie, and he ought to alledge Esplees in the Parson; as in taking of gross Tithes, Oblations and Obventions unto the Value of, &c. And the Tenant shall come and make Defence, and may join the Mife by Battel, or Grand Assise, &c. And see the Form of the Count, and the Defence, and of joining the Mife in the Book of *Entries*, f. 90.

39H.6.20.a. And a Man who claimeth to have Fee-simple in an Advowson may have a Writ de *Recto de Advocatione medietat. Ecclesie, vel tertie partis, vel quarta partis Ecclesie, &c.*

31H.6.3.a. And when a Parson sueth in the Spiritual Court for Tithes, which do amount unto the fourth Part of the Advowson against the Parson of another Parish; then that Parson who is sued in the Spiritual Court may purchase a Writ which is called *Indicavit*; which Writ is a Prohibition, and shall be directed as well unto the Judge of the Court as unto the Party, that they do not proceed in the Plea, &c. And then the Patron of that Parson who is so prohibited by the *Indicavit*, may have and sue a Writ of Right of the Advowson of *Dismes*; and the Form of the Writ is such:

*Præcipe A. quod reddat B. Advocationem Decimarum tertie partis Ecclesie de S. vel quarta partis, vel medietat. Ecclesie. &c.*

And this Writ is founded upon the Statute of *West. 2. c. 5.* in the End of the Statute, and doth not lie of a less Part of the Tithes than of the fourth Part of the Church. But it seemeth that at the Common Law before the Statute, a Writ of *Droit des Dismes* lay and was maintainable; as, *Præcipe quod reddat Advocationem Decimarum quinta partis, vel sexta*

*secunda partis Ecclesie, &c.* And that by the Statute of 18 E. 3. which is: *Whereas Writs of Scire facias have been granted to warn Prelates and other Religious Clerks to answer Dismes in our Chaucery, and to shew if they have any Thing, or can any Thing say, wherefore such Dismes ought not to be restored to the said Demandants, and to answer as well to us as to the Parties of such Dismes; that such Writs from henceforth be not granted, and the Process hanging upon such Writs be annulled and repealed, and that the Parties be dismissed from the Secular Judges of such manner of Pleas: Saving to us our Right, such as we and our Ancestours have had, and were wont to have of reason.*

F And by that appeareth, That before that Statute the Right of Tithes was determined in the King's Temporal Court; but the Statute hath now altered the Law. And if a Parson be sued in the Spiritual Court for the fourth Part of the Tithes, for which he purchases *Indicavit, &c.* by which the Judges do surcease; if the Patron of the Parson which sueth in the Spiritual Court hath but an Estate in Tail in the Patronage, or for Term of Life, he shall not have a Writ of *Droit des Dismes*, or other Remedy by the Common Law, to try the Right of the Tithes, for the feebleness of the Estate. But if two be seised of an Advowson, and unto the Heirs of one of them, they shall join in a Writ of Right of Advowson for the Advantage of him who hath the Fee-simple. 31 H. 6. 14.

G And also a Man shall not have a Writ of *Indicavit* before that the Party hath libelled against him in the Spiritual Court. And he ought to shew the Copy of the Libel before the *Indicavit* be granted: And the *Indicavit* doth not lie after Judgment given in the Spiritual Court. 12 E. 4. 13. b.

H And a Writ of *Right de Advocatione Decimarum & Oblationum quartae partis Ecclesie*, lieth as well as *de Advocatione Decimarum quartae partis Ecclesie tantum*.

I If one be Parson imparsoned, and another be Vicar in the same Church, and one of them be impleaded of the fourth Part of the Tithes of the Parsonage, and the other impleaded of the fourth Part of the Tithes of the Vicarage, they shall have several Writs of *Indicavit*, and their Patrons may have several Writs of Right of Advowson of the Tithes, &c. [ 31 ]

K And it appeareth in 13 H. 6. by the Opinion of *Fortescue*, that before the Writ of *Indicavit* ley of Tithes sued in the Spiritual Court, there was no Writ of *Droit des Dismes* sued thereupon. But it seemeth against reason; for the Writ of



*Affise de Darrein Presentment.*

*Droit of Tithes* lay as well for the Patron, as the *Indicavit* lay for the Parson.

And in 31 E. 1. it appeareth that a Man shall have a B Writ of Right *de medietate Advocationis*, where an Advowson is partible betwixt two Coparceners, and one of them is disturbed by a Stranger.

But the Writ of Right *de Advocations medietate Ecclesie* lay where two Coparceners do present two Parsons to one Advowson, &c. As there are in some Churches two Parsons, &c.

And a Writ of Right of Advowson lieth *de Advocations C Vicarie, vel prebend. vel Capella*, and such like, as well as *de Advocations Ecclesie*. And the King shall have such Writ as well as a common Person. But a Man shall not tender a Demy-mark against the King to enquire of the Seisin alledged in the King's Count, or Declaration, as he shall in case a common Person bring the Writ. Neither shall a Man have final Judgment against the King, although it be after the Mife joined betwixt the King and the Tenant.

And a Man shall have a Writ of Right of Advowson of a E Chpel which is a Donative, as well as he shall have if it were presentable, to the Ordinary.

*Affise de Darrein Presentment.*

THE Form of the Writ of *Darrein Presentment* for a common Person is such :

*Rex Vic. salutem. Si A. fecerit te secur', &c. tunc sum', &c. iii. liberos & legal. homines de visu. de B. quod sint coram Justic. vestris, &c. parati Sacramento recognosc. quis Advocat. tempor. pacis presens-avit ultim. Personam, que mortuus est, ad Ecclesiam de C. vel ultim. Vicar', qui mortuus est, ad Vicar. de N. que vacat, ut dic', & ejus Advoc. idem A. dic. ad se pertinere; & interim Ecclesiam illam videant, & nomina eorum imbrevari fac', & sum. B. qui Advoc. illam ei deserv', quod tunc fu' tibi, addis. illam Recog'. Et habeas ibi Summ', & hoc Breve. Teste, &c.* But for the King the Writ is; *Rex Vic. salutem. Sum' per bonos Sum. iii. liberos, &c.* and shall not say, *si Rex fecerit, &c. te secur', &c.* because the King shall not find Pledges to sue an Action, for he shall not be amerced, &c.

Note, That upon Quis advocatus, &c. 20 E. 3. Darrein Presentment 13. & 9 E. 2.

ibid. 17. if the Affise find Title for a Stranger not named in the Writ, a Writ to the Bishop shall be awarded for him; and therefore one cannot make Title to a Presentment in Time of War. 7 E. 2. Darrein Presentment. 26 E. 3. 41. ibid. 4. ac.

And

Vaugh 56  
L. 4 294b.



**G** And a Man shall have Affise of Darrein Presentment, although he nor his Ancestors do present to the last Avoidance: As if the Tenant for Life or for Years, or in Dower, or by the Courtesy, suffer an Usurpation unto a Church, &c. and die, he in the Reversion, who is Heir unto the Ancestor who last presented, shall have an Affise of Darrein Presentment, if he be disturbed. But if a Man present, and then grant the Advowson unto another for Life, and he suffer one Usurpation, or two, or three Usurpations; now at the next Avoidance he in the Reversion shall not have an Affise of Darrein Presentment, if he be disturbed to present. And that appeareth by the Statute of West. 2. cap. 5. That the Remedy of the Statute is given for the Heir of him who made the Demise, who is in Reversion, and not for the Lessor himself.

10 E. 3. Dar. Presentment 13. If the Affise find that Tenant by the Courtsey or Tenant in

*Dower was the last who presented, by that the Heir shall have a Writ to the Bishop, and yet he cannot make Title by that Presentment. Contr. in a Quare Impedit. And Seton gives the Reason, because he cannot convey by them. But if the Heir do allege the last Presentment in her self, and the Affise be to her by Default, and found ut supra, yet the Heir shall recover. Cont. if they be at Issue upon that Presentment.*

**H** And if a Man present unto an Advowson, and afterwards the Parson doth resign, or is deposed, and the Patron presents again, and is disturbed, he shall have an Affise of Darrein Presentment; and the Form of the Writ shall be; *Quis Advocatus tempore pacis presentavit ultim. personam, quæ mortuus est ad Ecclesiam, &c.* although that he resign, and be living. And the Form of the Writ is to suppose that the Defendant doth deforce him of the Advowson, and yet by his Count he counteth that he or his Ancestors last presented unto the Advowson, by which he doth suppose that he is in Possession of the Advowson; and yet the same is good.

16 E. 2. Darrein Presentment 20.

20 E. 2. Darrein Presentment 11.

**I** If a Man do present unto an Advowson unto which he hath right, and afterwards the Incumbent dieth, and a Stranger usurpeth, and presenteth unto this Advowson in the Time of War, and after that Incumbent dieth; now if he who hath Right do present again, and be disturbed, he shall have an Affise of Darrein Presentment, and this Presentment made in Time of War by the Stranger shall not grieve him.

6 E. 3. 41. Dar. Presentment 4. 7 E. 3. 1b. 2.

And so if a Man present unto an Advowson, and afterwards the Incumbent dieth, and another Ordinary doth present by Lapse another Incumbent, and after that Incumbent dieth; now the right Patron shall present, and if he be disturbed, he shall have an Affise of Darrein Presentment, notwithstanding the mean Presentments.

6 E. 2. Dar. Present. 16. 20 E. 3. ibid. 13. for the Ordinary shall present in the Rights

And so if the Guardian do present in the Right of the Heir, hath Right.

Vid. 14 E. 3. Heir, and the Incumbent dieth, the Heir shall present; and Darrein if he be disturbed, he shall have an Assise of *Darrein Presentment*, although the Guardian did present the mean and the last Presentment. But if a Man present unto an Advowson, and after leasé the same for Term of Years, and after the Church is void, and the Tenant for Years doeth present, &c. and then the Incumbent dieth and the Lessor presenteth, and is disturbed; it seemeth that he shall not have an Assise of *Darrein Presentment*, because the Tenant for Years did present in his own Right. But Tenant for Years shall have Assise of *Darrein Presentment*, if he have presented before; and so shall the Guardian of the Heir, if he have presented before.

If a Man usurp upon an Infant, and present, which Infant hath the Advowson by Descent; and afterwards the Incumbent dieth, the Infant shall present; and if he be disturbed, he shall have an Assise of *Darrein Presentment*. But if the Infant purchase the Advowson, and present, and afterward the Church become void, and a Stranger present, and usurp upon the Infant, and then the Incumbent dieth, the Infant presents, and is disturbed by a Stranger; he shall not have a *Darrein Presentment*, but shall be put to his Writ of Right.

If the Husband and Wife present unto an Advowson in the Right of the Wife, which is appendant unto a Manor of the Wife's, and after the Husband alien one Acre, parcel of the Manor, with the Advowson in Fee unto a Stranger, and dieth, and the Stranger presents, and alieneth the Acre unto another in Fee, saving the Advowson unto himself, and then the Church voideth; the Wife shall present; and if she be disturbed, she shall have an Assise of *Darrein Presentment*, because the Advowson was severed from the Acre; but if the Advowson were appendant to the Acre, then the Wife ought to recover the Acre before she present to the Advowson.

And Assise of *Darrein Presentment* doth not lie for one Coparcener against the other, as appeareth *M. 15 E. 3.* and *M. 20 E. 3.*  
*and 13. but they seem to make a Difference, when the Disturbance is before the Composition to present by Turns, and when after.*

And if one Defendant die in a *Darrein Presentment*, the Writ is good by the Survivor against the other.

If a Disturber present unto an Advowson, and the Patron bring an Assise of *Darrein Presentment*, and pendant the Writ the Incumbent dieth, if the Disturber presenteth another

[ 33 ]  
 35 H. 6. 50.  
 Mes Con.  
 230. Quare.  
 Tit all is  
 one Descent  
 per 11 E. 3.  
 Assise 37.  
 17 E. 3.  
 Darrein  
 Present. 9.  
 Shard, she  
 hath no s.  
 thy Rem.  
 dy but a  
 Quare Imp.  
 pect.  
 Sole ac.

se E. 3. Dar.  
 Present-  
 ment 11  
 and 13. but

they seem to make a Difference, when the Disturbance is before the Composition to present by Turns, and when after.

*Quare Impedit.*

ether Incumbent and dies ; yet the Patron shall have an Affise of *Dorrein Presentment* upon the first Disturbance against the Heir of the Disturber, *per Journeys Accounts* ; and so if the Disturber present two or three Times within the six Months, the very Patron shall have an Affise of *Dorrein Presentment* upon the the first Disturbance.

33 H. 6. 32. *Alc*  
The Church  
never is Li-  
tigious be-  
twixt Par-  
ceners, for  
if they can-

not agree, the Ordinary ought to admit the Presentee of the eldest ; but contrary of Joynments,

D *Et provisum fuit coram Domino Rege, Archiepiscopis, Episcopis, Comitibus, & Baronibus, quod nulla Affisa ultima presentationis de extero capiatur de Ecclesiis Præbendatis, nec de Præbendis,* This Pro-  
viso is ta-  
ken away by  
West. 2. 29.  
Hill. 19 H. 3.

*Quare Impedit.*

E THE Form of the Writ of *Quare Impedit* for the King in the Right of the Crown is such :

*Rex Vic. Lincoln, salutem. Præcip. W. Archiepiscopo & R. quod permittat nos presentare idoneam Personam ad Ecclesiam de W. que vacat, & ad nostram spectat Donationem, & unde præd. W. Archiep. & R. nos injuste impediunt, ut dicitur. Et nisi, &c. præd. Archiep. & R. quod sint coram nobis, &c. vel coram Justis. nostris de Banco, &c.*

Vid. Fitz.  
Na. B. 25.  
Where a  
Man may  
have an Af-  
fise of Dair-  
rein Pre-  
sent. there

he may have a *Quare Impedit*, but not è contra. C. 5 Part, 102. In a *Quare Impedit*, the Writ suit ad Ecclesiam ; and the Count de Advocatione guar. partium.

For the King may sue this Writ, and every Writ, in what Court he will.

F And if the King hath Title to present unto an Advowson by reason of the Lands and Temporalities in his Hands, of a Bishoprick, or Abbey, or Guardianship of an Heir, then the Writ is :

*Rex Vic. London' salutem. Præcip. W. Archiepiscopo, quod permittat nos presentare idoneam Personam ad Ecclesiam de W. que vacat, & ad nostram spectat Donationem, ratione Episcopatus Cantuar' super vacant, & in manu nostra existent, & unde idem Archiep. nos injuste impedit, ut dic', &c.*

And if it be unto the Prebend, then thus : *Ad Præbendam de I. in Ecclesia, &c. que vacat, &c. ratione Episcopatus, &c.* And if it be by reason of Ward, then the Writ shall be : *Que vacat, & ad nostram, &c. ratione Custod. terr. & heredis T. quondam Comitis de A. defuncti, qui de nobis tenuit in capite, & in manu nostra existentis, & unde præd', &c. nos injuste, &c.*



And if it be by reason of Wardship by Occasion of another Wardship, then the Writ is; *Que vocat & ad nostram, &c. ratione Custodia terræ & hered. J. T. in manum Domini E. super Regis Angl. Patris nostri, ratione Custod. terræ & heredis S. de C. quondam Comitum Glouc. defuncti, de quo idem I. terram suam tenuit per servitium militar. in manu ejusdem Patris nostri existentis, & unde idem, &c. nos injuste impedit, ut dicitur.*

And by the Register the King shall join with another Person in a *Quare Impedit*; and the Form of the Writ is such: **G**

*Rex vic, &c. precip. R. de C. quod juste, &c. permittat nos, & P. de T. presentare idoneam Personam ad Ecclesiam de K. que vocat, & ad nostram, ratione Custod. terræ & hered. I. que fuit uxor. T. de N. qui de nobis tenuit in capite, defuncti, in manu nostra existentis, & ad ipsius P. de T. spectat Donationem, & unde pread, &c. nos & prefat. P. de T. injuste impedit.*

11 E. 3. Br.  
Quare Impedit.

But now the common Opinion is, that the King shall have the whole Presentment alone, and alone shall have the Action. But methinks that it stands with reason that the King and the other join; as in a popular Action the Party shall sue for the King and for himself, and the Words of the Writ are: *Qui tam pro Domino Rege, quam pro seipso sequitur, &c.* and that in an Action of Debt, &c. and by the same Reason the King may sue for himself and for the Party. And the common Experience is, that a Man shall hold Lands in common with the King, and also Chattels: And by the same Reason they may have the Presentment or Advowson in common.

And if a Man be disturbed to present unto a Parsonage, **H** then the Writ shall be, *Præ, &c. quod permittat ipsum presentare, &c. ad Ecclesiam, &c.* for the word *Ecclesia* is always intended a Parsonage. And if it be a Vicarage, then the Writ is; *quod permittat ipsum presentare ad Vicar.* And if it be a Prebend, then *ad Prebendam*; and if a Chapel *ad Capellam*; and so he ought to name the Advowson as it is, &c. **8 H. 6. 22.**

[ 33 ] A Man shall not have a *Quare Impedit de Advocat. mediata. A* *tis, nec de medietat. Advocacionis, &c.* And if one Man hath **B** the Nomination unto an Advowson, and another hath the Presentation, if he name his Clerk, and he who hath the Presentation, present another Clerk; he which hath the Nomination shall have a *Quare Impedit*, and the Writ shall be, *quod permittat ipsum presentare, &c.* and in his Count he shall set forth the special Matter, and it shall be good.

And so if a Man hath a Chantry, which is a Donative **C** by Letters Patent, and he give the same unto a Clerk, who is disturbed by another, or another doth present to his Chantry,

Chantry, or giveth the same by Letters Patent; he which hath Right shall have a *Quare Impedit* of that Donative; <sup>17 E. 3. 12.</sup> and the Writ shall be, *quod permittat ipsum presentare, &c. ad Cantariam, &c.* and in the Count he shall set forth the Special Matter.

**D** And if a Bishop be disturbed to present where he ought to make Collation, the Writ shall be, *quod permittat ipsum presentare, &c.* and he shall count upon the Collation.

**E** And so if the King be disturbed to collate by his Letters Patent unto his free Chapel, he shall have a *Quare Impedit*, and the Writ shall be, *quod permittat ipsum presentare, &c. ad Prebendam* in his free Chapel, &c.

**F** And a *Quare Impedit* lieth of a Priory, or of an Abbey; <sup>14 H. 4. 36. b.</sup> and the Writ shall be, *quod permittat ipsum presentare ad Prioratum seu Abbatiam, &c.* See the Book of Entries 59.

**G** And there is another Form of Writ, *quod permittat ipsum presentare ad Ecclesiam Domus S. Martini Bristol, que vacat, &c.* and so of an Hospital, and the like.

**H** And a Man shall not have a *Quare Impedit* if he cannot alledge a Presentment in himself or in his Ancestors, or in another Person, from whom he claimeth the Advowson, and that in his Count, if it be not in special Cases: As if a Man at this Day erect a Church parochial by a Licence of the King or other Chantry, which shall be presentable, &c. if he be disturbed to present to the same, he shall have a *Quare Impedit*, without alledging of Presentment in any Person, and shall count upon the Special Matter.

Vaugh  
Hob. 10

<sup>21 E. 4. 2. 3.</sup>  
<sup>16 H. 7. 8.</sup>  
Keble ac.

**I** And if a Man doth recover an Advowson against another in a Writ of Right, when the Church voideth he shall present, and if he be disturbed, he shall have a *Quare Impedit*, and alledge the Presentment in him against whom he recovered, without alledging any other Presentment. And a Man shall have a *Quare Impedit* and alledge a Presentment by his Proctor, and it shall be good, without alledging a Presentment in himself: *Quod vid. 17 E. 3.*

**K** And if an Abbey hath been Parson *impersonae* Time out <sup>C. 2 Part.</sup> of Mind, and afterwards the Abbey is disturbed, he of <sup>47. b. ac.</sup> whom the Advowson is holden shall present, and if disturbed, shall have a *Quare Impedit*, without alledging of any Presentment in the Count, but shall shew the Special Matter.

**L** If Coparceners make Partition to present by Turns, and so do, and afterwards the younger Sister die, her Heir within Age, and in Ward to the King, and afterwards the Church void two or three Times during the Nonsage of the Heir, who



21 B. 3. Br.  
Quare Im-  
pedit 73.

who is the King's Ward; the King shall present, and if he be disturbed, he shall have a *Quare Impedit* alone as it appeareth *M. 22. E. 4.* But, saving the Opinion of the Book, I conceive the Law to be otherwise, because the Inheritance of the Presentment is several, &c. And if two Sisters be, and M have an Advowson which becometh void, the eldest Sister shall have the first Presentment; and so the Husband of the eldest Sister (if he be Tenant by the Courtesie of the Advowson) shall have the first Presentment; and the Tenant in Dower shall have but the third Presentment, &c.

16 H. 7. 8.

If the King have an Advowson in Fee, which voids, and N during the Avoidance the King granteth the Advowson in Fee, the King shall not present to this Avoidance: But if the King have an Advowson by reason of the Temporalities of a Bishop, and during the Avoidance the King restore the Bishop the Temporalities, yet he shall present unto the Advowson and not the Bishop for this Avoidance.

If the Heir sue his Livery and hath it, yet the King shall O present unto an Advowson which became void during the time that the Advowson and Land were in the King's hands.

24 H. 8.  
Dyer 4. C. 3.  
Part 3.

If a Man be seised of an Advowson in gross or in Fee appendant unto a Manor, and the Advowson void, and he dyeth, his Executor shall present and not the Heir, because Q it was a Chattel vested and severed from the Manor. And

50 E. 3. 26.  
ac. Vid. of  
147. 34. K.

if a Man be disseised of a Manor unto which an Advowson is appendant, and the Advowson become void, the Disseisee may present and have a *Quare Impedit*, although he R hath not entered into the Manor. But if the Bishop die, and the Advowson happen void before his Death, the King shall present unto the same by reason of the Temporalities, and not the Bishop's Executors.

2 H. 4. 19.  
40 E. 3. 14.  
after 44. K.  
147. E.

So if a Man have a Manor unto which an Advowson is S appendant in Fee, and the Church void in the Father's Time, and he die, and his Heir in Ward to the King, the King shall have the Presentment.

Lit. 890. 176.  
Lro: 99  
Lco: 556

Guardian in Socage of a Manor unto which an Advowson T is appendant, and the Church void, the Heir shall present, and not the Guardian, because he cannot account for the same.

If the King grant unto an Abbot and his Ancestors, that V the Monks shall have the Temporalities during the Vacation, now if the Advowson happen void during the Vacation, the Monks shall present to the same. *M. 30 E. 3.*

The Presentation to the Vicarage doth of common Right A appertain unto the Parson; but he may grant the same to another by Assent of the Patron and Ordinary. The



- The Heir in Tail shall not have a Presentment fallen in the Life of the Tenant in Tail, but the Executor of Tenant in Tail. So the Termer shall have the Presentment which happeneth during the Term, although he hath not presented during the Term to the Advowson, &c. [ 34. ]
- B** in Tail. So the Termer shall have the Presentment which happeneth during the Term, although he hath not presented during the Term to the Advowson, &c.
- C** The King may repeal his Nomination or Presentation, 7 H. 4. 32.  
**D** but a common Person cannot so do. And the King shall have a Writ upon a Bishop to induct one into a Prebend which the King hath given unto him; and to give him a Seat in the Quire, and a Place in the Chapter-house. Dyer 260. 25 E. 3. 47. Robert de Kelsey's Case.
- E** And a Man shall have a *Quare Impedit* of an Hermitage, and a Writ to put him into corporal Possession.
- F** If the King recover by *Quare Impedit*, and afterwards ratify the Estate of the Incumbent; yet at the next Avoidance the King shall present, because his Recovery and Judgment for him was not executed. T. 9 E. 3. In a free Chapel of the King, where the Dean ought to give the Prebends, if he do not collate within six Months unto them, then the King shall present by Lapse to them as Ordinary.
- G** If an Advowson be void by six Months, at which Time the King is seised of the Temporalities of the Bishoprick, the King shall present to this Advowson, as the Bishop should do; and the King shall have a *Quare Impedit* of the Sub-Deaconry of York, which voided when the Temporalities of the Archbishoprick were in the King's Hands; and the Writ shall be, *quod permittat eum presentare*; and yet the King shall have this Sub-Deaconry by his Letters Patent.
- H** Where Partition is made betwixt Coparceners by Licence of the King of an Advowson in a Court of Record, as in the Common Pleas, and afterwards the Coparcener who hath the next Turn dieth, her Heir within Age and in Ward to the King, and the Church void; the King shall have a *Scire facias* against the other Coparcener, &c. upon that Partition, and yet he was a Stranger to the Partition. 31 E. 3.
- I** If two Coparceners make Partition to present by Turns, although that one of the Coparceners do afterwards usurp upon the other Coparcener, and presents in her Turn, that Presentment shall not put her out of Possession, but she shall have her Turn when it falls again, and shall have a *Quare Impedit*, or a *Scire facias* upon the Composition if it be upon Record, if she be disturbed for to present, &c. 6 E. 3. Quare Impedit 39.
- K** If a Bishop make a Collation, and before Induction or Installation dieth, and the King seifeth the Temporalities; he shall have this Presentment, because that the Church is not full against the King, until the Parson or Prebend be installed or inducted, In 50 E. 3. 26. 38 E. 3. 4.

11 H. 4. 7  
 45 E. 3. 19  
 Waugh

24 E. 3. 31. If a Parson have a Parsonage, and afterwards doth take L  
 another Benefice without Dispensation; now the first Bene-  
 fice is void, and the Patron thereof may present, for this  
 Avoidance is called Cession.

ough 21. 131  
 6. 456. 76a  
 a. 206. 166  
 476 Br. Present-  
 ment al.  
 Eglise 46.

If in the Time of Vacation of an Abbey or Priory, a M  
 Church happen void, which is of the Patronage of the Ab-  
 bot or Prior, and a Stranger doth usurp and present there-  
 unto; this Usurpation shall not prejudice the Successor, but  
 at the next Avoidance of the said Church he may present,  
 and have a *Quare Impedit*; but otherwise it is if an Usurpa-  
 tion shall be had in the Time of his Predecessor, for that  
 shall put the Successor out of Possession, if the six Months  
 be past.

If a Vicarage happen void, and before the Parson present, N  
 he is made a Bishop, &c. yet he shall present unto this Vica-  
 rage, because it was a Chattel vested in him.

The Founder of a Priory shall have a *Quare Impedit* against O  
 the Subprior and the Convent, if they disturb him to present  
 to an Advowson which belongeth to the House, if it void  
 during the Vacation, where the Founder ought to have the  
 Temporalties during the Vacation. P. 9 E. 3.

If a Man traverse an Office found of a Manor unto which P  
 an Advowson is appendant, and upon the Traverse the King  
 leaseth the Manor unto him who tendred the Traverse with-  
 out mentioning the Advowson, and afterwards the Church  
 void, he who tendred the Traverse shall have the Present-  
 ment, if the Traverse be found for him.

If a Feme be assigned the third Part of a Manor unto Q  
 which an Advowson is appendant in Dower, she shall have  
 the third Presentment.

14 H. 6. 24. If the Patron be outlawed in Trespass, and the Church R  
 Newton, void, the King shall present, because of the Outlawry.

Feme is dis-  
 turbed and  
 taketh Hus-  
 band, the  
 Church  
 void, the  
 Husband  
 presents, the  
 same shall  
 vest the  
 Right in the  
 Wife.

If a Feme purchase an Advowson, and take a Husband, S  
 and the Church void, and a Stranger doth present, and the  
 Husband suffer an Usurpation, &c. by this Usurpation the  
 Wife shall be out of Possession, after the six Months past;  
 and she shall be put to her Writ of Right of Advowson, if  
 she have presented before; and if she have not presented,  
 she is without Recovery: But otherwise is it if the Feme  
 shall have an Advowson by Descent, or by Course of Inhe-  
 ritage.

If an Infant or a Feme Covert do not present within six T  
 Months, the Bishop may present for Lapse.

One Jointenant, or Tenant in common, shall not have V  
 a *Quare Impedit* for the Advowson which they have in com-  
 mon



mon, or in Jointure, if one of them present solely against his Companion. But if two Coparceners cannot agree in the Presentment, the eldest Sister shall have the first Presentment; and he who hath her Estate shall have the first Presentment; and if he be disturbed by the other Coparcener, she or he who hath her Estate shall have a *Quare Impedit* against the other Sister; and the Coparceners and those who have their Estates, shall present as Coparceners ought to do, *scil.* the eldest first, and then the Middlemost, and then the Third, and then the Fourth, and so as they shall be of Age, &c.

35 H.8. Dy.  
55. Advow-  
son descends  
to two Co-  
parceners,  
one of full  
Age, and the  
other with-  
in Age, the  
Guardian  
marrieth

*the eldest, the Church void, he presents in both their Names, the youngest cometh of Age. Some are of Opinion, that if they do not agree the eldest shall present, and it shall be her Turn: Others contrary. Quare.*

X If an Infant have a Manor unto which an Advowson is appendant, and suffereth a Usurpation when the Church becometh void, and afterward at full Age grants the Manor in Fee, and afterwards the Church become void; the Infant shall present, and not the Feoffee of the Manor, for the Advowson was severed by the Usurpation; and yet the Infant may present to the same.

[ 35 ]

A If the King's Tenant hath Title to present unto an Advowson, which is void, and the six Months pass; and afterwards the King's Tenant dieth before the Bishop presenteth for Lapse, his Heir within Age, and in Ward to the King, the Bishop shall not present for Lapse, but the King shall have this Presentment by reason of the Wardship. P. 18 E. 3.

B If Tenant in Tail of a Manor, unto which an Advowson is appendant, discontinue the Manor in Fee with the Advowson, and after the Discontinuer granteth the Advowson unto another in Fee, and afterwards doth re-infeoff the Tenant in Tail of the Manor, who dieth seised of the Manor; his Heir shall present unto the Advowson when it shall happen void: And if he be disturbed, he shall have a *Quare Impedit*, because he is remitted unto the Manor, and hath not Remedy to come to the Advowson.

C The Defendant in a *Quare Impedit* may sue a *Quare Impedit* against the Plaintiff, if his Clerk be not admitted nor instituted. And if the Plaintiff's Clerk be instituted and inducted pendant the Writ, it shall not abate the Plaintiff's Writ; but in that Case if the Defendant recover against the Plaintiff, he shall avoid the Plaintiff's Clerk; and so if the Defendant's Clerk be admitted pendant the Writ against him, if the Plaintiff recover, he shall avoid the Defendant's Clerk:



Clerk: But if the Clerk of the Defendant were admitted and instituted at the Time of the Purchase of the Writ, and the Plaintiff purchase the Writ only against the Patron, not naming the Incumbent; although the Plaintiff recover, he shall not avoid the Defendant's Clerk, because he might have named him in the *Quare Impedit*.

If a Stranger do present unto an Abbey or Priory which is eligible by the Convent, and his Clerk be instituted and inducted; *Quærs*, how this Wrong may be after redressed and reformed.

20 Eliz. 11. Hare's Case, he ought to be inducted. If a Man have a Chapel or Chauntry which is donative by Letters Patent, and he once present unto the Ordinary his Clerk to the Chauntry, he shall never after collate, but ought to present unto the Bishop; and if he do not present within six Months, the Ordinary shall have Advantage of the Lapse. E

A Presentment made by a Stranger unto an Advowson which is appropriated unto an Abbey, be the Presentment in the Time of Vacation, or in the Time of the Abbot, is void, although that the Clerk be instituted and inducted: But if the Abbot himself present unto the Bishop's Clerk to an Advowson which is appropriate to his House, this Presentment doth disappropriate the Advowson, and make it presentable after; and if he do not present within six Months after every Avoidance, the Bishop shall present for Lapse. The Bishop ought to present his Clerk for whom it is first found by a *Jure Patronatus*. G

1 H. 7. 9. 12 & 13 E. Dy. 293. e. 237. The Bishop shall not have the Advantage to present by Lapse, where the Church doth become void by Resignation or Deprivation, without giving Notice thereof to the Patron. H

Dr. & Stud. 117. 12 El. Dyer 293. Where the Bishop doth refuse the Clerk of the Patron for Non-ability, or for Crime, he ought for to give Notice thereof to the Patron, otherwise he shall not present for Lapse; but after the six Months past, the Patron shall have a Writ to the Bishop, if the Church do remain void, and the Bishop hath not collated thereunto. I

The Chancellor of England shall present unto all the King's Churches which are under the Sum of twenty Marks by the Year, which are in the King's Gift, and in the Right of the Crown: But if the King hath them by any other Title, then the Chancellor shall not present unto them. K

C. 10 Part. 134. 38 E. 3. 36. The Death of one Plaintiff, nor the Nonsuit of one Plaintiff shall not abate the Writ, but he shall be severed. L

Where an Infant hath an Advowson by Descent, and the Church

Church voideth, and he who hath Title paramount doth usurp, and present unto the same Church, and the six Months do pass; he is remitted by this Usurpation, and the Infant out of Possession, and without Remedy by that Usurpation.

**N** If a Man hath an Advowson, and the Church doth become void, and two Strangets do severally present their Clerks to the Bishop to that Advowson; the Patron shall have divers *Quare Impedit* against them, if he will, and shall have several Judgments, and shall recover several Damages for their several Presentments and Wrongs done.

**O** If a Man maketh another his Proctor, to present unto all his Advowsons, and to do several Things for him; if the Proctor present, as Proctor unto him, unto an Advowson unto which he hath Right to present in his own Right, that Presentment shall put him out of Possession of the Advowson, and shall give the Possession to the other. 17 E. 3. 60.  
Fitz. Quare  
Impedit 68.

**P** In a *Quare Impedit* for the King, although the Defendant hath a Writ unto the Bishop against the King, the King may have a new *Quare Impedit* against him of the said Avoidance, and make other Title.

**Q** If Prior and Convent ought to chuse the Abbot, and name him to the Patron, and he to present him to the Bishop, and they chuse one for Abbot, and name him to the Patron, and the Patron doth present another to the Bishop; they may sue in the Spiritual Court for Remedy, as it is said, *H. 11 E. 3. Tamen quere*; for it seemeth they are enabled to sue at the Common Law, as well as they are enabled to chuse and name the Abbot. As the Prior of *Westminster* and the Convent hath Power to sue their Abbot for an Advowson, *M. 20 E. 3.* 40 E. 3. 28.  
per For-  
tescue.

If the Disturber present two or three Times within the six Months, yet a *Quare Impedit* lieth against the Disturber upon the first Presentment, if he purchase the Writ within the six Months.

**A** Where a Man doth recover in a Writ of Right of Advowson, he shall present at the next Avoidance, and shall have a *Quare Impedit*, without alledging any Presentment in himself or his Ancestors, but shall declare upon the Record, or may have a *Seire factas* upon the Recovery. And so may his Heir have a *Seire facias* upon that Recovery against the Heir of the other Party, at the next Avoidance after the Recovery; but not after, as it seemeth. [ 17 ]  
16 H. 7. 8.  
per Keble.

**B** If a Man recover in a *Quare Impedit*, he shall have a *Seire facias* against the Patron and the Incumbent who made Default, if he will sue Execution of this Recovery. 15 E. 2. fol.  
174.

If



16 H. 7. 8.  
&c.

If Coparceners make Partition in the Chancery or in the Common Pleas, to present by Turns, and afterwards a Stranger doth usurp in their severall Turns; yet after, when their Turns come, every of them have a *Seire facta* upon this Partition against the Stranger when his Turn cometh, to shew wherefore he should not present, notwithstanding the Usurpation aforesaid. But otherwise it seemeth it is if the Partition be of Record, then they shall be put to their Writ of Right by reason of this Usurpation.

If Coparceners make Composition to present by Turns, and a Stranger doth usurp; and presenteth in the Turn of one of them, yet if they will they may join in a *Quare Impedit* against the Stranger, notwithstanding the Composition. And after Composition to present by Turns, if they do present in common, they may well do so. But it seemeth by that, that the Composition is waived; for if Coparceners (where one is within Age) make Composition to present by Turns, and at full Age they present contrary to this Partition, these Presentments shall avoid the Partition made before.

If the eldest Son by the first *Venter* present, and dieth without Heir, and afterwards the Church becomes void, the younger by the second *Venter* shall not present, nor have this Advowson. But *Devon* saith, If a Man hath two Daughters by divers *Venters*, and they enter and make Partition to present by Turns, and one dieth without Heir, the other Sister shall be her Heir: *Quod fuit concessum*. But after the Partition, if one Sister hath presented, and afterwards dieth without Heir, it seemeth her Sister of the Half-blood shall not be Heir unto her.

If a Man be disseised of a Manor unto which an Advowson is appendant, and the Disseisor suffer an Usurpation by a Stranger unto the Advowson, and afterwards the Disseisee doth re-enter into the Manor; he shall present unto the Advowson when it doth become void, notwithstanding such Usurpation.

## Spoliation.

There is a Manner of Suit called *Spoliation*, for the Fruits of a Church, or for the Church it self, which is to be sued in the Spiritual Court, and not in the Temporal Court; and therefore there is no Writ thereof in the Register. But it is good to be known what Person shall have that Suit, and against what Person it will lie, and for what Thing he shall sue, and when he shall sue, and in what Court.

*Spoliation* properly lieth for an Incumbent against another Incum-



Incumbent, where the Right of the Patronage doth not come in debate: As if a Parson be created Bishop, and hath a Dispensation to hold his Rectory, and afterwards the Patron doth present another Incumbent, who is instituted and inducted; now the Bishop shall have a *Spoliation* against that Incumbent in the Spiritual Court, because he claimeth by one Patron, and the Right of the Patronage doth not come in debate.

38 H. 6. 20.

Portescuc.

*rough 24*

26 H. 2. 3.

And so if a Parson do accept of another Benefice, for which the Patron presents another Clerk, who is instituted and inducted; now one of them may sue a *Spoliation* against the other, and then it shall come in debate whether he hath Plurality or not. But if a Patron do present a Clerk unto an Advowson, who is instituted and inducted, and afterwards another Man doth present another Clerk to the same Advowson, who is also instituted and inducted; there one of them shall not have a *Spoliation* against the other, if he disturb him of the Church, or to take the Fruits thereof, because the Right of the Patronage doth come in debate in the Spiritual Court, which of the Patrons hath Right for to present: And therefore in that Case, if one of them sue a *Spoliation* against the other, he shall have a Prohibition unto the Spiritual Court, and no Consultation shall be granted for the Cause before said.

See after

51. 1.

I And if one Clerk without any Presentation, Institution, or Induction, do cast another Parson out of the Rectory, and taketh the Profits thereof, the Parson shall not have a *Spoliation* against him, but an Action of Trespass; or an Assise of *Novel disseisin*; for *Spoliation* doth not lie, if not against him who cometh to the Possession of a Benefice, or unto the Fruits thereof, by the Course of the Spiritual Law, *scil.* by Institution, &c. so that he have Colour to have it, and to be Parson by the Spiritual Law.

38 H. 6. 19.

Markham.

26 H. 8. 3.

22 H. 6. 27.

K So if a Prebend happen void, and the Bishop collate thereunto, and before Induction the Bishop die, and the Temporalties come unto the King, and afterwards he is inducted, and afterwards the King giveth the same by his Letters Patents unto another Clerk, who is instituted and inducted; the first Clerk shall have a *Spoliation* in the Spiritual Court against the Presentee of the King, because the King ought to have removed him by *Quare impedit*, and not to have collated as he did. And there the Patronage doth come in debate.

*206: 241*  
*Lit: 344*  
*6 Co: 119*  
*Dy: 348:*  
*(12) 292*  
*(70)*

If an Abbot have a Manor unto which an Advowson is appendant in Fee, and he doth appropriate the Advowson

[37.]

M. 44. E. 3.  
31. Quare  
imp. 4.

to him and his Successors, and afterwards leaseth the Manor for one thousand Years, and also the Advowson, and the Lessee makes an Union of the Parsonage and the Vicarage, and presents the Vicar unto the Ordinary as Parson, &c. by reason whereof the Abbot sueth a *Spoliation* against the Vicar, and the Vicar sueth a Prohibition; the Abbot shall not have a Consultation upon the Matter shewed. By which it appeareth, that a *Spoliation* doth not lie for the Abbot in this Case; for that the Right of the Patronage doth not come in debate.

33 H. 6. 19.  
20.

And so if an Abbot be Parson imparsoned, and a Stranger present his Clerk to that Advowson, who is instituted and inducted; the Abbot shall not have a *Spoliation* against the Clerk, but an Action of Trespass, or Assise, if he be ousted; because the Right of the Parsonage is to be tried.

And if a Clerk obtain a Benefice by Provision, for which cause the King is to have the Presentment for that time, because the very Patron did not present within the time limited him by the Statute of 25 E. 3. and the King presents to the Church his Clerk to the Ordinary; who is instituted, and before Induction takes the Profits; he who is in by Provision shall not have a *Spoliation* against him, because he doth not come to the Possession of the Church by the Spiritual Law, but as an Intruder and Trespassor. But if the Presentee of the King were inducted, then there is no Remedy for him who hath the Benefice by Provision.

A Clerk had a Collation by the King unto a Chapel, D and was put into Possession by the Sheriff, and afterwards the Clerk was ousted by a Prior, &c. in that Case he shall not have a *Spoliation*, but an Assise, or Trespass, &c.

But it appeareth by the Register, that one Parson shall E have a *Spoliation* against another Parson, which have divers Patrons, &c. if he be spoiled of any Tithes or Profits appertaining to his Church, which do not amount to the fourth Part of the Value of the Church, as before is said. But if they do amount unto the fourth Part of the Church, then one Parson shall not have a *Spoliation* against another Parson, if they claim not of one Patronage, so that the Title of the Patronage doth not come in debate; and then he shall have a *Spoliation*; and if the other sue a Prohibition, &c. he shall have a Consultation.



*Ne admittas.*

**F** **T**HIS Writ of *Ne admittas* lieth for the Plaintiff in a *Quare impedit*: And the same is where one hath an Action depending in the Common Pleas, of *Darrein Presentment*, or of *Quare impedit*, and he supposeth that the Bishop will admit the Clerk of the Defendant pendant the Plea betwixt them; and he may sue this Writ directed to the Bishop. And this Writ ought to be sued within the six Months after the Avoidance; for after the six Months he shall not have this Writ, because that then the Bishop may present for Lapse; and therefore it is in vain then for to sue this Writ, because that the Title to present is then devolved unto the Bishop: But the King may sue this Writ after the six Months, where he hath a *Quare impedit* depending, or Affise of *Darrein Presentment*, because that *Nullum tempus occurrit Regi*.

*Nota, In Marrow's reading it is holden that the six Months shall not be accounted by 28 Days, but according to the Calendar Months.*

But there is a Rule in the Register thus, *Notandum est, quando Rex presentat ut in jure Coronæ, tunc incurrit ei tempus.* But that is not Law at this Day.

And the Writ of *Ne admittas* for the King is such:

**G** *Rex venerabili in Christo Patri W. eadem gratia Winton. Episc', salutem. Prohibemus vobis, ne admittatis Personam ad Ecclesiam de I. que vacat, ut dicitur, & de cujus Advocatione content. mota est in Curia nostra inter nos & A. Or thus, Inter A. & B. donec discussum fuerit in eadem Curia, utrum ad nos an ad prefat. A. Or thus, In eadem Curia ad quem eorum pertineat ejusdem Ecclesie Advocat'. Or thus, Inter nos, ratione Abbacie de S. vacantis, & in manu nostra existentis, & H. Linc. Episc', donec discussum fuerit in eadem Curia nostra, utrum ad nos ratione Vacationis prefat', an ad prefat. Episc. pertineat ejusdem Ecclesie Advocat'.*

**H** And it seemeth that the Defendant may sue this Writ as well as the Plaintiff, if the Defendant do suppose that the Bishop will admit the Clerk of the Plaintiff pendant the Writ. And this Writ of *Ne admittas* doth not lie, if the Plea be not depending in the King's Court by *Quare impedit*, or Affise of *Darrein Presentment*. And therefore there is a Writ in the Register directed unto the Chief Justice of the Common Pleas, to certifie the King in the Chancery, if there be any Pleas depending before him and his Companions by Writ betwixt such and such Persons, &c. And therefore it seemeth the Writ of *Ne admittas* shall not be granted, before the King be certified in the Chancery, that such Pleas



*Breve Episcopo ad admittendum Clericum.*

of *Quare Impedit*, or *Darrein Presentment* be there depending in the Common Pleas. But yet the Writ of *Ne admittas* may be granted out of the Chancery, directed unto the Bishop, that he do not admit, &c. before the King be certified in the Chancery, that such Plea of *Quare Impedit*, or *Darrein Presentment*, is depending in the Common Pleas; then the Party grieved may require the Chief Justice to certify the King in his Chancery, that no such Plea is depending there, and thereupon the Party grieved shall have such Writ:

[38] *Rex venerabili in Christo Patri, &c. Licet nos per Breve nostrum vobis prohibuimus, ne admitteretis Personam ad Ecclesiam de I. [ut in Brevis de ne admittas] quia tamen per certificationem eile & I. de S. nobis constat, quod nullum placitum pendet in Curia præd. coram ipso & sociis suis Justic. vestris de Banco inter nos & præf. W. de Advocacione præd., vobis mandamus, quod id quod ad Offic. vestrum in hac parte novcritis pertinere, libere executatis, Prohibitione vestra præd. non obstante. Teste, &c.*

And when the Bishop himself is Party and Disturber, **A** then the Form of the Writ of *Ne admittas* is as aforesaid; *Prohibemus vobis, ne admittas*. Yet the Form of the Writ used to be, *Prohibemus vobis, ne consecratis Clericum Ecclesie, &c. quia vacat, &c.*

*Breve Episcopo ad admittendum Clericum.*

7 H. 8. 32. **I** F a Man do recover his Presentation in the Common Pleas **B**  
8 H. 4. 22. against the Bishop, then he may have a Writ to the  
*A Writ shall* same Bishop to admit his Clerk, or unto the Metropolitan;  
*issue to the* and the Writ shall be such:  
*Metropolitan,*  
*if the* *Rex venerabili in Christo Patri, &c. Cum Prior de I. &c. in*  
*Bish. be Par-* *Curia nostra recuperasset versus nos Presentationem suam ad Vica-*  
*ty. Quare,* *riam de W. vobis mandamus, quod ad presentat. ipsius Prioris ad*  
*for the Bish.* *præd. Vicariam idoneam Personam admittatis, &c.*  
*did dis-*  
*claim as* **And if a Man recover against another than the Bishop, C**  
*Patron in* then the Writ which shall be made to the Bishop, shall be  
8 H. 4. thus:

*Rex, &c. Cum Prior, &c. in Curia nostra, &c. recuperasset ver-*  
*in a Quare* *sus I. P. &c. Vobis mandamus, quod non obstante Reclam. præd.*  
*Impedit the* *I. P. ad Presentat. præd. Prioris, &c. idoneam Personam admit-*  
*Disclaim,* *tatis, &c.* And upon that he shall have an *Alias* and a *Plu-*  
*there the* *ries*, if the Bishop do not execute the Writ, and an *Attach-*  
*Plaintiff* *ment* against the Bishop, if need be.  
*shall have a Writ to the Bish. contr. in Disclaimer in a Writ of Right of Advowson*  
6 E. 3. 7. *Error 78. The Reason is, because he cannot remove his Clerk after the*  
*six Months pass.* **But**

- D** But if the King do recover in the Common Pleas any Prebendary, or Sub-deanry, or Dignity against the Bishop, and giveth the same by his Letters Patents unto another Clerk; the Clerk shall shew the Letters Patents in the Common Pleas, and thereupon shall have a Writ unto the Bishop to admit him, and to induct him. And if the Clerk die before he be admitted and inducted, and the King giveth the same by other Letters Patents unto another Clerk; that Clerk shall have a Writ out of the Chancery, directed unto the Justices of the Common Pleas, reciting the Recovery, and how that the other Clerk died before he was admitted, and how that he hath granted the same to this Clerk by his Letters Patents, commanding the Justices, that they send another Writ to the Bishop, that he admit this Clerk, notwithstanding the King's Collation before made unto the other Clerk.
- E** In a *Quare Impedit* betwixt two Strangers, if there doth appear to the Court a Title for the King, they shall award a Writ unto the Bishop for the King. 11 H. 4. 71.  
Hank and Hill.
- F** If a Man do recover an Advowson, and the six Months pass, yet if the Church be void, the Patron may pray a Writ unto the Bishop, and shall have it; and if the Church be void when the Writ cometh to the Bishop, the Bishop is bound to admit his Clerk. And in Reason the same Law is, if the Patron after the six Months present unto the Bishop, if the Church be then void, the Bishop is bound to admit his Clerk. 21 E. 4. 3.  
  
14 H. 4. 11.  
Hankford.  
31 H. 6. 15.  
cont. where there is Fault in the Court.
- G** And a *Quare Impedit* shall be sued against a Sub-prior, &c. for Disturbance of the Patron. *Trinit.* 31 E. 1.
- H** Where the Writ abateth for Form, or false *Latin*, the Defendant shall not have a Writ to the Bishop. If the Patron who is Defendant make Default at the Distress, and the Incumbent abate the Writ by Plea, a Writ unto the Bishop shall not be awarded for the Patron, because he made Default. 7 H. 6. 15.  
per Curiam. E contra, If the Patron had appeared, and the Incumbent  
*made Default, in 7 H. 6. 37. 14 H. 4. 16. upon Pleas of the Incumbent, a Writ awarded to the Bishop.*
- I** In a *Quare Impedit* against the Bishop and others, all made Default but the Bishop, and the Plaintiff had not a Writ unto the Bishop against the others, until he had couated against the Bishop. 10 H. 6. 4. f.



33 H. 6. 1. If the Plaintiff be Nonfuir, the Defendant shall not have K  
 22 H. 6. 44. a Writ unto the Bishop, before he hath made Title to the  
 1 H. 7. 13. Advowson.  
 31 H. 6. 14.  
 38 H. 6. 14. 34 H. 6. 44. 11 H. 6. 8. Note: And there the Writ was brought by  
 two Coparceners against the third, and others.

Wint. 9. H. 6. Where the Defendant claimeth the Advowson as Par- L  
 16 p. r. Cu- son imparsonce, although it be found for the Defendant, he  
 riam: The shall not have a Writ to the Bishop.

Plaintiff Where the Writ abateth for *Misnom'*, or for Insuffici- M  
 shall have a Writ to the Defendant shall not have a Writ to the Bishop.

Bishop upon If the Defendant do not appear at the Distress returned N  
 insufficient against him, the Plaintiff shall have a Writ to the Bishop,  
 Plea without making Title.

21 H. 6. 36. If the Sheriff return upon a *Quare impedit, quod querens* O  
 Aid. non invenit Pleg, then the Plaintiff may find Pledges in the

33 H. 6. 1. Common Pleas, and shall have a new *Quare impedit*, in the  
 Common Pleas; and if the Sheriff return upon that Writ  
 rarde, and the Defendant appear, and the Plaintiff be cal-  
 led and appeareth not, the Defendant shall not have a Writ  
 to the Bishop, because that no Writ is served against the De-  
 fendant.

Where the Plaintiff recovereth by Verdict in a *Quare* P  
*impedit*, and it is found by the same Verdict that the six  
 Months are past, and that the Metropolitan hath present-  
 ed, whereas the Ordinary ought to have presented, &c.  
 and that the Year is now past, &c. yet the Plaintiff shall have  
 a Writ to the Bishop.

7 H. 4. 37. If a Man recover against a Bishop, he may have a Writ Q  
 to the same Bishop, or unto his Vicar-General, if he be out  
 of the Realm, or unto the Metropolitan.

A Man sued divers *Quare impeditis* against the Bishop, and R  
 he was Nonfuit in all but one Writ; the Defendant had  
 not a Writ to the Bishop until that Writ was determined.

2 H. 4. 1. In a *Quare impedit* the Defendant pleaded to issue, and S  
 after made Default, and a Writ was awarded unto the Bi-  
 shop for the Plaintiff.

At the *Distingas* returned against the Defendant, he T  
 comes, and hath Day by the Prayer of the Parties, and af-  
 terward makes Default; the Plaintiff shall not have a Writ  
 to the Bishop, but a new *Distingas*.

[39]

In a *Quare impedit*, the Defendant maketh Title for him- A  
 self and others, and afterwards the Plaintiff is Nonfuit; a  
 Writ to the Bishop shall be awarded for the Defendant on-  
 ly, and not for the others.

As



- B At the Distress returned against two, one appeareth, and the other maketh Default; the Plaintiff shall have a Writ to the Bishop against him who made Default; and yet it may be that the other Defendant may bar the Plaintiff; and it is so used at this Day: But the contrary was adjudged *H. 7. E. 3.* for the Cause before said. 14 H. 7. 19.  
& 7 H. 6.  
15.
- C In a *Darrein Presentment* betwixt two Strangers, the Assise found a Title for another Stranger; who was not Party to the Writ; he shall have a Writ awarded to the Bishop for him, although he were not Party to the Writ, because that the Writ is, *Quis advocatus ult. presentaverit*, &c.
- D Where a Man hath a *Quare impedit* against one, and the Defendant hath a *Darrein Presentment* against the Plaintiff, and recovereth in the *Darrein Presentment*, and the Plaintiff is Nonsuit in the *Quare impedit*, the Defendant shall have two Judgments against the Plaintiff, to have a Writ unto the Bishop in both Actions; and two Writs shall be awarded to enquire of the Damages; but he shall not render double Damages for one Disturbance.
- E When a Man sueth a *Quare impedit* against another, and after pendant the Suit he sueth *Ne admittas* to the Bishop, &c. and afterwards they agree to present in common by turns to that Advowson; then he shall have a Special Writ out of the Chancery unto the Bishop, to admit him who ought, by the Accord and Composition, to present at the first turn to that Avoidance. But first the King ought to send a *Certiorari* unto the Justices of the Common Pleas, to certify in the Chancery of the Accord there; and upon that Certificate the King shall send his Writ unto the Bishop, to admit his Clerk who by the Accord ought to have the first Presentment and Turn. And the Form of the Writ in the Register is such:
- F *Rex venerabili, &c. Cum nuper vobis per Breve nostrum prohibuerimus, ne admitteretis Personam, &c. ejusdem tertie partis Advocac'. ac postmodum, ad prosecutionem ipsorum E. & M. nobis suggerent. inter eos concordatum fuisse sub hac forma, quod pred. E. hac vice presentaret Clericum suum ad dict. tertiam partem, & pred. M. in proxim. Vacation. sequen. Clericum suum presentabit, sicut per quedam scripta indentata inter eos confecta, & sigillis suis consign', & coram nobis in Cancellaria nostra ostensa, plene liquet; ipsosque penes vos prosecut. fuisse, petend. cum instantia, ut Clericum ipsius E. hac vice ad dictam tertiam partem admitteretis, juxta formam concordie pred. Vos tamen, assert. manus vestras pretextu Prohibitionis nostrae pred. ligatas, Clericum ipsius E. admittere recusasse; & nobis*

supplican<sup>t</sup>, ut sibi, in collatio tertia partis præd. ad vos per Lapsum temporis, quæ in proximo, ut dicitur, imminet, hac vice devolvatur, velimus de congrua appositione remedii in hac parte factæ provideri; mandavimus dilecto & fideli nostro R. de N. quod ipse cogniciones quas præfati E. & M. coram ipso facere velint, utrum viz. ipsi super jure præsentandi ad tertiam partem concordati essent in forma præd. & si præd. M. vellet quod Clericus per ipsum E. ad eand. 3<sup>am</sup> partem præsentatus hac vice admitteret, ad eandem reciperet, & si dicta Scripta essent facta ipsorum E. & M. & nos inde in Cancellaria nostra sub sigillo vestro distincte & aperte redderet certiores: Et quia præf. R. nos ad mandatum nostrum certificavit, quod Concord. est inter præf. E. & M. quod præd. E. hac instanti Vacatione præsentabit Clericum suum ad dictam tertiam partem, & præd. M. in proxim. Vacatione sequen<sup>t</sup>, & sic præd. E. & M. & hered. sui ad tertiam partem præd. alternatim Imperpetuum præsentabunt; & quod ad Conventionem illam firmiter observand. Scripta præd. inter partes præd. sunt confecta: Vobis mandamus, quod idoneam Personam ad præd. tertiam partem ad præsentat præfati E. hac vice admittatis, & ulterius quod vestro incumbit officio in hac parte (Prohibitionis nostra præd. non obstante.) Teste, &c.

By this Writ it seemeth a Man shall have a *Quare Impedit* G quod permittat ipsum præsentare ad tertiam partem Ecclesiæ; and it seemeth to stand with Reason: For a Consolidation may be made of three Advowsons, and every Patron to present by turn, and then every one hath Right but to a third Part.

### Prohibition and Inhibition.

**T**HERE are divers Manners of Prohibitions and Inhibitions. H  
 ons, and they may be directed as well unto the Temporal Court, as unto the Spiritual Court. And one Writ in the Register is, where a Man sueth a *Præcipe in Capite* against another in the Common Pleas, of Lands or Tenements which are not holden of the King, but of another Lord; then the Lord of whom the Lands are so holden may sue this Writ directed to the Justices of the Common Pleas, commanding them that if it do appear unto them that the Lands are not holden of the King, &c. but immediately of another, that they do not meddle with the Conscience of that Plea, but that they bid the Party sue his Writ of Right Patent, *si sibi viderit expedire*. And in a Writ of Right, if the Tenant vouch a Foreigner to Warranty, the Tenant shall have a Writ of *Superfideas* directed to the Bailiffs of the same Court, to surcease the Plea, until



until the Warranty be determined; and if the Bailiffs will not surcease for that Writ, then the Tenant shall have another Writ of Inhibition directed unto the Sheriff, that he go unto the said Court; and to inhibit the Bailiffs, that they do not proceed in the Plea until the Warranty be determined, &c. And if they will not surcease for that Writ, then the Tenant shall have Attachment against the Bailiffs, directed unto the Sheriff, returnable in the Common Pleas, or King's Bench.

- A A Prohibition may be directed unto the Sheriff at the Suit of the Tenant, that he do not hold Plea in a Writ of Right unless Battel shall be thereupon waged, because that the Tenant hath put himself upon the Grand Assise.
- B And a Man may have a Writ of Prohibition directed unto the Sheriff, to go unto the Lord's Court, and to inhibit the Bailiffs, that they do not hold Plea in the Lord's Court of a House, &c. *inter A. Potentem & B. Tenentem.* And he may have another Writ unto the Sheriff, to prohibit the Lord himself, that he do not hold the Plea, &c.
- C And also the Tenant may have another Prohibition directed to the Sheriff, to prohibit the Bailiffs of the Bishoprick of the Hundred of *F.* that they do not hold Plea in the said Hundred *inter A. Pet. & B. Ten', de Consuetudinibus & servitiis quæ idem A. de eo exigit de liber. Tenem', quod de eo tenet in L. nisi Duellum inde vadit. fuerit;* because the said B. hath put himself upon the Grand Assise, &c. And if Tenant by Receipt sue such a Prohibition, the Writ ought to make mention of the Receipt.
- D Where the Bishop holdeth Plea of an Advowson, or of the fourth Part, or of the third Part thereof, then the Parry shall have a Writ of Prohibition directed unto the Bishop himself, in this Form:

*Rex vener. in Christo Patri A. eadem gratia Episcopo Winton', & ejus Offic. ac eorum Commiss' salutem Prohibemus vobis, ne ten. Placitum in Cur. Christianitat. de Advocat. Ecclesie de N. vel medietat'. vel tertiae partis, vel quarta partis Ecclesie de N. unde S. & F. querunt quod R. trahit eos in Placitum coram vobis, &c.* And he may have a Prohibition to the Parry himself *Ne sequatur,* by these Words; *Prohibemus tibi, ne sequaris Placitum in Curia Christianitatis de Advocat', &c. unde C. queritur quod tu trahis eum in Cur', &c.* And he may have an Attachment thereupon against him, if he follow it after the Writ cometh unto him.

And



## Prohibition.

And the King for himself may sue forth this Writ, although the Plea in the Spiritual Court be betwixt two common Persons, because the Suit is in Derogation of his Crown. E

And the King may sue an Attachment upon the same, if they do proceed, &c. And in Time of Vacation of a Bishoprick, the Prohibition shall be directed unto the Guardian of the Spiritualties, & ejus Officiali & Commissariis. And a Prohibition lieth for Chauntries, Chapels, Prebends, and Vicarages, &c. G

If a Man sueth another in the Spiritual Court for a Chattel, or Debt, the Defendant shall have a Prohibition, and the Writ shall be; *Prohibemus vobis, ne ten Placitum in Curia Christianitatis de Capitalis vel debitis*, &c. And he may have a Writ unto the Party himself, that he shall not sue there, &c. and shall have an Attachment thereupon, if they sue there afterwards, &c. And also the King may sue this Writ, and it may be directed unto the Judge and Party. And the King may have an Attachment upon it. H

If a Man sueth another in the Spiritual Court for a Lay-fee, which is Land or Tenements, or the like, then he shall have a Prohibition, and the Writ shall be, *Prohibemus vobis, &c. ne teneatis, &c. de Laito feodo Regis in S. unde queritur quod H. trahit eum in Placitum*, &c. And he may have another Writ unto the Party himself, &c. *Ne sequatur*, &c. and he may sue an Attachment upon it; and he may sue an Attachment only against the Party, or against the Judge only, or against both, at the Election of the Party who will sue. And if the Judge do dwell in one County, and the Party in another County, then if he will have an Attachment against both, he must sue forth several Writs. And so it seemeth if he sue several Prohibitions against them, he ought to sue several Attachments against them, if he will sue both, although they be dwelling one County. I

And a Man shall have an Attachment upon a Prohibition against the Judge, if he refuse to receive the Prohibition, and to admit of it. K

And a Prohibition lieth, if a Man be sued in the Spiritual Court for the Collation unto a Grammar-School. L

If a Man sue for Trespas in the Spiritual Court, the King or the Party shall have a Prohibition and Attachment, as before is shewed, unto the Judge, or Party, or unto them both.

Vid. 11 H. 4.  
47. by which  
it seemeth  
a Spiritual  
Trespas. 7 H.  
4. 1.

**N** In some Cases a Man shall have a Prohibition when he is sued in the Spiritual Court for the Tithes of his Lands. As if a Man be the King's Tenant, and holdeth of him in chief by Knights Service, and is sued in the Spiritual Court for the Tithes of the Demesne Lands, he shall have a Prohibition, because that these Lands may come into the King's Hands by reason of Wardship, or by Escheat; and then perhaps the King shall be otherwise charged than he ought to be charged, and therefore the same ought to be tried before the King in his Chancery.

And so, if a Bishop grant unto a Presentee in the Church of Lincoln the Tithes of his Demesne Lands, to him and his Successors; now if the Presentor be impleaded in the Spiritual Court for these Tithes, the King may grant a Prohibition; and the Form is such:

*Rex tali Judic' salutem, &c. Monstravit nobis venerabil. Pater Linc. Episcopus, quod cum I. Prasent. in Ecclesia beate Marie Linc', tenent de dno suo omnes Decim. Dominicarum terrarum suarum vel Dominici sui de N. quas id. Episc. & predecess. sui Episc. loci predicti conferr. consueverunt, Prior Sancte Katherine extra Lincoln' clamans Decimas illas pertinere ad Ecclesiam de B. trahit eum inde in placitum, &c. Et quia pred. Placitum tangit Coronam & dignitatem nostram, praesertim cum Collatio earund. Decimar. ad nos possit devolvi ratione Custodiae vel Escheat'. quia etiam consimiles Decimas conferimus in quibusd. Dominicis, & similit. quamplures Magnates regni nostri in Dominicis suis; vobis prohibemus, &c.*

[41.]

**A** Also a Man may sue a Prohibition directed unto the Sheriff, that the Sheriff do not suffer the King's Lay Subjects to come to any Place at the Citation of the Bishop, *ad faciend. aliquas Recognitiones, vel Sacram. praestand'*, nisi in causis matrimonialibus & Testamentariis. And the Party may have thereupon an Attachment against the Bishop, if he cite or distrain any one to appear before him to take an Oath at the Will of the Bishop, against the Will of him who is so summoned or cited. And by that it appeareth, that those general Citations which Bishops make to cite Men to appear before them *Pro salute anime*, without expressing any Cause, are against the Law, and the Party may have an Attachment against the Bishop for the same, and may sue a Prohibition so to do. And if he do express any Cause in the Citation, it seemeth by the Writ before, that it ought to be for some Matrimonial or Testamentary Cause. See 50 N.

**B** If a Man doth acknowledge in the Spiritual Court that he oweth



oweth another Man one hundred Pound to pay to him at a Day certain, and after doth not pay the same, &c. if he be sued in the Spiritual Court for this Debt, he shall thereupon have a Prohibition: And so if he acknowledge in the Spiritual Court, that he ought to pay to such a one 100 Marks at such a Day, &c. he shall not be sued in the Spiritual Court for that Debt; and if he be, he shall have a Prohibition and Attachment thereupon. But if a Man, by Reason of Marriage, or of a Will, doth acknowledge in the Spiritual Court that he ought to pay 100 Marks, or any other Sum at a certain Day; then if he do not pay it according to his Acknowledgment, he may be sued in the Spiritual Court for the same, and a Prohibition will not lie.

And if a Man do acknowledge in the Spiritual Court to pay a certain Debt at a certain Day, and doth not pay it at the Day, for which the other sueth him in the Spiritual Court, and excommunicateh him there, because he did not pay it at the Day; the other Party shall have a Prohibition against him.

Vide 21 Aff.  
70 Thorpe.

If a Man do recover a Debt in the Spiritual Court against another, and after sueth there to have Execution; the Party grieved shall have a Prohibition against the Party and the Judge, and an Attachment upon the same.

If a Man be indebted unto the King, or bounden to render an Account unto him, and after his Executors are sued in the Spiritual Court for a Debt which doth not concern Matrimony or Testament; his Executors shall have a Prohibition against the Judge, &c. rehearsing the special Matter, &c.

Where an Abbot, or Bishop, or other Person whatsoever, sueth in the Spiritual Court, because he taketh Toll, or other Composition or Custom of his Tenants, &c. there the Parry grieved shall have a Prohibition against him; or the King may sue this Prohibition and Attachment thereupon.

Where a Man granteth Parcel of his Manor to another Parson in Fee, to be quit of Tithes by Deed, and the Parson with the Assent of the Ordinary grants unto him, that he shall be quit of Tithes of his Manor for this Parcel of Land, &c. if he, or his Assignee be afterwards impleaded in the Spiritual Court for Tithes of his Manor, or any Parcel of his Manor, he, or his Assignee shall have a Prohibition upon that Deed: And if the Deed were made before Time of Memory, and so had continued to be quitted of Tithes of his

Vide Br.  
Prescription 603.

Nov. 42



his Manor, he shall have a Prohibition, if he be impleaded for the Tithes of that Manor, or any Parcel thereof, upon the Matter shewed.

H If a Man sue any Prohibition to any Spiritual Court, and the Judges will not receive the same, or will not allow it, and because he bringeth the Prohibition, they make a Citation against the Party, to answer before them for the same Cause; now he shall have a new Prohibition upon the Matter directed unto the Judges there, &c. And also he shall have an Attachment thereupon, if they proceed against him in their Court. And it is not material whether the Prohibition were sued legally or erroneously, because he shall not be punished for suing a Prohibition in the King's Court.

I A Man deviseth Lands in *London* in Mortmain, and by Reason of this Devise the Abbot, or he to whom the Devise is made, sueth for these Lands, or for any Parcel thereof, in the Spiritual Court by Colour of the Devise: The Party grieved by this Suit shall have a Prohibition.

K If a Man sue another in the King's Court in Trespass for Battery, or taking of his Goods, and afterwards is Non-suit, and discontinueth the Suit, for which the Defendant sueth him in the Spiritual Court for Defamation, &c. he who hath sued in the Temporal Court shall have a Prohibition against him, and an Attachment thereupon, if he sue again in the Spiritual Court; and also shall have such Prohibition unto the Judge, and Attachment against him, if he hold Plea therein after the Prohibition delivered unto him.

L Where a Composition is made by Deed indented at the Time of the Avoidance of a Prior, that an Abbot shall nominate six Persons, and that the other shall elect one of them to be Prior, unto the Ordinary; now if he who presenteth be sued in the Spiritual Court, because he hath presented one unto the Ordinary for to be Prior, he shall thereupon have a Prohibition against him who sueth there. And if the Sub-prior and Convent sue in the Spiritual Court to avoid such Presentment, he shall have a Prohibition against the Judge, &c.

[42.]

A And also the King may have a Prohibition directed unto the Ordinary, that he shall not visit the Hospitals which are of the King's Foundation, or of the Foundation of his Predecessors, because that the Chancellor of *England* ought for to visit them and no other. And so is it of the King's or his Progenitors Free Chapels, no Ordinary shall visit them, but the Chancellor of *England*, &c.

8 Aff. 29.

Br. Assise

138.

Where

6 H. 7. 14.  
Kible, vide  
8 All. 29.  
Br. Affale  
138.

Where a common Person is the Founder of an Hospital, which is donative by his Letters Patents, and doth consist all in Temporalities, if the Ordinary will visit such Hospital, the Founder shall have a Prohibition against him; or if the Ordinary will cite any of the poor Men to appear before him for an Hospital Cause, or to remove him, the Founder, or his Heir, shall have a Prohibition. And such Hospital may be appendant unto a Manor, as well as the Advowson of a Church.

And if a Man recover his Presentation by *Quare impedit*, and hath his Clerk admitted and instituted, and another Person who claimeth the Advowson by Provision from the Pope sueth in the Spiritual Court, for to avoid and remove the other Clerk; the Patron who hath recovered his Presentment, &c. shall have a Prohibition unto the Judge for to surcease, &c.

So if the King hath Title to present unto an Advowson, by reason of a Ward who is in the King's Hands, and after the six Months past presenteth his Clerk, who is admitted and instituted, and the Bishop present his Clerk before to the same Church for Lapse, who was admitted and instituted, &c. by reason whereof the Bishop's Clerk sueth the Clerk, who was presented by the King, in the Spiritual Court; the King's Clerk shall have a Prohibition directed unto the Judges, &c. that they shall not proceed in the Plea, &c.

See the Statute 9 E. 2. Articuli Cleri.

If a Man sueth a Priest, or a Monk, or Canon, or Clerk, in the Temporal Law, in Debt, or Trespass, and cause him to be arrested by his Body; if they sue for his Arrest a Citation in the Spiritual Court *de violenta manuum injectione in Clericum*, the other shall have a Prohibition directed unto the Judge.

If two Men are sworn to give Evidence unto a Jury, and do so, for which certain Persons are indicted; if they who are indicted sue them in the Spiritual Court who gave Evidence for Defamation, they shall have a Prohibition.

Where a Man sueth in the Spiritual Court for Spiritual Causes, and the Defendant purchaseth a Prohibition directed unto the Judges there, and delivers the same, and for so doing the Judges do excommunicate him for the Offence he did to the Church, in bringing a Prohibition to them upon a Spiritual Cause; the Party excommunicate shall have a new Prohibition upon that Matter, commanding them for to revoke the same. For a Man shall not be punished for suing forth Writs in the King's Courts, whether he have Right or Wrong.



H If a Clerk of the Chancery, or any of his Servants, or the Keeper of the Great-Seal, or any of his Servants, or the Chancellor, or any of his Servants, be sued in London before the Mayor or Sheriff for Trespafs, they shall have a *Superfedeas* directed unto the Mayor for to surcease, and bid the Party sue in the Chancery, if it be needful for him. And there are divers Forms of these Writs in the Register; Vid. 4 H. 3. and one Writ reciteth, that this Custom and Privilege Prohib. 15. was confirmed by Authority of Parliament Anno 18. E. 3. Vid. 43. D.

C If a Woman hath Title to sue a *Cui in vita*, and she swear unto the Tenant that she will not sue the *Cui in vita* 11 H. 4. 82. against him; if she afterwards sueth forth the Writ, for which the Tenant sueth her in the Spiritual Court for Breach of her Oath, she shall have a Prohibition, because the Oath toucheth a Temporal Thing, viz. Land.

If two several Patrons present severally to the Bishop, and thereupon one sueth a *Quare impedit*, or a *Darrein Presentment* against the other, and recovereth, and hath his Clerk admitted, for which the other Clerk sueth the Clerk who recovereth by Appeal, or otherwise, in the Archbishop's Court, because that he was not admitted at the Presentment of his Patron; the Patron who recovereth shall have a Prohibition directed unto the Archbishop, &c. or against the Clerk that sueth there for that Cause, that he doth not sue for that Cause, &c.

L And so is it if the Patron be disturbed by the Presentment of a Stranger, and the Disturber's Clerk sueth the very Patron's Clerk in the Spiritual Court; or contrary, the Clerk of the rightful Patron sueth the Clerk of the Disturber in the Spiritual Court, he who is grieved shall have a Prohibition.

M And if the King do collate unto any Prebendary, or recovereth the Collation unto any Prebendary, and hath his Clerk admitted, and afterwards the Clerk who is vexed sueth in the Spiritual Court, by means of Appellation, or Commission, or other Cause, by which the Title of the Collation may come in debate; the King shall have a Prohibition directed unto the Judges where the Suit is, commanding them that they do not proceed. And if the King do recover his Collation, or Presentation unto any Church, and after Execution of the Judgment is disturbed by Appeals, or Citations, or other such Means; or if that after the Clerk be inducted, the King's Clerk be vexed by Appeals, or Commissions, or Citations in the Spiritual Court for this Cause; then the King shall have a Writ, directed unto



unto all Sheriffs, Mayors, and other Officers, to take and arrest the Bodies of those who made such Impediments, to disturb the Execution of the Judgment, or of such Presentations or Collations made by the King; and also shall have a Writ of Prohibition unto the Bishops and their Officers, that they do not any thing in Derogation of his Presentment or Collation, or of the Execution of the Judgment given for the King. And also the King may sue such Prohibition directed unto the Party himself who sueth such Appeals, Provocations, Citations, Instruments, or Process, &c. that they do not sue such, or permit such Appellations, Provocations, or Impediments to be. And the King shall have Attachment upon that directed unto the Sheriff, &c. if the Party follow or suffer such, &c. to be sued contrary to that Prohibition.

If the King do recover his Presentment unto a Church, **A** and hath a Writ unto the Bishop, &c. to remove the other Incumbent, for which the Incumbent sueth an Appeal in the Archbishop's Court, &c. by reason whereof the Archbishop sendeth a Prohibition that he do not admit the King's Clerk pendant the Appeal, &c. then the King shall have a Writ directed unto the Archbishop and his Officers to take off his Inhibition, and that they do nothing, nor suffer any thing to be done by others, in Derogation of the Crown, or of the King's Right; and shall have another Writ against the Incumbent, that he follow not such Appeals, Provocations, or other Process or Impediments. And also the King may have an Attachment directed unto the Sheriff against such Incumbent, if he go on there after such Prohibition directed unto him.

And it appeareth by the *Register*, that another common **B** Person who recovereth his Presentment, or hath Title to present, shall have such Writs of Prohibition unto the Spiritual Judges, or the Party, that they shall not proceed, or pursue such, &c. and also Attachment against them if they do, &c. And where the King's Clerk is in Possession by such Recovery, and is after disturbed by another with Force and Arms, that he cannot take the Tithes and Profits of the Church, he shall then have a special Commission directed unto the Sheriff, and other the King's Officers, to take such Persons, as well within Liberties as without, and to carry them unto the Goal, there to remain till they have other command from the King.

And if the King do recover his Presentment, and hath a Writ unto the Bishop, and his Clerk is instituted and in-

ducted; if the Bishop, at the Suit of others hath Provocations, or other Instruments, to cite the King's Incumbent to the Court of *Rome*, or elsewhere out of the Kingdom; then the King shall have a Prohibition directed unto the Bishop, that he do not cite, nor cause to be cited, such Incumbent, &c. and the King may have an Attachment upon it, if, &c. And it seems that the King shall have a Prohibition without any Recovery had before, if his Presentee be instituted, &c. And so it seems a common Person shall have and sue such a Prohibition, when the Suit is to try the Title of the Presentment or Collation; yet the Writs in the Register are and speak of a Recovery.

- D** If a Man make Oath to insoeff me before such a Day, &c. if he do not insoeff me, I cannot sue him in the Spiritual Court for Breach of his Oath, because the Thing which is to be done is a Temporal Act, and shall be tried at the Common Law, whether he hath done it or not; and therefore if he be sued in the Spiritual Court for that Cause, he shall have a Prohibition. 31 H. 2. 87. contrary for personal Things. 4 H. 3. Prohibition 15. See 42 F. 2 E. 4. 10.
- E** If a Man be sued in the Spiritual Court, and the Judges there will not grant unto the Defendant the Copy of the Libel, then he shall have a Prohibition directed unto them for to surcease, &c. until they have delivered the Copy of the Libel, according unto the Statute made Anno 2 H. 5. And also the Defendant may have an Action against them upon the said Statute, if they will not deliver the Copy of the Libel, whether the Cause in the Libel be a Spiritual Cause or not. 4 E. 4. 33.
- F** If a Man maketh a Devise of Lands or Tenements devisable, the Party to whom the Devise is made shall not sue in the Spiritual Court to have the Lands or Tenements so devised; but if he do, the other Party shall have a Prohibition. But if he devise her Goods or Chattels Real, as a Term for Years, or a Ward; there he may sue in the Spiritual Court for such Thing. 37 H. 6. 9. Affirm. 46 E. 3. 32. 8 H. 8. Prohibition 39.
- G** If a Man sueth in the Common Pleas for Trespass, if he sue him in the Spiritual Court for the same Cause, he may shew the Matter in the Common Pleas, and shall have a Prohibition from thence directed to the Judges, &c. And so always when the Matter is depending in the Common Pleas, if he sue for the same Cause in the Spiritual Court, he shall have a Prohibition out of the Common Pleas. 33 H. 6. Prohibition 3. 4 E. 4. 37. 38 H. 6. 14.
- H** But a Man shall have a Prohibition out of the Chancery or King's Bench upon his Surmise, surmising that he is sued in the Spiritual Court for a Temporal Cause, &c. although he be not sued in the King's Bench, or elsewhere, for that Cause. 31 H. 8. Br. Prohibition 17.



unto all Sheriffs, Mayors, and other Officers, to take and arrest the Bodies of those who made such Impediments, to disturb the Execution of the Judgment, or of such Presentations or Collations made by the King; and also shall have a Writ of Prohibition unto the Bishops and their Officers, that they do not any thing in Derogation of his Presentment or Collation, or of the Execution of the Judgment given for the King. And also the King may sue such Prohibition directed unto the Party himself who sueth such Appeals, Provocations, Citations, Instruments, or Process, &c. that they do not sue such, or permit such Appellations, Provocations, or Impediments to be. And the King shall have Attachment upon that directed unto the Sheriff, &c. if the Party follow or suffer such, &c. to be sued contrary to that Prohibition.

If the King do recover his Presentment unto a Church, and hath a Writ unto the Bishop, &c. to remove the other Incumbent, for which the Incumbent sueth an Appeal in the Archbishop's Court, &c. by reason whereof the Archbishop sendeth a Prohibition that he do not admit the King's Clerk pendant the Appeal, &c. then the King shall have a Writ directed unto the Archbishop and his Officers to take off his Inhibition, and that they do nothing, nor suffer any thing to be done by others, in Derogation of the Crown, or of the King's Right; and shall have another Writ against the Incumbent, that he follow not such Appeals, Provocations, or other Process or Impediments. And also the King may have an Attachment directed unto the Sheriff against such Incumbent, if he go on there after such Prohibition directed unto him.

And it appeareth by the Register, that another common Person who recovereth his Presentment, or hath Title to present, shall have such Writs of Prohibition unto the Spiritual Judges, or the Party, that they shall not proceed, or pursue such, &c. and also Attachment against them if they do, &c. And where the King's Clerk is in Possession by such Recovery, and is after disturbed by another with Force and Arms, that he cannot take the Tithes and Profits of the Church, he shall then have a special Commission directed unto the Sheriff, and other the King's Officers, to take such Persons, as well within Liberties as without, and to carry them unto the Goal, there to remain till they have other command from the King.

And if the King do recover his Presentment, and hath a Writ unto the Bishop, and his Clerk is instituted and in-



ducted; if the Bishop, at the Suit of others hath Provocations, or other Instruments, to cite the King's Incumbent to the Court of *Rome*, or elsewhere out of the Kingdom; then the King shall have a Prohibition directed unto the Bishop, that he do not cite, nor cause to be cited, such Incumbent, &c. and the King may have an Attachment upon it, if, &c. And it seems that the King shall have a Prohibition without any Recovery had before, if his Presentee be instituted, &c. And so it seems a common Person shall have and sue such a Prohibition, when the Suit is to try the Title of the Presentment or Collation; yet the Writs in the Register are and speak of a Recovery.

- D** If a Man make Oath to insoff me before such a Day, &c. if he do not insoff me, I cannot sue him in the Spiritual Court for Breach of his Oath, because the Thing which is to be done is a Temporal Act, and shall be tried at the Common Law, whether he hath done it or not; and therefore if he be sued in the Spiritual Court for that Cause, he shall have a Prohibition. And if a Man be sued in the Spiritual Court, and the Judges there will not grant unto the Defendant the Copy of the Libel, then he shall have a Prohibition directed unto them for to surcease, &c. until they have delivered the Copy of the Libel, according unto the Statute made *Annō 2 H. 5.* And also the Defendant may have an Action against them upon the said Statute, if they will not deliver the Copy of the Libel, whether the Cause in the Libel be a Spiritual Cause or not.
- F** If a Man maketh a Devise of Lands or Tenements devisable, the Party to whom the Devise is made shall not sue in the Spiritual Court to have the Lands or Tenements so devised; but if he do, the other Party shall have a Prohibition. But if he deviseth Goods or Chattels Real, as a Term for Years, or a Ward; there he may sue in the Spiritual Court for such Things.
- G** If a Man sueth in the Common Pleas for Trespass, if he sue him in the Spiritual Court for the same Cause, he may shew the Matter in the Common Pleas, and shall have a Prohibition from thence directed to the Judges, &c. And so always when the Matter is depending in the Common Pleas, if he sue for the same Cause in the Spiritual Court, he shall have a Prohibition out of the Common Pleas.
- H** But a Man shall have a Prohibition out of the Chancery or King's Bench upon his Surmise, surmising that he is sued in the Spiritual Court for a Temporal Cause, &c. although he be not sued in the King's Bench, or elsewhere, for that Cause.

11 H. 7. 83.  
*contrary for personal Things.*  
 4 H. 3. Prohibition 15.  
 Sec. 42 F.  
 2 E. 4. 10.  
 4 E. 4. 37.  
 37 H. 6. 9.  
*Alizon.*  
 46 E. 5. 32.  
 8 H. 8. Prohibition 19.  
 13 H. 6. Prohibition 3.  
 4 E. 4. 37.  
 38 H. 6. 14.  
 31 H. 8. Br. Prohibition 17.

If a Man sue a *Quare Impedit*, and deliver it of Record, as he may, and afterward the Defendant, or his Clerk, sue a Citation against the Presentee of the Plaintiff; the Plaintiff in the *Quare Impedit* shall have a Prohibition in the Common Pleas, before the Return of the Writ of *Quare Impedit*, because it appeareth on Record that such a *Quare Impedit* is depending.

2 E. 4. 11.  
vide 18 H. 3.  
5.

[44]

*Rob: 142*  
*now to be inserted*  
*6 Nov: 156*

If a Parson grant to one by Deed, that he shall be discharged of Tithes of his Lands, and afterwards he sueth in the Spiritual Court for the Tithes, &c. it is said that he shall not have a Prohibition, because he may pretend this Matter in the Spiritual Court, to discharge him of the Tithes. But if it were upon a Composition made before Time of Memory, and now the Parson sueth for the Tithes of those Lands, there he shall have a Prohibition against the Parson, &c. *Quare* the Diversity, for I think he shall have a Prohibition in both Cases. The Case is *M. 8 E. 4. 14.*

Vide Com. 550. &c. 309.  
37 H. 6. 8.  
45 E. 3. 24.  
Vide 50 S.  
22 Aff. 70.  
17 E. 44.  
15 H. 3.  
Prohib. 22.  
16 H. 3.  
ibid. 24.

If a Man promise one 10 l. if he will marry his Daughter; if he marry the Daughter, and the other will not pay the Money, he shall not sue for the same in the Spiritual Court. But if he promise one with his Daughter in Marriage 10 l. &c. if he doth marry the Daughter, and he do not pay the Money, he may sue in the Spiritual Court for the 10 l. because it concerneth Matrimony. Which Diversity see in 22 E. 3. *lib. Aff.*

13 H. 3.  
Prohib. 21.  
vide 139.

If the Testator charge his Executors to pay his Debts to his Creditors, if they do not pay them, the Creditors may sue in the Spiritual Court; and they shall not have a Prohibition, for that this Charge of the Testator is as a Devise unto his Creditors: *Quod vide H. 9. E. 3. Prohibition 17.*

If a Man giveth Goods in Marriage with his Daughter, and afterwards they are divorced; the Wife may sue in the Spiritual Court for the Goods, and no Prohibition will lie thereof.

If a Stranger do disturb the Executors to perform the Will, they may sue him in the Spiritual Court, and no Prohibition lieth against them for so doing *T. 4. H. 3. Prohibit. 28. acc.*

4 E. 3. 27.  
19. Prohib. 2.

If a Man sueth a Prohibition because another draweth him into the Spiritual Court for an Advowson of a Church, &c. upon the Attachment upon the Prohibition sued he may declare, that he did deforce him of great and small Tithes, &c.

If one Parson sueth another Parson in the Spiritual Court for Tithes of the Profits arising in one hundred Acres of Lands within the Bounds and Limits of his Parish being,

for



for which the Patron of the other Parson purchaseth an *inducavit* unto the Spiritual Judge for to surcease, &c. then may the Parson who sueth in the Spiritual Court come into the Chancery, and have a Writ unto the Bishop for to enquire of the Value of the Church, according to the Tax of Tithes now currant, as upon the Value of the Tithes demanded, and to certifie the King in the Chancery thereof by Letters under his Seal, with the Writ: And it seemeth he ought so to do before he have a Consultation granted in that Case.

**G** If a Bishop will cite or compel the King's Chaplains, or the Masters of the Chancery, which are the King's Chaplains, to make their personal Residence upon their Benefices when they are attending in the King's Service, they may have a Prohibition unto the Bishop, &c. and upon the same an *Alias*, *Pluries*, and Attachment. But if they be not attending in the King's Service, then the Ordinary may compel them to make personal Residence upon their Benefices; and the Form of the Writ is such:

*Rex venerabilis, &c. Cum Clerici nostri ad faciend. in Beneficiis suis Residentiam personaliter, dum in nostris immorant. obsequiis, compellari, alias sup. hoc molestari seu inquietari non debeant; Nos, ac Progenitores nostri quond. Reges Angl<sup>i</sup>, hujusmodi Libertat. & Privileg. pro Clericis nostris à tempore quo non exiat memoria semper hactenus usi sumus, vobis mandamus, quod dilecti Clericum nostrum, Personam Ecclesie de B. &c. que per precept. nostrum in Cancell. nostra nostris jugit. intendit obsequiis, ad personalem Residentiam in Benefic. suo, &c. dum in eisdem obsequiis nostris immorat, nullatenus compellatis, &c.*

And if the King's Chaplain be chosen Dean of any Church, which Office requireth personal Attendance and Residence, and the Bishop will compel him to take the Deanry which requireth that personal Residence, by Spiritual Censures and Citations, &c. then he shall have a Prohibition unto the Bishop by these Words: *Vobis districte prohibemus, ne ipsum A. ad Residentiam aliquam in Benefic. suo faciend<sup>o</sup>, seu assumend. officium prad<sup>o</sup>, vel aliquod hujusmodi Residentiam requir<sup>o</sup>, dum obsequiis nostris prad<sup>o</sup>. sic intenderit, quoquo modo compellatis; & Sequest<sup>o</sup>, si quod in fructibus aut aliis bonis Ecclesie dicti Clerici nostri per ipsum Episcopum aut suos ea occasione appositum fuer<sup>o</sup>, sine dilatione fac. relaxari, &c.* And so if the Clerk abide in the King's Service in the Company of our beloved and trusty R. of P. in the Parts of Gascony.

And so if the Bishop will amerce the King's Chaplains, and compel them to pay a certain Sum of Money for Non-residence, they shall have a Prohibition.



If one sue another out of the Realm for Debt, or other **H** Cause, whereof the King's Court may have Conufance, he fhall have a Prohibition againft him, and an Attachment upon the fame, if, &c. And fo if one Clerk fuet another upon the Title of Collation of any Prebendary out of the Realm, &c. he may have this Prohibition: And the King may fend a Writ to him who is fo fued out of the Realm, commanding him upon Pain of Forfeiture of fo much as he may forfeit, that he go not out of the Realm for to answer thereunto, whereof the Conufance doth appertain unto the King's Court. And alfo the King may fend unto the Prebend, if he be fued out of the Realm for Title of the Prebendary, to prohibit him, upon Pain of Imprifonment, and of Forfeiture of what he may forfeit, that he do not go out of the Realm, nor answer there by his Proctor, or otherwife, &c.

And if any Man do purchafe from the Court of **Rome** I any Citation againft any Clerk, or others, directed unto the Archbishop of *Canterbury*, or unto others, to cite fuch Perfons to appear before the Pope, &c. and to answer for the Collation or Prefentation unto any Benefice or Prebendary; then the King fhall fend his Writ of Prohibition unto the Archbishop, or other to whom fuch Procefs is directed, that they do not cite, &c. and may have another Prohibition to the Party himfelf, and an Attachment upon the fame, &c.

[49.]

And when a Confultation is once duly granted, then the **A** Court may proceed in the Spiritual Court, notwithstanding that the Party purchafe a new Prohibition directed unto them, if the Libel be not changed: *Quod vide* by the Statute of 50 E. 3. c. 4.

The Writ of Prohibition, which is called *Indicavit*, moft **B** commonly lieth between four Perfons, whereof two are Patrons, and two are Clerks, and properly lieth where one Clerk fuet another in the Spiritual Court for Tithes which do amount unto the fourth Part of the Value of the Church at the leaft; for if it doth not amount unto the Value of the fourth Part, but unto the fifth Part, the *Indicavit* doth not lie. And this Writ lieth for the Patron, and that Clerk who is fued in the Spiritual Court: And this Writ may be fued as well againft the Judges as the Party. And the King may fue this Writ where his Clerk is impleaded for Tithes amounting to the Value of the fourth Part of the Church, or of the Church it felf. And this Writ of *Indicavit* lieth as well for the Patron, where his Clerk is impleaded for the Advoufon it felf, or fuch Vicarage, Prebend, or Chapel, as well as if he were impleaded of  
the

the Tithes of the Church, Vicarage, Prebend, or Chapel.

And it appeareth by the Register, the Writ of *Indicavit* which the King shall have where the Clerk is impleaded in the Spiritual Court for Tithes, not making Mention what is the Value of the fourth Part, is such:

*Rex Officiali Episcopi, &c. & ejus Commissarius salutem: Cum A. de B. Personæ Ecclesiæ de W. teneat omnes Decimas provenientes de Marisco, &c. de Advocatione nostrâ, Abbas de Bello, clamans eas pertinere ad Ecclesiam suam de, &c. trahit eum in Placit. &c. Vobis prohibemus, &c. utrum ad nos an ad præd' Abbas. pertinet earundem Decimarum Advocatio, quia Placit, &c.* And this Writ of *Indicavit* ought to be sued by the Patron before Judgment given in the Spiritual Court, for after Judgment given there, the *Indicavit* is void.

C And a Man shall not have an *Indicavit* before the Party in the Spiritual Court hath libelled there against the Defendant; and the Party who sueth the *Indicavit* ought to shew the Copy of the Libel in the Chancery, before he have the *Indicavit*. And when the Party hath libelled in the Spiritual Court, and the Party is put to answer, then it is called and said, that the Suit is contested in the Court of Christianity. 31 H. 2. 1.

D And *Indicavit* lieth for Tithes and Offerings, if Suit be in the Spiritual Court for them, as well as it lieth of an Advowson; and that for a common Person, as well as for the King. And the Writ of *Indicavit* shall not mention that the Tithes and Offerings which are in suit do amount unto the fourth Part of the Church, but *Decimas provenientes de eccliam acris terræ*, or of such a Manor: And if these Tithes be not to the fourth Part of the Value of the Advowson, the other Party may alledge and surmise the same, and have a Consultation. 4 E. 3. 25.  
29. Prohibition 1.

E And also *Indicavit* lieth where one Party is Parson Imparsonée, and the Clerk of the other Patron sueth him in the Spiritual Court for Tithes, &c. he may sue the *Indicavit*. And so if an Abbot be Parson imparsonée of a Church, and another Abbot is Parson Imparsonée of another Advowson, and one sueth the other for Tithes appertaining to his Advowson, amounting unto the fourth Part of a Church, &c. the other shall have the *Indicavit* against him.

And if an Abbot be Parson Imparsonée of an Advowson, and hath a Vicar endowed; then if the Parson be sued in the Spiritual Court for the fourth Part of the Tithes of his Parsonage, he shall have an *Indicavit*. And so if the Vicar be sued for the fourth Part of the Tithes and Offerings of his



Vicarage, the Parson, or he who is Patron of the Vicarage, shall have the *Indicavit*, because they are several Advocates; the Parsonage one, and the Vicarage another; and there may be divers Patrons of them. *Quod vide Pasch. 32. H. 6. in Title Indicavit.*

If Bailiffs, Mayors, or others, who claim Jurisdiction to arrest a Man upon a Plaint before them, or to attach his Goods, &c. do arrest one for Trespas or Contract, who was not within their Jurisdiction, the Party arrested, &c. shall have a Prohibition directed unto them, &c. and the Form is such:

*Rex Ballivis A. de N. salutem. Cum de Communi consilio regni nostri provisum sit, quod non licent alicui de eod. regno, nisi nobis, & ministris nostris specialem auctoritatem ad hoc habentibus, aliquis per Balliviam seu potestatem suam transseantes attachiar, ad respondendum alicui super contractibus, conventionibus, seu transgr. aliquibus extra eand. Ball. seu potestat. fallis; vobis precipimus, quod non attachiatis B. ad respondend. alicui coram vobis in Ball. vestra super hujusmodi contractibus, conventionibus, seu transgr., contra formam provisioni præd.; & Districionem, si quam inde feceritis, deliberari faciatis, &c.* And if they will not obey the same, he shall have an Attachment against the Bailiffs. And this Writ lieth as well upon Attachment of Goods, as for arresting of the Body.

If a Woman have Lands which she holdeth in Dower, or of joint Purchase with her Husband, or of her own Inheritance, if the Sheriff have Process out of the Exchequer to levy the Husband's Debts which he oweth unto the King; or if the Sheriff have Process out of another Court to levy Debts due by her Husband to another Person; if the Sheriff will distrain in the Lands which the Wife holdeth, &c. the Wife shall have a Writ unto the Sheriff, that he do not distrain the Wife who holdeth such Lands, in the same Lands, for the Debt of the Husband; and the Form of the Writ is such:

*Rex Vic', &c. Cum secund' Legem & consuetud. regni nostri mulieres in Terris & Tenementis quas tenent in dotem de dono virorum suorum, vel que sunt de hereditate sua, vel quas filii acquisiverunt, pro debitis virorum suorum reddend. distringi non debiant; ac tu B. que sunt uxor A. distring. in Terris & Tenementis suis, quas tenet in dotem ex dono ejusd. A. & etiam que fuer. de hereditate ipsius B. ac ex quasito ipsius B. sicut ex gravi querela sua accipimus: Tibi precipimus, quod ipsam B. in Terris & Tenementis suis quas tenet in dotem, vel que sunt de hereditate sua propria, vel ex quasito ipsius B. pro debitis præd. A. quendam viri sui, reddend. non distringas, vel distringi fac'.*

*contra*



*contra Legem & consuetud. prædictæ, & Distractionem, si quam, &c.*

And there is such a Writ unto the Sheriff, where Proceſs cometh unto the Sheriff out of the Exchequer, to levy the Debts of the Husband, *per summ. Scaccarii, &c.* And in that Case ſhe may ſue a Writ unto the Barons of the Exchequer, that they ſurceaſe to make out ſuch Proceſs to the Sheriff to diſtrain the Wife in ſuch Lands, &c. Another Form of Writ unto the Barons of the Exchequer, to ſurceaſe for to diſtrain the Wife, &c. and with a Proviſo in the ſame Writ, that they levy the Debts of the Husband's Executors, or of his Heir, or of the Lands and Tenements which were the Husband's, &c.

A And if a Man ſue another in the County-Court for Debts or Chattels which do amount to the Sum of 40*l.* then the Party ſhall have a Prohibition againſt him who is Sheriff, that he ſhall not hold Plea thereof, and that he tell the Party that he ſue in the Common Pleas; and the Writ is ſuch :

*Rex Vic', &c. Cum Placita de catallis & debitis que ſummam quadraginta ſolidor. attingunt, vel eam excedunt, ſecundum Legem & conſuetud. regni noſtri ſine Breui noſtr. placitari non debeant; ac A. B. de debit. centum ſolid. in Com. tuo ſine Breui noſtro implacitavit, ut accepimus: Tibi præcipimus; quod ſi ita ſit, tunc Placito illo in Com. præd. ſine Breui noſtr. ulterius tenend. ſuperſed. omnino, & præſ. A. dicas ex parte noſtra, quod Breve noſtrum de prædict. debit. verſus præd. B. ſibi impetret, ſi ſibi viderit expedire. Teſte, &c.* And if ſuch Writ be ſued in another Court, then the Writ ſhall be directed unto the Bailiff of the Court, in ſuch Form :

*Rex Ballivis I. de N. vel Ball. ſuis de N. ſalutem. Cum Placita &c. [uſque ibi, non debeant] ac. A. B. de eo, quod idem B. redd. præſ. A. catall. ad valentiam decem librar. coram nobis in Curia dicti Dom. veſtri de N. vel in Curia noſtra de N. ſine Breui noſtro implacitet, ut accepimus; Vobis præcipimus, quid ſi ita ſit, tunc Placito illo, &c. ut ſupra.* And if they do not ſurceaſe upon this Writ, then he ſhall have an *Alias* and *Pluries*, and Attachment againſt them, and alſo an Attachment againſt the Party himſelf.

And if a Man do owe unto another Man five Marks, and he ſue ſeveral Plaints for the ſame in the County-Court, or in any other Court againſt the Debtor, he ſhall have a Prohibition thereof, and rehearſe the Matter, and that he would defraud the King's Court of its Jurisdiction, and alſo the Party of his Answer, &c. commanding them that they do not proceed, &c. and that he command the Party to ſue at the Common Law in the King's Court; and if they will not

## Prohibition.

surcease, he shall have an *Alias* and *Pluries* and Attachment upon the same, &c.

And so it is if a Man will sue in the County-Court a Writ of Covenant or Trespass, unto his Damage of forty Shillings or more, the Party shall have a Prohibition for to surcease, and thereupon an *Alias*, *Pluries* and *Attachment*, &c.

And so if the Executor sueth in the County, or in a Court-Baron, for a Debt of five Marks by divers Plaints, whereas the Debt is upon a Contract, or upon an Obligation; now the Defendant may shew the same, and plead unto the Jurisdiction of the Court, or he may have a Writ of Prohibition directed unto them, that they do surcease, &c. and if he have Judgment in any of the Plaints sued for Parcel of the Debt, yet in the Prohibition he may prohibit him in the Plaints which are depending, and that Execution of the Judgment cease for the Residue.

And also if a Man sue in the County a Plaint of twenty Pounds, and hath Judgment to recover in that Court; yet the Defendant may sue a Prohibition, commanding the Sheriff and the Suirors that they do not execute the Judgment, although he have before admitted the Jurisdiction.

And so after Judgment given, and Execution awarded in the County, or in other Court-Baron, which hath not Power to hold Plea of Debt of the Sum of forty Shillings, &c. or of Damages in Trespass amounting to such Sum, or more, the Party Defendant shall have a Writ of Prohibition unto the Bailiffs, or unto the Sheriff or Officer of the Court, that they do not Execution; and if they have distrained the Party to make Satisfaction, that then they release the Distress, and that they revoke what they have done therein.

There is a Rule in the Register thus: *Si Placita de catallis vel debitis que summam quadraginta solidorum attingunt, vel eam excedunt, in Com', vel in alia Curia, sine Breui placitent, quod absit, non fiat inde Breue de falso Iudicio, nec Recordari nec Breue de Executione Iudicii; nec p'is Cur. Cl'ustatum, & alios, que secundum Consuetud. huiusmodi Jurisdictiones habent, &c.*

[47.]

And if a Man sueth another in the County, or other Court upon a Plaint of Trespass *vi & Armis*; the Defendant may sue a Prohibition unto the Sheriff, or unto the Bailiff, in such

1 E. 4. 15.  
Iudicium li-  
v'it without  
vi & Armis.  
Form.  
Writleten.

*Rex Ballivis de B. &c. Cum Placita de transer. contra pacem nostram in regno nostro Angl' vi & armis factis, secundum Legem & Consuet. ejusd. Regni, sine Breui vestro placitar. non debeant, ac W. implacitar. coram vobis in Cur. predicta, Domini vestri*



uestri R. de T. de diversis transgr. eidem W. per prefat. R. contra pacem nostram, vi & armis (ut dicit.) factis, ut accepimus, in ipsius W. grave dampnum, & contra Legem & Consuet. præd: Vobis præcipimus, quod si ita sit, tunc Placita prædicta coram vobis ulterius tenenda supers. omnino, præf. W. dicentes ex parte nostra, quod Breve nostrum de Transgr. præd. versus præfat. R. sibi impetret, si sibi viderit expedire. Teste, &c.

**B** And if one Man sueth another in a Court-Baron, or other Court which is not a Court of Record, for Charters concerning Inheritance or Freehold, he shall have a Prohibition, and the Form is such :

Rex Ballivis de R. de P. salutem. Cum Placita de Detentione chartar. seu scriptor. Liber. Tenement. tangentium in aliquibus Cur. que record. non habent, secundum Legem & consuet. regni nostri, sine Brevis nostro placitari non debeant, ac E. W. de eo quod id. W. redd. præf. E. tres Chartas, eorum vobis in Cur. præd. Domini vestri de P. sine Brevis nostro implac, ut accepimus: Vobis præcipimus, quod si ita sit, tunc Placito illo coram vobis in Cur. præd. sine Brevis nostro ulterius tenendo supers. omnino; & præf. E. dicatis ex parte nostra, quod Breve nostrum de Detentione Chartar. præd. versus præf. W. sibi impetret, si sibi viderit expedire. Teste, &c. An. 8. Apud Ebor. istud Breve ordinat. fuit per Concilium.

Quare non admittit.

**C** IF a Man do recover an Advowson, and hath a Writ unto the Bishop to admit his Clerk, and he will not admit him; then the Party may sue an *Alias* and *Pluries*, or Attachment, &c. or may sue a Writ of the Chancery, or out of the Common Pleas, at his Election, de *quare non admittit*, as well in the Term-time as in the Vacation; but the best is in Term-time to sue in the Common Pleas: And in this Writ it behoveth him to certify the Recovery. And the Form of the Writ of *Quare non admittit* for the King is such :

Rex Ric, &c. Sum. &c. A. Winton Episc, &c. quod sit coram nobis tali die, &c. ubicunque, &c. Quare cum nos nuper in Cur. nostra coram nobis recuperassetis, &c. And he shall not say in the Writ, *Si Rex fecerit te securum*, because the King shall not find Pledges, &c.

**D** And if the King do recover his Presentment in the Common Pleas, yet he may sue a *Quare non admittit* in the King's Bench before himself.

And



And so if a common Person do recover in a *Quare Impedit* in the Common Pleas, and the Record is removed by a Writ of Error into the King's Bench, and there affirmed; then he shall have a Writ unto the Bishop here, and ought to sue *Quare non admittit* against the Bishop there upon the Record, otherwise not. After the Record removed by a Writ of Error, the Plaintiff who recovered shall not have *Quare non admittit* until the Judgment be affirmed in the King's Bench.

And the *Quare non admittit* ought to be sued in the County where the Bishop refuseth the Plaintiff's Clerk.

And in the *Quare non admittit* he shall recover only Damages, and shall not have his Clerk admitted by this Writ.

And if the Bishop hath admitted and instituted him, and the Archdeacon will not induct him; he hath no Remedy but only in the Spiritual Court, as it is said; for it is a good Plea for the Bishop to say, That he admitted the Clerk, and sent his Letters unto the Archdeacon who will not induct him. And I conceive that if the Archdeacon refuse to induct the Clerk, that the Clerk shall have an Action on the Case against the Archdeacon, because the Induction is a Temporal Act. As if the Sheriff upon *Habere facias seisinam* will not admit him into Possession, he shall have an *Alias* and *Pluries*, and Attachment against him. But some have said, that he shall have a Citation against the Archdeacon in the Spiritual Court, and punish him there; for perhaps he may alledge a special Cause, for which by the Spiritual Law he ought not to be inducted, which Cause cannot be determined in the Temporal Court. *Ideo quere.*

And if the Vicar-general do refuse to admit the Clerk, the *Quare non admittit* shall be brought against the Bishop for that refusal; and if the Bishop do refuse the Clerk, and afterwards dieth, *Quare non admittit* is maintainable against the Guardian of the Spiritualities for this Refusal made by the Bishop. *Tamen quere.*

The Bishop is not bounden to admit the Clerk, if the Church be full of the Presentment of another Parry who is not Parry to the Recovery.

If the Bishop do refuse the King's Presentee, and doth afterwards admit him, yet the King shall have *Quare non admittit* against him for that Refusal; and so shall a common Person in like manner have, as I conceive.

*Vide 21 H. 7. 3. A Man recovered in a Quare impedit, and had a Writ to the Bishop, who returned, that the Clerk who was in, had resigned, and that the Church was full of the Presentment of J. H. and upon that Return the Plaintiff had a Scire facias against the Bishop: And after the Return the Opinion of the Court was, That he should have Quare non admittit.*

**M** In a *Quare non admittit* the Bishop may say, that he did present for Lapse.

**N** And *Quare non admittit* was maintainable against the Bishop's Official, *Mich. 9 E. 3.*

**A** If a Man do recover in a *Quare impedit* his Presentment unto a Chapel which is donative, then I think that he shall have a Writ unto the Sheriff to put the Clerk who recovered into Possession.

[48]

**B** And in a *Quare non admittit* the Bishop may say, that the Church is litigious betwixt two, &c.

**C** If a Man hath a Donative Chantry, which is of the Nature that one name unto another his Clerk, and that the other shall institute and induct him; there if he who hath the Nomination be disturbed, he shall have a *Quare impedit*, and if he do recover, he shall have a Writ unto him who ought to instal and induct him, to put him in Possession. But if he be disturbed by him who ought to instal him, then he ought to have a *Quare impedit* against him: And after that he hath recovered, he shall have a Writ to him who disturbed him, to put his Clerk into Possession; or he shall have a Writ unto the Sheriff, to put the Clerk of him who recovered into Possession, at his Election.

*Quare Incumbavit.*

**D** *Quare incumbavit* ought to be sued in the County where the Church is, because the Wrong is done there.

**E** And *Quare incumbavit* doth not lie but where the Plaintiff recovereth by Judgment of Court. And the King may sue a *Quare incumbavit* in the King's Bench, although the Record of Recovery be in the Common Pleas; but a common Person cannot do so. 17 E. 3. 74.

**F** And *Quare incumbavit* may be sued in the Common Pleas, although the Record be removed in the King's Bench by a Writ of Error, or in the Treasury; but if the Record be in the King's Bench, it seemeth then that the Party shall sue the *Quare incumbavit* there, &c. 17 E. 3. 76. for all.

**G** And *Quare incumbavit* is an Original Writ, and shall issue out of the Chancery, and not out of the Common Pleas.

**H** And *Quare incumbavit* doth not lie until the Party hath sued the Writ of *Ne admittas* unto the Bishop; for if the Bishop do incounter the Church before the Writ of *Ne admittas* sued, then the Party shall have a *Quare impedit*, and not *Quare incumbavit*; for the Bishop cannot have Notice until the *Ne admittas* be delivered unto him. And if the Bishop, after the *Ne admittas* delivered unto him, do admit his



*Quare incumbravit.*

his Clerk for whom it is found by the *Jure Patronatus*, yet the other Party shall have *Quare incumbravit* against him. And in *Quare incumbravit* he shall have Judgment to recover Damages, and also his Presentment. But so shall he not have in *Quare non admisit*, but only Damages.

And in 21 E. 1. it was adjudged, that a Man shall have *K. Quare incumbravit* without making mention of any Recovery in the Writ, or in the Count. But by the Rule of the Register he ought to mention the Recovery; and that seems to be the better Opinion.

And after the *Ne admittas* delivered, if the six Months pass, L. the Bishop may present his Clerk for Lapse, and shall not be charged by the *Quare incumbravit* for that Presentation; but it seemeth he cannot admit the Clerk of the other Man after the six Months pass, for that shall be against the Writ of *Ne admittas* delivered unto him. And also if the Bishop do present the Clerk of the other Party after the six Months, who had presented unto him before, that Presentment maketh Title to the Party, although it be after the six Months; by which it seemeth that the *Quare incumbravit* lieth then for the Parry.

And if the Plaintiff be Nonsuit in *Quare incumbravit*, he M may sue a new *Quare incumbravit*, and may vary from his Count upon the first Writ. And it is a good Issue, that he did N not incumber, &c. after the Prohibition delivered unto him.

And if a Man hath a *Quare impedit* depending, and he sue O a *Ne admittas* to the Bishop, and afterwards the Bishop do incumber the Church within the six Months with his Chaplain, or with the Defendant's Chaplain; then the Plaintiff shall have *Quare incumbravit*, and the Form of the Writ shall be such.

*Rex Vie', Linc. salutem. Si A. fecerit, &c. tunc sum. H. Line. Episc', quod sit coram Justic', &c. ostens. quare cum idem A. in Cur. nostra coram pref. Justic. recuperasset versus B. Presentat: suam ad Eccles. illi per cons. Cur. nostre pref. idem tamen Episc', pendente Placito in pred. Cur. coram pref. Justic', eandem Eccel. incumbravit, in ipsius A. dampnum non modicum & gravamen, & contra Legem & Consuet. regni nostri, & habeat ibi, &c. Teste, &c.*

And if he do not appear at the Return of the Writ of *in-* P *cumbravit*, nor at the *A. i. a.*, then the *Distringas* shall be in the End, *In vestri ne mandator. nostrer. contempnam manifesti, & consideracion. Cur. nostre enervationem manifestam: Et habeat ibi, &c.*

And if a Man hath a Writ of Right of Advowson de- Q pending betwixt him and another, and the Church void pendant the Writ, the Plaintiff shall not have *Ne admittas* to the Bishop, nor the Writ of *Quare incumbravit*, although the

the



the Bishop incumber the Church; for the Demandant shall not recover the Presentment upon this Writ, but the Ad-vowson; and if he hath Title to present, he may present, and have a *Quare impedit* if he be disturbed.

*Juris utrum.*

- R** *Juris utrum* is a Writ of the highest Nature that a Parson can have; and he shall have this Writ where the Lands or Tenements are aliened by his Predecessor, or if a Recovery be had against the Predecessor by Default, or by Reddition, or for want of Pleading of the Predecessor, where he hath not prayed in Aid of the Patron and Ordinary. But if he do pray in Aid of the Patron and Ordinary, and they join in Aid, and render the Land, or confess the Action, then the Successor of such a Parson shall not have this Writ against that Recoverer: And also if a Man recover by Action tried against a Parson's Lands, or Tenements, by Verdict, and the Parson doth not pray in Aid of the Patron and Ordinary, yet his Successor shall have a *Juris utrum*, and shall not be put to a Writ of Attaint.
- A** And if a Man intrude into Lands and Tenements after the Death of a Parson, the Successor shall have this Writ of *Juris utrum*: And so if a Parson be disseised of Lands and Tenements, Parcel of his Rectory, and dieth, his Successor shall have a *Juris utrum*.
- B** And also a Parson may have an Assise of Lands or Tenements of his Rectory, or a Writ in the *Quibus*, in the Nature of an Assise, or a Writ of *Entry* in the *Per*, or *Cui*, or in the *Post*, upon a Disseisin made to himself, but not upon a Disseisin made to his Predecessor, but shall be put to sue a *Juris utrum*, &c.
- C** Also a Person may have a *Cessavit*, if his Tenant who holdeth of him cesseth, &c. or a Writ of Escheatry, if his Tenant die without Heir. And by the Statute of *West. 2.* he may have *Quod permittat* of common Pasture.
- D** And if a Parson with the Assent of the Patron and Ordinary lease his Glebe-lands for Life, and the Tenant alieneth in Fee, or loseth by Default; it seemeth the Parson who leased the Land shall have a *Consimili casu* during the Life of the Tenant for Life; and after the Death of the Tenant for Life, a Writ of *Entry ad Communem Legem*.
- E** And if an Abbot or Prior be Parson Imparsoned of a Church, and alieneth the Land of the Rectory, his Successor shall have a *Juris utrum* to recover the Land, and not other Writ, because he shall have that as Parson. And

[49.]  
19 H. 4o.  
Forfeiture. If  
Annuity be  
recovered  
against a  
Parson, his  
Successor  
shall not  
have *Juris  
utrum* upon  
that Recov-  
ery; for  
that no-  
thing is ta-  
ken out of  
the Possession  
of his Suc-  
cessor; but  
a charge  
only upon  
the Successor  
which shall  
bind him.

Vide 57. e.

Vide 50 H.

And if a Man lease Lands unto one for Life, and afterwards granteth the Reversion by Licence unto a Parson and his Successors, and the Tenant attorneth, and after the Tenant for Life loseth the Land by Default, or alieneth in Fee; the Parson shall have a Writ *de Consimili casu*, during the Life of the Tenant for Life, and after his Death he shall have a Writ of *Entry ad Communem Legem*, &c.

And if a Parson lose by Action tried, or loseth by Default, his Successors shall have a Writ of Error or Attaint.

And if a Reversion be granted unto a Parson and his Successors by Licence, he shall have a *Quid Juris clamat*; or if the Services of a Tenant be by Licence granted unto a Parson and his Successors, he shall have a *Per quæ servitiâ*: And so of a Writ of *Quem redditum reddit*, &c.

Chap. 11.  
Part 49.

And so if a Parson be Tenant in Common of a Wood, or other Land, in the Right of his Church with another, and the other Tenant do Waste in the Wood, or Land, &c. the Parson shall have a Prohibition; and if he do Waste, he shall have a Writ of Partition, and the Place wasted shall be assigned to the other Party by the Statute of *West. 1. cap. 22*. But if a Parson be Patron of a Vicarage, and the Vicarage void, and a Stranger doth present, the Parson shall have a *Quare impedit*, or a *Darrein presentment*: But if the six Months pass, he shall have a Writ of Right of Advowson, because that that Writ is given only for him who hath the entire Fee and Right in him, and the Parson hath not the same; for the Right is in the Patron and Ordinary.

20 E. 3.  
Juris  
utrum. &c.  
Old N. 125.  
contr.

Nor shall a Parson have a Writ of Right *Sur disclaimer*, nor a Writ of Customs and Services, nor an *Injuste vires*, nor such Writs as are grounded upon the mere Right. But it seemeth he may have *Contra formam Collationis*, or *Fessamentis*, and a Writ of *Mesne*, and *Ad Terminum qui præterit*, &c. and such possessory Writs which are grounded upon the mere Right.

And a Parson or a Vicar shall have a Writ of *Juris utrum* against those who are several Tenants; and then the Form of the Writ shall be such:

*Rex Viſ. S. ſalutem, Si L. Episcopuſ de Lond. Perſon. Ecclēſiæ de E. fecer. te ſecur, &c. tunc ſumm. vii. liber. &c. de viſu. de E. quid ſit curam Juſtic. noſtris apud Weſt. tali die, &c. parati ſacrament. recogn, utrum xx. acre terra cum pertin. in E. ſit libera Eleemoſyna pertin. ad Eccleſiam ipſius L. an laicam ſocd. & A. B. C. & D. interim terram ill. videant, & ſum. &c. præd. A. qui duas acras inde tenet, B. qui octo acr. inde tenet, C. qui quinque acr. & unam rodam inde tenet, & D. qui quatuor*

ac.



*acr. terra & tres rolas inde tenet, quod tunc sint, &c.*

O And two Prebendaries may be one Parson in one Church, and then they shall join in a *Juris utrum*; and their Writ shall be such:

*Si W. Prebendarius Præbende de N. & R. Prebendarius Præbende de I. in Ecclesia beati Petri Eborac', Person. Ecclesiæ de A. prædictis Præbendis annexæ, fecerint, &c. tunc. summ. xii, &c. ut supra.*

P And where a Man is Parson of the Moiety of the Church, and another Clerk is Parson of the other Moiety of the same Church, then one may have a *Juris utrum*, and the Writ shall be such:

*Si W. Person. medietatis Ecclesiæ de N. fecerit, &c. tunc summ. xii, &c. sacramento recognos. utrum, &c. sit Libera Eleemosyn. pertin. ad medietatem ipsius W. Ecclesiæ præd' an libera Eleemosyn. pertin. ad alteram medietatem R. Person. alterius medietatis Ecclesiæ præd', &c. And Dean and Chapter may have *Juris utrum* in Special Case where they are Wardens of a Chantry, thus:*

R *Rex Vic. Lond. salut. Si Decanus & Capitulum Ecclesiæ S. Pauli London, Custodes Cantariæ ad Altare beate Mariæ in Ecclesiâ Sancti Pauli Lond', pro anima Ric. D. ordinat', fecerint vos secur', &c. tunc summ. &c. de wisn. urbis Lond', quod sint curam Justic. nostris apud Westm. tali die, &c. utrum, xx. solid. reddit. cum pertin. in Suburbio London. fiat, &c. pertin. ad Cantariam ipsorum Custod. ad Altare præd', an Laicum feud', &c. & interim Ten. unde redditus, &c. Teste, &c.*

[50]

A Where a Parson alieneth the Right of his Church with Warranty, and afterwards the Alienee is impleaded, and voucheth the Parson, who entereth into the Warranty, and loseth by Action tried, his Successors shall have a *Juris utrum* of the Seisin of his Predecessor, which he had before the

B Alienation. And a Vicar shall have a *Juris utrum* against the Parson for the Glebe of his Vicarage, which is Parcel of the same Church. If a Parson receive Rent or Fealty of the Tenant of the Land, which is aliened by his Predecessor, he shall not, during his Life, have a *Juris utrum*; but his Successors shall have *Juris utrum*.

D If a Writ of Right be brought against a Parson, who joineth the Mife without praying in Aid of the Patron and Ordinary, and afterwards loseth by Default, his Successor shall have *Juris utrum*. Otherwise it is if he loseth the Land by Verdict, as it seemeth.

E If a Parson have a Chapel annexed to his Parsonage, to which Chapel Glebe is appurtenant, the Parson shall have *Juris utrum* of the same.

40 E. 3. 27.  
2 H. 4. 2.  
Quare 11.  
H. 4. 13.  
11 E. 3. *Juris utrum*  
19. 7 Eliz.  
Dyer 239.  
240. 22 H.  
B. accept.  
14. 2 E. 6.  
B. accept.  
20.

A



## Consultation.

A Recovery in a *Cessavit* against a Parson by Default shall **F** not bar his Successor, but he must have a *Juris utrum* against him who recovered.

If a Chaplain of a Chantry lose the Lands of his Chan- **G** try by an Assise of *Novel Disseisin*, yet he himself shall have a *Juris utrum*, because that that is a Writ of Right; and the Writ is to enquire, *Utrum sit libera Eleemosyna Cantaria, an Laicum feodum, &c.* H. 1 R. 2.

**H** The Parson or Vicar shall have a *Quod permittat* in the **1 E. 1. Quod** *Debet* only, of his own Seisin, or of the Seisin of his Predeces- **peccit as 9.** sor; and may have that *Quod permittat* in the Nature of an **32 E. 1.** *Assise of Mortdaucesfor*, upon the dying seized of his Prede- **Comment.** cessor. **24.**

In a *Juris utrum* the Plaintiff ought to be named Parson or **I** Vicar, or such Name in Right of which Name he bringeth his Action: For if an Abbot, or Bishop, or a Dean, bring a *Juris utrum*, by Reason of the Land, which is Parcel of the Rectory annexed to the Bishoprick, or appropriated unto the Abbey or Deanry, they ought to be named Parsons of the Church in the Writ.

In a *Juris utrum*, if the Tenant at the first Day do make **K** Default, Re-summons shall be awarded; and if he make **L** Default again at the Summons returned, then the Jury shall be taken. And the Tenant shall plead in a *Juris utrum*, as the Tenant shall plead in Assise of *Novel disseisin*, *scil.* **M** two or three Dilatories to the Writ; and if it be not found, then to pray the Jury to enquire of the Points of the Writ.

And where the *Juris utrum* is brought against several Tenants by several Summons in the Writ, it may be taken against one only for that Parcel, and afterwards against the others. But it is otherwise in an Assise of *Novel disseisin*, if it be not in Special Cases.

*Writ of Consultation.*

**N** IF the Bishop cite any of the Paritioners of the Church **to be contributory unto the Reparations of the Parish- Church, or of any Chapel annexed thereunto, if the Party who sueth the Prohibition directed unto the Bishop, suppose that he is impleaded of a Lay Fee in the Spiritual Court, the Bishop shall have a Consultation upon the Matter shewed in the Chancery on the Part of the Bishop.**

And so if a Man obtain any Judgment or Sentence in the **O** Spiritual Court for a Legacy of Money, or other Chattels, if the Executors will sue a Prohibition for to delay the Execution of the Judgment, the Party shall have a Consultation.

See the Statute de circumspicte agatis, 13 E. 1 Rastall Prohibition 3.

37 H. 6. 9. Ashton.

- P** And if any Chaplain of the King's free Chapels keepeth any Concubine, then the Bishop may cite him before him for to punish him: And if the Chaplain purchase a Prohibition, because the King's free Chapels ought not to be visited by the Bishop, yet upon the Matter shewed, the Bishop shall have a Consultation to proceed to correct him by Pain corporal, and not pecuniary.
- Q** If a Prior and Convent sue in the Spiritual Court for Tithes and Mortuary, 7 Parson of the Church of C and an Abbot cometh into the Chancery, and surmiserh that 7. holderh the Church of his Patronage, and that the Prior, &c. claimeth the third Part of the Church of his own Advowson and Patronage, and prayeth an *Indicavit*, and the same is granted; now the Prior, &c. may shew this Matter in the Chan-<sup>See Artic-</sup>cery, and have a Consultation, because that in the Statute of <sup>li Cleri,</sup> *Articuli Cleri* it is contained, that in Dismes and Mortuaries, <sup>cap. 1.</sup> when under these Names they are proposed, there is no Room for our Prohibition.
- R** If a Prior sueth in the Spiritual Court for the Moiety of the Tithes of four Plough-lands, which he claimeth as appertaining unto the Church of N. whereof he is a Parson Imperfonce, which are not of the Value of the fourth Part of the Church, if the other purchaseth an *Indicavit*, surmising, that they are of the Value of the fourth Part; he who is sued in the Spiritual Court shall have a Consultation to proceed, *dummodo non agitur de Advocacione alicujus partis Ecclesie, dicta Prohibitione non obstante.*
- S** If a Man promise unto another with his Daughter in Marriage 10*l.* by Reason whereof the Party marieth his Daughter, if he who promiseth the Money will not pay the Money, he shall be sued for the same in the Spiritual Court; and if he purchase a Prohibition, the other shall have a Consultation: And if he who promiseth the Money dieth, yet the Husband who married his Daughter may sue the Executors for that Money, or the Executor of his Executors, in the Spiritual Court. Vide 44. 2.  
14 E. 4. 6.  
17 E. 4. 6.  
Com. 309.  
20 E. 4. 3.  
[51.]
- A** And if any of the Parishioners do disturb any Parson or Vicar to carry his Tithes by the usual Ways and Passages, the Parson may sue in the Spiritual Court for this Disturbance; and if the other sue a Prohibition upon the Matter shewed, he shall have a Consultation.
- B** If a Parson or Vicar have a Pension out of another Church, and the Pension is kept from them, and another Parson taketh and claimeth the same; the Parson or Vicar who ought to have the Pension may sue for the same in the Spiritual Court.
- N And



And so if a Parson, or Vicar, or Master of an Hospital, sue for a Pension in the Spiritual Court, which they and their Predecessors have had time out of mind, &c. if the other Party purchase a Prohibition upon the Matter shewed, he shall have a Consultation: And yet it seemeth, that upon the Prescription he may maintain a Writ of Annuity at the Common Law, but the same is in his Election. But if he once sue a Writ of Annuity at the Common Law for the same, and declare there upon the Prescription, then he shall not afterwards sue in the Spiritual Court for that Annuity in the Name of a Pension; and if he do, it seemeth the Party may have a Prohibition against him.

38 H. 6. 19. And a Parson may sue in the Spiritual Court a Spoliation C  
 against another for taking of his Tithes, or for taking of any Pension which doth appertain to his Church, although they claim by several Patrons, and of their several Presentments: But this is intended only where the Tithes and Profits taken and spoiled do not amount unto the fourth Part of the Value of the Church; for if they claim by several Patrons, and the Tithes, Profits, or Pensions, amount unto the fourth Part of the Church, then the Party grieved shall have an *Indicavit*, because the Title of the Patronage doth come in debate, &c. But if they claim by one and the same Patron, and of his Presentment, then one Parson shall have a Spoliation in the Spiritual Court against the other, although the Profits do amount unto a fourth Part, or a third Part, or the Moiety of the Church, because the Title of Patronage comes not in debate; and if a Prohibition be sued thereupon, the Party shall have Consultation.

Vide 36. A.  
 18 H. 6. 19. For where the Tithes of the Patronage is in question, there is no Spoliation.

If a Man have his Sheep lying and feeding for one Year D  
 in a Parish, the Parson of the Parish may sue in the Spiritual Court for Tithes of Wool of those Sheep; and if the Party sue a Prohibition, he shall have a Consultation.

And note, that Consultation shall be granted and directed E  
 to the Party himself who sued in the Spiritual Court, that he do not proceed in his Suit there; and also he may have a Consultation directed unto the Judge, commanding him to proceed there, notwithstanding the Prohibition aforesaid.

And the Parson may sue the Executors of his Predecessor F  
 in the Spiritual Court for the Dilapidations, and for that Sum of Money which is found by the Enquest charged by the Bishop or Ordinary, that the Dilapidations do amount unto, to pay the same: And if the Executors sue a Prohibition, the Party who sued in the Spiritual Court shall have a Consultation directed to the same, &c. to proceed; and another



another Consultation directed to him to sue as before.

**G** And if a Man doth detain his Tithes for his Sheep, which are in the Parish, and there feeding for half a Year, if he die, the Parson may sue his Executors for these Tithes in the Spiritual Court, and shall have a Consultation, if the Executors sue a Prohibition. And the Parson by Prescription may claim the Tithe of Calves and Kine, and Milk of Cattel feeding in the Parish, from the Feast of the Holy Trinity, unto the Feast of Saint Peter, which is said *ad vincula*; & *Decim. Lan. Provenientis de Ovibus Parochianorum suorum, occisis & morientibus a festo S. Mich. usque ad festum Pasche singulis annis*; & *Decimas Mellis & Cerae convenient de Apibus & alveis Apum infra limites Parochia sue*; and may sue for them in the Spiritual Court, and shall have a Consultation; if he be disturbed by Prohibition.

**H** And a Man may sue in the Spiritual Court for a Legacy: Where a Man deviseth *Fabrica Ecclesie 20 s. &c.* the Parson may sue the Executors for the same in the Spiritual Court, &c. and may sue the Executors in the Spiritual Court for the Tithes of Mills due by the Testator in his Life-time. And so a Vicar may sue in the Spiritual Court for the Tithe of Beans and Oats, arising within certain Limits within his Parish. And so he may sue *pro Decimis panagii convenientibus de bosco suo*; & *pro pullanis convenient. de equitio suo*; & *pro Butyro, Casco, & Lactificio, tempore hyemali*. But it seemeth the same ought to be by Prescription. And it was agreed before the King's Council in the Parliament holden at Salisbury, *quod Consultationes fieri debeant de s'vona cadua, eo non obstante quod non renoventur per annum*.

**K** A Man may sue in the Spiritual Court, where another Man doth defame him as a Falsifier, an Adulterer, or an Usurer, &c. 27 H. 8. 13.

And a Parson, or other Priest, may sue in the Spiritual Court, for laying violent Hands upon him, &c. to have him Excommunge, or to have corporal Punishment, but not to have Amends there. 12 H. 7. 23. 460.  
per Constable. C:  
11 H. 4. 88.  
7 H. 4. 14.  
[52.]

**L** Where a Prior sueth a Parson in the Spiritual Court *Pro duabus partibus Decimarum convenient. of the Demesnes of F.* whereof the Parson hath spoiled the said Prior, for which the Parson purchaseth an *Indicavit* in the Chancery, surmising that the Tithes do amount unto the fourth Part of the Value of his Church, and that the King is Patron thereof, by Reason of the Wardship of an Infant in the King's Hands, by Reason whereof the Prior cometh into the Chancery, and sheweth there that the Tithes do not

amount unto the fourth Part of the Value of the Church, and hath a Writ directed unto the Bishop to certify the King into the Chancery the Value of the Church which the Parson holdeth, and the Value of the Tithes demanded by the Prior: If the Bishop by his Letters certify for the Prior, then the Prior shall have a Consultation. And so it seemeth by this Writ. that where an *Indicavit* is sued, &c. the King shall be certified by the Bishop's Letters upon a Writ directed to the Bishop, what is the Value of the Church, and also what is the Value of the Tithes demanded in the Spiritual Court, before a Consultation shall be granted: And it seems to be a good Rule, and a good Order, so as no Party shall be deceived: And this Certificate of the Bishop shall bind the Party to say or aver any Thing against it. But a Consultation shall be granted upon the Certificate returned, &c. but notwithstanding that, if it be unto the fourth Part of the Value of the Church, the Party may sue a Writ of Right of Tithes, &c.

11 H. 4. 48.  
So if the Bi-  
shop certify  
that J. S. is  
uslage, or in  
Prison at  
the Time of  
the Uslage-  
ry, 15 E. 3.  
Usilage 2.  
Brev.

Eltoppel  
211.

M. S. 149

204 16

620: 217/3

If a Bishop make an Order, that the Parson of such a Church shall yearly pay unto the Abbot of B. and his Successors two Parts of the Profits of the Church in the Name of a yearly Pension, and that the Parson before he have Possession of the Church take an Oath so to do, for which the Parson sueth in the Court of Rome, and obtaineth a Delegacy directed unto the Bishop and his Officers, to repeal the Order, &c. Now if the Abbot sueth a Prohibition upon this Matter, the Parson shall have a Consultation.

If a Lay-man will not make his Offerings at Days limited to the Parishioners to offer, or will not confess himself unto his Curate, or receive the Sacrament of our Lord Jesus Christ of his Curate, by Reason whereof the Curate citeth and sueth him in the Spiritual Court for the same: If he purchase a Prohibition, &c. upon shewing the Matter, a Consultation shall be granted.

If the Churchwardens of any Church have used Time out of Mind to receive yearly of one of the Tenements of the Parish a Pound of Wax to maintain the Taper before the Crucifix in the Church, and he who is now Tenant of the Tenement refuseth to pay this Wax, &c. there the Churchwardens may sue in the Spiritual Court for the same: And if he obtain a Prohibition, Consultation shall be granted.

If a Man be condemned in the Spiritual Court in a Cause of Defamation, for which he appealeth unto the Court of Canterbury, &c. and there the Sentence is confirmed, and the Party condemned in twenty Shillings for Costs,

See for  
their Capa-  
city at the  
Common  
Law,

11 H. 4. 12.

7 H. 6. 30.

22 H. 7. 37.

8 E. 4. 6.

12 H. 7. 22.



Costs, and the Cause remitted unto the Judges before whom it was first commenced, by Reason whereof he who is condemned sueth a Prohibition; the other Party shall have a Consultation. If a Parson doth detain from the Parishioners the Goods of the Church, and in his Will he enjoinerh his Executors to deliver them unto the Parishioners; the Parishioners may sue the Executors in the Spiritual Court for them; and if they sue a Prohibition, the Parishioners shall have a Consultation; and this Consultation may be sued by any of the Parishioners who will sue in the Spiritual Court. If the Bishop or his Official cite any Man for laying violent Hands upon any Clerk, &c. if he sue a Prohibition, the other may have a Consultation; *Dummodo agitur ad panam corporalem, & non pecuniariam, &c.* See 51 K.

If a Man in Time of the Vacancy of a Parsonage or Vicarage will not pay his Tithes, and the Ordinary *ex officio* cite him to pay them, &c. if he purchase a Prohibition, the other shall have a Consultation granted unto him.

vough 200  
Margi

If an Abbot and Convent are bounden, by Reason of any Ordinance lawfully made, to find four Chaplains to sing in such a Church or Chapel for the Souls of such or such, and if they fail to find them, they bind themselves in divers Pains and Censures, and if they fail in all or in Part to find these Chaplains, they have granted that the Dean of *Salisbury*, or his Official, shall interdict their Church, and so hold it until they have satisfied, &c. for which the Dean or his Official, *ex Officio*, cite the Abbot and Convent to find the said Chaplains, &c. if they sue a Prohibition, the Dean or Official shall have a Consultation in that Case.

If the Ordinaries do forbid the Friars, that they shall not hear Confessions, nor they shall not admit any one to be buried in their Church, and sue them in the Spiritual Court for that Cause; if the Friars purchase a Prohibition, the Ordinaries shall have a Consultation.

If a Man sueth in the Spiritual Court for taking and detaining from him his Wife lawfully married unto him, if the other sue a Prohibition for the same, he shall have a Consultation, forasmuch as for Restitution of his Wife only he sued, &c. And yet he may have an Action at the Common Law, *De Uxore abducta cum bonis viri*, or an Action of Trespass for taking the Wife as it seemeth. See 51 L.

And a Parson shall sue for a Pension of forty Shillings in the Spiritual Court, whereof the House hath been seized Time out of Mind, and shall have a Consultation thereupon, if a Prohibition be sued, &c.



4 Co: 20 b:

[53.]  
12 H. 7. 22.

If a Man recover in the Spiritual Court in a Cause of De- M  
famation Costs, he shall sue there for the Costs; and if the  
other sue a Prohibition, he shall have a Consultation.

And if a Man have corporal Punishment in the Spiritual A  
Court for a Cause of Defamation, or for laying of violent  
Hands upon a Clerk, &c. if the Parry will redeem his Pe-  
nance, and promise to pay unto the Party a certain Sum  
for his Damages, &c. if after he will not pay the Money  
unto the Party, the Party damnified may sue for the same  
in the Spiritual Court; and if the other Party purchase a  
Prohibition, he shall have a Consultation.

If a Parson for an Offence have Judgment to be deprived B  
in the Spiritual Court, and the Patron doth present another  
Parson unto the Ordinary, who sueth the first Parson in the  
Spiritual Court because he will not void the Church, but  
defend himself by Appeals, or other Matters, &c. now if the  
first Parson purchase a Prohibition, the other may sue a  
Consultation; or without any Prohibition sued by the first  
Parson, the Parson may sue a Writ in the Chancery unto  
the Spiritual Judge, to proceed in the Spiritual Court upon  
the Cause of Deprivation and Disability.

Upon a Legacy given to any Order of Friars, they may C  
sue the Executors in the Spiritual Court for the same. And  
if the Executors purchase a Prohibition, they may have a  
Consultation upon the Matter shewed, &c.

If Friars, or other Persons whatsoever, sue in the Spirit- D  
tual Court for a Legacy, and have Process against others as  
Witnesses in that Cause; if the Witnesses will sue a Prohi-  
bition surmising that they are sued against their Wills *ex*  
*Officio Judicis*, in the Spiritual Court, &c. yet he or they to  
whom the Devise is made shall have, upon the Matter shew-  
ed, a Consultation.

And note, that the Justices of the King's Bench may  
grant a Consultation of Tithes as well as the Chancellor.

And when the Justices grant a Consultation of Tithes of  
Spoliation, they make the Libel indorsed in such Manner:

*Dominus Rex non habet cognoscere in Foro Ecclesiastic. de*  
*Spoliatione Decimarum, quatenus de Jure Patronat. seu de Ad-*  
*vocatione Decimarum non agatur.* And so they give no Power  
by the Indorsment; and the Rule in the Register is by those  
Words:

Nota, that the Justices said, That Tithes shall not be bur E  
of such Things which increase from Year to Year, and  
that by the Manure of Man: But that is against the Decree-  
tals.

And

F And all the Justices are against a Consultation in a Cause of Defamation, because, it seems, he may have his Action at Common Law for the same Defamation.

27 H. 8. 13. 46.  
ac. Br. Consultation 7. 6.

G Also of Coals, or of Quarries, or the like, a Man shall not pay Tithes, nor of Agistment, because that he payeth Tithes for the Cattel which feed in the Pastures.

Registers.  
Br. Dimes 18.  
26. 2.

H And also they say, that properly a Consultation ought not to be granted, but in Case where a Man cannot recover at the Common Law in the King's Courts.

I And if the Bishop cite a Man *ex Officio* for to appear before his Officers for Fornication, &c. or such like Offences, and the Party defendeth himself by Appeals, or such other Delays, and by suing a Prohibition unto the Spiritual Court, and afterwards he waves the Delays, and submits himself to the Judgment of the Spiritual Court, and they Delay to proceed in these Causes for the Vexation and Delays, and the suing of the Prohibition which the Party had before; then the Party shall have a Writ directed unto the Spiritual Judges, that they do proceed *in casu Defamationis ad penam canonicam imponend.*, & *in causa Submissionis*, &c. *Provisio quod quicquid in juris nostri Regii derogation. cedere valeat aliqualiter, per vos nullatenus attemptetur.*

K If the very Patron present an able Person to the Ordinary, and the Ordinary refuseth him, and afterwards a Disturber presenteth unto the Ordinary another Person unto the same Church, and the Ordinary doth admit, institute, and induct him, and afterwards the very Patron recovereth his Presentment against the Disturber; for which Cause the Presentee of the very Patron sueth the Presentee of the Disturber in the Spiritual Court, to avoid and remove him; for which Cause he sueth a Prohibition, &c. now the Presentee of the very Patron shall have a Consultation unto the Spiritual Court to proceed in that Case, &c. But first the Record in the Common Pleas ought to be certified into the Chancery of the Recovery, or of the Composition there made of the Title of the Presentment, before the Consultation shall be granted.

L If the Tenants or Possessors of any Lands or Tenements within any Parish have used to find a Chaplain to say Divine Service in the Parish Church, &c. time out of mind, &c. and afterwards they withdraw, and will not find such Chaplain, &c. then the Parson and Parishioners shall sue against them in the Spiritual Court, for to find such Chaplain in the Church: And if the Tenants or Possessors of the Land sue a Prohibition of the Matter shewed in Chancery, the



Parson and Parishioners shall have a Consultation to proceed, and by such Words: *Vobis significamus, quod in causa illa quatenus ad Cantuariam præd' ad pristinum statum, &c. & ad debitam punitionem occasione subtractionis hujusmodi eidem, &c. imponend' per vos agitur, licite procedere, & ulterius facere poteritis quoad ad forum Ecclesiasticum noveritis pertinere, dicta Prohibitione nostra, seu aliqua alia vobis in causa præd' impostum dirigid', non obstante, &c.*

[54.]

And if it be after Time of Memory, viz. in the Time of R. 1. and before the Statute of Mortmain, the Parson and Parishioners shall have such Suit for a Chantry, &c. And if a Parson and Parishioners sue one such Tenant and Possessor of the Lands to find such Chaplain, &c. and he sue an Inhibition from the Court of Canterbury; or appeal unto the Court of Canterbury, or make such subtil Delays in the Court of Canterbury; then the Parson and Parishioners shall have a Special Writ unto the Archbishop and his Officers: *Quod in casu & processu præd. clam vobis in Cur. Cant. virtute Appellationis præd' devolutis, quatenus ad Cantuar. ad debitum statum reducere faciend', ad debitam punitionem occasione subtractionis hujusmodi eidem, &c. imponend', & impon. faciend', & ad debitam sententiam in ipsum laram, si rite devoluta fuer', in suo robore permanere faciend'. per vos agitur, rite procedere, & ulterius facere poteritis, &c. dicta Prohib. nostra non obstante.*

If a Man devise an Ox or a Cow unto the Church for A Reparation thereof, or for the Churchyard, and he who hath the Cow or the Ox will not deliver the same unto the Churchwardens; then the Ordinary *ex officio*. or the Churchwardens may cite him, and sue him for the detaining of the Cow or Ox: And if the other Party sue a Prohibition, the Churchwardens shall have a Special Consultation. *Vobis significamus, quod in casu præd' quatenus ad restitutionem eisdem Gardianis de Legat' præd', in forma præd', ac parvam Canonice eidem imponend. pro detentione eorund' coram vobis tantummodo agitur, licite procedere, & ulterius facere poteritis quoad ad forum Ecclesiasticum, &c. Prohibitione nostra non obstante.* And if he will not proceed upon that, they may sue an Attachment, &c.

And in many Cases a Man shall have a Special Consulta- B tion. As, if a Parson sue in the Spiritual Court for Tithes of great Trees which pass the Age of 20 Years, and makes his Libel by the Name of *Silva cadua*; now the Party may shew in the King's Bench, or in the Chancery, that the Trees were great Trees above the Age of 20 Years; and upon this Surmise he shall have a Special Consultation, to proceed *ita*

quod



*quod de cadua*, and not of other Trees which are past twenty Years growth, or the Age of twenty Years. And see the Statute for the same, *Anno 45 E. 3. cap. 31.*

- C If a Man have a Chapel within his Manor which is a donative Chauntry, or presentable, and the Chaplain hath used to have the Tithes arising of the Demesons of the Manor Time out of Mind, &c. Now if a Parson (in whose Parish this Chapel is) sueth the Lord of the Manor, and also the Chaplain in the Spiritual Court, for the Tithes of the same Manor, they shall have a Prohibition, &c. because the Advowson of this Chapel may come unto the King by Wardship or Escheat, &c. And then the Parson within whose Parish this Manor and Chapel is, shall have a Special Writ of *Scire facias* against the Lord of the said Manor, and also against the Chaplain, returnable in the Chancery at a certain Day, if they can say any Thing wherefore a Consultation shall not be granted, and the Writ of Prohibition revoked and repealed; and further to do as the Court shall award in that Case. And in the End of the Writ shall be *Et habeas ibi nomina eorum per quos ei scire feceris, &c. & hoc Breve, &c.* Which Writ appeareth in the Register, in the End of the Writs of *significavit.*

*See Com. 472. in Molin's Case. Plow, commends this Form of Scire facias; but there is another Form used at this Day.*

## Breve de Vi Laica removenda.

- D THIS Writ de Vi Laica removenda lieth as well upon a Surmise made by the Incumbent, or by him that is grieved, &c. without any Certificate thereof made in the Chancery by the Bishop, as upon a Certificate thereof made in the Chancery by the Bishop.

*Old Na. Br. 33 Cent. and Marrow in his Reading.*

- E And when the Bishop makes Certificate into the Chancery of the Force, then the Form of the Writ is such:

*Rex Vic. Linc'. salutem. Ad requisitionem venerabilis Patrie Lincoln' Episcopi, tibi precipimus, quod omnem Vim Laicam, que se tenet in Ecclesia de l. sue diocesis, ad perturbandum ipsum Episcopum, quo minus officium suum Spirituale in Ecclesia illa exercere possit, sine dilatione amoveas ab eadem, &c.* And he shall have an *Alias*, and a *Pluries*, and an *Attachment* against the Sheriff, directed unto the Coroners, if he do not serve or return the Writs.

- F And if the King do collate unto any Prebend of any Bishop come to him by Title, and the Bishop make resistance, that the King's Presentee cannot have the corporal Possession thereof; then the Writ shall be directed unto the Sheriff, and shall be such:

*Præcipimus tibi, quod omnem Vim Laicam seu armatam que*

*se*

se tenet in dicta Ecclesia, vel dominiis eidem annexis, ad pacem nostram in Com. tuo perturbandâ, sine dilatione amoveat ab eisdem; & si quos in hac parte resistentes inveneris, eos per corpora sua attachies, & in prisona nostra salvo custodias, ita quod eos habeas coram nobis in Officiâ Sancti Hil' &c. ubicunque, &c. ad respondend. nobis de contemptu & resistantia supradictâ. Et habeas ibi nomina eorum qui attachiareris, & hoc Breve. And this Writ de Vi Laica removenda may be made returnable, or not returnable, at his Pleasure who will sue the Writ; and it may be returned into the Common Pleas as well as into the King's Bench.

[35.]

And note, that by this Writ the Sheriff ought not to remove the Incumbent who is in Possession of the Church, whether the Possession be of right or wrong, but only for to remove the Force, and to suffer the Incumbent for to enjoy the Possession: And if the Sheriff do amove, or would put out the Incumbent who is in Possession, the Incumbent shall have a Writ directed unto the Sheriff, commanding him that he do not put him out; and if he hath put him out, that without Delay he make him amends: And if he do not so do, the Parry may have an Alias, and Pluries, and Attachment against the Sheriff. And the Form of the Writ de Vi laica removenda, without the Certificate is such:

Rex Vic. S. salutem. Præcipimus tibi, quod omnem Vim Laicam, seu etiam armatam potentiam, quæ se tenet in Præbendâ de E. in Ecclesia de C. ad pacem nostram perturbandâ, sine dilatione amoveat ab ead: & si quos tibi resistent. inveneris in hac parte, tuos assumt. tecum sufficien. posse Com. tui, si necesse fuerit, eos attachies per corpora eor', &c. ut supra.

And the Form of the Certificate of the Bishop is such:

Excellentissimo Principi & Domino suo, Domino Henric. Dei gratia, &c. W. permissione divinus Ebor. Archiepiscopus, Ang. Primas, salutem in eo per quem Reges regnant & cuncta subsistunt. Custodini vestra Regis notum facimus per præceter, quod quidam, salutis sue immemores, possessorem Domini I. in Ecclesia de C. nostra Dioc. canonice sibi collata, quam A. aliquando tenuit occupat, in nostr. offic. & libertatis Ecclesiasticæ & juris prædicti I. præjudicium impediunt & perturbant: Idcirco Excellentie vestre humiliter supplicamus, quatenus ad hanc vim & potestatem omnimod. amovend. brachium regalis potentie solita gratia apponatis, ut inimicor. Christi rebellis sic per vestram reprimat. subsidium, ut libertas Ecclesiasticæ sub vestr. defensionis clypeo tuta maneat & illæsa, & vos a Deo exente retributionem emigram consequi valeatis, qui vos Ecclesie sue & populo per tempora conservet diturnus. Dat. apud B. quarto Kalendâ, &c.

Writ



## Writ of Waste.

**C** THE Form of the Writ of Waste against Tenant in Dow-  
er doth vary from the Form against other Tenants ;  
for the Writ of Waste against Tenant in Dower is such :

*Rex Vic', &c. Si A. fecerit te secur', &c. tunc sum. per bonos  
Sum. B. quæ fuit uxor C. quod sit coram Justic. nostris apud  
West. in quinden. Trin', ostens. quare fecit Vastum, venditionem,  
destructionem, & exilium in terris, domibus, boscis, gardinis, &  
hominibus, quæ tenet in dotem de hereditate præd. A. in N. ad  
exheredationem, &c.* And in that Writ he doth not rehearse  
the Statute which gave the Writ of Waste, nor the Writ  
of Waste against the Guardian, because they were punisha-  
ble at the Common Law, before the Statute, by Prohibiti-  
on and Attachment thereupon, if they did Waste. And ex-  
ilium in hominibus shall not be put in the Writ of Waste, if  
the Tenant in Dower, or other Tenant, do not misuse the  
Villains of the Manor, by reason whereof they depart from  
the Manor, or from their Tenures; and if they do, then  
it is Waste. And in a Writ of Waste against Tenant for Life  
or Years, he shall recite the Statute in such Form :

*Rex Vic', &c. Si A. fecerit te secur', &c. tunc sum. B. &c. quare  
cum de communi consilio regni nostri Angl. provisum sit, quod  
non liceat alicui Vastum, venditionem, seu destructionem facere in  
terrâ, domibus, boscis, seu gardinis; idem B. de terris, domibus,  
& gardinis in L. quæ prædict. A. ei dimisit, &c. fecit Vastum,  
&c.*

**D** And if an Abbot bring a Writ of Waste against Tenant  
in Dower, the Writ shall be: *Ostens. quare fecit Vastum in* 29 E. 3. 1.  
*terrâ, &c. quas tenet in dotem de jure Ecclesiæ ipsius, ad exher-*  
*edationem Ecclesiæ suæ, &c.* And shall not say, *de hereditate* Et 3. Ma.  
*ipsius Abbatis*, nor *ad exheredationem ipsius Abbatis*, &c. But if Dyer 129.  
the Heir bring a Writ of Waste against the Tenant for Life  
of his Ancestors, then the Writ shall suppose that the Ten-  
ant holdeth *de hereditate*, &c. and that the Waste is done *ad*  
*exheredationem suam*, &c. and that they have made Waste of  
Lands they hold in Dower of the Wife, yet the Husband  
doth not hold in Dower.

**E** And the Writ of Waste shall be always brought against  
the Tenant in Dower, or Tenant by the Courtisie, although  
they have granted over their Estates unto others.

**F** If the Husband make a Feoffment of his Land, or a  
Stranger doth abate after the Death of the Husband, or  
disseiseth the Husband in his Life-time, and afterwards the  
Wife



Wife recovereth her Dower against the Stranger, &c. if he bring a Writ of Waste against the Wife, the Writ shall make mention of the Recovery, &c. how she recovered the Land against him.

If a Feme hold in Dower of the King who hath the Reversion, and the King granteth the Reversion in Fee unto a Stranger, and afterwards the Feme committeth Waste; now the Grantee shall have a Writ of Waste, and the Writ shall make mention how she holdeth of the King, and how he hath granted the Reversion unto a Stranger, &c. and that she who held in Dower of the Stranger of the King's Grant hath committed Waste, &c. So if the Husband dieth, and the Heir maketh a Feoffment unto a Stranger in Fee, who assigneth Dower unto the Wife, and she commits Waste; the Writ shall make mention that she held in Dower of the Gift of her Husband by the Assignment of a Stranger, of whom the aforesaid Feme held in Dower of the Assignment which the Heir of the Husband hath made to the said Stranger, *ad exheredationem* of him who bringeth the Writ. The Form of the Writ of Waste where the Wife is endowed *ex assensu patris* is such:

5 &c. 4 Eliz.  
Dyer 206.  
208.

[55]

*Rex, &c. Si S. &c. tunc sum', &c. que fuit uxor R. quod sit &c. ostens. quare fecit Vastum, &c. qu. tenet in dote de domo patris. R. quondam viri sui, ex assensu A. de B. patris prædicti R. de præf. S. ex assignatione ejusd. A. &c.* And if the Wife do recover her Dower against the Father, then the Writ of Waste shall make mention of the Recovery thus; *Et quod eadem Isabella in Cur' nostra coram Justic' nostris de Banco per considerationem ejusd. Cur' recuperavit, ut dorem suam, versus præf. A. ad exhered' ipsius S. &c.* And the Writ may be of Mills and Vivaries; and then the Writ shall be, *ostens. quare fecit Vast. de terris, domibus, molendinis, boscis, vivariis, & gardinis.*

40 E. 3. 33.  
Finchden.  
41 E. 3. 23.  
Candish.  
42 E. 3. 19.  
per Curiam,  
24 H. 3.  
14, 20. ac.

And if a Guardian in Chivalry grant over his Estate, who maketh Waste, the Writ of Waste shall be brought against the Grantee, and not against the Guardian; and it is not like Tenant in Dower, or by the Courtesie: But if the Guardian do commit Waste, and afterwards granteth over his Estate, then the Heir shall have an Action of Waste against the Guardian, and not against the Grantee. And so if Tenant for Life or Years commit Waste, and granteth over his Estate, the Writ lieth against him who doth the Waste, and not against his Grantee. And the Form of the Writ against the Guardian is such: *Rex, &c. Si A. fuerit, &c. tunc sum' &c. quare fecerit, &c. que habet vel habuit in custodia de hereditate, &c. ad exheredationem, &c.*

And

**B** And ag'inst the Executors of the Guardian the Writ is :  
*Sum', &c. B. & C. Executors Testamenti de, &c. quare fieri. Vastum &c. quas habent in custod post mortem præd. B. de hered', &c. ad exhered. &c.*

**C** In a Writ of Waste against Tenant by the Courtesie, the Form of the Writ by the Register is to recite the Statute; and yet it seemeth the Writ is good, although that he do not recite the Statute; and the Form of the Writ is :

*Rex, &c. Si A. fecerit, &c. tunc sum', &c. quare cum de Com. consilio regni nostri Angl. provisum sit, quod non liceat alicui Vastum, venditionem, seu destructionem facere in terris, domibus, boscis, seu gardinis sibi dimissis ad terminum vite vel annorum, seu de illis que per legem terr. tenent; idem B. de domibus quas tenet per legem Angl. de hereditate præd. A. in N. fecit Vastum, ad exheredationem ipsius A. Et contra formam provisionis præd', ut dicitur. Et habeas, &c.*

**D** And if the Heir grant the Reversion of Tenant by the Courtesie unto another in Fee, and the Tenant attorn, &c. then the Form of the Writ is such :

*Rex, &c. Si Abbas de B. Tc. fecerit &c. tunc sum. B. Tc. quare cum, ut supra, idem B. de domibus in N. quas tenet ad vitam suam de præf. Abbate, quas A. de quo idem B. illas tenuit per legem Angl. de hereditate ipsius A. assign. inde præf. Abbati, fecit Vastum, &c.*

And if the Heir granteth the Reversion unto another Stranger in Fee, and the Tenant by the Courtesie doth attorn, and afterwards granteth over his Estate by the Courtesie to another Stranger, and afterwards that Stranger committeth Waste; now the Grantee of the Reversion shall have his Action of Waste against the Grantee of the Tenant by the Courtesie, for he cannot be Tenant by the Courtesie, if not of the Heir, &c.

**E** But if the Tenant by the Courtesie grant over his Estate unto a Stranger, and the Grantee commit Waste, the Heir shall have the Action against the Tenant by the Courtesie, and not against the Grantee who committed the Waste. But if the Heir have obtained or granted the Reversion in Fee, &c. and after the Tenant by the Courtesie attorn, and after grants over his Estate unto a Stranger who committeth Waste; now the Grantee of the Reversion shall not have an Action of Waste against the Tenant by the Courtesie, but against the Grantee of the Tenant by the Courtesie. And if a Feme be Tenant in Dower, and she grant her Estate unto a Stranger, and after the Heir granteth the Reversion in Fee unto another, and the Tenant attorneth, and after the Tenant for Term of

Life

11 H. 4. 15.



10 H. 4. *Assumpsit* 16. *The Assumpsit of Tenants in Dower is good.* Life commits Waste; it seemeth that the Grantee in Reversion shall have an Action of Waste against the Grantee of the Tenant in Dower, as he shall have against the Grantee of the Tenant by the Courtesie. The Form of the Writ of Waste against the Tenant for Life or Years is such:

*Rex, &c. Si A. fecerit, &c. tunc sum B. &c. Cum de communi consilio, &c. in terris, &c. sibi dimissis ad terminum vite vel annorum; idem B. de terris, domibus, bosis & gardinis in L. qua præd. A. præf. B. dimisit ad vitam ipsius B: Or thus, Quia P. pater vel mater, vel aliqu. Antecess. præd. A. cuius hæres ipse est, præf. B. dimisit ad terminum annor', fecit Vastum, &c. ad exheredationem, &c. & contra formam provis. præd', ut dic' & habeat, &c.*

11 E. 3. *West.* 113.

And by the Statute of *Marleb. cap. 23.* it is ordered, *Quod Firmarii, &c. non fac' Vastum in domibus, &c. vel exit. de hominibus.* By which Statute the Writ of Waste *de Exilio hominum* is warranted. *&c.*

In a Writ of Waste, if the Premises of the Writ recite *Quod non liceat alicui facere Vastum in domibus, bosis, & gardinis;* in the End of the Writ it is said, That the Defendant hath done Waste in Lands, Houses, Woods, Gardens, and Exile of Men; so as there is more in the End of the Writ than is in the Premises, yet the Writ is good: And so if less be in the End of the Writ than is recited in the Premises, yet the Writ is good. As if it be recited, *Quod cum provisum sit, quod non liceat alicui facere Vastum, &c. in terris, domibus, bosis, & gardinis;* and in the End it is recited, *Quod Defend. fecit Vastum in terris only, or in bosis only, or in domibus only;* yet the Writ is good.

If an Abbot make a Lease for Life or Years, and dieth, A and the Lessee afterwards committeth Waste, the Writ shall be such: *Rex, &c. Si Abbas, &c. tunc sum B. Quare cum de communi consilio, &c. idem B. de domibus in L. qua præd. Abbas, &c. (if the Abbot himself maketh the Lease;)* and if his Predecessor made the Lease, then thus: *Quia R. quondam Abbas, &c. prædecessor præd' nunc Abbatis, præf. B. dimisit ad vitam ipsius B. vel ad terminum annorum (if the Case be so) fecit vastum, &c. ad exheredationem Eccl. ipsius Abbatis.* And the like shall be for a Prior, or Master of an Hospital.

And against the Executors the Writ shall be; *Sum' I. & K. Executoris Testamenti: L. quod sint, &c. iidem Executores de nov. quas præf. A. præd' L. dimisit ad terminum annor', sic Vastum, &c.*

And if a Man make a Lease to a Feme Sole of Chafes, and she take Husband, and the Lessee dieth, and she and her Husband



Husband commit Waste; the Writ for the Heir shall be thus:

*Reu. &c. si A. fecit, &c. tunc sum' B. & C. uxor' ejus, quod, &c. quare cum, &c. iidem B. & C. de vivaritis in L. qua tenent ad vitam ipsius C. ex dimissione quam F. pater præd' A. cujus hæres ipse est, inde fecit præf. C. fecit Vastum, &c.*

And another Writ for the Heir: Where Land is leased to Husband and Wife, and the Heir, and the Husband dieth, and the Wife committeth Waste, the Writ shall be: *Endem A. de domibus in L. quas tenet ad vitam suam, ex dimissione quam W. inde fecit eidem A. & præf. B. quond' viro suo, & hæred' ipsius B. patris præd' H. cuius hæres ipse est, fecit Vastum, &c.*

And another Writ: When a Gift is made unto the Husband and Wife, and unto the Heirs of the Body of the Wife, and the Wife dieth, and the Husband committeth Waste, the Heir shall have a Writ of Waste, and the Writ shall be:

*Item A. de domibus in B. quas tenet ad vitam suam, ex dimissione quam W. inde fecit præf. A. & M. quondam uxori ejus, & hæred. de corpore ipsius M. matris præd' B. cujus hæres ipse est, exentibus, fecit Vastum, &c. contra formam, &c.*

And if a Man leaseth Lands for Term of Life, and hath three or four Sisters, and dieth, and they make Partition of the Lands, and of the Reversion, and the Tenant for Life committeth Waste; that Sister and her Husband who hath the Reversion shall have a Writ of Waste, and the Writ shall be:

*Reu. &c. si A. de B. & M. ux. ejus, &c. tunc sum', &c. F. &c. quare cum de communi consilio, &c. idem F. de domibus, &c. in L. quas tenet ad vitam suam, ex dimissione S. de C. de purpate ipsius M. ipsam de hereditat. que fuit ipsius S. fratris sui, cujus una hæred. ipsa est, per partationem inter ipsas M. A. & B. sorores ejus S. inde factam, conting' fecit Vastum, &c. Or thus: Item F. de domibus in L. quas tenet ad vitam suam de præf. M. ex dimissione A. patris præd' M. cujus una hæred. ipsa est, de purpate ejusit M. ipsam de hereditate præd' A. conting', fecit Vastum, &c.* And if Tenant for Term of Life grant over his Estate unto another, and the Grantee committeth Waste, the Writ shall be:

*Reu. &c. si B. fecerit, &c. tunc sum. A. &c. idem A. in domibus in N. quas tenet ad vitam I. ex dimissione quam idem I. cui præf. B. illas dimisit ad eundem terminum, inde fecit præf. A. fecit Vastum, &c.* And if Tenant for Term of Life grant over his Estate, and the Grantee granteth over his Estate, then the Writ shall be thus:

*Reu. &c.*

*Reu*

*Rex, &c. Si M. de R. Præbendarius Præbende de F. in Eccl. beati Petri Ebor', fecerit, &c. tunc sum' R. &c. quare cum, &c. idem R. de domibus in L. quas tenet ad terminum vita A. que fuit ux. H. de N. ex dimissione M. de O. qui ill. tenuit ad eundem termin' ex dimissione ipsorum H. & A. cui quidem A. & M. de O. quondam viro suo, W. B. quondam Præbendarius præd. Præbende, predecessor præd. Præbendarii, ill' dimisit ad vitam eorund. M. de O. & A. fecit Vastum, &c. ad exheredationem Præbend' ipsius R. & Contra formam provisionis præd', &c.*

And by that it appeareth, that if a Prebendary or Parson maketh a Lease for Term of Life, he or his Successor shall have an Action of Waste. If *M.* leaseth Lands unto *I.* for Term of Life, and dieth, and *L.* Son and Heir of the said *M.* granteth the Reversion unto *H.* in Fee, and *H.* granteth this Reversion unto *A.* in Fee, and afterwards the Tenant for Life committeth Waste; now the Writ of Waste brought by *A.* shall be such:

*Rex, &c. Si A. fecit, &c. tunc sum. I. &c. quare, &c. id. I. de domibus in L. quas tenet ad vitam suam de præf. A. ex assignatione A. de quo idem I. illas tenuit ad vitam suam, ex assignatione quam L. filius & heris M. qui ill. præf. I. dimisit ad eund. terminum, inde fecit vid. H. fecit Vastum, &c.*

If *S.* and *K.* his Wife seised in Fee, lease the Land unto *O.* for Term of Life, and afterwards *S.* dieth, and *D.* takes *H.* to Husband, and *K.* granteth the Reversion unto *A.* in Fee, and afterwards *D.* attorneth, and committeth Waste, and *A.* bringeth Waste, the Writ shall be:

*Rex, &c. Si A. fecerit, &c. tunc sum', &c. B. quod fit, &c. idem B. de domibus in N. quas tenet ad vitam suam de præf. A. ex assignatione quam H. & K. ux. ejus, que quidem K. & S. quondam viro suo, illas præf. B. dimiser. ad eundem terminum, inde fecer. præf. A. fecit Vastum, &c.* If *N.* leaseth Lands for Years unto *F.* which *F.* maketh *I.* his Executor, and dieth, and *I.* leaseth the Lands unto *R.* and afterwards *N.* granteth the Reversion in Fee to *P.* and *P.* granteth the Reversion to *M.* in Fee, and after *R.* Tenant for Life, committeth Waste; the said *M.* shall have a Writ of Waste, and the Writ shall be:

[58.] *Rex Vic', &c. Si M. fecerit, &c. tunc sum', &c. R. quid fit, &c. quare cum &c. id. R. in domibus in L. quas tenet ad termin. annu', ex dimiss. I. Exec. Testam. F. cui N. illas dimisit ad eund. terminum præf. M. ex assign. P. de quo idem R. ill. tenuit ad eund. termin. ex assign. quam præd. N. inde fecit præf. P. fecit Vastum, &c.*



**A** F. leaseth Lands unto E. and A. his Wfe, and unto the Heirs of E. and afterwards E. dieth, and B. his Son and Heir granteth the Reversion unto C. in Fee, afterwards A. committeth Waste; the Writ shall be:

*Reg. &c. Si C. fecerit, &c. tunc sum. A. &c. quare cum, &c. idem A. in domibus in B. quas tenet ad vitam suam de pred. C. ex assign. quam B. filius & heres E. cui pref. A. quondam ux. sua, E. illas dimisit, habend. eisd. E. & A. & her. ipsius E. inde fecit pref. C. fecit Vastum, &c.*

**B** M. leaseth Lands for Life unto C. and A. her Husband, and A. dieth, and C. taketh to Husband T. of F. and T. and C. his Wife lease the Lands unto P. of F. who leaseh the Lands unto J. and afterwards M. granteth the Reversion unto R. in Fee, and J. committeth Waste, and R. bringeth a Writ of Waste; the Writ shall be such:

*Reg. &c. Si R. fecerit, &c. tunc sum. J. &c. quare cum, &c. eadem J. in domibus vel terris quas tenet ad vitam C. ux. T. de F. de pref. R. ex assign. M. de quo P. de H. qua ill. pref. J. ad terminum illum dimisit, ill. tenuit ad eund. terminum. ex dimissione pred. T. & C. cui quidem C. & A. quondam viro suo, pref. M. ill. dimisit ad vitam eorund. A. & C. inde fecit pref. R. fecit Vastum, &c.*

**C** R. leaseh Lands unto Amice and J. her Husband for Term of their Lives, the Remainder to N. Daughter to J. D. for Term of her Life, the Remainder to the right Heirs of J. D. and afterwards T. (right Heir of J. D.) granteth that Remainder unto B. of C. in Fee, and afterwards J. (Husband of Amice) dieth, and she committeth Waste; the Writ of Waste shall be such:

*Reg. &c. Si B. de C. fecerit, &c. tunc sum. &c. Amic', que fuit uxor, &c. quare cum, &c. eadem Amicia in boscis, &c. quos tenet ad vitam suam de pref. B. de C. ex assign. quam T. conf. & heres J. D. de quo eadem Amicia illos tenuit ad eund. termin. ex dimiss. quam R. inde fecit pref. A. & J. quondam viro suo, ad vitam eorund. A. & J. ita quod post mortem eorund. A. & J. pred. bosci. N. filia J. D. ad totam vitam suam ulterius remanet, & post mortem ipsius N. iidem bosci rectus her. pred. J. D. remanet, inde fecit pref. A. fecit Vastum, &c.*

And by this Writ it appeareth, that he in the Reversion shall have a Writ of Waste against the Tenant for Life, where there is a mean Estate in Remainder for Life to another.

**D** There is another Writ of Waste in this Form.

*Reg. &c. Si J. & C. fecerit, &c. tunc sum, &c. J. &c. quare, &c. eadem J. de omnibus, &c. quas tenet ad vitam suam per Finem inde in Curia nostra coram W. de C. & sociis suis Justic. nostris*



*de Banco per Breve nostrum inter præd. C. & I. R. de P. levat. & quia post mortem præd. T. & I. præf. C. & I. & herid. de corpor' corum' I. & C. excunt', remanere debent per formam Finis præd', fecit Vastum, &c.*

And if a Man leaseh Lands for Term of Life unto E. the Remainder to M. for Life, and afterwards granteth the Reversion in Fee to one B. Father of R. whose Heir the said B. is; and afterwards the first Tenant for Life dieth, and the Tenant in the Remainder entreth, and committeth Waste; now the Writ shall be:

*Rex, &c. Si R. fel'. &c. tunc sum', &c. I. de C. & M. ux. ejus, &c. quare cum, &c. iidem I. & M. in terris quas tenent ad vitam ipsius M. de præf. R. ex assign. quam I. de C. que terram præd' I. de E. ad totam vitam suam, ita quod post mortem ipsius I. de E. eadem terra præf. M. ad totam vitam suam habend. remaner', dimisit, inde fecit B. patri præd. R. cujus heres ipse est, fecer' Vastum, &c.*

And there are other Forms of Writs in the Register which are not mentioned here for the Length of them; *ideo quæro librum.*

3 H. 6. 1.

Nota.

21 E. 3. 3.

&c 27. contr.

16 E. 3.

West. 100.

contr.

And there is another Form of Writ of Waste for the Lord by Escheat, who hath the Reversion by Escheat, &c.

And there is a Writ of Waste in the Register for him in the Reversion against Tenant by *Elegit* who hath Lands and Tenements in Execution for Debt or Damages. And so against Tenant by *Elegit* who hath Lands in Execution by Recognizance of Debt: And also against his Executor who hath Lands in Execution by *Elegit*. And it seemeth to stand with good Reason that the Action doth lie.

But some say, that he against whom the Execution is sued shall not have an Action of Waste, because he may have a Writ of *Venire facias ad computandum*, &c. and there the Waste shall be recovered in the Debt; but by the Action of Waste he shall recover treble Damages, and so it seemeth he shall not do by that Writ of *Venire factas ad computandum*.

And also if a Man hath Lands in Execution by *Elegit*, and afterwards he in the Reversion granteth the Reversion unto a Stranger in Fee; that the Grantee shall have an Action of Waste against the Tenant by *Elegit* seems reasonable; because the Waste is to his Disinheritance, and he ought not to satisfy the Debt due by the Grantor.

And see 21 E. 3. in Title *Scire factas*, whether Recognisor had a *Scire factus* upon his Surnise that the Recognisee had levied all the Debt by cutting of Trees.

If a Man have Common of Estovers in the Woods of another

another, and he who is Tenant and Owner of the Wood cutteth down all the Wood, he who ought to have the Estovers shall not have an Action of Waste, but shall have an Assise of his Estovers: For the Action of Waste doth not lie but upon a Lease made, or against Tenant by the Courtlesie, or Tenant in Dower, or Guardian.

[59.]

- A If Guardian in Chivalry commit Waste, the Heir shall have an Action of Waste as well at full Age as within Age.

And if a Man be in Ward unto the Lord by Reason of the Use of Lands, because that certain Persons were seised in Fee of the Lands holden by Knights Service unto the Use of his Father and his Heirs; now if the Guardian commit Waste, the Heir within Age, or of full Age, shall have the Action of Waste against the Guardian, and yet the Heir hath not the Reversion of the Lands, but the Use only. But that is given by the Statute of 4 H. 7. cap. 17.

Note, 12 H. 4. 3. per Hankford, in a Writ of Waste the Writ doth not recite the Statute, which proves that a Prohibition was against the Guardian at the Common Law.

And if the Guardian do commit Waste, he shall lose the Wardship; and if the Wardship be not sufficient to Answer the Damages for the Waste, then he shall render Damages unto the Value over and above the Loss of the Wardship, by the Statute of Gloucester, cap. 5.

If the King commit the Wardship of the Heir in Ward unto another, and the Committee doth Waste; then upon a Surmise made thereof in Chancery, the King shall send a Writ unto the Escheator, to go to the Land, and see if Waste be done, and to certify the King thereof in the Chancery.

- B If Escheators do commit Waste in Lands which they have in their Hands in Custody; the Heir within Age, or of full Age, shall have an Action of Waste, and shall recover treble Damages against them, and they shall suffer Imprisonment two Years at the least, at the King's Pleasure. And so if Escheators do commit Waste in other Lands seised unto the King's Hands by Enquest of Office. Anno 36 E. 3. cap. 13.

- C And Escheators, or other Guardians of Lands, in the Vacation of the Temporalities of Bishopricks or Abbies, shall do no Waste, &c. Anno 14 E. 3. pro Clero, cap. 4 & 5.

And if Tenant for Term of Life, or in Dower, or by the Courtlesie, or for Years, grant over their Estate unto divers unknown Persons, &c. to defraud him in the Reversion, and afterwards Waste is committed; he in the Reversion shall have an Action of Waste against the first Tenant who took the Profits, &c. Anno 11 H. 6. cap. 5.

- D There is another Writ of Waste which lieth betwixt two Tenants in Common of Lands, or a Wood in Fee-simple, and the Form of the Writ is such:

O 2      Ren,



*Rex, &c. Si A. fecerit, &c. tunc sum. Sec. B. ostend. quare cum idem A. & B. tenant boscum de J. in N. pro indiviso, pcedit B. de eodem bosco facit Pastum, &c. ad exheredationem ipsius A. Sec. Et habeat ibi, &c.* And this Writ lieth as well of Lands, Piscary, Turbary, and the like, as of Woods when they are holden in Common. See the Statute of *West. 2. Cum das vel tres, &c. Turbariam, cap. 22.*

The Heir within Age shall have an Action of Waste against the Guardian in Socage.

The Heir at full Age shall have an Action of Waste against the King's Committee, &c.

21 H. 1. 25. If two have a Reversion unto them, and unto the Heirs of one of them, they shall join in an Action of Waste against the Tenant for Life.

28 H. 6. Guardian in Socage shall not punish Waste done by a Stranger.

45 E. 3. 17. Waste shall be brought against Tenant for Life, where there is a Mesne Estate for Years between the Tenant for Life and him in the Reversion.

48 E. 3. 16. And it appeareth by the Register, that the Writ of Waste shall be maintainable, although the Mesne in the Remainder for Term of Life be between the Tenant for Life and him in the Reversion. *10 Hen. 7. in remanend. dis. of Surr. 21*

Where a Lease is made unto the Husband and Wife for Life or Years, there the Wife shall not be punished, after the Death of her Husband, for Waste done by the Husband. *M. 3. E. 3.*

The Tenant may cut Trees to mend Houses, &c. and to do Reparations. But if Houses decay by the Default of the Tenant, to cut Trees to amend them is Waste.

Where Waste is done by the King's Enemies, or by Tempest, the Tenant shall not be punished for the same.

Cutting of dead Wood is not Waste. And if a Man cut Wood to burn, where he hath sufficient Head-wood, it is Waste.

Also it is not Waste to suffer Lands to lie fresh, and not to manure them, and to suffer them to grow full of Thorns,

&c. Also it is not Waste to fell reasonable Wood, which is used to be felled every twenty Years, or within that Time.

If a Man fell Trees it is Waste; and if he suffer the Germans upon the Roots of the Trees to be again newly destroyed, the same is new Waste.

And if a Man do not repair the Banks, by Reason whereof the Land is drowned, the same is Waste.

*Moo. pl. 107  
pl. 200*



And if a Man plough Meadow, &c. it is Waste. A Wall or Pale, which is covered with Thabe or Timber, may be Waste, if the Tenant suffer them to be uncovered, by Reason whereof, &c. And the digging of Gravel, or Stone, or Coals, shall be said Waste.

25 H. 3.  
Waste 131.  
20 H. 6. 1.  
22 H. 6. 24.  
16 H. 2. 2c.

Housebote, Haybote, and Firebote, do appertain unto a Termor of Common Right, and he may take Wood for the same. H. 21 H. 6.

O A Bishop, or a Master of an Hospital, or a Parson, shall not punish Waste done in the Time of their Predecessors. But an Abbot or Prior shall. See 57 E.

P Tenant in Tail, after possibility of Issue extinct, shall not be punished for Waste.

A Cutting down Willows in the Sight of the Manor is adjudged Waste. P. 40. E. 3. [60.]

B Lessee for Life, Remainder in Tail, the Remainder in Fee unto the Lessee for Life, if he do commit Waste, he shall be punished by him in the Remainder in Tail; and yet the Lessee for Life hath the Remainder in Fee, but there is a Meisn Estate of Inheritance, &c. 50 E. 3. 3. Co. Litt. 540

C If a Man cut Trees of the Value of 3 s. 4 d. it hath been adjudged Waste. 14 H. 4. 11. 38 E. 3. 7.

D If a Man maketh a Lease for one Year, or half a Year, and the Tenant do Waste, the Lessor shall have Waste, and the Writ shall say, *Quis tenet ad Terminum Annorum*, and in the Count he shall shew the Special Matter. Graunge to the Value of 40s. wasted, and yet no Waste, say they.

E A Termor may cut the Under-wood, growing under the great Woods and tall Woods; but if there be not any tall Wood, then he cannot cut the Wood. P. 41 E. 3.

F And a Man may have Action of Waste, and Count upon divers Leafes. M. 44 E. 3.

G The Guardian shall not be punished for Waste done by a Stranger, &c. but a Termor shall, &c.

H If Tenant in Tail lease the Lands for his own Life, he shall have an Action of Waste against the Tenant, if Waste be done.

I The Grantee by Fine of the Reversion shall not have a Writ of Waste against the Tenant, before the Tenant attorn: But if a Reversion escheat unto the Lord, he shall have Waste against the Tenant without Attornment. Lit. 151.

And so if the King grant the Reversion by Letters Patent, the Grantee shall have Waste without Attornment. 34 H. 6. 51. 6 E. 3. 17.

And so if a Man devise the Reversion unto another in Fee, upon Waste done, the Devisee shall have Waste without Attornment. Attorn. 15. 12 E. 4. 3.

K And none shall have an Action of Waste but he who hath

10 H. 7. 5. an Estate in Fee-simple, or in Fee-tail. But a Patson or Prebendary shall have a Writ of Waste upon their Lease, yet some say that they have not the Fee-simple in themselves alone.

45 E. 3. 9. And if Tenant for Term of Life commit Waste, and afterwards alieneth in Fee, yet the Writ of Waste lieth against him: Otherwise it is if the Waste be done after the Alienation made, as is said; *tamen quare.*

3 H. 7. 17. 86 If an Abbot committeth Waste in Lands which he hath in Ward, and dieth, the Successor shall not be charged. But if he be deposed, the Successor shall be charged. M. 49 E. 3.

5 H. 7. 24. For the Reason of the Case. A Writ of Waste shall be maintainable against one upon a Lease made unto him until he be promoted unto a Benefice, and the Writ shall suppose *quod tenet ad terminum vite.* And so of a Lease made to endure from such a Feast unto such a Feast, the Writ shall suppose *quod tenet ad terminum annorum* in that Case, and by the Court the special Matter shall be shewed.

21 H. 6. 3. Destruction of Villains by Tillage, adjudged Waste.

22 H. 6. 2. Waste done by a Guardian unto the Value of 20 s. was adjudged Waste, and the Plaintiff recovered. H. 34 E. 3.

40 AB. 22. The Termor is not bound for to repair the Houses which are ruinous at the Time of the Lease made unto him.

Waste 24. If two Coparceners lease Lands for Life, and Waste is committed, and afterwards one of them dieth; the Aunt and the Niece ought to join in an Action of Waste for the Waste done before; and yet the Niece shall not recover any Damages for the same, but the Place wasted; and it seems they shall hold the same in Coparcenary. M. 11 E. 3.

by Knevit. a House which was newly built and not covered was destroyed by the Guardian, and no Waste. But if a Frame which was once covered in the Life of the Lessor, if the Lessee do waste it after his Death, the Heir shall have Waste 45 E. 3. 3. 20.

If there be two Coparceners, and one hath Issue, and dieth, and her Husband is Tenant by the Courtesie, and committeth Waste, his Son shall not have an Action of Waste against him without naming the other Coparcener: But if he bring such Writ, it shall abate. *Quod vi. P. 2. H. 6. Title Waste.*

If there be Tenants in common *pro indiviso*, and one committeth Waste, the other two ought to join in an Action of Waste against the Third. See for that, M. 3 E. 2. Waste.

If the Guardian commit Waste, and the Heir being within Age, bringeth an Action of Waste, the Guardian thereby shall lose the Wardship, and Damages for so much as is wasted, besides the Value of the Wardship which is lost; but if the Heir at full Age do bring a Writ of Waste against him who was Guardian, and recover, then he shall recover treble Damages against the Guardian, because the same is out of the Statute of Gloucester, which saith, that the Guardian shall lose



lose the Wardship; for he cannot lose the Wardship there; and therefore he is not in that Case as Tenant in Dower or by the Courtesie are, who were punishable in Waste by the Common Law, *Quod vi. M. 12 H. 4. 3.* in the Title of Waste, the Opinion of *Thirning*.

## Writ of Estripment.

**U** Here are two Manner of Writs of Estrepmēt. One is; H. 6. 16. when a Man hath a real Action depending, as a *For. Variance* *medon*, or a *Dow suit infra etatem*, or a Writ of Right, or such Action wherein the Demandant shall not recover Damages; then he may sue this Writ of Estrepmēt against the Tenant, inhibiting him that he do not make Waste, nor strip, pendant the Action: And this is properly before Judgment is given for the Demandant. from the first Record, for the Recital of the Name, Town or the like, shall not abate the Writ, because it is Original, not judicial.

And another Writ of Estrepmēt lieth for the Demandant, where he hath Judgment to recover Seisin of Land, and before Execution sued by *Habere facias seisinam*, he may sue this Writ, that the Tenant do not waste or strip: And this Writ doth recite the Recovery and the Judgment, &c. And also the Demandant may have a Writ of Estrepmēt directed to the Sheriff, commanding him that he do not suffer the Tenant to do waste or strip. 3 H. 6. 16. No Age in this Writ, for it is in Nature of

*Trespass, and no Process of Usulwry, for that it is a Preyre.* 14 H. 7. 10. If the Defendant plead in arrest of Judgment, or Release be pleaded after Verdict, or if the Justices take Advice of their Judgment, the Party may have Estrepmēt, by Read. 2 H. 6. 13. 4 El. Dy. 210.

**Y** And some say that this Writ of Estrepmēt doth not lie in such Action where the Demandant shall recover Damages against the Tenant. But it seemeth reasonable that the Demandant have such Writ where he doth recover Damages, as where not: For it may be that the Tenant is not of Ability to satisfy the Demandant for his Damages. And also if the Tenant shall be suffered to let the Houses to fall to decay, or to pull them down, and to destroy the Parks and Chafes, it should be very inconvenient. [61.] 14 H. 7. 7.

**A** And in every real Action the Demandant may have a Writ unto the Sheriff, commanding him, that he see that the Statute which ordaineth the Estrepmēt be observed; and that he do not suffer the Tenant to do such strip: And by the like Reason he may have the Writ against the Tenant, where he may receive Damages, &c. 23 H. 6. 8. qu. 22 E. 3. 2. Estrepmēt 9.

**B** And if the Tenant do make a Feoffment hanging the Plea, the Demandant may have a Writ of Estrepmēt against the Tenant and against his Feoffee, &c. And by the same Estrepmēt brought against the Defendant, a Stranger to the Recovery.



same Reason it seemeth that he may have a Writ of Estreptment against the Tenant and those who are his Servants, naming their Names, &c. although they have nothing in the Tenancy. *Quere tamen. Vid. T. 5 E. 2. Tit. Estreptment.*

24 E. 3.  
Estreptment  
15. 15 Eliz.  
Dyer 325.

In an Assise, and in every real Action, where the Deman- C  
dant shall recover Damages, he may have a Writ of Estreptment for Strip made after the Judgment; and before Execution; But for Corn cut and carried away after Judgment, and before Execution sued forth by the Demandant, the Demandant shall not have a Writ of Estreptment. *Quere* what Remedy he shall have: It seemeth none; for the Tenant may take the Profits of the Lands before Execution, as I think, for it shall not be said Estreptment, if not that the Tenant do such a Thing which shall be said Waste if a Termor had done it.

18. H. 8. 5.  
Note, A  
Man cannot  
have this  
Writ be-  
tween the  
Award of

the Writ and the Return; for the Statute giveth it pendent the Writ, and it is not pendent till returned. See 12 R. 2. Estreptment 6. by Charlton, he shall not recover Damages for Waste before the Judgment against the Tenant of the Land. D

And if a Man sueth a Writ of Right unto the Lord of a E  
Court-Baron, there he may sue a Writ out of the Chancery, directed to the Sheriff, that he see that Waste be not done, &c. or he may sue a Writ out of the Chancery, directed to the Party himself, commanding him that he shall not do Waste, &c. and an Attachment thereupon. And when the Writ is depending in the Common Pleas, then the Demandant shall have the Writ of Estreptment out of the Common Pleas, or out of the Chancery, at his Election.

3 H. 6. 13.

And the Writ may be directed unto the Sheriff and the P  
Party; or he may have several Writs, one to the Sheriff, and the other to the Party.

3 H. 6. 16.

12 R. 2. Br.  
Estrept-  
ment 13.

They were at  
Issue, if it  
were before  
the Delive-

And hanging the Action the Tenant may do Waste, and G  
shall not be punished, because it is before the Prohibition delivered unto him; but only for that Waste done after the Prohibition delivered.

And if a Stranger of his own Wrong do Waste after the H  
Prohibition delivered unto the Tenant, and against the Tenant's Will, then the Tenant shall not be punished for that Waste, &c.

**I** In a *Scire facias* to execute a Fine, if the Tenant do commit Waste, the Demandant may sue a Writ of Estreptment, *&c.* 33 H. 6. 6.  
14 H. 7. 7.  
2 H. 6. 13.

**K** In an Assise, the Tenant did Waste after Verdict, and before Judgment given, and afterwards the Plaintiff had Judgment, and afterwards sued a Writ of Estreptment against the Tenant for the Waste done by him after the Verdict, and before Judgment; and it was awarded, that the Writ was well brought. *H. 21 E. 3.*

**L** And a Writ of Estreptment against the Tenant for Waste done after the Judgment, and before Execution, was maintainable at the Common Law before the Statute. 33 H. 6. 6.  
cont. by  
some.

**M** And if a *Formedon* be brought of a Manor, and after the Estreptment is brought against the Tenant, and afterwards a Tenancy doth escheare unto the Manor, and the Tenant doth commit Waste in that Manor, he shall be punished for the same, and yet it is not demanded by the Writ, but Sureties were demanded by the Writ in the Name of the Manor, and the Land cometh in lieu of the Services, *&c.* 15 Eliz.  
Dyer 325.  
ac. 4 E. 3.  
32 Br. Estreptment  
12.

**N** If a Man do recover in a Writ of Waste, he shall have a Writ of Estreptment against the Defendant for Waste done after the Judgment, and before the Execution: 14 H. 7. 10.  
Cutler and  
Keble.

**O** In Attain in the Common Pleas, the Plaintiff shall have the Writ of Estreptment against the Defendant out of the Common Pleas, if he will, or out of the Chancery. 21 E. 3. 3.  
Br. Estreptment  
7.

**P** If a Man sue a *Juris utrum* against several Tenants, as he may, or a *Scire facias* against several Tenants, there he may have an Estreptment against any of the Tenants, and not against them all. And so it seemeth if a *Formedon* be brought against two Tenants jointly, the Demandant may have an Estreptment against one Tenant only. Quære, if  
Justices of  
Assise may  
award this  
Writ.  
34 E. 3. E-  
streptment  
14. 5 E. 2.

*Estreptment 11. Joint-tenancy at the Original is a good Plea; otherwise to say, that he was Joint-tenant at the Time of the Judgment given.*

**Q** And in a *Juris utrum* sued in London, a Man shall have a Writ of Estreptment directed to the Sheriff of London, as appeareth by the Register.

*Writ de Partitione facienda.*

**R** THE Writ de Partitione facienda is such: *Res, &c. Si A. fecerit, &c. sum. B. &c. ostens. quare quum eadem A. & B. in simul & pro indiviso teneant tres acres terre cum pertin. de hereditate que fuit M. matris predicta. A & B. cujus*



*cujus hered. ipsa sunt, in l. eadem B. Partitioi nostrae inde inter eas secundum Legem & consuetudinem regni Angl. faciend. contradic. & eam facere non permittit, minus iuste, ut dicitur. & habeat ibi Sum. & hoc Breve.*

9 H. 5. 15.  
Quare if  
Parceners of  
Lands in  
Tail shall  
have a  
Writ of  
Partition.

2 [34]  
Hrot 62

And if the Husband hath one Part of the Land by purchase, and the other Parcel in the Right of his Wife, and another Coparcener hath another Part as one of the Heirs of the common Ancestor; then the Husband and the Wife shall have a Writ of Partition against the three Coparceners, and the Writ shall be such:

*Rex Vic', &c. Si l. & M. uxor ejus fecer', &c. sum' M. &c. ostens. quare cum idem l. ut in jura ipsius M. de purparte ipsorum de Mauerio de T. quod fuit A. patrii prædicti. M. cujus una hered. ipsa est, contingent. idemque l. virtute Feoffamenti sibi per F. filiam & alteram heredem prædicti A. de purparte ipsius F. de eodem Mauerio contingent. facti, ac præf. M. filia & tertia her. ejusdem A. insimul & pro indiviso teneant Mauerium præd. cum pertin', eadem M. Partitioe inde, &c.*

And there is a Rule in the Register such, that is to say, That Anno 12. at York, was sealed a Writ de Partitione faciendā betwixt Strangers; and there it was said, that a Man should have the same in every Case without de hereditate in the Writ: And it's there said, that that Writ was never seen before.

And if a Man will sue a Writ of Partition for Lands in London, then he shall have a Writ unto the Mayor and Sheriffs of London in the Nature of an *Audita querela*, and the Writ shall be such:

*Rex Majori & Vic Lond. salut'. Ex parte S. de H. & I. ux. or. ejus nobis est ostens. quod cum ipsi R. & S. insimul & pro indiviso teneant unum mesuag. cum pertin. in Lond' idem R. & S. Partitioi inde secundum Legem & consuet. ejusdem Civitat. faciend. contradic', & eam fieri non permitt', in ipsorum S. & I. dampnam non modicam & gravamen, & contra Consuetud. in Civitate illa hactenus obtentam & approbatam: Vobis igitur præcip', quod audita ipsorum S. & I. in hac parte querel. & vocatis coram vobis R. & S. auditisque hinc inde partium rationibus, iidem S. & I. in præmissis ulterius fieri faciatis quod de jure & secundum Consuetudinem Civitatis prædictæ fuerit faciend', ut habent in casu consimili fieri consuevit. Teste, &c.*

And by that it appeareth that by the Custom of London one Joint-tenant, or Tenant in common, shall have a Writ of Partition against his Companion.

And Partition may be made in the Chancery, where one of the Coparceners is in ward to the King.

And



- D And Partition may be made of an Advowson or of a Reversion, that one shall have the Reversion of such Acres, and another shall have the Reversion of others Acres; and such Partition may be without Deed. 11 H. 4. 61.  
28 H. 6. 2.  
9 Aff. 23.  
3 E. 4. 9.  
45 E. 3. Par-  
tition 7.
- E And it appeareth in 3 E. 4. that Tenants in common may make Partition by Deed.
- F And Partitions betwixt Husbands and Wives shall bind the Wives, if they be equal. And by Partition made of a Manner without speaking of the Advowson, the Advowson doth remain in common. And Joint-tenants do make Partition of a Mill without Deed, and adjudged good. 9 H. 6. 5.  
19 H. 6. 25.  
2 H. 7. 5. ac.  
47 E. 3. 24.  
3 E. 4. 9.  
19 H. 6. 25.  
That they  
cannot
- G If one Coparcener doth lease her Part unto another Coparcener for Years, yet she shall have a Writ of Partition against her Sister during the Term of Years. 21 E. 3. Par-  
tition 9.
- H After Partition in the Chancery, she which is within Age, after she cometh of full Age, if she have too little, shall have a Writ de Partitione facienda against her Sister; or a Scire facias, upon the Record of the Partition in the Chancery, against her Coparcener, which shall be returned into the Chancery, &c. to shew wherefore new Partition or Extent shall not be made, &c. 21 E. 3. 31.  
Partition 10  
Thorpe.  
The Remedy  
is only by  
Scire facias.
- I And Partition betwixt Coparceners, that one shall have the Occupation of the Land from Easter until August, solely and in Severalty to her self, and then that the others shall occupy the Lands solely and severally from August to Easter, yearly to them and theirs Heirs, is adjudged a good Partition in the Time of King E 1. 10 E. 1. Par-  
tition 21.  
C. Lit. 4.  
Hal. 34 E.  
Welden &c  
Bridgwa-  
ter's Case
- K And by the same Reason it seemeth a good Partition, if two Coparceners have two Manors by descent, and they make a Partition, that one shall occupy one Manor one Year, and the other the other Manor for that Year, and then that he who occupied one Manor one Year, should occupy the other Manor for the Year following; and so they and their Heirs shall change every Year, and occupy the Manor which the other Coparcener did occupy the Year before. ac.
- And also Coparceners may make Partition for Term of Life, or for Years.
- M And also Partition, that one shall have the Land which is entailed, and the other the Fee-simple Land, is a good Partition; and the Process in this Writ is Sum, Attachment, and Disfranchisement.

*Writ de Excommunicato capiendo.*

20 H. 6. 1.  
Not good by  
his ordinary  
Seal.

Co.  
7a

:35b

The Arch-  
deacon shall  
certify, and  
it is said  
that he was  
Ordinary  
immediate,  
and yet it is  
doubted  
whether  
good or no,  
because the  
King cannot  
have benefit  
to seize Tem-  
poralties, for  
that he hath  
not Tempo-  
ralties as a  
Bishop hath.

**B**Efore this Writ shall be granted, the Contumacy and Contempt made by the Party unto Holy Church ought to be certified into the Chancery by the Bishop, by Letters under his Seal. But this Certificate by Letters may be made into the Chancery by a Bishop elect, before he be consecrated: And also the same may be certified by Letters of the Chancellor or Vicar-General, when the Bishop is beyond the Seas, or out of his Diocese, *in remotis agend'*, &c. And although that the Bishop be in his Diocese, yet the Certificate of the Vicar-General by his Letters unto the Chancery, reciting that the Bishop is *in remotis agend'*, is good, and shall not be traversed. And in Time of Vacation of the Bishoprick, the Certificate ought to be made by the Guardians of the Spiritualties for the Time being, or by the Archbishop, &c. if he be Guardian of the Spiritualties.

And upon this Writ he shall have an *Alias* and a *Pluries*, and if they are not answered, an Attachment against the Sheriff, directed unto the Coroners, returnable in the King's Bench.

And if the Excommunicate hath made Satisfaction unto the Church for his Contumacy and Contempt, &c. then the Bishop or Vicar-General, or the Guardian of the Spiritualties, &c. as before is said, ought to certify the King in the Chancery, that the Party hath made Satisfaction unto the Church for the Contempt, &c. and thereupon he shall have such Writ to the Sheriff, *viz.*

*REN VIC. LITTE. SALUT'. CUM S. & I. quor ad denunciationis Decani & Capituli Ecclesie beati Petri Ebor. sede vacante, or thus, ad denunciation. vener. Patris A. Winton Episcopi, tanquam excommunicatos, & claves contemptentes, per corpora sua, secundum Consuetud'. And, per te iusticiari praxipimus, donec sancte Ecclesie tam de contemptu quam de injur. ei illata ab eis fuerit satisfact'; jamque ex ipso Decan. & Capitulo, or thus, ab ipso Episcopo Absolution. beneficium in form. meruerunt obtiner', sicut iidem Decanus & Capitul', or thus, sicut idem Episc. per Litteras suas patentes nobis significaver', vel significavit: Tibi praxipimus, quod ipse S. & I. a prisona qua detinetur' si ea occasione, & non alia, detinetur' in eadem, sine dilacione deliberari facias, &c.*

And if the Sheriff will not execute that Writ, he shall have an *Alias* and a *Pluries*, and Attachment against the Sheriff, directed unto the Coroners, returnable into the King's Bench.

And



And if the Party excommunicated, who is so taken and in Prison, offer sufficient Caution or Surety, to abide the Ordinances and Rules of the Holy Church, and the Judges there and the Ordinary do refuse for to take such Caution or Surety, then he may have another Writ unto the Bishop to admit of his Caution, and the Writ is such :

Writ de Cautione admittenda.

**R**EX venerabili, &c. Ex parte A. Cum ad denunciationem vestram tanquam excommunicatum & claves Ecclesie contempnentem, per corpus suum, secundum Consuetudinem Ang<sup>l</sup>, per Vic. nostrum Lincoln. &c. Justiciarij preceperimus, donec sancte Ecclesie, &c. esset satisfactum; Nobis est ostensum, quod licet idem A. vobis frequenter obtulerit idoneam Cautionem dearend. mandatis Ecclesie in forma juris, ut per hoc Absolutionis beneficium consequi posset, vos nihilominus Cautionem hujusmodi ab eo admittere hactenus recusastis; de quo miramur: Et quia volumus quod idem A. diutius in prisona contra justitiam detineatur; Vobis mandamus, quod, accepta a prefato A. Cautione predicta, ipsam A. a prisona qua occasione premissa detinetur, deliberari mandetis, alioquin quod nostrum est in hac parte exequemur, &c.

And if the Bishop will not send unto the Sheriff to deliver the Person so excommunicated, then he shall have such a Writ out of the Chancery for to deliver him.

**R**EX Vic<sup>l</sup>, &c. Ex parte A. qui ad denunciationem venerabil<sup>l</sup>, &c. and rehearse the Writ sent before unto the Bishop for Deliverance of the Prisoner, &c. Et quia volumus quod idem A. diutius in prisona. contr. justitiam detineatur; Tibi precipimus, quod in propria persona tua accedas ad prefat. Episc<sup>l</sup>, & ex parte nostra moveas & efficacis indices, ut, accepta ab eodem A. Cautione predicta, ipsam A. a prisona predicta, mandet deliberari. Et si idem Episcopus vel Custos in presentia tua id facere noluerit, tunc ipsum A. a prisona predicta, si ea occasione, & non alia detineatur in eadem, deliberari fac. Teste, &c.

And upon this Writ he shall have an Alias and a Pluries unto the Sheriff; and if he do not serve the Writs, he shall have Attachment against the Sheriff, but so shall he not have against the Bishop, &c.

And if the Bishop do certify by his Letters into the Chancery, that he hath sent unto his Official or Archdeacon to absolve the Party Excommunicate, then the Party shall have a Writ unto the Sheriff rehearsing those Letters, &c. Vobis precipimus, quod predicta A. cum vob. constare poterit ipsum ab Excommunicatione sua predicta. per predict. Offic. vel Archidiacon. absolvi,



*Writ de Cautione admittenda.*

*absolvi, à prisona quâ detinetur, si tã occasione, & non aliã, at. in eadem. sine dilatione deliberari fac, &c. Teste, &c.*

And upon that Writ he shall have an *Alias, Pluris* Attachment against the Sheriff, if he do not serve the

And yet it seems that the Official or Archdeac whom the Bishop hath sent his Letters to - absolve the is not bound to certifie the Sheriff that he hath such ters; but the Sheriff ought to go or send to them to the Truth thereof, and thereupon to deliver the Party the Bishop, or he who excommunicated him, and whose Certificate the Party was taken, may comma Sheriff to deliver him, as it appeareth by the Writs Register.

And if a Man be excommunicated, and taken by *nisiaveit*, and after offers Caution unto the Bishop to the Church, and the Bishop do refuse, for which he a Writ to the Sheriff, to go unto the Bishop, and to him to take Caution, &c. now if the Bishop think Conscience, or standeth in Doubt whether the Sheriff deliver him by that Writ, the Bishop may purchase ther Writ directed to the Sheriff reciting the Case, the End thereof, *Tibi precipimus, quod ipsum A. à prisona disto, nisi in presentia tua cautionem pignorat. ad minus ei pise. de satisfaciend. obtulerit, nullatenus deliberes absque nostro, seu ipsius Episcopi, in hac parte speciali. Teste, &c.*

[64.]

And if the Bishop do take Caution of the Party to Holy Church, then the Bishop may certifie the same in Chancery, and thereupon the Party shall have a Writ the Sheriff for to deliver him.

And if the Sheriff do delver such Persons excommunicate without Order of Law, then upon Complaint of the shop into the Chancery, he shall have a new Writ unto new Sheriff rehearsing the Matter, commanding him to the said Person, and to detain him in Prison; and a the same Writ he shall command the Sheriff, to mal old Sheriff to answer the King in his Bench for the tempt: And if the Sheriff who setteth the Party at la yet Sheriff, then it seemeth the Writ shall be awarded the Coroners to apprehend the Party excommunicated to cause the Sheriff to appear, &c. as before is said.

And if a Man be excommunicated before the Chan of Oxford, &c. and the Chancellor doth certifie this E munication into the Chancery, &c. upon the same Cert the King shall award a *Significavit* unto the Sheriff, t prehend the Party; and the Writ shall be such: 20

Co: 686.

de gratia nostra speciali concesserimus, quod Cancellar. Universitat. Oxon', qui pro tempore fuerit, per Literas suas patentes Cancell. nostro Angl. pro tempore existent. significare possit & certificare de nominibus singulorum de jurisdictione pref. Cancellar. Oxon. qui majoris Excommunicationis vinculo fuerint innotati, & quod dict. Cancell. nostro, qui pro tempore fuerit, Brevis nostra fieri & sub magno Sigillo nostro consignari fac. pro captione eorum qui sic per dictum Cancell. Oxon. fuer. excommunicati, & per quadraginta dies perseveraver. in ead. ad signif. sive certif. ipsius Cancell. Oxon. supradicti, prout in Liter. nostr. patent. inde confectis plenius inde continet; ac Joh. F. Cancell. Universitatis praed. &c. per Literas suas, &c. quod W. de B. &c. sua jurisdictione propter suam, &c. as in the Writ. And quere if the University of Cambridge have such Privilege; it seemeth they have.

If a Man be sued in the Spiritual Court, and he purchase a Prohibition and deliver the same, and notwithstanding they proceed, for which Cause the Defendant sueth an Attachment upon the same Prohibition, and pendant the Attachment, the Defendant in the Spiritual Court is excommunicated, and the same certified into the Chancery, by reason whereof a *Significavit* is awarded unto the Sheriff against the Defendant for to take him: Now the Defendant may come into the Chancery, and shew how that he had a Prohibition, and an Attachment thereupon against the Party, and that pendant the Attachment he is excommunicated, and the *Significavit* awarded to take him. Now upon that he shall have a *Superedeas* directed unto the same Sheriff, reciting all the Matter, commanding him not to take him; and if he do take him for the Occasion aforesaid, that he deliver him *donec Placitum dicti Attachment. fuerit discuss.* &c. And this Writ shall issue out of the Chancery, if the Attachment be not returned into the King's Bench. But if the Attachment be returned into the King's Bench, then he shall have this Writ of *Superedeas* out of the King's Bench, or out of the Chancery, at his Pleasure. And it ought to appear by the Certificate of the Bishop, that he hath been excommunicated by the Space of forty Days, before the *Significavit* shall be awarded.

E. And if a Man be sued in the Spiritual Court, or the Bishop sue or cite him *Ex officio*, and excommunicate him, and certifie the same into the Chancery, and upon the same a *Significavit* is awarded unto the Sheriff for to apprehend him, &c. and afterwards the Official by Letters certifie into the Chancery, that he hath appealed from that Sentence unto



## Writ de Cantione admittenda.

unto the Court of *Rome*, or unto the Court of *Canterbury*, &c. then upon that Certificate he shall have a Writ of *Superfedeas* directed unto the Sheriff, reciting that he hath appealed, commanding him not to apprehend him *pendente Appellationis negotio supradicti*; or thus, to surcease, *donec de Consilio nostro aliud inde duxerimus ordinanda*, vel usque talem diem; or thus, to surcease, &c. and he hath apprehended him *ea occasione, tunc ipsum à prisona præd' qua, &c. deliberari facias* &c.

And after the *Significavit* awarded against the Party, if he bring the Pope's Bulls into the Chancery, testifying that he hath appealed from that Sentence, &c. he shall thereupon have a *Superfedeas* unto the Sheriff; and in the *Superfedeas* it behoveth not to make mention of the Pope's Bulls, but to say, *quod sicut per instrumenta publica, &c.* And he ought to prove his diligence in suing his Appeal by Witnesses, or by Oath, and within the Year of the Time of his Appeal sued. And the Rule in the Register is, Writs of *Superfedeas* (*hanging Appeals*) ought not to be; if it do not appear upon Record in the Chancery that the *Significavit* is granted and passed, &c.

And this Writ of *Significavit* doth not lie but where a Man is excommunicated by a Special Name, and in a Special Suit against him by the Ordinary *Ex Officio*, or by the Party, for that is called *Sententia majoris Excommunicationis*, and upon Certificate thereof in the Chancery doth the Writ lie. But where he is not especially excommunicated, &c. although that the Bishop certify that he is excommunicated *in Sententia Excommunicationis*, upon that this Writ of *Significavit* doth not lie, for they ought to express the Cause, and sue against him specially in the Certificate.

Upon an Excommungment certified by the Pope's Bulls a *Significavit* shall not be granted.

[65.] If a Bishop certify an Excommungment into the Chancery, made in Time of his Predecessor, and the Contumacy, &c. he shall have a *Significavit* thereupon: But upon the Certificate of the Commissary, or Official, of an Excommungment in the Chancery, and of the Contumacy a *Significavit* shall not be granted; nor upon the Certificate of an Abbot, who hath ordinary Jurisdiction, of an Excommungment in Chancery, a *Significavit* shall not be granted.

If a Bishop certify in Chancery, that another Bishop hath certified him that the Party is Excommunicate in his Diocess, and so hath remained by the Space of forty Days; the

2 Co: 517

p lo. 606.

12 E. 4. 15,  
16.  
14 H. 4. 14.  
8 H. 6. 3.  
20 H. 6. 1.  
E. 4. 14.

p lo 606.



the same Certificate is void, and a *significavit* shall not be granted thereupon.

**B** If a Man be excommunicated in the Spiritual Court, and the Bishop certifie the same in the Chancery and hath a Writ of *Significavit* directed unto the Sheriff to apprehend the Party, and the Defendant do appeal unto the Court of *Rome*, and hath Bulls and Instruments exhibited into the Chancery to prove the same; then upon these Bulls, &c. shewed in Chancery he shall have a special *Scire facias*, rehearsing all the matter directed unto the Sheriff, to warn the Party at whose Suit he was excommunicated to appear in the Chancery at a certain day, to shew cause why he ought not to surcease to apprehend the Party so excommunicated depending the same Appeal; and also commanding the Sheriff to take sufficient Sureties, who will answer Body for Body for him who is so excommunicated, to pursue, &c. and to do unto the Party as the Court shall award, and that then he do surcease to apprehend him. And if the Sheriff return the Writ of *Scire facias*, that he hath warned the Party, and hath sent the Writ unto the Bailiff of the Liberty, who had given him Answer, that he had warned the Party at whose Suit he was so excommunicated, to appear in the Chancery at the Day given by the Writ, &c. Now if the Party who was returned warned doth not come to appear, then he who was excommunicated shall have another Writ unto the Sheriff for to deliver him, &c. if he hath apprehended him; and if he hath not taken him, that he do surcease for to apprehend him, &c.

**C** And if a Man be excommunicated by the Bishop, and after the Vicar-General certifieth the same into the Chancery, because the Bishop is *in remotis*, for which a *Significavit* is granted, and he is taken by it; and then he who is apprehended, by his Friends sheweth in the Chancery how that he hath appealed unto the Court of *Canterbury*, which he followeth with Effect: Upon this Surmise he shall have a Writ unto the Sheriff who hath the Party excommunge in his Custody, commanding him that he warn the Bishop or the Vicar-General, and him who sued the Process against the Party excommunge, to appear in a certain Day in the Chancery, to shew wherefore the Party should not (*pendente Appellatione*) be delivered; and also to cause the Party excommunge under safe Custody to come, and to do as the Court shall consider in the said Cause.

**D** If the Bishop do excommunicate a Man, and certifieth the same into the Chancery, and thereupon a *Significavit* is awarded,

awarded, and the Party taken thereby, and he sueth Appeal in the Court of *Canterbury*, or of *Rome*, &c. and hath a *Scire facias* against the Bishop as aforesaid, and against the Party, to answer in Chancery, and shew Cause why he should not be delivered; by which the Bishop and the Party are warned, and appear not, for which Cause the Party is delivered: Now if he who is excommunicated will sue any Action in the Common-Pleas, or in the King's-Bench, or elsewhere, if he think the other Party will plead the Excommunication against him in the Common-Pleas, or elsewhere, then he shall have a special Writ of *Significavit* unto the Justices of the Court where he sueth, rehearsing all the Matter as aforesaid, &c. commanding them to proceed *secundum Legem & consuetudinem Regni*.

If the Bishop certifie into the Chancery an Excommunication made at the Suit of any one, and thereupon a *Significavit* is awarded, and the Party apprehended; now he who is apprehended may by his Friends shew in the Chancery, that he sued an Appeal from that Sentence in the Court of *Canterbury* with effect, and by *Scire facias* against the Bishop, and the Party at whose Suit he was excommunicated, returned at a certain Day into the Chancery: And thereupon he shall have a Writ unto the Sheriff, rehearsing all the Matter, commanding him thereby to warn the Bishop and the Party to be in the Chancery at the Day of the Return of the Writ, to shew what they can say wherefore the Party shall not be delivered; and also by the same Writ commanding the Sheriff that he take sufficient Sureties of the Party excommunicated to appear in the Chancery at the same Day, and to carry him back again unto Prison, if the Court at the same Day shall so think fit; and in the mean time to let him go at large by his Sureties, &c. and then if at the Day of the Return of the Writ the Party excommunicated doth not appear, nor his Bail, then shall a new Writ be awarded unto the Sheriff to apprehend the Party excommunicated again, &c. *donec sancte Ecclesie tam de contemptu quam de injuria ab eo fuerit satisfact*; and also to arrest the Bail, to appear before the King in his Bench at a certain Day, &c. *ad satisfaciendum tam nobis quam pref. Episcopo*, and him at whose Suit he was excommunicated; and farther to do as the Court shall award. And if at the Day given in Chancery by the Writ of *Scire facias*, the Bishop, and the Party at whose Suit he was excommunicated, do appear, and also he who was excommunicated, and the Matter cannot be determined that Day: Then Day shall be given over unto



unto both Parties, at a certain Day at another Term, &c. and then the Party excommunicate shall have a special *Superse-deas* unto the Sheriff, rehearsing the whole Matter, Commanding him that he do not apprehend him till that Day, &c. if he have not other Commandment from the King, &c.

A There are other Writs in the Register which are called [66.]

Writs of *Significavit*, because they shall not be granted before that the Bishop hath made Certificate by his Letters under his Seal of the Matter in the Chancery, upon the which the Writs shall be so granted. And the Writ is, where a Man is a Clerk convicted for Felony, and afterwards makes his Purgation; now the Bishop shall certifie this Purgation into the Chancery by his Letters, &c. and thereupon the Clerk convicted shall have a special Writ out of the Chancery directed unto the Sheriff, to restore him to his Goods and Chattels.

*Rex Vic. Lincoln. salus. Cum C. de P. Persona Ecclesie de R. nuper de raptu uxoris S. & de asportac. bonorum suorum, coram dilecto & fideli nostro W. & sociis suis Justic. nostris, prout mos est, eid. Episcopo liberatus, ibidem innocentiam suam super eodem crimine coram eodem Ordinario legitime purgaverit, sicut idem Episc. per Literas suas patentes nobis significavit, Tibi precipimus, quod eid. C. terrae, bona & catalla sua per te in manum nostram occasione praemiss. capta, nisi fugam fecerit ead. occasione, sine dilatione restituas, de gratia nostra speciali. Teste, &c.*

And the like Writ for the Heir of the Clerk, after his Death, to deliver the Lands unto him, &c. and in the End of the Writ are these Words, *sine dilatione de gratia nostra speciali*; by which it seemeth that these Words, *de gratia nostra speciali*, are not necessary Words, but Words of Form for the King's Honour, and that the King of right ought to make such Restitution.

B And if a Man do demand his Clergy before the Justices, and reads as a Clerk, and the Ordinary is demanded, and cometh not, for which the Justices command the Clerk to Goal again, &c. now at the Suit of the Ordinary, or of his Vicar-General, unto the King, or his Chancellor, he shall have a Writ out of the Chancery directed to the Justices of Goal-delivery, reciting the Matter, commanding them that they send unto the Goaler to deliver him unto the Ordinary.

V. 4. E. Dy.  
215. Stamf.  
108.

C And if a Man be taken out of a Church, or out of Sanctuary against his Will: Now if the Bishop certifie the Matter by his Letters Patents under his Seal into the Chancery, &c. desiring Restitution; then the King shall send his Writ unto



*Writ de Homine replegiando.*

the Judges of Gaol-delivery, reciting the Matter, commanding them to bring back the Party to the Place from whence he was taken.

If an Abbot or Prior certifieth by his Letters under his **D** Seal, that his Monk, Friar, Canon, is vagrant out of his Order, &c. in the Country; then upon that Certificate he shall have a Writ unto the Sheriff, to arrest and apprehend him, and to deliver him unto his Abbot or Prior, &c. or to their Attorney, to chastise him according to the Rule of his Order, &c.

*Writ de Homine replegiando.*

**I**N divers Cases a Man shall not have this Writ, although he be taken and detained in Prison: As if a Man be apprehended for the Death of a Man, or be taken by the King's Command; or if a Man be apprehended by the Command of the Chief Justice, as it appeareth by the Register. But the Statute of *West.* i. is, that he shall not be replevifable if he be taken by the Command of the Justices, and doth not say of the Chief Justice.

And also if a Man be taken by the Command of the Justices of the Forest, or if a Man be outlawed, or if a Man abjure the Realm, or if a Man be Approver, or if a Man be taken for Felony with the Manner; or those who break the King's Prison, or those who are common or known Thieves, or those who are appealed by Approver so long as the Approvers live, if they be not of good Fame, or for burning of Houses feloniously, or those who counterfeit the King's Money, or the King's Seal, or those who are taken by Certificate of the Bishop by a Writ de *Excommunicato capiendis*, or those who are apprehended for Treason, or those who are convicted by a Writ of *Redisseisin*, &c. all these Persons are notailable by this common Writ de *Homine replegiando*. But first they ought to make their Fines, or agree with the King, and thereupon have a Special Writ to the Justices, or those who do keep them in Prison, reciting how they have been fined, commanding them for to deliver them.

2 H. 4. 21.  
but 8 H. 4.  
16. cont.  
See 78 D. &  
9 H. 4. 2.

And if two or three Men be taken and imprisoned, they **F** may sue a joint Writ de *Homine replegiando*. And yet *H. 8 H. 4. 31.* such a Writ sued by two was abated; but yet it seems the Law is, they may sue jointly, and the Writ shall be such:

*Rex Vic. Lincoln', &c. Praecipimus tibi, quod jussu & sine dilac. repleg. sac', B. C. & D. quos in ipse capti & captus tenent ut dicitur; vel, quos D. & E. capiunt. & capt. tenent, ut dicitur;*

dicitur; nisi capti fuerint per special præcept. nostrum, vel capti-  
talis Justic. nostri, vel pro morte homin', vel pro Foresta nost'a,  
vel pro aliquo alio recto, quare secundum consuet. Angl. non sint  
repleg'; ne amplius clamorem inde audiamus pro defectu justitiæ.  
Teste, &c.

And upon that he shall have an *Alias* and *Pluries*, and  
Attachment, if need be. But if he who apprehendeth the  
Man do claim him as his Villain, and the same is returned  
by the Sheriff upon the *Alias* or the *Pluries*, then the Plain-  
tiff shall have another Writ of *Pluries* to the Sheriff  
thus:

Rex Vic', &c. Quum tibi plur' præceperimus, quod injuste, &c.  
W. quem H. cepit, & capt. tenet, ut dicitur, nisi capt. esset, &c.  
non sit replegiabilis, vel nobis causam significaves, quare, &c.  
ac tu nobis retornasti, quod accessisti ad Manerium prædict' H.  
ad replegiand. ibidem præd. W. juxta tenorem mandati nostr.  
præd', sed præd' H. deliberation. corporis ipsius W. non fieri per-  
misit, eo quod asserit ipsum W. esse nativum & fugitivum suum  
Manerii sui præd. clamando jus nativitatis & servitutis in per-  
sona ipsius W. infra dominium Manerii sui, &c. Nos nolentes quod  
præd. W. si liber homo sit, p. r. hujusmodi captivus, & clamemus lege  
communi destitua', tibi præcepimus, quod si præd. W. invenierit  
tibi sufficient. Caution', &c. essendi coram nobis a die S. Mich. in  
xv. dies, &c. ad respond. præf. H. si, &c. tunc ipsum W. interim  
repl. fac', juxta tenor. mandatorum nostrorum, &c. Et nihilominus  
si præd' W. fecerit te sicur. de clam. suo, &c. tunc pone per vna',  
&c. præd' H. quod sit coram nobis ad diem prædictum, præd' W.  
de captivis & clamens præd. resp. Et habeas ibi nomina Pleg', &  
hoc Breve, &c.

[67.]

And in the same Manner it shall be done in a *Homine replegiando*: If the Defendant claim the Plaintiff as his Ward, then upon that returned at the *Pluries* by the Sheriff, the Plaintiff shall have a Special Writ as aforesaid, reciting that he holdeth the same Land of the Defendant by Socage, and not by Knight's-service; commanding the Sheriff to deliver him, and to admit the Defendant by Pledges to appear at a certain Day, as afore is said, to answer unto the Plaintiff, &c.

A And if a Man be taken within the Cinque-Ports, then he shall have a Writ *de Homine replegiando*, directed unto the Constable of Dover, and unto the Warden of the Cinque-Ports, or his Lieutenant, in the Nature of an *Addita querela*, and the Writ shall be:

Rex dilecto, &c. Constabular. Castri sui Dover', &c. & Custod.  
Quinque portuum suorum, vel ejus locum tenenti, salutem. Ma-



*Writ de Homine replegiando.*

clamus vobis, quod audita querela A. quem B. cepit, & infra libertat. Portuum prædicti captum tenet, ut dicitur, vocatisque coram vobis partibus præd., auditisque hinc inde eorum rationibus, ipsum A. si secundum Legem & Consuetud. Portuum prædicti replegiabilis fuerit, replegiari faciatis, nisi capt. sit per speciale præceptum nostrum, vel capitalis Justitiæ nostræ, &c. ne amplius inde clamorem audiamus pro defectu justitiæ, &c.

And if a Man be taken by the Officers of the Forest, then he shall have a Writ de Homine replegiando unto the Keeper of the Forest, in such Form, viz.

Rex dilecto & fideli suo W. de B. Custodi Forestæ suæ citra Trent, vel ejus locum tenenti in Foresta de S. Mandamus vobis, quod si A. & B. capti & detenti in Foresta de S. pro transg. Venationis per ipsos facta, ut dicitur, unde indistat. sunt, inven. vobis, viz. uterque eorum, duodecim probos & legales homines de Balliva vestra, qui eos manucaptant habere coram Justitiæ nostris proximè itinerantibus ad Placita Forestæ in Com. N. cum in partes illas venerint, ad stand. recto de transg. præd.; tunc ipsos A. & B. si secundum Ass. Forestæ replegiabiles fuer. præd. xii. interim trahas in ball., sicut præd. est: & habeas ibi nomina illorum xii. hominum, & hoc Breve. Teste, &c.

And if the Warden will not bail him, he shall have an **B** Alias and Pluries against the Warden, directed unto the Sheriff, to attach him to answer before the King in his Bench, and to shew wherefore he has not replevied him, &c. And in the same Writ it shall be contained, that he call to him the Verderors, to deliver him who is so taken in the Presence of the Verderors by good Bail, and that the Sheriff do deliver the Names of the Bail unto the same Verderors, to answer before the Justices in the next Eyre. **C** And no Man shall be taken nor imprisoned for Vert or Venison, if he be not found in the manner, or indicted; in which Case he shall be set to Bail by the Warden *ex Officio*, or otherwise by Writ, as is aforesaid, &c.

For hunting in the King's Chases, or in the Chases of other Men, he ought to be sued at the Common Law; and for the same a Man shall not be taken and imprisoned, until he be convicted at the Common Law in an Action there brought against him. But for hunting in Parks, &c. the Party shall have an Action within the Year and Day upon the Statute of *Wist. 1. cap. 20.* But after the Year and Day the King shall have Suit. **D**

And if a Man hath any Park within the Bounds of any Forest, which Park is not inclosed according unto the Assise of the Forest, &c. then it shall be seized into the King's Hands; **E**



Hands; and then the Party shall have a special Writ of Replevin, to replevy a Park out of the King's Hands: And the Writ is such,

*Rex dilecti. & fideli suo W. B. Custodi, &c. vel ejus locum tenenti in Foresta de S. salut. Mandamus vobis, quod Parcum A. de B. & I. qui est infra metas Forestae nostrae praed., & qui, pro eo quod non includitur secundum Assisam Forestae, captus est, ut dicitur, in manum nostram, si secundum Assisam Forestae replegiabilis existat, eidem A. usque ad adventum Justitiae, Placit. Forestae in Com. praediecti replegiari fac. Teste, &c.*

- F** In a *Homine replegiando*, the Defendant claims the Plaintiff for his Villain, and the Plaintiff pleads that he is free, and saith that the Defendant hath taken his Goods, and prays that he may gage Deliverance, &c. for which the Defendant doth gage Deliverance. But the Plaintiff shall not find Sureties that he shall re-deliver the Goods, &c. if he be found Villain. *Quod vi. M. 6 E. 4. 8.*
- G** But in a *Homine replegiando*, if the Defendant claim the Plaintiff as his Villain, the Plaintiff ought to find Sureties to deliver his Body to the Defendant if he be found his Villain. *Quod vid. P. 31 E. 3.*
- A** In a *Homine repleg.* the Plaintiff was bound in a Recognisance in a certain Sum of Money unto the Defendant's Use, that he would sue him *cum effectu*; and if the Writ be abated for any Cause, yet he ought to sue another Writ for the taking, &c. otherwise he shall forfeit that Recognisance, as it appeareth, *H. 8 H. 4.*
- B** If a Man sue a *Homine repleg.* and the Defendant claim the Plaintiff for his Villain, if the Sheriff return the same upon the *Alias*, or upon the *Pluries*, in the King's-Bench, or Common-Pleas, where the Writ is returnable; then upon Sureties found in Court where the Writ is returned by the Plaintiff to yield his Body, &c. he shall have a special Writ unto the Sheriff for to deliver the Plaintiff out of Prison, &c. But by the Register he shall have a special Writ unto the Sheriff to take Sureties of the Plaintiff, and to sue with effect, and to yield his Body, if, &c. But the Usage at this Day is, that he find Sureties in Court, &c. and not to award a Writ unto the Sheriff to take Sureties, *Quod vi. M. 8 H. 4. 3.*
- C** And in a *Homine repleg.* if the Sheriff return that the Defendant hath esloined the Plaintiff's Body, so that he cannot deliver him; then the Plaintiff shall have a *Capias in Withernam* to take the Defendant's Body, and to keep the same *quousque*, &c. whether he be a Peer of the Realm, or other common Person. And if the Sheriff return *Non est inventus* in this

H. 7. 3.  
13. H. 7. 17.  
But the better Opinion is, that it is in the Judges Discretion. But  
6 E. 4. 8.  
& 12 E. 4. 4.  
That he shall not find Surety.  
[68.]

*Writ de Replegiare de Averiiis.*

this *Capias* in *Withernam* of the Body, then the Plaintiff shall have a *Capias* in *Withernam* against the Defendant's Goods, &c. *Quod Vide M. 11 H. 4. in Title of Withernam.*

*Writ de Replegiare de Averiiis.*

**I**F a Man take more live Cattle than one Beast, then the D Writ is such:

*Rex, &c. Præcipimus tibi quod iuste & sine dilatione replegiari fac. B. Averia sua, quæ D. cepit & injuste detinet, ut dicitur; & postea cum inde iuste deduci fac', ut amplius inde claverem audiamus pro defectu iustitiæ, &c.*

But if he take but one live Beast, then the Writ shall be:

*Rex, &c. Præcipimus quod repl. fac. B. quendam equum suum, vel quoddam jumentum suum, vel bovem suum, &c.*

And if a Man take a Dead Chattel, then the Writ shall be:

*Rex, &c. Præcipimus, &c. quod repl. fac. B. Bona & Catalla sua.* And in the Count he ought to declare of divers Things; But if he take but one Thing which is a dead Chattel, then the Writ shall be:

*Rex, &c. Præcipimus, tibi, &c. quod repleg. fac. B. quoddam rete, vel quoddam examen apium suarion, vel quoddam ferr. melleud. sui.* And if the Sheriff doth nothing upon this Writ, then he shall have an *Alias repleg. fac', &c.* and in the same Writ he may have this Clause; *Vel causam nobis significes, quare mand. nostrum vel tibi inde direct. excipi noluisti, vel non potuisti, &c.* And then this Writ shall be returned into the

King's Bench or Common Pleas. And if he do not serve this Writ, then he shall have a *Pluries* returnable into the King's Bench or into the Common Pleas. And in the *Pluries* is always this Clause; *vel causam nobis significes:* But not in the *Alias repleg.* if not that the Party will have it put in the Writ. And the Plaintiff may sue all these Writs forth together, *viz.* the *Replevin*, the *Alias* and the *Pluries*, and deliver them unto the Sheriff all at one Time; if he so see good. And if the Sheriff doth not return the *Pluries*, then the Plaintiff may have an Attachment against the Sheriff, directed unto the Coroners.

And it appeareth by the Register, that if the Sheriff return upon the *Replevin*, *Sicut Alias* or *Pluries*, that he hath sent unto the Bailiff of the Franchise, &c. who hath given him no Answer, or that he will not make Deliverance, &c. then the Plaintiff shall have a *Non omittas* unto the Sheriff, that he enter into the Franchise and make Return; and if the Sheriff doth not do so, he shall have an *Alias non admittas* directed unto the Sheriff, and afterwards a *Pluries non omitt'*, &c.

But



But it seemeth that that Return, *Quod mandavi Ballivo Libertatis &c. qui nullum mihi dedit responsum*, or the Return that the Bailiff will not make Deliverance of the Cattle, are not good Returns. For by the Statute of *West. 1. cap. 17.* in the End of the Statute it appeareth, That the Sheriff upon such a Return made unto him by his Bailiff, ought presently to enter into the Franchise, and to make Deliverance of the Cattle taken: And so it appeareth the Sheriff may do by the Statute of *Marlbridge, cap. 21.* If a Plea of *Withernam* be in the County by Plaint before the Sheriff, and the Sheriff send unto the Bailiff of the Liberty to make Deliverance, and the Bailiff doth nothing, that then the Sheriff *ex officio* may enter into the Liberty without any Writ directed unto him in that Case.

**G** And if the Sheriff upon the *Pluries* return, *quod prædict. B. Averia præd. A. cepit, & ea fugavit de Com. præd. in Com. F. per quod ea eidem A. repl. non potuit, &c.* or if the Sheriff return That he sent to the Bailiff of the Liberty of *D.* who hath Return of Writs, &c. who gave him Answer, that the Cattle are esloined into divers Liberties, by Reason whereof he cannot have a View of them, nor deliver the Cattle; or if the Sheriff return, That he himself cannot have View of the Cattle to deliver them; or if he return, That after the taking, &c. that the Defendant hath esloined the Cattle out of his Bailiwick that he cannot deliver them; or if he return That the Defendant hath esloined them into unknown Places, that he cannot have view of them, to deliver them; or if the Sheriff return, That he sent unto the Bailiff of the Liberty, who answered him, that the Defendant had impounded the Cattle within the Rectory of the Church of *G.* for which Cause he cannot deliver them, &c. Upon these Returns made by the Sheriff the Plaintiff shall have a Writ of *Withernam*, to take as many of the Defendant's Cattle, directed unto Sheriff; and the Writ shall be such:

[69.]

**A** *Rex Vie, &c. Cum plur. tibi præcepimus, quod injuste, &c. A. Averia sua que B. &c. detinet, ut dicitur, vel causam nobis significat, quare mandatum nostrum plur. inde tibi direct. exequi noluerit, vel non potuerit; ac tu nobis significaverit, quod postquam præd. B. Averia præd. A. cepit, in Com. tuam ea fugaverit, & de Com. præd. in Com. C. per quod ea eidem A. replegiar. non potuisti: Nos, malitia ipsius B. obviare volentes in hac parte, Tibi præcipimus, quod Averia præd. B. in Balliva tua sine dilatione capias in Withernam, & ea detineas, donec eidem A. Averia sua præd. secundum consuetud. regni nostri, replegiare possis, juxta tenorem mandatorum nostrorum præd. prius tibi, &c.*

And



upon a Replevin sued by Writ, then he ought to put an evident Cause in the Writ after the Teste of the Writ: And the Form of the Writ is such:

*Rem Vic. &c. Pune coram Justiciariis nostris apud Westm' tali die Loquel. qua est in Com. tuo per Breve nostr. int. A. & B. de Averia ipsius A. captis & injuste detentis, ut dicitur; & sic. pref. A. quod sit ibi, Loquelam suam versus præd. B. inde proficatur, si voluerit: Et habeas ibi hoc Breve, & aliud Breve. Teste, &c. Et quia præd. B. cepit Averia præd' in feodo suo pro Consuetud. & Servic. sibi debita, ut dicitur, Fiat executio istius Brevis si causa sit vera, & præd. B. petit, & aliter non. And he may shew divers other Causes: Quia præd. B. & C. cepit Averia præd. in feod. ipsius B. pro Consuetud., &c. Fiat executio, &c. ut supra. Or thus: Quia A. Clericus D. Vic. Com. præd', qui frequenter in absentia Vic. Com. illius tenet Placita ejusdem Com., est Cmsang. præd' A. propter quod idem Vic. favet ipsi. A. in Loquela præd', ut dicitur, Fiat executio, &c. ut supra.*

And he may shew any Cause which induceth any Favour that the Sheriff doth, or is like to do unto the Plaintiff. Or thus: *Quia præd. B. clamat præd. A. esse Nativum suum, & ea occasione assitit Averia præd' esse sua propria, propter quod Loquela illa in Com. deduci non debeat, ut dicitur. Fiat executio, &c. ut supra.*

And if a Replevin be sued by Writ in any other Lord's Court than in the King's Court, then the Plaint cannot be removed before the Justices by the Plaintiff, nor by the Defendant, without putting Cause in the Writ; and the Writ is, *Pune ad Petitionem patentis, Loquelam qua est in Com. tuo per Breve nostrum inter C. & Abbat. de W. & I. de quodam equo ipsius R. capti. & injuste detentis ut dicitur; & sum. per beno Sum. præd. Abbat. & I. quod tunc sint ibi præf. R. inde resp': Et habeas ibi hoc Breve, & aliud Breve. Teste, &c. Quia præd. Abbas est Dom. Cur. in C. in qua Loquela illa pendet per retornum Brevis nostri, per quod idem R. in Loquela prædicta in eadem Curia versus præf. Abbatem & I. justitiam consequi non potest, ut dicitur. Fiat executio, &c. ut supra.*

And if the Plea be removed at the Suit of the Plaintiff, then when he hath shewed Cause in the End of the Writ, he shall say afterwards in the same Writ, *Propt. quod idem Querens in Loquela sua præd' versus præfati B. in eadem Curia justitiam consequi non potest, ut dicitur.*

And if the Plea be removed at the Suit of the Defendant, then after Cause shewed in the Writ, it shall be said, *propter quod idem Ballivus favet ipsi. A. in Loquela sua præd', ut dicitur. Fiat executio, &c. ut supra.*

## Writ de Recordare.

**W**HEN the Plaintiff is in the County, and the Replevin sued there without Writ; then if the Plaintiff or Defendant will remove that Plaintiff, he ought to sue a Writ of Recordare out of the Chancery, directed unto the Sheriff; and the Writ shall be such:

*Rex Vic. Linc. salut. Præcipim. tibi, quod in pleno Com. tuo recordar. fac. Loquel. quæ est in eodem Com. sine Breui nostro inter A. & B. de Averis ipsius A. captis & injuste detentis, ut die & Record. illud habeas coram Justiciariis nostr. apud Westm. tali die, &c. sub Sigillo tuo, & sub Sigillis quatuor legal. Milit. ejusdem Com. ex illis qui Recordar. illi interfuer; & partibus eundem diem præfigas, quod tunc sint ibi, in Loquela illa prout justum fuerit processurum: Et habeas ibi nomina prædictor. quatuor Militum, & hoc Breve. Teste, &c. Fiat executio istius Brevis, si præd. A. hoc petat, & aliter non.*

And thereby it appeareth, that the Plaintiff may remove the Plaintiff by Recordare, without any Cause put in the Writ; But the Defendant cannot remove the Plaintiff by a Recordare, without shewing Cause in the Writ, as before is said upon the Pone. And the Causes for the Defendant ought to be such; Quia præd. B. in placitando asserit se Averia præd. cepisse in separali solo suo, ut in dampn. suo ibid', in quo quidem solo præd. A. clam. habere Commun. Pastur', ut dic'; quæ quidem Loquela, eo quod tangit liber. Tenement. (ut prædict. est) in eodem Comitatu, secund. Legem & Consuetud' regni nostri sine Breui nostro placitari non debet; Fiat executio istius Brevis, si causa sit vera, & præd. A. hoc petat.

And if a Replevy be sued by Plaintiff, in the Court of any other Lord than in the County-Court before the Sheriff, then the Recordare which is sued by the Plaintiff or Defendant shall be directed unto the Sheriff, and the Writ shall be such:

*Rex Vic. Linc. salut', Præcipim. tibi, quod assumptis tecum quatuor discretis & legalibus Militibus de Com. tuo, in propria persona tua accedas ad Curiam W. de C. & in illa plena Curia recordari facias Loquelam quæ est in eadem Curia sine Breui nostr. inter, &c. & Record' illud habeas sub Sigillo tuo & sigill. quatuor legal' dominum ejusdem Cur' qui Recordar' illi interfuer; & partibus, &c. ut supra. Quia præd. A. est Ballivus præd. W. de C. Curie sue præd', & tenet Placita ejusdem Cur. & Judex in sua causa esse non debet.*

Another



upon a Replevin sued by Writ, then he ought to put an evident Cause in the Writ after the Teste of the Writ: And the Form of the Writ is such:

*Rem Vic. &c. Pune coram Justiciariis nostris apud Westm' tali die Loquel. qua est in Com. tuo per Breve nostr. int. A. & B. de Averia ipsius A. captis & injuste detentis, ut dicitur; & dic. pref. A. quod sit ibi, Loquelam suam versus præd. B. inde prosecutur, si voluerit: Et habeas ibi hoc Breve, & aliud Breve. Teste, &c. Et quia præd. B. cepit Averia præd' in feodo suo pro Consuetud. & Servic. sibi debita, ut dicitur, fiat executio istius Brevis si causa sit vera, & præd. B. petit, & aliter non. And he may shew divers other Causes: Quia præd. B. & C. ceper' Averia præd. in feod. ipsius B. pro Consuetud', &c. fiat executio, &c. ut supra. Or thus: Quia A. Clericus D. Vic. Com. præd', qui frequenter in absentia Vic. Com. illius tenet Placita ejusdem Com', est Cmsang. præd. A. propter quod idem Vic. faciet ips. A. in Loquela præd', ut dicitur, fiat executio, &c. ut supra.*

And he may shew any Cause which induceth any Favour that the Sheriff doth, or is like to do unto the Plaintiff. Or thus: *Quia præd. B. clamat præd. A. esse Nativum suum, & ea occasione assitit Averia præd. esse sua propria, propter quod Loquela illa in Com. deduci non debeat, ut dicitur. fiat executio, &c. ut supra.*

And if a Replevin be sued by Writ in any other Lord's Court than in the King's Court, then the Pleint cannot be removed before the Justices by the Plaintiff, nor by the Defendant, without putting Cause in the Writ; and the Writ is, *Pune ad Pétitionem petentis, Loquelam qua est in Com. tuo per Breve nostrum inter C. & Abbat. de W. & I. de quodam equo ipsius R. capt. & injuste detento ut dicitur; & sum. per honor Sum. præd. Abbat. & I. quod tunc sint ibi præf. R. inde resp' : Et habeas ibi hoc Breve, & aliud Breve. Teste, &c. Quia præd. Abbas est Dom. Cur. in C. in qua Loquela illa pendet per retornum Brevis nostri, per quod idem R. in Loquela prædilla in eadem Curia versus præf. Abbatem & I. justitiam consequi non potest, ut dicitur. fiat executio, &c. ut supra.*

And if the Plea be removed at the Suit of the Plaintiff, then when he hath shewed Cause in the End of the Writ, he shall say afterwards in the same Writ, *Propt. quod idem Querent in Loquela sua præd' versus præfat' B. in eadem Curia justitiam consequi non potest, ut dicitur.*

And if the Plea be removed at the Suit of the Defendant, then after Cause shewed in the Writ, it shall be said, *propter quod idem Ballivus faciet ips. A. in Loquela sua præd', ut dicitur. fiat executio, &c. ut supra.*



## Writ de Recordare.

**W**HEN the Plaintiff is in the County, and the Replevin sued there without Writ; then if the Plaintiff or the Defendant will remove that Plaintiff, he ought to sue a Writ of Recordare out of the Chancery, directed unto the Sheriff; and the Writ shall be such:

*Rex Vic. Linc. salut. Præcipim, tibi, quod in pleno Com. tuo recordar. fac. Loquel. que est in eodem Com. sine Breui nostro inter cordare A. & B. de Aueris ipsius A. captis & iniuste detentis, ut die. & Record. illud habeas coram Justiciariis nostr. apud Westm. tali die, &c. sub Sigillo tuo, & sub Sigillis quatuor legal. Milit. ejusdem Com. ex illis qui Recordar. illi interfuer; & partibus eundem diem præfigas, quod tunc sint ibi, in Loquela illa prout justum esse fuerit processurum: Et habeas ibi nomina prædictor. quatuor Militum, & hoc Breue. Teste, &c. Fiat executio istius Brevis, si prædict. A. hoc petat, & aliter non.*

*It appeareth by the Register, & Br. Cause de Remo- ver, Plea 36. That by Recordare Pleas shall be removed extra Dur- ham & C. ibitriam: These are Courts of Record.*

And thereby it appeareth, that the Plaintiff may remove the Plaintiff by Recordare, without any Cause put in the Writ; But the Defendant cannot remove the Plaintiff by a Recordare, without shewing Cause in the Writ, as before is said upon the *Pone*. And the Causes for the Defendant ought to be such; *Quia præd. B. in placitando asserit se Aueria præd. cepisse in separali solo suo, ut in dampn. suo ibid, in quo quidem solo præd. A. clam. habere Commun. Pastur, ut dic; que quidem Loquela, eo quod tangit liber. Tenement. (ut prædict. est) in eodem Comitatu; secund. Legem & Consuetud. regni nostri sine Breui nostro placitari non debet; Fiat executio istius Brevis, si causa sit vera, & præd. A. hoc petat.*

And if a Replevy be sued by Plaintiff, in the Court of any other Lord than in the County-Court before the Sheriff, then the Recordare which is sued by the Plaintiff or Defendant shall be directed unto the Sheriff, and the Writ shall be such:

*Rex Vic. Linc. salut, Præcipim. tibi, quod assumptis tecum quatuor discretis & legalibus Militibus de Com. tuo, in propria persona tua accedas ad Curiam W. de C. & in illa plena Curia recordari facias Loquelam que est in eadem Curia sine Breui nostr. inter, &c. & Record. illud habeas sub Sigillo tuo & sigill. quatuor legal. hominum ejusdem Cur. qui Recordar. illi interfuer; & partibus, &c. ut supra. Quia præd. A. est Ballivus præd. W. de C. Curie sue præd., & tenet Placita ejusdem Cur. & Judex in sua causa esse non debet.*

Another

[71.] Another *Recordare* thus; *Accedat ad Wapentag. nostr. de H;* or thus, *Ad Hondr. nostr. de I.* or thus, *Ad Tithingum nostrum de L;* & *in pleno Wapentag. illo;* or thus, *In pleno Hundr. illo;* or thus, *In pleno Tithingo illo,* &c. And he may shew other Causes as the Case requireth. And if the *Recordare* be returnable in the Common-Pleas, and at the Day of the Return the Sheriff return it \* *tarde;* now the Party that sued that *Recordare* shall have a *Sicut alias Recordare* out of the Common-Pleas, directed unto the Sheriff, &c.

And if the Plea be discontinued in the County, yet the Plaintiff or Defendant may remove the Pleaint into the Common-Pleas or King's-Bench by *Recordare*, &c. and it shall be good, and he shall declare upon the same; and the Court shall hold Plea upon the same Pleaint; for if the Pleaint be continued in the County, and issue joyned upon it, yet nothing shall be removed but only the Pleaint; and in the Common-Pleas the Plaintiff may declare anew, &c.

And in a *Recordare* to remove a Record out of ancient Demeſne, the Writ shall say, *Loquelam & processum*, and not *Recordum;* quod vid. 39 H. 6. by all the Justices; yet the Form of the Register in the Record, as before is said; is, *Et Recordum illud habeat.*

If a Record be removed out of a Court of Record by a *Recordare facias*, it cometh in without Warranty, and the Court shall not hold Plea thereof. But if a Record cometh in Court without a Warrant, the Party may sue a Writ, directed unto the Justices, that they proceed upon that Record quod coram vobis residet. If the *Recordare facias* bear Date before the Pleaint were entred in the County, yet the Record is well removed, because that both Courts are Courts of Record. But if the Record be removed out of the Court of any other Lord by such Writ which beareth Date before the Entry of the Pleaint, it is not good.

## Recaption.

A Writ of Recaption lieth where a Man distraineth for Rent, or Service, or other Things, and afterwards, pendant the Plea, he who distrained doth distrain again for the same Rent or Service, or other Thing, the Beasts of the Party whom he had before distrained upon; then he who is so distrained shall have this Writ, and shall recover Damages for the second Distress taken; and he who took the Distress shall be fined for the Wrong, although the first Distress were lawfully taken, and although that the Rent or Services for which



which he distraineth were Arrear, &c. because by the first Distress he shall have return of the Things taken, until he hath the Rent or Services for which he distrained. But for Damage feasant in his Lands a Man may distrain the Beasts of any Man which he finds upon the Land, doing the Damage, so often as he shall find them so doing, because he distraineth them every time for a new Trespass, and new Wrong done in his Land. *Tamen quere.*

47 E. 3. 7.  
Finchden  
cont.

**F** And if the Lord distrain for Rent or Services behind, and afterwards, pendant the Plea, the Lord doth command his Servant to distrain for the same Rent or Service, by reason whereof the Servant or Bailiff do distrain again; the Tenant shall have a Writ of Recaption against the Lord for the same Distress.

And so it seemeth, if the Lord distrain his Tenant for Rent or Service, and afterwards the Servant or Bailiff do distrain the Tenant again for the same Rent or Service, and the Lord do agree unto that Distress, by joining in Aid-prayer of the Servant or Bailiff, the Tenant shall have a Writ of Recaption against the Lord. But if the Lord distrain for Rent or Service, and afterwards the Lord's Bailiff doth distrain the same Tenant for the same Rent or Service, pending the Plea; the Tenant shall not have a Recaption against the Lord, nor against the Bailiff, although the Bailiff maketh Conuance in the Right of the Lord, &c. For it may be that the Lord had not Notice of that Distress, or that the Bailiff had not Notice of that Distress which the Lord took before for the same Rent or Service.

**G** But it seemeth in that Case the Tenant may have an Action of Trespass against the Bailiff for the second Distress of his Cattle for the same Rent or Service, for which the Lord had distrained before.

**H** But if the Lord do distrain for Rent or Services, and afterwards (pendant the Plea) the Lord do distrain the Cattle of a Stranger for the same Rent, and not his Cattle who was first distrained; he who is so distrained shall not have a Writ of Recaption, nor he who was first distrained. For it behoveth him who shall have this Writ of Recaption, that he have his Cattle first distrained before for the same Cause for which they were distrained the second Time.

**I** But if a Man distrain two Mens Cattle for Rent or Service, and afterwards he doth distrain the Cattle of one of them again for the same Rent or Service; now he shall have a Recaption alone in his own Name.

**K** And if the Lord distrain the Beasts of a Stranger for Rent



or Service, and afterwards (pendant the Plea) the Lord doth distrain the Beasts of the same Stranger for the same Rent or Service; the Stranger shall have a Recaption as well as the Tenant, if the Beasts were taken at two several Times.

And if the Writ of Replevin be abated, then the Writ of Recaption shall abate, as it was adjudged in the Time of K. E. 1.

And if the Lord do distrain for Rent Arrear at a certain Day his Tenant's Cattle, and he sueth a Replevin, &c. and the Lord avow for the Rent, &c. and the Tenant plead *bars de son Fee*; if the Lord (pendant that Plea) distrain for Rent behind at another Day after, the Tenant shall have a Writ of Recaption, because the Lord's Title shall be tied by the first Plea. But otherwise it is, if the Tenant in the first Replevy plead *Riens arrears*, or levied by Distress, then (pendant that Plea) the Lord may distrain for the Rent behind at a Day after, because that the Seigniorie is there confessed, and the Tenant shall not have a Recaption.

[72.]

47 E. 3. 7. And the Tenant, or he who is distrained, shall have a Recaption before any Avowry made, and may aver he is distrained for the same Cause.

47 E. 3. 7. And in a Recaption the Defendant shall not avow, as he shall do in a Replevin, but shall justify the taking, &c. as he shall do in an Action of Trespas, for the Plaintiff shall recover Damages only in the Recaption for the Contempt that the Defendant hath done against the Law, and not for the taking of the Cattle, nor for the detaining of them. And in a Recaption it is not material whether the first Distress be of Right or not.

And if a Plea be removed out of the County into the Common Pleas by *Pone* or *Recordare*, and afterwards the Plea be nonsuit in the Common Pleas, before or after an Avowry made, the Lord after this Nonsuit may distrain again for the same Cause, and the Tenant shall not have a Recaption, because there is not any Plea depending; and yet the Plaintiff may sue a Writ of Second Deliverance upon the same Record.

And if the Lord distrain the Cattle of the Tenant and a Stranger, which they have in Common, for Rent or Service, and afterwards (pendant the Plea) the Lord doth distrain the Tenant's Cattle only for the same Cause; the Tenant shall have a Recaption for those Cattle. But if the Lord distrain the Cattle of the Tenant only for Rent, &c. and afterwards (pendant the Plea) the Lord doth distrain the Cattle of the Tenant and a Stranger, which they hold in common, for the same cause; it seemeth that the Tenant shall not have Recaption for those Cattle for the Interest of the Stranger. *Quere*.

**F** And if the Lord distrain, and the Tenant sue a Rep'evin, which is removed into the Common Pleas, and the Conu-  
sance is demanded by the Bailly of the Freehold, and is grant-  
ed, and afterwards the Bailiff fail to do Right unto the Party ;  
if he distrain again for the same Cause, the Tenant shall have  
a Recaption, because the Lord ought to remove the Plea into  
the Common Pleas again by Resummons, &c

**G** And a Recaption lieth where the Lord distraineth other  
Cattle of the Tenant than he first distrain'd, as well as if he  
had distrain'd the same Cattle again, if it be for one and the  
same Cause, as I conceive. And yet in 19 B 3. the Issue  
was taken upon the Property of the Cattle, as that they were  
other Cattle of the Plaintiff, &c.

And a Recaption lieth as well where the Lord distraineth  
the Tenant again for the same Cause, where the Plea is de-  
pending in the County before the Sheriff, as where the Plea  
is depending before Justices of Record.

**H** And if the Plea be depending in the County before the  
Sheriff, then the Form of the Writ of Recaption is :

*Rex Vic', &c. Monstravit nobis A. quod quum tu Averia sua,  
que B. cepit & in iusto detinuit, eid. A. sine Breve nostro replegiasset,  
& d' d' d' s' diem usq; ad prox. Com. tuum & pre. B. attachiasset,  
ad respon. super pref. A. idem B. post Attachment. illud Averia  
pred. A. iterum cepit ea occasione qua prius ea ceperat, & ea sicut  
prius detinet. Et quia hec injuriosum est & manifest. contra pacem  
nostram, Tibi precipimus, quod Averia pred. A. sine dilacione de-  
liberari fac', quousque capitale placitum inter eos terminet'. Et si  
invener. quod pred. B. Averia pred. A. iterum cepit ea occasione  
qua prius ea cep rat, & ea sicut prius detinet, tunc corpus pref. B.  
habeas coram te & custodiabus Placitorum Corone Nostr' ad proximi-  
mum Com. tuum. Et si per Ballivos tuos, per quos Averia pred. A.  
replegiat. fuerint, & per alios probos & legat. homines de Com. tuo,  
convincti poter. de secund. captione pro una & ead. occasione, tunc ip-  
sam B. ita per misericordiam castigas, quod castigat. illa in casu  
consimili timor. alius prebeat delinquendi.*

And if the Plaintiff be in the County by Writ of Rep'evin  
pending before the Sheriff, then the Writ is such :

*Rex Vic S. Is ut. Monstravit nobis A. quod cum ipse Breve  
vostrom nuper tibi detulisset de Averia suis sibi repleg', que B. ce-  
pit & injuste detinet, & Averia illa eid. A. repleg', & eidem  
dedisset diem usq; ad prox. Com. tuum, &c. as in the Writ be-  
fore. And if the Plaintiff be removed out of the County by Re-  
cordare, then the Form of the Writ of Recaption shall be such*

Q

Rex:

*Rex Vic. &c. Monstravit nobis A. quod cum B. Averia præd. A. cepisset & injuste detinisset, & tu ad querimoniam ipsius A. prout mos est, Averia illa eid. A. replegasset, & ei dedisset diem usq; ad prox. Com. tuum, & præd. B. attachiasset ad respond. super hoc præf. A. & postmod. tibi præceperimus quod haberes Resor. Loquela præd. coram Justic. nostris apud Westm. tali die prox. præterito; idem B. pendente Placito coram præf. Justic. Averia præd. A. iterum cepit, &c. ut supra.*

And if the Plaint be removed out of the County by a *Pone* into the Common-Pleas, then the Writ of Recaption is such :

*Rex Vic. &c. Monstravit nobis A. quod cum ipse Breve nostr. nuper tibi detulisset de Averia sibi sibi repleg. qua B. cepit & injuste detinuit, & Averia illa eid. A. repl. & ei dedisset diem usq; ad prox. Com. tuum, & præd. B. attach. ad respond. super hoc præf. A. & postmod. præceperimus Loquel. illam poni coram Justic. nostris apud Westm. tali die prox. præterito; idem B. pendente Placito præd. coram iisd. Justic. Averia præd. A. iterum cepit eâ occasione qua prius ea ceperat, & ea sicut prius detin. & in contempt. Præcept. nostrorum Justiciar. non permittit. Et quia hoc injustum est, & manifeste contra pacem nostr. Tibi præcip. quod si præd. A. fecerit ut sicut de clam. sua prosequenda, &c. tunc pon. per vad. &c. præd. B. quod sit coram Justic. nostris præd. ad respond. nobis de contemptu præd. & præd. A. de transgr. præd. & habeas ibi nomina Pleg. & hoc Breve; & Averia illa eid. A. repleg. facias. Teste, &c.*

[73]

If a Man sue a Replevin by Writ, and the Sheriff send *A* unto the Bailiff of the Liberty to replevy the Cattle, because that the taking was within the Liberty, and afterwards the Plaint is removed by *Pone* into the Common Pleas, and afterwards the Lord, or the Party who distrained before distrain again for the same Cause; then he who is so distrained shall have a Writ of Recaption, and the Writ shall be such :

*Rex Vic. &c. Monstravit nobis S. quod cum ipse Breve nostrum nuper tibi detulisset, de quadam equo suo sibi repl. quem I. & A. ceperunt, & injuste detinuerunt, ac Ballivi Libertat. Abbat. de R. de C. quibus Return. Brevis nostri præd. haber. fecisti, equum illum eid. S. replegassent, & præd. A. & I. attachiassent, ad respond. super hoc præf. S. & postmod. præceperimus Loquel. illam poni coram Justic. nostris apud Westm. tali die, anno regni nostri tertio; præfati I. & A. pendente placito prædicto coram Ballivis prædicti Abbat. Curia sua præd. coram quibus Loquela illa, juxta libertates eidem Abbati concessas, per eisd. Justic. re-tornata est placitand. Averia præd. S. iterum ceperunt, &c. ut supra.*

And



- B** And if a Lord hath a Hundred, or a Wapentake, and hath Power to hold Plea *de veteris Nominis*, &c. and a Man distraineth another there, for which he sueth a Replevin within the Hundred, and pendant the Plea there, the Party who distrained before, distrained the same Man again for the same Cause; then he who is so distrained shall have a Writ of Recaption in such Form directed unto the Sheriff.

*Rem Ple, &c. Monstravit nobis A. quod cum B. Averia præd. A. cepisset, & injuste detinisset, ac Ballivi M. de N. ad querimoniam ipsius A. (prout moris est) Averia illa eidem A. replegissent, ac ei dedissent diem usque ad proxim. Wapentag. prædicti Domini sui de N. & præd. B. attachiassent ad respondend. super hoc præf. A. postmodumque tibi præceperimus, quod assumptis tecum, &c. accederes ad præd. Wapentag. & in pleno Wapentagio, &c. sine Brevis nostro, inter ipsum A. & præf. B. de prædict. Averia ipsius A. captis, &c. & Record. illud, &c. idem B. pendente Pleito, &c. ad occasione quâ prius, &c. as before in the Writ of Recaption.*

- C** And now it appeareth by these Writs of Recaption, that if a Man be distrained, and he sue a Replevin by Plaint before the Sheriff in the County, and afterwards hanging that Plaint, he is distrained again for the same Cause, that he shall have a Writ of Recaption, which shall be directed to the Sheriff, and the Sheriff shall hold Plea upon that Writ of Recaption.

But if a Man be distrained within any Liberty, and he sue a Replevin there by Plaint, or by Writ, and pendant that Plaint in the Liberty he be distrained again for the same Cause, by the Person who distrained before; he shall not have upon that Distress a Writ of Recaption, because the Plaint is not pendent before the Sheriff, nor before the Justices, and the King will not direct the Writ of Recaption but unto the Sheriff. But if the Plaint were removed by *Pone* or *Recordare* out of the Liberty before the Justices, then the Party who was distrained shall have Recaption, as well for the Distress which was before the Writ of *Pone* or *Recordare*, as if the re-taking had been after the *Pone* or *Recordare* sued forth.

- D** And if a Man be convicted before the Sheriff in a Writ of Recaption, &c. he shall be amerced, and render Damages unto the Party for the Contempt. But if he be convicted before the Justices in a Writ of Recaption, he shall be fined, and not amerced, and also shall render Damages unto the Party for the Contempt.

*Writ de Withernam.*

**T**HIS Writ lieth where a Man taketh the Cattle or Goods **E** of another Man, and the Party sueth a Replevin by Writ, and an *Alias* and *Pluries*, and upon the *Pluries* the Sheriff doth return, that the Cattle or Goods, &c. are effloined, &c. by Reason whereof he could not replevy them, &c. then this Writ of *Withernam* shall issue out of that Court where the *Pluries* is returned, returnable in the King's Bench or Common Pleas; and the Form of the Writ is such,

*Rex Vic. Linc. sal. quum pluries tibi præcipimus quod ju-* **F**  
*ste, &c. A. Averia sua que B. &c. vel causam, &c. quare man-*  
*datum nostrum pluries tibi inde directum exequi noluisti, vel non*  
*potuisti; ac tu nobis significaveris, quod postquam præd. B. Ave-*  
*ria præd. A. cepit, & in Com. tuo ea fugavit de Com. præd. in*  
*Com. B. per quod ea eidem A. replegiar. non potuisti: Nos, mali-*  
*tia ipsius B. obviare volentes in hac parte, tibi præcipimus, quod*  
*Averia præd. B. in Balliva tua cap. in Withernam. & ea deti-*  
*neas, donec eid. A. Averia sua præd. secundum Legem & Consue-*  
*tudinum Regni nostri repl. possis, juxta tenorem mandator. nostror.*  
*præd. prius tibi, &c.*

And in the Writ of *Withernam* he ought to rehearse the **G** Cause which the Sheriff returneth, for which he cannot replevy them: As to say,

*Ac postquam præd. B. Catalla vel Averia illa cepit, Catall.*  
*vel Averia illa, aut Bov. vel Equum illum elongavit extra Bal-*  
*livam tuam, ita quod nullam deliberation. inde eid. A. fecerit po-*  
*tuisti, sicut nobis significasti; Nos, &c. tibi præcipimus, quod Ca-*  
*tall. vel Averia, &c. as the Case is, in Balliva tua ad valen-*  
*tiam Catall. &c. præd. A. sine dilatione cap. in Withernam,*  
*& ea detineas, donec eidem A. &c.*

[47.]

And there are very many Causes that the Sheriff may re- turn upon the *Pluries*, wherefore he cannot replevy them, whereof divers of them do appear in the Register, which a Man may there see.

And if the Sheriff do return upon the *Pluries repleg.* that **A** he hath sent unto the Bailiff of the Liberty who hath Return of Writs, &c. and that the Bailiff hath given Answer, that he cannot execute the Writ, because he cannot have a View of the Cattle or Goods which were taken; then the Court in which such Return is made shall award a Writ of *Withernam* directed unto the Sheriff, and the Sheriff shall thereupon make his Precept unto the Bailiff of the Liberty; and if the Bailiff of the Liberty doth not make a Return thereof unto the

the Sheriff, then the Sheriff shall return the whole Matter in Court, and thereupon the Court shall award a Writ of *Withernam*, and a *Non omittas* with the same: And the Form of the Writ shall be such:

*Rex Vic. B. salut. Cum plur', &c. [usque ibi, vel non potuisti] ac R. de C. Ball. Libertatis S. Walrici, cui Return. Brevis nostri haber' fecisti, tibi respond. rit, quod Executionem Brevis illius facere non potuit, eo quod cum sum Averiorum præd' habere non potuit, sicut tu nobis significasti; per quod tibi præcepimus, quod Averia præd. B. in Bal. tua sine dilat. caperes in Withernam. Et ea detineres, donec idem A. Averia sua, &c. inde direst', vel causam nobis signif', &c. vel tu non potuisti; ac tu nobis retournaveris, quod idem R. Ball. Libertatis præd'. cui Return', &c. habec. fecisti, null. tibi inde d. dit r. spons'. Tibi præcipimus, quod non omittas prop. Libertatem præd', quin' eam ingrediar', &c. cap. in Withernam. donec, &c. juxta, &c. prius tibi, &c. Teste, &c.*

**B** And if a Man distrain any Man's Cattle, and he sue a Replevin by Plaint made unto the Sheriff, for which the Sheriff makes a Precept unto the Bailiff to replevy them, and the Bailiff return at the next County, that he cannot replevy the Cattle, because they are sloined, or that he cannot have View of the Cattle; then the Sheriff in the same County-Court ought to make Enquiry if it be true which is returned, and if it be found so by the Jury, then the Sheriff *ex Officio* shall make a Precept unto his Bailiffs in the Nature of a *Withernam*, to take as many Cattle of the other Party: And if the Sheriff make such Precept to take the other's Cattle in *Withernam*, and the Bailiff will not execute the Writ, then the Party may have a Special Writ out of the Chancery, directed unto the Sheriff, commanding him to do *Withernam*, and to do Execution of the first Judgment: And the Writ shall be such,

*Rex Vic', &c. Monstr. nobis A. quod cum B. & C. Averia præd. A. cepit. & injuste detinuit. idemque A. coram te prosecutus fuisset pro Averia præd. sibi secund. Legem & Consuetud. regni nostri replegiand', ac licet per I. Ball. tuum, quem ad Averia præd. de dist. A. repleg. misisti, testatum fuerit, & per inquisitionem (prout miris est) in plen. Com. tuo fact. compertum, quod tamen Ball. visum de eisd. Averia habere non potuit, ad ead. in præf. A. replegiand', per quod in pleno Com. tuo consideratum fuit, quod Averia præd. B. & C. in Balliva tua caperentur in Withernam, & detinerentur, quousq; eidem A. Averia sua præd. secund. Legem & Consuetud. Regni nostri replegiar. possint; idem tamen A. Executioni considerationis præd. nondum assensus est, ad damn. ipsius A. non*



medicum & gravamen, & quia pref. A. subvenire volumus in hac parte, tibi precipimus, quod si ita sit, Averia præd. B. & C. cap. in Withernam. & ea detineas quousque eidem A. Averia sua præd. repl. possis secundum Legem & consuetud. regni nostri, & juxta considerationem præd., &c.

And by that it appeareth, that the Sheriff may award *Withernam*, or Replevin sued by Plaintiff, if it be found by Enquest in the County that the Cattle are esloined according to the Bailiff's Return, &c. But upon the *Withernam* awarded in the County, if the Bailiff do return that the other Party hath not any thing, &c. he shall have an *Alias* and a *Pluries*, and so infinite, and hath no other Remedy there.

But upon a *Withernam* returned in the King's Bench, or Common Pleas, if the Sheriff do return that the Party hath not any thing, &c. there a *Capias* shall be awarded against him, and Exigent, and Process of Utlagary.

In a Replevin sued by Writ, at the *Pluries* returnable the Sheriff doth return, *quod averia elongata sunt*, &c. Now if the Defendant appear, the Plaintiff shall not have a *Withernam*, because the Defendant may gage Deliverance. And if the Defendant's Cattle be taken in *Withernam*, they shall not be delivered to the Plaintiff, but the Sheriff shall keep them *quousq* &c. and the same appeareth by the Words of the Writ: But it is said, that it is the Usage in the King's Bench, that they shall be delivered unto the Plaintiff; by which it seemeth, that the Form of the Writ of *Withernam* there, is in another Manner than it is in the Register.

Note the last Case 13 H. 7. the Defendant appears at the Exigent after the *Withernam*.

In a Replevin, at the *Pluries* returnable the Sheriff doth return, *quod Averia elongata sunt*, &c. and the Defendant doth appear, and pleadeth that he did not distrain them: Now the Plaintiff shall not have *Withernam*. And so if the Defendant at the *Pluries* returned appear, and plead that the Cattle are dead in the Default of the Plaintiff, the Plaintiff shall not have *Withernam*.

And the Defendant in some Cases shall have a *Withernam* against the Plaintiff: As if the Defendant hath a Return awarded for him, and he sueth a Writ de *Retorno habenda*, and the Sheriff return upon the *Pluries*, *quod Averia elongata sunt*, &c. he shall have a *Scire facias* against the Pledges, &c. according unto the Statute of *West. 2.* and if they have nothing, then he shall have *Withernam* against the Plaintiff of the Plaintiff's Cattle. *Quod vide Tr. 7. R. 2.*

## Moderata Misericordia

A **T**HE Writ of *Moderata Misericordia* lieth in Case where [75.]  
 a Man is amerced in a Court-Baron, or other Court <sup>14 H. 4. 4.</sup>  
 which is not a Court of Record, outrageously for Trespas  
 or other Offence; then he may sue this Writ directed unto  
 the Lord of the Court, or unto his Bailiffs, commanding  
 them, that they moderately amerce the Party according un-  
 to the Quantity of the Trespas, &c. And this Writ is found-  
 ed upon the Statute of *Magna Charta. cap. 14. Quod nullus*  
*liber homo amerceatur nisi secundum quantitatem delicti, &c.* And  
 the Process upon this Writ is *Alias* and *Pluries*, and Attach-  
 ment, and the Attachment shall be awarded against him a-  
 gainst whom the Original Writ was sued; and the Form of  
 the Writ is such:

B *Rex Ball' I. de S. salutem. Monstravit nobis C. quod cum ipse*  
*nuper amerceatus esset in Cur. præd. domini vestri, de I. pro modico*  
*delicto, in quod incidit, vos ab eo gravem exigitis redemptionem,*  
*contra tenorem Magnæ Chartæ de Libertatibus Angliæ, in qua*  
*continentur, Quod nullus liber homo amerceatur nisi secundum quanti-*  
*tatem delicti, & hoc salvo Contentemento suo, & Villanus salvo*  
*Wainagio: Et ideo vobis præcipimus quod a præf. C. moderatam*  
*captatis Misericordiam, secundum quantitatem delicti illius, ne clamor*  
*ad nos veniat inde iteratus. Teste, &c.*

And the Attachment shall be always directed unto the  
 Sheriff, and the Writ shall be such:

*Rex Vic', &c. Si A. fecerit, &c. tunc sum. B & C. Ball. D. de I.*  
*quod sint coram justis nostris apud Westm', &c. ostens. quare cum*  
*idem A. nuper amerceandus esset in Hundred' vel Cur. dicti dom-*  
*sui de I. pro modico delicto, in quod incidit; & nos ad requisition.*  
*ipsius A. præf. Ball. præceperimus, quod juxta tenor' Magn' Char-*  
*tæ de Libertatibus Ang. moderatam ab eo caperent Misericord',*  
*secundum quantitatem & modum delicti illius; iidem Ballivi, spre-*  
*tis mandatis nostr. præd', præf. A. graviozem inde redemptionem.*  
*per varias districtiones torquere non cessarunt, in nostri contempt',*  
*& ipsius A. grave dampnum, & contra tenorem Chartæ præd'*  
*ut dicitur. Et habeas ibi Sum', &c. Teste, &c.*

C And if a Man be amerced in a Court Baron, where he did  
 not any Trespas, but it is so presented by the Enquest, &c.  
 yet it seemeth he shall not have this Writ, if the Amerce-  
 ment be not outrageous: But if the Steward of his own Head  
 will amerce any Tenant or other Party without Cause, I con-  
 ceive the Party shall have an Action of Trespas, if he be di-  
 strained for that Amercement, and the Party ought not for to  
 sue his Writ of *Moderata Misericordia.* Q 4



If a Feme Covert be amerced for Trespass, &c. if the Husband be distrained for the same, he shall have this Writ, if the Amercement be outrageous.

But what shall be said a moderate Amercement, and what not, appeareth by the Words of the said Statute, which saith *Secundum quantitatem delicti*. By which it seemeth that if it exceed the Value of the Trespass, it is not a moderate Amercement; and that shall be intended for the Value of the Trespass which is done unto the Lord, and to him who shall have the Amercement: For if one Tenant do Trespass unto another Tenant, he shall be therefore amerced in the Lord's Court by Presentment of the Trespass; but that Amercement shall not be unto the Value of the Damages which is done unto the Tenant, but having Regard unto the Wrong and Offence done unto the Lord for the Wrongs done unto his Tenant.

And if a Man be Nonsuit in a Court-Baron, he shall be amerced, and if it be outrageous, he shall have this Writ of *Moderata misericordia*: And so shall the Defendant if he be amerced in any Suit brought against him, because it is found against him; or that he makes Default to wage his Law at the Day given him in any Plaint sued against him, &c. And if the Amercement be not moderate, he shall have this Writ of *Moderata misericordia*, &c.

In a Court-Baron if two be amerced for one Trespass outrageously, they shall not join in a *Moderata misericordia*, for they shall be severally amerced, although the Trespass be jointly done. And so is it in a Plaint sued by two, if they be Nonsuit, the Amercements shall be several, and they shall not join in *Moderata misericordia*; yet if an Amercement be set jointly upon them, then they shall join in the Writ. But it seemeth this Amercement ought to be affected by Persons certain, when they are amerced for any Trespass. And if the Amercement which is set be affected by his Peers, then this Writ of *Moderata misericordia* doth not lie; for then it is according unto the Statute of *Mag. Chart.* *quod vid. 10 E. 2.* in Title of Actions upon the Statute in the Abridgment.

And it is called *Misericordia*, in *Englisb* Mercy, for the Smallness thereof, by which it seemeth it ought to be less than the Offence: And then it seemeth they shall be severally amerced for a Joint Offence, because one shall not be charged for the Offence of another; but they shall equally bear the Charge, and pay the Sum assessed.

And in the Common Pleas the Course is, when there are divers Defendants to make several Estreats of the Amercements,



ments, and to deliver them unto the Clerk of the Assise, and he shall deliver them unto the Coroners, and they use to *assess* the Amercements severally.

**K** And if divers Demandants be amerced in a real Action for their Nonfuir, they make the Estreats severally upon them, and deliver them as before unto the Clerk of the Assise, who delivers them over unto the Coroners to *assess* the Amercements.

But in a personal Action in the Common Pleas, where there are many Plaintiffs named, and they amerced, the Clerk hath forgotten, and cannot shew how the Usage hath been to make the Estreats against them; but it seemeth with Reason, that all shall be done in one Manner. For it cannot properly be said that a Man hath Mercy shewed and offered unto him if he shall pay, or shall be put to more Charge for the Offence of another Person, which himself hath not done: For the Nature of the Word (*Mercy*) is, that a Man shall not be punished so much as he hath deserved. By which it appeareth, that every Amercement shall be or ought to be severally assessed upon every one for his own Offence, and that to a lesser Sum than he deserveth to pay. *Quere* the Usage and Manner thereof in the Common Pleas, and look the Statute of *West. 1. cap. 18.* by the Equity of which Statute the Usage is accrued, and doth continue in the Common Pleas and King's Bench, and before the Justices of Assise; and the Clerk of the Warrants in the Common Pleas doth make the Estreats, and doth deliver them unto the Clerks of the Assise, to deliver them unto the Coroners to *assess* the Amercements, and the Coroners do *assess* the Amercements, and deliver them unto the Clerks of the Assises, and they deliver them back unto the Clerk of the Warrants, who maketh the Estreats: And then one of the Justices of the Common Pleas, or the Clerk of the Warrants, goeth with the Rolls of the Estreats into the Exchequer, and there puts them before the Barons of the Exchequer. And the Form of the Estreat is such:

**A** Staff. De Henr. Hart & Will. Maner, *quia non habuerunt Johannem Brok nuper de B. in Com. p[re]s[ent]i. Novit, quoniam manuceperunt, &c. De Johanne N. pro se & Pleg. suis, quia non est prosecutus Breve suum versus N. H. de K. in Com. p[re]s[ent]i. Husbandman in Placito Debite, &c. De Stephano White, pro falso clam. suo versus D. de, &c. in Placito Detentionis, &c.* And so the Estreat doth rehearse the Cause for which he was amerced, &c. For the Justices do not *assess* any Sum for any Amercement upon any Person, but make their Entry as aforesaid; and then the

the Coroners do set the Sum upon the Heads of every of them; as upon every one of them 4s. or 6s. as they shall think fit in their Discretions, viz. severally upon every of them.

And by the Statute of *Magna Charta*, cap. 14. no Spiritual Person shall be amerced according to his Spiritual Benefice, but according unto his Lay-fee, and according unto the Quantity of the Trespas; and if he be otherwise amerced, he shall have a Writ upon the said Statute against the Sheriff, or him who amerced him. And the Writ shall be such:

*Rex Vic', &c. Quum in Magna Charta de libertat. Angl. continetur. Quod nulla Ecclesiastica person. amerc. secundum quantitatem Benefic. sui Ecclesiastici, sed secundum Laicum Feod. suum; ac jam ex querela S. Person', &c. accepimus, quod licet ipse nullum Laicum Feod. teneat, tu tamen ipsum S. in Turno tuo, in Hundredo tali, super aliquibus coram te in eodem Turno presentat', ipse S. super his non summonito, nec legitime convicto, pro voluntate tua graviter amercissit. Et Amerciamentum illud de bonis suis Ecclesiasticis levare intendis minus juste, in ipsius S. dampnum non modicum Et contra tenor. Chartae praedictae: Nos valentes ipsum S. in hac parte praegravari, tibi praecipimus, quod si ita est, tunc ipsum S. coram te saliter amerciar', seu Amerciament. aliquod de bonis suis Ecclesiasticis levare non fac', contr. tenorem Chartae supraedictae; Et Districcion', si quam, &c. Teste, &c.*

And upon this he may sue an *Ap* and *Pl* and *Attach.* unless the Sheriff do according to the Writ directed unto him.

And it seemeth that the Party may sue a Writ upon the Statute by a *Pone*, &c. if he will, against the Sheriff or the other who amerced him, because that the Statute is a Prohibition in it self, and need not sue such a Writ as aforesaid. And by the Statute of *Magna Charta* every Amercement in a Court-Baron ought to be assessed by two Tenants of the Manor upon Oath. And if the Steward or Bailiff will assess any Amercement without Assessment, then he who is amerced shall have such Writ:

*Rex Ballivis Episc. W. de S. Salut'. Quum in Magna Charta de Libertatib. Angl. continetur, Quod nullus liber homo amercietur pro parvo delicto nisi secundum modum ipsius delicti, Et pro magno delicto secund. magnitudinem delicti, salvo Contentamento suo, Et Mercator eodem modo salva Merchandisa sua, Et Villanus alterius quam nostri eodem modo amerciet', salvo Wainogio suo, si incidit' in manum nostram, et nulla Misericordiar. praed. ponat. nisi per sacrament. proborum Et legalium hominum de visn', prout in eadem Charta plenius continetur; ac jam ex querela hominum Et Tenentium Manerii praed. accepimus, quod*



quod vos ipsos homines & Tenentes, cum in Cur. ejusdem Manerii in Misericordiam inciderint pro aliquo debitis, ad magnas pecuniar. summas voluntarie assiditis, non permittentes quod misericordia illa per sacrament. hominum & Tenentium ejusdem Manerii ponatur, in ipsorum homin. & Tenentium dampnum non modicum, & contra tenorem Chartæ præd: Nos, volentes Chartam ill. in omnibus & singulis suis articulis inviolabiliter observari, vobis precipimus, quod ab hujusmodi summis super homin. & Tenent. præd. quum in misericordia inciderint voluntario assidend. penitus desistentes, Misericordiam hujusmodi per sacramentum proborum & legalium hominum ejusdem Cur. poni permitatis, juxta tenorem Chartæ præd. Teste, &c.

And he may sue an *Alias* and a *Pluries* thereupon, *vel causam nobis significes*, and afterwards an Attachment against the Bailiffs, or him who assesseth the Amercement.

[77.]

## Writ de Nativo habendo.

**A** THE Writ de Nativo habendo lieth for the Lord who claimeth the Inheritance in any Villain, when his Villain is run from him, and is remaining within any place out of the Manor unto which he is regardant, or when he departeth from his Lord against the Lord's Will: And the Writ shall be directed unto the Sheriff; and if the Sheriff will not serve the Writ, he shall have an *Alias* and a *Pluries*, and Attachment against the Sheriff, if need be.

**B** But if a Man have an Estate but for Term of Life, or for Years in a Villain, it seemeth he shall not have this Writ of *Nativo habendo*, because this Writ is in the Nature of a Writ of Right for to recover the Inheritance in the Villain, and the same appeareth by the Count in the Writ, *Quare tamen*.

**C** And the Sheriff may seise the Villain, and deliver him unto his Lord, if the Villain confess unto the Sheriff that he is his Villain; but if the Villain say to the Sheriff, that he is frank, then it seemeth that the Sheriff ought not to seise him: As it is in a *Replevin*, if the Defendant claim Property, the Sheriff cannot replevy the Cattle, but the Party ought to sue a Writ de *Proprietate probanda*: And so if the Villain say that he is a Freeman, &c. then the Sheriff ought not to seise him, but then the Lord ought to sue a *Pone* to remove the Plea before the Justices in the Common Pleas, or before the Justices in Eyre. But if the Villain purchase a Writ de *Libertate probanda* before the Lord hath sued the *Pone* to remove the Plea before the Justices, then that Writ of

Vid. 1 & 2  
Eliz. Dyer  
173. Where  
this Writ  
lieth, and  
out of what  
Court.

And Vid.  
1 E. 4. 8. a  
good Case.  
7 H. 4. 46.

Libertate



*Writ de Libertate probanda.*

*Libertate probanda* is a *Superſedeas* unto the Lord, that he proceed not upon the Writ of *Nativus habendo* till the Eyre of the Juſtices, or till the Day the Plea be adjourned before the Juſtices, and that the Lord ought not to ſeiſe the Villain in the mean Time. But at this Day the Writ of *Libertate probanda* is of little Effect, becauſe by the Statute 25 E. 3. cap. 8. the Lord may ſeiſe his Villain and alledge Villainage in an Aſſion brought againſt him by the Villain, although he hath a Writ *de libertate probanda* depending, which is adjourned before the Juſtices in Banco, or the Juſtices in Eyre.

And if the Lord ſue a *Nativus habendo*, and the Villain purchaſe this Writ of *Libertate probanda*, by that the Sheriff ſhall not proceed further in the Writ of *Nativus habendo*, but the whole Plea ſhall be adjourned before the Juſtices in Eyre; and then the Writ of *Nativus habendo* and the Record ſhall be ſent before the Juſtices in Eyre, and the Lord ſhall declare thereupon, and the Villain ſhall make his Defence, and plead thereunto; and the Villain ſhall not declare upon the Writ *de Libertate probanda*, nor any Thing ſhall be done thereupon; for that Writ is but a *Superſedeas* to ſurceaſe for the Time, and to adjourn the Record and the Writ of *Nativus habendo* before the Juſtices in Eyre: And that appeareth by the Forms of the Writs of *Nativus habendo*, and of *Libertate probanda*, which are ſuch:

*Rex Vic. ſalutem. Praecipim. tibi. quod juſte & ſine dilatione fac. E haberi. A. de C. B. Nativum & fugitivum ſuum. cum omnib. Carallia ſuis. & tota ſequela ſua. ubicunque inventus fuerit in Badiis tuis. niſi ſit in Domin. noſtro. qui fugit de terra ſua poſt Coronat. Dom. H. Reg. filii Regni Johan. Et prohibem. ſuper forſatall. noſtro. ne quis cum injuſte detineat. Teſte. &c.*

The Form of the *Libertate probanda* is ſuch:

*Libertate probanda.*

**R**EX VI<sup>o</sup>. &c. Monſtraverunt nobis A. & B. ſerui ejuſ. quod **F** cum ipſa libera homines ſint. & parat. Libertatem ſuam probare. F. clamant eas nativas ſuas. vixat eas injuſte: Et ideo tibi praecipim. quod ſi praed. A. & B. fecerint te ſecur. de Libertate ſua probanda. tunc pntas Loquelam illam coram Juſtic. noſtris ad primas Aſſas. cum in partes illas venerint. quia huiusmodi probatio non pertinet ad te capiend. & interim ipſa A. & B. pacem inde habere fac. & dic. praed. F. quod tunc ſit tibi. Loquelam ſuam verſus praed. A. & B. inde proſecutus. ſi voluerit. Et habeat tibi hoc Breve. Teſte. &c.

And

**G** And now by these two Writs it appeareth, that the Lord who sueth the Writ *de Nativitate habendo*, shall pursue his Plaint upon the Writ of *Nativitate habendo*, and shall declare thereupon, &c. and that the Villain shall make Defence, and upon that Writ of *Nativitate habendo* the Freedom shall be tried. And also it seemeth by these Writs, that a Writ of *Libertate probanda* doth not lie, if not upon a Writ of *Nativitate habendo* sued out before by the Lord.

11 H. 4. 42.  
Gascoign  
ac.

**H** But it appeareth in 12 H. 3. *Itin. North.* that the Villain sued a *Libertate probanda*, & obtulit se at the fourth Day against the Lord, and he did not appear, but made Default, for which, upon the Default of the Lord, the Villain was enfranchised; and he had a Writ unto the Sheriff, that he do not suffer the Lord to trouble him after: *Quid vid.* in Title *Villainage* in the Abridgment; and *vid.* 47 H. 3. a good Case of that Matter.

Fitz. 2. VI.  
lainage 30.

**A** And when he sueth the *Nativitate habendo*, he shall enter a Plaint before the Sheriff in the County, as he shall do if he sue a Replevin by Writ unto the Sheriff, he ought to enter his Plaint before the Sheriff; so shall he do upon the *Nativitate habendo*: And the Plaintiff shall recite how he is his Villain, and how that he fled from him, &c. And by the Writ of *Libertate probanda* that Plaint shall be removed before the Justices of Eyre, or before the Justices *de Banco*, and then the Matter shall be tried before them, &c. Or the Lord may remove the Plaint by a *Pone* before the Justices of the Common Pleas, and thereupon he shall have Process against the Villain, &c. for the Sheriff cannot determine the Title of Villainage in the County; and that is proved by the Words in the Writ of *Libertate probanda*, viz. *Quia hujusmodi probatio non pertinet ad te capiend'*, &c.

Pitz. VII.  
lainage 3.  
[78.]

**B** And it is good for the Lord, that when he sueth the *Nativitate habendo* unto the Sheriff, that forthwith he sue his *Pone* unto the Sheriff, to remove the Plaint before the Justices of the King's Bench: For if after the *Nativitate habendo* sued, the Lord sue a *Pone* to remove the Plaint before the Justices *de Banco*, and before he delivereth the *Pone* to the Sheriff, the Villain sueth *Libertate probanda*, and delivereth the same to the Sheriff, by which the Sheriff adjourneth the Plaint before the Justices in Eyre, and returneth the Matter upon the *Pone* before the Justices of the King's Bench; now the Justices of the Bench ought not to proceed upon that *Pone* against the Villain, because that the Sheriff hath returned, that he hath adjourned the Matter before the Justices in Eyre by the Writ of *Libertate probanda*, *quod vid.* Hil. 26 E. 3. and yet the

11 H. 4. 43.  
Gascoign.  
old Nar.  
Brc. 46.  
25 E. 3. 49.  
Villainary  
12. That the  
Party is  
without Re-  
may. it not  
against the  
Sheriff.

*Poss* was of elder Date than the Writ *de Libertate probanda*, but was not delivered unto the Sheriff before the *Libertate probanda*.

And if a Man sueth several Writs of *Nativo habendo* against C two, the two may join in a *Libertate probanda*, notwithstanding the several Writs.

8 E. 4. 16. by Martin, all Villains, but in Favour of Liberty many Villains may join in a *Libertate probanda*.

And it seemeth that the Villain may sue a *Libertate probanda* before the Justices *de Banco*, as well as before the Justices in Eyre, although there be no such Writ in the Register. But if such Writ be made returnable before the Justices *de Banco*, it seemeth it is good; and they shall proceed thereupon as if it were before Justices in Eyre.

In a Writ of *Niese*, if the Plaintiff be Nonfuit after Appearance, the Defendant shall be for ever enfranchised; *quod vid. M. 12 E. 2.* and upon Departure in Despite of the Court, where he appeareth, and saith he will seek Counsel, and afterward he is demanded, and maketh Default, there the Villain shall be for ever enfranchised: And so upon a *Retraxit*, If the Plaintiff say that he will not pursue his Writ of *Niese*, the Defendant shall be enfranchised for ever.

29 E. 2. cont. before Appearance. 19 E. 2. Vill. 31. 39 E. 2. Fitz. Vill. 34. The Pl. counts upon a Confession, and the Def. acknowledges it, and after the Plaintiff was Nonfuit, and per Cur. it is an Enfranchisement for ever. 30 E. 1. Vill. 46. Harvy & Mitton, she is enfranchised but during the Marriage. Broughton cont. King took the Difference where the Lord married the Niese, and where a Stranger married her.

28 Aff. 34. And if a Freeman marrieth a Woman who is a *Niese* unto another, she shall be for ever free, although that the Husband dieth, and she survive him, and that by *Briston* in his Book in *favorem libertatis*. And it stands with Reason that the Law be such, because that she and her Husband are but one Person in Law, and she ought to be of the same Nature and Condition to all Intents as her Husband is; but the Husband is for ever free without any Condition in Law or otherwise, and by Consequence the Wife ought to be of the same Condition and Nature as her Husband is; and then if he be once clearly discharged of Villainage to all Intents, she cannot be a *Niese* afterwards without her own Special Act, as by Divorce, or Confession in a Court of Record, and that in Favour of Liberty; for a Freewoman shall not be Villain, for taking of a Villain to be her Husband.

remains Niese, but the Seisura is suspended, 13 H. 3. Vill. 4 E. She shall not be produced to prove Villainage during the Coverture, 30 E. Vill. 46. cont. 31 E. 3. Vill. 21. cont. In



H In a Writ of *Niese* it behoveth the Lord who sueth the Writ to bring with him two Persons at the least who are of the Villain's Blood, that will confesse them to be Villains, otherwise the Writ shall abate: And what shall be sufficient Proof, what not, see in the Title of *Villainage* in the *Abridgements*. But in a *Nativo habendo*, after the Plea is removed by a *Pone*, if the Defendant will confesse himself to be Villain, then the Plaintiff needeth not to bring any Proof thereof.

13 E. 1. Vill.  
32. 19 H. 6.  
32. ac. 19 E.  
2 Vill. 32.  
Cousin Fe-  
male shall  
not be  
brought to  
prove the  
Male Vil-  
lain. 13 E. 3.  
Vill. 36. ac.  
Old Na. Br.  
46 ac.  
Old Tenures  
Br. Vill. 68.

I If two bring a *Nativo habendo*, the Nonsuit of one of them is the Nonsuit of them both; for Summons and Severance lieth not in that Writ. But in a *Libertate probanda* it is otherwise, for there the Nonsuit of the one shall not prejudice the other.

K And it appeareth by the Register, that the Sheriff cannot seise the Villain by Force of this Writ of *Nativo habendo*, although that the Words of the Writ are, *Habere facias A. nativum & fugitivum suum*; for these Words give him Power to hold Plea, and not otherwise, as it appeareth in 2 H. 4. in a *Faux* Imprisonment. But if the Villain doth confesse unto the Sheriff that he is a Villain, then it seemeth reasonable that the Sheriff ought to seise him, saving the Opinion of that Book. But the Statute now maketh the Matter clear that the Lord may seise him, and so the Sheriff at his Request. And the Process in the *Nativo habendo* is Summons, Attachment and Distress.

2 H. 4. 24.

L In a *Nativo habendo* the Plea was removed by a *Pone*, and the Sheriff returned thereupon *Non est inventus*, for which a *Capias* was awarded, and after, upon Return of *Non est inventus* a *Latitas* was awarded, upon a Surmise made that he was in a foreign County, P. 7 H. 6.

M And in the *Libertate probanda* the Process is as upon the *Pone* sued to remove a Plaintiff in the County upon a Replevin, Sum', Attachment and Distress. And the Form of the *Pone* upon a *Nativo habendo* is such:

[79]

*Rex Vic', &c. Pone ad Petitionem Patentis, Loquel. quæ est in Com. tno per Breve nostrum inter A. & R. quem idem A. clam. Nativum & fugitivum suum; & Sum', &c. præd. B. quod tunc sit ibi, præf. A. inde respons. Et habeas ibi Sum', & hoc Breve, & aliud Breve.*

N And if the Villain do remain in ancient Demesne of the King in the King's Hands, and hath remained there by a Year and a Day, then the Lord cannot have nor maintain this Writ of *Nativo habendo* so long as he remaineth there: But if he hath not remained within the ancient Demesne of the

King

King a Year and a Day, but for half a Year, or other Time, which doth not make a Year and a Day, then the Lord shall have such Writ unto the Sheriff,

*Rex Vic', &c. Praecipimus tibi, quod nisi A. quem B. clamat Nativum & fugitivum suum in Com. Isti, per Breve nostrum manserit in Dominio nistro de S. per unum Annum & unum Diem sine Calumpnia, non remaneat Loquens praed. in Com. praed., eo quod manserit in Dominio nostro per minus temporis. Telle, &c.*

But it appeareth by the Writ, that if the Lord claim him within the Year and Day that he came into the ancient Demesne, that then the Villain shall not have Advantage of his staying there: But it seemeth that the Lord ought to claim the Villain within every Year and Day that the Villain stayeth within ancient Demesne, as he shall make his continual Claim to save his Entry into any Land. But if the Villain do remain in any other Manor than in ancient Demesne, which is in Possession of other Lord than the King, and there stayeth a Year and a Day, or for many Yeas, without any Claim made by the Lord, notwithstanding that the Lord may take and seise him, or have a Special Writ of *Nativus habendus* against his Villain, directed unto the Sheriff, as above is said.

If a Man purchase a Villain of another unto him and his Heirs, and the Villain runneth from him, he shall not have this Writ of *Nativus habendus*, because he hath no Proof of his Blood who will confess them to be Villains unto the Plaintiff; and if he bring Men of the Villain's Blood, who confess them to be Villains to a Stranger, and not to the Plaintiff, the same is not sufficient Proof. *Quare tamen.*

And the Lord may have a Writ unto the Sheriff to assist him to distrain his Villains, and the Writ is: *Rex Vic', &c. Praecipimus tibi, quod sis in auxilium A. de F. ubi ipsi non sufficit ad distringendam Villanos suos de N. ubi faciendum ei cons. & servitium debita & consueta. Telle, &c.* See the Statute *An. 1 R. 2. c. 6.*

And when the King makes Tallage of his ancient Demesne Lands in his Hands throughout the Realm, then the other Lords who have ancient Demesne Lands of the King in Fee-farm shall have such Writ to tax them; and the Writ is such:

*Rex Vic', &c. Quia Dominica nostra per Angl. tallari fuerunt, tibi praecipimus, quod si Manerium de C. aliquando fuerat Dominicum nostrum, vel progenitorum nostrorum, quidam Reg. Angl. & hucusque consueverunt tallari, tunc A. rationabile Tallagium*



*Tallagium habere fac. de liber. Tenentibus suis in Manerio præd, sicut prius fieri consuevit. Teste, &c.*

**E** And if the King's Villains do convey themselves out of the Manor, then a Special Writ shall be directed unto the Sheriff, that he enquire by the Oaths of honest and good Men the Names of them, and where they abide, and that he make them return, and abide within the Manors as before.

**F** If a Woman sueth a Writ of *Liberate probanda*, the Form of the Writ is such: *Monstravit nobis Alicia, quod cum ipsa libera femina sit, &c. et parata libertatem suam, &c. ut supra.*

*Writ de Securitate Pacis.*

**G** THIS Writ lieth when a Man is in Fear or Doubt that another will beat or assault him, and lieth properly where one Man doth threaten another Man to kill him, beat him, or assault him; then may he come into the Chancery, and pray to have such Writ unto the Sheriff, and the Form of the Writ is such:

*Rex Vic. Linc. salut. Quia A. de B. nobis gravit. conquest. est, quod C. ei de corpore suo manifeste minat; Tibi præcipimus, quod eidem A. de præf. C. firmam Pacem nostram, secundum Consuet. Angl. habere fac. ita quod secur. sit, quod eid. A. de corpore suo per præf. C. vel per procuracionem suam damnnum vel periculum non eveniat. Teste, &c. Or thus: de incendio domorum suarum manifeste minas. Tibi præcipimus, &c. ita quod, &c. eid. A. de domibus suis præd. per hujusmodi incendium dampnum, &c. And a Man may have a Writ for the Safety of his Body, and for the Burning of his Houses, all in one Writ. And he may have an *Alias* and a *Pluries*, and Attachment against the Sheriff, if he does not his Office, &c.*

**H** And by the ancient Course of Law he ought to take his Oath upon a Book before he have this Writ, before a Master of the Chancery: But now they use to sue forth such Writs by their Friends, who will sue for them without any Oath made; and the same is ill done, because they are many Times sued, more for Vexation than for any good Cause; and the Justices of the King's Bench will not grant any Writ for Surety of Peace, without making Oath that he is in Fear of corporal Damage. And the Justices of Peace ought not to grant any Warrant at the Suit of any one to find Sureties of Peace, if the Party who doth require the same will not take his Oath that he requireth the same not for Malice, but for the Safety of his Body.



[80.]

And if a Man hath sued a Writ against one directed unto the Sheriff, and the Sheriff take Security of him to keep the Peace, and afterwards he breaks the Peace against him who demanded the same; he which demanded the Surety of Peace shall have Attachment against him to find Sureties; and the Writ is such:

*Rex Vic', &c. Si A fecerit, &c. pome, &c. B. quod sit eorum Justic', &c. ostens. quare cum pref. B. pred. A. de corpore suo minaret', &c. pref. A. ea occasione Breve nostr. de Pace ind. habend' tibi detulisset, idem B. licet Securitat. tibi præsiterit, quod per ipsum vel procurat' suam pref. A. de corpore suo dampnum vel periculum non evenit, id. B. nihilominus in prefat' A. apud W. vi & ar. insult. fecit. & ipsum, &c. in nostri contempt. manifest', & ipse A. grave dampnum, & contr. pacem nostram: & habeat ibi Pleg. & h'c Breve. Teste, &c.*

And upon this Writ the Plaintiff shall recover Damages, and the Defendant shall be fined for his Contempt, if he be found guilty.

And if any one will have a Writ for Surety of the Peace against any one who dwellerh within the Cinque Ports, then he shall have a Writ out of the Chancery directed unto the Constable of Dover, and unto the Warden of the Cinque-Ports, and the Writ shall be such:

*Rex dilectis & fideli suo N. Constabulario Castri sui Dover', & Custod' Quinque Portuum suorum, salutem. Mandamus vobis, quod audita querela A. de eo quod B. qui est de Libertate Quinque Portuum, &c. minat', vocatisque coram vobis partibus pred', auditisque hinc inde eorum rationibus eidem A. super hoc debitum & festinum justitiæ complementum fieri faciatis, prout de jure & secundum legem & consuet. Portuum predictorum fuer. faciend'. & alias in casu consimili fieri consuevit. Teste, &c.*

But it is a common Opinion, The Security which the Sheriff ought to take of the Party who ought to find Sureties for the Peace, ought to be taken by Bond, that is to say, to bind the Party and his Sureties by Bond, that he keep the Peace, and that he burn not the Houses, &c. But now after the Statute of 1 E. 3. cap. 6. which appointeth that certain Persons shall be assigned in the Chancery to keep the Peace, there are other Forms of Writs for the Ease of the People who will have the Peace against other Persons, which Writs shall issue out of the Chancery; and some of them are directed unto the Justices of the Peace, and unto the Sheriff, and some are directed only unto the Sheriff: And these Writs are of other Forms, which is such:

*Writ de Securitate Pacis.*

179

**B** Rex dilectis & fidelibus suis, I, &c. & sociis suis Justiciariorum nostris ad Pacem nostram in Com' S. conservand. assign' salutem. Or thus, Custod' Pacis nostra in Com' S. &c. & Vic. iust' Com', & eorum consilios, salutem. Or thus, Vic' S. salutem. Supplicavit nobis A. quod cum ipse de vita & membris suis, necnon de incendio domorum suar', per E. graviter & manifeste comminatus existat, velimus pro securitate ipsius A. in hac parte provider'; Nos supplication' prae. annuentes vobis, vel tibi praecipimus, si miter injungentes, quod praed' E. coram vobis, vel te, corporaliter venire faciat, & ipsum ad sufficientes Manucaps' inveniend', qui eum mancipere voluerint sub certa poena sibi per te vel vos rationabiliter impend', pro quod nobis respondere volueritis, vel volueris; Or thus, Et ipsum E. ad sufficientes Securitas' inveniend', sub poena centum libr. ad opus nostrum solvend', vel quemlibet eorum sub poena, &c. quod ipse dampn' vel malum aliquod sibi A. de corpore suo, vel de donibus suis per hujusmodi incendium, non fac', nec fieri procurabit, quovis modo compellatis, vel compellat. Et si hoc coram vobis vel te facere recusaverit, tunc ipsum E. proximo gaol. nostrae committatis, vel committat, in eadem salvo custod. quousque hoc gratis facere voluerit. Et cum Securitas. illam sic ceperitis, vel ceperis, nos inde in Cancelleraria nostra sub sigillis vestris vel alicujus vestrum, vel sub sigillo tuo, distincte & aperte sine dilacione reddas certiores, certificatis, vel certificetis indilate, hoc Breve nobis remittentes, vel remittens.

**E** And for this Form of Writ, when the Writ is in the plural Number, the Writ is directed unto the Justices of Peace, or unto the Justices and Sheriff. And when it is in the singular Number, the Writ is directed unto the Sheriff only; or unto one Justice only.

**F** And if the Husband threaten his Wife to beat or to kill her, she shall have this Writ: See 25. b. f.

Supplicavit nobis A. uxor B. quod cum ipsa de vita sua & inviolatione membrorum suorum per praed. B. &c. [ut supra, usque ibi. respond' volueris] quod ipse praes. A. bene & honeste tractabit & gubernabit, ac dampn. & malum aliquod eid. de corpore suo, aliter quam ad virum suum ex causa regiminis & castigationis ux. suae licite & rationab. pertinere non fac', nec fieri procurabit, quovis modo compellatis, &c.

*Com: 130  
20 b. Hot.  
Theel 64*

**G** And if a Man be in Variance with other Men, and he is in doubt that Damage or Hurt will come unto him, or his Servants or his Goods, by reason of this Variance; then he shall have a special Writ against them directed unto the Sheriff, that he cause them to find Security that they do not damage or hurt the other in his Body, or his Servants, or other

his Goods, in a certain Sum, &c. And if they will not find Security, that then he arrest them and keep them in Prison, until they will find Sureties: And that the Sheriff certify all that is done upon the same into the Chancery, upon Pain, &c. as it appeareth by the Register. And that Security ought to be taken by Recognizance, as it seemeth; **A**

[81.] *tamen quare.* And when a Man hath purchased such Writ of *Supplicavit*, directed unto the Justices of Peace, or unto the Sheriff, or unto both, against any Man, then he against whom the Writ is sued may come into the Chancery, and there find Sureties in the Chancery, that he will not do Hurt or Damage unto him that sueth the Writ; and then upon that he shall have a Writ of *Superfideas* out of the Chancery, directed unto the Justices of Peace, or unto the Sheriff, or unto one of them, reciting how that he hath found Sureties in Chancery according to the Writ of *Supplicavit*, and reciting the Writ of *Supplicavit*, and the Manner of Security that he hath found, and the Sum of Money in which they are bounden; commanding the Justices and Sheriff that they surcease to arrest him, &c. or compel him to find Sureties, &c. And if they have arrested him for that Cause, and for no other, that then they deliver him, &c. See the Form of the Writ in the Register. And if the Party who ought to find Sureties cannot come into the Chancery to find such Surety, then his Friend may purchase a *Superfideas* in the Chancery for him, reciting the Writ of *Supplicavit*, &c. and that such a one and such a one are bounden for him in the Chancery in such a Sum, that he shall keep the Peace according to the Writ of *Supplicavit*: And the Writ shall be directed unto the Justices of the Peace and Sheriff, that they or some of them take Surety of the Party himself, according to the Writ of *Supplicavit*, for to keep the Peace, &c. and that then they surcease to arrest him; and if they have arrested him for that Cause, that they then deliver him.

And sometimes the Writ of *Supplicavit* is made returnable into the Chancery at a certain Day: And if it be so, then if the Justices do not certify the Writ, nor the Recognizance, and the Security which is taken, the Party who sued the *Supplicavit* shall have a Writ of *Certiorari* directed unto the Justices of Peace, to certify the Writ of *Supplicavit*, and what they have done thereupon, and the Security which is found, &c. and so the party shall have such *Certiorari* unto the Justices of Peace, to certify the Security taken upon *Supplicavit*, although the Writ of *Supplicavit* be not returnable in the Chancery.



**C** And so if a Man demanded Surety of Peace in the County against any Man, he shall find Sureties in the County before the Justices of the Peace, &c. He who demanded the Security may sue a Writ of *Certiorari*, directed unto the Justices of Peace, to remove the Surety of Peace, and the Recognisance taken thereupon; and to certify that Recognisance, and Security taken, under the Seals of the Justices of Peace, or one of them. And if the *Certiorari* be sued upon a Writ of *Supplicavit*, then the *Certiorari* shall rehearse the Writ of *Supplicavit*: And if it be sued upon Surety demanded in the County without a *Supplicavit* sued, then the Form of the Writ of *Certiorari* is such:

*Rex Custodibus Pacis sue in Com. L. & eorum cuilibet, sal. Volentes certis de causis certiorari super tenorem cujusd. Securitatis Pacis nuper coram R. B. & sociis suis Custodibus Pacis nostre, & Just. nostris ad diversa Felon, Transgr. & Malefacta in Com. L. audient' & terminand' assign. de R. de W. de eo quod ipse damn. vel malum aliquod B. de F. aut alicui populo nostro non fac. nec fieri procurabit, ex officio vestro capt. que quid. Securitate penes vos residet, ut dicitur; vobis mandamus, quod nos inde in Cancell. nostra sub Sigillis vestris vel unius vestr. distinet. & aperte sine dilacione reddatis certiores, hoc Breve nobis remittentes. Teste, &c.*

**D** And when the Writ of *Supplicavit* is directed only to the Sheriff, then the *Certiorari* shall be directed unto the Sheriff only, to make Return of the Security found, if he have taken any Security, &c.

And if a Man find Sureties to keep the Peace against certain Persons before the Sheriff, without any Writ of *Supplicavit* sued by him who demanded Surety, and without the Writ used of ancient Form; then the Party who demanded the Surety may have a *Certiorari* unto the Sheriff to certify the Security taken by him into the Chancery, without making mention in the *Certiorari* of any Writ sued forth to cause the Sheriff to take such Security; and by that *Certiorari* it seemeth, that the Sheriff *ex officio* may cause the Party to find Surety to keep the Peace, if any one pray the Sheriff to have such Surety, and that the Sheriff bind them by Recognisance, and that he certify the same into the Chancery by the *Certiorari*: For if he certify an Obligation taken for Security, that Certificate cannot make the Bond to be a Thing upon Record, and the Party cannot be bounden unto the King but by Matter of Record, or unless that he will come into the Court, and confess the same to be his Deed, and pray to have the same enrolled. And it

Vid. 12 H. 7. by Pineux, by the Common Law the Sheriff is Conservator Pacis. Vid. Lamb. 110. 11. and now by the Statute of 33 H. 8. cap. 39. it is clear that Bond shall not be taken.

seemeth that the Law is such, because that by the Common Law the Sheriff is Conservator of the Peace, and hath the Keeping and the Custody of the County for the Time that he is Sheriff; and the same appeareth by his Commission and Letters Patents which he hath, the Words of whose Patents are such:

*Res. Sec. Commissimus vobis Custodiam, &c.* and by that he takes his Authority, the which is a Matter of Record, as the Commission which was made to them who shall be Justices of the Peace, the which Commission giveth them Authority to hear, determine and enquire of all those things which are done against the Peace. And by reason of that Commission they have Power to bind Men by Recognisance to keep the Peace, upon Complaint made unto them by any Person: And yet there is not express Authority given them by the Commission to take that Recognisance, but it followeth, that because they have Authority to cause Men for to keep the Peace, and to hear and determine Offences against the Peace, they have Power to bind Men by Recognisance so to do; for every thing which they have done by Vertue of their Commission ought to be taken as a Matter of Record. And by the same Reason the Sheriff, because that his Patent is of Record, and he is Conservator of the Peace in every Place, every Obligation which he taketh for to keep the Peace shall be in Law taken for a Recognisance, and especially when it is certified in the Chancery by *Cartularii*: But yet all the Pleas that are holden before him in the County are not of Record, nor Pleas holden before him in the County by Writ of *Justitias* are not taken as Matters of Record; for these Pleas are holden before him by reason of the Courts which he hath by reason of his Office, as the County and Hundred Court, &c. But the Leets and Tolls which are for the Commonwealth, as for Keeping of the Peace, these are Courts of Record, and by Consequence for Keeping of the Peace the Sheriff as Judge of Record, and may take Recognisance for the Keeping of the Peace *ex Officio*; but if he so do, and take Recognisance upon a Writ of *Supplicavit*, or other Writ directed unto him to take Sureties for Keeping of the Peace, it is the stronger; but give Credit to better Reason, and therefore *quare* thereof.

[82.]

Vide 7 H. 4.

34. ac.

Crompton

25. f.

10. 21. 11. v.

10. 21. 11. v.

10. 21. 11. v.

10. 21. 11. v.

10. 21. 11. v.

10. 21. 11. v.

10. 21. 11. v.

10. 21. 11. v.

10. 21. 11. v.

10. 21. 11. v.

10. 21. 11. v.

10. 21. 11. v.

10. 21. 11. v.

10. 21. 11. v.

10. 21. 11. v.

10. 21. 11. v.

10. 21. 11. v.

10. 21. 11. v.

10. 21. 11. v.

10. 21. 11. v.

10. 21. 11. v.

10. 21. 11. v.

10. 21. 11. v.

10. 21. 11. v.

10. 21. 11. v.

10. 21. 11. v.

10. 21. 11. v.

10. 21. 11. v.

10. 21. 11. v.

10. 21. 11. v.

*Writ de Auxilio ad Filium suum Militem faciend.  
vel ad Filiam Maritand.*

**A** THE Form of the Writ is such :

*Rex Vic', &c. Præcipimus tibi quod iuste, &c. fac. habere  
A. rationale Auxilium de Militibus & Liberis Tenentibus suis  
in Bacciva tua, ad primogenit. fil. suum Milit', faciend. vel ad  
primogenit. filiam suam maritand', juxta formam Statuti de com-  
muni consilio regni nostri Angl. inde prævisi. Teste, &c.*

**B** And a Man shall not have this Writ before that his Son hath accomplished the Age of fifteen Years, nor for to marry his Daughter before she be of the Age of seven Years, as appeareth by the Statute of *West. 1. cap. 35.*

**C** And he who holdeth his Lands by a Knight's Fee shall pay 20 s. unto the Lord, to make his Son a Knight, or for to marry his Daughter, and no more.

And the Tenant who hath Lands of the yearly Value of 20 l. holden in Socage, he shall pay 20 s. unto the Lord to make his Son Knight, or for to marry his Daughter.

And he who holdeth by half a Knight's Fee shall pay 10 s. and he who holdeth Lands in Socage of the Value of ten Pounds by the Year shall pay 10 s. And so according unto the Rate of the Value of the Socage-Land, and according unto the Quantity of a Knight's Fee, he shall pay his Aid, and that by the Statute before-mentioned.

**D** But this Aid, to make the Son a Knight, or to marry his Daughter, the Lord was to have by the Common Law of his Tenants, and the Statute puts it only in Certainty. And the Lord may distrain his Tenants for this Aid, and avow for the same if he will; and he need not for to sue this Writ unless he will. And this Writ is directed unto the Sheriff, and he may sue an *Alias* and a *Pluries*, and an Attachment against the Sheriff, if he will not assist the Lord to distrain his Tenants for this Aid.

**E** And the King's Tenants in like manner shall pay Aid unto the King to make his eldest Son a Knight, or for to marry his eldest Daughter, &c. *viz.* every one who holdeth by a Knight's Fee 20 s. and he who holdeth by half a Knight's Fee 10 l. and so according to that Rate.

And in like manner every one who holdeth of the King in Socage 20 l. Land shall pay 20 s. to make his eldest Son Knight, or for to marry his eldest Daughter. And he who holdeth 10 l. Land in Socage shall pay 10 s. and that is ap-



pointed by the Statute *de Provisiombus*, An. 25 E. 3. cap. 10. And the Statute setteth the Aid certain, because that before the said Statute the King might distrain for more to make his Son a Knight, or to marry his Daughter; but now the Statute appointeth that the King shall have no more.

And if the eldest Son dieth before he cometh to the Age of fifteen Years, or before the Lord hath levied the Aid to make him Knight, then the Lord shall have Aid for the younger Son, to make him Knight when he cometh to such Age, and yet he is not *Primogenitus filius*, as the Writ doth suppose, but he is the *Primogenitus* which is then alive, and that is sufficient, for he ought for to be Heir apparent. And so it is if the eldest Daughter dieth before the Lord hath levied Aid of his Tenants for to marry her, then he may levy Aid for the next eldest which is then living, after she is of the Age of seven Years.

And by the Statute the Writ which shall be directed unto the Sheriff to levy such Aid for the Lord, shall mention that the Son is of the Age of fifteen Years; and if it be for the Daughter, it shall mention she is of the Age of seven Years, otherwise the Writ is not good. But that Form is not in the Register, for it seemeth the Register was made before the Statute of *West. 1.* and therefore the Writ ought to be according as the Statute ordaineth it.

And if the Lord have Aid to make his Son Knight, or to marry his Daughter, and dieth before he hath paid the same, then the Son or Daughter shall have an Action of Debt against the Father's Executors for the Money: And if the Executors have no Goods of the Lord, then the Daughter shall have an Action of Debt against the Father's Heir, for so much of the Money as she wanteth of that which her Father had levied for to marry his Daughter: And that is by the Statute of *West. 1. cap. 35.* And he who holdeth by grand Serjeanty or petit Serjeanty shall not pay Aid to make the Son a Knight, or to marry the Daughter, as it appeareth *M. 11. H. 4. 32.*

And if the Lord doth levy Aid for the Marriage of his Daughter, and afterwards marieth her, then the Daughter shall not have an Action of Debt against the Father's Executors for the Money levied, &c. But if the Daughter be not married in the Life-time of the Father, &c. by him, then the Action doth lie. And so it seemeth, that if the Son be not made Knight in the Life-time of the Father, that he shall have an Action against the Father's Executors for the Money levied to make him Knight.

[83.]

See before  
122 g.

*Writ de Scutagio habendo.*

- C** THIS Writ for Escuage lieth in Case where a Man holdeth Lands of the King by Knight's Service, to which Homage, Realty and Escuage is appendant: And he who holdeth of any Lord by such Service, who holdeth over of the King by the like Services, when the King maketh a Voyage-Royal in War against the *Scots* or against the *Welch* in proper Person, or by his Lieutenant, then he who holdeth by Knight's Service ought to go in Person, or find a Man to go for him in the War with the King, or his Deputy in that War, for forty Days at his own Cost: And if he do not go, or not find a Man so to do for him, then he shall pay for that Default, and not doing of his Service, such Sum of Money as shall be assessed by Parliament; for a Knight's Fee so much, and for half a Knight's Fee so much; and so according to that Rate. And then he who holdeth by a whole Knight's Fee shall pay so much for Escuage as the Parliament doth assess that a whole Knight's Fee shall pay, if he hath not done the Service; and he who holdeth by half a Knight's Fee shall pay according to the Rate; and those who have done their Services and gone in the War, shall not pay any Thing. And that Sum of Money is called Escuage, *Scutium Scuti.*
- D** And if a Man holdeth of the King by Knight's Service, and to go with him in his War, &c. then that Lord shall have Escuage of his Tenants who hold of him by the like Service; but the Sum which he shall have and levy ought to be assessed by Parliament (as aforesaid) before he distrain for the same.
- E** And if a Man hold of any Lord, to guard his Castle in Time of War, or to blow a Horn in the Time of Invasion of Enemies, the same is Knight's Service: But it seemeth that for those Lands they shall not pay Escuage, if they do not their Services, but the Lord shall distrain them for not doing their Service, and shall have Recompence for the same. So that none shall pay Escuage but only those who hold by such Services, to go into the War, or to find a Man to go, &c. *tamen QUARE.*
- F** And if he who holdeth of the King by Knight's Service to go with the King in War, do his Service, &c. then he shall have a Writ for him, directed unto the Sheriff, to have Escuage of those who hold of him by the like Service. And the Form of the Writ shall be such:

Vide Litt.  
19, and 20.

Vide 16 El.  
Dyer 329.

That he who  
holdeth by  
the Moiety of  
a Knight's  
Fee, holdeth  
by Knight's  
Service, and  
so it shall be  
intended, if  
it be not  
found to the  
contrary.



## Writ de Scutagio habendo.

Rex Vic<sup>2</sup>, &c. quia dilectus & fidelis noster W. D. habuit servicium nobiscum per preceptum nostrum in Exercit<sup>o</sup> nostro Scotiae an. regni nostri primo; Or thus, Fuit nobisc. per precept. nostrum in Exercit<sup>o</sup>, &c. an<sup>o</sup>. Sec. sicut per Rotul<sup>o</sup> A. Constabularii nostri Exercitus nostri praed<sup>o</sup>, nobis constat; Or thus, Fuit finem nobisc. pro servic<sup>o</sup> suo in Exercitu nostro Scotiae, an<sup>o</sup>, &c. sicut per Certificat. Theaurarii & Baron. nostror. de Scaccario in Cancellar<sup>o</sup> nostra de mandato nostro missam nobis constat: Tibi praed<sup>o</sup> primus, quod eidem W. D. haberi fac. Scutagium suum de Feodis milit. qua de ipso tunc tenebant in Ball. tua, viz. obo solid. de Scuto pro Exercitu praedit<sup>o</sup>: & hoc nullatenus omittas. Teste, &c.

And by that it appeareth, that if the King's Tenant goeth **G** with the King's Lieutenant, or his Deputy in War, that the Constable of the Host ought to certifye the same into the Chancery, before the King's Tenant shall have a Writ to levy the Escuage of his Tenants; and if the King's Tenants do agree with the King for his going, &c. then the King ought to be certified thereof in the Chancery by the Treasurer and Barons of the Exchequer, before that he shall have a Writ to levy the Escuage of his Tenants.

And by that it appeareth, that if the King's Tenant do **H** not go in the Voyage, nor agree with the King for that Voyage, that then he shall not have Escuage of the Tenants, nor distrain the Tenants for the same.

And if a Man holdeth of the King by Socage, and others **I** hold of him by Knight's Service, and the King maketh a Voyage of War into Scotland and Wales; now it seemeth he shall not have Escuage of his Tenants, if he goeth not with the King in the Voyage: But if he goeth with the King or his Deputy, or agree with the King for that Voyage, then it seemeth he shall have Escuage of his Tenants, and shall have the aforesaid Writ. And it is not material whether he hold by Knight's Service, or in Socage.

And if there be Lord, Mesne and Tenant, and each holdeth **K** of the other by Knight's Service, if the Tenant go into Scotland by the King's common Summons, then the Mesne shall not pay Escuage: *Quod conceditur per cur. Trin. 5 H. 5.*

[94.]

And if a Man holdeth Lands by such Service, that he shall **A** pay a Penny, or a Pair of Spurs, when Escuage runneth, &c. the same shall not properly be Escuage, as it appeareth in 15 E. 2. Title Avowry in the Abridgments.

Vid. Title  
Avowry,  
215.  
See before  
83 E.

And *vid.* 19 R. 2. that Garder of a Castle doth counter- **B** vaile Escuage, so that his Heir shall be therefore in Ward, and so of grand Serjeanty; and yet it seemeth they shall not pay Escuage. *Quod vid.* in Title Gard. And



2. And in Title *Quare Impedit*, in the Abridgments, that Escuage certain doth not make Knight's Service, *Hilb.* 5. 3.
- D And if there be Lord, and many several Mesnes and Tenants, and each holdeth by several Knights Service, if the Tenant paravail of the Land doth the Services, and goeth with the King in War, &c. the same shall excuse all the other Mesnes; for, for one Land but one Service can be demanded, viz. to go, or to find a Man to go, &c. and so the Mesne paramount here is excused, because that the Service is done by the Tenant, &c.
- E And when the King will levy Escuage of his Tenants, he useth to grant a Commission to certain Persons. And the Form of the Commission is such:

*Rex dilectis, &c. Assignavim. vos ad Scutag. nostr. de Exercti-  
tu nostro Scotie, an r.g. nostri primo levand. & colligend. in  
Comitat. K. tam infra Libertatem, quam extra, de Feodis  
Milit. que tunc tenebant de nobis in capite, sive de Escaetis &  
Honorib. in manu nostr. tunc exist', sive de perquisito progenitor.  
nostr. r. aut nostri, quam a Feodis Milit' que tenent' de Ar-  
chiepiscopatib', Episcopatib', Abbat', Prioratib', de aliis Dignita-  
tib'. vel Offic' Eccl'iasit. quibuscunque, que tunc in manu nostra  
fuer', ac de hereditat. Hæredum infra ætat. & in custod. nostra  
existen', viz. xl. solid. de quolib' Feode pro Exerctiu suprad';  
ita quod omnis denarios inde proveniunt. habeatis ad Scaccar.  
nostr. part. cultr. ad citius qu'd poteritis nobis ibid. solvend'. Et  
quia quamp'ia de Feod. præd. ad manus diversor. devener. tam  
temporib. progenitor. nostror. quam nostro, quadam viz. per de-  
scensum hereditar. tam in partes quam alio modo, & quadam  
per alienat. inde diversimode factas. Assignavim. vos ad inqui-  
rend. per sacrament. probor. & legal. homin. de quolib. Hundredo  
in Com. præd. tam Nullit. e. n. r. gladio, quam alior. per quos  
rei veritas melius sciri poterit, qui tenuer. Feoda militaria  
tempore præd. in eod. Com. aut aliquam partem Feod. eorund.  
ut de Corona nostra Angliæ, vel de perquisito progenitor. nostror.  
& nostro. & de Arch:ep. Episcopat. Abbat. Priorat. & aliis  
Dignitatib' & Officiis antedictis, ac etiam de hereditatib. Hæ-  
red. præd. tunc infra ætatem existen'. & quos Feod. & quantas  
partes Feod' quilib. Tenens hu usm. tunc tenit. & in quibus Vill.  
distinãe, & qui fuer. antecessores illor. qui tenent per descensum  
hereditar. & qui alio modo, ac etiam qui Hæredes fuer. infra æ-  
tatem, & in custod. nostra, & qui Archiepiscopa. Episc. Abbat.  
& Priorat. & aliis Dignitat. quæcumque vel Offic. a tempor. illo  
vacabant. temporal. quor. custodia. ad nos pertinet. Et ita vobis  
in fide qua nobis tenemini firmiter injungendo mandam. quod ad  
certos dies, &c. præmis. faciat. & explicitis in forma præd. &  
Inquisi-*

*Inquisition. super pramis. distinte & aperte factas, qua de singulis Feodis, & de nominib. & cognominib. ea singulat. quond. tenentium dum integre. tenebantur, & eor. qui postmod. ea successive tenuer. post partitiones eor. int. hered. participes, vel per alienationes, ut praed. est, apertam faciunt mentionem, habeat. ad Scaccar. praed. circa fest. Pauc. proxim. futur. sub sigillis vestris & sigillis eor. &c. fact. fuer. Mandam. etiam Vic. nostro Cum praed. quod ad certum, &c. fact. fuer. tot & tales prob. & legal. homines tam Milit. gladio civibus quam alios de Balliv. sua, tam infra Libertat. quam extra, per quos rei veritas melius sciri poterit: & inquiri, & quid vobis in pramis. pariat. & intendat. Mandam. etiam Thesaurario & Baronibus nostris de Scaccar. praed., quod hujusm. Feod. ad Scaccar. praed. reperta, Terras & tenement. in Com. praed. tangentia, vobis celeriter in scriptis mittant in evidenciam, & pro majore expeditione praemissorum. In cuius, &c. Teste, &c.*

19 E. 2. Br. And a *Venire facias* shall be sent unto the Sheriff close upon this Commission, and another Writ close unto the  
Tenures 68. *Lessee for*  
*Life may do*  
Escuage.

6 E. 2. Gard And now it appeareth by this Commission, that the King  
12. *he shall* shall have Escuage of the Tenants who hold of these Lands  
*have the* or Manors which the King hath in his Hands by reason of  
*Ward, be-* Ward, or by reason of the Vacancy of a Bishoprick, &c.  
*cause it is* Or if he have an Estate for Years in the Seigniori, he shall  
*a Sust. real,* have Escuage of the Tenants, &c.  
*by Wilbic,*

Scrope And so shall another Lord have, if he have a Term for  
contr. Years or for Life in the Seigniori, if he go in Voyage with the King in War into *Scotland*, &c. he shall have Escuage then of the Tenants which hold of him by Knight's Service; for the Tenant is not bound to go, but for to defend his Lord, or to find a Man for to defend him; and then if the Lord do not go into the War, the Tenant is excused.

[§5.] *Writ de Securitate inveniend. quod se non divertat ad partes externas, sine Licentia Regis.*

Vid. 1 Eliz. BY the Common Law every Man may go out of the Realm  
Dyer 165. to merchandise, or on Pilgrimage, or for what other Cause he pleaseth, without the King's Leave; and he shall not be punished for so doing: But because that every Man is of right for to defend the King and his Realm, therefore the King at his Pleasure by his Writ may command a Man that he go not beyond the Seas, or out of the Realm, without Licence; and if he do the contrary, he shall be punished for disobeying the King's Command. And it seemeth that this Command  
may

may be made by the King's Writ under the Great Seal, and also under the Privy Seal, or his Signet; for by the Law the Subject is bounden to take Notice of every of the King's Seals in such Case, as well as of the Great Seal.

And there are two Manners or Forms of such Writs; one is directed unto the Party, and the other unto the Sheriff, commanding him that he cause the Party to find Security that he shall not go out of the Realm without the King's Licence. And the first Writ is such:

*Rex I. de B. salutem. Quia datum est nobis intelligi, quod tu versus partes exteras absque Licentia nostra clam destinas te divertere, & quamplura nobis & Corona nostra præjudicialia ibidem prosequi intendis, in nostri contemptum & præjudicium, ac contra proclamationes & inhibitiones nostras inde sæpius factas: Nos, hujusmodi contemptui & præjudicio obviare volentes, tibi districte sub periculo quod incumbit prohibemus, ne versus partes exteras absque licentia nostra speciali aequaliter te divertas, nec quicquam ibidem prosequi attemptes, seu attemptari fac. quod in nostrum seu dictæ Coronæ nostræ præjudicium cedere valeat quovis modo, nec aliquem ibidem mittas ex hac causa. Teste, &c.*

And also the King by his Proclamation may inhibit his Subjects, that they go not beyond the Seas, or out of the Realm, without Licence, and that without sending any Writ or Commandment unto his Subjects; for perhaps he cannot find his Subject, or know where he is, and therefore the King's Proclamation is sufficient in it self. And if the Subject do contrary thereunto, it is a Contempt, and for so doing he shall be fined to the King.

The other Form of Writ directed unto the Sheriff is such:

*Rex Vic', &c. Quia datum est nobis intelligi, quod A. B. Clericus, versus partes exteras, ad quamplura nobis & quampluribus de populo nostro præjudicialia & dampnosa ibid. prosequend', transire proponit: Nos, malitia sua resist. volentes in hac parte, tibi præcipimus, firmit. injungentes, quod præd. A. B. coram te corporalis. venire fac', & ipsum ad sufficientes Manuceptores inveniend', qui cum manucapere voluerint, sub certa pena eis parte rationabilis. imponend', pro qua nobis respond. volueris: Orthus, Et ipsum A. B. ad sufficient. securitatem inveniend', sub pena centum librar' ad opus nostr. solvend', vel quilibet eor. sub pena, &c. quod ipse versus aliquas partes exteras sine licentia nostra speciali se non divertat, nec quodcumque ibid' prosequatur aut. prosequi vel attemptari facere præsumet, quod in nostri contempti' vel præjudic' aut populi nostri dampn. cedere valeat, nec aliquem*

12 & 13 E-  
liz. Dyer  
296. ac.



*Writ of Trespass.*

*aliquem aut aliquos ibid. mittet ex hac causa, quovis modo compellat. Et si hoc eorum te fac. recusaverit, tunc ipsum A. B. pro: gaul. vestra committas, in ead. salvo custodiend. quousque hoc gratis fac. voluerit. Et cum Securitas id. sic ceperis, nos inde in Cancellar. vestra sub sigillo tuo distinere & aperte sine dilatione redd. certiores, vel certifices indilate, hoc Breve nobis remittent. T. ste, &c.*

And this Writ may be directed unto Justices of the Peace, or unto the Sheriff, or unto both; and the Form may be as the Writ of *Supplicavit*, which is directed unto the Justices of the Peace, and unto the Sheriff, to cause him to find Sureties, &c.

And every one upon a Surmise made unto the Chancellor may sue forth this Writ for the King; and then the Party against whom it is sued may come into the Chancery, and obtain Licence by Letters Patents, or by Letters under the Privy Seal, or Privy Signet: And the Licences are good although they be not under the Great Seal, because those Letters will excuse his Contempt. And such Licences are called Pass-ports. And now by the Statute of 5 R. 2. c. 2. it is ordained. That no Person pass out of the Realm without the King's Leave, but those who are excepted in the Statute, and therefore see the Statute.

*Writ of Trespass.*

There are two Manners of Writs of Trespass. One is of a Trespass which is Vicountial, and is directed unto the Sheriff, and is not returnable, but shall be determined in the County before the Sheriff; and in this Writ he shall not say, *Quare et & Armis*, &c. but the Form of the Writ is such:

[86.] *Rex Vic. Linc. salut. Quisquis est nobis W. de B. quod C. in ipsam W. apud N. insultum fecit, & ipsam verberavit, vulneravit, & male tractavit, & alia enormia ei intulit, ad dampnum ipsius W. non modicum & gravamen; & ideo tibi precipimus, quod Loquel. illam audias, & postea inde iuste deduci facias, ne amplius clamorem inde audiamus pro defuncta iustitia. T. ste, &c.*

And by this Writ the Sheriff shall hear and determine that Trespass, &c. by Inquest according to the Common Law; and this Writ is in effect a Commission unto him, and he may declare upon this Writ unto his Damage of 20 l. or more.

And another Form of Writ for Goods is such:

*Rex Vic. &c. Quisquis sunt nobis W. & B. Executores Testamenti C. quod*

*Ci quod B. & F. bona & catalla que fuer. ipsius C. ad valenc. &c. sub custodia ipsor. Executor. apud N. inuenta, ceper & asportaver. & alia enormia eis intuler. in retardat. Execut. Testamenti præd. Et id'o, &c. ne amplius, &c.*

**B** And a Man may sue other Writs of Trespafs upon the Case in the County before the Sheriff; and the Forms of the Writs are such:

*Rex Vic. &c. Quæstus est nobis A. quod cum B. centum oves suas præd. A. super terr. & pastur. suam apud N. per unum annum moratur. nil custodiend. sub certis conditionibus libiraret, præd. B. oves illas ibid. super terram ipsius A. existentes sine licentia & voluntate ejusdem A. infra termin. præd. cepit & abduxit, & alia, &c. ad dampnum, &c.* By which Writ it appeareth, that he cannot take back the Cattle again, if the Plaintiff perform the Conditions.

**C** If a Man borrow a certain Sum of Money, and doth pawn Goods for the same, and he offereth the Money again unto the Party, and prayeth that the Pawn may be delivered back to him, and the other refuse to do it: he shall have an Action of Trespafs upon the Case in the County before the Sheriff, to determine the Matter, &c.

**D** If a Man doth deliver unto another a Bull, or Oxen, or Cows, to make his Benefit of them for a certain Time upon Condition; if he against the Will of him to whom they were delivered take them back again within the Time, he shall have an Action of Trespafs against him, directed unto the Sheriff, to determine that Cause.

**E** If a Man do distrain Kine which are with Calf, and impound them against Law for so long time that they cast their Calves, then he shall have a special Writ directed unto the Sheriff, rehearsing the special Matter, to end the same before the Sheriff in the County.

**F** And so if a Man have a Salt-pit by the Sea-coasts, and another erecteth a Wall betwixt the Sea and the Salt-pit, if the other Person throws down the Wall, by which the Sea-water over-floweth the Salt-pit, he shall have a special Writ directed unto the Sheriff, to end the Matter in the County.

**G** And so for every Manner of Trespafs done, a Man may chuse to have such a Writ directed unto the Sheriff, to end the Matter before him in the County, or to sue a Writ unto the Sheriff, returnable in the Common-Pleas, or the King's-Bench:

**H** And if the Writ of Trespafs be returnable, then the Writ shall be of another Form, for then these Words, *Vi & Armis*, shall be in the Writ; and if it want those Words, the Writ shall



shall abate, if they be not Writs of Trespass upon the Case; which Writs of Trespass shall not have these Words *Quare vi & Armis* in the Writ, although they are returnable in the Common Pleas, or King's Bench; and if they have the Words *Quare vi & Armis* in the Writs, it shall be good cause to abate the Writs. And the Form of a Writ returnable in the King's Bench, is such:

*Rex Vic, &c. Si A. feceris &c. tunc pona per vad. & salvos pleg. B. quod sit coram nobis in Oſſavis S. Mich', ubique fuerimus tunc in Angl'. And if it be returnable in the Common-Pleas, then thus: Coram Justic. nostris apud Westm' in Oſſavis S. Mich', ostens. quare vi & armis in ipsum A. apud N. insult' fecit, & ipsum verberavit, vulneravit, & male tractavit, ita quod de vita ejus desperabatur, & alia enormia ei intulit, ad grave dampnum ipsius A. & contra pacem nostram. Et habeas ibi nomina pleg' & hoc Breve. Teste, &c.*

And if a Man do imprison another, then the Form of the Writ of Trespass is: *Ostens. quare vi & Armis in ipsum A. apud N. insult. fecit, & ipsum vulneravit, imprisonavit, & male tractavit, & alia, &c.*

And it is not material whether he be wounded or not, for the Form of the Writ is such: But the Damages shall be increased for the same, if he do recover. And if he do imprison him until he pay a Fine for his Deliverance, then the Form is: *Quare vi & Armis ipsum A. apud N. cepit, imprisonavit, & male tractavit, & ipsum in prisona ibid', quousque Finem per tantum pro deliberatione sua habend' cum pref. B. fecisset, detinuit, & alia enormia ei intulit, &c.*

2 H. 4. 13.  
7 E. 6. 17y.  
70. 20 E. 3.  
38. per  
Thorp.  
And a Man may have one Writ of Trespass for divers Trespasses, &c. as for breaking of his Close, cutting of his Trees, fishing in his Ponds, beating of his Servants, and taking of his Goods and Chattels, and all in one Writ; and for cutting of his Woods, and for taking his young Hawks; and the Form of the Writ is: *Quare vi & Armis boscum ipsius A. apud N. intravit, & tres pullos Esperorum suorum, pretis tanti, super id ead. bosco nidificantium cepit & asportavit, & alia enormia, &c.*

And by this Writ it appeareth that the Property of the Hawks are in him who hath the Land by the Word [*suorum*] in the Writ.

[87.] And for hunting in a Warren the Form is: *Quare, &c. Warrenam ipsius A. apud N. intravit, & in ea sine licentia & voluntate sua fugavit, & Lepores, Cuniculos, Phasianos, & Perdices cepit & asportavit, &c.*

And



A And if a Man hunt and take another Man's Conies in his Clofe which is no Warren, then the Form of the Writ is: *Quare, &c. Clausum ipsius A. apud N. fregit, & in eo sine licentia & voluntate, &c. fug', & tot Canicul. pretii tanti cepit & asportavit, &c.*

E. 3. 13.  
2610. 196  
1 Donk: 1  
Rayib: 16  
Salb: 53

And by this Writ it appeareth that he who hath the Land hath no Property in the Conies. And so of a Park: *Quare, &c. Parcum ipsius A. apud N. fregit, & in eo, &c. fugavit, & feras cepit & asportavit; or thus, Quare, &c. Herbam ipsius A. apud N. nuper cresc', vel Blada ipsius A. apud N. nuper crescentia, ad valentiam decem librar', cum quibusdam Averiti depastus fuit, conculcavit, & consumpsit, & alia, &c.* And he need not say in the Writ, *Quare, &c. Clausum fregit, &c. & Herbam, &c.*

B And there is another Form of Writ of Trespass, *De solo fesso & carbonib. maritimis asportatis.* And another Form of Writ in the Register, *De equo & cattall. arrestatis sine causa, quousque Finem fecerit.*

D And another Form, *De dono fracta & maeremio asportat'.*

E And the Writ of Trespass for Executors, for Goods taken out of their Possession, which is such:

*Rex, &c. Si A. & B. Executores Testamenti C. fecerint, &c. tunc pone, &c. quare quatuor Boves qui fuer. ipsius C. pretii centum solid', sub custodia ipsorum Execut. apud N. inventos cepit & abduxit. & Blada que fuer. pred. C. ibid. crescentia messuit, & Blada illa ac alia bona & cattall. que fuer. ejusd. C. sub custodia eorund. Executor. ibi inventa cepit & asportavit & alia enormia eis intulit, in retardationem executionis Testament. pred. & cont. pacem nostram.*

F And if an Abbot and his Monks break the Seal of any Writing which they have made to another Person, the Party shall have a Writ of Trespass against them in such Form:

*Rex, &c. Si A. fecerit, tunc pone Abbatem de C. & I. & D. Conventus ejusd. Abbatiz, &c. quare, &c. quoddam Scriptum ipsius A. communi Sigill. pred. Domus signat', per quod idem Abbas & Conventus ejusd. loci tenebant. pref. A. in visu & vestitu & omnibus necessariis suis sibi invenient', quousque idem Abbas & Conventus eandem A. alicui viro viginti libras terre vel redd. habenti maritaver' apud L. invener. malic' fruger', & alia, &c.*

G And also a Man may have a Writ of Trespass for sitting in his several Piscary, and for cutting of his Grass, and for plowing of his Land, or for shearing of his Sheep, and all in one Writ.

And another Form of Writ for mowing of his Corn, and cutting of his Grass, and felling of his Woods, and eating of his Corn and Pastures, and all in one Writ.

## Writ of Trespass.

And also another Writ of Trespass made unto a Woman **H** before Coverture, which is such:

*Si A. & B. uxor ipsius fecerint, &c. tunc pone, &c. quare, &c. quoddam Forcerium ipsius B. apud N. inuent' fregit, & quoddam Script. obligatorium in eodem Forcerio inuentum cepit & asportauit, &c. & alia, &c. ad graue damnum ipsius A. & B. & contra pacem nostram.*

And another Writ in the Register, *De Navi abducta, & I catall' asportat'.*

And another Writ, *De Bladis & graminibus uinorum de R. pass', &c.* And another Writ, *De Bladis & graminibus bosci cadui depassit, &c.*

And another Writ, *De Stagno fracto*, thus: *Quare, &c. L quoddam Stagnum apud R. malitiose fregit, per quod aqua ab eod. Stagno decurrens Vivarium ipsius A. ibid. in tantum inundauit quod per cursum aquae illius & inundation' praed. piscis in eod. Vivar. tunc existens ad valenc' cent. marc' exiuit; & alia, &c.*

By which it appeareth, that he shall have a Writ of Trespass *vi & armis*, because he causeth the Water to run out of his Pond, by which the Fish there go away.

And there is another Writ *De equis abductis*, and Goods **M** and Chattels unto the Value of 5*l.* and 100*s.* of Money, in Money told, *ibidem inuent' cepit, &c.*

And there is another Writ of Trespass against those who **N** lie near the Plaintiff's House, and will not suffer his Servants to go into the House, nor the Servants who are in the House to come out thereof; and for taking and impounding his Cattel, and not suffering him to sue a Replevin, &c. And the Form of the Writ is such:

*Rex, &c. Si, &c. pone, &c. quare vi & armis Mansio ipsius A. apud H. obseder. & homines & seruientes suos extra Mansio, praedictam existentes, eandem Mansionem ad serui & commodum ipsius A. inibi faciend. ingredi, ac quosd' alios homines & seruientes suos inibi existentes, Mansio. praedictam ad terram ipsius A. ibidem excolend. exire, non permisit', per quod cent. acr. terrae ipsius A. inuita remanser', & idem A. profic. terr. sua praedictae ad valentiam viginti librarum, & serui. suum eorundem hominum & seruients. per magnum tempus amisit; necnon Aueria ipsius A. ibidem imparcavit. & ea ibidem imparcata detinuerant, non permisit' ea eidem A. secundum Legem & consuetudinem Regni nostri replegiari; & alia enormia ei intulerant, &c.*

And there is another Writ of an House broke, and Prisoner taken away thus:

*Quare vi & armis domum ipsius A. apud N. in qua idem A. A. quend. H. de C. Scotum, per ipsum in guert' cepit', tanquam pris-*  
*nar.*



*har. suum, quousque sibi de centum libris, per quas idem H. redemptionem suam cum prefato A. pro vita sua salvand fecerat, satisfactum foret, detinuit, fruger', & ipsum H. ceper'. & abduxer' & alia enormia, &c.*

**B** And note, that the Form of the Writ for a live Thing, as 2 & 3 P. & Horses, or Men, or such like, is to say, *ceperunt & abduxerunt;* Mar. Dyer 121. and for a dead Thing, to say, *ceperunt & asportaver'*, &c.

**C** And there is another Writ of Trespass; if a Man take another and imprison him until he make Oath that he will not trouble nor imprison him for a Trespass done to him before, or imprison him until he hath made unto him a Release of all Actions.

**D** And if a Man taketh his Villain and puts him into the Stocks, and others come and break the Stocks, and let him out, he shall have an Action of Trespass, and the Form is:

*Quare cum idem R. S. nativum & fugitivum suum, in Manerio suo apud K. pro eo quod idem R. non fuit justificabilis, cepisset, & ipsum ibidem in cippiis ad castigand', prout sibi bene licuit, posuisset, predict', &c. pred. cippas vi & armis fruger', & ipsum S. ceper'. & abduxer'. &c.*

**E** There is another Form of Writ thus: *Quare vi & armis, &c. quodd. Fossatum in L. terris & simis in tantum implevit, quod aqua de Fossata predict'. exiens Blad. ipsius W. in garbis in horreo suo ibidem existent. superundavit, per quod Blada pred. ad valentiam C. s. putrefacta fuer', & Arbor. suas ibid. nuper crescen. ad valentiam xl s. radicibus evulser'. & asportaver'. & Blada sua ibidem nuper crescen. ad valenc. xl s. cum quibusdam Averiiis suis depasti fuer', conculcaver'. & consumpser'. &c.*

And by the first of these Writs appeareth that that is an Action of Trespass upon the Case, and the Residue a common Action of Trespass.

**F** And if a Man draw Wine out of the Vessels, and put Water in the same to fill them up again, he shall have an Action of Trespass in this Form:

*Quare vi & armis, &c. xl. lagenas de quodam dolio Vini ipsius A. pretii quatuor. libr', in navi predicti I. apud S. posite abinde usque S. ducent', extraxit & dolium illud aqua maritima adimplevit, ita quod residuum Vini pred. putridum devenit. & totalit. deperit; & alia, &c.*

**G** And another Writ of the Fish of his Piscary, and Herb fed up, and Land digged thus:

*Quare vi, &c. in libera Piscar. ipsius A. apud N. piscatus fuit. & Herbam suam ibid. nuper crescen. falcavit, & in terra sua similiter ibid. fodit, & terram inde projecit, ac Herbam predict'. & Piscem de Piscariis predict'. ad valentiam C. s. ceper', &c.*



And it appeareth here that there are divers manners or Forms of fishing in his Fish-pool. One Writ is, *Quare, &c. in Vivariis suis piscatus fuit, &c.* Another Writ is, *Quare, &c. in separ. Piscar. ipsius A. piscatus fuit, &c.* And the third Writ is as before, *Quare in libera Piscar. ipsius A. apud N. pisc. fuit, &c.*

And a Man shall have a Writ of Trespass for breaking of his House, and cutting of his Trees, and for fishing in his Ponds, and for taking of his Goods and Chattels, and for taking of his Plough-Cattel, and impounding of them, and for taking of his Doves out of his Dove-house; and the Form is such:

*Quare, &c. Domus ipsius A. apud N. fregit, & Arbores suas ibid. nuper crescen. succidit, & in Vivariis suis ibid. piscatus fuit, & Pife. inde ac Arbores præd. necnon alia bona & catall. sua, ad valentiam C. s. ibidem inventa cepit & asportavit, & Averia sua de caruca sua ibid. cepit & imparcavit, & ea tandem imparcata detinuit, quod quadraginta aer. terre ejusd. A. per magnum tempus inculte remanser, & Columbas columbar. sui ibidem cum retibus & aliis ingeniis cepit & asportavit, per quod idem A. volatum Columbar. sui præd. totaliter amisit; & alia, &c.*

C. 5 Part,  
108. in Tres-  
pass 280 De-  
fendant at  
to one Thing  
justified,  
and pleaded  
Not guilty  
to another;  
and the Jury  
found one Is-  
sue, and  
taxed Da-  
mages en-  
tirely. 22 El.  
Dy. 369.  
2 & 3 Mar.  
Dyer 121.  
17 E. 3. ac.

And by this Writ it appeareth that a Man shall have an Action of Trespass for taking of his Plough-Cattel, and shall join the same in a common Action of Trespass, with other Trespasses; and also that he shall have an Action for taking of his Doves.

And a Man may have a Writ *de Clauso fracto, & Bladis in garbis & Fæn. ad valenc. C. s. depastis, &c.* or of eating of his Hay only, &c. Or, *Quare A undinem ipsius R. ad valenc. C. s. apud N. nuper crescen. messuit & asportavit.*

Another, *Quare, &c. Lapidem molarem ipsius Prioris pretii xl s. apud N. fregit; & bona & catalla, &c.*

And by this it appeareth, that if it be a live Thing or dead Thing for which the Action is brought, it is not material whether he say *pretii, &c.* or *ad valentiam, &c.*

And another Writ of a Mill-Pool broken in two Towns, thus:

*Quare, &c. Stagnum molendini ipsius R. de B. apud R. & S. fregit, per quod aqua de eodem Stagno totaliter exivit, & eidem R. proficuum molendini sui præd. ad valenc. C. s. amisit; & bona & catalla sua, &c.*

And another Writ, *De Dominis & catallis combastis.*

And another Writ, *De Oribus tonsis & Lanis asportatis.*

And another for taking him and imprisoning him in one Place, and from thence carrying of him to Prison in another Place, and there detaining him in Prison.

And

**A** And another Writ for taking of his Sheep in one Place, and impounding of them in another Place, until he hath paid a Fine.

**B** And another Writ for breaking of his Sluices in such manner :

*Quare, &c. Exclusum stagni molendin. ipsius Abbatis & Parcum suum ibid. apud S. freger & in eo sine licentia, &c. & Arbor. suas, &c. & in separali Piscaria, &c. & Piscem inde, & Arbor. præd. ad valenc. C. s. necnon Feras de præd. parco cepit.*

**C** Another Writ, *Quare vi & armis, &c. Exclus. ipsius A. ultr. fossatum de N. pro salvatione terrarum suarum apud C. &c. vi & armis fregit, & maceratum inde ad valenc. C. s. in minutas partes secuit, ita quod per fracturam huiusmodi terræ & prata ejusd. A. ibidem inundat. fuer', & id. A. proficuum terrarum & pratorum præd. ad valenc. C. s. totalit' amisit; & alia, &c.*

**E** And another Writ: If a Man doth imprison his Villain, and set him in the Stocks for some Offence, and another Man doth set him at large, the Lord shall have an Action of Trespass for breaking up the Stocks, and for setting his Villain at large.

**F** And another Writ: If a Man be riding on the Way, and another Man striketh his Horse, by which the Rider falleth and is hurt; he which is cast off his Horse shall have Trespass against the other. See 91. k.

**G** And another Writ for putting out another Man's Eye thus: *Quare vi & armis dextr. ocul. ipsius W. apud N. eruit, & alia, &c.*

And the Master of an Hospital shall have an Action of Trespass for taking of Goods in the Time of his Predecessor. And the Form of the Writ is such: *Rex, &c. si W. de N. Custos Hospitalis sancti Michael. de C. fecerit, &c. tunc ponit, &c. quare vi & armis bona & catalla prædict. Hospitalis, ad val. C. s. tempore I. de C. nuper Custodis Hospital. præd. prædecessoris prædict. Custod' apud R. inventa cepit & asportavit, &c. & alia, &c.*

**H** And the like Writ for an Abbot or Prior, and in the end of the Writ he shall say, *in deterioration. Domus & Ecclesie ipsius Abbatis:* And so it seemeth it shall be in the end of the Writ for an Hospital.

And another Writ for an Abbot thus: *Quare vi & armis portas & domos Dom. & Eccles. ipsius Abbat. apud L. fregit, & Blada Dom. & Eccles. præd. tempore præd. Abbatis ibidem crescent. ad val. &c. cum quibusd. Averiis depastus fuit, emulcavit & consumpsit, & bona & catalla arund. Domus & Ecclesie tempore prædict. ad val. C. s. ibidem inventa cepit, &c. & alia, &c.*



And another Writ for a Trespass done in the Time of Vacat-  
tion of an Abbey or Hospital; *Quare vi & armis bona &*  
*catall Domus & Ecclesia ipsius Abbatis de C. tempore Vacatensis*  
*Abbat. prædicti. ad val. C. s. apud L. inventa cepit & asportavit,*  
*Ec. & alia, Ec. in deteriorationem, Ec. & contra pacem Ec.*

And another Writ of Trespass; *Quare vi & armis War. K*  
*rennaw ipsius A. apud C. intravit, & in ea, Ec. fugavit; & Bos-*  
*cum suum similit. ibidem intravit, & tres pullos suos Espervorum*  
*in ead. bosco nuper nidific. pretii xx s. ac alia bona & catall sua ad*  
*val. C. s. ibidem inventa, necnon lepores, cuniculos & perdices in*  
*Warrenna cepit, Ec.*

And another Writ of Trespass; *Quare vi & armis centum L*  
*Oves ipsius A. apud T. invent. cum quibusd. canibus fugavit. cauet*  
*illos ad mordend. Oves præd. in tantum incitando, quod per fuga-*  
*tionem illam & morsus canum præd. Oves præd. multipliciter dete-*  
*rioratae fuer. & magna pars Ovium ill. factus abortivus fec. & in*  
*T. servient. suum ibidem insult. fecit, Ec. per quod, Ec.*

And another Writ, *De Porcis fugatis ita quod interierunt, Ec.*

And if a Man do incire or procure his Dog to bite any  
Man, he shall have an Action of Trespass for the same.

And if a Man fill a Ditch with Mud and Earth, which had M  
used to be a Water-course, for which another Man's Land is  
drowned, &c. he shall have a Writ of Trespass, *Quare vi*  
*& armis*, and the Writ is such: *Quare vi & armis quodd.*  
*Fossatum apud T. per quod quaedam aqua decurrit ib. terrâ & sîmo*  
*in tantum implevit, quod aqua illa de antiquo cursu suo impedita*  
*xx. acras terræ ipsius A. ibidem diversis Bladis seminatae inundavit.*  
*per quod idem A. proficuum terræ suæ præd. totalis. amisit;*  
*& alia enormia, Ec.*

And if a Man distrain Cattel, and carrieth them into un- N  
known Places, the Party shall have an Action of Trespass,  
*Quare vi & armis*, for the Distraining of them; and the  
Writ is such:

*Quare vi & armis Averia ipsius A. apud N. cepit, & ea ad*  
*loca ignota fugavit, ita quod Averia ill. eidem A. secundum Le-*  
*gem & consuet. Regni nostri replegianda inventiri non potuer. &*  
*alia, Ec.*

There are divers Writs of Trespass founded upon Sta- O  
tutes, whereof some do follow.

*Rex, Ec. Si A. Ec. tunc attach B. Ec. quod sit coram nobis,*  
*Ec. ad respond. præf. A. quare vi & arm. C. uxor. præf. A. apud*  
*N. rapui; & eam cum bou. & catall. præd. A. ad val. C. marcarum,*  
*abduxit, & eam adhuc ei detinet; & alia, Ec. ad grave dam-*  
*nium, Ec. contra formam Stat. in hujusmodi casu provis. Ec.*  
*Teste, Ec.*

Another



**P** Another Writ: *Quare vi & arm. Averia ipsius A. apud N. in Com. tuo cepit, & ea à Com. illo usque P. in Com. Kanc. fugavit & impareavit, & ea ibid. impareata detinet, cont. Legem & consuet. Regni nostri & cont. pacem nostram. Et habeas ibi, &c.*

**A** Another Writ of Trespass, that Distresses, &c. be not out of the Fee, or in the King's Way thus: *Si A. fecerit, &c. tunc pone, &c. quod sit, &c. coram, &c. ostens. quare cum de communi Cencil regni nstr. provisum sit, quod non liceat alicui Distractiones facere ex quacunq. causa extra Feod. suum, nec in via Regia aut communi strata, nisi de nobis & ministris specialem auctoritatem ad hoc habentibus, præd. B. qui minist. noster non est, ut dicitur, extra Feod. suum apud N. Averia, ipsius A. contr. formam provisionis præd., &c. Et habeas, &c. Ocherwise in the Highway thus: *Averia seu bona & catalla ipsius A. in Regia via cepit, & impareavit, & ea adhuc impareata detinet, contra Legem & cons. Regni nostri, &c. & cont. pac. nostram: Or thus: Et Averia præd. diu impareata detinuit contra Legem, &c. & contr. pacem nostr., &c. Et habeas, &c. Et Averia illa eid. A. interim deliberari fac. Teste, &c.**

[ 90 ]

**B** Another Writ of Trespass against him who distraineth a Man by his Plough-Cattel, or by his Sheep; *Ostens. quare cum ad communem utilitat. Regni nostri stat. sit, quod nullus de eodem Regni distringat per Averia carucar. suarum, vel per Oves, pro debito nostro vel alieno, seu alia quacunq. occasione, per Ball. seu minist. nostros aut alior., quamdiu alia habeat Averia per que rationabilis Districcio super ipsum fieri possit pro debitis illis levand., exceptis duntaxat Averis illis que in damno alicujus inveniunt secundum Legem & cons. Regni nostri impareari contigerit; præd. W. Oves præd. A. apud N. vel Averia ipsius A. de caruca sua apud N. cont. form. Stat. prædict. cepit & impareavit, & ea adhuc ibidem impareata detinet, cont. Legem & cons. &c. & cont. pacem, &c. Et habeas, &c. & Averia illa eidem A. interim deliberari fac. Teste, &c.*

And so note, that in this Writ of Trespass the Sheriff shall make Deliverance unto the Party, as he shall do upon a Replevin: And if the Party hath the Beasts delivered unto him before the Writ sued, then this Clause, *Averia illa eidem A. interim deliberari facias*, shall not be in the Writ.

**C** Another Writ: If a Man doth take the Oxen or Carts of another, or other Things, as Barges or Ships, to carry Goods, against the Will of the Owner, then he shall have such Writ:

*Rex Vic, &c. Si, &c. pone, &c. ostens. quare cum in Stat. dudum apud Westm. edit. int. alia continentur, quod nullus capiat equos, boves, plausira, carucas, naves, & batellas ad cariagium fac., contra voluntat. illius cujus res ill. fuer.; præd. B. & D. vi & armis*

## Writ of Trespafs.

quandam carectam & quatuor equos: præd. A. apud N. invenit, contra voluntatem ipsius A. ad carcerium fac' cepit, & per magnum tempus detinuit; & alia turba, &c. ad gravi dampnum, &c. Contra formam statuti prædicti, & contra pacem nostram. Et habens illi, &c.

Executors shall have such Writ of Trespafs for Goods and Chattels taken in the Life of the Testator.

And if a Man do distrain out of his Fee, he who is distressed shall have an Action of Trespafs against him; and in the end of the Writ there shall be this Clause, *Et oportet illi eidem A. interim deliberari facias, &c.* And by that Writ the Sheriff shall deliver the Cattel to the Party, as in a Replevin.

If a Man cast a Thing upon the Feet of another, by which he is hurt, he shall have an Action of Trespafs for the same.

If a Man take a Canon or Monk out of the Monastery, *Uaugh 100* the Abbot or Prior shall have an Action of Trespafs thereupon, thus:

Ostenf. quare quand. domum infra Priorat. de B. que est Cella ejusdem Abbatis, in qua Frater I. Canonic. ejusdem Abbatis, prædicti in quod contra Regulam Ordinis sui incidit, existit, juxta dicti Ordinis regulam castigand', ut & armis friger', & præf. I. cepit & abduxit; & alia, &c. Or thus; Quare, &c. Clausum ipsius Abbatis apud L. fragit, & fratrem W. de L. Canonicum, &c. in Carcerali custodia infra clausum prædicti. juxta Regul. Ordinis sui castigand. detentum, ab eadem custod. extraxer. & abduxer'; & alia, &c.

And a Man shall have an Action of Trespafs for taking his Son and Heir, or his Daughter and Heir, and marrying her. And the Writ is such:

*11 H. 4. 16.* Si R. fecerit, &c. tunc pone, &c. W. & B. quod sint, &c. Quare ut, &c. Johann', vel Johann', as the Case is, filium vel filiam & herid. præd. R. apud I. invenit. rapuer', maritaverunt, abduxerunt; & alia, &c.

And the King shall have an Action of Trespafs for taking of his Goods. And the Writ is such:

Quare ut & armis bon. & catalla nostra ad nos, &c. & alia turrima ibidem perpetravit, in nostri contempt', & grave dampna, &c. & contra pacem nostram.

And for such Trespafs done upon the Soil and Possession of the King, the Use is for to have an Information of Intrusion for the King in the Exchequer, and the Defendant there to answer it. And when he appeareth in the Exchequer, the Course is there to bind him in Recognizance at his Peril to leave the Possession to the King; and yet it seemeth the King may have an Action of Trespafs, *Quare Clausum fregit, &c.*



*Ec. & Herbas depast. fuit. Ec. & Arbores succidit. Ec.*

**K** And there are other Writs of Trespass, *Quare Fossata & Sepe ipsius A. frugerunt, &c.*

And another Writ for digging in his Land, and for putting of Lime and Hemp in the Ditches, by which the Water is corrupted; and the Writ is:

*Quare, Ec. in separali solo ipsius A. apud N. fodit, & terram inde projectam in fossatis suis ibidem projecit, & limum & cannabum in eisd. fossat. posuit, per quod aqua in foss. existens per corruption. limi & cannabi præd. adeo infecta devenit, quod Piscis in eisd. fossat. existens ad val', Ec. interit; & al', Ec.*

[ 98 ]

**A** And another Writ of Trespass for assaulting a Man in his House, and lying in wait for him, until he make Oath that he will not bring an Action against him, *Ec.* and the Writ is such:

*Quare in ipsum I. Ec. & ipsum I. in quandam dom', ad quam pro vita sua salvanda ib. fugit, insecuti fuer', & ipsum inibi per tempus non modicum obseder', & ipsum sic obsessum quousq; corpor. præstit. sacrament. quod aliquam Action. versus præf. Ec. occasione transgr. præd. seu alia occasione quacumq; non moverit, detinuer', Ec.*

**B** And if a Man have Waif and Stray within his Manor by 40 E. 3. 10. Prescription, and another Man taketh the Waif or Stray out of the Manor, *Ec.* he who hath the Manor shall have an Action of Trespass for them, *Ec.* and that without any Seizure of them before.

**C** And if a Man take another Man and imprison him, and compel him to make to him a Statute-Merchant, or a Release, or an Acquittance, he shall have an Action of Trespass for the same, and the Writ shall recite the Matter, and the detaining in Prison of him, *quousque, Ec.*

**D** If a Man have a Wreck by Prescription, or by the King's Grant, *Ec.* if Goods be wrecked upon his Lands, and another taketh them away, he who hath the Wreck shall have an Action of Trespass, *Quare vi & armis,* for thus taking without Seizure thereof before; and the Writ is such:

*Ostenfur', quare cum idem Th. Dom. Manerii de Eston Bavene existat, & ib. habere debeat, ipseq; & antecessores sui Dom. Manerii præd. à tempore quo non extat memoria hucusq; habere consuever', Wreckum maris infra prædict. Manerii præd'; præd. Jocus & Robert. bona & catalla ad valene. C. s. apud S. infra prædict. ejusd. Maner. ad terr. projecta, que ad ipsam Th. tanquam Wreck. pertin. deberent, vi & armis ceper. & asportaver', Ec. Or thus, decem libr. in pecunia, Ec. Or, quare cum per Chartam, Ec. habere debeat, Ec.*

560.100



If a Man fend his Servant to apprehend his Villain, and bring him unto him, and the Servant apprehendeth the Villain, and in bringing him unto his Master another rescueth him from the Servant, and lets him go at large; the Master shall have an Action of Trespafs for this Rescous, and not the Servant, for the Wrong is done unto the Master, &c.

If an Abbot or other Man hath a Hundred, and hath all Felons Goods within the Hundred, if any Felon within the Hundred be attainted, and the Sheriff taketh the Goods of the Felon within the Hundred, he who hath the Hundred, and such Liberty, shall have an Action of Trespafs against the Sheriff for the Goods which the Sheriff took, and the same shall be, *Quare vi & armis, &c.*

And if an Abbot or other Person ought to have Toll in any Place, and sendeth his Servant to take the Toll, and another doth disturb his Servant to take the Toll; the Abbot, or he who ought to have the Toll, shall have a general Action of Trespafs, *Quare vi & armis* they did assault his Servant, and disturbed him to take the Toll. And the Writ is such:

*Quare cum idem Abbas, per Chart. progenito. nostr. pred. quendam regum Angl. habere debeat Theolonium de rebus venalib. ad Villam de S. venient. ib. iidem R. & I. in S. serviant. ipsius Abbatis, per ipsum ad hujusm. Theolonium in Villa pred. colligend. deputat. vi & armis insultum f. car. & ipsum quo miris hujusm. Theolonium colligere & percipere potuit impediver. & pred. catall. per ipsum S. pro hujusm. Theolonio nomine Distriction. ibid. capta & attachiata eidem S. abstuler. per quod idem Abbas profic. de hujusm. Theolonio proveniens per magnum tempus amisit; & alia, &c.*

And so if a Man ought to have Toll in a Fair, &c. and his Servants are disturbed to gather the same, he shall have the like Action for Assault of his Servants, and for the Loss of their Service, and for the Disturbance made unto them, and for losing the Profit of his Toll, and all in one Writ.

Vid. 1H. 5. 1  
47 E. 3. 22.

And if a Man have a Fold in common with two other Men, and the one do disturb him to set up his Clays and Pales, and break them, he shall have an Action of Trespafs against them in this Form, *Quare vi & armis*, thus:

*Si Priorissa de T. fecerit, &c. tunc pone, &c. E. &c. essent. quare cum ead. Priorissa quendam Faldum apud F. simul cum pred. E. ac M. de B. habere debeat, ipsaq. Priorissa & ejus predecess. hujusm. Faldum cum prof. E. & M. & eor. antecess. a tempore quo non extat memoria, semper hucusque habere consuever. pred. E. claias & pales ipsius Priorissa in Faldo curund. Priorissa. E. & M.*

*apud diſtam Villam de F. nuper ereſt. poſitos, vi & armis fregit, & ipſam Prioriſſam quo minus clavis & palos in Faldo præd. prout ad ipſam pertinuit, ponere, vel aliquod commodum de Faldo illo percipere poſuit, impedivit; & alia, &c.*

**I** A Man ſhall have an Action of Trespaſs for taking of his Apprentice, or for taking of his Servant.

**K** And the Church-wardens ſhall have an Action of Trespaſs for taking the Goods of the Church, either in their own Time, or in the Time of their Predeceſſors.

**L** And a Man may have an Action of Trespaſs for breaking of his Houſe or Cloſe, and alledge a Continuance of the Trespaſs, and of the Breaking thereof, from ſuch a Day unto ſuch a Day; as well as he may have for treading of his Graſs or cutting of his Corn, &c.

**M** The Ordinary ſhall have an Action of Trespaſs for thoſe [ 92 ]

Goods which he hath to adminiſter as Ordinary; where a Man dieth Inteſtate, and the Goods are taken out of his Poſſeſſion, he ſhall have an Action of Trespaſs for the taking thereof. But he ſhall not have an Action of Trespaſs for Goods taken out of the Poſſeſſion of him that died Inteſtate, but the Adminiſtrators ſhall have ſuch Action; for the Ordinary ſhall not have an Action for Goods or Debts of him that died Inteſtate, but only an Action of Trespaſs for the Goods taken out of his own Poſſeſſion. And the Proceſs in this Writ of Trespaſs is an Attachment and *Diſfringas*; and if the Sheriff do at the Attachments or *Diſfringas* return *Nihil*, then he ſhall have a *Capias*, and *Alias*, and *Pluries*, and Exigent, and ſo Proceſs of Utlagary againſt him.

**A** If the King granteth a Protection unto a Man, by which Protection he taketh him, his Lands and Goods into his Protection, as the common Courſe and Form of Protections are; now if another Man do afterwards take his Goods, or doth enter into any of his Lands or Tenements during the Time that the Protection is in force, he ſhall have a ſpecial Action of Trespaſs againſt him in this Form:

*Oſtenſ. quare cum nuper ſuſceperimus in proteſt. & deſenſion. noſtram W. homines, terras, rez, reddit', & omnes poſſeſſiones ſuas, omnib' & ſingulis inſipient' ne quis injuriam, moleſtiam, damnum inferret ſeu gravamen; id. B. bona & catal. præd. W. dum ſub proteſt. noſtra fuit, apud N. invent', ad valent. cent. librar', & arm' cepit & aſportavit, & homines, &c. per quod, &c. & lin, &c. ad grave dampnum ipſius W. & cont. pacem veſtr. Et hæc ibi nomina Plig', & hoc breve. Teſte, &c.*

**B** And alſo he who hath the King's Protection, if any Man take his Goods, or enter into his Lands, &c. or beat his



## Writ de Trespass sur le Case.

Servants, &c. he shall have a special Writ unto the Sheriff for to enquire of them, and to certify the same before the King, &c. and it seemeth the King shall make Process against them by *Venire facias*, as upon an Indictment, and that thereupon they shall be fined, and the Writ is such:

*Rex Vic. Linc. salut'. Præcipimus tibi, quod per sacrament. præbor. & legal. homin. de Com. tuo per quos, &c. diligent. inquiras, qui malefactor. & pacis nostræ perturbator. bona & catal. A. ad valentiam cent. librar', apud N. inuenta quem suscepim. in defension. nostr' special'. homines, res, redditus, & omnes poss. suas, omnib' & singul. inhibentes, ne quis eis injuriam, molestiam, dampnum inferret seu gravamen, vi & arm. ceper. & asportaver'. & in homines suos ibid. existentes, insultum fecer', & ipsos verberaverunt, &c. & alia, &c. ad grave dampnum ipsius A. & contra pacem nostram præd. & contra pacem nostram: Et Inquisition. inde distinet. & aperte factam nobis, sub sigillo tuo & sigillis eor. per quos facta fuerit, sine dilatione mittas, & hoc Breve.*

But note, That there is a Statute made *An. 28 E. 3. cap. 6.* that willeth, that no Commission or Writ shall be from thenceforth granted unto the Sheriff, to enquire, &c. But if such Writ or Commission be granted, &c. *Quere* if it be good; it seemeth not, for this Statute is made only to bind the King that he shall not grant, &c.

There is another Writ *De Fenu in Prato prostrat. & depast.*; & another Writ *De Clauso Ostio, & Fenestris fractis, &c.*

## Writ de Trespass sur le Case.

There is another Form of Writ of Trespass upon the Case which is to be sued in the Common Pleas or King's Bench; and in that Writ he shall not say *Vi & armis*, &c. but in the end of the Writ he shall say *contra pacem*, and the Form is such:

*lex Vic'. &c. Si Matilda de D. &c. tunc pone, &c. quod sit, &c. ad respond. tam nobis quam Matildæ, quare cum ead. Matilda super quoddam Breve nostrum de Prohibitione reversus præf. I. ne ipse Placitum in Cur. Christianitatis de catallis & de debitis quæ nunc de Testamento vel Matrimonio sequeretur, in Cur. nostrâ impetrasset, eademq; Matilda dictum Breve nostrum præf. I. apud G. liberasset: idem I. recepto dicto Breve nostro, ead. ibid. in lura processit & possidens suis contulcavit, necnon Placitum præd. sequutus est in ead. Curia Christianitatis, in nostri contempt', & ipsum Matildæ grave dampnum, ac contra pacem nostram. Et habeas, &c.*

Note well  
this Writ,  
that it lieth  
for casting a  
Writ into  
the Dirt.  
Crompton  
133. ac.

Another



**F** Another Writ; *Quare in aqua de Plim. per quam inter Humber & Gaunt navium & battellorum communis est transitus, ex transverso aque pilos defixit, per quod quedam navis cum triginta quarteris brasii ipsius W. submersa fuit, & viginti quarteris brasii, pretii C. s. deperier; & alia enormia, &c.*

**G** And if the Lessor do oust the Executors of the Lessee of their Term, they shall have a special Action of the Cafe against the Lessor, and the Writ shall be by Summons, &c. and not by *Pone per vadios & salvos pleg*, as the other Writ of Trespas is; and the Form is such:

*Si Johan', Executrix Testam. E. de C. fecerit te, &c. tunc sum', &c. P. & M. ostens. &c. quare cum iidem P. & M. unum molendinum & sex acres terræ cum pertin. in N. præf. E. de C. ad terminum qui nondum præterit dimisissent, & idem E. de C. in Testamento suo præd. molendinum & terr', usque ad finem termini præd', præd. Executrici, ad executionem Testam. præd. inde faciend', legasset; præd. P. & M. post mortem ipsius E. de C. præd. molend. & terras (durante termino præd') ingressi, ex præd' Executrici desinent minus juste, in retardation. execut. Testam. prædicit', ut dic'. Et habeas, &c.*

And if the Sheriff doth arrest a Man upon a *Capias* directed unto him sued forth upon a Statute-Merchant, and afterwards set him at Liberty, he who sued the Writ shall have a special Action upon the Cafe against the Sheriff, which is such:

**A** *Rex Coronatoribus salut'. Si A. fecerit, &c. tunc pon', &c. Vic. nostrum Suff. quod sit, &c. ostens. quare R. mercatorem, nuper per Breve nostr. eid. Vic. direct', prætextu ejusd. Recognitionis centum marcarum eid. A. præf. R. juxta formam Statuti apud Acton Burnel nuper editi fact', capt. & custod. ejusd. Vic. apud O. existen', præf. A. de præd. centum maris minime satisfacto, contra voluntatem ipsius A. libere abire permisit, ad grave damnum ipsius A. & in retardation. execution. Recognitionis prædicit', ut dicitur. Et habeatis, &c.*

**B** And if the Sheriff in a Writ of Account or Debt return upon any, *quod non est inventus, nec habet terras, &c. per qu. distringi poterit, &c.* for which a *Capias* is awarded against him, and he arrested thereupon, where he hath sufficient Lands, or Goods and Chattels; then he shall have an Action upon the Cafe against the Sheriff, directed unto the Coroners, as before is said, &c.

**C** And so another Writ; If the Sheriff hath a Prisoner committed unto him for Debt, &c. and afterwards he suffer him to go at Liberty before the Debt be satisfied, &c. he shall have an Action upon the Cafe against the Sheriff; and

14 H. 7. 14.

22 E. 4. 1

8c. 2.

34 H. 6. 6.

21 H. 7. 10.

36 H. 6. 3.

yet

yet it seems he may have an Action of Debt against the Sheriff.

If a Man be indicted of Felony before any Justice, and D  
one T. as one of the four Men of the Town, and Reeve, give the Evidence as Indictors, &c. and afterwards he who is indicted is acquitted, &c. and afterwards the Bailiff of the Hundred or other Officer shewed unto T. that he who is acquitted hath a Writ of Conspiracy against him, and that he hath a *Capias* to arrest him, by which he is arrested and imprisoned until he pay six Marks for a Fine for his Deliverance, &c. he shall have an Action of Trespass upon his Case: But it seemeth he may have a general Action of Trespass in that Case upon False Imprisonment, if he have not any Writ directed unto him.

If a Replevin be removed out of the Liberty by *Pone* into E  
the Common Pleas, and afterwards (pendant the Plea there) the Bailiff of the Liberty doth award a Return in the Liberty to the Defendant, for which he taketh the Cattel and impoundeth them, by Means whereof some of them die for want of Food; the Party grieved shall have an Action upon the Case against the Bailiff of the Liberty who awarded that Return to hold Plea after the Matter removed in the Common Pleas.

If a Man do attach another or his Goods for Debt, &c. in F  
a Liberty, and after the Bailiff, by Covin betwixt him and the Defendant to discontinue the Plea, deliver the Goods attached to the Defendant, the Plaintiff shall have an Action upon the Case against the Bailiff, and the Writ is such:

*Si A. fecerit, &c. tunc sum' I. Ballivum magne Cur. sive Mercati de N. quod sit, &c. ostens. quare cum idem Ball. ad Querimoniam præd. A. B. per quedam catall. sua, ad respondend' præf. A. in Cur. prædiç' secundum Legem mercatoriam, prout moris est in regno nostro Angl', de debito decem librarum, quod idem A. de præf. B. exigit, attachasset, ac in Loquela prædiç' in eadem Cur. inter partes prædiç', quæ se in Inquisitionem inde posuer', in tantum processum fuisset; prædiç' Ballivus pendente coram eo Inquisitione prædiç', per Collus. inter ipsum & præfatum B. habitam in Cur. prædiç', malitiose recessit, & Inquisitionem prædiç' capere recusavit, per quod Placitum præd. exitit discontinuat'; idemque Ballivus catalla prædiç' eidem B. præf. A. de debito præd. non satisfacta, postmodum liberavit, ad damnum ipsius A. viginti librarum, ut dicitur, &c.*

And a Man shall have an Action of Trespass upon the G  
Case against his Neighbour who hath Lands betwixt him and the Sea, and ought to make Banks; and cleanse certain

Ditches



Ditches and Sewers betwixt him and the Sea, and he doth not cleanse them as he ought to do, by reason whereof his Land is surrounded, &c. he shall have his Action upon the Case against him for not mending the Banks, and cleansing the Ditches and Sewers, &c.

- H** If a Man be committed unto the Gaol for Debt or Arrerages of Account, and the Gaoler of Malice lay so many Irons upon him, or set him in the Stocks, or keepeth his Victuals from him, by reason whereof he is so spent, that he becomes lame, or hath other Infirmity; he shall have an Action upon the Case against the Gaoler.

If a Man doth distrain any Prior's, or other Prelate's Horse, whereupon he is riding in his Journey, for or upon any Contract, Debt, or Trespass done by him or his Predecessor, when he might have distrained or attached him by other Goods or Chattels of the said Prior or Prelate, then he shall have an Action upon the Case, which is such:

*Vid. Br. Attachment 23. But if he hath no other Goods, then he may attach these Goods.*

- I** *Si A. Prior, &c. pone B. &c. ostens. quare cum non liceat alicui Prelatum, Magnatem, seu aliquam personam Ecclesiasticam regni nostri, per idem Regnum alicubi transeuntem, occasione alicujus Contractus seu debiti per equitatum suum proprium distringere, cum alia Averia seu catalla ibidem habeat, per que rationabilis Distinctio super ipsum fieri valeat; præd. B. præf. Priorem per Villam de C. transeunt' occasione cujusdam Contractus inter S. quendam Priorem de, &c. Prædecessorem præd. Prioris, & præd. B. dudum, ut dicitur, per quendam Equum palfridum suum, quanquam per alia Averia & catalla tunc ibid. rationabilem Distinctionem super ipsum fac. potuisset, distinxit, & palfridum illum diu malitiose detinuit, per quod negotia sua ardua, pro quibus transitum suum præd. fecerat, perierant; & alia, &c.*

[ 94 ]

- A** And if a Man promise and take upon him to make for another Man certain Carriages for Carriages, or other Thing, and taketh Money before-hand for to do the same, and afterwards he doth not make them according to the Promise and Undertaking; the other may have an Action upon the Case against him, and the Writ shall be such:

*Si W. &c. tunc pone I. &c. ostens. quare cum idem I. tres currus pro victualibus & herveis ipsius W. ad partes transmarinas ducend. pro certa pecunia summa, cujus unam part. præ manibus recepit, infra cert. termin. inter eos concord. facere & fabricare apud S. assumpisset: Idem I. currus præd. infra terminum præd. facere & fabricare non curavit, per quod idem W. diversa bona & catalla sua ad valentiam C. marc. que in curribus præd. duci*



## Writ de Trespass sur le Case.

duci debuissent, pro defectu cur. præd', totaliter amisit ad grave dampnum ipsius W. ut dicitur: Et habeas, &c.

*S Rep: 37*  
And if a Man be lodged in any Inn, and any of his Goods B be taken or stoln from thence by a Stranger, he shall have an Action upon the Case against the Inn-keeper, and the Writ shall be such:

*Rex Vie, &c. Si A. fecerit, &c. tunc pono, &c. B. quod sit, &c. ostens. &c. quare cum secundum Legem & cons. regni nostri Angli. hospitatores, qui hospitia communia tenent, ad hospitand. homines per partes ubi hujusmodi hospitia existunt transseunt, & in eisdem hospitantes, eorumque bona infra hospitia illa existentia, absque subtrahitione custodire die ac nocte tenentur, ita quod pro defectu ipsorum hospitatorum seu servientium suorum hospitibus hujusmodi dampnum non eveniet ullo modo: Quidam malefactores quendam equum ipsius A. pretii xl. s. infra hospitium ejusd. B. apud S. hospitati, inventum præ defectu ipsius B. ceper. & abdux', & alia enormia, &c. ad grave dampnum, &c. Et habeas, &c. Teste, &c.*

If a Man do sell unto another Man a Horse, and warrant C him to be sound and good, &c. if the Horse be lame or diseased, that he cannot work, he shall have an Action upon the Case against him.

*H. 6. Action sur le Case 15*  
*(4)*  
*6/23/469*  
And so if a Man bargain and sell unto another certain Pipes of Wine, and warrants them to be good, &c. and they are corrupted, he shall have an Action upon the Case against him.

But note, it behoveth that he warrant it to be good, and the Horse to be sound, otherwise the Action will not lie. For if he sell the Wine or Horse without such warranty, it is at the other's Peril, and his Eyes and his Taste ought to be his Judges in that Case.

*H. 7. 41. 9*  
*7. 21*  
*6 23: 19*  
*lan: 312*  
*Down: 177*  
But if a Smith prick my Horse with a Nail, &c. I shall D have my Action upon the Case against him, without any Warranty by the Smith to do it well. And the Writ shall be, *Quare quendam clavum in unum pedem cujusdam equi J. apud N. fixit, per quod putridus devenit, sic quod idem equus per magnum tempus laborare non potuit, & idem J. profic. equi sui præd' per idem tempus amisit, ad dampn', &c.* For it is the Duty of every Artificer to exercise his Art rightly and truly as he ought.

And if any Sheriff or Under-Sheriff do distrain any Par. E sons or Vicars, or other Spiritual Persons, in any Land whereof they are possessed in the Right of their Churches, they shall have Actions upon the Case against the Sheriff in this Form:

*Rez. &c. si A. persona Ecclesie de C. fecerit, &c. tunc pnt. &c. B. Vic. nostrum Somers. & C. Subvic. nostrum ejusdem Com. quod sint, &c. ostens. quare cum in articulis cleri regni. nostri per dominum E. nuper Regem Angl. progenitor. nostrum concessit inter alia continetur, ne ministri nostri, ut Vic. aut alii, cap. animalia rector. Ecclesiarum pro districtionibus aliquibus in via Regis, nec in feod. in quibus Ecclesie ill. olim fuer. dotate; pced. Vic. & Subvic. averia pced. A. apud L. in feodo ipsius A, Ecclesie sue pced. de quo eadem Ecclesia olim dotata fuit cepit. & ea abinde usque S. duxerunt, & imparcarerunt, & ea imparcata ibidem diu detinuer. contra legem, & consuet. regni nostri, & contra form. articulorum pradict. & contra pac. in nostram. Et habeas, &c.*

**F** If a Man ought to be quit of Toll for himself and his Tenant and Men, in every Market or Fair, &c. Now if any Officer or Bailiff take a Toll of him, his Tenants or Men, he of whom the Toll is taken, shall have an Action of Trespass upon the Case against him who took the Toll, or distrained his Goods for the Toll. And also he may have a Writ out of the Chancery directed unto the Bailiffs or such Officers, that they suffer them to be quit of Toll, &c. and he may have an *Alias* and a *Pluries*, and Attachment thereupon against the Bailiffs or Officers, if they do not obey such Writs, and the *Pluries* shall be returned into the Common Pleas or King's Bench.

If a Man hath a Manor within any Honour, and by prescription hath had View of Frankpledge of his Tenants within his Manor, &c. Now if he or his Tenants be distrained by the Lord of the Honour, to come unto the Leet of the Honour, and to present there those things which ought to be presented within the View of Frankpledge within the Manor, he who is distrained may have a general Action of Trespass for this Distress, or he may have a special Writ directed unto the Bailiffs or Officers of the Honour reciting the whole matter, commanding them that they suffer the Lord of the Manor to have and to hold his Leet of his Demesne, &c. as he hath used to do; and that they do not distrain him or his Tenants in any wise to come unto the Leet of the Honour, to present any thing which ought to be presented in the Leet of the Manor; and also comprehending in the same Writ, that if they have taken any Distress for that cause, that he then redeliver them, &c. And upon that he may have an *Alias* and *Pluries*, and Attachment against them if they do not obey the aforesaid Writs.

T

And

160:94  
 1851 (95)



## Writ of Trespass upon the Case.

And also if a Man hath used to have a Gulf of Water in A any Water, and it hath been used that no other should make a Gulf in the same Water, between his Gulf, and the Gulf of B. now if another doth make another Gulf betwixt them, he shall have his Action upon the Case in this manner. *Si A. persona Ecclesie de C. fecerit, &c. R. de T. &c. quare cum idem A. habere debeas, ipseque & predecess. sui person. Eccl. præd. à tempore quo non extat memor. semper hæcenus haber. conf. quend. gurgit. in aqua de W. in B. ita quod in ead. aqua inser gurgit. ipsius A. & gurgit. S. de E. Domini Man. de H. nullus aliquem gurgitem levare, palos seu claias figer. aut retia aliqua pro pisce inibi cap. ponere debeat, seu conf. aliquibus temporibus retroactis: idem R. claias & palos int. gurgit. præd. A. & S. in ead. aqua fixit, & retia pro pisce inibi capiend. posuit & ibidem piscatus fuit & piscem inde cepit & asport. per quod idem A. profic. gurgitis præd. ad valens. C. s. amisit, & al. &c. Et habeat, &c.*

And if a Man hath a liberty to return Writs, and to execute them, if the Sheriff *ex officio* enter into the Liberty, and execute any Process there; the Lord of the Liberty shall have an Action upon the Case against him; and these Writs do appear in the Register.

If a Man be found in Arrearages before Auditors, for which the Auditors do commit him to the Goal, and afterwards he escape from thence, now the Gaoler ought to pay the Money which was arrear upon the Accompt. And the Gaoler shall have his Action upon the Case against him who escaped to answer unto the King for the Escape: and to the Gaoler for the Damages which he hath sustained; the Form of the Writ is such:

*Rex Vis. &c. Ex gravi querela A. accepimus. quod cum B. compotum suum de tempore quo fuit Ballivus C. in N. eidem C. infra libertas. de K. nuper reddiderit. Et idem B. pro arrearagiis compoti illius per auditores ejusdem compoti postmodum arrestatus, & prædict. A. custod. gaol. nostræ libertas. præd. liberatus fuit, in eadem gaola custodiend. quousque præd. C. de arrearagiis prædictis juxta formam statuti de hujusmodi receptoribus & ballivis provisi plene satisfecerit, prædictus B. à custodia prædict. A. prædicto C. de arrearagiis prædict. non satisfacto, contra pacem nostr. evasit, occasione cujus evasion. idem A. præfeto C. de arrearagiis illis juxta formam statuti prædicti plene satisfecerit, in ipsius A. damnum non modicum & gravamen. Et quia transgr. illum si talis. perpetrata fuit, relinquere nihilominus impunitam, Tibi præcipimus, quod si prædict. A. fecerit te sicur. tunc prædict. B. per corpus suum attachias, ita quod*



*Writ of Deceit.*

*quod cum habeat coram nobis, &c. ad respondend. nobis de eva-  
sione predicti. & predicti. A. de damnis que sustinuit occasione eva-  
sionis illius. Et habeat ibi hoc Breve, &c.*

And if a Man play with another at Dice, and he hath false Dice with which he playeth, and gets the other's Money with these false Dice, he who loseth his Money, may have his Action upon the Case for this Deceit, and the Form of the Writ is such:

*Rex Vic. &c. Si A. fecerit, &c. tunc pone, &c. T. de D. &c. quod sit, &c. ostens. quare cum idem T. de D. machinans ipsum A. subdole defraudare, & diversas pecuniar. summas de eodem A. extorquer. eund. A. ad ludend. ad tales cum ipso. T. ad quandam jocum vocat, le Doken, pro divers. pecuniar. summis apud Bur-  
ton super Trent, excitasset & procurasset, ac idem A. cum ipso T. ad tales ad jocum predicti. ibid. lussisset, pred. T. quosdam tales veracit. titulat. eidem A. tradidit ad jactandum, & cum tali pred. ad manus ipsius T. devenire contigissent, idem T. quosdam alios tales falsos & subdole titulos, quos numerum duodenarium, & non alium quolibet jactu attingere se visisset, falso & fraudulent. projecit, per quod idem A. magnas pecuniar. summas eidem T. ad jocum illum amisit, ac idem T. summas illas sub colore lu-  
eri falso & deceptivo cepit & asportavit, ad dampnum ipsius A. 5 li. ut dic. & habeat ibi nomina plog. & hoc Breve. Teste, &c. and this Writ was sued Anno 5 E. 4. which see in the Register. 240.*

And although that the Defendant doth not entice the Plaintiff for to play, yet if the Defendant play with false Dice, &c. by which he gets the Plaintiff's Money; it seemeth the Plaintiff may maintain this Action well enough, because the Enticement is not the cause of the Action, but the casting of the false Dice, by which he gaineth the Money, &c.

*Writ de Disceit.*

**T**His Writ lieth properly where one Man doth any thing in the name of another, by which the other Person is damaged and deceived; Then he who is so damaged shall have this Writ. and the Writ is without the Words *vi & armis*, and the Writ is such: Vi. Long  
5 E. 4. 40.  
18 E. 7.  
Disceit 41.  
This Writ  
cannot be  
sued by Attorney 19 H. 6. 50. it shall not abate for Form if it hath matter of Sub-  
stance.

*Rex Vic. Lincoln. Si A. fecer. &c. tunc pone, &c. P. &c. [ 96 ]  
ad resolvend. tam nobis quam prefat. A. quare quod. Breve no-  
strum per fin. 20 s. ad opus nostrum per breve pred. capiend. nomine  
T 3  
predi.*

26 E. 3. 65. *pradiſt. A. hęc penitus ignorant. fraudulent. & maliſiſe in Can-*  
*Disceit 58. cellar' noſtra impetrauit. in deception. Curie noſtr. ad grave dam-*  
*The King num ſpſus A. Et habias ibi nomina pleg. & hoc Breue, &c.*  
*Iſhall have this Writ,*

*if no other wil ſue it, becauſe it is penal. 19 H. 6. 44. Soif a Man levy a Fine*  
*confiſſ. an Action or a Recog. or Statute, or appear as Vouchee in my Name.*

By which it appeareth, That if a Man do purchase a Writ in my Name, for which Writ I ought to pay a Fine in the Chancery, as the course there is for every Writ of Debt of the Sum of 40 l. or more, to pay for every Writ of 40 l. 6 s. and 8 d. and if it be of 100 Marks 6 s. 8 d. And so for every 100 Marks 6 s. 8 d. and so for every Writ of Plea of Land, which is *Præcipe quod reddat*, if it be not a Writ of Right Patent, for every Writ which is of the yearly value of 5  
 19 H. 6. 44. Marks 6 s. 8 d. &c. and so according to that Rate. And  
 7 H. 6. 33. then if a Man purchase such a Writ in my Name, and I know not thereof, I shall have this Writ of Disceit.

And if I do present one unto a Church whereof I am the Patron unto the Ordinary, and one T. doth disturb me, for which Disturbance another doth purchase a *Quare impedit* in my Name returnable in the Common Pleas against the said T. I not knowing thereof, and afterwards causeth the Writ to abate, or me to be Nonſuit in that Writ, I shall have this Writ of Disceit against him who purchased that Writ, &c.

19 H. 6. 44. If one forge a Statute-Merchant in my Name, and sueth a  
*If a Man Capias thereupon, for which I am arrested, I shall have this*  
*make an Writ of Disceit against him that forged it, and against him*  
*Obligation who sued forth the Writ of Capias, &c.*  
*in my name,*

If a Prior or Abbot have Title to present unto a Vicaridge whereof they are Parsons imperſonee and Clerks ſecular or Regular at their Wills; and afterwards another doth forge a Grant in the name of the Abbot or Prior under their Convent-Seal, that they do grant to one of the Parſhioners, &c. that they shall present a ſecular Perſon and not a Regular, as a Canon or ſuch, &c. the Prior or Abbot may have a Writ of Disceit, and the Form shall be ſuch:

*Si Prior Bartholomæi de ſuburb. Lond. &c. pœnita W. & B. &c. quod ſint coram nobis, &c. in octabis ſancti Martini ubi-  
 &c. oſtenſ. quare quum idem Prior perſonam ſecularem  
 vel regularem idoneam. ad vicariam ſancti Sepulchri extra  
 muros Lon<sup>a</sup>. quam quidem Eccleſiam idem Prior tenet in propri-  
 or uſus, pro uoluntate ſua preſentare debeat, & hęcimus conſue-  
 uerit, prædiſt. W. & B. colluſione inter eos præalocuta prædiſt. Preſe-  
 rem*



rem malitiose pręgruare machinantes, sigillum commune prioratus prædicti concrosecerunt, & quasdam literas patentes, per quas prædecessorem præd. prioris concessisse debuer. idem Prior & Convent. loci præd. personam secular. & non alium, ad vicar. illam præsentare deberent cum eodem sigillo contrafacto consignari fec. & literas illas sigillo præd. consignatas in quadam causa ad instantiam ipsius W. tunc Paroch. Eccles. præd. inter ipsum W. & præf. Prior. coram Officiali Cur. Cant. Christianit. super motione frat. R. de F. canonic. præd. Prior. ad presentat. suam ad vicar. præd. per Episc. Lond. admissi nuda exhibuere & ipsum Prior. laborem & expensis virtute literarum præd. diversimodo in hac parte fatigari procurar. in ipsius Prioris dispend. non modicum & gravamen. Et habeas ibi nomina plegiorum, & hoc breve, &c.

- D** And if a Man be Attorney for another in a Plea real against the Demandant, and afterwards by Covin between the Attorney and the Demandant, the Attorney makes default, for which the Land is lost, the Tenant who lost the Land shall have a Writ of Disceit against the Attorney, and the Writ shall be such :

*Ostenf. quare quum idem A. præf. R. in loquela quę fuit coram eisdem Justic. nostris per breve nostrum, inter C. patent. & præf. tenent. de 20. acris terre cum pertin. in C. attorn. suam coram nobis fecisset ad lucrandum vel perdend. in loquela præd. præf. B. collusionis inter ipsum & præd. C. habita, s; ad quend. diem per præf. Justic. in eadem loquela in banco præd. præfixum gratis absentavit, per quod idem A. pro defectu ipsius B. terram præd. per considerationem cur. nostrę amisit, in deceptionem ejusdem cur. nostrę in ipsiusque A. grave damnum, & exheredationis periculum manifestum. Et habeas, &c.*

- E** And if an Action of Trespas be brought against many, and the Plaintiff and one J. by Covin between them cause certain Persons to come into Court and say, that they are the same Defendants; and that they make the said J. their Attorney, and afterwards the said J. as Attorney for the Defendants pleadeth unto Illue, and afterwards suffers the Enquest to pass by default, by which the Plaintiff doth recover against the Defendants: Now those who are the true Defendants shall have a Writ of Disceit against J. who appeared as Attorney for them, &c. and the Writ appeareth in the Register.

And so if R. doth recover in an Assize against W. certain Tenements and Damages, and because W. hath nothing in the same County to levy the Damages, R. removeth the Record of Assize into the King's Bench or Common Pleas, to sue forth Process thereupon, and to have Execution of the said Damages recovered, for which the said W. to defraud the



[ 27. ]

said R. of his Execution, sueth forth a Writ to remove the Record in Chancery, surmising that he will have an Attaint thereupon before the Justices of Assize, &c. by which the Record is removed into the Chancery, and delivered to the said W. to carry to the said Justices of Assize, whereupon he may sue his Attaint. Now if the said W. will not sue forth the Attaint, but delay him, to oust him of his Execution, R. who recovered shall have a Writ of Disceit against him upon the matter, which appeareth in the Register.

One I. de A. sueth a *Præcipe quod reddat* against C. and T. A his Wife, who plead a Fine levied to the said T. by one F. and Margaret his Wife, Mother of the Demandant, &c. and the Defendant saith, That his Mother's Name is *Margery* and not *Margaret*, and after Day is given by the Court, at which Day C. and his Wife procure and cause a Stranger to come into Court, and confess the Fine as the Tenant hath pleaded, by which the Demandant is barred, the Demandant shall have a Writ of Disceit against the said C. and T. his Wife as appeareth by the Register. But it seemeth, that if *Margery* do levy a Fine of her Land by the name of *Margaret*, that she and her Heirs shall be concluded to say, that she another name. But the Tenant may plead, That she by the name of *Margaret* did levy a Fine of her Land, &c. and that hath been done where a Woman had to her name *Agnes*, and she levieth a Fine by the name of *Anne*, it hath been awarded good, and shall bind her and her Heirs, and shall be pleaded, That she by the name of *Anne* levied the Fine.

*without*  
that that I levied the same; for I shall not have Disceit, by Littleton and Danby.

20 H. 6. 10. If a Man sue a *Præcipe quod reddat* against divers Tenants, B and they purchase a Protection for one of them, surmising that he is beyond the Seas upon the King's Service, whereas he is and always hath been remaining in England, by which the Demandment is delayed: The Demandant shall have a Writ of Disceit against the Tenants for that Delay, and the Writ shall be such:

44 H. 3. 4.  
If a Man sueth a Protection, and doth not go, this Writ lieth, contrary if he go, though he presently return.

*Si A. fecerit, &c. tunc pone B. & C. &c. quod sint coram, &c. ad respondend. tam nobis quam A. quare cum idem A. in Curia nostra coram Justic. nostris de banco implacitasset per breve nostrum predictas B. & C. de tribus partibus Manerii de S. cum pertin. iidem B. & C. Cur. nostra ac legi & consuetudini Regni nostri Anglie manifeste illudend. & prosecutionem predicti A.*

in hac parte provocat. machinando ad quendam diem partibus prædict. in eadem loquela coram præfatis Justic. præfixum quasdam literas nostras de protectione continent. ipsum C. ad partes transmarinas in obsequio nostro tunc profecturum fuisse, & ipsum sic quietum esse de omnibus placitis & querelis, except. placitis de dote unde nihil habet, & Quare impedit, & ass. novæ disseisina, & ultima presentationis, & attineta, & exceptis loquelis quas coram Justic. nostris itinerantibus in itineribus suis summoniti contigerit, coram præfatis Justic. porrigi fecerint, ipso C. tunc, post & antea in Ang. continue commorante, per quod loquela illa coram præf. Justic. remansit sine die, in nostri contemptum manifestum, & deceptionem Curie nostræ præd. ac legem & consuetud. præd. illusionem manifestam, necnon ipsius A. dispend. non modicum & exhered. periculum manifestum. Et habeas ibi, &c.

**C** In a *Præcipe quod reddat*, if the Sheriff return the Tenant summoned where he was not summoned, by which the Defendant loseth his Land by default at the *Grand Cape* returned, the Tenant shall have a Writ of Disceit against him who recovered, and against the Sheriff for his false Return, and by that Writ the Tenant shall be restored unto his Land again. And it seemeth the Tenant shall have this Writ after Judgment given for the Demandant against him that recovered before any Entry or Possession: For if the Tenant shall not have a Writ of Disceit before the Demandant doth enter, then perhaps the Demandant will not enter, until the Summoners in the *Præcipe quod reddat*, and the Summoners, Viewers and Pernors in the *Grand Cape* are dead, and then he shall not have a Writ of Disceit after their Deaths; For whether he was summoned or not shall be tried by the Summoners, Viewers and Pernors by examining of them. But see 3 E. 3. That the Tenant shall not have a Writ of Disceit before the Demandant hath entred, *Tamen quare*. And in a Writ of Disceit the Process shall be made against the Summoners, Viewers and Pernors to be examined thereupon, &c. And if the Demandant who recovered by false Return of the Sheriff made a Feoffment of the Land, then the Writ of Disceit lieth against the Demandant who recovered, and against his Feoffee and the Sheriff; and if the Demandant who recovered be dead, and the Sheriff also, yet the Writ of Disceit lieth against the Demandant's Heir, and against him who is Tenant of the Land, if the Summoners, Viewers and Pernors be living: But if the Summoners, Viewers, or Pernors be dead, then the Writ of Disceit is lost. But a Writ of Disceit lieth if any of the Summoners, Viewers, or Pernors be alive, for if they say that they did not summon him, then the

3 E. 3. Dif.  
ceit 47.  
18 E. 2. Dif.  
ceit 54.

32 E. 3. 16.  
cont.



35 H. 6. 46. Plaintiff in the Writ of Disceit shall recover his Land and shall be restored, &c. for it ought to be done by two Summoners at the least, and two Viewers, &c. And if any of them do not that which is returned they ought to do, then the Writ is not executed as it ought to be, by which the Plaintiff in the Writ of Disceit ought then to be restored, &c.

And in a *Scire facias* to execute a Fine, if the Sheriff return the Tenant summoned by two Summoners, if it be not true, yet the Tenant by the Return shall lose the Land; for Execution shall be awarded upon the Return, if the Tenant do not appear; and then the Tenant shall have a Writ of Disceit against the Sheriff, and him who had Execution and him who is Tenant, and shall be restored to the Land.

And so if a Man sue a *Scire facias* upon a Recognizance of Debt, and the Sheriff return the Defendant summoned where he is not summoned, for which the Plaintiff hath Execution awarded, the Defendant shall have a Writ of Disceit against him who had Execution, and the Sheriff shall be punished by this Writ for his Falsity, and the Party who recovered, shall make Restitution of that he recovered, &c.

[ 28 ]

8 E. 4. 6.  
con. *Writ*  
a Man  
10-  
fects by  
Proc pe in  
Capite,  
wh. re he  
ought to  
have sued in  
the Lord's  
Court, and  
the Lord  
brought  
Disceit for  
the profits  
of the Court,  
48 E. 3. 20.  
17 E. 3. 18.  
20 E. 2. Dis-  
ceit. 5. ac.  
19 E. 1. Dis-  
ceit. 3.  
19 E. 1. Dis-  
ceit 56.  
20 E. 1. Dis-  
ceit 4. 18.  
shall not  
have Dis-  
ceit by  
Wildy  
Hill. cont.

And if a Man levy a Fine at the Common Law unto another of Land which is in ancient Demesne, the Lord of ancient Demesne shall have a Writ of Disceit against him who levied the Fine, and he who is Tenant shall avoid the Fine; and there he who ought to give the Land shall be restored unto his Possession and Title which he hath given by the Fine, because the Fine and Gift thereby is avoided. But if he who leyeth the Fine, have after by his Deed released unto him who hath the Possession by the Fine, or by the Deed confirm his Estate in the Land, then he unto whom the Release or Confirmation is made, shall have and keep the Land notwithstanding that the Fine be avoided, because that Release or Confirmation made unto him being in Possession, hath made his Estate firm and rightful, against him and his Heirs who released or confirmed the same.

If a Man do recover in a Writ of Waste where the Tenant was not summoned, &c. the Defendant shall have a Writ of Disceit, and shall be restored, T. 9 E. 3.

If Husband and Wife lose the Land of the Wife by default, they may sue a Writ of Disceit, and if the Husband dieth, it seemeth the Wife may sue a Writ of Disceit to be restored to her Land, &c. or have a *Qui in vita* upon the Statute, at her Election; and the Writ of Disceit shall be directed unto the same Sheriff who did the Disceit, and false Return, and not unto the Coroners, as appeareth, Trin. 20 E. 3. Yet it seemeth



- seemeth it is not Error, if it be directed unto the Coroners, *20 E. 3.*  
*Disceit 5.*
- D** And in a Writ of Disceit, if the Sheriff return one Summoner dead, yet the other Summoner shall be examined, *8 H. 6. 1.*  
 And if it be found that he did not summon, *18 E. 4. 1.* the Party shall be restored unto the Land; and so if one Viewer, or Person did not do that which he ought to do, the Party shall be restored, because it ought to be done by both, *Et*. But if Summons be by four Men, as long as two of them be alive, the Tenant who lost may have a Writ of Disceit.
- E** And a Writ of Disceit lieth against him who embezillesh a Writ, and also against him who procureth another to embezil a Writ, if it be embezilled, *19 H. 6. 29.*  
*50. 71.*
- F** And if a Man doth bargain with another to enfeof him of certain Lands, and afterwards he enfeofeth another Man, he with whom he made the Bargain, shall have a Writ of Disceit. *20 H. 6. 34.*  
*16 E. 4. 9.*
- G** And if a Man do recover in a *Quare impedit* by default, *26 H. 6.* *Disceit 15.* *Et* if the Defendant be not summoned, he shall have this Writ, and the Summoners and Pledges upon Attachment shall be examined thereupon. And if the Disceit be found, he shall have a Writ to the Bishop, *Et* for him. *27 H. 6. 5.*  
*vid. 34 E. 3.* *Disceit 57.* *Neither the Clerk nor the D. f. ousted.*
- H** If an Action of Debt be brought against two as Executors, where one of them is not Executor, if he who is not Executor confess the Action, he who is Executor shall have a Disceit against him, and recover as much in Damages. *9 E. 4. 33.*  
*Lit. ac.*
- I** If an Attorney be not informed by his Client to plead in any Action, and he plead, *Quod ipse non est veraciter informatus, Et ideo nullum responsum, Et* the same shall be entred to save him of Damages in a Writ of Disceit brought against him by his Master, *Et*. *10 E. 4. 9.*
- K** If a Man sell Cloaths, and warrant them of a certain Length, if they be not of such Length, he who bought them shall have a Writ of Disceit against him upon his Warranty, although the Warranty be only by Word: But if the Warranty be made at another time after the Bargain made, then it ought to be in Writing, otherwise he shall not have an Action upon that Warranty: For he shall not have an Action of Disceit therefore, if the Warranty be not made upon the Bargain, and at the Time of the Bargain. *11 E. 4. 6.*  
*5 H. 7. 41.*
- L** The Writ of Disceit ought to be brought into the County where the Disceit is supposed to be done. *9 E. 5. 7.*
- M** If a Man recover in a *Preceptum in Capite* by Default where the Lands are not holden of the King, nor he hath not the Lord's License to sue in the Common Pleas, the Lord shall have

have a Writ of Disceit, and recover Damages; but the Recovery shall stand in force, and the Lord shall have Seignior, and he who recovered shall also hold over the King by way of Estoppel.

If a Man procure another to sue an Action against me to N trouble me, I shall have a Writ of Disceit.

A Writ of Disceit shall be maintainable against the Attorney and the Sheriff, because they put a Writ of *Habere facias seisinam* upon the File of the Sheriff's Writ, where they have not any Record to warrant it.

21 E. 3. 20.  
5 E. 4. 6.  
17 E. 3. 31.  
Disceit 37. If a Man levy a Fine of Land in ancient Demefn, and also of Land at the common Law, the Party shall have a Writ of Disceit for the ancient Demefn Land, and shall avoid the Fine for that Land, and the Fine shall stand good for the Land at the Common Law.

If a Man lose Lands by default in a *Præcipe quod reddat*, and dieth, his Heir shall have a Writ of Disceit as well as the Father, and shall have Restitution.

15 E. 3.  
Disceit 43. If a Man have Execution by default upon a Recognisance in a *Scire facias* sued against another, and the Defendant dieth, his Executors shall have a Writ of Disceit and shall be restored, &c. If the Disceit be found that their Testator was not warned, there the Garnishers shall be examined, &c.

[ 99. ]

18 E. 3.  
Disceit 42. And if a Man recover an Annuity, and afterwards sueth a *Scire facias*, and recovereth by default, the Defendant shall have a Writ of Disceit if he were not warned.

3 & 4 E. 3.  
Disceit 45. And the Vouchee shall have a Writ of Disceit where he loseth by default if he were not summoned, &c.

18 E. 2.  
Disceit 54.  
55. In a *Præcipe quod reddat* against the Husband and the Wife at the *Grand Cape*, the Husband appeareth in Person, and the Wife appeareth by Attorney, who hath a Warrant which is insufficient, by which Judgment is given upon the default of the Wife against the Husband and Wife, &c. yet they shall have a Writ of Disceit if they were not summoned, &c.

19 E. 2.  
Disceit 56. And were a Man loseth by default in a *Quare impedit*, or Waste, it behoveth that the Summoners and the Pledges upon the Attachment, and the Manucaptors upon the Distress shall be examined, when the Writ of Disceit is brought therefore. See in the Title of Disceit in the Abridgments for that matter.

If a Man sue a Writ of *Monstravit* against another to account, &c. where he hath sufficient Lands in another County, by which he may be brought to answer by Writ of Account, the Defendant shall have a Writ of Disceit against the



the Plaintiff who such the *Monstravit*, *quod vide Mich. 9 E. 2. Fitz. Disceit. 52.*

If Tenant for life loseth by default where he was not summoned, and dieth; he in the Reversion shall not have a Writ of Disceit, because he shall not have a Writ of Error, if not by the Statute, &c.

E If a Man be Tenant for Life of a Manor in ancient Demesne, and the Tenant of that Manor doth levy a Fine of his Land at the Common Law, the Lord of the Manor who is Tenant for Term of Life, should have a Writ of Disceit, and after his Decease, he in the Reversion shall have a Writ of Disceit, and reverse that Fine. 1 E. 3. 5. So of Lessee of Years.

F If the King doth recover in a *Præcipe quod reddat*, or in a *Formedon* against another Man by default, the Tenant shall have a Writ of Disceit, as well as he shall have a Writ of Error, where the King recovereth by erroneous Process, &c. or erroneous Judgment. See for this matter, *M. 10 H. 4. in Title Traverse in the Abridgment.*

G And this Writ of Disceit shall sometimes issue out of the Common Pleas, or he may sue it out of the Chancery if he will; as if a Man lose Lands by default in a *Præcipe quod reddat* in the Common Pleas, the Tenant, if he were not summoned, shall have a Writ of Disceit out of the Common Pleas, if he will, or out of the Chancery. 22 E. 3. Disceit.

H And so if a Man have an Execution upon a Recognisance in the Common Pleas, or King's Bench by default, &c. the Defendant shall have a Writ of Disceit, if he were not summoned out of that Court where the Execution was sued, &c. or out of the Chancery, at his Election. 17 E. 3. 51. Disceit 39.

I And there are divers other Writs of Disceit, in the form of a Writ of *Audita querela*, as if one sue a *Præcipe quod reddat* against another, and the Tenant is essoined at *Quind. Pasch.* which Essoin is adjourned until *15 Trin.* the Term following, and the Demandant and his Attorneys by Covin betwixt them recovered a Writ in the File of Writs, that the Tenant hath made *N. and M.* his Attorneys jointly and severally at the said *Quind. Pasch.* by which the Demandant challengeth that Essoin, because he had Attorney in the Writ not essoined, by which at the Day of Adjournment the Essoin is quashed, and the Demandant recovereth the Land by this default at *Quind. Pasch.* Now the Tenant shall have a Writ of Disceit against the Demandant and his Attorney, and the Form of the Writ shall be in the nature of *Audita querela*, and shall be directed unto the Justices of the Common Pleas, and is such:



Reu Justic' suis de banco salutem. Monstravit nobis I. de B. quod cum W. de B. nuper implicasset ipsum I. coram vobis in banco pred. brevo nostr. de unomes. &c. in B. & placit. pred. ad captiōem. inquisition. propria persequut. fuisset, diesque partibus predictis. à die Pasch. proxim. præterito, &c. in xv. dies data extitisset, ad quem diem idem I. se fecit effoniari, & effon. ill. adjudicat. fuit usque ad xv. S. Trin. tunc proxim. sequent. predictiq; W. & P. attorn. sui collusion. inter eos præhabita machinant. præf. I. de tenemento predictis. exheredar. S. de F. seruiant ipsius W. de B. & W. de P. attorn. ipsius I. ipso die penitus ignorante recordare, & breve de attorn. in filiciis brevium in xv. Pasch. in banco predictis. & quandam calumniam supradictis. effon. post fecissent, & effon. predictis. pro eo quod predictis. I. attorn. suum in eodem placit. habuit non iacere assiruisse, quod ad dictis. xv. S. Trin. seifina de tenemento predicto pro eo quod attorn. pred. I. ad dictam quinden. Pasch. effoniatus non fuerit quod eidem W. de B. per considerationem Curie extitis adjudicata, in deceptionem Cur. nostre predictis, ac ipsius I. grave damnum, ac exheredationem manifestam, super quo idem I. per petitionem suam coram nobis & consilio nostro in parlamento nostro exhibitam, Nobis supplicavit, ut & de remedio providere velimus in hac parte. Et quia predictis W. de P. super præmissis coram vobis in banco predicto allocutus ea cognovit ut dicitur, Vobis mandamus quod audita querela ipsius A. super præmissis, vocatisq; coram vobis tam præf. W. de B. & W. de P. quam S. de F. auditisq; hinc inde eorum rationibus, si per inquisitionem sic inde faciend. aut per recognitionem eorundem W. W. & S. vel eorum alicujus vobis constare poterit, quod I. tenementa predicta per collusionem predictam amisset, ut est dictum, tunc tam super deceptionem & collusionem predictam quam super recuperationem tenementi predicti habend. tam pro vobis quam præfat. I. iustitia complementum fieri faciatis, prout de jure fuerit faciendum. Teste, &c.

100  
If a Notary or other Person, of Covin counterfeit the Seal of any Parson or Vicar, and forge Letters of Resignation of his Parsonage or Vicarage, in the Name of the Parson or Vicar of his Benefice, he shall thereupon have a Writ of Disceit, and the Writ is in the Register. But whether by that he shall be restored unto his Benefice, *Quere;* it seemeth not, because the removing of him is a Spiritual Act. K

If two several Men come before the Mayor of the Staple, or before other Mayor of a Town, and there one acknowledgeth unto another *scilicet* in the Name of another Man, affirming him to be such a Person, which in truth he is not: for which the other Person is troubled, and sued upon the Statute, and taken in Execution, &c. he shall have a A

Writ

Writ of Disceit against the two Persons, &c. and shall recover Damages against them.

**B** And so if a Man be bounden unto a Prior by a Statute-Merchant in 40*l.* to be paid at a certain Day, at which Day he payeth the Money unto the Prior, &c. and afterwards another Person in the Prior's Name, cause the Statute to be certified in the Chancery, and sue Execution thereupon, the Prior not knowing thereof, he who was bounden and hath paid the Money, shall have a Writ of Disceit against the Prior, and those who sued the Execution in his Name.

**C** If the Escheator, by Vertue of a Writ directed to him, doth seize into the King's Hands, the Lands of any Person who holdeth of the King in Chief, by which the King commits the Wardship of those Lands unto another, who grants them over unto another during the Nonage of the Heir. Now if the Under-Escheator of his own Authority return another Office without Enquest, &c. and disturbeth the Possession of the second Grantee, the second Grantee shall have a Writ of Disceit against the Under-Escheator: And so if the Escheator, of his own Authority have so done without taking any Enquest, &c. according to the course of the Law; and these Writs are in the Register.

And thereby it appeareth, that an Escheator may have an Under-Escheator, as well as the Sheriff may have an Under-Sheriff.

**D** And also it appeareth, that an Escheator shall be punished, altho he be an Officer of Record, if he return any Office, *virtute Officii*, which he hath not taken any Enquest to enquire of the same: And the Procefs in the Writ of Disceit is Attachment and *Distringas*.

*Writ de Parco fracto.*

**E** A Writ of *Parco fracto* lieth where a Man distraineth Cattle for Damage-fesant, or for Rent or Service; and put them into the Common Pound, or into another Pound or Place, which shall be said to be a lawful Pound; and he who hath Property in the Cattle, or other Person taketh the Cattle out of the said Pound, and driverth them where he pleaseth: He who distraineth him for, &c. shall have the Writ *de Parco fracto*.

If a Man sendeth his Seryant to distrain for Rent or Services, and the Seryant distraineth the Cattle, and impoundeth them, and a Stranger taketh them out of the Pound, the Master shall have the Writ *de Parco fracto*, and not the Seryant, for it is the Master's Pound.



5 H. 7. 9.  
It is a  
Pound as  
well as if  
it were in  
his Several.  
Fairfax.  
cont.

If a Man distrain for Rent, or Services, or for Damage-fesant, and put the Cattle in the Land or Close of a Friend with his Licenſe, and he who owneth the Cattle taketh them out of the ſaid Close, he who diſtrained them, ſhall have the Writ *de Parco fraſto*, and not he whoſe Close it is: For who owneth the Close, ought to have an Action of *Quare clauſum fregit*, &c. for that it is not his Pound, but the Pound of him who diſtraineth the Cattle; and the form of the Writ is:

*Rex Vic' Lincoln ſalutem. Si A. &c. tunc pone, &c. B. oſtenſ. quare cum idem A. in clauſo ſuo apud N. quendam averia, vel ſic, averia præd. B. cepiſſet, & ea ſecundum legem & conſuetudinem regni noſtri ibidem impareſſet, idem B. parcum illum vi & armis fregit, & averia prædiſt. cepit & abduxit, & alia enormia ei inſulis, ad grave damnum, &c.*

And note, that this Writ is *vi & armis*, and he ſhall not ſhew in the Writ, what kind of Cattle they are, nor to whom the Property of the Cattle doth appertain, if that he pleaſe not ſo to do.

And if a Man ſend his Servant for to diſtrain for Rent, or Services, or for Damage-fesant, then the form of the Writ is ſuch:

*Oſtenſ. quare cum idem A. in clauſo ſuo apud N. per B. ſervient. ſuum quendam bovem, vel, quendam averia capi feciſſet, & idem B. bovem illum, vel ſic: averia illa ſecundum legem & conſuetudinem regni noſtri Angl. ibidem impareſſet, apud C. parcum illud vi & armis fregit, &c. vel ſic, per Abbe, Oſtenſ. quare cum idem Abbas in domo ſua in ſuburbio Linc. per fratrem I. caſtod. cell. noſtræ ſanctæ Mariæ Magdal. extra Lincoln. quodam averia, &c. Aliter pro def. ita in curia dom', &c. quare cum idem A. in feod. ſuo apud N. per ſervient. ſuum averia præd. B. pro quodam deſalta, quam idem B. fecit in cur. ejuſdem A. verſus E. in lingua qua fuit in eadem curia inter, &c. per conſiderationem curiæ prædiſt. capi feciſſet, & idem A. averia illa ſecundum, &c. impareſſet, prædiſt. B. parcum, &c.*

If a Man do diſtrain for Amercement in a Hundred, and impound the Cattle, and the other taketh them out, the Writ ſhall be;

*Quare cum idem A. per B. & C. ballivos ſuos de hundred. de N. quodam jumenta ipſius F. apud S. infra præciſum hundred. prædiſt. pro quodam amercionento, ad quod idem F. amerciatas fuit in eodem hundredo, ad opus prædiſt. A. levand. capi feciſſet, & idem B. & C. jumenta, &c.*

41 E. 3. 26.  
47. E. 3.  
13. 12. H.  
7. 15.

And in this Writ he ought to ſhew, that the Property of the Cattle were in him who was amerced, becauſe he cannot diſtrain

distrain the Cattle of other Men for this Amercement: but for Rent or Service it is otherwise. For the Party may distrain the Cattle there levant and couchant upon the Lands.

If the Queen do distrain for a Debt or Amercement due unto her, and impound the Cattle, and a Stranger doth break the Pound, and take them out, then she shall have a Writ, and the Writ shall be such:

*Rex. Vic. S. salutem. Pone per vad, &c. P. de E. & C. de D. quod sint, &c. ad respondendum tam nobis quam Annæ Reginae Angliæ, quare cum W. de R. ballivus libertatis prædictæ. Regine, hundred. de C. in quo eadem Regina sicut in ceteris terris & tenementis suis sibi per nos concessis habet returnum omnium brevium nostrorum prout ad ipsum W. ratione officii sui pertinuit, virtute returni cujusdam brevis sibi pro te infra libertatem prædictæ. facti. pro quodam debito ad opus prædictæ. Regine de prædictæ. P. per sum. seacarii nostri levando, averia prædictæ. P. apud B. cepisset, & ea secundum legem & consuetudinem regni nostri ibidem imparcasset, prædictæ. P. & C. parcum illud vi & armis fregerunt, & averia prædictæ. ceperunt & abduxerunt, & alia enormia ibidem perpetraverunt in nostri contemptum, & ipsius Reginae gravem clamorem, & contra pacem nostram, &c.*

And when the Queen sueth any Writ, the Writ shall not 18 E. 3. 21.  
say, &c. *Si Anna Regina Angl. fecerit te secur, &c.* for she shall 27. 33.  
not find Sureties as a Common Person shall do, for she shall not be amerced, as appeareth by the Writ before.

If the Husband do distrain for Rent or Services which he hath in right of his Wife, and a Stranger taketh them out of the Pound, the Husband shall have the Writ *de Partio fracto* in his own Name: But yet it seemeth he may sue the same in his Name, and in the Name of his Wife, and join the Wife with him, *tamen quare.*

## Writ of Rescous.

**T**HE Writ of Rescous lieth where a Man doth distrain for Rent or Services, or for Damage-fesant, or would impeach or impound the Cattle, and the other Party doth rescue them, or taketh them from him, then he shall have this Writ of Rescous; and the Writ is such:

*Rex Vic, &c. Si A. fecerit, &c. tunc pone, &c. offens. quare cum idem A. in feodo suo apud S. quadam averia, vel sic: avaria prædictæ. B. cepisset, & ea ibidem secundum legem & consuetudinem regni nostri Angliæ imparcari voluisset, prædictæ. B. averia prædictæ. vi. & armis rescussit, et alia, &c. vel sic. Quare cum idem A. in feodo suo apud S. pro consuetud. & servit. sibi debitis per C. serviens,*



## Writ of Rescous.

*servient. suum quendam aviria capi, vel sic. Quendam carellam ipsius B. capi fecisset. Et idem C. carellam illam usque manerium prædicti A. de S. secundum, &c. ducere voluisset, prædicti B. carellam illam vi, &c. in ipsum C. insultum fecit, &c.*

And so it appeareth he may join in a Writ of Rescous, for the Assault and Battery of his Servant.

And if he do distrain Cattle, and other dead Chattels, E the the Writ shall be ;

*Ostenf. quare cum idem A. in feodo suo apud S. pro consuetudinibus & serviciis sibi debitis, averia & catalla prædicti B. cepisset, & averia illa imparcasset, & catalla prædicti nomine distributionis secundum legem & consuetudinem regni nostri, Angliæ detinere voluisset, idem C. averia illa rescussit, & catalla prædicti A. abstulit, & alia, &c.*

And if he do distrain for a Rent-charge, the Writ is such :

*Quare cum idem A. in quodam tenemento ipsius B. apud N. pro quodam annuo reddito per scriptum ipsius B. obligatoriam distributionis ipsius A. obligato pro reddito præd. à retro existent, quodam catalla ipsius B. cepisset, & ea nomine distributionis secundum legem, &c. ibidem detinere voluisset, præd. B. catalla prædicti, &c.*

And note, That if a Man send his Servant to distrain for Rent, or Service, or Damage-felant, and Rescous be made upon the Servant, the Master shall have the Writ of Rescous and not the Servant: For the Wrong is done unto him who ought to have the Rent or Service, or is damaged, &c.

If a Collector or Sub-Collector distrain for Fifteens, and Rescous be made, he shall have the Writ of Rescous, and the Writ shall be such :

*Si W. de S. subtaxator decime in villa de S. nobis per civem G. & burgenf. regni nostri ultim. concess. &c. fecerit et, &c. tunc pone B. &c. ad respond. tam nobis quam præfat. W. quare cum idem W. quodam catalla ipsius B. pro certa pecunie summa ratione decim. prædicti. assesse cepisset, & catalla illa ibidem nomine distributionis nomine nostro detinere voluisset prædicti B. catalla illa præfat. W. ibidem insultum fecit, & ipsam verberavit, &c. & alia, &c. in nostri contemptum & præjudicium, & præd. W. grave damnum, & contra pacem, &c.*

And if the Bailiffs or Officers do arrest certain Persons, and others rescue them from the Officers, then he who caused them to be arrested, shall have the Writ of Rescous; and the Writ shall be such :

*Quare cum idem Prior per chartam Domini E. quam inspecturus habere debeat apud W. liberam curiam suam de omnibus*

hominibus suis, tam burgens. quam aliis, & de omnibus placitis, & querelis & attachmentis qualitercunque contingens, una cum prioribus & omnibus aliis ad homines suos spectant. De idem Prior per B. ballivum suum apud E. R. & M. homines ipsius Prioris pro diversis transgressis, apud T. infra libertatem predictam Prioris per ipsos (ut dicitur) contra pacem nostram factis, unde clamor & hinc hinc ibidem levat, fuerit, attachmenti fecisset, & idem Prior ipsos R. & M. ibidem secundum legem & consuetudinem detinere voluisset, & sic in hac parte in Curia Prioris predicti subitur, predicti B. & L. prefat. R. & M. de predictis transgressis non iustificati, a custodia ipsius B. vi & armis ceperunt, & quo voluerunt abire permiserunt, & alia enormia, &c. ad grave damnum ipsius Prioris, & libertatis sue lesionem manifestam, & contra pacem nostram.

And note, that if the Bailiff or Sheriff, or other Officer of the King, do arrest a Man, or distrain him for Debt, or other Service due to the King, and Rescou is made, then the Bailiff or other Officer shall have the Writ of Rescou in his own Name, and not the King's, and the Writ shall be such:

Si T. ball. hundred. de F. fecerit, &c. tunc pone, &c. ad respondendum tam nobis quam prefat. ball. quare cum idem ball. iuxta officium sui debet. W. quem per Viccomitem nostrum Com. predicti per breve nostrum de iudicio sibi directum capi precipimus apud K. virtute mandati nostri predicti cepisset, & ipsum usque castrum nostrum R. in prisona nostra ibidem moraturum ducere voluisset, predicti R. & S. ipsum W. apud villam de K. vi & armis rescuserunt, & alia, &c. in nostri contemptum, & predicti ball. grave damnum, & contra pacem nostram, & habeat, &c.

**A** And if the Bailiff would arrest any Person, and he himself do rescue himself, and will not obey the Arrest, then the Writ shall be such:

Si H. de ball. vice nostre de S. fecerit, &c. tunc pone B. &c. quare cum idem H. iuxta officium sui debetum prefat. B. pro quodam but. suo super ipsum per W. de S. apud C. levat, ad querimoniam predicti W. secundum legem & consuetudinem regni nostri attachmenti fecisset, predicti B. se iusticiari non permittens attachmenti, vi & armis fregit, & in ipsum H. ibidem insultum, &c.

**B** And if the Sheriff send unto the Bailiff of the Liberty to levy Fines and Amercements for the King, and the Bailiff distrain certain Cattle, and the Rescou is made: Now the Lord of the Liberty shall have a Writ of Rescou of the Rescou done to the Bailiff, and for the Battery and Assault made upon him, and for the Loss of his Service, and all in one Writ.

If the King's Bailiff do distrain for Rent, and Rescou is made, the Bailiff shall have the Writ of Rescou, and not the King.

U

And



And if a Man sue forth an Execution, and hath a *Capias* directed to the Sheriff to arrest the Party, and the Sheriff make his Warrant to the Bailiff of the Queen's Liberty where the Party dwelleth, to arrest him, by which the Bailiff doth arrest him, and others do rescue him from the Bailiff, he who sued forth the Writ of Execution, shall have the Writ of Rescous against him that rescued him, as appeareth by the Register: But yet it seems reasonable that the Bailiff have a Writ of Rescous in such Case: For some say the Bailiff shall be chargeable to him, who sued forth the *Capias*, &c. and for the Arrest, *Tamen quare.*

And it appeareth by the Register, That if a Writ be directed unto the Sheriff, to levy the Expences of the Knights at the Parliament, and the Sheriff make his Warrant unto the Bailiff of the Liberty of the Bishop of Ely, to levy the Sum assessed, &c. for which the Bailiff by his Under-bailiff doth take certain Cattle and would impound them, and other Persons do rescue the Cattle and beat the Under-bailiff, that the Bailiff shall have the Writ of Rescous against them, and there it seemeth that the Knights which should have the Money, shall not have a Writ of Rescous for the same Rescous, because it is not a Duty unto them by any Person certain, but to be levied of the Inhabitants of the Towns,

And if the Lord do distrain his Tenant's Cattle, and a Stranger's Cattle, for Rent or Service behind, when there is not any Rent or Service behind, the Stranger may rescue his own Cattle, but not the Tenant's as it seemeth. And that as it seemeth by the Statute of Malbridge, cap. 3. which willeth, *Non ideo puniatur Dominus per redemptionem*, yet the Opinion of Thorpe, M. 31 E. 3. is contrary, for, he saith, the Stranger may rescue as well the Tenant's Cattle as his own.

*Quare.* And Rescous is not, but where he hath the Possession of the Cattle, or the Thing of which the Rescous is supposed to be made: For if a Man come to arrest a Man, or to distrain, and he is disturbed to do the same, he shall not have a Writ of Rescous, but an Action upon the Case.

And the King shall not have the Writ for a Rescous done to his Officer, *qd. vide P. 20 E. 3.* but he may cause him to be indicted for the same.

### Audita Querela.

**T**HIS Writ of *Audita Querela* lieth as well upon Matter in Fact, as upon Matter in Writing, as after appears. And this Writ shall be directed unto the Justices of the

the Common Pleas or King's Bench, and lieth where *A.* and *B.* come before the Mayor, &c. and *B.* doth acknowledge himself to be bounden in 100 *l.* to *A.* in the Name of *C.* before the Mayor; and affirmeth his Name is *C.* and afterwards *C.* is arrested by Force of this Bond and Statute, and taken in Execution: Now *C.* shall have *Audita Querela* against *A.* and *B.* and the Form is such:

*Rex Justiciaris suis de banco salutem. Querelam C. recepimus continens quod A. & B. collusione inter eos apud W. prahabita, Cur. nostr. illuder. & pres. C. callide pragravare machinantes nuper coram C. Majore ville nostre Southampton, & R. Clerico ad recognitionem debiti. apud S. accipienda deputat. comparentes ipsum C. & C. Sacramento corporali ad hoc prestit. exist. asseruerunt, per quod idem B. sub nomine ejusdem C. pres. A. 100 l. ad eum terminum jam preterit. solvend. coram eisdem Major. & Clerico, juxta formam statuti dudum apud Aeton Burnel pro mercatoribus editi, se deber. recogn. & postmod. ipsum C. pro ea quod ipse prad. 100 l. pres. A. ad terminum prad. non solvit, per pres. Majorem eapi, & in prisiona nostra salvo custodiri, quousq; eidem A. de eisdem 100 l. plen. satisfac. false & malitiose procurat. in ipsum C. damnum non modicum & deceptionem Cur. nostre manifestam: super quo idem C. nobis supplicavit, ut sibi remedium congruum adhiberi velimus: Vobis mandamus, quod auditis querelis ipsius C. in hac parte, & vocatis coram vobis pres. A. & B. ac pres. Majore & Clerico, auditisquo hinc inde partium ration. eidem C. super falsitat. malitia, & decep. prad. pleniam & celerem justiciam fieri fac. prout de jure & secundum consuetudinem regni nostri fore videritis faciendum. Teste, &c.*

**A** If a Man lease Lands unto *A.* for Life, and afterwards by Fine grants the Reversion unto *B.* in Fee, and dieth, and the Heir of the Recognisor, and one *L.* by Covin betwixt them sue a *Præcipe in Capite* against the said *A.* supposing the Land to be holden of the King, whereas it is not holden of the King, but of another Person: And in this *Præcipe in Capite* they cause one *F.* to appear as Attorney for *A.* and to joyn the *Mis* in the said Writ; and afterwards the Attorney by Covin doth make Default, for which Judgment is given against *A.* Now upon the same Matter he shall have an *Audita Quer.* directed unto the Justices of the Common Pleas, commanding them to proceed as well for the Restitution of the Land, as upon the Disceits, and to do speedy Justice as of Right according unto the Custom of the Realm they ought to. And the Writ is such:

*Rex Justic. suis de banco salut. Monstravit nobis A. ut cum*

(103)



ipse nuper manerium de G. cum pertinentiis in Com. L. ad terminum vite sua tenuisset ex dimissione A. ac H. fil. & her. prædict. I. manerium prædict. T. de S. & hered. de corpore ipsius T. excoctibus (ut dic.) per. finem inde in Cap. vestra coram Justic. nostris de banco apud W. leuat. post mortem præd. A. habend. concessisset, B. filius & heres prædict. H. & L. collusion. inter eos præhabita, præfat. A. de prædict. manerio amover. & præfat. T. de reversu manerii prædicti. excluder. machinantis breve nostrum (quod vocat. Præcipe in cap.) Vic. nostro Leicestre. ad certum diem jam præterit. retornabile. de manerio prædict. ac si idem maner. de nobis teneret. in capite cum non teneat. sub nomine præd. E. versus præf. A. & T. in Cancellar. nostra impetrari, & breve. nostr. prædict. quod præd. A. & T. juxta formam brevis præd. sum. fuerunt official. coram vobis ad diem præd. per. præf. Vic. retorn. ac quendam ignorantiam qui se R. de S. nominari offeruit coram vobis in hanc præd. apparer. ad perdendum vel lucrandum. in loquela præd. per. præf. A. & T. attornat. ipsius A. & T. de impetratione brevis sum. & attornat. præd. sub nomine suo ut permitti. falso penitus ignorantibus falso & malitiose procuraverunt. ac præf. attornat. ad eundem diem coram vobis comparent. posuerit se in magnam assiam nostr. & petierit recognitionem fieri. utrum videtur A. & T. majus jus habuer. tenend. dictum man. cum pertinentiis. sicut illud tenuer. ad præd. E. habend. dicti. man. sicut ibid. petiit. per. quod per. defaltam quam videtur A. & T. posuerunt. in ead. Cur. per. vos consideratum fuit. ibid. quod præd. E. recuperaret seisinam suam de præd. man. cum pertin. versus præf. A. & T. Tenend. eidem E. & hered. suis quiete de præd. A. & T. & hered. suis in perpetuum. cujus quidem considerationis prætextu præd. A. a man. suo præd. cum pertin. perpetuo est amovitus. in ipsius A. dominum non modicum. & Cur. vestra deceptionem manifestam. super quo. præfatus A. nobis supp. eorum congruum remedium sibi adhiberi. Nec hujusmodi collusionem. malitiam. & deceptionem. transire volent. impunit. Vobis mandamus quod audis. querel. ipsius A. in hac parte. & vocat. coram vobis præf. E. & L. L. & al. in hac parte. quos for. videritis vocat. & audis hinc & inde partium rationibus. ulterius eid. A. tam super restitutione & recuperatione. dicti man. quam super collusionem. malitia & deceptione præd. plenam & entirem justic. fieri faciatis. prout de jure & secundum legem & cons. regis. &c. faciend. Teste. &c.

And by this Writ it seemeth the Justices ought to make void the Recovery, if they find the Disceit, &c. yet it seemeth they may not so do.

If a Man be bound in a Statute-Merchant, and afterwards maketh a Feoffment of Parcel of his Land unto another

- ther Man, and of other Parcel unto another, and the Recognisee sueth Execution upon the Statute, and hath Execution against one Feoffee, that Feoffee shall have an *Audita Querela* against the other Feoffee, to shew Cause why he should not have Execution of his Lands, as of the Lands which himself hath.
- C** If a Man be bounden in a Statute-Merchant, and certain Indentures of Defeasance are made of the said Statute, and afterwards the Conusee doth arrest the Recognisor and imprisoneth him, and taketh the Defeasance from him, and then sueth Execution upon the Statute, the Recognisor shall have an *Audita Querela* against him upon the whole Matter.
- A** If at the *Nisi prius* in Trespass it be found for the Plaintiff, and Damages assessed, and before the Day in Bank the Plaintiff release unto the Defend. all Actions and Demands, and afterwards prayeth Judgment, and sueth Execution thereupon, the Defend. upon that Release shall have an *Audita Querela*.
- I** 36 H. 6. 24. 21 H. 7. 33. 1 H. 4. Br. *Audita Querela* 37. Fitz. Release 53. Release of all Actions is not sufficient Matter to have *Audita Querela*.
- B** And the Heir of the Recognisee may sue an *Audita Querela*, if he have Matter in writing to discharge the Execution.
- C** If a Man be bound in a Statute-Merchant or Staple, and afterwards payeth the Money according to the Statute, and hath the Statute delivered unto him, and cancelleth the same, and afterwards the Recognisee forgeth a new Statute in the Name of the Recognisor, the Recognisor upon the Statute cancelled shall have an *Audita Querela*.
- D** If a Statute-Merchant or Staple be made by one unto another, and delivered into the Hand of a Stranger to deliver upon Conditions performed, and the Stranger doth deliver the Statute before the Conditions performed, and the Conusee sueth Execution thereupon, the Recognisor shall have an *Audita Querela*.
- E** If a Man sueth forth an Execution upon a Statute, and hath Execution, and afterwards grant over his Estate, the Recognisor shall have an *Audita Querela* against the Grantee without naming him, who sued the Execution, if he have Matter in writing for to sue.
- F** A Man may sue an *Audita Querela* against the Recognisee, because he hath purchased a Mannor unto which the Recognisee is a Villain regardant, and yet he may enter and seize the Recognisee without such Suit.

fl. 4. 30

E. 3. Execut.

127. 45 E. 3.

11. 16 Eliz.

Dy. 3. 37. 4

E. 3. 52. 8.

3 Eliz. Dy.

193. 194.

Whalcy's

Case.

[104]

49 Ass. 23.

44 Ass. 15.

Holt. Br.

Audit. Que-

rela. 43. 5 H.

5. 1 Br. Au-

dit. quer. 16.

43 E. 3. 15

H. 8. 5. V. 2.

8. 3. Eliz.

Dy. 193.

43 E. 3. 38.

Finchden.

43 E. 3. 27.

con. 12. H. 4.

6. Calp. con.

12 H. 4. 15

8. 16.

Frankford.

43 E. 3. And.

quer. 18. 8.

32. 12. 8.

1. 1. H. 4.



46 E. 3. 28. And a Stranger who made not the Recognisance, nor was C  
 Fulchorp. Tenant of the Land at the Time of suing forth of the Ex-  
 17 Alt. 24. ecution, shall have an *Audita Querela*, if he have Mattee of  
 Audit. quer. Discharge in writing. *Vi. 11 E. 3. Lit. Aff.* and there it is  
 20. 10 E. 3. said the same is given by the Statute. The Feoffee shall not  
 25. Error 71. have a Writ of Error, &c. Nor the Feoffee of the Conusor  
 the Feoffee of Part of the Lands shall not have an *Audita Querela* until  
 had Error. his Lands be taken in Execution.

18 E. 3. 36. If a Man sueth *Audita Querela* against the Conusor, and I  
 Audit. quer. sheweth a Statute cancelled; and saith the same was deli-  
 9. the Co- vered to him in lieu of Acquittance, the Recognisee may shew  
 nusor must shew the true Statute, and shew that the Statute shewed which was  
 shew the cancelled was a forged Statute, and thereupon he shall have  
 Statute, a Writ unto the Justices in the Nature of *Aud. Quer.* com-  
 otherwise he manding them that they send for the Mayor and the Clerk,  
 shall not and for the Parties, and for to do Right; and the Examina-  
 have the tion of the Mayor and Clerk shall try and end the Matter,  
 Plea. *Quod vi. M. 11 E. 1.*

48 E. 3. 20. Upon a Recovery of a Debt, if he sue a *Scire facias*, and  
 12 H. 4. 4. the Sheriff return *nihil*, by which an Execution is awarded,  
 per Hun- the Defendant shall have *Aud. Quer.* if he have a Release  
 gerf. 21 E. 3. or Acquittance, because he was not warned: But if the Sher-  
 15. Hil. Au- riff hath returned him warned, he shall not have *Aud. Quer.*  
 dit. Quer. upon such Release, &c. because he might have pleaded the  
 18. 6 E. 7. same upon the Return of the *Scire facias*.

100-77 And if an Infant bind himself in a Statute-Merchant or  
 6:123 Scaple, he shall have an *Aud. Quer.* during his Nonage to a-  
 1:155 void that Statute, and afterwards he shall have an *Aud. Quer.*  
 2:260 after his full Age to avoid that Stat' upon that Matter in Fact.  
 3:780 he cometh of full Age.

91/10 And so if a Man make a Statute-Merchant or Staple by  
 305 Dures, he shall have an *Aud. Quer.* to avoid that Statute by  
 2) this Imprisonment.

15 E. 4. 5. If two be severally bounden in two several Statutes, and  
 Bin. ac. 20. afterwards the Recognisee by Deed doth release both the Sta-  
 H. 3. Aud. afterwards the Recognisee by Deed doth release both the Sta-  
 quer. 27. tutes to one of them, if he sue Execution against them se-  
 20 E. 3. verally they shall joyn in *Aud. Quer.* upon that Release.

18. If the Recognisor enfeoff a Stranger of Parcel of the N  
 Land, and afterwards enfeoffeth the Recognisee of another  
 15 H. 8. Br. Parcel of the Lands, and afterwards the Recognisee sueth Ex-  
 2 Aud. quer. ecution against the Recognisor and the Feoffee; the Feoffee  
 3. 673 shall have an *Aud. Quer.* against the Recognisee, and discharge  
 14 E. 2. 24. his Lands, because that the Recognisee hath discharged his  
 Br. Audita Parcel of Land which he purchased by his own act.

9. quer. 22. Upon an *Audita Querela* sued he shall have a *superfedine*  
 2 H. 5. 1. in the same Writ to stay Execution, &c. But if he be  
 Nonfuit

Nonfuit, he may have a new *Audita Querela*, but then he shall not have a *Superfedeas* to stay Execution.

**P** And a Man shall not have an *Audita Querela*, supposing the Recognisee will sue Execution, but it ought to be alledged in the Writ, that he hath in *facto* sued Execution.

**Q** If a Man sue *Audita Querela* upon a Release, and afterwards is Nonfuit, he shall not have an *Audita Querela* upon new Matter, *ut dicitur* 43 E. 3. But it seemeth the Law is otherwise, but he shall not delay Execution by a new *Audita Querela*. 43 E. 3. 28. Thorp. 24 E. 3. Audita querela 11.

**R** If a Man doth comprehend two Matters in the *Aud. Quer.* to extinguish the Execution, yet the Writ is good, but the Plaint. shall hold himself to one Matter, and the Defend. shall answer to that. And Variance berwixt the *Aud. Quer.* and the Record shall abate the Writ. But if there is a new *Audita Querela* sued according to the Record, he shall have a *Superfedeas* to stay Execution, &c. although he had before a *Superfedeas* in the other *Audita Querela*, which was abated. 44 E. 3. 36. 24 E. 3. 27. Br. Audita querela 24.

**S** If a Man sue Execution upon a Statute-Merchant and hath a *Capias* returned in the Common Pleas, if the Feesces or Partics will sue an *Audita Querela*; they ought to sue the same out of the Chancery, directed unto the Justices of the Common Pleas. Vi. 22 H. 6. 56.

**T** If a Man sue an Execution upon a Statute-Merchant as Executor unto another; the Party shall not have an *Audita Querela*, supposing in the Writ that he who hath such Execution is not Executor. 2 R. 3. 8. con. if the Testator be living. 24 E. 3. 30. Br. Audita querela 41.

And the Process in *Audita querela* is *Venire facias* and *Distringas*, *Alias* and *Pluries Distring.* and if he return *Nihil*, or *Non est inventus*, he shall have a *Capias* against the Defendant. T. 18 E. 3.

**A** A Man recovereth by Default in an Action of Waste, the Defendant sueth an *Audita querela*, directed unto the Justices out of the Chancery, surmising in the Writ, that he was not summoned, nor attached, nor distrained; For which the Justices grant out of the Rolls in the Common Pleas, a Writ of *Disceit* against the *Audita querela* which was but a Commandment to the Justices to do right unto the Party, &c. 12 H. 4. 6. *Tein.* 19 E. 3. And yet they shall proceed upon the Writ of *Disceit*, and not upon the *Audita querela*. 48 E. 3. 1. he shall not have *Capias* but *ficut alias*.

**B** If a Man be bounden in a Recognizance in the Common Pleas, and afterwards doth release unto the Party, and then against his Release sueth Execution; Then he shall there come into the Common Pleas, and shall sue an *Audita querela* thereupon out of the Rolls. And so if one recover in the Common Pleas or King's Bench, Debt or Damages, and afterwards



afterwards, by his Deed releaseth the same, and afterwards  
sueh forth Execution upon the Recovery, the Party to  
whom he releaseth shall have *Aud. quer.* out of the Common  
Pleas or King's Bench where the Record is, and yet he may  
have an *Aud. quer.* out of the Chancery, and so it shall be  
sometimes Judicial, and sometimes Original.

46 E. 3. 3. And if a Man be bounden in a Statute-Merchant or Staple C  
48 E. 3. 12. ple unto another Man, and afterwards the Recognisee make  
47 E. 3. 5. a Defeasance unto the Recognisor, now if the Recognisee  
47 E. 3. 25. sue Execution upon the Statute against the Form of the In-  
dentures, the Recognisor (or his Executors if he be dead)  
may have an *Aud. quer.* against the Recognisee.

And it appeareth in the Register, That a Writ of *Aud. D*  
*quer.* lieth for an Infant who hath entred a Statute-Merchant  
or a Statute-Staple during his Nonage, if he be yet within  
Age.

And another *Aud. quer.* appeareth in the Register for the E  
Feesse, of Parcel of the Land which belonged to the Re-  
cognisor, against the Recognisee, because that the Recogni-  
see hath purchased other Parcel of the Lands of the Recogni-  
sor, &c.

If a Man be arrested and imprisoned upon a Statute-Mer- f  
chant, and afterwards the Recognisee doth release unto the  
Recognisor, or he pay the Debt, and hath Acquittance, or  
pay Parcel, and hath a Release for the Residue: Then they  
may come into the Chancery, and there find Surety Body  
for Body, to be in the Chancery at a certain Day, and there  
to pay the Money, &c. if he cannot discharge himself by Ac-  
quittance or Release, and thereupon he shall have a Writ  
unto the Sheriff where he is in ward, rehearsing how he  
hath found Sureties in the Chancery, commanding him to  
deliver him if he kept him in Prison for that Cause, and for  
no other Cause, and upon that he may have an *Alia* and a  
*Pluries* and *Attachment* against the Sheriff if he will not de-  
liver him, &c.

But if a Man be arrested and imprisoned upon a Statute  
Staple, and he hath Acquittance or Release to discharge him-  
self, then if he will sue an *Aud. quer.* or a *Scire fac.* to avoid  
the Execution of that Statute, he ought for to give Surety  
as well to the Party, as unto the King in the Chancery, fe-  
verally in a certain Sum, &c. to sue with Effect, and to ren-  
der his Body, or pay the Money, &c. otherwise he shall not  
be delivered out of Prison: And the same is by Force of the  
Statute of 11 H. 6. cap. 10.

## Writ of Attaint.

**G** THE Writ of Attaint lieth where false Verdict is given in a Court of Record against the Plaintiff or Defendant, or against the Demandant or Tenant in a Plea real or personal sued by Writ or by Bill; if the Debt or Damages do exceed 40 s. Then he against whom the Verdict passed shall have a Writ of Attaint, and the Writ shall be such: If it be in Action of Trespas in the King's Bench,

V. 4 Ma. 1.  
Br. Attaint  
127. it lieth  
not upon an  
Informat.  
40 E. 3. 11.

**H** *Si E. de L. fec. 29 secur. &c. tunc summon', &c. 24. legal. militum de visu. de N. quod sint coram nobis apud B. in octabis s. Hill parati sacrament. recognosc. si jurator. per quos quadam inquisitio nuper capta fuit coram nobis apud B. per breve nostrum inter L. & M. ux. ejus & præd. S. de quadam transgressione eidem M. per præf. S. illata, ut dicitur. falsum fec. sacram. sicut idem S. nobis graviter conquerens monstravit & interim diligenter inquiras, qui fuer. juratores prime inquisitionis, &c. & eos tunc habetas coram præf. Justic. &c. vel coram nobis, &c. as the Case is and lieth.*

**I** And by the Statute of West. 1. cap. 38. a Man shall have an Attaint in Plea of Land of Freehold, of a Thing which toucheth the Freehold.

**K** And by the Statute of 1 E. 3. cap. 6. a Man shall have Attaint in Trespas.

**L** And by the Statute of 5 E. 3. c. 6. in the End of the Statute a Man shall have Attaint of Trespas sued by Bill without Writ before Justices of Record, if the Damages exceed 40 s.

14 H. 7. 14.  
Brian.

**M** And also a Man shall have Attaint for the Damages, although they be not paid, &c.

14 H. 7. 14.  
Fincux.

**N** And if false Verdict pass by Writ of *Nisi prius*, then the Form of the Writ is:

*Parati sacramento recognosc. si jurat. per quos quadam inquisitio nuper summon. fuit coram nobis, & capta coram dilect. & fidel. nostr. T. de B. uno Justic. nostr. ad placit. coram nobis tenenda assign. per breve nostrum de Nisi prius apud K. inter ipsum E. & præf. T. de quadam transgr. &c.*

**O** And if the Verdict be taken within any Liberty or Corporate Town, then the Writ of Attaint is such:

44 E. 3. 21.  
44 Aff. Br.  
Attaint 131

*Parati sacramento recognosc. si juratores per quos quadam inquisitio nuper sum. fuit, & capta apud L. sine brevi nostro coram Majore & Ball. Civit. nostre Lincoln. de loquela que fuit coram dilectis & fidel. nostris S. Scrope & sociis suis Justic. nostris ad placita coram nobis tenend. assign. inter I. de L. & præf. S. de quadam transgr. eidem I. per præf. S. illata, ut dicitur, qua quidem loquela juxta libertates civitatis civibus civit. nostre præd. per char-*



tas progenitorum nostrorum quondam regum Angl. & confirmat. nostram concessas, coram eisdem Magist. & Baill. nostris retora. fuit placitum, falsum fecer. sacramentum, sicut idem J. nobis graviter inquiringdo monstravit necne, & interim, &c.

And upon false Verdict given in London upon Nisi prius, the Form of the Writ is such:

*Parati sacramento recogn. si jurat. per quos quaedam inquisitio nuper sum. fuit coram nobis, & capt. coram R. de M. tunc uno Justie. ad placita cor. nobis tenend. assign. associato sibi A. de F. apud S. Martin Lond. juxta libertat. civitatis prae. per breve nistr. &c.*

If false Verdict be given in a Corporate Town, upon a Plaint without Writ, then it is such:

*Parati sacramento recogn. si jurat. per quos quaedam inquisitio nuper capta fuit coram nobis apud Litc. sine brevi nostro inter A. de D. de quadam transgressione, &c. illata, de qua quidem transgressione idem B. convict. fuit, & 20 l. eidem A. pro damnis suis in hac parte adjudicat. existunt ut dicit. falsum fecer. sacrament. sicut idem A. &c.*

And if false Verdict be given within the Verge, then the Writ shall be such:

*Parati sacramento recogn. si jurat. per quos quaedam inquisitio nuper capta fuit coram Senesc. & Maresc. hospitii nostri apud G. sine brevi nostro inter K. & prae. T. de quadam transgressione eidem R. per prae. T. apud C. infra virgam nostram ut dicebat. illata, falsum fecer. sacramentum, &c.*

And if a Man be condemned by false Verdict in Debt, or Damages, then if he sue an Attaint, he shall have a special Writ unto the Justices, to bail him upon Sureties taken, that if the Attaint pass against him, he render himself to Prison, or satisfy the Debt, and the Writ is such:

*Rex dilect. &c E. de S. & sociis suis salut. Cum. I. arratuverit cor. nobis per breve nistr. quondam jurat. 24. ad convincend. juratur. per quos quaedam inquisitio nuper capta fuit cor. nobis apud W. per breve nistr. inter R. & prae. J. de quadam transg. &c. illat. ut dicit. ac ex parte ipsius J. accepim. quod ipse pretextu processus in prae. placito de trans. facti. captus est, & in prisona Marescalcie nostrae cor. nobis detentur, quo minus jurat. suam prae. prosecut. possit, super quo, &c. adhiberi. Nos volentes quod idem J. in prisona nostra prae. sic detineat. quo minus jurat. suam prae. prosecut. valeat, ut debet: Vobis mandavimus, quod si idem J. inveniret cor. vobis suffic. manucapt. qui eum manucaptant habere cor. nobis ad prosecutend. attinellam prae. & terminata attinella illa, si cont. ipsum transierit, vel ipse attinellam illam non fuerit prosecutus, quod reddat se prisona nostra prae. & satisf. tam vobis de eo quod ad nos, quam prae. R. de eo quod ad ipsum pertinet,*

*tinet in premissis, & ulterius faciat & recipiat quod Curia consideraverit in hac parte, tunc ipsum J. a prisona nostra predicta deliberari fac. per manusc. hujusmodi, ad proseguendum attaint. supradicta.*

**E** And if a Man vouch in a *Præcipe quod reddat*, one who entred into the Warranty and pleadeth, and loseth by false Verdict, he shall have an Attainr, and the Writ shall make mention of the Voucher; And so if a Man pray to be received for Default of Tenant for Life, and is received and pleadeth, and loseth by false Verdict, he shall have a Writ of Attainr, and the Writ shall mention the Receipt.

And so if it pass against the Plaintiff by false Verdict, and he bring an Attainr, the Writ shall make mention of the Voucher, and of the Receipt; and so if he in the Reversion joyn with the Tenant for Life by Aid Prayer, and they lose, by which he in the Reversion brings an Attainr he shall make mention in the Writ of the Aid Prayer; and also in Assize, if it be discontinued and afterwards Re-attachment sued, and he loseth by false Verdict, the Writ of Attainr shall make mention of the Re-attachment, because he reviveth the Original of Assize.

But if the Defendant in a Writ of Detinue pray Garnishment, who cometh and pleads, and the Plaintiff loseth, by which he bringeth Attainr against the Garnishee, the Writ of Attainr shall make mention of the Garnishment. That is well debated *M. 9 H. 6.* in the Title Attainr in the Abridgment.

But, saving the Opinion of the Book, it seemeth the Writ of Attainr shall make mention of the Garnishment, &c. for the Defendant in a Writ of Detinue who sueth the Garnishment, is in manner out of Court; and when the Garnishee comes, the Plaintiff counteth upon his Original Writ, which is the Writ of Detinue, and the Garnishee shall answer to that Count; and the Writ of Garnishment is but for to make him come in and answer to the Plaintiff to his Original and Count, and when he comes and pleads, he pleads unto the Plaintiff's Count, which is upon the Original, by which the Plea which is between the Plaintiff and the Garnishee is upon the Original Plea, as it seemeth, *tamen quere.*

And if a Man plead a Deed in Bar, in which there are Witnesses, and the Deed is denied, for which Process is awarded against the Witnesses, which joyn with the Jury, and it is found the Plaintiff Deed, now he shall not have an Attainr, &c. because the Witnesses do affirm the Verdict by their Testimonies. But if it be found not his Deed, then the other Party shall have an Attainr, for the Witnesses cannot prove a Negative, but of the Affirmative they may have Notice whether it be his Deed or

8 H. 4. 4.  
11 H. 4. 51.  
Skecn. 34  
H. 6. 31.  
11 H. 4. 50.  
Gascoigne.  
17 E. 2. Recovery in  
Value 32.  
9 H. 6. 38.  
*Yet he shall  
not mention  
if the Ten-  
nant for  
Life be  
dead.*  
4 Aff. 7.  
4 E. 3. 54.  
Br. Attainr.  
49.

9 H. 6. 38.

[107.]

11 Aff. 19.  
Br. Attainr.  
57. 23 Aff.  
11.  
Challenge  
132. Thorp.  
15 E. 3. At-  
tainr 16. ac.

not,



not. A Man shall have an Attaint in special Cases, where every Word of the Verdict is true; as if a Man hath had Common appendant unto his Land, Time out of Mind, and he bring an Assize of the Common, and make Title that he hath had Common, Time out of Mind, &c. without speaking of the Appendant, and it is found for him; the Defendant shall have an Attaint, for the Plaintiff's Title is for Common in gross, and not Common appendant; and yet the Words of the Verdict are true, that he hath had Common Time out of Mind, &c. but not in such manner as shall be taken by the Title.

10 E. 4. 17.  
ac. Co. 291.  
292.

10 E. 4. 17.  
24 H. 8. Br.  
Attaint 96.

And so if a Man have a Rent as Forester in Fee of such a Forest Time out of Mind, and in Assize of that Rent he make Title thereunto, that he hath had a Rent out of that Land Time out of Mind, &c. without saying as Forester in Fee, &c. and it be found for him, the other Party shall have an Attaint upon that Verdict, altho' the Words of the Verdict be true, for he hath not had such Rent by Prescription as shall be intended and taken by his Title.

35 H. 6. 30.

11 E. 4. 5.

33 E. 4. 2.

14 H. 7. 5.

9 H. 6. 2.

3 H. 6. 29.

3 Martin ac.

48 E. 3. 19.

conr. 33 H.

6. 25.

2 H. 4. 2.

per Curiam,

so of

Error.

18 H. 8. 1.

21 H. 6. 56.

28 H. 8. 5. 10.

42 E. 3. 26.

34 H. 6. 32.

ac. 12 H. 4.

5.

In Waste

against two,

one made

Default,

and the o-

ther plead-

ed, the who

made Default shall not have Attaint.

43 E. 3. 30.

34 H. 6. 12.

Morle, conr. 39 H.

6. 1. ac. 8 H. 4. 23.

Tirwin.

If a Man recover outrageous Damages by Verdict, but he releaseh Parcel of the Damages before Judgment, and hath Judgment for the Residue, the Defendant shall not have an Attaint for those Damages which are released.

And in a Writ of Waste the Plaintiff shall have a Writ to enquire of the Waste, who if they give false Verdict by which the Plaintiff recovereth, the Defendant shall have an Attaint per Cur. M. & H. 4. But I do not see how the same can be warranted by any Statute, which giveth the Attaint, because the Writ of Enquiry is awarded by the Court ex Officio per Sacramentum proborum, &c. And the Sheriff may make the Enquiry by the Oaths of six or eight Persons of the Waste, and he is not bound to take twelve Persons. *Quare* of this.

38 E. 3. 12. & 27. Br. Collusion: & upon Writ of Enquiry of Waste for an Abbot Quare jus shall Issue, which proves it is no Verdict but an Enquiry.

The King shall have an Attaint upon a false Verdict passed against him as well as a common Person.

In Trespas against two, one cometh and pleadeth Not guilty, and is found guilty, and afterwards the other cometh and pleadeth Not guilty, and is found guilty by another Enquest; Now in this Case the first Jury shall assess all the Damages for the Trespas, and the Defendant in the last Enquest shall have an Attaint of the Damages assessed by the first Enquest, if they be outrageous or excessive, &c.

43 E. 3. 30. 34 H. 6. 12. Morle, conr. 39 H.

6. 1. ac. 8 H. 4. 23. Tirwin.

Tenant

- F** Tenant by Statute-Merchanc shall have an Attaint if he be barred in Assize by false Verdict, or found against him by false Verdict; where he is Defendant in the Assize. 2<sup>d</sup> Aff. 16. Br. Attaint 69.
- G** If a Man recover in a *Præcipe quod reddat*, against a Tenant by false Verdict, there have been divers Opinions whether the Tenant shall have an Attaint before Execution sued out against him. *Vi. 41 E. 3. Lib. Aff. 21. H. 6. 60.* But the Statute of 1 E. 3. saith, That a Man shall have an Attaint of Damages before Execution sued of them, before which Statute it seemeth he could not have Attaint of them. But in the Time of E. 3. the Defendant sued forth an Attaint for Damages upon false Verdict given against him in a Writ of Trespass before the Plaintiff sued Execution of the Damages, which see in Title Attaint in the Abridgments, *temp. E. 1.* And also by the same Reason, if a Man do recover Land, the Tenant shall not have Attaint before Execution. And *Non-tensure* hath been pleaded, and admitted a good Plea divers times in an Attaint. And on the other side if the Tenant shall not have an Attaint before Execution sued, or Entry made by the Demandant or his Heir, then perhaps they will not enter until the Jurors are dead, and then the Tenant shall be without Remedy by Attaint. 34 H. 6. 13.
- H** If a Man who was Tenant do recover in Attaint, the Judgment shall be that he shall be arrested, &c. which could not be if the Demandant hath not entered, and when he himself is Tenant in Possession. 16 H. 8. 2. 31 H. 6. 12. 35 H. 6. 39. 22 E. 3. 10. Br. Attaint. 42.
- I** And I think it the better Opinion, That if in Trespass the Defendant plead Villainage in the Plaintiff, &c. and he is found frank unto his Damages of 20 s. the Defendant shall not have an Attaint for the Smallness of the Damages, &c. But in a *Præcipe quod reddat*, if the Tenant plead *Non-tensure*, and it be found against him, he shall have an Attaint, &c. 5. Aff. 24 E. 3. 34. Br. Attaint 42. 6 Aff. ib. Br. 51.
- K** An Attaint shall be maintainable against the Terre-Tenant without naming him who was Party to the Record: Otherwise it is in a Writ of *Recordare*; for that shall be sued against him who was Party, or his Heir or Executor, if it be a Personal Action, otherwise it shall abate. 14 Aff. 2. Br. Attaint 59. 10 E. 4. 13. 8 H. 4. 18. 9 H. 6. 47. 34 H. 6. 36. 35 H. 6. 30. contr. is admitted.
- L** Attaint doth not lie upon false Verdict given in an Appeal of Maibem, or Appeal of Felony or Murder. 34 H. 6. 36. 35 H. 6. 30. the contr. is admitted.
- M** An Attaint may be sued in the Common Pleas, if the Record be there; or it may be sued in the King's Bench upon a false Verdict given in the Common Pleas, if the Record be removed into the King's Bench. 8 Eliz. Dy. 250.
- N** A Recovery was in an Assize brought in the King's Bench, and afterwards that Record was sent unto the Common Pleas, and 16 Aff. 4. Br. Attaint 60.



44 E. 3. 2. and the Party sued an Attaint upon the Record in the  
 44 Aff. 20. Common Pleas, *Vi. 8 E. 2. H. Affise. Iter. Kan.*

21 E. 3. 10. Attaint was sued upon a false Verdict given against the  
 Br. Att. 32. Defendant when he claimed Liberty, and adjudged that he  
 22 E. 3. 3. should have it. *H. 15 H. 3.*

H. 15 H. 3. And the Writ of Attaint may be sued out of the Com-  
 21 E. 3. 10. mon Pleas or King's Bench, upon a false Verdict given in  
 364. the same Court, as well as out of the Chancery, *qd. vi. 30  
 E. 1. Itin. Cornub.*

In a Writ of Entry brought in *Suffex*, the Defendant  
 pleaded a Release in *London*, which was found against him  
 in *London*, for which he brought an Attaint in *London*, and  
 it was maintainable, *qd. vi. M. 18 E. 1.*

If the King recover by false Verdict, he shall have Attaint  
 against the Petit Jury only, as if the King do recover  
 by erroneous Process, &c. the Party shall have a Writ of  
 Error of the Judgment, and shall not name the King, be-  
 cause he is always present in the Court.

2 H. 4. 4. The Vouchee or Tenant by Resceit, or he in the Reversion  
 16 E. 3. where he joyneth to the Tenant by *Aid Prier*, shall  
 Error 72. have Attaint if he lose by false Verdict: And if Tenant for  
 20 E. 3. Life lose by false Judgment, he in the Reversion shall have  
 Error 2. an Attaint or Writ of Error living the Tenant for Life, by  
 11 H. 6. 29. the Statute of 9 R. 2. *cap. 3.*

If the Defendant in Trespafs, plead Villenage in the Plain-  
 tiff, and he saith that he is Frank, and is so found by Ver-  
 dict, and afterwards the Defendant dieth, his Heir shall  
 have an Attaint to avoid this Estoppel and false Verdict,  
 although it was given in a personal Action.

8 H. 4. 13. In an Attaint upon a Recovery in *Præcipe quod reddat*, the  
 Skyene. Defendant pleads *Non-tenure*, and the Demandant saith, That

he made a Feoffment unto unknown Persons, &c. and that he  
 brought the Action within the Year, and with that, that he  
 will averr that the Defendants took the Profits the Day of

21 H. 6. 55. the Writ purchased; and the Defendant saith, That he did  
 21 E. 3. 10. not take the Profits, &c. Now this Issue shall be tried by the  
 Br. Attaint 32. Attaint; and if they give false Oaths, he shall have an At-  
 32. It shall be tried by taint upon that Verdict; by *Newton*: As if in a Writ of Right  
 Twelve, and the Tenant plead a collateral Warranty, made within the  
 not by the same County, it shall be tried by the Grand Assize; and if  
 Attaint. they give false Verdict, he shall have an Attaint, because  
 19 Aff. 13. the same is out of the Point of Assize; by *Newton*, *Tr. 21 H. 6.*

Br. Attaint. 63. 32 Aff. Nonsuit in Attaint after Appearance is peremptory, and  
 13 Br. At- he shall not have a new Attaint; and so upon a *Retrahit*, if  
 taint 75. the Demandant say he will no more sue his Attaint, and  
 that

that he entred upon Record, he shall not after have another Attaint.

**E** If a Man have a *Præcipe quod reddat* against divers, by several *Præcipes*, and by Enquest it is found for the Demandant; he shall have a Writ of Attaint against the Tenant, &c. But if it is found against the Tenants, he shall have several Attaints; for as unto all of them, it is a several Enquest to try their Issues severally.

14 Aff. Br.  
Attaint 59.

**F** If the Demandant be barred in a *Formedon*, and afterwards releaseth all Actions, or all his Right in the Land, yet his Heir shall have a Writ of Attaint.

**G** And so if the Father be Nonfuit upon an Attaint upon a Writ of *Formedon*, he there shall have an Attaint.

**H** And a Man shall have an Attaint before Justices of Oyer without Original Writ, upon a Bill only sued before the same Justices, T. 5 E. 2.

**I** If false Verdict be given in Assize of *Novel disse*, then if the Plaintiff will sue an Attaint, he ought to have such a Writ.

*Rex Vic. Lincoln. salutem. Si A. fecerit te fecurum tunc sum. &c. 24. miles de visn. de S. quod sint coram Justiciariis nostris ad primam Assisam, cum in partes illas venerint. Vel sic, coram dilectis & fidelibus nostris R. de W. & B. de F. & his quos sibi associavimus de certis, &c. quos idem R. & B. tibi scire faci. parati sacramento recogn. si J. injuste & sine judicio destituit præfat. A. de libero tenemento suo in S. vel de communia pastura sue in S. quæ pertinet ad liberum tenementum suum in eadem villa, post primam transfratationem Domini H. filii Regis J. in Pascon. unde idem A. queritur quod juratores Assise Novæ disse. quæ inter eos sum. fuit & capta coram nobis apud W. per breve nostrum; vel coram præfat. R. & B. vel coram dilectis & fidelibus nostris W. de H. & sociis justiciar. nostris ultim. itinerant. apud L. in com. tuo per breve nostrum falsum fecer. sacramentum, & interim diligenter inquireas, qui fuer. Jurator. illius ass. & cor tunc habeas coram præf. Justic. ad præfat. ass. vel coram R. & B. Et sum; &c. præd. I. vel sic: præd. I. H. qui præd. tenementa nunc tenet: quod tunc sit ibi auditur. illam recognitionem, & habeas ibi nomina Militum, & hoc breve.*

**K** And if a Man lose by false Verdict in Assize before Justices of Assize, if he will sue an Attaint before the same Justices, he ought to sue a Patent directed unto the same Justices to give them Authority to hold Plea thereof; or he may sue a Patent unto other Justices to hold Plea of that Writ of Attaint, and the Form of the Patent is such:

**L** *Rex dilectis & fidelibus suis R. & B. salutem. Sciatis quod constituimus nos, &c. Justic. nostros, una cum his, quos*

vobis



vobis associavimus ad jurat. 25. Milite. capiend. quam A. arrain. coram vobis per breve nostrum versus I. ad convincend. Jurator. in Affisa nova disseffa. que inter eos sum. fait. Et capta coram vobis apud W. per breve nostrum de tenementis in S. vel de communi postur. in S. vel sic. coram vobis prefat. R. Et dilecto Et fidei nostro S. nuper Justic. nostris. &c. apud W. per breve nostrum de tenementis in S. Et ideo vobis mandavimus. quod ad certos. &c. provideritis. jurat. illam capiatis. factur. inde quod ad justitiam pertinet secundum legem Et consuetudinem regni nostri: Salvo nobis amerciametis inde provenient. Mandavimus enim Vic. nostro Lincoln. quod ad certos diem Et locum. quos ei scrips. fac. jurat. illam terram vobis venire fac. In cujus rei testimonium has literas nostras fieri fecimus patentes. Teste. &c.

And a Man shall have a Writ of Attaint upon a false Verdict in an Affize of Nufance. Quare levavit vel prostravit quoddam stagnum in N. &c. vel quoddam fossatum. vel quoddam sepem. vel diveritit cursum aque in N. ad nocumentum. &c. in eadem villa. And the Form of the Writ is such:

[109]

Si A. &c. tunc sum. &c. parati sacramento recognoscere. si J. injuste Et sine judicio levavit. vel prostravit. quoddam stagnum in N. vel quoddam fossatum. vel quoddam sepem. vel diveritit cursum cujusdam aque in N. vel archarit. vel obstravit quoddam viam in N. ad nocumentum. &c. in eadem villa. post primam. &c. unde idem A. queritur. quod juratores ass. que inter eos sum. fait. Et capta coram. &c. apud N. per breve nostrum falsum. &c. Et interim. &c. Et sum. &c. Et habet. &c.

And it is a Rule in the Register. That in an Attaint upon an Affize of Novel disseffa a certain Day shall be set. as in an Affize. Die lune vel alio die in Crastin. vel in Oshab. vel in quinden. Pasch. but it behoveth that the Tenant have Garnish out by 15 Days in the Attaint. for the Statute doth not give lesser Time. but only in Affize before the King.

And there is another Form of the Writ. if the Affize be adjourned into the Common Pleas. and taken there before the Justices of the Common Pleas. and the same appeareth in the Register.

And another Form is of the Writ of Attaint. where the Affize is brought against the Husband and Wife. and the Wife is received for the Default of the Husband. and pleadeth and loseth by false Verdict.

And another Form of Attaint is. where the Tenant in the Affize pleadeth the Release of the Plaintiff. or of his Ancestor in Bar of the Affize which is found against them. upon a false Verdict.

And another Form of the Writ of Attaint is. where the

the Verdict passeth by *Nisi prius* out of the Common Pleas.

**F** And another Form of the Writ of Attaint is, where the Assize is summoned before certain Justices, and after it is taken before other Justices by a general Commission, and a false Verdict is given upon the same.

**G** And another Form of the Writ is, if an Assize be summoned before divers Justices, and afterwards is taken by any of them by Vertue of the Writ of *Si non omnes*, then the Party shall have a Writ of Attaint, rehearsing the whole matter.

**H** And if a Man upon Verdict given in an Assize before the Justices of Assize sueth an Attaint before the same Justices, or other Justices, he may have a Writ of Association directed unto the same Justices before whom the Attaint is laid; and the Writ of *Si non omnes*, as he shall have in Assize, &c. who was Plaintiff there; And he shall have a Writ Patent directed unto him who is Associate, &c. which Writs do appear in the Register after the Writs of Assize of Novel Disseisin.

But it appeareth by one Writ in the Register, that there was a Constitution made, which required, That the Assize and Jurors and Certificate shall be taken before the Justices commonly assigned: By which it seemeth, That a Man shall not have an Attaint upon a false Verdict given in an Assize, but before the Justices of Assize, or before the Justices of the Common Pleas, if the Record be removed thither, or before the Justices of the King's Bench, if the Record be removed before the King; and the Form of the Writ is such:

*Rex dilect. & fidel. suis R. & G. de E. salutem. Licet super constituimus vos Justic. nostros ad jurat. viginti & quatuor mulit. capiend. quam J. quæ fuit ux. E. arrain. cor. vobis per brev. nostr. versus E. quæ fuit ux. A. de L. ad convincend. jurator. Ass. no. diff. quæ inter ipsum A. & prof. J. & alios, &c. sum. fuit & capt. apud L. cor. dilectis & fidelibus nostr. R. & B. nup. Justic. nostris ad ass. &c. assign. per brev. nostr. de tenement. in S. Quia ea inquisit. præd. facta fuit cont. form. statuti nostri apud Northampton. nup. editi, in quo continetur, qd. assise jurate, & certificationes cor. Justic. communiter assign. & non aliis captantur: Quod quidem statut. in omnibus & singulis suis articulis volent. inviolabiliter observari, Vobis mandamus, quod de captione jurate præd. prætextu commiss. nostræ sic fact. vos nullatenus intromittatis. Teste, &c. Quod quidem statut. fact. fuit Anno. 2 Ed. 3 Regis Angl. cap. 2.*

21 E. 3. 3.  
Br. Attaint  
21.  
21 Aff. 7. Br.  
Certificat.  
de Assize 2.  
21 E. 3. 10.  
Br. Att. 32.  
10 H. 6. 4.  
No Attaint  
upon Tenement  
recovered  
di, but upon  
the Record  
it self.

**I** By which it appeareth, That he shall not have a Writ of Attaint by Commission, &c. before other Justices, but only before Justices of Assize, or of the Common Pleas, or King's Bench, as before is said.

The Form of the Writ of Attaint upon a Rediff. is such:



*Rex Vic', &c. Si R. feoderit, &c. tunc sum. &c. 24. legal. Militas, &c. usque ibi parati, &c. Si juratores per quos quadam inquisitione capta fuit coram E. tunc Vic. com. tui, et custod. placitarum corone nostrae, ejusdem per breve nostrum apud W. inter R. et præd. B. de quadam rediff. eidem R. per præf. B. fact. ut dicit, de uno mesuagio et 9. acr. terræ cum pertin. in W. falsum fecerunt sacramentum sicut eidem R. nobis gravit. querend. monstravit, et interim diligenter inquiras, qui fuerint juratores illius inquisitionis, &c. et eos tunc habeas coram præf. R. et J. Et sum. præd. B. quod tunc sit ibi ad audiend. ill. recogn. & habeas ibi sum. &c.*

Vi. 3. Eliz.  
Dy. 25.

And it seemeth, That this Writ of Attaint ought to be sued before the Justices of Assize of the said County, and that they shall have a Patent for the same directed unto them, and that the Record shall be brought before them. But if the Record be removed into the Common Pleas, then it seemeth he shall have his Attaint there.

And it appeareth by *Glanville*, That a Man shall have an Attaint, and the manner how the Jurors shall be punished.

42 E. 3. 25.  
2 H. 4. 23.  
Galcoigne.

And if any Jurors be convicted of false Oath, they shall be imprisoned, and then they ought to sue unto the King to pay a Fine for their Imprisonment, and when they are agreed with the King, they may sue a Writ for to remove the Record before the King in the King's Bench, and the Writ shall be such:

By this it  
appeareth  
that they

shall forfeit their Lands in Fee, as upon Praemunire, but for their own Lives by Br. Attaint 100 & 95. upon the Book of 22 E. 4. 1.

110.]

*Rex dilectis E. et sociis suis, &c. salutem. Cum W. de M. et alii de falso sacramento per ipsos facto in quadam inquisitione capta apud W. coram W. de B. & sociis suis nuper Justis. Dem. Regis, &c. de Banco per breve nostrum inter R. peten. et W. de M. tenent. de manerio de B. cum pertin. excepto uno gardino in eodem maner. coram dilectis et fidelibus nostris W. de B. et sociis suis, &c. de Banco. per quandam juratam 24. convicti fuissent, et ea occasione prisona nost. de Fleet adjudicat. ac bona et catalla sua, terr. et tenementa sua in manu nostra seista. Nos record. et processum negotii prædict. cum omnibus ea tangent. una cum corporibus præd. W. et aliorum coram nobis certis de causis venire fecimus, ac jam ex parte ipsius W. nobis est supplicat. et cum ipse in prisona hujusmodi occasione præmissorum jam diu detentus fuisset et adhuc existit, velimus ab eo rationabil. finem pro imprisonmente illo, bonis et catall. ac terris & tenementis suis præd. ac etiam pro estrepamento terrarum et tenementorum prædict. recipere, ipsum à prisona, qua sic detinetur, facer. liberar. Nos statui ejus compatiens in hac parte, ac volentes idem W. gratiam*

gratiam facere special. Vobis mandamus, quod visis record. & processu præd. & habita consideratione ad valorem bonorum & catall. terrarum & tenementorum præd. ac estrepament. eorund. rationabilem finem de eodem W. pro eo quod ad nos pertinet in hac parte recipiatis & ipsum W. à prisona, qua præmissa occasione detinetur deliberari, & ei bona & catall. terr. & tenement. sua in manu nostra existentia sic liberari faciatis per finem supradict. Teste, &c.

And thereupon the Party shall be fined, as the Justices if the King's Bench will assess in their Discretion; and upon that they shall grant a Writ to deliver his Goods and his Lands, and for to deliver him out of Prison, and the Writ shall be such:

43 E. 3. 26.  
See Statute  
3 H. 8. ca.  
15.

Rex Vic. &c. Cum W. de M. unus jurator, in quadam inquisitione capta apud W. coram W. de B. & sociis suis Justic. Dom. Regis, &c. (ut supra, usque ibi) Justic. nostris de banco per breve nostrum de falso sacramento per ipsum W. fact. per jurat. 24. Mil. convict. fuisset, & ea occasione prisona nostr. adjudicat. bona & catalla, necnon terr. & tenementa sua in manu nostra seiscit. sunt, nobis constat per inspectionem record. et process. præd. que coram nobis venire fecimus, Ac idem W. postmodum venisset in Curia nostra coram nobis, et finem fecit nobiscum pro imprisonmento prædicto, et terris et tenementis suis habendis: Tibi præcipimus, quod omnia terras et tenementa ipsius W. si ea occasione et non alia in manu nostra existent, eidem W. sine dilacione re-habere fac. et de corpore ipsius W. capiend. occasione præd. omnino supercedeas. Proviso tamen quod de valore terrarum et tenementorum prædictorum à tempore judicii super veredicto juratis prædict. redditus usque ad datum istius brevis, et etiam de estrepamento eorundem cum inde inquisit. fuerit, nobis respondeas. Teste W. Thorpe, &c. Anno 6. Robul. 104.

A And there are divers other manners of Forms of Writs of Attaint, which are not here mentioned, because a Man may see them in the Register.

## Writ of Oyer and Terminer.

**T**He Writ of Oyer and Terminer should not be properly called a Writ; but it is a Commission directed unto certain Persons, when a great Assembly, Insurrection or a heinous Misdemeanor or Trespas is committed and done in any Place. Then the Manner and Usage is to make such a Commission of Oyer and Terminer, to hear and determine such misbehaviour; and the Statute made 2 E. 3. c. 2. requireth, That no Commission of Oyer and Terminer be granted but before the Justices of one Bench or other, or the Justices Itinerant,



## Writ of Oyer and Terminer.

and that for horrible Trespasses; and it is of the King's special Grace, according unto the Form of the Statute thereof made in the time of the Grandfather of the said King Edward; and the Form of the Commission is such:

*Rex dilecti & fidelis A. B. & C. salutem. Ex gravi querela D. accepimus, quod E. F. & G. ac quidam alii malefactores & pacis nostre perturbatores in ipsum D. apud N. vi & armis insultum fecerant, & ipsum verberaverunt, &c. ita quod de vita eius desperabatur, & alia enormia ei intulerunt, ad grave damnum ipsius D. & contra pacem nostram. Et quia transgressionem si aliter perpetrata fuerit, relinquere nolumus impunitam: Assignamus vos & duos vestrum Justice, nostros ad inquirend. per sacramentum proborum & legalium hominum de Com. Lincoln. per quos rei veritas melius sciri poterit, de nominibus malefactor. præd. quia una cum præf. E. F. & G. transgress. illam perpetrat. & de transgress. præd. plenius veritatem, & ad eandem transgress. audiendum & terminandum secundum legem & cons. regni nostri. Et ideo vobis mandamus quod ad certos dies & loca, quod vos vel duo vestrum ad hoc provideritis, inquisitionem illam faciatis, & transgr. illam audiat. & terminatis in forma præd. fact. quod ad justitiam pertinet secundum legem & cons. regni nostri: solvite nobis amerciam. & alios ad nos inde spectant. Mandamus enim vic. nostro com. præd. quod ad certos dies & loca, quos vos vel duo vestrum ei sciri fac. venire faciat coram vobis vel duob. vestrum, tot & tales probos & legales homines de ball. sua per quos rei veritas in præmissis melius sciri poterit & inquiri. de cuius rei testimonium, &c.*

[ 111. ]

And the Rule in the Register is, That if this Clause, *Ac quid. alii malefactor. &c.* be not put into the Commission aforesaid, then in the end shall be this Clause, *Per quas rei veritas melius sciri poterit de transgr. præd. plenius veritatem ad eandem transgressionem, &c.*

And the Form of the Writ which shall be directed unto the Sheriff upon that Commission is such:

*Rex Vic. &c. Ex gravi querela D. &c. (ut supra, usque ibi) assignavimus dilecti, &c. A. B. & C. & duos eorum Justice, nostr. ad inquirendum per sacramentum proborum & legal. hominum, &c. (usque ibi) audiendum & terminandum secundum legem & cons. regni nostri. Et ideo tibi præcip. quod ad certos dies & loca, quos videm A. B. & C. tibi scire fac. venire facias coram eis vel duobus eorum, tot & tales probos & legal. homines de balliva tua, per quos rei veritas in præmissis melius sciri poterit & inquiri, & habeas ibi hoc breve, &c.*

And the King may make a Writ of Association unto the Justices of Oyer and Term, to admit them into their Company whom

whom the K. hath associated unto them, and the Form is such:

*Rex dilectis A. B. & C. Sciatis quod cum nuper ad querimoniam D. nobis suggerent. quod E. F. et G. ac quidam alii malefact. et pacis nostr. perturbatores, &c. (usque, &c.) impunitam: Assignavimus vos et duos vestrum Justic. nostros, &c. (usque) ad audiendum et terminandum, secundum legem et cons. Assignavimus vobis vel duobus vestrum faciendum. Ita tamen quod si ad cert. dies et loca, quos vos vel duo vestrum ad hoc provideritis, ipsum H. adesse contigerit, tunc ipsum ad hoc in socium admittat. in forma præd. Mandamus enim eidem H. quod una vobiscum, vel duobus vestrum ad hoc intendat, sicut præd. est, Teste, &c.*

And the Form of the Writ of Association, which shall be directed unto him who shall be associated unto the Commissioners is such:

*Rex dilecto et fideli suo H. salutem. Sciatis quod cum nuper ad querimoniam D. nobis suggerentis, quod E. F. et G. ac quidam alii malefactores, &c. assignavimus dilect. &c. A. B. et C. et duos eorum Justic. nostros, ad inquirendum, &c. (ut in patent. usque ibi) terminandum secundum legem, &c. Associavimus vos præf. A. B. et C. et duobus eorum ad præmiss. una cum eis vel duobus eorum faciendum; ita tamen quod si ad certos dies et loca quos iidem A. B. et C. vel duo eorum ad hoc providerint, vos adesse contiger. tunc vos ad hoc in socium admittant, alioquin A. B. et C. vel duo eorum (non expectata presentia vestr.) ad præmiss. faciendum procedant. Et ideo vobis mandamus quod ad præmiss. una cum præf. A. B. et C. vel duobus vestrum intendatis in forma præd. faciendum, &c. salvis nobis, &c. Mandamus enim eidem A. B. et C. quod vos ad hoc in socium admittant, sicut præd. est.*

**C** And then the King may send another Writ unto the said Justices of Oyer and Terminer to proceed, although that all the Justices do not come at the Day of the Sessions. And this Writ is called a Writ of *Si non omnes*, &c. and shall be directed as well unto that Justice as shall be so associate, as unto the other Justices of Oyer and Terminer, and shall be such:

**D** *Rex dilect. A. B. et C. et H. salutem. Cum nuper ad querimoniam D. nobis suggerentis, quod E. F. et G. ac quidam alii malefact. &c. (usq; ibi) contra pacem nostr. assignaver. vos præf. A. B. et C. et duos vestr. Justic. nostros, &c. (usq; ibi) audiend. et ad terminand. secund. leg. et consuetud. regni nostri, et postmodo associaver. vobis præf. A. B. et C. & duobus vestr. præf. H. ad præmiss. faciendum: Vobis mandamus quod si vos omnes præmiss. faciend. commode interesse non possitis, tunc vos tres vel duo vestr. quos present. esse contiger. ad præmiss. fac. secund. legem, &c. procedatis. Teste, &c.*

And if the King hath made Commissioners of Oyer and Terminer A. B. and C. and afterwards by another Writ doth as-



*Writ of Oyer and Terminer.*

associate unto them 7. of H. who is admitted, &c. and afterwards 7. of H. dieth. The King may make a new Association of other Persons to the first Justices; so that Association shall be made and granted after Association; and he may make Association of two or three Persons unto the first Commissioners, or to those of them who are living, to continue the Proceedings, and to proceed to hear and determine the whole Matter, and that they do admit those he doth associate, or two or any of them, to proceed upon the whole Matter, and such a Writ is in the Register: And by that it appeareth, That by the Death of any of the Commissioners, the Matter shall not be discontinued: And the Writ of Association shall be patent, and the Writ directed to the Justices of Oyer and Terminer, to admit the others in their Society, shall be close.

And if a Trespass be done unto one in the Confines of two Counties, then the Party may sue a Commission of Oyer and Terminer, directed to certain Persons, to hear and determine the Matter, and the Form shall be such:

*Rex dilectis, &c. Ex gravi querela D. accepimus, quod G. bonus et catall. ipsius D. ad valenc. centum librarum apud M. R. & N. que sunt in confinio Com. Norff. & Suff. invent. vi & armis cepit & asportavit, &c. (usque ibi) Justic. nostri ad inquirendum per sacramentum proborum & legalium hominum de Com. præd. per quos, &c. Mandavimus enim Vicecom. nostris Com. præd. quod ad certos dies & loca, in confinio Com. præd. quos, &c. coram eis in confinio corund. Com. tot & tales probos & legales homines, &c.*

And the Writs directed unto the Sheriffs of two Counties shall be Close.

And a Commission of Oyer and Terminer was granted upon a Rescous made upon the King's Bailiff where he distrained for Debts, or Amercements to the King, and Rescous was made upon him.

And the King may grant certain Commissions de Oyer & Terminer, of divers Trespasses done by any Person at the Suggestion of divers Persons, without nominating any in the Commission, and then the Form of the Commission beginneth in this manner:

*Rex dilectis, &c. Ex clamoribus querimonibus diversorum hominum de Com. N. ad nostrum sepius pervenient. audit. quod A. Episcopus Wint. &c. plur. & diversas oppress. &c.* And he shall have the like Writ unto the Sheriff to return the Panel.

And if a Man have Goods and Merchandise in any Ship upon the Seas, which Ship is broken by Tempest, and the Goods cast upon the Lands, these are no Wrecks, because certain Persons came alive to the Land, and the Merchandise

560:107 b.  
Vaugh. 160

ses or Goods are taken by Malefactors unknown, &c. The Party may have a Commission of Oyer and Terminer, directed unto certain Persons, to enquire of those who did the Trespas, and to hear and determine the same, and to make Restitution unto the Party, and a Writ unto the Sheriff to return *probos & legales homines, &c.* before the said Justices, &c.

**D** And a Man may have Commission of Oyer and Terminer, to enquire of Extortions, Oppressions, and other Misdemeanors of Under-Sheriffs, Escheators, Bailiffs, Clerks of the Market, and all other Officers, upon the Complaint and Suit of any one that will sue, and a Writ unto the Sheriff to return a Jury before the said Justices.

**E** And also the King may direct his Writ unto the Sheriff, or unto Mayors or Bailiffs, to do as much as in them lieth and appertaineth to them, to remove such Persons from their Office, against whom it is supposed that any one will complain; or that he doth not put such or such into any Office, until Enquiry be made of their Carriage and Behaviour, &c.

**F** And if a Man sueth a Commission of Oyer and Terminer against divers Persons, for taking of his Goods and Chattels, and when they have taken them, they waste, spend or eloin them; then the Party who sued out the Commission, shall have a Writ unto the Sheriff, reciting the Matter, commanding him to stay the Goods, and to put them into safe Custody, until it be otherwise provided and adjudged by the Justices of Oyer and Terminer, or by other Justices to be after assigned. And upon that Commission of Oyer and Terminer, if it be found for the Plaintiff, the Justices may return the Goods to the Party, and give him Damages; and therefore it varieth from the Action of Trespas sued before the Justices of the King's Bench, or the Common Pleas.

**G** And in the time of the Vacation of a Bishoprick, if any Person hunt in the Parks or Chases of the Bishop, the King may send his Commission of Oyer and Terminer to certain Persons, to hear and determine and enquire thereof; and the Writ shall be such:

*Rex dilect. &c. Sciatis quod assignavimus vos & duos vestr. Justic. nostros ad inquirendum, &c. de com. &c. per quos. &c. qui malefactores & pacis nostre perturbatores parcos de S. H. & A. in Com. predict. postquam ipsi ad manus nostras ratione instantis vacationis Episcopatus Cicestr. devener. vi & armis freger. & in eis sine licentia & voluntate nostris fugaver. & feras ceper. & asportaver. & alia enormia nobis ibidem intuler in nostri dispendium & contemptum, ac contra pacem nostram, & transgressionem*



## Writ of Oyer and Terminer.

*transgressi nem pro ad plenius veritatem, et ad transgressiones illas audiendum et terminandum, secundum legem, &c. Et ideo vobis mandamus, quod ad certos dies, &c. inquisite, illam fac. et transgressionem, &c. terminetis in forma predicta, facturam, &c. Mandamus, &c. et inquiri, &c. Telle, &c.*

And if in the time of the Vacancy of the Archbishoprick, any Person doth hunt in the Parks, or cut down the Woods, or fish in the Piscaries of the Bishop &c. when the Archbishop is created, the King may send and grant the Commission of Oyer and Terminer, to enquire and determine the Trespas in the time of the Vacancy; and the Form of the Commission shall be,

*Rex dilect. &c. Et gravi querela venerabilis Pastoris W Ebor. Archiepiscopi accepimus, quod quidem malefactor, &c. parcos, &c. (and recite in the Commission all the Trespas, especially) et alia enormia, &c. in nostri contemptum manifestam, et deterior Archiepiscopatus predicti, et dilecti Archiepiscopi gravi damnum, et contra pacem nostram. Et quia contempt. transgressio, &c. impunito, &c. assignavimus vos, &c. (utque ibi) ad contemptum et transgressionem illas, tam ad sellam nostram quam pro Archiepiscop. audiendum, &c. terminandum secund. legem, &c. Et ideo vobis, &c.*

But it is to see how it standeth with the Statute of Marlebridge, that the Bishop shall have an Action and punish a Trespas done in the Vacancy of the Bishoprick: But it seemeth it shall be so by these Words in the Statute, *Quod si rapina aliqua facta sunt Abbatibus vel aliis Prelatis Ecclesiasticis, &c.* And in the end of the Statute are these Words, *Si autem in terris et tenementis hujusmodi religiosor. de quibus eorum Prelati obier. seisisi, ut de jure Ecclesia sua, aliqui se intrudunt tempore vacationis, &c.* And it seemeth these Words *hujusmodi religiosorum*, shall extend to Bishops: As much as to say, the Bishop shall punish a Trespas done in time of Vacancy of the Bishoprick, in cutting down of Trees, &c. for of Right the King cannot cut such Trees; but for hunting in the Parks, or fishing in the Piscaries, it seemeth the King ought to have the Action for the Trespas done in the time of the Vacancy; but if they do destroy all the Fish within the Fish-pools, or kill up all the Deer in the Parks in the time of the Vacancy, it seemeth reasonable, that by the Statute of Marlebridge, the Successor have an Action for such Trespas: *Quere* of this matter.

And it is intended, That the King of right ought to keep and defend his Kingdom as well against the Sea, as against Enemies, that it be not drowned or wasted, and to provide Remedy for the

the same: And also to provide that his Subjects pass by all ways through the Kingdom with Safety; and therefore if the Sea-Walls be broken, or the Sewers or Gutters not scowred, so as the fresh Waters cannot have their Courses, the King ought to grant a Commission to enquire thereof, and to hear and determine the Defaults; and the Form of the Commission is such.

Rex dilecti. A. B. et C. &c. Cum wall. fossata. guttura, suerae, pontes, calceta, gurgites et trenchia in partibus Holland. inter cruce[m] de W. et pontem de E. per impetum maris, et refluxus, ad inundationem aquarum dulcium per diversa loca in partib. praed. adeo diruta sunt et contracta, quod quamplurima domna et inestimabilia pro defectu reparationis arundem Wallorum, fossatorum, gutturum, suerarum, pontium, calcetor. et gurgitum, et obstructionem trenchearum praed. temporibus retroactis evenirent ibidem, majoraq; processu temporis evenire timent, nisi super hoc celerius remedium adhibeatur opportunum. Nos pro eo, quadratione dignitatis, vestre regis, ad providendum salvation. regn. nostr. circumquaq; sumus ascripti, Volentes in hac parte congruum et festinum remedium adhiberi, assignavimus vos, &c. ad supervidendum wall. fossata, guttura, suerae, pontes, calceta, gurgites et trenchias praed. et ad inquirendum per sacramentum tam Militum quam aliorum proborum et legalium hominum de partibus praed. tam infra libertates quam extra, per quos, &c. poterit, per quorum defectum hujusmodi damna contigerint ibidem, et quae terras et re ementa tenent; seu communiam pasturae aut piscariam in partibus illis, vel etiam defensionem, commodum, et salvationem habent, vel qualitercunque per wall. fossata, guttura, suerae, pontes, calceta, gurgites praed. habere poter. sed etiam damna per trenchias praed. sustinent vel sustinere poter. et ad omnes illos pro quantitate terrarum et tenementorum suorum, sive per numerum acrarum, sive per carucatas pro rata portionum tenur. suae seu pro quantitate commun. pastur. vel piscariae suae ibidem distringendum, et per amerciamenta et alia modo, prout melius videritis faciendum, puniendum una cum ballivo libertatum et aliorum de partib. illis ad hujusmodi walla, fossata, guttura, suerae, pontes, calceta, et gurgit. in locis necessar. reparand. et quodviscunque, et ubi necesse fuerit de novo faciend. ac trenchias praed. in locis necessariis obstruend. ita quod aliquibus tenent. terrar. seu tenement. hujusmodi, seu communiam pasturae seu piscariae habentibus, divit. vel pauper. aut al. cujuscunque fuerit conditionis, status, aut dignitatis, quam defensionem habere poterint qualitercunque per praedicta wallum, fossatum, guttura, suerae, pontes, calceta, et gurgites, seu etiam damnum per trenchias praed. sustinent, vel poterint sustinere, sive fuerint infra libertates vel extra, non procedant in hac parte: Et ideo

nobis



## Writ of Oyer and Terminer.

vobis mandamus, quod ad certos dies & loca quos vos, &c. ad hoc provideritis præd. wall. fossata, guttura, fueras, pontes, calceæ, gurgites, & trenchens supervideatis, & præmiss. omnia & singula faciatis & expleatis in forma prædicta, & omnia quæ per vos ordinari & fieri contigerit in hac parte, tam infra libertatem quam extra, faciatis firmiter observari. Mandamus enim vic. nostro Linc. &c. quod venire faciat, &c. tot & tales tam milites quam alios probos, &c. tam infra libertates quam extra, per quos rei veritas melius sciri poterit, &c.

And upon this Commission a Writ shall issue to the Sheriff rehearsing the whole Matter in the Commission, commanding him to return a Jury, &c. as appeareth by the Commission. And if the Justices shall sit by Vertue of that Commission, and take divers Presentments and Indictments, and award Process upon them returnable at a certain Day, and afterwards all the Justices or some of them die, the King may grant a new Commission to the Justices which are living only, or unto others, rehearsing the Death of him who is dead, or of those who are dead, commanding them to continue the Proceedings begun, and to proceed upon that Process, and to hear and determine all these Defaults and Offences in the said Commission, the King reciting, that he hath sent unto the Executors of those who died, to send all the Rolls, Records, and Process before the new Commissioners. And upon that Commission, the King shall send a Writ unto the Executors of the Justices who are dead, to send the Rolls, Records and Process as aforesaid, forthwith under their Seals, and another Writ unto the Sheriff to make a Panel, and to return the same before the new Commissioners, and upon that Commission the Justices shall make a Precept unto the Sheriff, that at a certain Day and Place he return before them the Panel according to their Commission, and that he be there before at the same Day [ 114. ] with the Precept. And this new Commission shall be made as well to continue the Suits and Process betwixt Party and Party, sued before the Justices of Oyer and Terminer, as well as the Indictments and Presentments made and found for the King. And the King may put into the Commission a Command unto the said Commissioners, to receive the Records and the Rolls, and Process of the said Executors. But see the Statute of Sewers, and especially the Statute of King Henry the Eighth for that Matter.

And if any English Merchants Goods be spoiled, and his Goods taken beyond the Seas by Merchants Strangers, and the English Merchant was beyond Sea to have Justice and  
 Restitution

Restitution made thereof, and could not obtain the same, and this Matter is testified unto the King in his Chancery: Now upon this Testimony, if the Merchants Strangers shall come into any Place within the Realm of *England* with their Goods; then the *English* Merchant shall have a Writ out of the Chancery, directed unto the Mayor or Bailiffs where such Merchant Strangers are with their Goods, to arrest them and their Goods, and to keep them under Arrest until they have satisfied the Party his Damages, which he hath sustained by reason of their misdoing. And may have divers Writs directed unto divers Ports or Towns, unto the Mayor or Bailiffs thereof, to arrest such Merchants and their Goods, and to detain them until they have satisfied the *English* Merchant for the Trespas which they have done unto him beyond the Seas. But it seemeth the *English* Merchant shall not have such Writ, for any Debt due to him by Contract from a Merchant Stranger, upon a Contract made beyond the Seas, if the Merchant do come into *England*, or his Goods; *Quere tamen* thereof. And the King shall recite in his Writ which is directed unto the Mayor or Bailiffs, &c. how he hath sent the like Writ unto the Mayor or Bailiffs of such a Town, and another Writ unto the Mayor or Bailiffs of the other Town, in the like manner; and this Writ shall be sued to attach all those who did the Trespas, and their Goods unto the value of the Trespas, which he supposeth he was endamaged.

**C** And if certain Persons ought to accompt unto a Corporation, as if the King grant to the honest Men of the Town of *M.* a certain Sum, out of Things which come to the same Town to be sold, and there are Collectors to gather the same, who do so; the King may grant a Commission to certain Persons, to enquire what Persons have received such Sums, and to hear and determine the Matter, and to hear their Accounts thereupon, and do in that Case as Auditors shall do; and he shall send a Writ unto the Sheriff to return a Jury before the same Justices at the Day, &c. which they

18 E. 4. 17  
Conspiracy  
against  
one diet  
pendant the  
Writ. Per

Curiam the Writ shall not abate, and note by Finchden 44 E. 3. 32. that one shall answer if he appear.



## Writ of Conspiracy.

1 Statute  
33 E. 1 de  
Conspirati-  
tionibus.  
Vi. after E.  
F. G. Con-  
spiracy shall  
be against  
one, &c  
contr.

Note if the  
Action be  
brought a-  
gainst divers, and all but one are acquit, the Action faileth. 28 Ad. 12. so if all  
but one are discharged by matter in Law.

A Writ of Conspiracy lieth where two, three or more Persons of Malice and Covin do conspire and devise to indict any Person falsely, and afterwards he who is so indicted is acquitted, now he shall have this Writ of Conspiracy against them who so indicted them. But this Writ lieth against two Persons at the least who do so conspire; for if one Person of Malice and false Imagination do labour and cause another falsely to be indicted, the Party who so is indicted, shall not have a Writ of Conspiracy, &c. but an Action upon the Case against him who caused him falsely to be indicted.

If two Men conspire to indict another, and afterwards he is indicted, for which he bringeth Appeal upon the same Indictment, and after is Nonsuit upon his Appeal after Declaration or before Declaration, the Party who was falsely indicted shall have a Writ of Conspiracy, because he is arraigned after the Declaration upon the Appeal, and is acquitted, and before the Declaration upon Nonsuit he shall be arraigned upon the Indictment, and if he be acquit, he shall have a Writ of Conspiracy, &c. But if he be falsely indicted, and after an Appeal is sued upon that Indictment, and he put no Answer unto the Appeal, and afterwards is acquitted by Verdict upon the Appeal, he shall not have a Writ of Conspiracy in that case, because he is acquit upon the Appeal, and not upon the Indictment, &c. But upon Nonsuit in the Appeal a Conspiracy doth lie for the Cause before mentioned.

34 H. 6. 9.  
p. r. Prifoir.  
Note, this  
case proves  
that Conspi-  
racy lieth as  
well upon  
Appeal as  
Indictment;  
for he is ar-  
raigned up-  
on the ap-  
peal, Staundford 172. that is indicted at the Suit of the King, 19 E. Fitz. Conspir.  
12. 5 E. 3. ib. 22.

5 E. 3 Con-  
spiracy 22.  
13 F. 3.  
Conspiracy  
25. The a-  
betters shall  
not be en-  
quired of  
but where  
the Abet-  
ment is  
found by En-  
quest.

And if two conspire to cause a Man to sue an Appeal against another of Felony or Murder without any Indictment taken or found thereof, and after the Defend. is acquit by Verdict, he shall not have a Writ of Conspiracy against those who conspired to appeal him, because that by the Stat. of West. 2. cap. 12. *Quia multi per malitiam*, it shall be enquired of Abettors, if he be not indicted thereof; and if they be found, he shall have a *Scire factos* against them out of the same Court where he is acquitted, to answer him his Damages. And so if he get a Nonsuit in any such Appeal, where there is not any Indictment, the Defend. shall have a Writ of Conspiracy

after

Writ of Conspiracy.

253 26

after the Nonsuit or after the Acquittal: But the Form of the Writ of Conspiracy where he is acquit by Verdict doth vary in Words in the end from the Writ of Conspiracy which is founded upon the Plaintiff's Nonsuit in Appeal, for one Writ founded upon the Verdict is, *Quousque secundum legem, &c. acquiesatus fuisse.* And the other Writ of Conspiracy founded upon the Plaintiff's Nonsuit is, *Quousque idem querens per consideration. Cur. nostr. inae quietus recessit.* The Form of which Writ follows:

19 H. 6. 19/81.  
& 4 H. 6. 23.  
Nul riel  
Record is 4/10  
a good Reply  
in Conspiracy

*Rex Vic, &c. Si A. fecerit, &c. tunc pone, &c. B. & C. quod sint coram nobis, &c. Ostens. quare conspir. inter eos apud N. prehabita praf. A. de quodam jumento furtive apud N. capto & abducto indictari, et ipsum ex occasione capi, & in prisona nostra Warr. quousque in Cur. nostr. coram dilectis et fidel. nostr. R. et S. Justic. nostris ad Gaol. nostram Warr. deliberand. assign secundum legem et consuetud. regni nostri acquiesatus fuisse, detineri falso et malitiose procuraver. ad grave damn. ipsius A. et contra form. ordinat. in hujusmodi casu provis. Et habeas ibi nomina pleg. et hoc Breve. Teste, &c.*

The other Writ founded upon Nonsuit in Appeal is such:

*Rex Vic, &c. Si A. fecerit, &c. tunc pone, &c. B. et C. quod sint coram nobis, &c. Ostens. quare conspir. inter eos apud N. prehabita praf. A. de morte, D. apud E. nupex interfecit. appellari et ipsum A. ex occasione capi et in prisona nostra de L. quousque in Cur. nostra coram nobis idem A. &c. per consider Curie nostre inde quietus recessit, &c.*

A And if a Man cause one as Principal to be appealed of Felony or Murder, and another as Accessary to him, and afterwards is Nonsuit in his Appeal, the Accessary shall have a Writ of Conspiracy as well as the Principal.

And if the Principal and one who is Accessary be indicted of Felony, and be taken and arrested, and the Principal is indicted and acquitted, now by that the Accessary is discharged, and the Accessary thereupon shall have a Writ of Conspiracy against those who conspired to indict him, and the Writ in the end shall say, *Quousq. idem (the Principal) secundum leg. &c. acquiesat. fuisse, et idem (the Accessary) quietus recessit.*

33 H. 6. 1.  
34 H. 6. 9.  
cont. if the  
Principal  
die before  
he be at-  
tainted.

B And a Man shall have a Writ of Conspiracy upon an Indictment before any Mayor, Bailiff of any City or Borough, who have Gaol. delivery within the City or Borough, if he be acquitted before them, &c. for that Acquittal discharged.

C eth him of the Felony. But a Writ of Conspiracy doth not lie against the Indictors, &c.

20 H. 6. 5

D If Jurors be sworn to enquire, &c. and afterwards any of them is discharged by the Justices, he shall not be punished for what

7 H. 4. 31.  
8 H. 4. 6.  
21 E. 3. 19.

*Handwritten notes and signatures at the bottom of the page, including the name 'J. B. ...' and other illegible text.*



47 E. 3. 17. what he did when he was sworn: But if he do conspire against, he may be charged for the same in a Writ of Conspiracy; 27 H. 8. 2. And he who cometh into Court, and discovereth Felonies, 20 H. 6. 5. and is sworn to give Evidence to the Jury, is not chargeable 33. in Conspiracy. 35 H. 6. 14.

14 H. 6. In a Conspiracy against two, one pleadeth the Writ, E and the other Matter in Law, which is adjudged for him, Conspiracy and the Plea unto the Writ found by Verdict against him who pleaded unto the Writ, the Plaintiff shall have Judgment against him who pleaded to the Writ: But if both had pleaded Not guilty, and one had been found guilty, and the other not, there the Plaintiff shall not recover, for then he did not conspire as is supposed by the Writ. But if 1. may be that they did conspire in the Case aforesaid, although that the Matter in Law be adjudged for the Defendant. And if the Principal die before any Verdict given upon the Acquittal, or have a Pardon and plead it, then the Accessary shall not have a Writ of Conspiracy, because he is discharged by the Death of the Principal, or by the Pardon to the Principal.

*Conspiracy against two, one is against, the other makes Default, Judgment*

*shall be against him. 24 E. 3. 34. but quere by Staundford 174. for 27 E. 3. it is holden that one shall not answer without the other.*

If a Man be falsely indicted of Felony, and afterwards by Act of Parliament a general Pardon is granted of all Felonies, the Party now shall not have a Writ of Conspiracy, although he will plead unto the Indictment and is acquitted, and will not plead the Act, &c. because his Life was not in danger, and the Felony was discharged by the Act.

The Justices of Gaol-delivery arraign a Prisoner for Murder, within the Year where an Appeal is depending against the same Prisoner for the same Murder, which they know, and yet they proceed and acquit him, he shall have a Conspiracy, although he was not acquitted nor discharged of the Appeal; See the Statute of *An. 3 H. 7. cap. 1.* And before that Statute it was holden, 21 H. 6. by *Passon and Newton*, That he shall have a Conspiracy; for they said that he should be hanged if he had been found guilty upon the Arraignment on the Indictment. And see the Statute *de Conspiratoribus, temp. E. 1.* which Statute doth not determine in what Cases a Conspiracy shall lie. But by the Statute of 4 E. 3. c. 10. which giveth the Justices of *Nisi prius* and of *Assise* Power to hear and determine of Conspiracies, Confederacies, and Champerties, which they cannot determine in short Time, they adjourn them *in Banco*, and shall be there determined. And

*† Acquittal is therefore an Absolute discharge of the offence otherwise this Writ could not be maintained See 94*

And if a Man be indicted or appealed of Treason or Felony, or a Trespafs done in a Foreign County, &c. if he be acquit thereof, he shall have a Conspiracy against him who procured him to be indicted or appealed, and shall recover treble Damages by the Writ upon the Statute of 8 H. 6. c. 80.

And if a Man be indicted of Felony or Treason, where there is not any such Place within the County, he shall have Conspiracy, and recover his Damages against the Abettors and Procurers or Conspirators by the Statute of 18 H. 6. cap. 12.

And the Form of the Writ for the Accessary in a Writ of Conspiracy is,

*Quare conspiration. Et. pref. A. de eo quod ipse abetasse & procurasse debuisset D. qua fuit uxor E. F. & G. de morte ipsius E. quondam viri sui appellari coram J. & sociis suis nuper Justiciar. nostris ad appellum illud audiend. & terminand. indiet. & ipsum ea occasione capi & imprisonari, & in prisona nostra Linc. quousque coram pref. Justic. nostris inde, secundum legem & consuetud. regni nostri acquietatus fuisse, &c.*

[116.]

**A** And there are divers other Writs of Conspiracy grounded upon Disceit, and Trespafs done unto the Party, which are properly Actions of Trespafs upon the Case; as if two Men do conspire to indict another Man, because he did not arrest a Felon, who passed by the Town of N. and because they caused him to be indicted and amerced in the Leet of R. and P. and took and imprisoned him for that Amercement until he be acquit in the said Leet.

**B** And if Men say and affirm unto A that he hath Right unto such Land, and procure and cause him to sue an Action for the same against B, who is Tenant of that Land, &c. by which he is of necessity compelled to sell other Lands or Tenements for the Defence of his Land, &c. now he shall have an Action against those who procure or conspire to cause A. to bring this Action, &c.

**C** And if two Men procure or cause one to be indicted for Hunting in another's Park, for which he is taken, imprisoned and put to Charges until he hath acquitted him of the Trespafs, he shall have a Conspiracy against them.

**D** And Conspiracy shall be maintainable against those who conspire to forge false Deeds which are given in Evidence by which his Land is lost.

**E** Conspiracy shall be maintainable against those who conspire to bring an Assise in the Name of the Plaintiff against a Def. and to make one Attorney for the Plaintiff, in which Assise the Plaintiff was found Villain, &c. now he may bring this Writ of Conspiracy.

And

2 Bro. 16.  
4 Bro. 17a.  
46 E. 3. 20.  
39 E. 2. 11.  
Fitz. Con-  
spiracy 9.  
42 E. 3. 14.



3 Ait. 13. And Conspiracy shall be maintainable against those who  
11 H. 7. 25. conspire to indict one of Treasons, &c. waerof he is acquitted, &c.

And Conspiracy shall be maintainable, because the Defendant made one to present in the Name of the Plaintiff unto an  
40 E. 3. 19. Advowson, and for that presenting unto the Bishop, who is admitted and instituted, &c.

47 E. 3. 15. If one conspire to cause a false Office to be found of my  
but the office ought to be sufficient. Land, which is found by his Procurement, &c. I shall have a Writ of Conspiracy.

In a Conspiracy against two, one justifies because he was then Justice by Commission, when the Plaintiff was indicted before him, &c. and for any Conspiracy before, he pleaded Not Guilty.

2 H. 4. 6. And a Writ of Conspiracy for indicting of Felony doth  
21 H. 7. 26. not lie but against two Persons at the least; but a Writ of Conspiracy, for indicting one of Treasons or other Falsity made, as in Cases aforesaid, lieth against one Person only.

38 E. 3. 3. And a Man shall not have a Writ of Conspiracy for indicting him of Felony, against Husband and Wife, because they are but one Person; but against Husband and Wife and a third Person it well lieth.

But if the Writ of Conspiracy be brought against two, then it shall be said properly a Writ of Conspiracy. But if it be brought against one Person only, then it is but an Action upon the Case upon the Falsity and Deceit done, because one Person cannot conspire with himself.

And the Writ of Conspiracy may suppose the Conspiracy to be in two several Places, and shall be good; and the Writ ought to be brought in the County where the Conspiracy is made, and not where the Indictment was, or where the Deed was done, &c.

There is also another Writ of Conspiracy which is given upon the Statute called *Articuli super chartas*, 28 E. 1. cap. 10. which Writ shall be directed unto the Justices of Assize to enquire of the Conspiracy; and the Writ shall be such:

*Rex dilectis & fidelibus suis W. de S & sociis suis, &c. assign. salut. Cum inter ceter. articulos, quos dominus Edw. quond. Rex Angl. avus nostr. ad emendas. statas populi sui concessit, ordinat. sit, quod de Conspiratoribus, falsis informatoribus & malis procuratoribus duodenar. inquisitionum, assisarum & juratorum Justic. de utroq; banco, & Justic. ad ass. capiend. assign. cum in patriam venerint ad officium suum faciend. faciant inquisitionem ad cujusvis querelam sine brevi, & sine dilacione, & faciant Justic. conquirenti, prout in articulis pred. plenius continetur:*

Donp 12-10

4

Re: Ab: 111

5 H. 6. 30.

22 H. 6. 29.

*continetur: Nos dictos articulos in omnibus inuolabiliter obseruari volumus. vobis mandamus, quod inspecta ordinat. præd. ult. ad prosecution. omn. & singul. coram vobis conuer. volumus. faciat. quod secund. formam ordinæ. præd. fuerit faciend. Teste, &c.*

- O And upon that he shall have an *Alias* and a *Pluries*, and *Attachment* against the Mayor or Sheriff, &c. if they do not according to the Writ sent unto them, or return the Cause why they cannot do the same; and it seemeth reasonable that the Party in Prison should have an *Action* upon that Statute against the Recognisor, if he find him not Bread and Water in Prison, &c. according to the Statute.

## Writ of Account.

- P **A** Writ of Account lieth diuers Ways; for if a Man make one his Bailiff of his Manor, &c. he shall have a Writ comp<sup>t</sup>. 8. of Accompt against him as Bailiff. 9 H. 6. Ac.

And if a Man make one his Receiver, to receive his Rents or Debts, &c. he shall have a Writ of Accompt against him as Receiver. 6 R. 2. Belk. Accompt. 47. 14 H. 4. 80.

And if a Man make one his Bailiff, &c. and also his Receiver, then he shall have an Accompt against him as Bailiff, and also as Receiver.

- Q A Man shall have a Writ of Accompt against one as Bailiff or Receiver where he was not his Bailiff or Receiver; for if a Man receive Money for my Use, I shall have an Accompt against him as Receiver; or if a Man do deliver Money unto another to deliver over unto me, I shall have an Accompt against him as my Receiver. [117] 29 H. 6. Fitz. Accompt 6. 36 H. 6. 10. 10 R. 2. Accompt 45. ac.

- A And so if a Man enter into my Land to my Use, and receive the Profits thereof, I shall have an Accompt against him as Bailiff.

- B And so if the Father doth occupy the Land of an Infant, which the Infant hath purchased or hath by purchase, the Infant shall have an Account against him as Bailiff of his Lands; and this Writ of Accompt may be sued as well in the County as in the Common Pleas. Vi. 43 E. 2. 21. Thorpe. 19 E. 3. Fitz. Accompt

- C If a Man have cause to have an Accompt against one as Bailiff or Receiver, if he die his Executors shall have the Action: But an Accompt doth not lie against the Executors of a Bailiff or Receiver, for the Receipt or Occupation of their Testator. And the Writ of Accompt which shall be sued in the County, is a *Justicies* directed unto the Sheriff, which is such: 56. the Writ of Accompt is given to Executors by Statute and was not at the Common Law.



## Writ of Account.

*Rex Vic. Linc. sal. Prac. tibi, quod Justic. A. quod juste & sine dilatione reddat B. rationabile computum suum de tempor. quo fuit ball. suus in N. & recepit. denar. ipsius B. sicut rationabiliter monstrar. poterit, quod ei redd. debet, ne amplius inde clam. audiamus pro defectu justitia. Teste, &c.*

And for Executors the Writ is :

*Quod redd. B. & C. exec. testamenti D. rationabil. comput. suum de tempor. quo fuit ball. ipsius D. in N. & ipsius defuncti, sicut ration. monstrara. poterit.*

If two Merchants occupy their Goods and Merchandises in common unto their common Profit, one of them shall have an Action of Accompt against the other in the County or in the Common Pleas; and the Writ in the County shall be :

*Rex Vic. &c. Prac. tibi quod Justic. A. mercator. quod juste redd. mercat. rationabil. comput. de tempor. quo fuit recepit. denar. ipsius B. ex quacung; causa & contractu ad communem utilitat. ipsorum A. & B. proven. sicut per legem mercator. rationabiliter monstrar. poterit, quod ei redd. debet.*

Two par- chase a Mar- rior for Life, and one ta- keth upon him to be Bailiff to the other. no Ac- compt lieth by 1 E. 2. Acco. 115. & 21 E. 3. ib. 66. 30 E. 1. Ac- comp: 177. Note, that in a Writ, which sup- peth that

And this Clause, *Ex quacung; causa & contractu*, ought to be put in every such Writ, whether it be sued in the Common Pleas, or in the County.

And the Executor of one Merchant shall have such Writ against the other Merchant, but not against his Executor :

*Rex Vic. &c. Prac. A. quod redd. B. rationabil. computum de tempore quo fuit receptor d. narior. ipsius A. vel ballivus ipsius A. in N. & nisi fecerit, & prad. A. fecerit se secur. de clamor. sus. prosigendo, tunc sum. prad. B. quod sit coram Justic. nostris apud Westm. in Quindena Pasce. &c. ostens. quare non fecerit, & hab. in a Writ, which sup- peth that*

de tempore quo fuit receptor d. narior; the Defendant shall not say, that he had accounted from such time to such time, but ought to shew certain for what things he hath accounted, Contra where the Writ is, A tempore quo fuit Ball. 3 E. 3. Acc. 69.

14 H. 4. Ac- compt 124. 4 E. 2. 17. 10. 97. 31 E. 3. Ac- compt. 57. 25 E. 3. 45. in the like Action the Dif. said That he was not Receiver of the Predecessor, and admitted good. 20 E. 3. Accompt 78. Accompt lieth against an Abbot not withstanding the Receipt was by the Predecessor.

And a Prior, or Abbot, or Master of an Hospital, shall have a Writ of Accompt against him who was Receiver or Bailiff in the Time of their Predecessor, and the Form of the Writ shall be such :

*Prac. A. quod reddat I. Priorissa de S. rationabil. computum de tempore, &c. ball. Alicie quondam Priorissa de S. predecess. prad. I. & recepit. denar. ipsius Alicie Priorissa, &c.*

And another Writ thus, *Pracipe A. quod reddat.*

And

And another Writ thus: *Præc. A quod redd. communitati vill. de W. rationabil. computum suum de tempore, &c. quo fuit receptor denar. ipsius communitat. in W. Et nisi, &c. Et præd. communitat. &c.*

**G** And note that the Writ of Accompt sued in the County may at the Suit of the Plaintiff be removed into the Common Pleas by a *Pone* without any Cause shewed in the Writ, but shall not be removed out of the County by the Defendant without Cause shewed in the *Pone*, &c. As if the Defendant plead a foreign Release, then it shall be said in the *Pone*, *Quia prædict. defend. in placitand. in Cur. nostra in N. in qua loquela pendet per return. brevis nostri protulit quoddam scriptum acquietantie sub nomine ipsius A. continens in se præf. A. omnes acc. quas versus præf. B. def. ratione compoti præd. habuit, eidem B. remisisse in Com. Linc. fact. ut dicitur, quod quidem scriptum præf. A. omnino dedixit, propter quod loquela illa in Cur. præd. ulterius deduci non debet, Fiat executio istius brevis, si causa sit vera, & aliter non.*

**H** There is another Manner of Writ of Accompt founded Vi. 4 E. 2. upon the Statute of *Marlebridge*, cap. 23. And that Writ lieth where a Man ought to make Accompt as Bailiff or Receiver, and hath no Lands or Tenements by which he may be distrained, but is vagrant in secret Places, where he will not be found, then the Plaintiff shall have a Writ of Accompt which is called *Monstravit* upon the Statute, and the Writ is of this Form:

*Rex Vic. &c. Monstravit nobis Prior de N. quod cum A. extiterit ballivus suus in K. omnium rerum & bonorum suorum cur. 6s. 8d. and habens administrationem, idem A. compoto suo non soluto subterfugia querens, latitat in balliva tua, nec possit inveniri ad reddend. præf. Priori computum suum prædict. Et quia de communi consilio regni nostri provisum sit: quod si ballivi, qui dominiis suis computum suum reddere tenentur, se subtraxerint, & tenementa non habent per que distringi valeant, per eorum corpora attachentur: Ita quod Viccom. in quorum ballivis invenient. eos venire fac. ad compot. suum redd. Tibi præcipimus, quod si præf. Prior fecerit te secur. de clamore suo prosequendo, tunc præd. A. attach. ita quod cum habeas coram Justic. &c. tali die, ad reddend. præf. Priori computum suum præd. sicut rationabiliter monstrare poterit, quod ei reddere debet, &c. & habeas ibi, &c.*

But this Writ is not now in use, because that by the Statute of *W. 2. cap. 12.* made after the Statute of *Marlebridge*, Process of Outlawry is given in a Writ of Accompt against Bailiffs and Receivers: But yet he may sue a *Monstravit*

[118.]



at this Day if he will: And the Form of the Writ of *Monstravit* directed unto the Sheriffs of London is such :

*Rex Vic. Lond. salut. Monstravit vobis A. quod cum B. extiterit receptor denarior. ipsius A. & ball. suis in N. idem B. computo suo non solut. interfugia quarens latitat in Ball. vestra, &c. Et quia, &c. vobis precipimus, quod si præd. A. fecerit vos secur. de clamor. suo proseguendo, tunc præd. B. attachiatis, ita quod cum habeatis coram Majore civitatis nostr. Lond. & vobis in proxim. Hustingo vestro Lond. ad reddend. præf. A. computum suum præd. sicut, &c. Et habeatis, &c.*

And the Receivers and Bailiffs may be put in one Writ in the *Monstravit* thus, *Receptor denar. ipsius A. & ball. suis in N.* But if the Writ be sued in the Common Pleas, then the Bailiff must be put, *Sicut ball. suis & receptor denarior. ipsius A. in N.*

See that in  
Accompt a-  
gainst one  
as Bailiff  
and Receiver,  
the Defendant  
said, that he  
was Guardian  
in Socage and  
not Bailiff,  
and good; per  
32 E. Accompt  
60.

And a Writ of Account lieth against Guardian in Socage; but the Form of the Writ doth vary from the Form of the Writ against the Bailiff, &c. and the Form is such :

*Rex Vic. &c. Si A. fecerit, &c. tunc sum. &c. B. quod sit coram Justic. &c. ostens. quare cum de communi consilio regni nostri provis. sit, quod custodes terrarum & tenementor. tenentur in socagio hered. terrarum & tenementorum illorum cum ad plen. etat. pervenerint, reddant rationabil. computum suum de exitibus de terris & tenementis illis provenientibus de tempore quo custod. illam habuer. ratione minoris etatis hered. præd. idem B. præf. A. rationabil. computum suum de exitibus provenient. de terris & tenementis suis in N. qua tenentur in socagio, & quorum custod. idem B. habuit dum præd. A. infra etat. fuit, reddens cont. ut dic. & if the De-  
fendant  
hath the Occupation  
or Manurance of  
the Land, the  
Action lieth, per  
32 E. 3. Accompt  
59. Fitz. 27.*

1 E. 33. Accompt 77.

Notwithstanding  
that he be  
Guardian  
in Droit,  
an in Droit,  
if the De-  
fendant  
hath the Occupation  
or Manurance of  
the Land, the  
Action lieth, per  
32 E. 3. Accompt  
59. Fitz. 27.

*Vi. old N.B.* And if a Man during the Minority of the Heir enter into the Land of the Heir which he hath by Descent, and take the Profits to the Use of the Heir, the Heir at full Age shall have an Accompt against him as Guardian for the Profits received until he come to the Age of 14 Years; and for the Profits received after the Heir come of the Age of 14 Years, he shall have a Writ of Accompt against him as Bailiff, and not as Guardian, for he cannot be Guardian longer for Socage Lands but till 14 Years of Age: But the Heir shall not have an Action of Accompt against him as Guardian until the Heir be of full Age of one and twenty Years, and that by the Words of

of the Statute, which are *Qui cum ad etatem pervenerit, &c.* But he shall have an Action of Accompt against him as Bailiff during his Nonage, at what time he will against him who taketh the Profits of the Lands which he hath by Descent, be he Guardian in Socage, in Right, &c.

C And a Writ appeareth in the Register, That if a Man be found in Arrearages upon his Accompt, and the Party Plaintiff do arrest him in London for those Arrearages, then he may sue a Writ in Chancery directed unto the Sheriff rehearsing the whole Matter commanding the Sheriff to detain and keep in Prison him who is so arrested, until he hath satisfied and paid the Arrearages. And it seemeth by the same Reason, That if a Man sue an Action of Debt upon Arrearages of Accompt before Auditors, and hath the Party arrested, that he shall have a Writ out of the Chancery unto the Sheriff, to keep him in Prison until he hath paid those Arrearages, but I conceive this Writ doth not stand in Law, that he shall be kept in Prison without answering unto the Suit commenced against him.

D A Man may have a Writ of Accompt against a Woman as *Receptrix denariorum*, or against a Chaplain, but not against an Infant. 14 H. 6. 4.  
16 E. 3. Accompt 52.

E A Man may have an Accompt against one as Bailiff of a Court or Hundred.

F And a Man shall have an Accompt against a Prior upon a Receipt had by his *Commoign*, but there the Writ doth suppose, that he himself did receive the Money, &c. and shall not say, by the Hands of his *Commoign*. And so a Receipt made by the Husband, by the Hands of his Wife, is his own Receipt, and the Writ and the Count shall suppose that he himself did receive, &c. without saying by the Hands of the Wife; But it is otherwise if a Prior or Husband receive Money of a Stranger, then the Count shall be that he received by the Hands of the Stranger, &c. But the Writ shall be general, *Tempore quo fuit receptor denar.*, without saying by whose Hands, but he shall shew that in the Count or Declaration. 2 H. 5. 2. 47  
E. 3. 16. 4 E.  
3. acc. 44  
E. 1. but  
5 E. 3. 21.  
Accompt  
100. cont.

G And if a Man deliver Goods or Money beyond Sea to deliver to him again in England at a certain Place, he shall have an Account for those Goods, &c. 41 E. 3. 9. *Not.*  
12.  
41 E. 3. 10.

And if a Man deliver Money to one upon Condition, that if he do such a thing, he shall have the Money, if nor, then he who delivered it shall have it again, if he perform not the Condition he shall have an Account against him for the same. 12 H. 4. 18.  
acc. 11 H. 4.  
75. Skreen.  
21 E. 3. acc.  
compt. 66.

If two have Goods in Joinder, or in Common, and one of them deliver the Goods to one to render Accompt, he alone shall have an Action for them. Y 3      If



45 E. 2. 21. If two have a Ward, and one take all the Profits, the other shall have an Accompt against him, P. 45 E. 3.

[119.] If the Husband hath received the Profits of the Wife's Lands, and die, the Wife shall not have a Writ of Accompt of the Profits, nor of the Rents, during the Coverture, against the Husband's Executors.

4 E. 3. 17. If a Receiver or Bailiff make a Deputy, yet the Action of Accompt shall be brought against the Receiver or Bailiff themselves, and not against their Deputies: For the Deputies receive the same to their Masters Uses.

11 R. 2. He who is Surveyor or Controler of Lands, shall not be charged in Accompt.

4 E. 3. 12 E. 3. *ibid.* 75, & 13 E. 3. *ibid.* 76.

6 E. 3. 3. An Apprentice shall not be charged to accompt by a Writ of Accompt: But the Master shall have a Writ of Accompt against a Servant who is sent to receive Money, &c. if he be Receiver.

*as Receiver, the Defendant said that he was his Apprentice, and no Plea, but he was forced to answer to the Receipt.*

The Parish-Priest shall not be charged for the Offerings offered, by a Writ of Accompt, if it be not otherwise agreed betwixt them, &c. For the Clerk holds the Vessel in which they are put.

If a King grant unto a Town the Toll of the Things sold in the same Town, for the Walling of the Town, and other necessary Things in the Town, and there be Collectors to receive the same, if the Collectors will not render Accompt thereof, they may have a Commission out of the Chancery to enquire of the Receipt of the Toll-Money, and the Receivers, and to hear and determine the same, and to hear their Accompts, and a Writ of Attendance unto the Sheriff, to return a Jury before the Commissioners.

## Writ of Debt.

C. 5. p. 79. A Writ of Debt properly lieth where a Man oweth another a certain Sum of Money by Obligation, or by Bargain for a Thing sold, or by Contract, or upon a Loan made by the Creditor to the Debtor, and the Debtor will not pay the Debt at the Day appointed that he ought to pay it, then  
10 H. 6. 7. *Debt per Accusamentum in Lett.*  
22 H. 6. 56. *In Debt against Successor upon Account to his Predecessor which comes to the Use of the House, the Writ shall be in vice Debet.*  
13 H. 7. 3.

the Creditor shall have an Action of Debt against him for the same; and it may be sued in the County before the Sheriff by Justices, as well as in the Common Pleas; and the Form of the Writ is sometimes in the *Debet* and *Detinet*, and sometimes in the *Detinet* only, and not in the *Debet*, and if it be in the *Debet* it shall abate. It shall be always in the *Debet*, and *Detinet*, when he who makes the Bargain or Contract, or lends the Money, or he to whom the Bond is made, bringeth the Action against him who is bounden, or Party to the Contract or Bargain, or unto the lending of the Money: And Money delivered by the Writ. But if a Man sell 20 Quarters of Wheat, or a Horse; if he bring Debt for the Horse, the Writ shall be in the *Detinet* only, and the Form of the Writ sued in the County before the Sheriff for Money, is such:

*In Debt against Husband and Wife for a Debt before Coverture, the Writ shall be Debet & Detinet, so in Debt against or for the Successors in respect of Obligation made to the Predecessor, 47 E. 3. 23. 40 E. 3. 16. 9 E. 4. 41. 47 E. 3. 23. If the Heir be to bring Debt, it shall be in the Detinet.*

*Rex Vic. Surr. salutem. Præcipimus tibi, quod Justitias A. quod juste & sine dilacione redd. B. 205. quos ei debet ut dic. sicut rationabiliter monstrare potest, quod ei redd. debet ne amplius inde clamorem audiamus pro defectu justitiæ, &c. Teste, &c.*

**I** And if the Writ of Debt be for other Goods or Chattels than Money, then the Writ of Debt shall be such:

*Rex Vic. &c. Præcipimus tibi, quod just. A. &c. quod redd. B. quendam librum, vel quendam cyphum, vel quendam equum, vel duos agnos pretii, &c. quem vel quos vel quæ ei injuste detinet sicut, &c.*

**K** And if a Writ of Debt be brought in the County before the Sheriff by Justices, the Plaintiff may remove the Plea unto the Common Pleas by a *Pone*, without shewing Cause in the Writ: But the Defendant shall not remove the Plea out of the County without shewing Cause in the *Pone*, and yet in the End of the Writ it shall be said, *Fiat execut. istius brevis, si causa sit vera, aliter non.* And the Causes wherefore the Defendant may remove the Plea, are many, as appeareth in the Register. One, if the Defendant plead a foreign Plea, which cannot be tried in the County, &c. Or if the Defendant shew that he before whom the Plea is depending, doth maintain the Plaintiff, or favour him, &c.

And if the Plea of Debt be sued within any Liberty, or Court of any Borough or City, &c. the Plaintiff may remove the Plea by a *Recordare* into the Common Pleas without shewing any Cause in the Writ. But if the Defendant sue to remove the Plea by a *Recordare* into the Common Pleas, out



of any Town or City, he ought to shew Cause in the Writ, as before is said. And if the Sheriff remove the Plea out of the Court by a *Pone* at the Suit of the Defendant or Plaintiff; and afterwards the Bailiffs or Officers of the Court proceed in the Plea, and give Judgment, and award Execution, &c. then the Defendant or he against whom the Judgment is given, and Execution awarded, shall have an Attachment against the Bailiffs, or those who so proceeded to Judgment; &c. to answer as well the King for the Contempt, as the Party his Damages, &c. And the Form of the Writ of Debt in the Common Pleasis:

*Rex Vic. &c. Præcip. A. quod juste, &c. redd. B. c. s. quis ei debet & injuste detinet ut dicit. Et nisi fecerit, & præd. B. fecerit, &c. tunc sum. per bonos sum. præd. A. &c.*

29 H. 8. 2.

And the Rule in the Register is, *Quod in brevi de debito de M cavallis nunquam dicit, quod ei debet.* And if the Debt be brought by Executors for a Duty due to their Testator, the Writ shall be *Quos ei detinet*, and not *Debet & detinet*, because they were not Parties to the Contract. And so if Debt be brought by the Creditor against Executors for the Debt of the Testator, the Writ shall be, *Quos ei detinet*, &c. and not *Debet & detinet*, although by the Writ he demand Money, viz. 20 l. or other Sum of Money.

[120.]

If a Man make B. and a Monk his Executors, and is indebted unto another, the Action of Debt shall be brought against B. and the Abbot and the Monk, and the Form of the Writ shall be such:

*Præcip. B. execut. testamenti S. & Abbati de C. & frat. A. de C. canonico ejusd. Ab. de C. coexecut. præd. B. testamenti præd. 20 l.*

Joyn'd in  
Action 75.  
H. 7. 8. Keb.  
A Lease for  
Years to a  
secular Man  
and an Ab-  
bot, quæ-  
runt they  
hold. See 15  
Elix. Plow.  
441. The  
Heir of the  
Heir shall be  
charg'd.

And if they bring an Action the Writ shall be: *Præcip. D. &c. qd. redd. B. execut. testamenti S. & Abb. de C. fratri A. de C. canon. ejusdem Abb. de C. coexecut. præd. B. testamenti præd. B.*

And if a Man be bound unto B. and an Abbot in 20 l. B. and B. dieth, his Executors and the Abbot shall joyn in the Action of Debt, and the Writ shall be such:

*Præcip. C. &c. quod juste, &c. redd. B. & M. execut. testamenti R. & Abb. de C. 10 l. &c. quas, &c. Et nisi, &c. & præd. execut. & Abb. fecerint se, &c.*

And if a Writ of Debt be brought against the Heir upon an Obligation of his Ancestors, the Writ shall be such: *Præcip. A. de S. fil. & her. B. quod redd. &c.*

And if there be divers Heirs, then the Writ shall be: *Præcip. A. de S. fratri & uni hered. B. & B. consanguineo & alteri her. d. ejusdem B. &c.*

And if a Man be in Debt, and die intestate, or the Executors refuse to be Executors, for which the Goods come to the Hands

Hands of the Ordinary, the Creditors shall have an Action of Debt against the Ordinary by the Statute of *West. 2. cap. 19.* and the Writ shall be such:

*Præc. p. A. Episcopo Lincoln. ad. cujus manum bona & catalla que fuer. B. qui obiit intestatus, ut dic. devener. quod juste, &c. redd. &c.*

And if the Goods come unto the Hands of the Ordinary, and afterwards the Ordinary maketh Executors, and dieth, the Creditor shall have an Action of Debt against the Executors of the Ordinary, and the Writ shall be such:

*Præcip. A. de B. & C. de T. execut. testamenti magistris R. de P. nuper Decani Ecclesie beati Petri Eborac. & custod. spiritualitatis Archiepisc. Eborac. sede vacante, ad cujus manus bona & catalla que fuer. E. de B. qui obiit intestat. ut dicitur, devenerunt, quod juste, &c. redd. &c.*

And it appeareth by the Register, that in *Anno 16 E. 3.* the Plaintiff was answered unto such Writ which he brought against the Executors of the Ordinary.

And there is a Writ of Debt in the Register for the Ordinary, against him who was indebted unto him who died intestate. But the Opinion of the Sages of the Law at this Day is, That the Ordinary shall not have an Action of Debt against those who were indebted to the Intestate, because the Action is given to the Administrator, and the Ordinary may commit Administration of the Goods when he pleaseth. But before the Statute of *31 E. 3. cap. 11.* the Administrators could not have an Action of Debt against the Debtors, wherefore it was then thought Reason, that some Person should have the Action for those Debts, &c. But the Ordinary at this Day may have an Action of Trespas for taking of the Goods out of his own Possession, but not for taking them out of his Possession who died intestate, as Administrators may have.

**E** If a Man be retained in *England* to do Service beyond Sea, receiving *10 l. per An.* he shall have an Action of Debt in *England* where the Retainer was.

**F** If a Man marries a Woman who is in Debt to divers Persons, the Husband and Wife shall be sued for the Debts, living the Wife: But if the Wife die, the Husband shall not be charged for the Debt after the Death of the Wife, if the Creditor of the Husband and Wife do not recover the Debt during the Coverture, which was due by the Wife before the Coverture: For then, altho' the Wife dieth, yet the Husband shall be charged for that Debt by that Recovery after the Death of the Wife.

**G** A Man shall be charged in Debt for the Contract of his Bailiff or Servant, where he giveth Authority unto his Bailiff

14 H. 4. 30.  
so against  
Guardian of  
the Spiritu-  
alties.

q. 6. 39 b  
ans 92

28 E. 3. 1.

2 R. 3. Fitz  
Debt. 3.

or



or Servant, to buy and sell for him: And so for the Contract of the Wife, if he give such Authority to his Wife, otherwise not.

6. 23 If a Man lease Lands for Years rendring Rent, and for Default of Payment, that he shall re-enter; if he do re-enter in the Land for not Payment of the Rent, yet he may have an Action of Debt for the Rent, for which he doth re-enter, and in the Writ shall recover the Rent, for which he re-entred.

14 E. 3. If a Man bind him and his Heirs unto another in 20 l. and dieth, the Heir shall be charged to pay the same, if he have Lands by descent in Fee-simple from his Ancestors, otherwise not. But if a Man be bounden in an Obligation to one and his Heirs, and the Obligee dieth, his Heir shall not have an Action of Debt upon the Obligation, but his Executors.

*A Man was bound to one and his Heirs, and holden the Heir should not have Debt living the Executors.* 9 H. 6. 58. *The Heir shall not have Detious for a Deed bailed by his Father.* 19 H. 6. 4. 48 E. 3. 12. *It is said, that if the Ordinary do not commit Administration, the Heir shall have Debt.*

19 H. 2. If any Man promise to one 20 l. to marry his Daughter, and he marieth her, he shall have an Action of Debt against him upon that Promise, H. 31 E. 3.

45 E. 3. 24. If a Parson have an Annuity in Fee in the Right of his Church, and the Annuity is behind, and the Parson dieth, his Executors shall have Debt for the Arrearages of the Annuity in the Life of the Testator.

6. 8. ac. If a Man grant to one a Rent in Fee, and further grant, that if the Rent be behind, &c. that he shall forfeit for a Penalty 40 s. to the Grantee and his Heirs, If the Rent be arrear, the Grantee shall have Debt for the Penalty. And so the Heir shall have the Penalty, and shall have Debt for the same, because it is an Inheritance, and perhaps may continue, &c.

21 H. 7. 5. If a Man be condemned in Debt or Damages, and be committed unto Prison for the same; if the Gaoler suffer him to go at Liberty, or he escape out of Prison, the Gaoler shall be chargeable in Debt to him at whose Suit he was imprisoned, and his Executors.

7 H. 6. 19. *Thurning and Skreen, that he may distrain for the Penalty, quod non est lex. But note, that if a Man be in Prison by Capias ad Compurand. and after escape, no Debt, but Action upon the Case, because he is not in Prison for any Duty.* by Choke & Pigot 1. 5 E. 4. 15. 16 E. 4. 2 & 3.

70 E. 3. 16. If a Man lend another Man a Horse until a certain Day, and then he to redeliver the Horse or 10 l. at the same Day, after the Day if the Horse be not delivered, it is in his Election

to bring an Action of Debt for the Horse in the *Detinet*, or an Action of Debt for the 10 l. in the *Debet*.

- C If a Man make a Lease for Life unto a Woman, rendering Rent, if she marry, and after the Rent is behind, and the Wife dieth, the Husband shall be charged in an Action of Debt for the Rent behind, because he took the Profits of the Lands by reason of his Wife; otherwise it is of an Obligation made by his Wife before Marriage, then the Husband shall not be charged if a Recovery be not against him and his Wife in the Life of the Wife. 26 E. 3. 64. 46.  
Debt 180. 8.  
10 H. 6. 11.  
9 H. 6. 29.  
20 H. 6. 45.  
Ascough.  
49 E. 3. 25.

If a Woman be endowed of a Rent, and afterwards taketh Husband, and the Rent is arrear, and the Wife dieth, the Husband shall have an Action of Debt for the Rent, because it was a Duty in him during the Marriage. But if a Man be bounden unto a Woman, and she taketh Husband, and the Day of Payment cometh during Marriage, and after the Wife dieth, the Husband shall not have an Action of Debt upon the Bond, because it was a Duty due unto the Wife, and a thing in Action before the Marriage. Vi. 14 H. 6.  
26. 10 H. 6.  
11.

- D If a Parson have an Annuity in Fee, and the same is behind, and the Parson doth resign, yet he shall have an Action of Debt for the Arrearages before the Resignation. 19 H. 6. 14.  
Quere.  
Ascue pro.  
Newton  
con.

- E And if a Man lease a Manor for Life, and the Rent is behind, which the Tenants who hold of the Manor are to pay, and the Lessee for Life of the Manor dieth, his Executors shall have Debt for the Arrearages of the Rent due by the Tenants of the Manor.

- F And so if the Tenant for Life of the Manor, surrender his Estate to him in the Reversion of the Manor, yet he shall have Debt against the Tenants of the Manor for the Arrearages before.

If a Man have a Patent from the King to have a certain Sum for Term of Years, or for Life, out of the Customs of London, and thereupon he have a *Liberate* to the Customer to pay him, which he delivereth to the Customer, at which time the Customer hath enough in his Hands to pay him; now by the Delivery of the *Liberate*, and the Assets in the Hands of the Customer, the Customer is Debtor unto him, and he shall upon this Matter have Debt against him. 37 H. 6. 25.  
If a Libe-  
rate be de-  
liver'd. to  
Customers  
or other  
Collectors  
that will  
sustisse.

they shall be discharged against all others. 27 H. 6. 9. ac. 21 H. 6. Debt 43.

- G If two submit themselves to an Award, and the Arbitrators award that one shall pay the other 10 l. he shall have an Action of Debt upon that Arbitrement.



37 H. 6. 35. If an Abbot hath an Annuity in Fee, and the same is behind, he shall not have an Action of Debt for the Arrearages, because the Annuity continueth. H

Neither shall a Parson have an Action of Debt for the Arrearages of an Annuity, which he hath in Fee during the time that he is Parson: But if he resign, he shall, or if he dieth, his Executor shall have an Action of Debt for the

38 H. 6. 5. same. And if a Man who is Bailiff do accompt before Auditors, and it is found that he hath expended more than he hath received, for the Surplusage he shall have an Action of Debt against the Lord whose Bailiff he was. But if a Receiver accompt, and is found in Surplusage, many say that he shall not have an Action of Debt for the same, because he is bounden to lay out any Parcel thereof: But it seemeth if he do it by Command of the Lord, that then it is reason that he have an Action of Debt against the Lord for the Surplusage. I

41 E. 3. Debt 127. An Abbot shall be charged in an Action of Debt upon a K  
3 E. 4. 26. Loan of Money made unto his Predecessor, if the Money came to the Use of the House.

*The Writ shall be general, and the Count special.* An Attorney shall have an Action of Debt against his Client for Money which he hath paid unto any Person for his

20 H. 6. 21. If a Man contract to pay Money for a thing which he hath M  
Newton. bought; if he take a Bond for the Money, the Contract is discharged, and he shall not have an Action of Debt upon  
28 H. 6. 4. discharged, and he shall not have an Action of Debt upon  
59 H. 8. 22. the Contract.  
ac. 1 H. 6. 8. the Contract.

per Babington. 9 E. 4. 20. and so 10 H. 7. 21. and 24. 22 H. 6. 16. 21 H. 7. 5. Carter 3 H. 4. 17.

If a Man maketh a Lease for Years, rendering Rent of N  
5 H. 7. 18. Lands deviseable by Will, and afterwards deviseth the Reversion of the same Lands unto a Stranger in Fee, the Devisee shall have an Action of Debt for the Rent reserved, without  
ac. so Lord by Escheat of a Reversion. any Attornment of the Tenant for Years. But if the Lessor hath granted the Reversion by Fine or Deed, the Grantee shall not have an Action of Debt without Attornment  
56. 113 a. of the Lessee for the Rent reserved.  
620. 193/10

4 E. 4. 25/ Danby. If a Man be indebted, and entereth into Religion, his Executors shall be sued for the Debt, and not the Abbot who accepted him into Religion. O

5 H. 7. 24. Brior. 13. If a Man be condemned in Trespass, or in Debt upon a P  
H. 4. Debt 167. 5 H. 5. 8. Bond, where he denieth his Deed, and afterwards he is taken  
7 H. 6. 5. by a *Capias pro fine* at the King's Suit within the Year, and  
1 H. 6. committed to Prison; if the Gaoler suffer him to escape, he  
D. b. 26. shall have an Action of Debt against the Gaoler: Yet he was  
7 H. 4. 4. not committed to Prison at his Suit, but at the King's Suit.  
4 E. 4. 16. But  
22 E. 4. 67.

But within the Year after the Condemnation and Judgment, the Suit for the King shall serve as well for the Party as the King, because the King was intituled to it by the Party, but after not: For it shall be intended that the Party is agreed with him who is condemned, and therefore after the Year he shall be put to his *Scire facias* upon the Judgment.

- 7 H. 4. 14. 4.  
E. 4. 16. 22.  
Aff. 74. 21 E.  
4. 67. 14 H.  
7. 15. 19. 20.  
11 H. 4. 44.  
Skreen.
- A If a Man lease Lands for Term of Years rendring Rent, and afterwards the Rent is behind, and the Lessee surrendreth his Term, yet the Lessor shall have an Action of Debt for the Arrearages before, as it seemeth by P. 38 E. 3. *tamen quere*, for the Opinion is contrary to 2 H. 6. [122.]  
9 E. 3. 7.  
Debt 149. 36.  
19 H. 6.  
Debt 145.  
Vi. 14 H. 8.  
14. for Waste.  
7 H. 6. 2.
- B If a Servant will not do his Service, by the Statute of 24 E. 3. cap. 5. he shall be arrested and committed to the Gaol, and if the Gaoler set him at large, he shall lose 10 L. to the King, and 5 L. to the Party. Now if the Gaoler set such Prisoner at large, the Party who would have him detained, shall have an Action of Debt against the Gaoler.
- C If a Man recover Damages in an Action of Waste, he may have an Action of Debt upon the Recovery if he will. 43 E. 3. 2.
- D And so a Man may have an Action of Debt upon a Statute Merchant or Staple, or upon a Recognizance, or may have Execution according to the Statute at his Pleasure. 3 E. 4. 27.  
*quere*. 43 E. 3. 2.
- E A Prior did recover an Annuity in Fee against a Parson, and afterwards he sued a *Scire facias* against the Parson, and did recover in the *Scire facias* the Arrearages of the Annuity, and afterwards he brought an Action of Debt against the Parson upon the Recovery in the *Scire facias* for the Arrearage, and it was maintainable.
- F An Abbot shall be charged in an Action of Debt for Victuals, or other necessary Things bought by the Butler, or other Officer who is deputed to make Purveyance for the Abbey in Time of Vacation. 26 E. 3. 55.  
Debt 165.
- G If a Man levy Aid of his Tenants for the Marriage of his Daughter, and dieth, the Daughter not married, the Daughter shall have an Action of Debt against the Executors of her Father for the Aid levied; and if the Executors have not any thing, she shall have an Action of Debt against the Heir for that Aid, if he have any thing by Descent. 3 E. 3. *Item*.  
North. Fitz.  
Debt 57.  
See 82. Lac.
- H If two Coparceners make Partition, and one granteth or promiseth unto the other a certain Sum of Money for the equality of the Partition, she shall have an Action of Debt upon this Promise, and shall recover the Money. 30 E. 3.  
Debt 151.
- I If a Man make a Tally, and make Bond thereupon, and seal and deliver it as his Deed, yet it shall not bind him, but he may plead against the same, that he owed him nothing, 12 R. 2. Debt  
44 E. 3. 21.  
44 E. 3. 2. 6c  
9 H. 3. 26.



If a Man become Debtor for another by Word, is shall not make him Debtor, if not by the Custom of London.

thing, or wage his Law. For an Obligation ought to be made in writing in Parchment or Paper, and not written upon any Piece of Wood, as a Tally is.

And a Man shall have an Action of Debt against him who becometh Pledge for another upon his Promise to pay the Money, without any Writing made thereof, *qd. vi* in Title Pledge acquietand. P. 34 E. 31.

*Writ de Rationabili parte Bonorum.*

If the Father hath two Sons, and maketh one of them his Executor. Quare if he shall have any Part as Son because he is Executor, and hath Advancement by

**T**HIS Writ lieth where the Wife after the Death of her Husband cannot have the third Part of her Husband's Goods after the Debts are paid, and Funeral Expences performed: For then she may have this Writ against the Executors of her Husband: And it seemeth by the Statute of *Magna Charta*, c. 18. that this was the Common Law of the Realm; and so it appeareth by *Glanvil*, that it is the Common Law, that after the Debts paid, the Goods shall be divided into three Parts: One Part for the Wife, another Part for Sons and Daughters, and the third unto the Executors; but yet the Writs in the Register rehearse the Customs of the Counties, and are of this Form.

*that. A Woman did demand the Moiety of her Husband's Goods, because he had no Children, and counted upon the Custom of the Realm, 31 E. 3. But 21 H. 6. 1. & 2. seemeth, it is by Custom, and not by the Law of the Land, 7 E. 4. 20. ac. M. 19. and 20 Eliz. in B. R. A Writ was brought and allowed there, notwithstanding that Exception was taken at it, that it was maintainable by special Custom in London. 1 E. 4. 5. Pilling. ac.*

*30 H. 6. Respond. 95. A Woman brought the Writ for the Moiety, and counted upon the Custom not speaking of any Town, or that it was the Custom of the Realm, 28 H. 6. 4. 40 E. 3. 8. 3 E. 3. Debt 156. Counts by the Custom of the Town of Northampton. 17 E. 99. & 76. and that it is by the Common Law. 7 E. 4. 20. Exception was taken, because he did not count that the Custom did continue.*

*Rex Vic', &c. Si A. que fuit uxor. B. Sec. fecerit, &c. tunc sum. C. & D. execut. testamen. prædict. B. qd. sint, &c. ostens. quare cum secund. conf. in com. præd. hæsen. obtentam, uxores post mortem viror. suor. habere debiant rationabilem partem suam de bonis & catall. viror. suor. præd. iidem execut. præfati A. rationabilem partem suam ad valentiam 16. marcar. de bouis & catall. que suor. præd. B. quidam viri sui detinent, minus iuste, & ea ei reddere contradicunt, in ipsius A. donnum unum modicum & gravamen, & contra consuetud. præd. & habere sibi sum. & breve, &c.*

And

And the like Writ the Sons and Daughters may have against the Executors; and the Form is:

2 E. 2. Fitz.  
Detinue  
161. 30 E.

*ibid.* 52. *And see* 31 H. 8. *It hath oftentimes been put in Ure at Common Law, and never demurred upon.*

*Rez, &c. quia A. de N. & S. soror ejus fecerunt nos secur. &c. sum. &c. I. de H. & E. exes. testament. R. de N. qd. sint, &c. ostens. quare cum secund. consuetud. in com. præd. hætenus obtentam & approbatam pueri post mortem patrum suorum, qui eorum hæred. non sunt nec in vita patrum suorum promoti fuer. hab. debeant rationabiles partes suas de bonis & catall. quæ fuer. patrum suor. præd. iidem præd. ipsi non sunt nec qui in vita ejusdem patris sui, promoti fuer. rationabiles partes suas ad valenc. decem librar. &c. ut supra.*

*Marriage is no Advancement, if the Father's Goods be not given in his Life, for Issue was taken thereupon. 3 E. 3. Det. 155.*

*Señta ad Molendinum.*

**M** *Señta ad Molendinum* lieth, where a Man by an Usage Time out of Mind, &c. hath used to grind his Corn at the Mill of B. and afterwards he goeth unto another Mill, and withdraweth his Suit from B's Mill, then may he have this Writ. And also it seemeth that the Lord may have this Writ against his free Tenants who hold of him to do Suit at his Mill, and yet he may distrain his Tenants for the Suit, and avow for the same.

*Quære, If a Man may create a Tenure at this Day upon a Gift in Tail, or such Estate, P. 20. El. Com. B. A*

**A** And by Prescription a Man may have Suit to his Mill, of the Villeins of a Stranger, and have *señtam ad molendinum* against them, and that it seemeth by reason of their Residence in certain which they dwell upon. And this Writ is sometimes *Vicontiel*, and shall be sued in the County by a Writ of *Justicies*, at the Plaintiff's Pleasure, or in the Common Pleas by a *Præcipe*, &c. and the Form of the Writ in the County is such:

*Life of Parcel of the Demesnes doing Suit to his Mill, and good.*

*Res Vic. &c. Præcipimus tibi, quod Justicies A. qd. juste & sine dilation. fac. señtam suam ad molendinum. E. de N. in C. quam ad illud debet & solet, ut dic. sicut rationabiliter monstrare poterit, quod eam ad illud facere debet, ne amplius inde clamorem audiamus pro defectu justitiæ. Teste, &c.*

[123.]  
*Note, That Tenant for Life of a Minor shall not have this Writ.*

*because it is in the Debet & Solet. 20 Eliz. Dyer. Br. Note 127. 128. Curia Glau. denota lieth for Tenant for Life, and yet the Writ is, Debet & Solet.*

**A** And if the Writ be sued in the Common Pleas, the Writ shall be thus:

*Præcip. A. quod juste & sine dilations faciat señtam ad molendinum E. de N. in C. quam ad illud facere debet & solet, ut dicitur, & nisi fecerit, &c. tunc sum. &c.* And



And by the Rule in the Register, a Man shall have a Writ of *Seffa*, &c. *quod faciat seffam ad furnum, & ad thoral, & ad omnia alia hujusmodi.* And Tenant for Life, or in Dower, may maintain this Writ in the *Debet & Solet*, for this is of the Nature of a Writ of the Possession: But in the *Debet* only, seemeth to be in the meer Right. And the Defendant shall have a View in a *Seffa ad molendinum* in the *Debet & Solet* of Land, &c. of the Mill in which the Suit is to be done. And the Process in a *Seffa ad molendinum* shall be Summons, Attachment, and Distress, &c. and if he do appear after Default, then shall issue a *Disfringas ad audiendum Judicium*, and yet he may sue his Default. And you may see the Form of the Count in this Writ in the Book of *Entries*, where he counteth upon a Tenure of Land, &c. and another Count, where he counteth upon Prescription: *Sc.* that the Tenant, and all those which held those Lands, have used to do their Suit at his Mill, *quod vi. f. 169.*

## Quod permittat.

**Q**uod permittat lieth where a Man hath Common of Pasture for his Cattle, and he is disturbed by a Stranger that he cannot use his Common, then shall he have this Writ: And this Writ may be sued by *Justices* in the County, or in the Common Pleas; and the Form of the Writ is:

27 H. 8. 12.

*Rex Vic. &c. Præcipimus tibi, quod Justices A. quod juste, &c. permittat B. hæred. communiam pasturæ in N. ad centum oves, &c. vel ad centum boves, &c. quam habere debet, ut dicitur, sicut rationabiliter, &c. ut amplius inde clamorem audiamus. Vel sic: Communiam pasturæ in terra ipsius A. quam in ea habere debet, &c. Vel sic: Quod permittat A. habere Communiam pasturæ in centum acris ipsius A.*

Vi. 2 H. 4.

13. View

grantable

in this Writ,

yet it is

said 3 E. 3.

that the Defendant cannot vouch in a

quod reddat. Vi. 45 E. 3. 8. in the View.

And the Rule in the Register is; when Common of Pasture is claimed in the Land of any Person certain, then the certain Number of Cattle are not put in the Writ, &c. but the Form of the *Quod permittat* sued in the Common Pleas is such:

*Rex Vic. &c. Præc. A. quod juste, &c. permittat B. hæred. Communiam pasturæ in N. & 40 ac. hinc, quam habere debet, ut dicit. Et nisi feceris, & prædict. R. faceris te, &c. tunc sanam, &c.*

And another Form of the Writ for Common append. thus:

Rex

*Ren Vic', &c. Præc. A. quod iuste, &c. permittat B. habere Communiam pasturæ in N. quæ pertinet ad liberum tenementum suum in eadem villa, vel in alia villa, de qua idem A. vel pater præd. A. cuius hæres ipse est, injuste & sine iudicio disseis. R. patrem præd. B. cuius hæres ipse est, post primam transiretati. Dom. Henr. Regis fil. Reg. Johan. in Pascon. ut dicitur. Et nisi, &c.*

Note, This Writ is in the Nature of a Writ of Entry upon a Disseisin made to his Ancestor.

**H** And the Rule in the Register is, That the Writ of quod permittat lieth of Common of Pasture, Turbary, Piscary, and reasonable Estovers, against a Disseisor of a Disseisin to the Plaintiff of his Ancestors, by him and his Ancestors, and not in other Degrees, because he ought to have a Writ of Right in the *Debet & solet*.

But an Abbot may have a Writ of *Quod permittat* of a Disseisin made unto his Predecessor, and shall make mention of the Disseisin in his Writ.

**I** And the Form of the Writ *de libera piscaria* is such:

*Rex, &c. Præc. A. &c. quod, &c. permittat B. habere liberam piscariam in aqua ipsius A. in N. Vel sic, in aqua in N. quam in ea habere debet & solet, ut dicit. Et nisi, &c.*

**K** There is another Form of the Writ of *Quod permittat*, in the Nature of *Mortdancestor*, and is such:

*Rex, &c. Præc. A. quod, &c. permittat B. habere Com. pastur. in N. in qua C. pater, vel mater, vel soror ipsius B. cuius hæres ipse est, fuit seisis. ut de feodo tanquam pertin. ad liberum tenementum suum in eadem villa die quo obiit, ut dicit. Et nisi, &c.*

3 E. 2. 3. quod permittat, 1.

And if it be a Common in gross, then he ought to put this Clause in the Writ, *tanquam pertinuens ad liberum tenementum suum, &c.*

**L** And so a Parson or an Abbot shall have a *Quod permittat* of the Seisin of his Predecessor, and the Writ shall say:

*Præc. &c. quod permittat B. personam Ecclesie de C. habere Com. pasturæ in N. de qua E. quondam persona de C. præd. &c. fuit seisis. ut de iure Ecclesie sue præd. die quo obiit, ut dicit. Et nisi, &c.*

31 E. 3. quod permittat. 2. 30 E. 3. 3. quod permittat 4. A Prebend

And the Rule in the Register is, That in the same manner as is said before of Common of Pasture, so it may be said of all other Commons, as of Turbary, Piscary, &c.

**M** And there are divers other Writs of *Quod permittat* of another Nature; as a Man shall have a *Quod permittat* against the Lord, to suffer his Villains to do Suit to his Mill, &c. and that accrueth by Usage and Prescription; the Writ is:

had the Writ for measuring a Water in the Time of his Predecessor.

**A** *Rex, &c. Præcipe A. quod iuste & sine dilatione permittat villanos suos de C. facere sectam ad molendinum B. &c. in E. &c. Et nisi, &c. Et præditi B. fecerit, &c. tunc sum', &c.*



If the Mol- And another Writ: *Præcipe A. quod permittat B. molere de-  
ler takes* minium bladum suum de N. ad molendinum ipsius A. in N.  
To, then quæstum de multura, quod ad idem molendinum molere debet &  
Trespas h- solet ut dicit. Et nisi, &c. Vel, *Præcipe A. &c. quod permittat  
erib: But if* B. haurire aquam ad fontem ipsius A. in N. sicut ad illum haurire  
the Tenant debet et solet ut dicit: Et nisi, &c. Vel, *Quod permittat B. ad-  
of the Free- hold sake it,* aquare gregem suum ad aquam ipsius A. in N. sicut illum ad-  
Quod per- aquare debet et solet, ut dicit; Vel, *Quod permittat B. habere  
mittat.* liberum taurum suum in N. sicut habere debet & solet, ut dicit;  
41 E. 3. 24. &c. Vel, *Quod permittat B. habere quoddam thimium ultra terram  
44 E. 3. ac.* ipsius A. in N. &c. Vel, *Quod permittat B. habere liberam fald-  
suam in dominicis terris suis in I. quam habere debet et solet.  
Vel, Quod permittat habere liberam piscariam in aqua ipsius A.  
in N. &c. Vel, Quod permittat habere liberum passagium ultra  
aquam de Humbr. in navi ipsius A. quod in ea habere debet et  
solet ut dicit, &c. et nisi, &c. But a Man shall not have a  
Quod permittat de rationabilibus estoveriis in bosco, vel in turba-  
ria, vel in bruera, & similibus.*

VI. E. 1. Br.  
Battail 13.  
6. Quod  
permittat.  
9. A Quod  
permittat  
erouglos of  
Eflowers.

And the like by the Rule in the Register, for in lieu thereof is given the Writ of Assise of Novel Disseisin by the Statute of West. 2. cap. 26.

And a Man shall have a Writ, *Quod permittat erigere scelas in solo ipsius L. in B. mans; ipsius contiguo pro domibus suis ibidem quoties fuerit opus cooperiend. et reparand. sicut erigere debet et solet, ut dic. et nisi, &c.*

And a Man may have a Writ of *Quod permittat* of a Cottodie; as *Præcipe P. Priori, &c. quod permittat B. habere sustentation. competent pro se et uno garcione in villu et vestitu et omnibus aliis necessariis, ac pro uno equo in victu singulis diebus, et etiam sustentationem competent. pro quatuor hominibus de com. ejusdem B. quatuor garcionibus, 4 equis, 4 leporariis, et 4 esparveris singulis An. ad festa Natalis Domini, Pasch. Pent. & omnium Sanctorum, et per. 3 dies post quodlibet festo. prædict. in Prioratu de C. &c. de qua E. quondam Prior loci prædict. injuste, &c. diff. F. patrem prædict. B. cujus heres ipse est post primam transfestationem, &c.*

30 E. 1. Qd.  
permittat  
10. Br. Bat-  
tail 13.

And in a *Quod permittat habere chiminum*, in the Nature of the Writ of Right, and to hold Suit, and dereign the Warrant, &c. the Defendant came and joined the Nise upon the meet Right, and was received.

4 E. 3. 48.  
Quod per-  
mittat 7.

And in a *Quod permittat* by a Person, he counted de fac. B. & droiz, and held Suit, and dereign, &c. and the Tenant came and gaged Battail, &c. tempore Regis, E. 1.

And Tenant in Tail shall have a *Quod permittat*.

And in a *Quod permittat* of a Common the Tenant shal-  
ledged

ledged the Darrein Seisin in the Plaintiff, and it was adjudged a good Plea to abate the Writ. But there the Plaintiff counted of the Seisin of his Ancestor: For a Man shall have a *Quod permittat* of his own Seisin, as it seemeth.

- D And a *Quod permittat ipsum reducer. cursum aque, &c.* which is misturned, will well lie.
- E And a Man shall have a *Quod permittat* against the Tenant 2H.4.13.2c. of the Freehold for an Act done, or a Disturbance done by a Stranger who was not Tenant of the Soil.
- F And the Process in a *Quod permittat* is Summons, Attachment and Distress: And if the Sheriff at the Summons return *Nihil*, the Plaintiff may pray a *Capias* and have it, *Quod* 30 E. 3. vide H. 39 E. 2.
- G And the Form of a Count in a *Quod permittat* appears in the Book of Entries, fol. 80. on the first Side.
- H And if a Man build a House, or a Wall, or other Thing which is a Nuisance unto the Freehold of another, and dieth; he whose Nuisance it is shall have a Writ *Quod permittat* against his Heir that did the Nuisance, and the Writ is such:

*Rex Vic' &c. Præcipe A. quod juste, &c. permittat B. prosterner. quandam domum, vel quandam murum, vel quandam sepem vel quoddam molend. vel fossatum, quem quam vel quod R. pater vel alius antecessor. prædict. A. cujus heres ipse est, injuste et sine iudicio levavit ad nocumentum liberi tenement. C. patris vel alterius antec. præd. A. cujus heres ipse est in eadem villa vel in alia, post primam, &c. ut dicit, et nisi feceris, &c. Vel sic, Quod permittat B. exaltare, vel deexaltare quoddam stagnum in L. quod prædict. A. injuste levavit, vel deexaltavit, ad nosument. liberi tenementi sui vel C. patris prædicti B. &c. Et sic, Quod juste, &c. permittat B. reducere cursum cujusdam aque in L. in rectum & antiquum cursum suum, quem C. mater præd. A. cujus heres ipse est, divertit, ad nocumentum, &c. Vel sic, Quod juste, &c. permittat B. deobstruere quandam viam in N. quod C. pat. præd. A. cujus heres ipse est injuste obstruxit, &c.*

And if a Man levy a Nuisance unto the Freehold of another, and he to whom the Nuisance is done maketh a Feoffment in Fee of the Land; and he who did the Nuisance maketh a Feoffment of the Land in which the Nuisance is; yet there is a Writ in the Register for the Feoffee of him to whom the Nuisance was levied against the Feoffee of the other, to reform that Nuisance, and the Writ is such:

*Rex Vic' &c. Præcipe C. quod juste, &c. permittat B. deardare quandam viam in N. quam C. injuste & sine iudicio ardarit, &c.*



[ 125 ]

But this Writ is not given by the Statute, but may sue, &c. by the Statute *West. 2. in Casu Consimili, &c. c. 2. 4.*

And 2 *Quod permittas* of a Fair or Market shall be sued in A the Common Pleas; and the Writ is such:

*Rex Ple', &c. Si A. feceris, &c. tunc sum. B. Sec. quod sit coram Justic. nostris ostens. quare levavit quod. Mercatum, vel, quandam Feriam in I. ad necumentum liberi mercati, vel libera Ferie ipsius A. in eadem villa, vel, in alia post primam, &c. ut dicit. Et habeas ibi summon. &c.*

Or Bailiw.  
34 E. 1. Br.  
De mandam.

And the like Writ for the Heir where the Father doth levy the Market or Fair unto the Nuisance of another Fair or Market; or for the Heir against him who leveth the Nuisance, &c.

## Writ of Admeasurement of Pasture.

Dough 255

THE Writ of Admeasurement of Pasture lieth betwixt B Commoners who have Common appendant to their Freeholds, if one of them surcharge the Common by putting in more Cattle in the Common than he ought to have Common for there, then that Commoner who is grieved shall have this Writ of Admeasurement of Pasture; and by this Suit all the Commoners shall be admeasured, as well those who have not surcharged the Common, as he who hath surcharged it, and he who bringeth the Action shall be also admeasured.

8 H. 6. 26.

Note, This Writ is Vicontiel, and the Statutes are the Judges by 7 E. 4. 23. 18 E. 3. Admeasurment 7. a notable Case.

And the Writ is *Vicontiel*, and shall be directed unto the C Sheriff, and shall not be returnable; and the Form of the Writ is such:

*Rex Ple', &c. Questus est nobis A. quod B. & C. uxor ejus injuste superoneraverunt communiam pasture sue in N. ita quod in ea plura habent animalia & pecora quam habere debent & ad ipsos pertinet habendum. Et ideo tibi precipimus, quod justo & sine dilatione admens. fac. pasturam illam, ita quod prad. B. & C. non habeant in ea plura animalia & pecora quam habere debent, & ad ipsos pertinet habendum secundum liberum tenementum suum, quod habent in eadem villa. Et quod prad. A. habeat in pastura illa tot animalia & pecora quot habere debet, & ad ipsum pertinet habend., ne amplius inde clam. audiamus.*

And if the Tenant surcharge the Common with his Cattle, &c. the Lord shall not have the Writ of Admeasurement against the Tenant; but it seemeth the Lord may distress the Surplusage of the Cattle Damage-tenant. And some say, That the Lord may have an Assize against the Tenant for the Surcharge, for that he is disturbed of the Profit of his Land. *Quer.* of these Cases. But

But if the Lord surcharge the Common, the Tenant shall <sup>18 E. 2. 29.</sup> not have a Writ of Admeasurement against the Lord, but he shall have an Assize of Common against the Lord.

And so if the Lord do make Approvement of the Common unto himself, and do not leave sufficient Common to the Tenant, the Tenant shall have an Assize, and not a Writ of Admeasurement. And he who hath Common appurtenant certain, or Common by Grant certain, shall be admeasured; and a Tenant shall have an Admeasurement against him; but he who hath a Common appurtenant without Number, or Common in gross without Number, shall not be stinted, nor a Writ of Admeasurement doth not lie <sup>See 179. E. 126. D. E.</sup> against him.

And in the Time of E. 1. it was agreed, That one Neighbour shall have a Writ of Admeasurement against another <sup>F</sup> where they intercommon by reason of Neighbourhood.

And if the Sheriff will not make the Admeasurement, he shall have an *Alias* and *Pluries*, *vel causam Nobis significet*. And if he do not return the *Pluries*, he shall have an Attachment against the Sheriff. And the Plea may be removed out of the County by a *Pone* at the Suit of the Plaintiff without shewing Cause in the Writ. But at the Suit of the Defendant he ought to shew Cause in the Writ: And the Writ of *Pone* is such:

*Pone ad petitionem petentis coram Justic', &c. tali die loquelam que est in Com. tuo per breve nostrum inter A. & B. de com. pastura in N. admensur. & sum', &c. præd. B. quod tunc sit ibi præf.*

<sup>C</sup> *A. inde responsurus, &c. & habeas, &c. hoc bre', & aliud breve.* <sup>7 E. 4. 22. Danby.</sup>

And upon this Writ of Admeasurement the Plaintiff shall enter his Plea into the County before the Sheriff, as he shall do in a Replevin sued by Writ, and upon that the Sheriff shall make a Warrant against the Defendant, &c. and warn him to appear; and if he come and plead nothing in bar, or grant it, then the Sheriff shall make the Admeasurement.

In a Writ of Admeasurement brought against one of Common in *D.* the Defendant said that he had Lands in *B.* and *S.* to which he had Common in the said Place, and yet the Writ good; for it is holden there that the Ouster of the Surcharge shall not be in the same Place only, yet it seemeth all the Common shall be admeasured, *Temp. E. 1. Admeas. 15.*

But if the Defendant shew Cause unto the Sheriff wherefore the Admeasurement should not be made, then the Sheriff ought not to make Admeasurement upon this Writ; but the Plaintiff ought to remove the Plea by a *Pone* into the



*Writ of Admeasurement of Pasture.*

Common Pleas, by which *Pone* the Defendant shall have Day for to appear, &c. And if he appear not, then shall issue a *Distringas* directed to the Sheriff to distrain the Party, and such Day shall be given by that Writ, that two Counties may be kept between the Date of the Writ and the Return, and in the Counties Proclamation shall be made, that he come and shew Cause why the Admeasurement should not be made. And if he do not come at the Return of the *Distringas* then a Writ shall be awarded unto the Sheriff to make the Admeasurement by his Default; and that is given by the Statute of *West. 2. cap. 8.* and the Writ is:

*Rex Vic. &c. Cum A. nuper nobis questus est quod B. & C. injuste superoneraver. communiam pastura sue in N. ita quod in ea plura habent animalia & pecora quam habere debent & ad ipsos pertinet habendum. Per quod tibi precipimus, quod iuste & sine dilatione admensurari fac. pasturam illam, ita quod predicti B. & C. non habeant in ea plura animalia & pecora quam habere debent, & ad ipsos pertinet habendum secundum liberum tenement. suum in eadem villa. Et quod predicti A. habeat in pastura illa tot animalia & pecor. quot. habere debet, & ad ipsum pertin. habend. &c. ne amplius, &c. ac tu nihil inde feceris sicut ex querela ipsius A. accipimus, cumque in brevi nostro de admensurat. pastur. statuerimus quod post magn. distriction. dentur dies infra quos duo Com. teneant. ad quos proclametur, quod resu. veniat a tibi respondere. Ad quem diem si non veneris, fiat admensur. per defaultam: Tibi precipimus, sicut alias tibi preceper. quod iust. & sine dilatione admensur. fac. pastur. antedict. juxta tenorem alterius brevis nostri tibi inde directi, & juxta form. statut. nostri inde provis. & edit. ne per pref. A. oporteat nos super hoc iteratum sollicitari. Teste, &c.*

[ 126 ]

And when the Pleas is removed by *Pone* in the Common A Pleas, and the Plaintiff appears and the Defendant, then the Plaintiff shall count against the Defendant, and see the Form of the Count in the Book of Entries, fol. 128.

And if the Defendant do grant to have the Admeasurement, a Writ shall issue out to the Sheriff to make Admeasurement, which shall be such:

*Rex Vic. &c. Precipimus tibi, quod assumptis tecum 12, &c. per quos, &c. qui nec, &c. in propria persona tua accedat ad communiam pastura admensurandum et per eorum sacrament. admensurandum fac. communiam pastura predicti ita quod predicti S. & C. def. non habeant plura, &c. et ad ipsos pertinet non habend. secund. liberum tenementum suum, quod habent in eadem villa. Et quod pred. R. habeat in pastura illa tot animalia et pecora, quot. habere debet, et ad ipsum pertinet habere secund. liberum tenementum*

*umentum suum, quod habet in eadem villa, et admensurat. quam, &c. scire facias coram Justic. nostris, &c. sub sigillo tuo, et sigillis eorum, &c.*

**C** After the *Pone* returned to remove the Plea out of the County, if the Defendant make Default at the Day of the Return of the Writ, then shall issue a Writ to the Sheriff to distrain the Defendant, and in the Writ shall be contained that he make open Proclamation in two Counties, &c. that the Defendant come into the Common Pleas at the Day of the Return of the *Distringas*, to answer to the Plaintiff, &c. And if the Sheriff return the Writ served, and the Defendant doth not come, then shall issue a Writ to the Sheriff to make the Admeasurement.

**D** And it appeareth by the Book of Entries, fol. 123. That a *See 125. D.* Writ of Admeasurement doth not lie against the Lord of the Soil.

**E** And if a Man be once admeasured by a Writ of Admeasurement directed unto the Sheriff by the Sheriff, &c. and afterwards he furchargeth the Common again, then the Party who sued the first Writ, shall have a Writ to the Sheriff, called a Writ *De Secunda Superoneratione*; and the Writ is such:

18 E. 3. 20.  
Admea-  
surement 7.  
ac. and  
there holden  
that it lieth  
not against  
the Proffee

*of the Lord of the part of the Demesnes, so that the Proffee is in the same Degree as the Lord himself; 8 E. 2. Admeasurement 14. In Admeasurement of Pasture the Defendant said that the Demandant pendant the Writ had ejected him of the Common, and no Plea; for notwithstanding that he had not the Common, he held the Land for which the Common is surcharged.*

*Rex Vic', &c. Monstravit nobis A. quod cum ipse breve nostrum nuper tibi detulisset de communia pasturæ sue in N. admensuranda quam B. injuste superoneravit. Et tu pastu. ill. per præceptum nostrum, prout moris est in regno nostro admens. &c. idem B. pasturam illam post admensuram prædictæ. injuste superoner. in ipsius A. dispend. non modicum et gravamen, et contra formam stat. nostri super hoc provis. Et quia eidem A. juxta formam ejusdem statut. subvenire volumus, ut tenemur: Tibi præcipimus, quod tu in propria persona tua accedas ad pasturam illam, et per sacramentum proborum et legalium hominum de balliva tua, per quos rei veritas melius sciri poterit, de secunda superoneratione ejusdem pasturæ diligenter inquir. Et si per inquisitionem illam pasturam ill. per præf. B. post admens. iterum injuste superonerat. inveneris, tunc de averiis illis pastur. ill. ultra debit. numer. post primam admens. positis, vel de pretio illor. nobis respondeas ad Scaccarium, et superoneration. amoveas sup. Teste, &c.*



*Writ of Admeasurement of Pasture.*

And it appeareth by this Writ, that a Man shall have a **Writ De Superonerations** upon the first Writ of Admeasurement of Pasture, which is *Picantiel* and directed to the Sheriff; if the Sheriff make Admeasurement upon that Writ, and afterwards the Defendant surcharge the Common again, as well as upon a Writ of Admeasurement awarded out of the Common Pleas upon a Judgment there given, &c. But upon the Writ of Admeasurement awarded to the Sheriff, by which he maketh Admeasurement, if the Defendant surcharge the Common after, the Writ of *Secun. Superonerations* shall be awarded out of the Chancery: But upon a Judgment given in the Common Pleas of Admeasurement, &c. if the Defendant surcharge the Common, the Writ of *Secunda Superonerations* shall be awarded out of the Common Pleas. And the Form of the Count in a Writ of Admeasurement is such:

*Et unde pradicti. querens queritur, quod cum ipse seisis. sit de uno messuag. cum pertin. in S. ad quod idem querens habet & habere debet communiam pastura cum quatuor equis, in centum acris pastur. vocat. B. quolibet ann. per totum annum pertin. Et prad. def. seisis. existit in dominico suo ut de feod. de quatuor virgat. terra, cum pertin. in eadem villa, ad quas idem defend. habet & habere debet communiam pastura cum centum equis, & 20 bobus, &c. quolibet ann. per totum annum pertin. prad. defend. injuste superoneravit commun. pastur. prad. vocat. B. ita quod in ea plura habet animalia & pecora quam habere debet, & ad ipsum pertinet habere, unde dicit quod deteriorat. est, & damnum habet ad 20 li. & petit admensur.*

And by the Writ of *Secunda Superonerations* the Plaintiff **G** shall recover his Damages against him that was Defendant in the first Writ, and also he shall forfeit unto the King the Cattle which he put in over the due Number after the Admeasurement made. And all this is by the Stat. of *West. 1, 2.*

And *Note*, That by the Writ of Admeasurement all the **H** Commoners shall be admeasured as well as those who were Parties to the Writ. But yet if any of those who are Commoners which were not Parties to the Writs of Admeasurement, &c. do surcharge the Common after Admeasurement, they shall not forfeit their Cattle, nor the Value of them that were in the Pasture above the due Number, because they were not Parties to the first Writ, nor the Party shall recover Damages against them for this Surcharge in this Writ. For the Writ of *Secunda Superonerations* doth not lie but only against him against whom the first Writ was sued forth.

*Writ de Reparatione facienda.*

**A** THE Writ *de Reparatione facienda* lieth in divers Cases, one is, where there are three Tenants in Common or Joint, or *pro indiviso* of a Mill or a House, &c. which falls to decay, and one will repair, but the other will not repair the same, he shall have this Writ against them; and the Writ is such :

**B** *Rex Vic', &c. St A. fecerit, &c. tunc sum. &c. B. & C. quod sint, &c. ostensur. quare cum iidem A. B. & C. quoddam molendinum in N. pro indivis. teneant, & ipsi exitus inde provenientes pro equali portione inde percipiant, & ad reparationem & sustentationem ejusdem molendini teneant. ac iidem B. & C. licet portionem de exitibus illis ipsos contingent. percipiant, reparationi tamen & sustentationi prædicti molendini contribuere contrad. in ipsius A. dampn. non modicum & gravamen ut dicit, & habeas ibi sum', &c.*

**C** And so if a Man have a House adjoining to my House, and he suffer his House to lie in decay, to the Annoyance of my House, I shall have a Writ against him to repair his House in such Form :

*Præcipe A. quod, &c. reparari fac. quandam domum suam in N. que minat ruinam ad nocumentum liberi tenementi B. in eadem villa, que reparari debet & solet, ut dicit, &c. & nisi, &c.*

And so if I have a Passage over a Bridge, and another ought to repair the Bridge, and he suffer the same to fall to decay, I shall have a Writ against him in this Form :

*Rex, &c. Præcipe A. quod, &c. reparari faciat una cum B. & C. participibus suis pontem vel quoddam stagnum in N. quem vel quod cum eis reparare debet ut dicit, & nisi, &c. vel sic, quendam pontem, vel quoddam stagnum qui vel quod dirut. vel dirupt. est, ad nocument. liberi tenem. B. in eadem villa, quem vel quod facere debet & solet, &c. ut dicit; vel sic, reparari fac. cum B. & C. participibus suis fossata & wallias in N. que diruta sunt ad nocumentum liberi tenementi B. & C. quas vel que cum eis reparare debet & solet ut dicit, &c.*

And if any Bridge, Wall, or Sewer be broken, unto the Annoyance of the Country, upon a Surmise made by any Person thereof in Chancery, that certain Persons ought to repair the same, he shall have a Writ unto the Sheriff to distrain such Persons to repair the same; but it appeareth by the Register, that the King shall send his Commission to the Sheriff to enquire who ought to make such Bridge, and



and that he distrain them to make the same, and repair it. But by the Statute of 28 E. 3. cap. 9. a Commission shall not be made unto the Sheriff to take an Indictment; and the King may send unto the Sheriff to distrain those Persons who ought to make or repair such a Way, or Causey, or Pavement, and upon it an *Alias* and *Pluries* if it be not done, and an Attachment upon the same; and if the Bridge or Way be in the Confinces of the County, he shall have several Writs unto every Sheriff to distrain them in their Bailiwicks, that they with the Men in the other Counties shall make and repair the Bridges and Ways, &c.

And there is another Writ in the Register in the Title of F the Writ of *Ex gravi querela*, thus,

*Rex Majori et Vic. de A. salutem. Ex parte W. nobis est ostensum quod cum ipse habeat quoddam selarium cum pertin. in præd. villa de A. ac I. habeat quoddam selarium cum pertin. in eadem villa desuper selarium prædictum dirutum et confractum, ad incrementum selarii ipsius W. et per præf. I. secundum consuetudinem ville præd. reparari debeat, idem tamen I. selarium illud reparare contradicit, prout dicit. ad grave damnum ipsius W. et contra consuetudinem prædictam: Et quia nolimus, quod idem W. injuriatur in hac parte: Vobis præcipimus, quod vocatis coram vobis partibus præd. auditisque hinc inde eorum rationibus, eidem W. in præmissis fieri fac. debitum et festinum iustitie complementum, prout de jur. et secundum consuet. &c.*

And thereupon the Mayor and Sheriffs, or Bailiffs shall proceed, and award Process against the Parties; and if they will not do it, he may have an *Alias* and a *Pluries*, and Attachment against the Mayor and Bailiffs.

*Writ de Curia claudenda, and for repairing of Hedges.*

11 R. 2. Curia Claudenda, 5. L. 5 E. 3. 100. Brought to be in the Deb. and Soler, and the Tenant for Life shall have the Writ.

2 H. 4. 11.

**T**HE Writ of *Curia claudenda* may be sued before the Sheriff in the County, and then the Writ is such:

*Rex Vic', &c. Justiciei A. quod iuste, &c. claud. curiam suam in N. que aperta est ad nocumentum liberi tenementi B. in eadem villa, vel in alia villa, quam claudere debet et solet ut dicit. sicut rationabiliter monstrare poteris, quam eam claudere debeat, ne amplius, &c.*

And this Writ lieth where one ought for to enclose his Land from his Neighbour, and will not do it, he shall have this Writ; and the Writ may be sued in the Common Pleas, and then the Writ is such:

*Rex*

- I Rex, &c. Præcipe A. quod iusto, &c. claudat Curiam suam in N. quæ aperta est, ad nocumentum liberi tenement. (usque ibi) &c. debet & solet. Et nisi, &c.
- L. 5 E. 4. 118.  
119. A Man shall have this Writ before he be damnified. Quia timet. 27 H. 6. Curia Claud. A Nontenure is a good Plea in the Writ.
- A And this Writ shall be removed out of the County at the Suit of the Plaintiff without Cause, and at the Suit of the Defendant he ought to shew Cause in the Writ, and in the End of the Writ shall be this Clause: *Fiat executio brevis, &c. si causa sit vera, aliter non.*
- [ 182 ]  
16 H. 7. 9. Per Fincux, The Judgment is to recover the Inclosure and Damages.
- B And the Curia claudenda doth not lie but against him who hath a Close adjoining unto the Plaintiff's Land, and it doth not lie but for him who hath a Freehold in the Land, for Tenant for Years shall have this Writ, and the view lieth in this Writ.
- C But it seemeth that if a Man have Common in a great Waste to him and his Heirs, or for Life, and he who hath the Land adjoining unto the Waste and Soil, and who ought to enclose, enter into the Waste, and will not make his Enclosure, yet the Commoner shall not have this Action for the Damages which he sustainerh, &c. although the Commoner may distrain the Cattle Damage-feasant in the Land which is his Common, for the Writ doth suppose, *Ad Nocumentum Liberi tenet.* of the Plaintiff, which proveth that the Plaintiff ought to have the Soil adjoining, if he have the Action.
- 22 H. 6. 7, 8.  
22 E. 4. Cur. claud. 39 H. 6. ib. acc.  
13 R. 2. Cur. claud. 3.  
12 H. 8. 2.  
24 E. 3. 4.  
15 H. 7. 13.  
5 H. 7. 2.  
22 H. 6. 9.
- D And the Process in this Writ is Summons, Attachment and Distress, and if he do appear and afterwards make Default he shall have a *Distringas* in the Place of a *Petit Cape*, &c. And if he make Default at the Day of the Return of that Writ, he shall have a Writ to enquire of Damages, and also a Writ to distrain him to make the Reparations,
- 22 E. 4. Issue  
127. 10 E. 4.  
7. 13 R. 2.  
Cur. claud.  
3.  
29 H. 6.  
38 Dy.
- E &c. And in this Writ in his Count he ought to shew the Certainty of the Land which the Plaintiff hath adjoining unto the Defendant, and the Certainty of the Land which the Defendant hath there adjoining which he ought to enclose. And to alledge a Prescription of the Enclosure, &c. as appeareth in the Count of the Book of Entries, fol. 32. So it is holden 22 H. 6. for if it be by Indenture or Composition, then he shall be put to his Writ of Covenant.



## Writ of Quo Jure.

**T**HE Writ of *Quo Jure*, where a Man hath Lands in Fee, and another claimeth Common in that Land, he who owneth that Land shall have this Writ against **F**  
 7 H. 4. 18. If that Commoner who claimeth the Common, and the  
 is a good  
 Plea to say  
 that he hath nothing in the Lands in which he claimeth Common.

*Rex Vic', &c. Si A. fecerit, &c. tunc sum', &c. B. quod sit, &c. ostens. quo jure exigit, &c. communiam pasturam in terra ipsius A. sicut idem A. null. habet communiam in terra ipsius B. nec idem B. servitium faciat, quare communiam in terra ipsius A. habere debet, us dicit, & habeat inde, &c.*

And this Writ lieth for the Lord of a Town, or of a Waste, or for any other Tenant who claimeth Common in his Land; although he be not Lord of the Waste, nor the Town.

And this Writ is a Writ of Right in its Nature, for when the Plaintiff hath declared in this Writ, the Tenant shall make defence and set out his Title to the Common, and I alledge Scisin thereof, and the Esplees, *Et quod tale sit jus suum offert, &c.* as the Demandant shall do in a Writ of Right; and then the Plaintiff in the *Quo jure* shall make Defence, and deny the Scisin alledged by the Defendant, and join the *Mise* upon the meer Right, or by Battail, and see the Count and the Form of Pleading in a *Quo jure*, *Lib. Ent.* 96. and 80.

And in a *Quo jure* brought by two, Summons and Severance lieth, and the Nonsuit of the one shall not be the Nonsuit of the other. And this *Quo jure* lieth against K several Tenants, as it appeareth, *H. 24 H. 3.* But in that case they shall, it seemeth, make several Defences, and make several Titles, and join the *Mise* severally. And the View shall be granted in this Writ. And the Process in this Writ is Summons, Attachment and Distress, and after Appearance if the Defendant make Default, a grand Distress L shall issue out in the Place of *Petit Cape, &c.*

Writ

*Writ de Rationabilibus Divisis.*

**T**HE Writ de Rationabilibus Divisis, is in its Nature a Writ of Right. And lieth properly where two Men have Lands in divers Towns or Hamlets, so that the one is seised of the Land in one Town or Hamlet, and the other of the Land in the other Town or Hamlet by himself; and they do not know the Bounds of the Towns or Hamlets, which is the Land of one, and which is the Land of the other; then to set the Bounds in certain, this Writ lieth for the one against the other; and the Form of the Writ is such:

*Rex Vic', &c. Precip. tibi quod iuste & sine dilatione fac. esse rationabiles divisas inter terram A. de B. in C. & terram N. D. de E. in F. sicut esse debent & solent, unde idem A. querit. quod predicti. D. plus inde trahit ad feodum suum quam ad ipsum pertinet habend. amplius, &c. Teste, &c.*

And this Writ lieth for Tenant in Fee-simple, and against Tenant for Life, and in this Writ the Tenant for Life shall have aid of him in the Reversion, and they may join the Mife in this Writ, and it shall be tried by the Grand Assize, as other Writs of Right shall be.

And this Writ is *Vicontiel*, and may be determined by the Sheriff: For the Plaintiff in this Writ shall make his **P**laint before the Sheriff, in Nature of a Count, and upon the same the Sheriff shall make a Precept to warn the Defendant, and when he cometh the Plaintiff shall count, and the Defendant shall answer the same in the Count, &c. and if he deny it, then the Sheriff shall make the Division and Partition of the Land between them by certain Metes and Bounds.

**Q** But if the Defendant will plead and join the Mife upon the meer Right, and put himself on the Grand Assize, then the Plaintiff ought to remove the same by a *Pone*, without Cause, and the Defendant may remove it with Cause, as it is said in other Writs. And the Count in this Writ is in this Form:

*Et idem A. modo venit & dicit quod cum rationabiles & res. divis. esse debent inter terram predictam N. &c. in S. & terram ipsius A. & B. divisas predictas. incipient. versus Boream in quodam loco vocato K. & sic directe versus Austrum in longitudinem per L. usque E. ultra quas divisas predictas N. &c. nihil habere debet versus Occidentem, idem N. &c. ultra divis. prad. tranerit ad feodum suum in S. de terra ipsius A.*

*trecom.*



[ 129 ]

*trecent. acres morae & pasturae, &c. Unde idem A. dicit quod quidam W. nuper pat. suum fuit seifitus in dominico suo ut de feodo per diversas metas & bondas tempor. pacis tempore, &c. capiend. inde explet. &c. ad valenc. & quod tale sit jus suum offerre, &c.*  
 And the Tenant may join the Mife by Battail or by Grand Affise, &c.

And divers Tenants in common of a Town or Hamlet, may have this AÆtion against him who is Tenant of another Town adjoining, and they shall count one Count, and shall make their several Ticles in that Count, and shall alledge the Esplees severally in the same Count. Which see in the Book of Entries, fol. 167.

And the Defendant shall make his Defence several against every one of them, or may wage Battail, or join the Mife at his Pleasure, and then the Plaintiffs shall reply thereunto and recite anew their Count, and alledge the Esplees, as before, and then join to the Mife with the Tenant upon the meer Right, or by Battail at the Pleasure of the Tenant. And if they do join the Mife in the County before the Sheriff, by Battail, it shall be determined there, but not by the Grand Affise, &c. And it seemeth, that Tenant in Tail, nor a Parson of a Church, nor Tenant for Life shall not have this Writ, for he ought to have an Estate in Fee who maintaineth this Writ, and Summons and Severance lieth in this Writ, and the View shall be granted in this Writ. And Jointenancy or Coparcenary is a good Plea in this Writ, and the Writ may be brought against several Tenants, who have Tenements in severally or in common in the other Town.

*Writ Ex parte talis.*

**T**HE Writ of *Ex parte talis* lieth where Auditors are assigned unto a Bailiff or Receiver to accompt, and the Auditors will not allow unto the Bailiff or Receiver his reasonable Allowances, which they ought to do, but commit him to Prison; he who is so imprisoned shall have this Writ *Ex parte talis*, &c. But if a Man brings a Writ of Accompt, and Auditors are assigned unto him who is Bailiff or Receiver, to take his Accompt, and they will not allow him his Allowances which they ought to do, &c. he shall not have this Writ of *Ex parte talis*, nor any other Remedy in that Case, for he may shew the same to the Justices, and they shall relieve him.

*Note, 13 R. 2. Fitz. Accompt 51. Upon this Writ of Ex parte talis, the Barons of the Exchequer use to allow an Averment that the Plaintiff in the Writ hath paid the Money by the Commandment of the Owner, or such Special Matter, without Writing or Tally of the same.*

And

**G** And if a Plea of Accompt be sued in London against a Receiver, &c. or in other Court of Record, and the Party appear, and Auditors are assigned him by the Court, and they will not allow unto him such Allowances which he thinketh they ought to do; he shall have a Writ of *Ex parte talis*, and the Writ is such:

*Rex, &c. Ex parte A. capti & detenti in prisona nostra Linc. pro arrearagiis compoti sui, in quibus B. asserit ipsum sibi tene. de tempore quo fuit ballivus suus in M. nobis est ostensum quod auditores compoti prædicti. per ipsum B. ad hoc deputat. ipsum A. super eodem compoto indebit. gravaverunt, onerando ipsum de receptis, quæ non recepit, vel non allocando ei expens. et liberationes rationabiles, in ipsis A. damnum non modicum et gravamen. Et quia volumus, quod eidem A. injuriatur in hac parte. Tibi præcipimus, quod si prædicti. A. per testimonium auditor. compoti liberat. fuerit, et invenerit tibi suffic. manucapt. qui enim manucapiant habere coram Theſaurario et Baronib. nostris in Scaccario nostro, ad reddend. præfat. B. compotum suum juxta formam statuti de communi consilio regni nostri inde provif. tunc ipsum A. a prisona prædicta, si ea occasione & non alia detineat. in eadem, deliberari fac. per manucaption. supra dicti. Et scire fac. prædicti. B. quod tunc sit ibi cum rotul. et talliis, per quos prædicti. A. compotum suum prius reddidit ad faciendum & recipiendum in præmiss. quod de jure et secundum formam statuti præd. inde fuerit faciendum, et habeas ibi nomina manucapt. illor. et hoc breve. Teste, &c. Vide Stat. inde Westm. 2. cap. 11.*

**H** And this Writ shall be returnable before the Treasurer and Barons of the Exchequer at a certain Day, as it appeareth by the Writ.

**I** And if a Man have Auditors assigned him in London by the Party who taketh the Accompt, and will not allow his Tallies or other Things to be allowed, but commit him to Prison, and because he is a Stranger in the City he cannot find Sureties to bail him to sue his Writ of *Ex parte talis*, &c. Then he may send unto the Chancellor, and surmise in the Chancery, and put in Sureties before the King there, and thereupon he shall have a Writ unto the Sheriff of London out of the Chancery, rehearsing the Matter, and how that he hath found Sureties there, according to the Statute, commanding the Sheriff to deliver him out of Prison, and the Writ shall be such:

*Rex Vic. Lond. &c. Ex parte A. &c. (ut supra usque ibi) non modicum et gravamen. Et quia idem A. forinsecus est in Civitate nostra Lond. et ignotus, per quod manucaptiores de eadem*



*eadem Civitate invenire non potest de habend. ipsum coram The-  
saurario & Baronibus nostris de Scaccario ad reddend. compt.  
suum prædictum & ad faciendum ulterius, & recipiendum quod  
Curia nostra considerabit in præmiss. vosque alios manucaptors  
quam de Civitate ab eodem A. admittere recusastis, ac idam A.  
sufficiens. manucaptor. coram nobis in Cancellar. nostra invent.  
viz. C. D. & E. de com. Eborac. qui eum manuceperunt ha-  
bere coram Theaurario vel ejus locum tenente, & Baron. nostris  
de Scaccario in quind. Pasche, proxim. futur. ad recitandum  
ibidem comptum suum prædict. & ad stand. rectis in præmiss.  
secundum formam statut. de commun. consilio regni nostri inde  
provisi Vobis mandamus, quod ipsum A. a prisona prædicta, si  
[ 130 ] ea occasione & non alia detineatur in eadem interim deliberari  
fac. per manucapt. supradict. Et scire fac. prædict. B. quod  
tunc sit, &c. per quos prædict. A. comptum suum prius reddi-  
tum supradictum & ad faciendum & recipiendum quod ju-  
stum fuerit, & consonum ration. Et habeas tibi hoc Breve,  
&c.*

And if he do remain in Prison, he may sue the *Ex parte* A  
*talis* returnable before the Treasurer and Barons of the  
*Exchequer*, and thereupon he may have another Writ out  
of the Chancery directed unto the Treasurer and Barons  
of the *Exchequer*, that they take Sureties of him who is  
in Prison according unto the Form of the Statute; and  
that they deliver him out of Prison, and shall have ano-  
ther Writ unto the Gaoler, that he send his Body before  
the Treasurer and Barons of the *Exchequer*, and that he  
deliver the Body when the Treasurer and Barons send  
him a Writ so to do, &c. which Writ appeareth in the  
Register.

And if a Man be committed to Prison by Auditors for  
Attrearages of his Accompt, and afterwards escape out of  
Prison, the Gaoler shall satisfy the Party at whose Suit he  
was committed, and the Gaoler shall have a special Action  
upon the Case upon the Prisoner to answer the Escape and  
the Damages which the Gaoler hath sustained, which Writ  
is among the Writs of *Ex parte talis* in the Register; but it  
seems reasonable that the Gaoler may take the Party again,  
and so is the Opinion of some Books.

6. 52 b.  
Vid. 6 H. 7.  
11 & 12.  
10 H. 7. 25.  
13 E. 4. 9.  
14 H. 7.

## Writ of Execution upon a Statute-Merchant.

C **A** Writ of Execution upon a Statute-Merchant lieth in Case, where a Man is bounden in a Statute-Merchant before any Mayor or Bailiff of a Corporate Town, who have Power to take such Bonds or Recognizances, to pay a certain Sum of Money at a Day, at which Day he doth not pay the same, then he to whom the Obligation or Recognizance is made, may come before the Mayor, or him before whom the Bond or Recognizance was taken, and pray him to certify the same into the Chancery under his Seal according unto the Statute of *Acton Burnel*, and if he will not certify the same as he ought to do, then the Recognisee may have such Writ directed unto the Mayor :

*But if a Statute Merchant be acknowledged to one who is absent, it shall not bind the Commission if it be not delivered to the Commissionee, as it seemeth by 20 E. 3. Fitz. ac-compr. 79.*

*26*  
*32*

*See, as it seemeth by 20 E. 3. Fitz. ac-compr. 79.*

*Rez dilectis sibi Majori Linc. & T. Clerico ad recognitionem debitorum apud L. accipiendum deputatis salut. Ex parte I. nobis est offensum, quod cum R. ann. regni nostri decimo, coram W. nuper majore ville Linc. & H. nunc Clerico ad hujusmodi recognitiones in eadem villa accipiendas deputato, recognovisset se debere prefat. I. 241 juxta formam statuti dudum apud Acton Burnel pro mercator. editi, certis terminis solvend. & licet termini solutionis predicti jam diu sunt elapsi, idemque I. vos sepius requisierit, ut nos in Cancellar. nostra de recogn. predicti. juxta formam statut. predicti. certificaretis, & vos tamen nos in Cancellar. nostru predict super recognitione predict. hucusque certificare distulistis, & adhuc differtis, unde quamplurimum admiramur. Vobis mandamus quod scrutatis rotulis de hujusmodi recognit. cor. pref. W. & H. ann. predict. factis in custodia vestra, ut dicitur, existentibus, si inveneritis recogn. predict in forma predict. facti. fuisse & terminos solutionis predict, elapsos fuisse & nos in Cancellar. nostra alias inde certificat. non fuisse, tunc nos in eadem Cancellar. super recognitione predict. distincte & aperte, juxta formam statuti predict. sub sigillo pro recognitione mercatorum ibidem deputatis certificetis ut ultcrius super hoc fieri faciamus, quod secundum formam predicti statuti fuer. faciendum.*

And if he will not certify by this Writ, he may sue an *Alias* and a *Pluries* and Attachment against the Mayor and Clerk; and it appeareth by this Writ, that if an Obligation be once certified in the Chancery, it ought not to be certified again without *Affidavit* made, that Execution was not sued upon it, and then he shall have a special Writ unto the Mayor for it, for then it shall be taken as a several Obligation upon every Certificate.



And also it ought to be certified under the Seal of him who is deputed to seal the Obligation. And if the Mayor do make his Certificate unto the Chancery, then the Party shall have a Writ to execute the Statute, thus :

*Rex Vic Linc. salut. Quia A. de B. coram. C. & C. clericus ad recognit. debitorum apud L. accipiend. deputat. vel sic, coram D. Majore: vel sic, coram L. nuper Majore Civitatis nostrae Linc. & F. Clerico, vel, tunc Clerico ad recognitionem debitorum apud L. accipiend. deput. recognovit se debere E. 10. libras quas ei soluisse debuisset ad festum, &c. ann. &c. & eas ei nondum solvit ut distitur; Tibi precipimus, quod corpus prædicti. A. si laicus sit, capias & in prison. nostra salvo custodir. facias, donec eidem E. de prædicto debito vel execution. testamenti prædicti. E. de prædicti. 10. l. plene satisfecerit. Et qualiter hoc præceptum nostrum fuerit execut. nobis scire facias in Octabis S. Hill. ubicunque. &c. per literas tuas sigillat. & habeas, &c.*

[ 131 ] And this Writ may be returned as well into the Common Pleas as King's Bench. And if a Man make a Statute Merchant of 100l. payable at divers days, if he fail of Payment at any of the said Days, the Recognisee shall sue Execution at that Day, and shall not stay his Execution until all the Days are past, as he shall do of an Obligation.

Contrary in Covenant or if he assent 10 pay by 5 M. 107. 32 H. 6. cont. 14 H. 8. 14. Brudencill.

If a Man be bound to pay 20 l. at divers Days, he shall not have an Action of Debt upon the Bond, until all the Days are past. But if he who is bounden in a Statute Merchant be a Clerk or Abbot, &c. then the Writ of Execution is of another form, viz.

*Rex &c. quia A. persona Ecclesie de B. coram, &c. precipimus tibi quod prædicti. 10 l. de bonis & catallis ipsius A. in bairva sua mobilibus sine dilacione levari, & eund. E. habere fac. Et qualiter hoc præceptum, &c.*

For a Clerk shall not be arrested by his Body upon that Statute, and if Process be awarded to arrest him, by that Statute he shall have a Writ unto the Sheriff, that he do not trouble or molest him, and if he have arrested him for the same, that he deliver him, if he know no Cause why he should not enjoy the Privilege of a Clerk: And in some such Writ there is a Proviso put in the End of the Writ thus :

*Proviso quod præd. decem libr. de terr. bonis & catallis ipsius A. si non levata fuer. juxta formam statuti prædicti. levantur, ut est iustum, &c. Teste, &c.*

If a Man be bounden in a Statute Merchant in 20 l. and the Statute at the Suit of the Recognisee is certified in the Chancery, and afterwards he dieth, his Executors may have a special Writ unto the Mayor, reciting the Certificate

cate before them, commanding them to certify the same again into the Chancery, and the Writ is such :

*Monstraver. nobis L. & W. execut. testament. L. de B. quod cum R. &c. ( ut supra usque ibi ) juxta formam statuti præd. certificatis : vos tamen pro eo quod per rotulos vestros invenistis quod Cancellar. nostra super eadem recognition. alias esset certific. quicquid inde facer. non curastis, ac præd. execut. contra nos in Cancellar. nostra personaliter constituti offeruerunt, aliquam execut. recognit. prædict. in vita ipsius L. seu post mortem suam virtute certificat. inde in Cancell. prius fact. nullatenus fact. fuisse, & nobis supplicaver. ut sibi in hac parte velimus de remedio providere. Et quia eisdem execut. quatenus jure poterimus in hac parte velimus subvenire, vobis mandamus, quod scrutat. rotul. vstr. hujusmodi recognit. contingat. si inveneritis, recognit. illam in forma prædict. factam fuisse, & terminos solution. transactos esse, ut est dictum, tunc nos in Cancellar. nostra super recognit. præd. distinte & aperte sub sigillis vestris pro recogn. debitor. ibidem deputat. prout moris est, certificetis, non obstante Cancellar. nostr. prius inde extitit certificata. Teste, &c.*

**A** But this Writ is not granted but upon Affidavit and Oath made by the Executors in Chancery, or by him who would have that Execution.

Writ of Execution upon a Statute Staple.

**B** **A**ND if a Man be bounden before the Mayor of the Staple in a certain Sum, to pay at a certain Day, &c. and he do not pay it according to the Statute; then he to whom the Obligation is made, shall come before the Mayor and shew him the Statute, and pray him to certify it under the Seal into the Chancery, as he shall do upon a Statute Merchant. Or the Mayor may award Execution if the Party be dwelling within his Jurisdiction, or have Lands or Goods there, &c. And if the Mayor will not certify at the Request of the Party, then he shall have a Writ out of the Chancery unto the Mayor to certify the same, as he shall have upon a Statute-Merchant shewed in Chancery; and upon the same an Alias, and a Pluries, and Attachment against the Mayor if need be; and when the Mayor hath certified the Statute under the Seal, then the Writ of Execution shall issue forth against the Party, to arrest him, and to extend his Lands, &c. and this Writ shall be always returnable in the Chancery, and not in the King's Bench nor Common Pleas, as the Writ, which issueth forth to do Execution upon a Statute-Merchant; and the Form of the Writ is such :

*Vi. 45 E. 3.  
22. Finchden. Execution shall be sued first of the Goods, and then of the Lands. But 7 R. 2. Execution 46. the Party hath his Election to take one or the other, and so is the Use at this Day.*



*Writ of Execution upon a Statute Staple.*

*Rez vic. Linc. salut. Quia R. de W. xx. die Septembris, & ann. Et coram E. de B. Majori stapal. nostr. de B. ad recogn. debitor. in eadem Stapula accipiend. deputat. recognovit se debere W. de F. octo libr. Et. quas ei soluisse debuit in Festo Et. tunc Et. Et quas ei nondum solvit, ut dic. Tibi precipimus quod corpus prad. R. si laicus sit cop. & in prisona nostra donec eidem W. de prad. debito plene satisfecerit, salvo custod. & omnia terras & catall. ipsius R. in balliva tua per sacrament. proborum & legalium hominum de balliva prad. quo rei veritas melius sciri poterit juxta verum valorem eorumd. diligenti. extendi & appreciar. & in manum nostram seisuri fac. & ea pras. W. quousque sibi de debit. prad. satisfact. fuer. liberet. ac juxt. form. ordination. inde fact. Et qualiter hoc precept. nostrum fuerit execat. scire fac. nobis in Cancell. nostr. in Crastin. animarum proxim. futuro ubicunque tunc fuerit per literas tuas sigillatas, & habeas ibi hoc breve, &c.*

And by this Writ it appeareth that the Sheriff may arrest the Conusor, and extend and take his Lands, Goods and Chattels, and return the same Extent in Chancery, &c. And thereupon the Conusee may sue a Writ unto the Sheriff out of the Chancery to deliver him the Lands and Goods to the Value of the Debt, which Writ is called *Liberate*, and is such :

[ 132 ]

*Rez Vic. &c. Cum R. de W. xx. die ( usque ibi ) per literas tuas sigillatas, & tunc sic: Ac tu nobis returnasti, quod prad. R. non fuit inventus in balliva tua, postquam breve nostr. tibi liberat. fuit, sed quod cepisti in manus nostr. omnia terras & tenementa & catalla ipsius R. in dicta balliva tua, & ea extendi & appreciari fecisti juxta tenorem brevis nostri prad. viz. duas partes unius messuagii que appreciant. ad quinque libras, Tibi precipimus, quod eidem A. omnia terras & tenementa, & catall. prad. per te in manus nostras sic capta, si ea per extent. & aprec. prad. habere voluerit, liberet, habend. juxta form. ordination. prad. quousque sibi de debito prad. fuer. satisfact. Et qualiter hoc preceptum nostrum fueris execat. scire fac. in Cancell. nostra in quinden. Posthe prox. futur. ubicunque tunc fuerit per literas, &c. Et habeas, &c.*

2 E. 4. 10.

And if a Man be bounden before the Mayor of the Staple or in a Statute-Merchant before another Mayor, &c. and have no Lands but in *Durham*, or other County Palatine, then upon the Certificate of the Statute made by the Mayor, &c. upon the Return of the Sheriff, that he hath not Lands nor Tenements within his Bailiwick, the Party may surmise that he hath not any thing but in the County Palatine, &c. and pray that the Tenor of the Record may be sent thither, to have Execution done, and upon that Surmise he shall have such Writ.

*Writ.*

## Writ to do Execution in a County Palatine.

**R**ex venerabili in Christo patri I. eadem grat. Dunelm. Episc. vel ejus Canc. in Episcopatu præd. salut. &c. Tenore cujusdam statuti de Stapula facti coram W. de W. nuper Majore Stapul. Westm. ad recognitiones debitorum in eodem Stapula accipiend. deputat. de xl. li. T. de W. jam defuncti. ut dicit. & E. de R. civ. Lond. per Agnetem quæ fuit uxor. H. de R. Episcopat. Dunelm. nuper recognitis, & per N. B. nunc Major, dicit. Stapula in Canc. nostram missis Vobis mittimus præsentibus interclusum, ut inspecto tenore præd. ulterius ad prosecutionem Katharinæ quæ fuit uxor præfat. T. I. F. & R. de L. executor. testamenti præd. T. executionem recognitionis præd. fieri fac. prout de jure & secund. legem & consuetud. regni Angl. fuerit faciend. Teste, &c.

**B** And if the Statute be not sufficiently certified in the Chancery by the Mayor, &c. because he hath omitted any Part of the Bond, as the Name, or Surname, or other Matter material, then upon Affidavit made, that he hath not had Execution by Reason of that Certificate, he shall have a new Writ unto the Mayor and Clerk, &c. to certify the Statute fully again into the Chancery, notwithstanding his Certificate made before, and that Writ doth appear in the Register.

*Note, 2 R. 3. 7. 3. several Certificates were made upon one Statute. But it cannot be intended but that they were several Statutes. And note, That several Writts were awarded upon them to several Sheriffs.*

If the Mayor doth make a Certificate of the Statute into the Chancery, and delivereth the same unto the Recognisee, and the Party keepeth the Certificate, and will not put it into the Chancery; and afterwards another is made Chancellor, the Party ought to have a new Certificate to that Chancellor, otherwise he shall not have Execution of the Statute upon that Certificate made to the old Chancellor which was not delivered in Time into the Chancery: And then he ought to sue a Writ in Chancery directed unto the Mayor, to make a new Certificate, and the Writ shall be such;

Rex, &c. Majori Stapula Westmon. ad recognitiones debitorum in eadem Stapula accipiend. deput. salut. Ex parte D. Sec. nobis est ostens. quod cum W. de E. &c. ann. regni nostri tertio coram vobis in Stapula præd. recogn. se debere præf. A. xl. li. juxta formam statuti Stapula præd. cert. termin. solvend. & licet vos termino solution. præd. elapso K. Episc. London. nuper Cancellar. nostro dum in officio Canc. stetit, sub sigillo officii nostri, prout moris est, certificaveritis, quia tamen præd. D. dictam certificat. penes se hucusque retinuit, & præf. R. nuper Canc. cui prius nominatim inde certificastis, ab officio suo Canc. a diu est & extitit onerat. Volumus, & vobis mandamus, quod dictam certific. præf. nuper Canc. per vos sic fac. sane & integr.



*Writ of Execution.*

*integr. vobis restit. & serutatis rotulis de hujusmodi recognitione coram vobis ann. præd. factis, si inveneritis recognitionem præd. factam fuisse, tunc Canc. nostro moderno in eadem Canc. super recogn. præd. distinct. & apert. juxta form. stat. præd. sub sigillo pro recognitionibus stipula præd. deputat. certificet. indilate, ut alterius super hoc fieri faciamus, quod secundum formam statuti præd. fuer. faciend. dicta certific. prius sic facta non obstant. Teste, &c.*

But note, That if in the first Certificate he hath not expressed the Name of the Chancellor, that then he may deliver that Certificate to the new Chancellor, and sue Execution upon it, and therefore it is good to make the Certificate general to the Chancellor without naming his Name.

*Recognisance in the County before the Sheriff.*

**I**F a Man doth acknowledge in the County before the Sheriff to pay to another a certain Sum of Money at a Day certain, and do not pay it at the Day, then the Recognisee shall have a Writ out of the Chancery unto the Sheriff, commanding him to do Execution upon that Recognisance, and the Writ shall be such:

[[33 ]

*ReX vic. &c. Monstravit nobis A. quod cum ipse implacitasset in Com. tuo per brev. nostrum B. & idem B. in pleno Com. illo recognovit se debere præf. A. certam pecuniam ad certum termin. reddend. tu tamen termino illo elapso, eandem pecuniam eidem A. nondum solutam ad querimoniam secund' recognitionem suam habere non fecisti, in ipsius A. damnum non modicum & gravamen. Et quia eid. A. prout justum fuerit subvenire volent. in hac parte Tibi præcipimus, quod si ita est, tunc pecuniam illam de bonis & catallis ipsius B. in balliva tua levare, & illa præf. A. sine dilacione habere fac. ne clamor ad nos inde perveniat iteratus. Teste, &c.*

But it seemeth Recognisance shall be made when a Plea depending in the County before the Sheriff by Writ between the Parties in Debt, &c. but if there be not any Plea depending in the County by Writ, but by Plaint, *Quare* if that Recognisance shall be made; and it seemeth reasonable that it may be taken, as well as when the Plea of Debt is depending in the County before the Sheriff by Plaint, as if it were by the King's Writ.

But if a Man come into the County before the Sheriff, and there in Court acknowledge to pay a certain Sum of Money, unto another at a certain Day, &c. where there is not any Plaint or Action depending, betwixt the Parties, whether this Acknowledgment shall be good or not, *Quare*. And it seems

seems

seems reasonable, That if it be under the Sum of 40 Shillings, that such Acknowledgment shall be good, and bind the Party.

A And if the Party have a Writ to the Sheriff to do Execution of such Recognisee (as before is said) and the Sheriff will not do the same, then the Recognisee may sue an *Alias* and a *Pluries*, and Attachment against the Sheriff, and the Form of the Writ is such :

*Rez, &c. Ex parte A. accepimus, quod cum nuper tibi precipimus, quod si B. recognosceret se debere A. tantum, tunc ipsum B. distringeres ad præd. debit. eidem A. sine dilacione reddend. ac licet idem B. coram te recognoverit se debere præf. A. præd. debit. tamen ipsum B. ad debitum illud reddend. distringer. habemus distulisti, & adhuc differs, in ipsius A. damnum non modicum & gravamen: Et ideo tibi precipimus, quod si ita est, tunc execution. recognitionis sine dilacione fieri fac. juxta tenorem mandati nostri præd. & hoc nullo modo omittas. Teste, &c.*

But it seemeth by this Writ, that if the Recognisor will not again acknowledge the Debt before the Sheriff when he cometh to him to do Execution, &c. but say that he hath paid the same, That then the Sheriff ought not to do Execution. And there is another Writ in this Form :

*Rez Vic. &c. Præcip. tibi, quod si A. recognovit se debere B. centum solid. tunc ipsum A. distr. ad præd. debitum eidem B. redd.*

And he may have an *Alias* and a *Pluries* and Attachment upon the same, &c. And if the Sheriff return upon the *Alias*, quod distinxit partem per frument. vel per alia catal. ad quod non invenit emptores, Then by the Title of the Register shall be awarded a Writ of *Pluries reiterando* returnable, & illud insufficient. reputand. &c. But *Quare* tamen of that; for it seemeth to be a good Return: And *Quare* if the Sheriff may sell the Goods to pay the Recognifance, for it seemeth by the Register he may sell the Party's Goods.

C And if a Man be in Execution upon a Statute-Merchant, he ought to be found in Prison for the Rent and Revenues of his Lands which are in Execution, &c. that is to say, with Bread and Water, as appeareth by the Statute; and if he have not the same, he may sue a Writ upon the Statute directed to the Mayor and Sheriff, where he is in Execution, that he have the Livelihood which the Statute giveth him; and the Writ is such :

*Rez Majori & Vic. Lon. salut. Cum in Statuto de Mercator, edito contineat, quod mercatores pro quorum debitis contigerit debitores suos per formam statut. prædict. arrestari & imprisonari, invenire teneantur debitoribus illis in prisona commorant. panem & aquam ad sustentationem suam. Vobis precipimus, quod*



*Writ de Perambulatione faciend.*

*W. de S. pro debet. E. de K. per formam statuti nostri prad. ut dicitur arrestat. & in prisona nostra detent. si ea occasione & non alia detineatur in eadem, fieri fac. in hoc casu, quod fuerit faciend. & in casu consimili fieri consuet. juxta form. Statuti prad. T. &c.*  
 And upon that he may have an *Alias*, *Pluries*, and *Attachment*.

*Writ de Perambulatione facienda.*

**A** Writ de *Perambulatione faciend*s, ought to be sued with the Assent of both Parties, where they are in Doubt of the Bounds of their Lordships, or of their Towns; then they by Assent may sue this Writ, directed unto the Sheriff to make the Perambulation, and to set the Bounds and Limits between them in Certainty: And the Writ is such;

*Rex Vic. &c. Præcipimus tibi, quod assumpt. tecum 12. discretis & legal. Milit. in com. tuo, in propria persona tua accedas ad terram A. de B. in N. & terram C. de D. in E. & per eorum sacramentum fieri fac. perambulat. inter terram ipsius A. de B. in N. & terram ipsius C. de D. in E. ita quod perambulat. illa fiat per certas metas & divisas: Quia prædicti A. & C. posuerunt se coram nobis in perambulationem illam, & scire fac. Justic. nostris apud W. Et. tali die, vel Justic. ad primam assis. &c. sub sigillo suo & sigillis quatuor legal. Milit. ex illis qui perambulat. illi interfuer. per quas metas & divisas perambulatio illa facta fuerit, & habeas tibi nomina Militum, & hoc breve.*

And the King may make his Commission to other Persons to make that Perambulation, as well as to the Sheriff, and to certify the same into the Common Pleas, or in the Chancery, or elsewhere, &c. And such Commission is oftentimes granted to make Perambulation of three or four Counties where they are in Doubt in the Bounds and Limits thereof, and this Perambulation made by Assent, shall bind all the Parties and their Heirs.

But if Tenant for Life be of a Seigniory, and another who is Tenant in Fee Simple of another Seigniory adjoining sue forth such a Writ or Commission, by Reason whereof a Perambulation is made, it seemeth the same shall not bind him in Reversion; neither shall the Perambulation made with the Assent of Tenant in Tail bind his Heir.

And the Perambulation may be made for divers Towns, and in divers Counties, and the Parties ought to come in Person into the Chancery, and there acknowledge and grant that a Perambulation be made betwixt them, and the Acknowledgment shall be enrolled in the Chancery, and thereupon a Commission or Writ shall issue forth. And if the Parties

Parties cannot come in Chancery, then they ought to sue forth a Writ of *Dedimus potestatem* directed to certain Persons, to take their Acknowledgment, and to certify the same into the Chancery under his Seal, &c. and then upon that Certificate returned into the Chancery, That Commission or Writ may be granted, although the Parties do not appear in Person in Chancery to pray the same.

## Writ de Warrantia Chartæ.

**D** THE Writ of *Warrantia Chartæ* lieth properly where a Man doth enfeoff another by Deed, and bindeth him and his Heirs to *Warrantia*, &c. Now if the Defendant be impleaded in an Assize, or in a Writ of Entry in the Nature of an Assize, in which Actions he cannot vouch, then he shall have that Writ against the Feoffor or his Heir, who made such Warrantia: And the Writ is,

In a Warr. Chartæ the Defendant said that he had a Formedon pendant of the Land and

no Plea, and that was against the Issue in Tail. Itin. North. 2 E. 3. Garr. de charters 13. 2 E. 2. lb. 6.

**E** Rex, &c. Prae. A. quod iuste &c. warrant. B. unum messaag. cum pertin. in D. quod tenet, &c. de eo tenens clam. & unde chartam suam habet, ut dicit. &c. Vel sic: Manerium de N. cum per. in. & advocat. Ecclesie ejusdem ville quam tenet, &c. (usque ibi) unde chartam suam habet, vel chartam D. patris vel matris vel alterius antecessoris, cujus heres ipse est, ut dicit & nisi, &c.

2 Tenants in Common shall join in this Writ 28 E. 3. 90. so where 3

are Jointenants, and a Release to the other two, 40 E. 3. 41, 42. 16 H. 6. 7. If the Defendant tender a Plea to the Plaintiff, and the Plaintiff will not enter it; he shall not have Advantage in this Writ.

**F** And although the Writ doth suppose that he holdeth of the Defendant, yet that is not material whether he holdeth of him or not.

And also that the Plaintiff holdeth any Land of the Defendant by Homage *Ancest.* and hath not a Charter thereof: Yet he shall have this Writ of *Warr' Chartæ* against the Defendant, and the Writ shall say *unde Chartam habet*, &c. and yet he hath no Deed to shew, but only shall hold by Homage *Ancestrel*, which implieth a Warrantia, and therefore in that Case, those Words, *Unde Chartam habet*, &c. are not material, and there be not Dedi & Concessi in the Charter, per Curiam, the Writ lieth not.

§ Eliz. Dyer 221. If the Warrantia be only against the Grantee and his Heirs

12 H. 3. Garr. de Charters. 27. One brought this Writ, *Unde Chartam suam habet: the Defendant said, Non habet Chartam suam, and the Plaintiff confessed the same, and said it was Charta antecessoris sui, adjudged for the Defendant.*

If



21 H. 6. 8. If a Man have a Lease of Lands for Life rendring Rent, or maketh a Gift in Tail rendring Rent without Deed, and afterwards the Lessee or Donee is impleaded in such Action where he cannot vouch, then he shall have this Writ of *Warrantia Charta* against the Lessor or Donor, or his Heir who hath the Reversion: For that Reversion and Rent reserved, maketh a Warranty in it self by the Statute of *Bigamis*, cap. ult. although he hath not any Deed thereof.

21 H. 6. 8. And if a Man give Lands to one in Fee by Deed by these Words, *Dedi, concessi, &c.* now he is bound to warrant the Lands to the Feoffee by those Words, and if the Feoffee be impleaded, he shall have a Writ of *Warrantia Charta* against the Feoffor, by these Words, *Dedi, concessi, &c.* but not against his Heir, for the Heir shall not be bounden unto a Warranty made by his Father, unless he bind him and his Heirs to Warranty by express Words in the Deed: As to say, *Ego & haered. mei omnia praed. terras, &c. warrantizabimus, &c.*

In a Preci-  
pe quod reddat  
where the  
Tenant  
hath a Re-  
lease or  
Confirmati-  
on with Warranty  
oc: 22  
But note, That he shall not have the Writ of *Warrantia Charta* against the Feoffor, or against him against whom he hath the Warranty, if he be impleaded in any Action in which he may vouch him, for then he ought to vouch him to warranty; and if he will not vouch him to Action, he shall not afterwards have a Writ of *Warrantia Charta*. *Il. Gav. Cha*  
*pl. dt. 30 Nov. 135 D*  
Writ, Wood and Brian. 12 H. 7. 2.

And a Man may sue forth this Writ of *Warrantia Charta* before he be impleaded in any Action, but yet the Writ doth suppose that he is impleaded: And if the Defendant appear and say that he is not impleaded, by that Plea he confesseth the Warranty, and the Plaintiff shall have Judgment to recover his Warranty, so as if the Defendant be after impleaded, and vouch him to Warranty, and he entred into the Warranty, and pleadeth and loseth, and that the Defendant recover in Value. The Defendant shall have in Value of the Lands against the Vouchee, which he had at the Time of the Purchase of his *Warrantia Charta*, and therefore it is good Policy to bring his *Warrantia Charta* against him before he be sued, to bind the Lands of the Vouchee which he had at that Time. For if a Man be vouched, he shall not render in  
2 H. 4. 14. &  
12 H. 4. 13.  
He shall  
have in Va-  
lue the  
Lands  
which he had at the Time of Judgment, for the Judgment makes them subject to the Execution, 1 E. 3. 11 Fitz Gar. de charter 2. acc. 8 E. 2. Voucher. 237. A Man cannot vouch a Clerk attaint, or a Man outlawed: But rather have War. Chart. Cont. of an Idiot Quod reddat. Quere if it be Law at this Day. Br. War. Chart. 29. 8 E. 4. 10. Markham acc. 24 E. 3. B. War. Chart. 13. acc. 19 E. 3. Gar. Chart. 9. acc.  
Value

Value, but of the Lands which he had at the Time of the Voucher, and if he have aliened the Lands before the Voucher, he shall render nothing in Value; and therefore it is Policy to bring his *Warrantia Charta* against him when he hath the Land to render in Value. And upon this Writ and Judgment, the Land shall be bound. But if a Man recover his Warranty by Writ of *Warrantia Charta*, and hath bounden the Land which the Vouchee had at that Time: Yet if he be afterwards impleaded for that Land, for which he recovered his Warranty, he ought to vouch him against whom he recovered his Warranty, to defend the Land, if he be sued in any Action wherein he may vouch, otherwise he shall not have advantage by Recovery of his Warranty in the *Warrantia Charta*.

**A** And if a Man recover his Warranty in a *Warrantia Charta*, and afterwards is impleaded in an Action in which he cannot vouch, as by Assize, or by *Scire facias* sued forth upon a Fine, &c. It seemeth he ought to give Notice to him against whom he hath recovered his Warranty of the Action, and to pray him to shew him what he shall plead for to defend the Land, &c. *Quare tamen* thereof.

23 H. 3.  
Gar. Chart-  
ters 26.

**B** If a Man exchange Lands with another by Deed, if he be impleaded, he may vouch him with whom the Exchange was made, by Reason of that Exchange; and also he shall have a Writ of *Warrantia Charta* by that Deed of Exchange, although there are not Words of Warranty in the Deed; and the Vouchee shall have a Writ of *Warrant. Charta*, *tamen quer'* of that.

7 H. 4. 18.

**C** And if a Man be impleaded who is not Tenant of the Land, but Pernor of the Profits, he shall not have a Writ of

17 E. 3.  
and Br.

**D** *Warrantia Charta*, because he can lose nothing. And a Man shall have a Writ of *Warrant. Chart.* although he may vouch in the Action brought against him, and if he do recover in the *Warrantia Charta*, and afterwards lose in the Action brought against him, in which he hath vouched him against whom he recovered his Warranty, Then he shall have a Writ which is called *Habere fac' ad valent'*, &c. presently within the Year after the Recovery, and shall not sue forth *Sci' fac.* And an Assignee shall have a Writ of *Warran. Chart.*

War. ch. 30.

None shall  
have the  
Writ but  
the Terre-  
Tenant. *Alia*

24 E. 3. 25.

Willbye.

E. 4. 12.

3 E. 4. 7.

A good Plea

that he had

**E** And a Man shall have a Writ of *Warran. Chart.* of Land or Rent which he demanded against him out of Land. *Sci'* but there he ought to vouch of Land discharged of the Rent, &c. if he may vouch in the Action.

nothing in

the Land. *Th.*

jour de brie

purchase.

**F** And a Man may bring his Writ of *Warran. Chart.* in what County he pleaseth, if the Deed bear not Date in a certain Place, or County: For then he ought to bring the Writ where the Deed beareth Date. But if a Man bring a Writ of

19 E. 3.

Gar. ch. 10.

4 E. 3. Gar.

ch. 12. acc.

for Rent

*Warrantia Service.*



*Warrantia Charta*, by Reason of Homage *Ancestral*, &c. then it ought to be brought in the County where the Land lieth.

E. 1 Voucher, 266.  
21 H. 6. 40.  
Newton.  
See Little.  
111. for the Reason of this Case.

And if a Man doth enfeof another of Lands by Deed with Warranty, if the Feoffee maketh a Feoffment over, and taketh back an Estate in Fee, the Warranty is determined, and he shall not have a Writ of *Warrantia Charta*, because he is in of another Estate. And so if *A.* disseise *B.* and enfeof *C.* with Warranty, who encoffeth *D.* with Warranty, upon whom a Stranger entreth, in whose Possession *B.* the Disseise releaseth his Right, all the Warranties are extinct, and if *D.* re-enter, and be impleaded, he shall not have a Writ of *Warrantia Charta*, because he is in of another Estate by Wrong. But if a Man be impleaded for which he purchaseth a Writ of *Warrantia Charta* against whom he hath a Warranty, and vouch him also in the Action; and afterwards depending the Action, a Stranger who hath ancienter Title entreth upon him, yet that shall not abate his *Warrantia Charta* sued out before; quod vi. 21 H. 6.

Feb. 23

26

4 E. 2. Gar. Char. 29.  
it is but a personal Action in the Nature of a Covenant,

therefore he shall recover Damages. 2 H. 6. 31. It is holden, that in this Case he shall recover Damages only. But it seemeth by Br. Warr. chart. 31. that if he hath no Land to be recovered in Value, that he shall not recover Damages tantum, nor more than in Voucher.

And a Man may sue forth divers Writs of Warranty of Charters against divers Men: And if he have divers Warranties against them, he shall recover severally against them.

And a Man may sue a Writ of *Warrantia Charta* at the Common Law for a Warranty made of Lands in ancient Mesne.

And if a Man have a Writ of *Warrantia Charta* depending, although that the Plaintiff who brought the Action against him who brought the *Warrantia Charta* be Nonsuit in his Action, the same shall not abate the Writ of *Warrantia Charta* although he hath not an Action sued against him for the Land, &c.

### Writ de Mesne.

18 H. 3.  
Mesne, 78.  
adjudged  
that the  
Mesne  
ought to acquit the Tenant against all Lords Paramount, 29 E. 3. 34. acc.

THE Writ of *Mesne* lieth where there is Lord, Mesne, and Tenant, and each hold by Owelty of Services, as by Homage, Fealty, and 20 L. Rent yearly. Now if the Tenant be distrained by the Lord Paramount for the Rent sought to acquit the Tenant against all Lords Paramount, 29 E. 3. 34. acc.

or Service of the Mesne behind, he shall have a Writ of Mesne against the Lord who is Mesne, and by the Writ he shall recover his Damages if he be distrained, otherwise not: and by that Writ he shall be compelled to do the Service, and to pay the Rents, and the Writ may be sued in the County before the Sheriff, and the Writ is:

*Rex Vic. &c. Præcipimus tibi, quod Justic. A. quod juste, &c. ac-* *Note, that*  
*quietet B. de servic. qua C. ab eo exigis de libero tenemento suo quod* *the Plain-*  
*de pres. A. tenet in I. & unde querit. quod pro defectu ejus distrin-* *tiff in a*  
*ficat rationabil. monstrare poterit, quod cum acquietar. debeat, ne* *Writ of Mes-*  
*amplius, &c.* *ne needeth*  
*not in the*  
*Count to*

show the Certainty of the Tenure between the Mesne and the Lord Paramount, but generally to say, that he holdeth over, per 38 H. 6. 12. and 39 H. 6. 29. 13 E. 4. 6. If there be Lord, Mesne, and Tenant, and the Tenant is distrained by the Lord for which he bringeth a Replevin, the Lord avoweth upon a Stranger, the Tenant may have a Writ of Mesne: Tet the Mesne cannot joyn because the Avowry is made upon a Stranger.

And if it be sued in the Common Pleas, the Writ is:

*Rex Vic. &c. Præc. A. quod juste, &c. acquietet B. de servic. quod nos ab eo exigimus de libero tenemento, &c. unde idem A. qui medius est inter nos & præf. B. eum acquietare debet, & unde queritur, quod pro defectu ejus distringit. & nisi, &c.* And this Writ is where the King distraineth for Services, &c.

And if another Person be Lord Paramount, then the Writ is; *Quod acquieret B. &c. qua C. de eo exigit de libero tenemento, &c. unde idem A. qui medius est inter C. & præf. B. eum acquietare debet, &c.*

A And the Writ of Mesne may be sued and removed out of the County, at the Suit of the Plaintiff by a Pone without Cause, and at the Suit of the Defendant with Cause shewed, as in a Replevin. [ 136 ]

And a Man may have an Acquittal, and sue forth a Writ of Mesne upon it divers Ways. One if the Mesne grant unto his Tenant by his Deed, upon his Tenure made of him to acquit him against his Lord Paramount, he shall have a Writ of Mesne upon that Grant. Another Cause of Acquittal is where he holdeth in Frankalmoigne. Another Cause is, where he holdeth in Frankmarriage; or where he holdeth by the like Service as the Mesne holdeth over, which is called Owelty.

B And also a Man may have an Acquittal by Prescription, as C if he hold by Homage Ancestrel.

D And also by Conuance in a Court of Record for to acquit him, &c. And the Men of Cornwall claim to plead a Plea

<sup>14</sup> E. 3.  
 Mesne 7.  
 38 H. 6. 12.  
 39 H. 6. 29.  
 Prisor.



Plea in a Writ of *Mesne* in the County without Writ, and that they have had Allowance thereof in Eyre. And although the Writ of *Mesne* be depending betwixt the *Mesne* and the Tenant paravail, yet the Lord shall distrain the Tenant paravail for the Rents and Services, and shall not tarry until the Writ of *Mesne* be ended betwixt them, whether he ought for to acquit the Tenant or no.

7 H. 4. 12. And if a Man bring a Writ of *Mesne* where he is not E  
distrained, yet the Writ is maintainable, but then he shall not recover Damages: For the Writ is brought only for to recover the Acquittal, &c. As if he bring a Writ of Warranty of Charters where he is impleaded, &c. he is to recover the Warranty *pro loco & tempore*.

4 H. 6. 25.  
4 E. 4. 35.  
11 H. 4. 55. And if the Tenant holdeth by the Services which the *Mesne* F  
holdeth over, and also by other Services, it is a good Owelty to have Acquittal, because it is such, and more. And although that the Lord dieth depending the Writ of *Mesne*, yet the Writ shall not abate.

25 H. 6.  
Mesne 12. And Tenant for Term of Life where the Remainder is over G  
in Fee, shall have a Writ of *Mesne* against the *Mesne*: But Tenant for Life shall not have a Writ of *Mesne* against him in the Reversion. But Tenant in Dower shall have a Writ of *Mesne* against him in the Reversion, because she hath her State by the Law.

38 H. 6. 12.  
Prisor. And if the *Mesne* have paid the Services unto the Lord H  
50 E. 3. 23. Paramount, yet if the Tenant be afterwards distrained for those Services, he shall have a Writ of *Mesne*. But it is a Question whether he shall recover Damages in that Writ. But it seemeth he shall have Damages, because the *Mesne* shall recover Damages against the Lord, if he will put his Cattle in the Pound for the Tenant, and sue a *Replevin*, &c. and yet not distrained in his Default is a good Plea in a Writ of *Mesne*. And if he pay the Services, he is not distrained in his Default: for if the *Mesne* grant unto the Tenant to acquit him after the Tenure made, he shall have a Writ of *Mesne* thereupon, as I conceive.

4 E. 4. 35.  
Belling. ac. And the Husband and Wife shall have a Writ of *Mesne* I  
14 E. 3. where they are distrained for the Lands of the Wife.  
*Mesne*.

12 E. 3.  
Mesne 12. If the *Mesne* grant the Mesnalty for Life, and the Tenant K  
10 E. 3. 58. attorn, the Tenant shall not have a Writ of *Mesne* against the Grantee for Life. But Tenant in Tail shall have a Writ of *Mesne*: And ancient Demesne is a good Plea in a Writ of *Mesne*.

8 E. 3. 26.  
Mesne 19. And a Writ of *Mesne* lieth against Tenant for Life where L  
the Remainder is over in Fee: And the Writ of *Mesne* shall be maintainable against the Heir of the *Mesne* where his

Ancestors have granted the Services of the Tenant by Fine, if the Tenant hath not attorned according to the Fine: For he shall not be compelled to attorn without granting Acquittal unto him: And if he grant Acquittal, &c. he shall have a Writ of *Mesne* upon the Grant; and yet it commenceth after the Tenour.

And if the Tenant be distrained for the Relief of the *Mesne*, or for reasonable Aid, &c. he shall have a Writ of *Mesne* against him. 39 H. 6. 29.  
38 E. 3. 34.

If a Man be Tenant by the Curtesie of a *Mesnalty*, &c. if the Tenant be distrained, the Writ of *Mesne* shall be sued against him in the Reversion, and not against the Tenant by the Curtesie. H. 4 E. 2.

A Seigniori is granted unto the Husband and Wife, and to the Heirs of the Husband, and in a *Per qua servitia* sued by them, the Tenant will not attorn, unless they will grant to acquit him, &c. for which the Husband grants for him and his Heirs, to acquit the Tenant and his Heirs, and afterwards the Husband dieth; the Tenant may bring a Writ of *Mesne* against the Husband's Heir, during the Life of the Wife who was Tenant for Life, and good. *Quod Vi.* H. 5 E. 3. Mesne 52.

And in the Time of E. 1. the Tenant brought a Writ of *Mesne*, because he did not acquit him of a Rent-Charge demanded, &c. because he by his Deed bound him and his Heirs to warrant and acquit him, and it was maintainable. Mesne 56.

And an Abbot sued a Writ of *Mesne*, by Reason of the Confirmation made unto him in *Frankalmoigne*, and it was maintainable. H. 2 E. 2. 5 E. 2.  
Mesne 64.

If a Man have Judgment to recover his Acquittal in a Writ of *Mesne*, if he be not afterwards acquitted, he shall have upon the Recovery a *Distingas ad acquietandum* against the *Mesne*, if it be three or ten Years after the Judgment given; and that is given by the Statute of *Westminster* 2. cap. 9. And a Scire facias against the Lord. 14 E. 3. Mesne 7.

If the *Mesne* do acknowledge Acquittal by Fine, and after he sueth a *scire facias* thereupon, and he appeareth not at the Return of the Writ, then shall issue a Writ of *Distingas ad acquietandum*, &c. and an *Alias* and *Pluries*, &c. until he appear; and if he come upon the *Distingas*, and cannot plead any Thing, but that he ought for to acquit him, then the Plaintiff shall recover Damages against him.

And if the Ancestor do acknowledge an Acquittal in a Court of Record, the Tenant shall have a *scire facias* against the Heir to acquit him without other Specialty, &c. 46 E. 3. 31.  
14 E. 3.  
Mesne 7.

And if a Man recover Acquittal of a Writ of *Mesne*, &c. he shall after have a *Distingas ad acquietandum*, and if he do 49 E. 3. 31.  
do



[ 137 ] do not appear, he shall be forejudged by Default of his Mefnalty; and fo if he appear, and it be found by Verdict againft him, he shall be forejudged.

Old. N B. And a Man shall have a Writ of *Mefne* to acquit him of  
83. 11 E. 3 Suit unto a Hundred which the *Mefne* ought to do by Reason  
Br. suit 4 of his Mefnalty, and not by Reason of Refiancy, &c. And  
E. 3. 42. the Procefs in a Writ of *Mefne* is Summons, Attachment, and  
*Diftringas*; and if the Defendant hath not any Thing in the  
County by which he can be diftrained, then the Plaintiff may  
furnifh that he hath Affets in another County, and pray a  
*Diftringas* thither, and he shall have it by the Statute; and  
upon that he shall be forejudged, &c. if he do not appear, and  
the Writ be ferved and returned againft him. But that is given  
by the Statute: For at the Common Law he shall not have but  
Diffrefs infinite in the fame County where the Writ was brought,  
and that is in the County where the Land is; and at this Day he  
may choofe whether he will fue the Procefs at the Common Law,  
Diffrefs infinite in the County, or the Procefs which is given  
by the Statute, Summons, Attachment, and the grand Diffrefs,  
which shall have Day to answer by fuch Times as two Counties  
may be holden, in which the Sheriff shall make Proclamation  
that he come to answer the Plaintiff, and if he do not come,  
and the Writ be returned, then he shall be forejudged.

*Writ da Plegiis acquietandis.*

THE *Writ de Plegiis acquietandis* lieth, where a Man becomes Pledge or Surety for another to pay a certain Sum of Money at a certain Day. &c. if the Party doth not pay it at the Day, &c. If he who becomes Surety be compelled to pay the Money, he shall have this Writ againft him who ought to have paid the fame. But it hath been a Queftion whether this Writ lieth without fhewing a Specialty; and it feemeth reasonable that it be maintainable, although he have not any Specialty to prove it. For the

Vi. 22. Eliz. Writ as it feemeth is given by the Statute of *Magna Charta*,  
Dy. 378. cap. 8. which is; *Quod si plegii voluerint, habeant terras*  
& *tenementa debitoris quousque sit his satisfacti, de debito quod*

Fitz. Pledg-  
es 9. there  
it was al-  
luded that  
the Custom  
of London  
was such.

*antea pro eo solverint.* And there is not fpoken of any Writing made betwixt them; and if he have a Writing, then he may have Remedy thereupon by the Common Law, or by Writ of Covenant, or Debt; and then that Statute needed not to have been made. And *Pafch. 43 E. 3. 10.* it is adjudged, That the *Writ de Plegiis acquietandis* lieth without any Specialty fhewed thereof, and it feemeth good

Reason:

reason: because the Statute makes the Tie in that Case, and that appeareth by the Regifter, because Writs are given for the Executors of him who became Pledge, and against him who was the Debtor, because their Testator did not acquit his Sureties, &c. And this Writ is *Vicentiel*, and may be sued in the Country before the Sheriff, or in the Common Pleas by a *Præcipe*. And the Form of the Writ is such:

**D** *Rex Vic', &c. Præcipimus tibi, qd. Justiciis A. qd. juste. &c. acquiet. B. de 20s. unde posuit se in plegium 5 s. C. & cum nondum acquietavit, ut dic. sicut rationabiliter monstrare poteris, quod cum inde acquietare debeat, ne amplius, &c. pro defectu Just. &c.* And the Form of the Writ for the Common Pleas is such: *Rex, &c. Præcipe A. quod juste, &c. acquietet B. de cent. marcis, unde posuit se in pleg. versus C. & eum nondum acquietavit, ut dic', &c. & nisi, &c. Vel sic pro Executoribus, quod acquietet B. & C. execut. testamenti D. de 10 li. unde posuit prædict. D. in pleg versus, &c. & eos nondum, &c. Vel sic versus Executors, Præc. A. & B. &c. execut. testamenti &c. qd. juste, &c. acquietent E. de, &c. unde idem E. posuit se in pleg. versus D. & eum nondum, &c.*

**E** And if a Man become Surety for another in the Exchequer to accompt for him, and doth not, he shall have a Writ against him to discharge him of the Accompt, and the Writ is:

*Rex, &c. De acquietando A. de quodam compoto quem præd. B. pro se de tempore quo idem A. fuit ball. libertatis H. reginæ Angl. matris nostr. in com. D. coram Theſaur. & Baron. nostris de Scac. reddere manucepit, & posuit cum in pleg. versus nos in Scac. præd. & eum nondum acquietavit, &c.*

**F** And if a Man become Surety for another to pay a certain Sum of Money, or to do other thing, &c. so long as the Principal Debtor hath any thing and is sufficient, his Sureties shall not be distrained by the Statute of *Magna Charta*: And if they be distrained by the Sheriff, &c. they shall have a special Writ upon the Statute for to discharge them. And the Writ shall be such:

*Rex Vic', &c. Monstraverunt nobis A. & B. quod cum ipsi devenissent pleg. C. versus D. de quadam summ. pecun. in qua idem C. præfat. D. tenebatur, ac idem C. satis habeat unde prædict. debitum solveret, tu nihilominus ipsos A. & B. distring. ad solvend. præf. D. pecuniam prædict. Et quia injustum est, quod plegiis aliqui ad solution. debiti compellant. quando principales debitores sufficient. habeant unde debitum suum reddere possunt, Tibi præcipimus, qd. C. distring. ad præd. pecuniam solvend. ut præf. pleg. suos pacem inde habere permittas et averia sua,*

Vi. 39E. 3. 92  
by Kniver.  
Br. Pledge  
22 The  
Plaintiff  
ought to  
have the  
Writ first  
against the  
Party and  
if he be in-  
sufficient,  
then against  
the Plegges.  
Mag. Char-  
ta cap. 8.



*si que ea occasione ceperis, sine dilatione deliberari facias. Teste, &c.*

And it seemeth that this Writ lieth where a Man recovereth against the Sureties in the County, and the Sheriff distrains them to pay the Debt, where the Principal is sufficient: But if he sue the Sureties in the Common Pleas, where the Principal is sufficient to pay the Debt, &c. Now whether the Sureties may plead that, and aver that the Principal Debtor is sufficient to pay it; or whether they shall have a Writ to the Sheriff not to distrain them, if the Principal be sufficient, *Quere* of those Cases. And the Process in the Writ is Summons, Attachment and Distress.

## Writ of Detinue.

A Writ of *Detinue* lieth, in Case, where a Man delivereth Goods or Chattels unto another to keep, and afterwards he will not deliver them back again; then he shall have an Action of *Detinue* of those Goods and Chattels; and so if a Man deliver Goods or Money put up in Bags, or in a Chest, or in a Cupboard, unto another to keep, and he will not redeliver the Goods or the Money in the Bags; he to whom they should be delivered shall have a Writ of *Detinue* for those Goods, &c. But if a Man deliver Money not in any Bag or Chest, to redeliver back, or to deliver over unto a Stranger; now he to whom the money shall be delivered, shall not have an Action of *Detinue* for the Money, but a Writ of Account; because *Detinue* ought to be of a thing which is certain; as of Money in Bags, or of a Horse, or of a hundred Cows, or such certain things. And this Writ may be *viacantiel*, and shall be sued before the Sheriff in the County if the Plaintiff please; or he may sue it in the Common Pleas, and the Form of the Writ in the Common Pleas is.

*If a Man  
bail a thing  
to bail to  
L. S. he shall  
have Detin'  
by Prisot, yet  
he hath no  
Property till  
agreement,  
39 H. 6. 44.  
Laiton,  
congr.  
7 H. 4. 13.  
Detinue  
was brought  
of a Bag with  
20 l. and by  
Martin, 4 H. 6. 1  
and 2. If a Man  
bail 20 l. to  
redeliver  
lieth, and  
accompt. Congr.  
if it were per  
accompt. rendre,  
6 E. 4. 11.  
Detinue of  
four quarters  
of Barley, and  
doth not say  
in Sacks; and  
yet good.*

*of a Bag with 20 l. and by Martin, 4 H. 6. 1 and 2. If a Man bail 20 l. to redeliver Detinue lieth, and accompt. Congr. if it were per accompt. rendre, 6 E. 4. 11. Detinue of four quarters of Barley, and doth not say in Sacks; and yet good.*

*Rex Vic. &c. Proc. A. &c. qd. &c. redd. B. unam chartam quam ei injuste detinet, ut dicit, & nisi, &c. Vel sic, quod redd. B. unam pixidem cum tribus scriptis obligat. in eadem pixide contentis sub sigillis predict. B. consignat. And the rule in the Register is, quod in brevi de Chartis reddendis semper debet*

debet poni cert. numerus Chartar' vel scriptor'. And a Man may have a Writ of Detinne of one Writing, and the Writ shall be, *Præc. A. qd. Te redd. B. quoddam scriptum, per quod B. omnia bona & catalla sua in manerio de N. nuper exist. I. de L. dedit bona & concessit, qd. ei injuste, &c.* And the Form of the Writ in tallia; and the Count is such: *Rex Vie', &c. Præc. tibi, quod justicias A. quod juste, &c. redd. B. unam Chartam, vel tres Chartas, vel unum scriptum obl. vel conventionale, vel acquietan. vel testam. vel chirographam, quod. quas vel que ei injuste detinet, ut dicit, sicut rationabiliter monstrare poterit, quod si ea redd. debeat, ne amplius, &c.*

- C And if a Man sue in any Court a plaint of Detinne for any Charters which touch and concern Freehold, if it be not in the Common Pleas by the King's Writ, the Defendant may sue a Prohibition; to prohibit them, &c. and to surcease, &c. *Rex ball. I. de R. sal. Cum placita de detentio chartarum seu on.*

*scriptorum liberum tenementum. tangen. in aliquibus cur. que record. non habent, secundum legem & consuetud. Regni nostri sine brevi nostro placitari non debeant, ac W. B. de eo quod id. in B. redd. præfat. W. tres Chartas coram vobis in cur. prædict. Dom. vestri de R. sine brevi nostro implacitet, ut accepimus, vobis precipimus, quod si ita est, tunc placito illo coram vobis in curia prædict. sine brevi nostro, ulterius tenend. super sedatis omnino, & præf. W. dicatis, ex parte nostra, qd. breve nostrum de detentio chartarum prædict. versus præf. B. sibi impetret, si sibi viderit expedire. Teste, &c.*

- D And the Plea may be removed by *Pone* out of the County at the Plaintiff's Suit, without Cause shewed in the Writ; and at the Suit of the Defendant he ought to shew Cause in the *Pone*: And this Clause shall be in the end of the Writ. *Fiat executio istius brevis, si causa sit vera, aliter non, &c.*

- E And if a Man find my Goods which I have lost, I shall have a Writ of Detinne of them. *38 H. 6. 24. 25. Lit.*

- F And if a Man giveth Lands in tail by Deed indented, and the Donee dieth without Heir, the Donor shall have a Writ of Detinne for that part of the Deed indented which the Donee had.

And so if Lands be given to two Men and the Heirs of one of them; if the Tenant for Life dieth, he who hath the Fee shall have a Writ of Detinne for that Deed. *7 E. 4. 20. Mitre.*

- G If a Man make a Feoffment in Fee of his Land by Deed, yet the Feoffee shall not have the Charters concerning the Land, but the Feoffor shall keep them, if he do not give them to the Feoffee; but against a Stranger the Feoffee shall have an Action of Detinne for those Charters which concern a Stranger. *12 E. 4. 14. the Feoffee shall not have this Writ against a Stranger.*



concern the Lands, if he cannot make Title by the Feoffor, or those who claim Title by the Feoffor.

H. 7. 102. And the Heir in Tail shall have a Writ of *Detinue* against H the Discontinuee for the Deed of Entail by which the Land was given.

9 H. 6. 58. And if a Man maketh a Feoffment in Fee of the Land I which is Fee-simple, his Heir shall have the Charters which concern the same Lands, and not the Executors of the Father.

10 H. 6. 58. The Heir ought to make Title to the Land otherwise the Executors shall have them. 19 H. 6. 41. acc. 9 E. 4. 52. If a Man make a Lease for Years and afterwards confirms H his Estate in Fee, the Heir of the Feoffee shall have the Deed of the Lessor for Years, as well as the Deed of Confirmation, because that the Deed doth make the Confirmation good: And so of every Deed which maketh his Title, or a lease, or the like, without which his Title shall not be sure, and he shall have an Action of *Detinue* for them.

9 H. 6. 15. And the Heir shall have a *Detinue* of Charters, although L he hath not the Land; as if I be enfeoffed with Warranty, 10 E. 4. 9. and I enfeoff another with a Warranty in fee, my Heir shall 39 E. 3. B. have a *Detinue* of that Deed by which I am enfeoffed, because he may have advantage of the Warranty. Chart 38. 10 E. 4. 9. 10 E. 4. 12.

The Lord by Escheat shall have *Detinue* and the Executors shall not have the Action for them.

And if a Man have Goods delivered to him to deliver o-M ver to another, and afterwards a Writ of *Detinue* is brought against him by him who hath Right unto the Goods; Now if the Defendant depending the Action deliver the Goods o- ver to whom they were bailed to him for to deliver, the same is a good Bar in the Action, because he hath delivered them according to the Bailment made unto him.

For *Detinue*. 62. 13 H. 3. Prohibition 21. And after Divorce made betwixt the Husband and the A Wife, the Wife shall have a Writ of *Detinue* for the Goods given with her in *Frank-marriage*, which see M. 35 E. 1. And the Process in *Detinue* is Summons, Attachment and Distress.

*Writ de Recto de Custodia terre & hæredis.*

THE Writ de *Custodia Terra & Hæredis* lieth where the Tenant holdeth of his Lord by Knight's Service, and dieth in his homage, and a Stranger entreth into the Land, and taketh the Body of the Heir: The Lord of whom he holdeth the Land shall have a Writ of *Custodia Terra & hæredis*; and the Writ is such:

*Rex Vie, &c. Prac. A. quod, &c. redd. B. custod. terr. & hered. C. quam ad ipsum B. pertinet, eo quod pradict. C. terr. suam de eo tenuit per servitium militare, ut dicitur &c. & nisi, &c.*

*Alter de herid. terr. Prac. A. quod &c. redd. B. & C. uxorem ejus W. filium & hered. E. cujus custodia ad ipsum B. & C. pertinet, eo quod pater E. terram suam de pradict. C. &c. Vel sic: de L. patre pater C. cujus heres ipse est & tenuit per servitium militare, ut dicitur, &c. et nisi, &c.*

**C** And a Writ of the Lands only is such: *Prac. A. quod &c. redd. B. custod. unius virgat. terr. cum pertinet in R. que ad ipsum pertinet, eo quod C. terram illam de eo tenuit per servitium militare, ut dicitur, &c. Vel sic: ratione dimission. quod ad ipsum B. pertinet quam A. de quo pradict. C. terram illam tenuit per servitium militare, inde fecit eid. B. ut dicitur. &c.*

**D** And if a Man have a Wardship by reason of a Ward, and it is taken from him, the Writ shall be thus: *Quod reddat B. J. filium et hered. C. cujus custodia ad ipsum pertinet ratione custod. terr. et hered. R. de quo pradict. C. terram illam tenuit per servitium militare, inde fecit eid. B. ut dicitur. &c.*

And if the Lord Paramount will shew a Writ of Right of Ward for the Services and Rent, and the Heir of the Mesne, he may have a general Writ of the Land and Heir, if he will, or a special Writ thus:

*Præcipe A. quod &c. reddat B. custodiam decem solid. redditus, et hered. C. que ad ipsum pertinet, eo quod pradict. C. tenementum unde redditus ille provenit, de eo tenuit per servitium militare, ut dicitur.*

**F** And this Writ may be sued in the County before the Sheriff by a Justices, and then the Writ is such:

*Præcipimus tibi, quod justicies A. quod reddat B. custodiam terr. & hered. C. que, &c. ut dicitur, sicut rationabiliter, &c.*

**G** And the Plaintiff may remove the same by a Pone without Cause shewed, and the Defendant ought for to shew Cause in the Pone, as he shall do in a Roplewin.

And it appeareth by the Register, That the Guardian in ~~Socage~~ shall have the Writ of Right of Ward of the Heir alone, or of the Land alone, or of both; for the Heir thus:

**H** *Rex, &c. Prac. A. quod, &c. redd. B. W. filium et hered. C. cujus custod. ad ipsum B. pertinet, eo quod pradict. C. terram suam tenuit in socagio, et pradict. B. propinquo est heres ipsius C. ut dicitur.*

And there is the like Writ for the Land. And the Reason and Cause that he shall have this Writ seemeth to be, because that for the Land he cannot have other Remedy, if he cannot enter into the Land: And yet I conceive that



## Writ of Right of Ward.

Guardian in Socage shall have a Writ of Right of Ward for the Land, because he is accountable unto the Heir for the same, which proves he hath no Right unto the Land, but as Bailiff.

And the Guardian in Socage shall have a Writ of Ward for Cause of Wardship, where his Guardian ought to have another Infant in Ward, because he is next of Blood unto him to whom the Inheritance cannot descend; and the is such:

*Res. Sc. Prac. A. quod, &c. red. B. custodiam terr. & hered. C. quod ad ipsum B. pertinet ration. custodiae J. filia & hered. D. qui terram suam tenuit in socagio, in manu ipsius B. existens, eo quod praed. B. terram suam tenuit in socagio, & praedict. B. propinquior est haeres ipsius J. ut dicit, Et nisi, &c.*

And it seemeth, That a Writ of Right, *De communi custodia*, I was at the Common Law, and as well for Guardian in Socage for the Body of the Heir, as for Guardian in Knight's Service. But the Writ of Ravishment of Ward was not at the Common Law for the Guardian in Knight's Service, but the same was given by the Statute of *Westm. 2. cap. 35.* And by the Equity of that Statute Guardian in Socage shall have a Writ of Ravishment of Ward as well as Guardian by Knight's Service; and by the same reason he shall have a Writ of Right of Ward at the Common Law, as Guardian in Socage shall have.

And if the Mesne hath two Daughters, one within Age, K and the other of full Age, and dieth; and the Lord hath the Wardship of her within Age, and afterwards the Tenant dieth, his Heir within Age, now the Lord Paramount, and the Sister of full Age who is one of the Mesnes, shall have a Writ of Right of Ward in this Form:

*Prac. A. &c. quod, &c. reddat B. uni filiar. & heredum W. & P. de E. custodiam terre & hered. R. quod ad ipsos B. & P. pertinet, eo quod praed. R. terram suam de praef. B. & M. soror. ejusdem B. altera fil. & hered. ejusdem W. infra aetatem, & in custodia praedict. P. existens, tenuit per servitium militare, ut dicunt, & nisi, &c.*

And it appeareth in the Register, That the Writ *De E. L. & L. Custodiae* lieth for the Land, and for the Heir together, for the Writ is such:

11 H. 4. 64,  
65. If the  
Ejectment

of Ward be brought of Land only, the Party must shew the Certainty of the Land; but if it be of the Body and Land, the Writ general, *de terris & hered. ii. gaud.*

22 Eliz. Dy. 292. It lieth not but of Land only.

*Rex Vic'.* &c. *Si A. fecerit, &c. tunc sum. &c. B. ostensur.*  
*quare cum custodia terre & hered. C. usque ad legitim.* etatem *her. præd. ad ipsum A. pertineat, eo quod idem C. terram suam* isset aliis  
*de eo tenuit per servitium militare, ac idem A. in plena & paci-* to another,  
*fica seisinâ ejusdem custodiæ diu extiterit, prædicti. B. prædicti. hæretis* yet he may  
*hered. infra ætatem existen. ipsum A. a custodia illa violent.* Writ a-  
*ejecit, ut dicit, & habeas ibi sum. & hoc breve, &c.* gainst him  
who ejected

*him, and yet the Party shall recover Land to his Writ. 12 H. 4. 10. by Hank-*  
*ford; so if one eject the Ejector, he who was first ejected shall not have this Writ*  
*no more than one shall have Trespass, &c. against the second Trespasser, 39 Aff. 2.*

**A** Another Writ for the Land only, where he hath the same by Grant of the Guardian, thus:

*Rex Vic'.* &c. *Si A. fecerit, &c. tunc sum. &c. quare cum*  
*custodia unius virgat. terre cum pertin. in D. usque ad legiti-*  
*mam ætatem J. fil. & hered. C. ad ipsum A. pertineat, ratione*  
*dimissionis quam R. de quo prædicti. C. terram suam tenuit per*  
*servit. militare inde fecit eidem A. ut dicitur, ac idem A. in*  
*plena & pacifica seisinâ ejusdem custod. diu extiterit, idem B.*  
*hered. prædicti. infra ætat. existen. præd. A. a custod. præd. vio-*  
*lenter ejecit, ut dicit, &c.*

**B** Another Writ when a Man hath a Ward of the King's Grant, and he granteth the same over unto another, then thus, as above:

*Ratione dimissionis, quam C. qui custod. illam habuit ex*  
*commission. Dom. Ed. nuper Regis Angliæ, prædecess. nostri, de*  
*quo præd. R. terram suam tenuit per servitium militare, inde*  
*fecit eidem B. &c. ac idem, &c. Or thus, Si B. fecer. &c. tunc*  
*sum. B. respondend. tam nobis quam præfat. G. quare cum nos*  
*commiserimus præf. E. custod. terr. & tenement. quæ fuer. J. de*  
*C. defuncti, qui de nobis tenuit in capite, & quæ ratione minoris*  
*ætat. P. consang. & hered. prædicti. J. in manum nostram extite-*  
*runt, habend. cum omnibus ad custod. ill. spectantibus usque ad*  
*legit. ætat. hered. prædicti. & idem E. in plena & pacifica*  
*seisinâ ejusdem B. custod. pretext. commiss. nostr. præd. diu ex-*  
*stitit, idem B. hered. præf. infra ætat. existen. præd. A. a cu-*  
*stod. cent. solid. redditus cum pertin. in H. inde violenter ejecit,*  
*ut dicit, &c.*

**C** And the Guardian in Socage shall have a Writ *De Ejectione Custod.* as appeareth by the Register; and by the like reason, as well as he shall have a Writ of Ravishment of Ward for the Body, he shall have a Writ of Ejection of Ward for the Land,

13 H. 5. 27



## Writ of Right of Ward.

And if a Man have the Patronage of an Abbey or Priory, D and hath Right to have the Temporalities during the time of Vacation of them, if he have the Possession thereof, and be ousted, he shall have a Writ *De Esibione Custodia*; and the Writ shall be such:

*Ostenſur. quare cum custod. priorat. de B. ad ipsum A. in vacationibus ejusdem prioratus pertineat, ac idem A. in plena et pacifica seſſina ejusdem custodia in ultim. vacatione ejusdem custod. in ultima vacatione prioratus predicti. diu extiterit, pred. B. pref. A. a custodia illa violenter ejecit, &c.*

And by the Register it is said, That the Writ of Right may be sued *De Custodia Priorat'*, in time of Vacation, &c. thus:

*Rex. &c. Praef. &c. quod, &c. redd. B. custodiam Prioratus de N. &c.*

And that is grounded upon the Statute of *Magna Charta* cap. 6. *Quod omnes Patres Abbatiarum, &c.*

And there is another Writ of Ward for the Body, which is called a *Writ of Ravishment of Ward*: And that Writ lieth as well for Guardian in Socage, as for Guardian in Knight's Service.

And if a Man have one in Ward because his Ancestor E held of him by Knight's Service, and the Ward is ravished and taken from him; he shall have that Writ of Ravishment of Ward.

And so shall the Grantee of the Ward, or his Executors F if he be taken from them; and the Form of the Writ for the Lord of whom the Ancestor of the Ward held, is such:

*Rex Vic. &c. salut. Si A. fecerit, &c. tunc pone, &c. B. quod sit coram Justiciariis nostris, vel coram nobis tali die, ubicunque, &c. ostensur. quare J. fil. et hered. C. infra etatem existens, cujus matrimonium ad ipsum A. pertinet, apud N. inventum rapuit & abduxit, contra voluntatem ipsius A. & contra pacem nostram, et interim diligenter inquiras, ubi hec illi sit in balliva tua, et ipsum, ubicunque fuerit inventus, cap. et salvo et secur. custod. ita quod eum habeas coram pref. Justic. nostris. Or thus, Coram nobis, &c. ad pref. terminum ad redd. cui pred. A. et B. reddi debeant, et habeas, &c.*

And if the Heir be ravished and carried from County to County, then the Writ shall be thus:

*Rex Vic. &c. Quest. est nobis A. predicti. B. C. fil. et hered. L. infra etat existens, et in custodia sua existens, apud E. in Com. Linc. rapuit, et de Com. illo usque I. in Com. tuo abduxit, contra volunt. ipsius A. et contra pacem nostram; et item tibi precipimus,*

onus, quod prædict. hered. ubicunque in balliva tua inven. poteris, capias & salvo & secur. custodias, ita quod cum habeas coram Justic. nostris apud, &c. tali die, quem diem idem A. habet ver. præfat. B. ad redd. cui de jure reddi debeat, & habeas, &c.

**G** And the form of the Writ for the Guardian in Socage is thus:

Rex, &c. Si A. fecerit, &c. tunc pone, &c. B. &c. quare cum custodia terr. & hered. C. usque ad legitimam etatem ipsius hæredis ad ipsum A. pertineat, eo quod prædict. C. terram suam tenuit in socagio, & prædict. A. propinquior est hæres ipsius C. ac idem A. in plena, &c. diu extiterit, prædict. W. B. filium & heredem prædict. C. infra etatem & in custodia ipsius A. exist. apud N. inven. vi & armis cepit, & abduxit, & alia enormia ei intulit, ad grave damnum ipsius A. & contra pacem nostram, Et habeas ibi nomina pleg. & hoc breve. Teste, &c. Vel sic: Vi & armis rapuit, & ipsum sine licetia & voluntate ipsius A. maritavit ad grave damnum, &c.

[ 141 ]

**A** And if the Infant be in the Custody of the Lord, and during his Nonage he enter upon the Lord, and oust him of the Land which he ought to have in Ward, then the Lord shall have a Writ of Intrusion of Ward against him, and the Writ shall be such:

**C** Rex Ric<sup>o</sup>, &c. Si A. fecerit, &c. tunc sum &c. I. filium & hered. C. ostens. quare cum custod. ad ipsum A. usque ad legitimam etatem hæredis prædict. pertineat ratione dimissionis quam L. de quo prædict. C. terram suam tenuit per servitium militare inde fecit præfat. A. & que A. in plena & pacifica seifina, &c. extiterit, prædict. I. infra etatem existens, se in terram prædict. intrusit, & custodiam illam præfat. A. detinet, ad damnum ipsius A. non modicum & gravamen, &c. ut dicit, &c. Et habeas, &c. Vel sic: ostens. quare custodia maneris de T. cum pertin. usque ad legitimam etatem prædicti I. ad ipsum A. pertinisset ratione dimissionis, quam B. cui H. de quo & Alice uxor ei præd. C. Manerium illud tenuit per servitium militare, illud dimisit, inde fecit præf. A. &c. ac idem A. in plena, &c. præd. I. dum infra etatem fuit, se in manerium prædictam intrusit, & custod. illam præfat. A. hucusque detinuit, ad damnum, ut dicit, & habeas, &c.

**D** And the Writ lieth where the Tenant holdeth of a Man and his Wife by Knight's Service in the Right of the Wife, and the Tenant dieth, his Heir within age, and the Husband granteth the Wardship of the Land unto another who granteth it over unto another, upon whom the Heir intrudeth, &c.

And



2 H. 7. 9.  
31 Ad. 26.  
Br. Ailin.  
321.

And if the Lord have the Custody of the Heir within Age and tender him a convenient Marriage, and he refuseth it and intrudeth, then the Lord shall have a Writ against him for to recover the Value of the Marriage, and also to recover the Land, which shall be such :

Vid. 8 Eliz.  
Dyer 225.  
The tender  
traversed.

*Rex Vic. &c. Si A. fecerit, &c. tunc summ. &c. B. &c. ostens. quare cum maritagium predicti B. ad ipsum A. pertineat, eo quod predicti B. terram suam de eo tenuit per servitium militare, & idem A. predicti B. dum fuit infra etatem in custodia sua competens maritagium absque disparagacione, juxta formam statuti de communi consilio regni nostri inde provisum, sepius obtulerit, idem B. maritagium illud renuens prof. A. de maritagio suo contradicit, &c. ad grave damnum, &c.*

And it appeareth by the Writs above said, That the Guardian shall have a Writ of Intrusion of Ward against the Heir as well at his full Age, as during his Nonage.

There is another Writ *De valore maritagii* for the Lord or for his Executors against the Heir, without speaking of any Intrusion made by the Heir into the Land. And the Writ is such :

*Rex Vic. &c. Si A. &c. fecerit, &c. tunc summ. &c. quare cum maritagium ipsius L. &c. (usque ibi) obtulerit, prof. L. maritagium illud renunciet de eodem maritagio profat. A. cum jam ad plenam etatem pervenerit satisfacere recusavit, & adhuc recusat minus juste, ad damnum, &c. Et contra formam statuti.*

And if the Heir be in the Lord's Custody, and doth marry himself within Age, without the Assent of the Lord, and when he cometh of full Age, he entreteth upon the Lord, and puts him out of the Land, then the Lord shall have a Writ of Forfeiture of Marriage against him, for the double Value of the Marriage. And the Writ shall be such :

*Si A. fecerit, &c. tunc summ. C. fil. & hered. D. quod sit coram Justiciis, &c. ostens. quare cum maritagium ipsius C. una cum custodia unius acr. terr. cum pertin in N. ad ipsum A. pertin. ratione dimission. quam L. qui custodiam illam habuit ex dimissione F. cui G. eam dimisit, de quo predicti D. terram suam tenuit per servitium militare, inde fecit profat. A. & idem A. prof. C. dum infra etatem & in custodia sua competens maritagium absque disparagacione juxta formam statuti de communi consilio regni nostri inde provisum sepius obtulerit, idem C. maritagium illud renuens, se sine licentia & voluntate ipsius A. maritar. fecit, & se in terris predictis (prof. A. pro maritagio predicto non satisfacto) intrusit, & de maritagio predicto eidem A. satisfacere contradicit, ad grave damnum ipsius*

*ipsum A. contra formam statuti predicti. ut dicit, & habeas, &c. & summ. &c. Teste, &c.*

**I** And that Writ lieth where the Lord granteth the Wardship of the Heir and Land of his Tenant unto *F.* who granteth the same Heir and Land unto *L.* who granteth the same over unto the said *A.* the now Plaintiff, who rendereth Marriage unto *C.* and he refuseth the same, and marieth himself during his Nonage, and at his full Age entreth into the Land, the Marriage not satisfied, &c.

**K** And otherwise for the Lord against the Tenant himself, thus:

*Si A. fecerit. &c. summ. &c. B. fil. & hered C. quod sit coram Justiciar. &c. offens. quare cum maritadium predicti. B. ad ipsum A. pertinat eo quod predicti. C. terram suam de eo tenuit per servitium militare, & idem A. competens maritadium absque disparagacione, &c. & predicti. B. dum infra atatem fuit, frequent. obtulerit, idem B. maritadium illud admittere recusavit, & sine licentia & voluntate pref. A. se maritavit &c. ad grave damnum. &c.*

**L** And the Lord may have such Writ of Forfeiture of Marriage against the Heir of the Mesne, if he marry during his Nonage, and enter into the Mesnalty, or take the Rent and Services of the Tenant Paravail, and the Writ shall be general, as if he were Tenant Paravail, &c. not making mention of the Mesnalty.

**A** If a Man be Tenant in Tail, the Reversion to the King, and the King doth license him to alien in Fee, and to take back an Estate unto himself and his Wife in Tail, the Remainder to his right Heir, and he maketh such Feoffment, and taketh back an Estate unto himself and his Wife in Tail, the Remainder to his right Heirs, and dieth, his Heir within Age; The King, notwithstanding his Licence, shall have the Wardship during the Life of the Wife, for that the Licence doth not give him Power to alien the King's Reversion, &c. And when the Reversion cannot be discontinued, the Estate Tail cannot be discontinued, but by his death the Heir may enter into the Land, and so the King may in his Right.

**B** If a Man have Lands for Life, the Remainder in Fee unto another, and he in the Remainder dieth, his Heir within Age, he shall not be in Ward during the Life of the Tenant for Life; because that during his Life, the Tenant for Life is Tenant to the Lord Paramount, although the Land be holden by Knight's Service. And the Guardian shall put out the Termor who holdeth for Years of the Lease of his Tenant.

And

[ 142 ]

V. Dye r  
& 12. &c  
130 b. C.  
2. PART 92.



And the Statute of *Marlebridge* in a manner proveth he may so do. And there are many old Books to prove the same by Judgments that are given; and it seemeth reasonable that it should be so, by the ancient Title which the Lord hath, when he reserved such Services upon his Feoffment, to have the Wardship if he dieth, the Heir being within Age.

*C. part 35.* And if the Tenant be disseised and dieth, his Heir being  
*41 E. 3. 18.* within Age, the Lord shall seize the Ward, and enter into the  
*Br. War. 10.* Land upon the Disseisor in the Right of the Heir.

But if the Tenant doth enfeoff his Son during his Non-  
*33 H. 6. 16.* age, who doth Homage unto the Lord, and afterwards the  
*Prisot.* Tenant dieth, the Heir within Age, the Lord shall not have

the Wardship of him, because he hath accepted of him for his Tenant in the Life of the Father. But it appeareth by  
*14 Aff. Br.* *Magna Charta*, That the Lord shall take Homage of the Heir  
*Affize 192.* before he have the Wardship of him, but that is after the  
*Com. 133.* Death of the Ancestor, and not in the Life of the Ancestor,  
*36 E. 3.* and so was the Law taken in Old Books.

If a Man purchase Lands by feoffment which are holden  
*Gard. 11.* severally of divers Lords by Knight's Service, and afterwards  
*31 E. 1.* dieth, his Heir within Age, that Lord who first getteth the  
*Gard. 155.* Ward shall have him, because there is no Priority; but if  
*Br. Fealty.* he purchase Lands which are holden by Knight's Service of  
*Good but in* one Lord, and afterwards purchase Lands by Knight's Service  
*Forfeiture* of another Lord, and dieth, his Heir within Age, that  
*of Marriage.* Lord shall have the Wardship of the Heir of whom the  
*in 7 E. 2.* Land first purchased was holden, for he holdeth of him by  
*Accom. Jur.* the more ancient Feoffment and Priority, than he holdeth of  
*Statute. 31.* the other Lord.

And if a Man hold of the King by Posteriority, and holdeth  
*So of Land* Lands of another Lord by Priority, and afterwards dieth, his Heir within Age, the King shall have the Wardship of his Body by his Prerogative, not having Regard to the Priority or Posteriority.

And if a Man hold of the King by Posteriority, and of  
*C. 5. part* another Lord by Priority, and afterwards the King granteth  
*36.* the Seigniority unto the Queen for life, and afterwards the  
*Quere, If* Tenant dieth, his Heir within Age, the Queen shall have  
*Plenary be* the Wardship of the Body, not having Regard unto the Post-  
*a good Plea* eriority, because that the Reversion of the Seigniority doth  
*against the* remain in the King.  
*Queen*

But if the King hath granted the Remainder of the Seigniority in Fee unto a Stranger, then it seemeth the Queen shall not have the Wardship of the Body, for the Seigniority  
*where the*  
*Reversion is*  
*in the King.*  
*18 E. 3. 13.*  
*Stauford,*  
*Prerogative*  
*13.*

of Posteriority, &c. and Priority is changed by the Feoffment of the Tenant of the Land. And if he make a Feoffment in Fee of the Land which he holdeth by Priority, and take back an Estate again of the same, now he holdeth the same Land of that Lord by Posteriority, whereas he held it before of him by Priority. But if the Lord of whom the Tenant holdeth by Priority, grant his Seigniorie unto another in Fee, and take back again an Estate in the Seigniorie to him in Fee, &c. yet the Tenant holdeth of him by Priority as he held before, because the pleading of Priority is to say, That he holdeth of such a Man and his Ancestors, or of those whose Estate he hath in the Seigniorie *per antiquius feoffamentum*, &c. than he holdeth the other Land, so that the Feoffment of the Land doth make the Priority. And if the Tenant do forejudge the Mesne, of whom he holdeth by Priority, &c. Yet he shall hold by Priority of the Lord Paramount, as he held of the Mesne before, &c.

*If he make a Feoffment & this done to his use. Quare if the Priority be gone. 2 E. 2. Fitz. Gard. 2. acc.*

**G** The Mayor and Aldermen, and Chamberlains by the Custom of London shall have the Custody of any Orphan in the City, and if they commit the Custody of such Orphan to another, he shall have a Writ of Ravishment of Ward against him who taketh the Ward out of his Possession.

**H** And if the Guardian marry the Heir after the age of 14 Years, and afterwards the Heir is taken by a Stranger, the Guardian shall not have a Writ of Ravishment, &c. because he hath had the Effect of his Marriage.

**I** If a Man have a Ward in the Right of his Wife, although the Wife dieth, yet the Husband shall have the Ward, because it is a Chattel vested in him.

*Tenant in Tail grants his Estate of a Manor*

*unto which an Advowson is appendant the Church void, Tenant in Tail dieth, the Grantee shall have the Advowson. So if the Church void during the Term, and the Term expire, 9 E. 3. Quare Impedit 18.*

**K** Where the Tenant maketh a Feoffment by Collusion, and the Lord accepteth the Services of the Feoffee, then he shall not have the Wardship of the Tenant's Heir, nor shall oversee the Collusion.

And if a Man at this Day maketh a Feoffment in Fee to his Use, and the Lord accept the Services of the Feoffee: yet if the Feoffor who hath the Use dieth, his Heir within Age, the Lord shall have the Wardship of his Heir by the Statute of 4 H. 7. cap. 17.

[ 143 ]  
*But the Certuyque use of a Seigniorie shall not have Guard*

*for the Feoffee before 27 H. 8. was Lord,*

And



And if a Man lease Lands for Term of Life, the Remainder to the Husband and Wife in Tail, the Remainder in-Fee to the Heirs of the Husband, and the Husband and Wife die, his Heir within Age being Tenant for Life, his Heir shall not be in Ward.

If the King's Tenant giveth Lands in Tail without the King's Licence, and the King accepteth the ancient Tenant for his Tenant, and the Services, and afterwards the Donee in Tail dieth, his Heir within Age, the King shall have the Wardship of him, as seemeth by the Statute of 34 E. 3. cap. 15. And this Acceptance of the Services shall not conclude the King; for the King shall not be concluded, &c. if he have matter to shew which may serve him. And yet in Anno 4 H. 6. it is adjudged contrary; and therefore *Quere* the Law in that case.

27 H. 8. 26.  
Fitz-Herbert contra.  
Vid. 34 & 35 H. 8.  
Dyer 54.  
4 H. 6. 19.

And the Lands of the Wife within Age shall be in Ward, although her Husband be of full Age.

And if a Woman be past the Age of fourteen Years at the time of the death of her Ancestor, she shall not be in Ward.

A Committee of the King shall not have a Ward by reason of the Ward; but the King shall have the same, because the King remaineth Guardian, &c. and the Heir shall sue Livery.

2 H. 4. 19.  
acc. 40 E. 3.  
14. contra.  
10. Eliz.  
Dyer 277.  
The Executors of the Predecessor shall have the Ward.

If a Bishop have Title to have a Ward, and doth not seize him in his Life time, and dieth, the Successor shall have that Ward, and shall seize him, &c. Otherwise it seemeth if the Bishop had seized him.

If the Heir Female be married by the Lord before her Age of fourteen Years, and afterwards the Husband dieth, the Heir Female shall not be married again by the Law, &c. And by that same reason he shall not have a Writ of Ravishment of Ward, if another Man do ravish her afterwards.

If the Grandfather have a Son, and the Son taketh a Wife, and have Issue, and dieth, the Mother of the Issue shall have the Wardship of the Child which is her own Child, and not the Grandfather, although the Issue may have the Land which ought to descend to him by the Grandfather, and although that the Mother shall not have the Land. *Hill.* 31 E. 3.

C. 6. part 21. 6.  
11 H. 7. 12. contra.  
7 H. 4. 12. acc.

If an Infant recover Land by a Writ of *Dum non fuit compos mentis*, he shall not be in Ward; and so it seemeth if he do recover by a Formedon or other Action Ancestral, where he could not enter, because his Ancestor did

not die Tenant to the Lord, &c. nor in his Homage,

And a Man may seise his Ward, although he be Apprentice or in Service of another.

But if the Tenant maketh a Feofment by Collusion, the Lord ought to recover the Land by a Writ of Right of Ward, before he shall have a Writ for the Ravishment of the Ward, &c.

If a Man be Tenant by the Courtesie of a Seigniorie, the Heir shall not be in Ward during the Life of the Tenant by the Courtesie, &c.

But if a Man have Issue a Son, and afterwards he taketh a Wife who hath Lands holden by Knight's Service, and hath Issue by her, and afterwards the Wife dieth, if the Husband be not Tenant by the Courtesie of the Land, then the Husband's younger Son shall be in Ward during the Life of his Father, &c.

If an Infant be married in the Life of his Father within the Age of Consent, and afterwards the Father dieth, the Infant being within the Age of Consent; The Lord shall have a Writ of Ravishment of Ward for the Infant, because he may perhaps disagree unto the Marriage.

And the Lord of the Villain shall have the Wardship of the Land and the Body of the Heir of a Villain, if he seise him before the Lord, &c. otherwise not of the Land.

If Lands descend unto the Wife, and afterwards the Wife hath Issue by her Husband, and dieth before the Husband entred, so that he shall not be Tenant by the Courtesie; The Issue shall be in Ward if he be within Age, and if he be not Heir apparent to the Husband; and so if the Issue by the Wife were a Woman, and within Age, where the Husband hath a Son living, that Issue within Age shall be in Ward, during the Life of the Husband which is its Father.

And *Pasch. 31 E. 3.* The Opinion was, that if the Husband have not Lands which shall from him descend to his Issue, that then his Issue shall be in Ward for the Lands of his Wife, if he were within Age, &c. in the Life of the Husband: But it seemeth the Law is not now taken to be so.

Guardian in Socage did grant the Wardship over to a Stranger, and the Grant awarded good. *Hill. 26 E. 3. & Hill. 31. E. 3.*

If an Infant enter for a Condition broken upon a Feofment made by his Ancestor, he shall be in Ward for that Land, if it be holden by Knight's Service.

And

30 E. 1. Gar  
156. acc. by  
shall not  
have For-  
feiture upon  
tender and  
refusal.

7 H. 6. 12.  
in case of  
the King.  
40. Ass. 7.  
Br. VIII. 32.

11 H. 7. 12.  
12 H. 7. 20.  
6 H. 4. 4.



Vid. 2 & 3  
Elix. Dyer  
190.

And a Man or a Woman shall have a Writ, *Quare filium et hered. suum rapuit*: Or, *Quare filium & heredem rapuit*, Or. *Causanguineum & heredem suum rapuit*, &c. and that by the Common Law.

And the Process in a Writ of Ward appeareth by the Statute of *Marlebridge*, cap. 7. viz. Summons, Attachment and Distress

And in a Writ of Right of Ward, if he cometh not at the Distress, then the Proclamation shall be awarded, that he shall have day by while two or three County Courts are holden in the mean time, before the Return thereof; and if the Writ be returned, served, and he do not appear, he shall lose the Wardship, and the Plaintiff shall by Judgment recover the same.

## Writ of Escheat.

*Founder-ship shall not escheat nor be forfeited, because it is tied to the Blood. Also Rent charge shall not es-*

*cheat by Death, cont. by Attainder, 24 E. 3. 22. Br. Escheat. 9. H. 7. 37. 7 E. 4. 11. A. 120. If Abby or Parish Church be dissolved, the Lands which they held shall escheat. 21 H. 7. 89. If a Man holdeth two Acres by several Services of one Lord, he ought to have two Writs of Escheat.*

THE Writ of Escheat lieth where the Tenant who hath an Estate in Fee-simple, of any Lands or Tenements, and holdeth them of another, and the Tenant dieth seized without Heir General or Special, the Lord shall have the Writ of Escheat against him who is Tenant of the Lands or Tenements, after the Death of his Tenant, and by this Writ he shall recover the Land, because he shall have the same in lieu of his Services.

But if Tenant in Tail die without Heir, he in the Reversion shall not have a Writ of Escheat, but a Formedon in the Reverter.

[ 144. ]

*Tenant in Tail of a Sig. grants the same, which escheats, Tenant in Tail dieth without Issue, he in the Reversion shall have Escheat of the Land, because he is come in lieu of the Sig. See 40 E. 3. 4. 33 E. 2. Escheat. 9. but by his opinion he shall not have Escheat, because the Reversion was out of him at the death of the Tenant.*

But if a Man be Tenant for Life, the Remainder in Fee B unto a Stranger and his Heirs, and afterward the Stranger dieth,

dieth without Heir, and afterward the Tenant for Life dieth; the Lord shall not have a Writ of Escheat, because the Tenant for Life was Tenant to the Lord, and not he in the Remainder, &c. But there the Lord shall have a Writ of Infrustration if a Stranger enter on the Land after the Death of Tenant for Life.

**C** And if the Tenant be disseised, and afterwards dieth without Heir, &c. it seemeth the Lord shall have a Writ of Escheat, because his Tenant died in the Homage. And in that Case he shall have a Writ of Right of Ward, if the Tenant die, his Heir being within Age, and by the like Reason he shall have a Writ of Escheat.

**D** If the Tenant dieth without Heirs, and afterwards the Lord dieth; the Heir of the Lord shall have a Writ of Escheat for to recover the Land, &c. for that Escheat made, and shall give a Right unto the Lord to have the Land.

And this Writ shall descend from the Lord unto his Heir, &c. and the Forms of the Writs of Escheats are divers: One where the Tenant is a Bastard, and dieth without Heir, and then the Writ is such:

*sher, whose Heir he is, and Exception taken, because it ought to be quod de eo tenet.*

**E** *Rex Vic', &c. Præc. A. &c. quod redd. B. 10 acr. terr. cum pertin. in N. quas C. de eo tenuit, & qua ad ipsum B. reverti debent, tanquam escheata sua, eo quod præd. E. bastardus fuit, & obiit sine hered. ut dicit. &c.*

**G** And if he be not a Bastard, but dieth without Heir, then the Writ is; *Et que ad ipsum B. reverti debeant tanquam escheata sua, eo quod præd. C. obiit sine hered. Vel sic: eo quod præd. C. feloniam fecit, pro qua suspensus fuit: vel pro qua utlagatus fuit: vel pro qua regnum abjuravit; & nisi, &c.* And the Form of the Writs for the Heir appear in the Register.

**H** And the King shall have a Writ of Escheat for Lands in London, if the Tenant died seized of Lands there without Heir, because the Lands in London are holden of the King; and this Writ he may sue in the King's Bench or in the Common Pleas.

And if a Man be beheaded for Felony, or die after Judgment, before that he be executed by the Officer; yet the Writ shall say, *Pro qua suspensus fuit, &c.* and it is not material whether that he be hanged or not.

*34 E. 3. Escheat 10. Contrary if he stand mute, 4 E. 4. 18. 22 H. 6. 38. Newton. If a Man go beyond sea without Licence, and taketh Wife there, and hath Issue and dieth, the Land shall escheat.*



42 E. 3. 34.  
Where the  
Tenant is  
Utlage of  
Felony, the  
Lord hath  
Election to  
have a Writ  
of Escheat;  
supposing  
that the  
Tenant was  
Utlage, or  
that he died  
without  
Heir.

And the Course in the Register was, That if a Man were attainted of Felony, that the King did send a Writ to the Sheriff to enquire what Lands and Tenements he had, and which he held of the King, and which of other Lords, and by what Service, and what they were worth by the Year *ultra reprints*, and that he certify the same. But the same is altered by the Statute of 28 Eliz. 3. cap 9. which is, That a Commission be made out unto the Sheriff to take the Inquest: And also there was another Writ appointed by the Register, directed unto the Sheriff to enquire whether such House or Land which *W.* had, who was attainted of Felony, were seized into the King's Hand for a Year and one Day or not, and of whom they were holden, and who had the Year, Day and Waite, and ought to answer the King for the same, and that he send the same before the King, &c. and now in Place of these Writs, there ought to be a Commission granted to enquire thereof, directed to certain Persons by the Statute aforesaid.

And if a Man be attainted of Felony, and another enters into the Land, and taketh the Profits, and if it be found by Commission that such a Man, who was attainted of Felony, had such Lands and Tenements, and that the Lands and Tenements have been in the King's Hand for one Year and a Day; and that *B.* hath taken the Profits for that Year and Day, and also hath had the Waste thereof; and that the Lands are holden of *F.* Then *F.* shall have a Writ unto the Sheriff, for to deliver him Seizure of the Lands, &c. *Salvo jure cuiuslibet.*

And he who hath taken the Profits for the said Year and Day, shall answer the King for the same: And thereby appeareth, That the King shall not have but the next Year and Day, which cometh after the Attainder, and that he took the Profits for that Year, shall answer the King for the same.

And if Lands be holden of an Abbot, and the Tenant die without Heir, &c. the Successor shall have a Writ of Escheat, and the Writ shall suppose, *Ad ipsam nunc Abbatem reverti debet tanquam Escheata sua, eo quod prad', &c. obiit sine herede, &c. ut dic. Et nisi, &c.*

And the Tenant for Life of the Seignory shall have a Writ of Escheat, or Tenant in Dowry, or by the Courtsey, and also the Lord shall have a Writ of Escheat of the Mefalty, which is but a Rent-service, and shall demand the Rent by the Writ.

And the King shall have a Writ of Escheat of Tenements within

within Cities and Boroughs, which are holden of him in Fee-farm.

And if a Man have Title to have a Writ of Escheat, if he do not accept Homage of the Tenant, he shall not afterwards have the Writ against him, because he hath accepted him his Tenant; and so if he accept Fealty of him. But if he do accept the Rent of the Tenant, that shall not bar him of his Writ of Escheat; and the Process are *Summons, Grand Cape* and *Petit Cape*, as in any other *Præcipe quod reddat*.

21 H. 7. 30.  
But by the  
Count, he  
shall suppose  
the Land  
was holden.  
11 H. 4. 12.

[ 145 ]

## Writ of Covenant.

- A WRITS of Covenant are of divers Natures; for some are merely personal; and some Covenants are real, to have a real Thing, as Lands and Tenements; as a Covenant to levy a Fine of Land is a real Covenant. But a Writ of Covenant which is more personal is, where a Man by Deed doth covenant with another to build him a House, &c. or to serve him, or to enfeoff him, &c. and he doth not the same according to the Covenant: Then he with whom the Covenant was so made, shall have a Writ of Covenant against him. And there is a Note in the Register, which is this: *A Writ of Covenant ought not to be made according to Law Merch. without a Deed, because no Plea of Covenant can be without Deed, and every Man ought to be judged according to his Deed, and not by another Law; and the Form of the Writ is such, Rex Vic', &c. Prac. A. quod, &c. teneat B. convent', &c. de damn. & perdit. per infidelitatem & defectum W. fil. R. ap. penticii prad. B. infra termin. sex annorum illat. eidem B. restitund'. Et nisi, &c.*

- C And if a Man make a Covenant by Deed to another and his Heirs, to enfeoff him and his Heirs of the Manor of &c. Now if he will not do it, and he to whom the Covenant is made dieth, his Heir shall have a Writ of Covenant upon that Deed; and also his Assigns shall have a Writ of Covenant where the Covenant is made to him and his Assigns.

11 Eliz. Dy.  
2. 17. Sir An.  
thony Cook's  
Case.

- D And so Executors shall have a Writ of Covenant, of a Covenant made unto their Testators for a personal Thing, and these Writs appear in the Register.

And it appeareth by the Register he may sue a Plaintiff of Covenant in the County or in the Hundred-Court, &c.

And that he shall have a *Recordare* to the Sheriff, for to remove the same out of the County into the Common Pleas, as it shall be done in a *Replevin* sued there.



## Writ of Covenant.

And if the Plaintiff of Covenant be sued in the Hundred, or in other Court of other Lord, he shall have an *Accedens ad Curiam* directed unto the Sheriff to remove the Plaintiff into the Common Pleas.

And the Writ of Covenant for Executors is such: *Præc. F. I. quod, &c. A. B. & C. executoribus testament. N. conventionem facti. inter ipsum N. & W. de E. de ipso W. cum præd. N. more apprenticisi per septem an. moratur. & eidem N. post termin. illum complet. per tantum tempus quantum idem W. infra dicti. termin. se à servitio ejusdem N. elongaverit servitur. ad quam quidem conventionem adimplend. & manutenend. idem W. scripsit. suo se oblig. Et nisi, &c. Et præd. execut. &c.*

And if a Man make such Covenant by Word; or to build him a House, &c. and he doth do it ill; then the Party shall have an Action upon the Case for the ill doing of it.

If a Man covenant by Word to do such a Thing for a certain Sum of Money, and receive one Parcel of the Money, and Day is appointed for the Payment of the rest. Now if he do not according to his Covenant, he shall have an Action on the Case against him for not doing of it, because it is a Bargain betwixt them.

VI. 28 E. 3. 2. 1. And a Writ of Covenant lieth against Executors for a Covenant broken of the Testator, and the Writ shall be:

10 H. 7. 18. *Præc. I. & R. executor. testament. E. quod, &c. tenent W. & A. uxori ejus conventionem factam inter ipsum A. & præf. E. de eo quod idem E. hæred. vel executores sui reddant C. sibi & hæred. I. cum idem C. ad plenam ætatem pervenerit rationabil. compot. suum de omnib. terr. & tenement. que præd. I. tenuit in villa de N. in com. N. pervenient quorum custod. idem E. habuit ex dimission. quam præf. A. cui custod. terrar. & hæred. præd. pertinuit eo quod præd. I. terram suam tenuit in socagio, & eodem A. appropinquier fuit hæred. ipsius I. inde fecit eidem E. &c. Et nisi, &c.*

56: 21 a  
2 E. 4. Covenant 2.  
40 E. 1. 5.  
And if a Man have Lands for a Term of Years, and covenanteth to leave them in as good a Plight as he found them, although that he pulleth down the Houses, the Lessor shall not have an Action of Covenant before the End of the Term: For the Covenant hath Relation thereunto, &c. But if he do waste in Wood, Covenant lieth; for he cannot repair it. E. 1. Covenant 29.

36: 30 3  
Feb: 35  
120  
If a Man make a Lease by Deed-Poll, if the Lessor put out the Lessee, he shall have a Writ of Covenant upon the Deed-Poll. But if a Stranger who hath no Right, put out the Lessee, he shall not have a Writ of Covenant against the Lessor,

*Writ of Covenant.*

325

Lessor, because he hath Remedy by Action against the Stranger. But if the Stranger enter by Eigne Title upon the Lessee, then he shall have an Action of Covenant against the Lessor, because he hath no other Remedy.

82 H. 6.

32 H. 6.

**M** And in a Writ of *Covenant* brought by the Lessee against the Lessor, if the Term be not expired, he shall recover the Term again, if he hath put him out. But if a Stranger put him out by Eigne Title, then he shall recover all in Damages against the Lessor. And the second Lessee shall have a Writ of Covenant against the Lessor, if the Lease be made to him and his Assignees with Warranty.

1 bid: 4

And if a Man lease Lands for Life by Deed, and afterwards putteth him out, the Lessee shall not have a Writ of Covenant against him, but an Assize. But if he grant by the Deed, That if a Stranger enter by Eigne Title, that then he shall have a Writ of Covenant thereupon: Now upon the special Matter he shall have a Writ of Covenant, otherwise not, *Quod Vi. Trin. 26 H. 6.*

33 E. 2. 24.  
Skipwith  
and Kne-  
vvt. he shall  
recover as-  
sises only.  
24 E. 3. 24.  
he shall re-  
cover his  
Term.  
20 E. 3. Co-  
venant 3.  
Vi. 9 Eliz.  
Dyer 257.

**A** And in *London*, a Man shall have a Writ of Covenant without a Deed for the Covenant broken.

27 H. 6. Co-  
venant 11.

**B** And a Man shall have a Writ of Covenant against the Sureties who became Sureties, or gave Security that a Man should perform such Covenants, &c.

17 H. 6. 10.  
40 E. 3. 5.  
[ 146 ]

**C** And the Assignee of the Lessee shall maintain a Writ of Covenant against the Lessor, although there be not any Assignee mentioned in the Deed of Covenant.

42 F. 3. 3.  
finchden.  
If the Cove-  
nant go  
with Land,

*the Assignee shall have Covenant without being named. As two Coparceners one covenanteth to discharge his other Party, the Alliance shall have Covenant.*

**D** Also Administrators shall have a Writ of Covenant as well as Executors.

**E** And the Writ of Covenant ought to be brought where the Covenant was made. But if he bring it in another County, the Party shall not plead the same to abate the Writ, unless the Deed bear Date in another County, and so the Title of Covenant in the Abridgments were large for that Matter.

26 H. 6. Co-  
venant 3.  
Although  
it bear Date  
in other  
County, ye  
the Writ  
lieth wite  
the Land  
is.



## Covenant to levy a Fine.

**T**HERE is another Manner of Covenant, which is more F in the Realty. And that Writ properly lieth where a Man by Deed granteth to another to levy a Fine to him and his Heirs of certain Lands and Tenements, he to whom the Grant is made shall have a Writ of Covenant against him to levy a Fine of that Land, and the Form of the Writ is such :

*Rex Vic' &c. Præcip. A. &c. quod, &c. teneat B. convention: suam inter eos fact. de manerio de N. cum pertin. Vel sic; de uno mesuagio & una acr. terr. cum pertin. in N. &c. & nisi, &c.*

And the Form of the Particulars in that Writ shall be used as the Form is in a *Præcipe quod reddat* of Land, to put the Particulars in the said Writ.

46 E. 3. 4.  
47 E. 3. 3. And if he who ought to levy the Fine, and make the Co-G nusance, cannot come for Sickness or other reasonable Cause into Court, then he may sue a Writ of *Dedimus Potestatem*, directed unto some Justice, that he go to him to take the Conusance, and to certify the same to the Justices of the Common Pleas, and the Writ of Covenant ought to be sued before the *Dedimus Potestatem* be returned in the Common Pleas; and the *Dedimus Potestatem* ought to recite that the Writ of Covenant is depending in the Common Pleas before the Justices; and the Writ shall be such :

*Rex dilecto & fideli suo, W. Rickhil salutem. Cum breve nostrum de convention. pendeat coram vobis & sociis vestr. Justic. nostris de banco inter A. & B. & C. uxor. ejus de una carnea terra cum pertin. in N. ad finem inde inter eos coram vobis & sociis vestris prædict. de banco præd. secundum legem & consuetudinem regni nostri levand ac præf. A. B. & C. adeo impotentes sui existant, quod absque maximo suorum corporum periculo usque ad Westm. ad diem in brevi prædict. contentum ad recognitiones quas in hac parte requiruntur faciend. laborare non sufficiunt, ut accepimus. Nos statui eorund. A. B. & C. compatientes in hac parte, dedimus vobis potestatem recipiend. cognitiones quas præd. A. B. & C. coram vobis facere voluerunt in præmiss. & ideo vobis mandam quod ad præf. A. B. & C. personaliter accedent. cognition. suas præd. recipiatis. Et cum eas receperitis præf. socios vestros inde distincte & aperte reddatis certiores ut tunc finis ille inter partes prædict. de tenementis prædict. coram vobis & sociis vestris prædict. in eodem banco levari possit, secundum legem & consuetudinem prædict. & habeas ibi tunc hoc breve. Teste, &c.*

And

And if the *Dedimus Potestatem* be made unto any the Justices of the King's Bench, then the Form of the Writ is such :

*Rex dilect', &c. W. capital. Justic. nostro. Vel sic; Justic. nostro, &c. Cum custos domus vicaria Ecclesie beati Petri Ebor. tulerit breve nostr. de convent. versus H. militem de advocacione Eccles. de F. ad finem inde inter eos coram Justic. nostris de banco secund. legem & consuetud. regni nostri levand. ac idem custos & H. adeo impotentes, &c. (usque ubi) & cum eas recepertis pref. Justic. nostros inde sub sigillo vestro distincte & aperte reddatis certiores, ut tunc finis ille, &c. (usque ibi) secundum legem & consuetudinem supradict. mittend. eisdem Justic. hoc breve. Teste, &c.*

And if a Man have divers Writs of Covenant depending against several Persons in several Counties, &c. he may have one Writ of *Dedimus Potestatem* directed to one Justice to take their Conuſance severally, and to certify them, &c. and the Form of the Writ is such :

*Rex, &c. Cum breve nostrum de conventione pendeat coram vobis & sociis vestris Justic. nostris in banco inter E. & J. de medietate manerii de N. cum pertin. & aliud breve nostrum de conventionis pendeat coram vobis & sociis vestris præd. inter ipsam E. & præf. I. de uno mesuagio, &c. (& sic de aliis, &c.) ac fines inter eos, &c. (ubi supra.)*

And if a Man ought for to levy a Fine, and he is going in the King's Service, then he shall have a *Dedimus Potestatem* directed unto the Justices, to take his Conuſance. And so of a Woman who is with Child; and the Writ shall mention the same; thus,

*Rex, &c. Cum breve, &c. (usque ibi) ad finem, &c. ac præf. W. de mandato nostro obsequio nostro alibi intendat, & præf. I. prægnans sit & gravida, ac prædict. B. languidus & impotens sul existit, per quod prædict. W. apud Westm. ad diem in brevi contentum venire non potest, nec prædict. I. & B. ad dict. diem & locum laborare non suffic. ad cognit', &c. Nos eidem W. grat. volentes facere specialem in hac parte, & statui eorundem I. & B. compariet. in hac parte.*

And if he in the Reversion will levy a Fine of his Reversion unto another upon a Writ of Covenant sued forth against him, the Conuſance shall be taken in the Common Pleas, but the Fine shall not be engrossed until the Tenant for Life have attorned; and the Fine is said to be engrossed, when the Chirographer maketh Indentures of the Fine, and delivereth them to the Party to whom the Conuſance is made, and then it is said, that the Fine is engrossed, and after that the Conu-



see shall not have a *Quid juris clamat* against the Tenant for Life. But the Course is, when he in the Reversion upon the Writ of Covenant sued against him, maketh the Conufance of the Reversion by Fine, &c. then upon that the Conufee shall have a *Quid juris clamat* against the Tenant for Life; and if the Tenant for Life be fo weak that he cannot travel, then he may sue a *Dedimus Potestatem* directed to the Justices to take his Conufance, &c. and to certify the same into the Common Pleas.

2 H. 5. l. And the like Writ of *Dedimus Potestatem* shall be granted, where the Lord by Fine granteth the Services of his Tenant unto another upon a Writ of Covenant sued against him, If the Conufee sue a *Per qua servitia* against the Tenant, then if he be weak or sick, he may sue a *Dedimus Potestatem*, to take his Conufance, &c. and to certify the same, &c. But now the Course is for to admit the Defendant in a *Quid juris clamat*, or *Per qua servitia*, to make Attorney after a Plea pleaded; and that especially where he pleadeth such Plea, that he shall forfeit his Estate, if it be found against him, &c. then it is clear, That he shall make Attorney after the Plea pleaded; and the Course is now to make Attorney after pleading: and if he be adjudged to attorn, to award a *Distringas ad attornandum* against him, &c.

4 Mar. Dy.  
166.

And if a Man have a Writ of Covenant against one to levy a Fine, and thereupon a *Dedimus Potestatem* directed to a Judge to take the Conufance of the Party, and the Judge doth take the Conufance by Force of the Writ, and will not certify the same in the Common Pleas, then the Party may sue a *Certiorari* directed to the same Judge, reciting all the Matter how he hath taken the Conufance, commanding him by the Writ, to certify the same into the Common Pleas: And upon that an *Alias*, and *Pluries*, and Attachment to the Judge, if he will not certify it or return it, or shew Cause why he do not certify it. And if the Judge be dead who took the Conufance, he may have a *Certiorari* to his Executors, and an *Alias*, and *Pluries*, and Attachment, *vel causam nobis significes*; and in the End of the Writ shall be this Clause: *Et habeas ibi hoc breve, per quod cognitiones predicti recepistis, & hoc breve. Mandamus enim J. sic. nostris de banco predicti, quod cognitiones & brevia predicti, sub sigillo nostro eis missis, quod ea a vobis recipiant. Teste, &c.* And by that it appeareth, That although the *Certiorari* be sent to the Judge to return the Conufance taken before the Justices of the Common Pleas, that yet he ought to sue forth another Writ to be sent and directed to two Justices of the Common Pleas, to receive

receive such Conuſance taken: And the Writ of *Certiorari* which ſhall be directed unto the Juſtices of the Common Pleas to receive the Conuſance, is in the Register amongſt the Writs of Covenants.

**C** And if a Man will levy a Fine of Lands holden of the King in chief, then he ought to have a ſpecial Writ unto the Juſtices of the Common Pleas; thus,

*Rex Juſtic. ſuis de banco ſalutem. Cum per literas noſtras potentes de gratia noſtra ſpeciali conceſimus L. quod ipſe de maneriis ſuis de N. & I. cum pertin. quæ de nobis tenentur in capite ſeoffare poſſit. W. &c. recitand. totam chartam (uſque ibi) prout in literis noſtris prædict. plenius contineatur, ac breue noſtrum de conventionẽ pendeat coram vobis in banco prædict. inter præd. L. & W. de maneriis prædict. ad finem inde inter eos ſecundum legem & conſuetudinem regni noſtri levand. ut accipimus, Vobis mandamus, quod finem illum inter partes præd. coram vobis in eodem banco levari permittatis juxta tenorem literarum noſtrarum prædict., &c.*

**D** And if it do appear unto the Court, that the Lands are holden of the King in *Capite*, the Court *ex officio* ought not to ſuffer ſuch Fine to be levied without ſuch a Writ directed unto them, declaring the King's Pleaſure.

And there is another Writ of *Certiorari* directed unto the Treafurer and Chamberlains of the Exchequer, to certify the Tranſcript of a Fine in the Chancery; and a Writ of *Mittimus* out of the Chancery directed to the Juſtices of the Common Pleas to tranſcribe the ſaid Fine, &c.

And another Form of Writ of *Certiorari* directed unto the Chirographer, to certify into the Chancery *tenorem cujuſdam note in Cur. Domini E. nuper Regis Angliæ, &c.* as appeareth in the Register.

Writ of Dower unde Nihil habet.

**E** A Writ of Dower, unde Nihil habet, lieth, in Caſe where a Woman taketh her Husband, who is ſole ſeized of Lands or Tenements, to him and his Heirs in Fee ſimple, or unto him and the Heirs of his Body, &c. Or if the Husband during the Marriage betwixt him and his Wife, be ſolely ſeized in Fee-ſimple, or in Fee-tail of ſuch Eſtate, that the Iſſue begotten betwixt him and his Wife may inherit the ſame, Then if the Husband doth alien the ſame, or dieth ſeized thereof, or be thereof diſſeiſed, and dieth, his Wife ſhall have a Writ of Dower, unde Nihil habet, againſt him who is Tenant of the Freehold of the Land, or againſt him who is

29 Aff. 68.  
Br. Dow.  
63.

Dower lieth  
not againſt  
Guardian  
in Socage,  
and there-  
fore it is  
doubted if  
ſuch a  
Guardian  
ſhall aſſign  
Dower if  
there be a  
Guardian  
Diſſeiſin.



*Writ of Dower unde Nilhil habet.*

Guardian in Knight's Service of the Land; and the Form of the Writ is:

*Rez Vic, &c. Prac. A. quod iuste, &c. redd. B. que fuit uxor C. rationabilem dotem suam, que ei contingit de tenemento quod fuit pradiſſi. C. quondam viri ſui in N. unde nihil habet ut dicit. Et unde queritur, quod prad. A. ei deſere. & niſi, &c.*

And againſt the Guardian the Writ is ſuch: *Præcipe A. Custod. terra & heredis J. quod reddas, &c. B. que fuit uxor C. &c.*

Otherwiſe where the Wife is endowed *ad ſtium Eccleſie*. Thus, *Prac. A. quod, &c. redd. B. que fuit uxor C. Centum acr. terra cum pertin. in N. de quibus pradiſſi. C. quondam vir ipſius B. eam dotavit ad ſtium Eccleſ. quando eam deſponſavit, unde nihil habet, &c.*

And if ſhe be endowed *de aſſenſu Patris*, then thus: *Præc. A. quod, &c. redd. B. que fuit uxor C. Centum acr. terra, &c. de quibus pradiſſi. C. filius & hæres ipſius A. quondam vir ipſius B. de aſſenſu & voluntate ipſius A. patris ſai eam dotavit ad ſtium Eccleſ. &c. unde, &c.*

Perkins 67, 68. Common fans numbr. & Eſtovers. Old Na.Br. 5. 2 E. 3. Dower 23. &c.

And the Writ of Dower *unde nihil habet*, may be ſued in the County before the Sheriff by a *juſticiars*. And a Wife ſhall be endowed of Advowſons, Villains, Commons of Paſture, and of other Profits, or Liberties, of which her Husband had any Eſtate of Inheritance; which Eſtate the Iſſue betwixt them by Poſſibility may inherit, &c.

And the Wife may ſue a Writ of Dower of Lands or Tenements in London, and the Writ ſhall be directed unto the Mayor and Sheriffs of London, and the Writ ſhall be ſuch:

*Rex Majori & Vic. Lond. ſalutem. Præcip. vobis quod juſticiaris A. quod iuſte & ſine dilatione, & ſecundum conſuetud. Civitatis noſtr. London. redd. B. que fuit uxor C. rationabilem dotem ſuam, que ei contingit, &c. in Lond. & juſtic. D. quod iuſte, &c. & ſecundum conſuetudinem, &c. reddat eidem B. rationabil' dotem ſuam, &c. in eadem Civitate, unde nihil habet, &c. ut dicit, & unde querit' quod prad' A. & D. ei deſorceant, rationabiliter monſtrare poterit, quod ei reddere debeant, ne amplius, &c. Teſte, &c.*

And by that it appeareth, That a Woman ſhall have a Writ of Dower in London, againſt ſeveral Tenants by a ſeveral *Juſticiars* in one Writ, as well as ſhe ſhall have a Writ of Dower againſt ſeveral Tenants by ſeveral *Præcipes*, and all in one Writ. And the Proceſs is *Summons, Grand Cape and Petit Cape* in the Common Pleas.

*Writ*

*Writ of Admeasurement of Dower.*

**F** **T**HE *Writ of Admeasurement of Dower* lieth, where the Heir when he is within Age endoweth the Wife of more than she ought to have Dower of: Or if the Guardian endow the Wife of more than of the third Part of the Land of which she ought to have Dower: Then the Heir at his full Age may sue this Writ against the Wife, and thereby she shall be admeasured; and the Surplusage which she had in Dower shall be restored to the Heir; but in such Case there shall not be assigned anew any Land to hold in Dower, but to take from her so much of the Land which amounteth to above the third Part of all the Land of which she ought to be endowed.

And if the Heir within Age before the Guardian enter into the Land, do assign to the Wife more Land in Dower than she ought to have, then the Guardian shall have the *Writ of Admeasurement* against the Wife by the Statute of *West. 2. cap. 7.* And if the Guardian bring the Writ, and do pursue it against the Wife; yet the Heir at his full Age by the same Statute, shall have the *Writ of Admeasurement of Dower* against the Wife.

And the Writ is *Vicontiel*, and shall be sued in the County before the Sheriff, and the Writ is such:

**G** *Rez Vic, &c. Questus est nobis A. filius & haeres B. quod C. quae fuit uxor praedicti B. plus habet in dotem de liber. tenem. quod fuit praedicti B. quondam viri sui in N. quam habere debet, & ad ipsam pertinet habend. Et ideo tibi praecipimus, quod iuste & sine dilatione Admensurari fac. dotem illam, ita quod praedicti C. non habeat plus in dotem de hereditate praedicti A. quam habere debet & ad ipsam pertinet habend. secundum rationabilem dotem suam. Et praedicti A. habeat de dote illa, id quod habere debet, & ad ipsam pertinet habend. ne amplius, &c. Teste, &c.*

And for the Guardian the Writ is such: *Questus est nobis A. Custos terr. & haeres E. quod C. quae fuit uxor praedicti E. plus habet in dotem ipsius, &c. (usque ibi) ita quod praedicti C. non habeat plus in dotem de hereditate praedicti E. quam habere debet, &c. Et quod praedicti A. custos habeat de dote illa, &c. ne amplius, &c. Teste, &c.*

**H** And when the Plea is in the County, the Plaintiff may remove it without Cause, and the Defendant may remove it with Cause in the Writ, as in a *Replevin*. And if the Writ be removed in the Common Pleas by a *Pone*, and Process be awarded against the Defendant according to the Statute, which



## Writ of Admeasurement of Dower.

which is Summons, Attachment and Distress, &c. Then the Sheriff cannot make the Admeasurement, but to extend all the Land particularly; and to return the same into the Common Pleas, and thereupon the Admeasurement shall be made by the Justices.

And if the Guardian assign for Dower, &c. more than she ought to have, and afterwards grant over his Estate, his Assignee shall not have a Writ of *Admeasurement*.

Perk. 19 d.  
7 H. 2. Ad-  
measurement 4.

And so if the Heir within Age assign unto the Wife more in Dower than she ought to have, &c. The Guardian in Right may have a Writ of Admeasurement; but if he grant over his Estate, his Assignee who is Guardian in *Fait* shall not have the Writ, because it was a Thing in Action given to his Lessor, &c. and the Heir shall have a Writ of *Admeasurement of Dower*, for Dower assigned in the Time of his Ancestor.

12 H. 6.  
Admea-  
surement.  
9.

And if a Woman be endowed in Chancery by the King, &c. the Heir shall have a Writ of *Admeasurement* against her if she have more assigned to her for her Dower than she ought for to have.

7 E. 2. Ad-  
measurement 13.

And if the Guardian do assign Dower more than she ought to have, the Heir during his Nonage shall not have a Writ of Admeasurement, but if he himself assign more for Dower than she ought to have, &c. then it seems reasonable, that he himself during his Non-age have the Writ of *Admeasurement of Dower*.

o. Litt. 54b.  
56. 12 a

But if the Wife after the Assignment of Dower do improve the Land, and make it better than it was at the Time of the Assignment; an Admeasurement doth not lie of that Improvement. But if the Improvement be by Casualty of a Mine of Coals or of Lead, which are in the Land, &c. which have been occupied in the Husband's Time, the Doubt is the more; but she cannot dig new Mines; for that shall be Waste if she so do.

And if the Ancestor dieth seized, and the Husband die before he entrench into the Land, yet the Wife shall be endowed, although her Husband had but a Possession in Law.

Perkins 89.  
3 H. 7. 5.  
21 E. 3. 21.

But a Man shall not be Tenant by the Courtesy of the Wife's Land, if his Wife had not a Possession in Deed, if it be not in special Cases: as of Advowson or Rent, where she dieth before the Day of Payment of the Rent.

And in that Case, if the King's Tenant die seized, and the Heir die before he enter; then the Wife shall be endowed.

But

But if the Heir enter and intrude upon the King's Possession, and afterwards die before he sueth his Livery; The Wife shall not be endowed by the Statute of *Prerogativa Regis*, cap. 12. which is, that if the Heir intrude upon the King's Possession, that *Nullum accrescit ei liberam tenementum*, &c.

1 H. 7. 17.  
4 H. 7. 1.

E Where a Woman taketh a Lease for Years of Land; she shall not be endowed of the same Land during the Term.

2 H. 4. 7.  
Perkins 69.

F And where the Estate which the Husband hath during the Marriage is ended, there the Wife shall lose her Dower. As if Tenant in Tail do discontinue in Fee, and afterwards taketh a Wife and disseiseth the Discontinuee, or the Discontinuee doth enfeoff him, and afterwards the Tenant in Tail dieth seized, his Heir is remitted, and the Wife shall lose her Dower, because the Heir is in of another Estate of Inheritance, than the Husband had during the Coverture.

d.

And so if a Man have Title of Action to recover any Land, and afterwards he entreteth and disseiseth the Tenant of the Land, and dieth seized, and his Heir entreteth, The Heir is remitted unto the Title which his Ancestor had, and the Husband's Wife shall lose her Dower; for that Estate which the Husband had is determined, for that was an Estate in Fee by Wrong, and the Heir hath the Estate in Fee which his Ancestor had by Right.

60. Litt.

G If a Man make a Gift in Tail, reserving Rent to him and his Heirs, and afterwards the Donor hath a Wife, and the Tenant in Tail dieth without Issue, The Wife of the Donor shall not be endowed of the Rent, because the Rent is extinct, for it was reserved upon the State-Tail which is ended: But although that the Tenant in Tail dieth without Issue, yet his Wife shall be endowed, because the Land continueth and is not determined as the Rent is.

10 E. 3.  
Avowry  
159.  
Perk. 63. d.

H If the Grandfather dieth seized, and after the Father dieth seized, and the Son hath the Land, and then the Wife of the Grandfather, is endowed of the third Part of the Land and dieth, yet the Wife of the Father shall not have Dower of that third Part, because *dote ex dote peti non debet*.

Perkins 62.  
45 E. 3. 13.

60. Litt 3  
6.

I And if the Husband be Tenant in Common with two other in Fee of certain Lands, and dieth, his Wife shall be endowed of the third Part of that Land, only with Metes and Bounds to hold in Common, &c.

K And if a Wife be endowed of a Mill, or of an Office, she shall have the third Part of the Profits thereof assigned unto her, and she shall have a Freehold in the third Part of the Mill, &c. *M. 45. E. 3.*

45 E. 3.  
Dower 50.  
1 H. 5. 3.  
Perkins 67.



Litt. 8. 12. A Woman of the Age of nine Years or more at the Death I  
 H. 4. 1. Dc. of her Husband, shall have Dower of his Land. And if she  
 & Stud. 43. be of less Age at the Death of her Husband, then she shall  
 not have Dower.

If a Woman be endowed, and afterwards loseth by Action  
 tried, if she pray in aid of him in the Reversion, she shall be  
 new endowed of that which remaineth.

If the Husband exchange Land, &c. and afterwards dieth, N  
 if the Wife have Dower of the third Part of the Land taken  
 in Exchange, she shall not have Dower of the other Land,  
 &c. which was given in Exchange.

If a Woman be Guardian in Socage, and she bring a Writ  
 of Dower against a Stranger, he may plead, that she holdeth  
 other Land in Socage of which she may endow her self, *de le  
 plus beale*, and then the Wife upon that may endow her self  
 of those Lands unto the Value of the third Part, which she  
 ought to have of the other Lands which the Guardian hold-  
 deth, &c. And whether she may endow her self of the *plus  
 beale* unto the Value of the third Part which she ought to  
 have of her Husband's Land or no, *Quare*; for some hold,  
 That Dower *de plus beale* shall endure but during the Mi-  
 nority of the Heir who is in Ward.

The Son would have endowed his Wife of a Reversion of  
 Land which one held for Life, *ex assensu Patris*; and it was  
 holden, that it was not good, *M. 4. E. 3.* because it was  
 not in Possession; whereof a Right of Dower may be claimed.

22 E. 3. And the Writ of Dower *ex assensu patris* lieth as well B  
 Dower 121. against the Guardian, as against the Tenant of the Free-  
 Perk. 64. 2. hold.

If the Tenant fore-judge the *Mesne*, yet the Wife of the C  
*Mesne* shall be endowed.

5 E. 3. If a Man recover in Value against the Husband by a War- D  
 Dower 149. ranty *Ancestrel*; yet the Wife shall be endowed, because the  
 same is by Force of the Warranty made, and not by Reason  
 of Eigne Title to the Land.

The younger Son shall not assign Dower to his Wife *ex E  
 assensu patris* of the Father's Land, because he is not Heir  
 apparent.

Perk. 68. 2. If the Husband enter into Religion, the Wife shall not F  
 13 E. 19. have Dower during his Life.

Dower 161. The Wife shall have the third Part of the Advowson for  
 her Dower.

43 E. 2. 19. If the Wife do elope from her Husband, and remain with E  
 Perkins 70. b. the Adulterer, she shall lose her Dower; but if she remain  
 in Adultery upon the Husband's Lands or Tenements, she  
 shall

- I shall have Dower, because the same is not an Elopement.  
 If the Husband be attainted of Felony by Outlawry or otherwise, she shall lose her Dower. *contra: 2<sup>d</sup> in 436. b.*
- K If one Joint-tenant make a Feoffment of his Part, his Wife shall not be endowed because her Husband was never sole seized.
- L Endowment *ex assensu matris*, is good, but *ex assensu fratris*, it's holden it is not good.
- M If a Man marry a Woman in a Chamber, Dowment *ad ostium Camerae*, is not good. *3 H. 6. 4. Lessee for Life makes a Feoffment in Fee, his Wife shall have Dower against the Lessee, but not against the Lessor.*
- N And a Woman married in a Chamber, shall not have Dower by the Common Law, *H. 16 H. 3. Quere* of Marriages made in Chapels not consecrated, &c. for many are by Licence of the Bishop married in Chapels, &c. And it seemeth reasonable, That in such Cases she shall have Dower.
- O And in some Places the Wife shall have the Moiety in Dower, as in Gavelkind.
- P And in some Cities she shall have all by the Custom which is called Free-Bench, &c. And *Glanvil* saith, That *ad ostium Ecclesie*, a Man cannot assign more than the third Part in Dower, and if he do the Wife shall be admeasured, &c. but less may be assigned by Law; yet at this Day it seemeth, That the Assignment *ad ostium Ecclesie* of more than the third Part, is good, and she shall not be admeasured for it.
- Q And the Wife shall not be distrained in the Lands which she holdeth in Dower, for the Debts of the Husband in his Life due to the King, nor in the Lands of Inheritance of the Wife, nor in the Lands which she hath by Purchase made by the Husband to him and his Wife, and unto their Heirs; and if she be distrained by the Sheriff, she may sue forth such Writ.

*Rex Vic', &c. Cum secund. legem & consu. Regni nostri Angl. nobiles in terris & tenement. que tenent. in dotem de dono virorum suorum, vel que sunt de hereditate sua, vel q. sibi perquiser. pro debitis virorum suorum reddend. distringi non debeant, ac tu B. que fuit uxor A. distringis in terris & tenement. suis, que tenentur in dotem de dono predicti. A. & etiam que fuer. de hered. ipsius B. sicut ex querela sua accepimus: Tibi precipimus, quod ipsum B. in terr. & tenemen. suis que tenentur in dotem, vel sunt de hereditate sua propria, vel ex quasito ipsius B. pro debito ipsius*



*Writ of Admeasurement of Dower.*

*ipſus A. quondam viri ſui redd. non diſtringi fac. contra legem & conſuetudinem pr̄ adic̄. & diſtributionem quam, &c. ei deliberari fac. &c. Teſte, &c.*

There is another Form of Writ in the Register for Tenant in Dower, which is directed unto the Sheriff, commanding him that he do not diſtrain the Wife in thoſe Lands which ſhe holdeth in Dower, or of her own Inheritance, for the Husband's Debt; but that Writ hath theſe Words in the End of the Writ, *Dum tamen heredes & executores teſtamenti ipſius A. ad debita illa nobis reddend. ſufficient. non diſtr. &c.* And by theſe Words in the Writ it ſeemeth, That if the Heir of the Executors have not ſufficient of Lands or Goods to pay the Debt, that the Wife ſhall be charged and diſtrained for the Debt of the Husband in thoſe Lands. But it ſeemeth reaſonable, that the Wife ſhall not be charged or diſtrained for the joint Purchase made to her Husband and her, nor for her Lands of Inheritance, nor in the Lands wherein ſhe hath Title of Dower before the Husband become indebted unto the King. And that the firſt Writ is according to the Law for thoſe Caſes. But if the Husband be indebted unto the King before ſhe have Title of Dower, it ſeemeth to be otherwiſe.

And there is another Writ in the Register for the Wife directed to the Sheriff, that he do not diſtrain her in Lands or Tenements which her Husband and ſhe purchaſed jointly before the Husband was indebted to the King, if they purchaſe the Land jointly to them in Fee, the Lands after the Death of the Husband in the Hands of the Wife and her Heirs ſhall be diſcharged of the Debt; and if he be diſtrained that he deliver them again to the Wife.

And by the ſame Reaſon, although the Husband be before indebted to the King, that if he and ſhe purchaſe the Land jointly in Fee to them, after the Death of the Husband, the Wife and her Heirs be diſcharged of that Debt. And there is another Writ in the Register, for the Tenant in Dower, directed to the Sheriff, that he do not diſtrain the Wife for the Husband's Debt, becauſe that the Heir who ought to pay the ſame out of the Lands is within Age, and in Ward to the King. Or becauſe that other Tenants who ſhould be charged with the Payment thereof, are omitted.

And ſo it ſeemeth, the Lands of the Tenant in Dower ſhall be diſcharged, if there were other Lands of the Husband to pay the Debt. And thoſe Writs appear in the Register, fol. 142, 143.





## Writ of Customs and Services.

Pleas, or by one Writ and diverse Justice in the Writ which shall be directed unto the Sheriff to hold Plea upon them. But if the Writ of Customs and Services be sued against several Tenants by several *Præcipes* in the Writ, and returned into the Common Pleas, then all the *Præcipes* shall be put together thus. *Præcipe A. quod fac. B. &c. Et præc. C. quod, &c. fac. D. &c. Et præc. F. quod, &c. fac. G. &c.* And in the last *Præcipe* shall put this Clause, *In redditibus & aliis*, and this Word *arretragiis* shall be left out.

2 E. 2. Fitz.  
Droit 23.

And when the Writ is in the Right only, then he shall count of the Seisin of his Ancestor, and the Writ only in the *Debet*; but when he counts of his own Seisin, then the Writ is in the *Debet & solet*, &c.

And Disclaimer lieth for the Tenant in this Writ against the Demandant.

N. B. 38.  
The Disclaimer  
ought  
to be in a  
Court of  
Record and  
not in the  
County.

And note that if he say in the Writ, *Ut in redditibus & arretragiis*, that these Words prove that the Demandant himself was seised of the Services, and then if he count in such Writ of Seisin of his Ancestors, and not of his own Seisin, the Writ shall abate, *quod vi. 30 E. 1. Title Droit.*

But if he will bring a Writ of Customs and Services of the Seisin of his Ancestors, he ought to leave out those Words out of the Writ, *Ut in redditibus & arretragiis*, &c.

And a Writ of Customs and Services doth not lie against Tenant in Frank-marriage, untill the fourth Degree be past, &c. if not, that he hath done Homage to the Lord, &c. for by so doing he is concluded, &c.

And if a Man will bring a Writ of Customs and Services against any Tenant, and by his Count demand Homage, then the Writ ought to make special Mention thereof, as to say *Ut in homagio*, &c. otherwise the Writ shall abate.

And if a Man holdeth divers Manors in several Counties by one Service, &c. if the Lord be deforced or kept from his Services, he shall have several Writs of Customs and Services, for each County one Writ, and shall have them returned at one Day, in the Common Pleas, and then he shall count upon them, as his Case is, which see in the Title of *Droit*, 30 E. 1.

And note that this Writ is a *Præcipe quod faciat*, &c. and where he demandeth Land, then the Writ is *Præcipe quod reddat*, &c. and in this Writ the Mife shall be joined, if the Writ be brought by Tenant in Fee of the Tenancy, by him who hath a Fee in the Seigniory. But if the Writ be brought by Tenant in Dower, or Tenant in Tail, against the Tenant in Fee-simple, it is a Question how the Mife shall be joined. But, I think, the Mife shall be joined in that  
Case

Case, and the Weakness of the Estate on the Part of the Demandant shall not out the Tenant of the Plea, which the Law giveth him to join the Mife; but if the Writ be brought against the Tenant for Life, where the Remainder is over in Fee, there the Tenant may pray in Aid of him in the Remainder, and then they may join the Mife with the Demandant, &c. But where the Demandant, who hath the particular Estate, bringeth the Action, although he pray in Aid of him in the Reversion to join the Mife, it is hard to be done, &c. But it seemeth reasonable, that the same Law which enableth him to bring the Action, the same Law ought to enable him for to join the Mife upon the Plea of the Tenant.

## Writ of Annuity

**A** Writ of Annuity lieth in Case, where a Man granteth unto another a yearly Rent for Life, or for Years, or in Fee out of his Lands, or out of his Coffers, or to receive from his Person yearly at a certain Day; now the Grantee may sue a Writ of Annuity for the same, &c. if he be behind at the Day of Payment, &c. And if it be granted out of the Land with a Clause of Distress, then he may chuse either to distrain for the same, and make it a Rent-Charge, or he may bring a Writ of Annuity for the same. But if he bring a Writ of Annuity for it; if the Defendant appear, and the Plaintiff declare thereupon, then he cannot distrain for it after. And in like Manner, if he do distrain for it and avow, then he shall not sue a Writ of Annuity for the same Rent. But if a Man grant a yearly Rent for Life, for Years or in Fee, and doth not express in the Grant that it shall be taken out of any Lands or Tenements, nor any Distress granted for Non-payment thereof, then it is merely taken for an Annuity; and he shall not have any other Remedy for the same, but a Writ of Annuity.

**B** And this Writ may be sued before the Sheriff in the County by Justices as well as in the Common Pleas, and the Form of the Writ in the County is such:

*Rez Vic. &c. Prac. tibi, quod justicies A. quod juste, &c. redd. B. centum marcas, duodecim quarteria frumenti, & xx. robas, quod ei a retro sunt do annuo reddito C. s. duorum quart. frumenti, & unius robæ, quæ ei debet, ut dicit, sicut rationabiliter monstrare poteris, quod ei redder. debeat, no amplius, &c.*

*The Plain- tiff in A. mity had Judgment to recover Damages, and there- upon*

*brought a Scire Facias in B. R. & execute Judgment, and good. 24 E. 3. Fitz. Melinc.*



34 H. 6. 20. And the Form of the Writ in the Common Pleas is:  
 3 H. 6. Annuity 2. 16. *Rez Vic', &c. Præcipe A. quod iuste, &c. redd. B. cent. marc.*  
 E. 3. Annuity 22. *& medietatem trium pannorum cum pellua, & duorum pannorum*  
*cam sudone, quæ ei a retro sunt de anno redditu decem marcas. &*  
*Man bring medietatis unius panni cum furura, & unius panni cum sudone, quod*  
*annuity ei d. bet, &c. & nisi, &c.*

and the same extinguish or determine pendent the Writ, the Plaintiff cannot have Judgment in the Writ, but is put to his Action of Debt.

And note, that in that Writ the Form is, *Quem ei debet*, where he demandeth other Thing than Money. And yet in a Writ of Debt, the Form is, that he say in the Writ, *Quas ei debet*, if not that he demand Money; for if he demand Robes or Corn, or such like Chattels, the Writ shall be, *Quas vel quas ei detinet*, and not *debet*, &c.

And in Debt if a Man demand Money, and also ten Quarters of Wheat, then the Form of the Writ is:

*Præc. A. quod iuste, &c. redd. B. decem libras, &c. quas ei debet, ac dec. quarteria frumenti quas ei iniuste detinet, &c.*

9 H. 6. 12.  
and 13.

And if a Man have an Annuity of 20 l. to receive of A. and he grant 10 l. of the same to another Man to receive of A. A. shall not be charged by that Grant, but the Grantor only by Writ of Annuity: But if he had granted 10 l. Parcel of the said Annuity, it seemeth then that the Grantee ought to charge him who ought to pay the 20 l. by a Writ of Annuity.

And the Writ of Annuity ought to be brought in the County where the Grant was made; but an Annuity to receive from a Man of Religion, or a Body Corporate, or from a Church, ought to be brought where the Church or House is, or where the Seisin is alledged.

40 E. 3. 5.  
acc. 15 E. 4.  
46.

And the Heir shall be charged by a Writ of Annuity upon the Grant of the Father if he have Assets by Descent. But an Annuity shall not be maintainable against the Heir by Prescription, because it cannot be known whether he hath by Descent from the same Ancestor, &c. by whom the Annuity was first granted.

Vi. 14 H.  
3. 18.

And a Writ of Annuity shall be maintainable against a Parson upon a Grant made by his Predecessor, with the Assent of the Patron and Ordinary; and so upon an Ordinance made by the Ordinary without the Patron, if he have *Quid pro quo*.

An Annuity granted by the Bishop with the Confirmation of the Dean and Chapter, shall bind the Successor of the Bishop.

And

Writ de procedendo ad Judicium.

341

**R** And if a Man grant unto another 40 s. or a Robe yearly at such a Day, &c. after the Day he may demand the one or the other at his Election. *145 Q. 2. Mod. c. 16 E. 3. Annuity 34. 20 E. 3. Annuity 32.*

And an Annuity shall be maintainable by a Parson against a Vicar, upon an Ordinance of the Ordinary, if he have *Quid pro quo.*

**I** Upon Debate of an Advowson between a Prebend and a Prior, the Ordinary made a Composition and Ordinance, that the Prebend should have an Annuity of 20 s. and the Prior, the Advowson for ever, and that did charge the Prior in a Writ of Annuity and his Successors, *T. 9 R. 2.*

**K** And in the Time of Vacation the Patron and Ordinary may by their Grant charge the Church for ever, as appeareth in *er 92. the same Year.*

**L** And if the King grant one an Annuity for Life or Years, he ought to express in the Grant by whose Hands he shall receive the Annuity, as to say, *Per manus Vic. de S. vel ball. 9 H. 6. 33. nstri. de manerio nostro de S.* and then the Bailiff or Sheriff shall have Allowance upon his Patent shewed, if he hath paid the same; and if he have not such Words in the Grant of Annuity, the Grant is void, for he cannot sue the King for it, and no Person is bounden to pay the same unto him, if he be not expressed and named in the Patent, &c. And the Process in a Writ of Annuity is Summons, Attachment and Distress, &c. And for Default of Distress, &c. Procefs of Outlawry, by the new Statute made, *Ann. 23 H. 8. cap. 14.* *if a Man grant 10 s. Parcel of Annuity of 20 s. and in Truth there is no such Annuity, the Grant is void. But if it be granted to receive out of such a Sum, and there is no such Sum, yet the same is good to charge the Person of the Grantor. Vi. Annuity 5. to receive in 10. l. or de 10 l. no Difference.*

Writ de Procedendo ad Judicium.

**T** HE Writ to proceed unto Judgment lieth where Judges of any Court delay the Party, Plaintiff or Defendant, that they will not give Judgment for him when they ought so to do, &c. then the Party grieved, shall have this Writ directed unto the Judges, and the Form of the Writ is such:

*Rex Majori & Vic. Lond. sal. Quia redd. iudicii loquela que est coram vobis in Hustingo nostro Lond. sine brevi nostro inter A. & B. de quadam transgress. eidem A. per pref. B. illat. ut dicitur, diutinam cepit dilation. ad grave damnum ipsius A. sicut ex querela sua accepimus, vobis precipimus, quod ad iudicium inde redd. cum ea celeritate qua secundum legem & consuetud. civitat. pref. fieri poterit procedat. Teste, &c.*



*Writ de Procedendo ad Judicium.*

And upon that Writ he shall have an *Alias* and a *Pluries* directed unto them, if they will not proceed, and afterwards an Attachment upon that directed to the Coroners, &c. returnable into the King's Bench or Common Pleas, and it appeareth by the Writ that it lieth as well against Judges of Record as other Justices.

1 Ma. Dyer  
10. the O-  
pin. cont.

If a Man pray in Aid of the King in a real Action, and the Aid be granted, it shall be awarded, that he sue unto the King in the Chancery, and the Justices in the Common Pleas shall stay until the Writ of *Procedendo in loquela* come unto them.

And then they may proceed in the Plea, until it be come that they ought to give Judgment for the Plaintiff, and then the Justices ought not to proceed to Judgment, until the Writ cometh to them to proceed to Judgment, which is called a Writ *De procedendo ad Judicium*.

27 H. 8. 9.  
Eliz. Dyer,  
257, 258.  
Vi. 28 H. 6.

And so it is, if the Defendant in a personal Action pray in Aid of the King, and the Aid be granted, now the Judges ought not to proceed until *Procedend. in loquela* comes unto them, and then they may proceed and try the Issues joined; but yet they shall not give Judgment until a Writ cometh to them to proceed to Judgment.

And if the King by his Writ certify to the Justices that the Lands are seised into his Hands, &c. then they shall stay until the Writ *De Procedendo in loquela* be afterwards sent unto them.

And so, if it appear to Judges of Record, that the Lands are seised into the King's Hands, or if it appear to the Court by pleading or shewing of the Party, that the King hath Interest in the Land, or shall lose Rent or Service, there the Court ought to stay until they have from the King a *Procedendo in loquela*, and if the *Procedendo* be directed unto any of the Judges to proceed, it is good, although it be not directed unto them all.

And if a Man have Aid of the King, the *Procedendo* ought to make Mention of the Aid-Prayer, and recite the same in the Writ, commanding them for to proceed in the Plea, otherwise it is not good.

And if Conuance of Plea be granted, &c. in an Action real sued in the Common Pleas, and afterwards in the Franchise, and the Tenant pray in Aid of the King upon a good Cause, and hath the Aid granted; the *Procedendo* shall be parted to them in the Franchise.

And if the King write unto the Justices to prorogue the Assise because the Defendant is in his Service, yet the Justices ought to proceed, and not to stay for the same.

And

1 And if Verdict pass for the Plaintiff in Assise of *Novel diff.* before the Justices of Assise, and before they give Judgment by a new Commission new Justices are made, then the Plaintiff in the Assise may sue forth a *Certiorari* directed unto the other Justices to remove the Record before the new Justices, that they may proceed unto Judgment; and the Form of the Writ is such:

*Rex dilecti. & fidel. suo E. salutem. Monstravit nobis H. quod cum ipse nuper arrain. quendam ass. novel. diff. coram dilecti. & fidelibus nostris H. de T. & B. nuper Justiciariis nostris ad ass. &c. assign. per breve nostrum versus R. &c. & alios, &c. contentos, de tenementis in L. ac licet vos & prefat. B. ass. illam secundum legem & consuetudinem regni nostri ceperitis, judic. tamen super veredicto ass. predicti. pratectu ejusdam commissionis nostre, dilectis & fidelibus nostris I. de C. & I. I. de omnibus ass. juratis & certificatis coram quibuscunque Justiciariis nostris in Comitatu predicti. per brevina nostra arrain. capiendum postmodum facti. adhuc restat reddend. in ipsius H. damnum non modicum & gravamen, per quod expediens est & necesse, quod predicti. I. de C. & I. super record. & process. ass. pred. coram vobis & pref. B. habet. certiores. vobis mand. quod rec. & proc. &c. tangentibus pref. I. de C. & I. sub sigillo vestro distincte & aperte sine dilacione mittatis, & hoc breve. Mandamus etiam I. C. & I. quod receptis & visis record. & process. pred. ad iudicium pred. secundum legem & consuetudinem regni nostri procedant. Teste, &c.*

And the party Plaintiff may sue another Writ unto the new Justices, that when the Record is sent unto them by the old Justices, that they receive and look upon the Record, and then to proceed to Judgment, and the Form of the Writ is such:

*Rex dilectis & fidelibus suis R. de C. & I. de I. & Justic. ad ass. &c. assign. salut. &c. Monstravit nobis H. &c. (ut supra usque ibi) coram dilectis & fidelibus nostris I. B. & vobis pref. I. de C. nuper Justiciariis nostris, &c. de tenementis in L. & postmod. ad prosecutionem ipsius H. nobis suggerent, prefat. B. & vos prefat. I. de C. ass. illam cepisse, & ad iudicium, &c. distulisse, mandaver. prefat. B. quod record. & process. ass. predicti. coram eo & vobis prefat R. de C. [ 154 ]*

*babit. una cum brevi originali, &c. vobis prefat. R. de C. & I. de I. dilecto & fideli nostro C. de L. postmodum Justic, &c. assign. distincte & aperte mitter. & breve nostrum quod sibi inde venerit, vobis & prefat. R. de C. I. de I. & prefat. C. de L. per aliud breve nostrum dederimus in mandat. quod receptis & visis record. & process. predicti. ad iudicium predictum*



*Writ of Proceeding unto Judgment.*

*secundum legem & consuetudinem regni nostri reddend. procederitis. Et licet idem B. record. & process. ass. p. ad. coram vobis prefate. R. de C. l. de l. & p. C. de l. mississet, Iudicium tamen ass. p. ad. adhuc restat. reddend. in ipsa A. damnnum non modicum & gravamen; Nos ea de causa negotia predictum, quatenus secundum legem & consuetudinem regni nostri poterit, maturari volentes, & eidem H. ulterius inde fieri iustitie complementum: Vobis mandavimus, quod vos vel duo vestrum visis & examinatis record. & processu p. ad. ad Iustit. p. ad. secundum legem & consuetudinem regni nostri reddend. procedatis. Teste, &c.*

And upon that Writ if the Justices do delay to give Judgment he may have an *Alias*, and afterwards a *Pluries* directed unto the same Justices, *vel causam nob. significetis*; and if the Justices upon the Writ will not give Judgment according to the Writ, *Quere* whether the Plaintiff may have an *Attachement* against them, because they are Justices of Record.

But see in the Register amongst the Writs to remove Records, many Writs to proceed to Judgment, &c. of several Forms.

And if the Chaplain of a Chantry bring an *Affise of Novel disse.* against another Chaplain for Lands, and the Defendant claimeth the same Chantry by the King's Collation and prayeth in Aid of the King; now if the Defendant cannot shew Title in the Chancery for the King, he may have a *Procedendo*, directed unto the Justices of Assise, that they proceed unto the taking of the Assise, notwithstanding the Allegation made of the King's Collation; and he may sue the like Writ where the Defendant doth pray in Aid of the King in Assise by the King's Grant, and have that granted if he cannot shew Matter in the Chancery, which proves the King's Title, the Plaintiff shall have a *Procedendo*, that they proceed to take the Assise, notwithstanding the Allegation made of the King's Grant.

And there are divers Writs in the Register directed unto Justices of Assise, that they do not proceed in the Assise against the Defendant *dummodo sit in servitio Domini Regis* in the War, but to continue them; but these Writs are made by Vertue of an Act of Parliament made for that Time as it seemeth. But if the King certify by his Writ unto the Justices, That the Lands are in his Custody, by Reason of Nonage of any Heir, or by an Inquisition taken and returned in the Chancery, commanding that they do not proceed, the King not consulted with; then it seemeth the Justices ought to stay for the Time, although there is not any Office found nor returned; for they are bound to give Credit to the King's Certificate, although that it be not true, &c. And

in

in Attaint for the Plaintiff if he be in War in the King's Service, he may have a Writ directed to the Judges of the Common Pleas, to continue the Attaint, and to adjourn it to a certain Day, &c.

**E** And in Assise of *Novel diff.* if the King send his Writ to the Justices, reciting that the Defendant holdeth the Land of the King by Gift by his Charter for Life, commanding them that they do not proceed, the King not consulted: Now although the Tenant will not plead the same, it seemeth, that by that Writ the Justices ought to stay their Proceeding. So if the King recite in the Writ, the Tenant is in his Service in War beyond the Seas, or in *Scotland*, and that he holdeth for Life by the King's Charter of the King's Gift, commanding them not to proceed, the King not consulted, but to continue the Assise until a certain Day, there, it seemeth, they shall stay their Proceedings; for the Tenant cannot plead it, &c. For if the Escheator will say, That he hath seised the Lands into the King's Hands in an Assise brought by any Person, in that Case the Court shall surcease, *a fortiori*, by the King's Certificate: and divers such Writs are in the Register, &c.

**F** In Assise of Lands and Tenements, the Defendant pleads two or three Records in Bar to divers Parcels of the Land which are in the Treasury, and the Plaintiff denieth those Records, the Defendant ought for to remove those Records out of the Treasury by a *Certiorari* directed unto the Treasurer and Chamberlains of the Exchequer. And if he sue forth such a *Certiorari* to the Treasurer and Chamberlains, and they certify some of the Records in the Chancery to the King, and moreover certify, That there are other Rolls of the same Justices, of which they have not yet made full Search: Upon that Certificate made by the Treasurer and Chamberlains in the Chancery, the King shall send his Writ unto the Justices, commanding them to continue that Assise until the next Assises, that full Search may be made of those Records, so that the Tenant lose not his Lands for Faileur of the Records: and such Writ is in the Register.

**G** And if a Man sue an Assise before the Justices of Assise, and the Tenant plead Bastardy in the Plaintiff, upon which a Writ is awarded to the Bishop to certify at the next Assises; and before the next Assises the King maketh new Justices, and the ancient Justices do certify the Record of Assise unto the Treasury, the Plaintiff ought for to sue a *Certiorari* to remove this Record out of the Treasury  
into



into the Chancery by a Writ to the Treasurer and Chamberlains, and upon that Record sent into the Chancery, he shall have a Writ of *Mittimus* sent unto the Justices reciting the Matter; and in the End of the Writ shall be this Clause:

[ 155 ]

*Nos ut partibus predictis in eadem ass. fieri valeat quod iustum est, record. & process. prad. placiti, que coram nobis in Cancellaria nostra certis de causis venire fec. vobis mittimus sub pede sigilli nostri mandantes, ut his inspectis, necnon certis. prad. Episcopi coram vobis super hoc, ut dicit. missa, ac recept. a Vic. Com. predicti. brevi originali eiusdem, quod penes ipsum remanet, sicut per inspection. eorund. record. & process. nobis constat iterum in eadem ass. iuxta tenorem brevis & placit. predicti procedat. & eisdem partibus fieri fac. quod de jure & secundum legem & consuetudinem regni fuerit faciendum. Mandamus enim eidem Vic. quod dictum breve vobis libere ad proximam Session. vestram in Com. predicti, Teste, &c.*

And if a Man sue an Assise before Justices against one Tenant, and in the same Assise he name the Mayor and Commonalty of any Town as Disseisors, or Bailiffs of any Liberty as Disseisors, unto the End they may not have Conuifance of the Plea: Or that they shall not make the Panel; Now he may sue a special Writ in the Nature of an *Audita querela* directed unto the Justices of Assise to enquire of the Matter, and to do Right unto the Parties, and if it be found, it shall abate the Assise, *Vi. Statute 9 H. 4. cap. 5.* and see the like Statute made for the Sheriff, *Anno 11 H. 6. cap. 2.*

But the Sheriff or Bailiff ought to shew the Matter unto the Court, and pray that it be enquired of, &c.

*Writ de quod ei deforceat.*

**T**HE Writ of *Quod ei deforceat* lieth, where Tenant in Tail, or Tenant in Dower, or by the Courtesie, or for Term of Life, lose their Lands by Default is a *Præcipe quod reddat* brought against them, Then they have not any other Remedy if they were summoned according to the Law, &c. but this Writ of *Quod ei deforceat*: And this Writ is given by the Statute of *Westm. 2. cap. 4.* and the Writ is mentioned in the Statute, and the Form is such:

*Rex Vic. &c. Præcipe A. quod, &c. redd. B. que fuit uxor C. unum mesuagium cum pertin. in N. quod clamat esse rationabilem dotem suam, Vel sic, Quod clamat esse de rationabili dote sua, & quod idem A. ei injuste deforc. ut dicit.*

And if the Tenant in Frankmarriage bring the Writ, then the Writ is;

*Quod*

*Writ de Quod ei desorceat.*

347.

*Quod iuste, &c. reddat B. unum messuagium cum pertin. quod clamat esse jus & maritagium suum, & quod idem A. ei iniuste desorceat.*

And if he be Tenant in Tail, then the Writ is,

*Quod redd. &c. quod clamat tenere sibi & hered. de corpore suo exeuntibus & predict. A. ei iniuste desorc.*

And for Tenant for Life the Writ is,

*Quod clamat tenere ad terminum vite sue. Vel, for Tenant by Courtesie, Quod clamat tenere per legem Anglie.*

And the Register is, That this Writ for Tenant by the Courtesie, is by Equity of the Statute. But if the Tenant in Tail, or such other Tenant who hath a particular Estate, lose by Default where he is not summoned, &c. then he may have a Writ of Disceit, or a *Quod ei desorceat*, as he pleaseth.

If a Man lose by Default in an Action of Waste sued forth against him, he shall not have a *Quod ei desorceat*, for the Verdict which found the Waste.

And if a Man lose any Land by Default in a Writ of Right in a Court Baron, he may remove that Record into the Common Pleas, and then have a *Quod ei desorceat* upon that Record; and so he shall have the *Quod ei desorceat*, although he do not remove the Record; but then it seemeth, that the *Quod ei desorceat* shall be sued in the Common Pleas, or in the Court-Baron, where he loseth the Land, as he pleaseth, *tamen Quere.*

2 H. 4. 2.  
Hankford.  
conrr.  
41 E. 3. 8.  
vi. 44 E. 3.  
42.  
2 E. 4. 11.  
10 E. 4. 21.  
10 H. 7. ac.

And the *Quod ei desorceat* lieth against a Stranger to the Recovery; as if a Man recover by Default, and maketh a Feoffment, the *Quod ei desorceat* shall be brought against the Feoffee.

And if a Woman lose by Default, and taketh Husband, she and her Husband shall have the *Quod ei desorceat*: But if Tenant in Tail loseth by Default and dieth, his Heir shall not have the *Quod ei desorceat*, but a *Formedon*; for that is his Writ of Right.

Where a Woman hath a Dower assigned her in the Chancery for the Nonage of the Heir, who is in Ward to the King; and afterwards the Heir at full Age sueth a *Scire facias* in the Chancery against the Wife to avoid that Endowment, and recovereth in that *Scire facias* by Default of the Wife; Now the Wife shall have a *Quod ei desorceat* in the Common Pleas upon that Recovery.

And so if a Man recover in the King's Bench any Land by Default, upon a *Scire facias* sued out of any Record which is there, the Tenant who lost by Default, shall have his *Quod ei desorceat*, and shall sue the same in the Common Pleas,



46 E. 3. 21. If two Coparceners Tenants in Tail lose their Lands by Default, they shall join in a *Quod ei desorcat*, and yet the Default in the one is not the Default of the other. *M. 46 E. 3.*

Old N. B. 62a And in a *Præcipe quod reddat*, if the Tenant for Life or in Tail appear, and after depart in Despite of the Court, he shall lose his Land, and yet he shall have a *Quod ei desorcat*, for that Recovery is by his Default, because he did not appear when he was demanded.

And if Tenant in Tail, or Tenant for Life, after the Mife joined in a Writ of Right depart, in Despite of the Court, he loseth his Land, and there he shall not have a *Quod ei desorcat*, because Judgment final shall be given against him in that Case.

Old N. B. 355. contr. If the Husband and Wife be seised of Land in the Right of the Wife, for the Life of the Wife, and they lose the Land in a *Præcipe quod reddat* by Default, yet they shall have a *Quod ei desorcat*, &c.

And if Tenant for Life loseth his Land in a *Cass.* brought against him by Default, yet he shall have a *Quod ei desorcat* by the Statute of *West. 2. H. 5 E. 3. & M. 9 E. 3.*

And if Tenant by Receipt upon the Default of Tenant for Life appeareth, and is received, and pleadeth, and afterwards loseth by Action tried: Yet the Tenant for Life shall have a *Quod ei desorcat*, for the Judgment is given against him by his Default.

And if the Tenant vouch, and the Vouchee will not appear, for which the Tenant loseth by Default of the Vouchee, it is to see whether the Tenant shall have a *Quod ei desorcat*; for he loseth the Land by the Default, although it be not his own Default, for the Statute is, *Et cum temporibus retroactis cum aliquis amisisset terram suam per defaultam, non habeat aliud recuperare quam per breve de recto*: And there it doth not say, *per defaultam suam*, but only by Default. But after in the Statute, it saith, *Provisum sit; quod de cætero non fit eorum defaulta eis ita præjudicialis*, &c. And by that it seemeth that the Tenant ought to make Default. But it seemeth that the Default of the Vouchee, is the Default of the Tenant, and so Default in both: *Quere* of that. But if the Tenant vouch, and the Vouchee appeareth and entred into the Warranty, and afterwards loseth by Default, now if the Tenant lose by the Default of the Vouchee, he shall not have a *Quod ei desorcat*, because he shall have Judgment to recover over in Value against the Vouchee, by the Default of the Vouchee, so as he shall have Recompence. But if the Vouchee doth not appear, but maketh Default, then he shall lose the Land by the Default of the Vouchee; but that is not the Default of the Tenant, and therefore *Quere* of that Case. And

**C** And if Husband and Wife lose by Default the Land of the Wife, which he holdeth for Term of Life, if the Husband dieth, she shall not have a *Quod ei desorceat*, but a *Cui in vita*, for it is a Demise made by the Husband. And when he bringeth the *Quod ei desorceat*, he counteth that he was seised of the Land in his Demesne, as of Free-hold, or in his Demesne in Tail, without shewing of whose Lease, or Gift he was seised, and he ought to alledge Esplees in himself, &c. and then the Defendant ought to deny the Right of the Demandant, &c. *The Tenant in the Quod ei desorceat may plead any Bar as in other Actions, and then the Demandant cannot vouch by the Statute of West. 2. cap. 4. But if he make his Bar by the first Recovery there he may.* *33 H. 6. 46. quod nota.*

*Writ de Attornato faciendo vel recipiendo.*

**D** **T**HE Writ de Attornato faciendo or recipiendo lieth, where a Man ought to do Suit at the County, or at the Hundred, or Wapentake, or other Court, and he would make Attorney for him to appear at the same Court, &c. And if he be in Doubt whether the Sheriff will admit such a Man for his Attorney which he maketh, then he who would make such Attorney, may sue that Writ directed unto the Sheriff, or Bailiff of the Hundred, commanding them to receive such a Man to be Attorney for him to appear, &c. and the Writ is such:

*Rez Vic. &c. Quia per commune consil. regni nostri provis. est quod quilibet liber homo, qui secliam debet ad Com. Tithingum, Hundredum & Wapentagium, libere possit facere Attorn. suum ad secl. suam pro eo faciendo. Tibi prac. quod Attorn. quem S. loco suo Attorn. voluer. ad secl. pro eo faciendo. ad Com. tuum pr. ed. Tithingum tuum de A. & B. Hundred. de C. & D. Wapentagium tuum de E. & F. loco ipsius S. sine difficultate. ad hoc recipias. Teste, &c.*

Otherwise unto the Bailiff of a Hundred, thus:

*Rez Ballivis suis de Hundredo sept. Hundred. de Cobham & Bray salut. Quia per commun. consil. regni nostri, &c. qui secliam debet ad Hundred. libere possit, &c. vobis pracip. quod attorn. &c. ad prad. Hundred. sept. Hund. de Cobham & Bray loco ipsius S. &c.*

Otherwise unto the Bailiffs of another Lord.

*Rez Balliv. A. de I. salutem. Quia per Commun. consilium, &c. qui secliam debet ad Curium dilecti Domini sui libere possit, &c.*

vobis



*Writ de Attornato faciendo vel recipiendo.*

*vobis precipimus, &c. ad Curiam dicti domini vestri de I. loco ipsius S. sine difficultat. ad hoc recipiat. Teste, &c.*

And by that it appeareth, that the Tenant may make Attorney by his Letters Patents to do Suit at the Court of his Lord. And if the Tenant by his Letters Patents under his Seal make Attorney for him, to do Suit for him at the L. Court, or at the Hundred, and the Bailiffs will not admit of him, &c. then he shall have a Writ unto them in this Form;

*Rex Ballivis Decani & Capital. Ecclesie beate Mariae Linc. de C. vel Hund. de S. salut. Quia, &c. ( usque ibi ) precipimus, quod attorn. quem S. per literas suas patentes loco suo attornat. voluerit ad secliam pro eo faciend. ad Cur. dictorum Decani & Capit. de C. vel ad hundred. præd. Decani & Capital. de C. loco ipsius S. sine difficultate ad hoc recipiatis hac vice de gratia nostra spec. &c.*

And for the Guardian there is another Writ thus:

*Rex, &c. Vobis mandamus, quod attornat. quem S. custos terra & hered. R. loco suo attornat. voluerit ad secliam pro eo, nomine dicti hered. faciendum, &c. loci ipsius custodis sine difficultate ad hoc, &c.*

Or thus to the Bailiffs of the King:

*Rex Ballivis suis honoris Peverel in Com. N. salutem. Quia, &c. vobis precipimus, quod attorn. quem S. loco suo attorn. voluerit ad secliam pro eo faciend. ad Curiam nostram honoris præd. in Com. præd. loco ipsius S. recipiatis, &c.*

[ 157 ]

And if the Lord of any Tenant be in Ward to the King for the Nonage of his Heir, because he holdeth other Lands of him in *Capite*, &c. and his other Lords will distrain for Suit during the Time the Lands are in the King's Hand or in the Hands of his Committees, then the King or his Committees shall have a special Writ unto the Bailiffs of the other Lords, that they do not distrain the Heir nor in the Lands, &c. during the Time he lies in the King's Hands, or in the Hands of his Committee, and if he have distrained them, that they deliver back the Distress again; and that Writ appeareth in the Register.

And if the King hath any Lands or Tenements in Ward, during the Nonage of an Infant, and the King in Chancery, assigns Dower unto the Wife of the Husband who was Father to the Ward, of Lands holden of other Lordships; now if the other Lords will distrain the Tenant in Dower for Suit at their Court during the Time the Lands are in the King's Hands, the Wife shall have a Writ unto the Bailiffs of the other Lords, commanding them that they do not distrain her. And recite in the Writ all the special Matter; and

if

if they have taken any Distress, that they deliver it back again.

If a Man make an Attorney to do Suit for him at the County, or Hundred, or other Court, and the Bailiffs will not admit him for his Attorney, Or if the Bailiffs do admit him for Attorney, and afterwards discharge him after the Year; supposing that he ought not to continue Attorney for the Party above one Year; or for any other unreasonable Cause they discharge him to be Attorney for the Party; then the Party may have a special Writ directed unto the Bailiffs, &c. commanding them that they receive him for his Attorney, and thereupon he may have an *Alias*, and a *Pluries*, and an *Attachment* against them returnable in the Common Pleas, or in the King's Bench, if they will not admit him for his Attorney, or return Cause upon the *Pluries*, which shall be allowable, wherefore they do not admit him; and the Form of the Writ is such:

*Rex Ballivis A. de Hundredo de B. salutem. Ex parte C. nobis est ostensum, quod cum ipse per breve nostrum attornatum suum ad seclam pro eo faciendo ad Hundredum predicti domini vestri de B. in eodem Hundredo coram vobis fecisset, & idem attornatus per idem breve ad hoc admittus, seclam illam haenus fecerit, sicut moris est in Regno nostro, vos praesumptioni vestrae voluntarie in-nuentes, & causam praetendentes, quod potestas hujusmodi Attornati ultra Annum durare non debet, ipsum C. praed. seclam per Attornatum suum praedicti. facere non permittitis, in ipsius C. damnum non modicum & gravamen, de quo miramur quamplurimum. & movemur. Et quia Virtus brevium nostrorum de hujusmodi attornat. faciendo terminum non capit, nec terminus limitatur duranti-bus person. quae ad hoc requiruntur: Nos ne idem C. vel alii indebite vexentur vel graventur occasione praedicta, remedium super hoc adhibere volentes: Vobis praecipimus, firmiter injungentes, quod ab hujusmodi voluntariis & indebitis vexationibus & gra-vaminibus eidem C. vel aliis ea occasione de caetero inferendis desistentes, ipsum C. seclam praed. per Attornatum suum praedicti. sine difficultate qualibet facere permittatis, juxta tenorem prioris brevis nostri vobis inde directi. Et ita vos habeatis in hac parte, quod praedicti C. occasione praedicti. non ponatur in defaulta, nec in aliquo sit perdens, & quod non oporteat nos super hoc amplius sollicitari, per quod manum ad hoc aliter apponere debeamus. Teste, &c.*

- C** Note, That the Party may make Attorney by the King's Writ directed unto the Bailiffs, commanding them for to receive such Person for his Attorney. Or he may have a Writ out of the Chancery directed unto the Bailiffs, or Sheriff, to receive any such Person for his Attorney, that  
ho



*Writ pro Exonerat. Sectæ ad*

he will present unto the said Bailiffs or Sheriffs to be his Attorney to do his Suit; or he may make Attorney by Letters Patents directed unto the Bailiffs without suing forth any such Writ.

And if a Man sue forth a Writ directed unto the Bailiffs to admit one for Attorney to do his Suit for him, and the Bailiffs refuse to admit him; now the Party who sued forth the Writ shall have an *Attachment* against the Bailiffs for that Refusal, without suing forth an *Alias* or a *Pluries* directed unto them.

And so the same Law is, if the Tenant by his Letters Patents maketh one Attorney to do his Suit for him, and the Sheriff or Bailiff of the Court doth refuse to admit him for his Attorney: Upon that Refusal, the Party shall have an *Attachment* against the Bailiff, &c. although he hath not sued forth any Writ directed to him before, because they do against the Statute, which requireth, that they admit him for Attorney whom the Tenant will make to be his Attorney.

And he shall have the like Writ against the Bailiffs of any other Lord, who refuse to admit an Attorney to do Suit for the Tenant in any Court Baron, and that Writ appeareth in the Register.

*Writ pro Exoneratione Sectæ ad Curiam Com. vel Baron.*

**T**HIS Writ lyeth where the Tenant holdeth his Land to do Suit at the County-Court, Hundred, or other Court-Baron, or Wapentake or Leet, and he who ought to do the Suit is in Ward unto the King, or his Committee, and the Lord of whom he holdeth by such Service, will distrain him to do his Suit at his Court during the Time he is in Ward unto the King or his Committee; his Gaurdian shall sue this Writ unto the Sheriff, or Bailiffs of the Court, that they do not distrain him, &c. to do Suit during the Time he is in Ward to the King or his Committee; and the Form of the Writ is such:

*Rez Ballivis A. de I. salutem. Cum secundum legem, &c. nos debeamus scilicet ad Curiam alicujus facere occasionem terrarum & tenementorum quoruncunque in manu nostra, vel in custodia nostra existent. & illi quibus hujusmodi custodias commiserimus custodias illas, durante custodia illa, adeo libere & ab omni seclis quite tenere debeant, ac si nos eas in manu nostra teneremus. Vobis precipimus, quod ratione terra & tenementorum I. de Juncti, qui de nobis tenuit in capite, & que sunt in custodia ejusdem*

ejusdem R. ex concessione nostra non distringatis, vel distring. faciatis, ad faciendam sectam ad Curiam prædictæ. domini vestri de I. dur. custodia antedicta, & distr. si quam, &c.

And the like Writ shall be for Tenant in Dower, where she is endowed in the Chancery of Lands which are in Ward to the King, which Lands are holden of other Lords; now if the other Lords will distrain the Tenant in Dower, to do Suit for those Lands which she holdeth in Dower, she shall have a Writ for to discharge her, which is such:

Rex Ballivis A. de B. salutem, Cum secundum legem, &c. (ut supra usque ibi) existentes, & mulieres terras vel tenementa tenentes in dotem de hujusmodi custodiis, ea ideo libere & ab omni secta quiet. tenere debeant dur. custodiis illis, ac si prædictas terras & tenementa in manu nostra teneremus: Vobis præcipimus, quod M. & R. uxor ejus occasione terrarum & tenementorum quæ fuer. H. in F. quæ de nobis tenuit in capite, & quæ idem K. & M. tenent in dotem ipsius R. de dono prædicti, H. quondam viri sui, & de hereditate filii & hered. A. infra ætatem & in custodia nostra existent. non distringatis ad faciend. sectam ad Cur. prædictæ. domini vestr. durante custodia nostra supradicta, & distr. &c.

And if the Heir be in Ward of the King and also his Lands, and afterwards the Tenants Paravail who hold of the Heir are distrained by other Lords, of whom the Heir holds his Lands, to do Suit unto the Lord's Court, those Tenants shall have a Writ directed unto the Lord's Bailiff, to discharge them of the Suit, and the Writ is such:

Rex Vic. Nott. salutem. Cum secundum legem & consuetudinem regni nostri, nullus qui tenet de hered. infra ætatem & in custodia nostra existent. teneatur ad sectam faciendam ad Com. Hundred. Wapentag. seu alius Cur. pro terris & tenementis ipsorum hered. in manu nostra existent. durant. custod. supradicta: Tibi præcipimus, quod Abbat. de Derley tenens quorundam terrarum & tenementorum Rogeri filii & hered. Roger. Bellers defuncti in Chilwell. qui de Domino Rich. nuper Reg. Angliæ tenuit in Capite, occasione terrarum & tenementorum ejusdem hered. in eadem Vill. in manu nostra ratione minoris ætat. sue existent. non distring. vel distring. facias, ad faciend. sectam ad Wapentagium de B. durante custodia supradicta.

And if the Heir and his Lands be in the King's Ward, for Lands holden of the King in Capite, and afterwards the other Lords of whom the Heir holdeth Parcel of his Lands will distrain for any Service or Rent to them due, then the King or his Committee may sue a Writ for them



*Writ pro Exoneratione Secta ad*

to surcease from such Distress, and the Writ is such :

*Rex Ballivis, &c. Cum hered' infra aetatem & in custodia nostra existentes servitia aliquam durantiis custod. illis facere minime debeant seu teneantur secundum legem & consuetudinem regni nostri, Vobis precipimus, quod districtum, quam Abbati de W. tenenti hered. Willielmi de W. qui de nobis tenuit in Capite infra aetatem & in custodia nostra existant. pro homag. fidelitat. ac aliis serviciis predicti. hered. pref. Dom. faciend. fac' supercedeatis omnino durante custodia antedicta & districti. si quam, &c.*

And also the Tenant in Dower shall have such Writ if the Bailiff of other Lords will distrain her, for the Relief of the Heir or other Services, during the Time that the Heir's Lands are in the King's Custody, or in the Custody of his Committee. And it seemeth, That he may sue this Writ directed unto the Lord himself, as well as to the Bailiffs, or unto them both.

*Note,* That if a Man holdeth of another to do Suit to his Mill, &c. if he do not the Suit, he shall have a *Secta ad Molendinum* against him, and by the same Reason, if a Man hold of another Lord to do Suit at his Court in the Manor of D. if he do not the Suit, the Lord may have a Writ of *Secta ad Curiam suam faciend.* as well as the other Writ. But yet there is no such Writ in the Register, because he may distrain for that Suit, and shall not have any other Profit but only Appearance in his Court. But in the other Case of *Secta ad Molendinum*, he shall have other Profits by the Suit, the Toll of the Grain he shall grind there, and for that Profit it seemeth the Action of *Secta ad Molendinum* was given, and for the Suit of the Court, but only for a Distress, *tamen Quere.*

Vi. 31 H. 2. If the King have Lands by Forfeiture or Escheat, and A  
25. 33 H. 6. lease them for Life, at Will, or in Tail, and if the Lord of  
7. Staun- whom the Lands are holden will distrain the King's Commit-  
ford, 38 H. tee or Lessee for Suit or other Services, he shall have a special  
Writ unto the Lord's Bailiffs to surcease, &c.

And if Lands descend unto divers Coparceners, for which one Suit shall be done at the Lord's Court, if Parcel of those Lands come into the King's Hands, then he shall have a special Writ to discharge him of the Suit for the Time they shall be in the King's Hands, which shall be such :

*Rex Vic', &c. salutem. Cum de communi consilio regni vestri, provisi. sit, quod si hered. aliqua, de qua aliqua Secta debeat ad play. hered', &c. vel ad alios per vendition', &c. devoluta-*

tur: unica tam, &c. fieri consuevit, ac quedam hereditas, que fuit H. de B. de Baronia de B. de qua quidem Baronia unica secta tantum ad Com. tuum prædicti. debet. ad dilecti, & fidel. nostrum W. de H. & I. fil. & hered. R. de S. infra ætat. & in custod. dilecti. & fidel. nostri R. de N. ex commissione nostra existen. per venditionem sit devoluta, ut accepimus: Nosque secundum legem & cons. &c. non debeamus sectam aliquam facer. occasione terr. & tenement. in manu nostra, & in custod. nostra exist. & illi quibus huiusmodi cust. commiserim. illas adco libere & ab omni secta quiete tenere debeant, sicut nos ea in manu nostra teneremus, tibi præc. quod si ita est, tunc non distr. præd. W. de H. ad fac. sectæ. ad com. tuum præd. pro terr. & tenement. de Baronia præd. aur. custod. dilecti heredis supradicti, &c.

And if the Wife be Tenant in Dower of any Land, she shall not be distrained to do Suit for that Land which she holdeth in Dower, if the Heir have sufficient Land in the same County to be distrained for the same. And if she be distrained, then she shall have such Writ,

**B** Rex Balliv. hundred. de N. salutem, &c. Cum secundum legem & consuetud. regni nostri mulieres tenentes in dotem, pro terris & tenementis suis, quas tenent in dotem, sectæ. ad hundr. vel cur. alicujus facere non debeant. Vobis præcipimus, quod A. quæ fuit uxor B. ad faciend. sectam ad hundr. prædicti. pro terris & tenementis q. tenet in dotem & libero tenemento quod fuit præd. quond. viri sui, contra legem & consuetudinem regni nostri non distringatis, dummod. hered. præd. B. alias terr. & tenementa in balliva tua habet, per qua distringi valeat ad sectam illam pro præd. dote faciend. & districti. si quam fecer. &c. eam sine dilatione liberari facias, &c.

**C** And if Lands descend to many Coparceners, whereof one Plowd. Suit ought to be done for the whole Land; now if the Land be holden of the King, then all the Coparceners ought to do the Suit as well after Partition as before: But if the Land be holden of another Lord, then that Coparcener or his Feoffee who hath the Part of the eldest Sister, shall only do the Suit; and if the Lord will distrain the other Coparceners, then they shall have a Writ against him directed to him or his Bailiffs to discharge them of that Suit, and Distress taken, &c. and the Writ shall be such:

Rex C. vel ball. C. salutem, &c. Cum de communi, &c. provisum sit, quod si hereditas aliqua, de qua unica secta tant. debeant. ad plur. hered. participes ejusd. hered. vel al' per vend. seu alio modo devolvatur, unica tant. fiat secta pro hereditate illa, sicut prius fieri consuevit, ac quedam hered. quæ fuit A. in N. pro qua unica sectæ. tum debet ad cur. tuam de I. vel ad



## Writ pro Exoneratione Sectæ ad

cur. prædicti domini vestri de I. ad A. B. & C. cum hæred. & participes hæred. prædicti. sit devoluta ut accepimus: Tibi vel vobis præcipimus, quod non distringas vel distringatis, prædicti. A. B. & C. ad diversas sectæ. pro portionibus suis hæred. præd. separatim faciend. ad curiam tuam de I. vel ad cur. præd. domini vestri de I. contra form. prov. prædicti. & distinctionem si quam, &c.

And if the Tenant enfeoff divers Persons of Lands, for D which one Suit ought to be done, if one of the Feoffees do the Suit, &c. if the other Feoffees are distrained to do Suit for that Land, they shall have such Writ, which Writ is in the Register, and that Writ is given by the Statute of Marlebridge, cap. 9.

And so if the Heirs or Feoffees shall do the Suit, at the County, Hundred, or Wapentake; if one do the Suit, all of them are discharged; and if they be distrained, they shall have that Writ.

And so if one Coparcener maketh a Feoffment of his Part, or a Man the Tenant by the Courtesy of one Part of the Land, yet one Suit shall be only done by one Coparcener by him who hath the eldest Part. And if they be joint Feoffees, then by one of them, as they can agree amongst themselves, &c. And if he sue such Writ, and he be distrained, then he shall have an Attachment against the Lord, or the Bailiffs to whom the first Writ was directed, to answer that Contempt, in which Writ he shall recover his Damages, &c.

But if there be two Coparceners of Land, for which one H Suit ought to be done, and the eldest Sister will not do the Suit at the Lord's Court; then the Lord may distrain the other Coparcener, as well as the eldest Coparcener for that Suit, and if the Coparceners be distrained, then they shall have a Writ against the eldest Sister to compel her to do the Suit, and the Writ shall be such.

*Res Vic, &c. Si B. & C. fecerint, &c. tunc sum, &c. A. quod sit, &c. ostens. quare cum de communi, &c. quod si hæred. aliqua, &c. (usque ibi) consuevit, & quod illa quæ habet curiam partem, &c. ac quedam hæred, &c. (usque ibi) sit devoluta, ut accepimus, & prædicti. A. habet partem hæred. illius. Et præfat. B. & C. parat. sunt contribuere. pro portionibus suis ad sectam illam faciend. Idem A. sectam illam pro se & præfat. B. & C. cur. præd. facere contradicit, ad gravi dummum ipsarum B. & C. & contra form. prov. si. præd. ut dic. & hæret ibi sum &c.*

A And if a Man have Lands in divers Places in the County, and hath severall Leets, &c. or Hundreds, and he is constrained to come unto the Leet or the Sheriff's Torn, where he is not dwelling or conversant, but is dwelling within the Precinct of any other Leet or Hundred, &c. then he shall have a Writ unto the Sheriff, for discharging him from coming to the Sheriff's Torn, or Hundred or Leet, or other Place, than in the Leet or Precinct of the Hundred where he dwelleth: and the Writ is such:

*Rex Vic Wigorn. salutem. Cum de communi consilio regni nostri provis. sit quod si qui in diversis hundred. habeant tevements, non habeant necesse venire ad turnum vic. nisi in ball. ubi fuerint conversantes: Tibi precipimus, quod non distring. S. ad veniend. ad turnum tuum in hundredo nostro de I. contra form. provis. predicti, &c.*

And look the Statute of *Marlebridge*, cap. 10. by which it appeareth, that the Sheriff ought for to hold his Torn as he hath used in the Time of *Richard* the first, and *John*, Kings of England.

And by the Writs it seemeth, That he shall hold his Torns in every Hundred, &c. And if the Sheriff distrain against that Statute any Man, then he may sue that Writ upon the Statute, &c. and if he do distrain him after: then he shall have Attachment against the Sheriff, &c. and the Writ is such:

*Rex Coronatoribus suis in Com. Lincoln. salut. Si A. fecerit, &c. tunc ponite, &c. B. Vic. nostrum com. prad. quod sit, &c. ostens. quate eum de communi consilio, &c. (usque ibi,) conversant. idem B. vel idem Vic. distrinxit pras. A. ad veniend. ad turn. ipsius Vic. de hundred. nostro de I. contra form. provis. predicti. & contra form. mandati nostri prius ei inde directi. ut dic. & habeatis, &c. Et averia ipsius A. ea occasione capta interim de liberari faciatis. Teste, &c.*

B And if a Man have Lands within the Precinct of severall Leets, or in one County, and he dwelleth within the Precinct of one of them, and he is distrained to come unto another Leet where he dwelleth not, then he shall have such Writ unto the Sheriff, or Bailiffs of the Court, &c. that they do not distrain him to come to that Leet, within the Precinct whereof he dwelleth not, and the Writ is such:

*Rex, ball. suis honoris de C. in Com. Lincoln. vel, ball. A. de B. in Com. &c. salut. Cum de communi consilio, &c. si qui in divers. hundred, &c. non habeant necesse venire ad visum franc. plegii, nisi in ball. ubi fuer. conversant: Vobis pras. quod non distringat.*



*Writ pro Exoneratione Sectæ ad*

*disfringet. ad veniend. ad visum franciplegii in cur. vestra, vel in cur' domini vestri honor. prædict. in com' prædict. cont. form', &c. & distriction. si quam, &c.*

And it appeareth that if the Party be distrained, after that he hath sued the Writ directed unto the Sheriff, or Bailiffs, that they do not distrain him, that he shall have an Attachment against them; But it seems reasonable, that first he have an Attachment against the Sheriff, or against the Bailiffs, who distrained him to come to the Leet in the Hundred where he is not dwelling, if he be dwelling within the Precinct of another Leet, because the Statute of *Marlebridge* is a Prohibition in it self, and he who doth contrary to the Statute doth Wrong unto the Party, upon which he may have an Attachment, without suing forth any Writ.

*Note*, That Men or Women who have entred into Religion, ought not to come unto the Sheriff's Torn, or unto the Leet of any other without great Cause; and if they be distrained for to come, they may have a Writ out of the Chancery to discharge them, which shall be such:

*Rez Vic', &c. Cum de communi consilio, &c. quod viri religiosi non habeant necesse venire ad turnum vic', &c. Vel sic; ad visum franciplegii, nisi eorum presentia ob aliquam causam specialiter exigatur: Tibi præcipimus, quod non disfring. Abbat. de I. ad veniend. ad turnum tuum: Vel sic; ad visum franciplegii, in hundred. vestro de B. contra form. provisionis prædict. & districtionem, &c.*

And the Abbot shall have such a Writ unto the Bailiffs of another Lord, that they do not distrain him to come to his Leet.

And by the Common Law, Parsons of Churches shall not be compelled or distrained to come to the King's Leets, or to the Leets of other Lords of the Lands annexed to their Churches, and if they be distrained so to do, they shall have such Writ:

*Rez Vic', &c. Cum secundum consuetudinem regni nostri personæ Ecclesiast. ratione terr. & tenement. suor. Eccles. suis annex. venire non debeant ad visum francipleg. in cur. nostra vel aliorum quorūcumque: Tibi præcipi quod C. personam Eccles. de I. ratione terr. & tenement. suor. Eccles. præd. annexor. ad veniend. ad visum francipleg. in hundred. de N. non disfringas contra consuet. præd. & districtionem, &c.*

And Clerks who are not Parsons, nor have Benefices, shall not be distrained or compelled to come to Torts or Leets, but they shall have a Writ to discharge them, thus:

Rez Vic', &c. Cum persona Ecclesiast. non habeant necesse venire ad turn. vic. vel ad visum franc. pleg. nisi eorum present. ob aliquam causam specialiter exigatur juxta form. provisionis de communi consilio regni nostri in consimili casu pro viris religios. facta, ideo tibi precipimus quod non distring. S. personam Eccles. de N. vel capellanam, ad veniend. ad turn. tuum vel ad visum franc. pleg. nostri in hundred. de I. cont. form. provis. prad. & district', &c.

And Women are not compellable nor distrainable to come unto the Sheriff's Torn, nor to Leets, and if they be distrained, they may sue such a Writ as a Priest may sue, and thereupon an *Alias*, a *Fluries*, and Attachment, &c. And because that Women are not sworn in Leets as Men who are of the Age of twelve Years or more are; it is said, That when a Woman is outlawed, that she is *Wayve*, and not Outlawed; for she was never sworn to the Law, &c. But a Man is said outlawed, because he was sworn to the Law; and now for his Contumacy he is put from the Law, and said outlawed, as it were *extra legem positus*; and a Woman is not so, for she was never sworn to the Law.

A And by the Rule of the Register, two Women may sue that Writ unto the Sheriffs or Bailiffs of the Leet, that they do not distrain them to come to the Torn or Leet, &c.

See before  
14. good Causes  
for their  
Privilege.

B And if the Sheriff will distrain the Tenants in ancient Demesne, to come unto the Leet or Sheriff's Torn, they may have one Writ for them all directed unto the Sheriff, commanding him that he do not distrain them, &c. to do any Suit at the Leet or Torn; and that Writ shall be sued in all their Names if they will, as a *Monstraverunt* shall be sued: Or any of them may sue the Writ in his own Name, if he be distrained to do such Suit; and the Writ is such:

Rez Vic', &c. *Monstraverunt nobis homines de manerio de D. quod est de antiquo Dominio Corona Angli. quod cum ipsi ad Torn. Vic. seu ad visum franc. pleg. extra libertatem maner. prad. venire non debeant nisi ipsi vel eorum antecessor. homines & tenentes de eodem manerio venire. consueverunt a temporibus retroactis, tu nihilominus homines nostros prad. ad veniend. ad Torn. in K. vel ad visum franc. pleg. in hundr. nostro de K. cont. consuet. in eodem manerio haecenus usitatum gravit. distringis & ipsos multipliciter. ea occasione inquietas minus juste in ipsorum hominum & tenentium prejudicium manifestum & gravamen. Et quia prad. hominibus & tenentibus notamus injuriari, Tibi precipimus, quod si ita est, tunc ab hujusm. distractionibus iis ex causa pradicta, de cetero inferend. penit. cessitas, & ipsos consuetudinibus suis, quibus haecenus rationaliter, usi sunt absque*



*Writ de Quarentina habenda.*

*impedimento seu calumnia uti permittas & gauder, ne querela ad nos veniat iterata. Teste, &c.*

And if the Sheriff will distrain a Man to do Suit to the D Hundred or Wapentake twice in the Year to do Things appertaining to that Leet, then he shall have a Writ upon the Statute of *Magna Charta* directed to the Sheriff, which shall be thus :

*Rex Ball. sub de Wapentak. de R. sal. Cum in Magna Charta de libertatibus Angl. contineat, quod nullus Vic. vel Ball. sans fac. curru. suum per hundr. nisi bis in anno & non nisi in loco debito & consueto, viz. semel post Pasch. & iterum post festum S. Michael. ne jam ex querel. hominum & tenentium Abbat. de C. accepimus, quod vos ipsos homines & tenent. in hac part. pergravar. martinantes, ipsos ad veniend. ad quodlibet Wapentag. nostrum pred. ad presentand. ibidem, ea q. ad visum franc. pleg. pertinent jam de novo gravit. distringitis, in ipsorum hominum & tenentium grave damnum & prejudicium manifestum, & contra tenorem Magna Charta pred. nos eand. chart. in omnibus inviolabiliter observari volent. vobis precipimus, quod dictos homines & tenentes ad veniend. eoram vobis ad Wapentagium pred. ad presentand. ea q. ad visum franc. pleg. pertinent contra tenorem Charta pred. nullatenus distring. & districtionem, si quam, &c.*

And by that it appeereth, That he shall not distrain to come to the Hundred to present a Thing appertaining to the Leet but twice in the Year ; but to do Suit at the Hundred, to do that which appertaineth to the Hundred Court, he may distrain them several Times to do the Suit, and they shall have no Remedy, because Suit at the Hundred is from three Weeks to three Weeks.

*Writ de Quarentina habenda.*

**T**HE Writ of *Quarentina habenda* lieth, where a Man dieth E seized of any Messuage and Lands, &c. and immediately after the Death of the Husband, the Heir or he who ought to have the Lands after his Death, will put the Wife out of the Messuage, &c. Then the Wife shall have this Writ ; for by the Statute of *Magna Charta, cap. 7.* the Wife shall remain in the Capital Messuage after the Death of her Husband by forty Days, if it be not a Castle ; And that Writ is *Vicentiel*, and shall be directed unto the Sheriff, and he shall hold Plea thereof, and the Writ is such :

*Rex Vic. Sec. vel ballivis suis S. salutem. Ex querel. B. que fuit uxor D. accepimus, quod cum in Magna Charta de libertatibus Angl. contineatur, quod vidua maneat in capitali Messuag.*

suag. maritorum suorum per quadragint, dies post obitum maritorum suorum præd. nisi messuagia illa castra sint; infra quod tempus decies sue assignentur eisdem, & quod interim habeant rationabilia estoveria de bonis eorund. I. de C. ipsum B. statim post mortem prædicti, viri sui de Capitali messu. quod fuit ejusdem D. in H. licet castrum non sit, nec dos ei assign. fuer. violenter ejecit & ipsam estoverium suum de bonis eorund. com. percipere non permitt', in ipsius B. annum non modis. & gravamen, & cont. tenor. Charta prædicti. Et quia præf. B. injuriari nolumus in hac parte, vobis mandamus, quod vocatis coram vobis partib. præd. & auditis hinc inde eorum rationibus, eidem B. plenam & celerem justitiam inde fieri faciatis juxta tenorem Chart. præd. ne pro defectu justitiæ querela ad nos venerit iterata. Teste, &c.

Quere, if an Infant may keep the Possession during the Time of Quarentine by Force of the Statute of 8 H. 6. 4. & 5 Ma. Dyer 161.

**A** And upon that Writ the Sheriff shall award Process against the Party to come, and answer the same, and shall not stay until the County-Court be holden; for this Writ is a Commission unto him, and upon the same he shall immediately make Process against the Party for to answer, &c. within two or three Days according to his Discretion, and thereupon to proceed as Justices shall do upon a Commission of Oyer and Terminer, &c.

Nota by Newton. The Woman shall not have Meat and Drink. For the Statute doth

not extend to it: But Fitzherbert in abridging the Case Quere, if she may not kill Things for her Provision, if there be not any Provision in the House.

## Writ of Contribution.

**B** THE Writ of Contribution lieth where there are Tenants in Common, or who jointly hold a Mill pro indiviso, and take the Profits equally, and the Mill falleth into Decay, and one of them will not repair the Mill; now the other shall have a Writ to compel him for to be contributory to the Reparations, and the Writ is such:

Rez Vic', &c. Si A. fecerit, &c. tunc summ', &c. B. & C. quod sint apud W. &c. ostens. quare cum iidem A. B. & C. quoddam molendinum in N. pro indiviso teneant, & ipsi exitus inde proveniens. pro equali portione percipiant, & ad reparationem & sustentat. ejusdem molendini teneantur, ac iidem B. & C. licet proportionem de exit. illis ipsos contingen. percipiant, reparationi & sustentationi prædicti. molendini contribuere contradicunt, in ipsius A. annum non modicam, & gravam. ut dicit, & habeas ibi sum. & hoc breve.

And if there be three or four Coparceners of Lands, and the eldest Sister do the Suit to the Lord of whom the Lands are



Co: 16:

are holden for all the Coparceners, and the others will not allow her for her Charges and Losses according to the Rate for the same Suit; That Coparcener who did the Suit may have this Writ of Contribution; and the Writ is such:

*Rex Ric. &c. Si B. fecerit, &c. tunc summ. A. & I. uxorem ejus, & R. & F. uxorem ejus quod sint coram Justic. &c. ostens. quare cum de com. consilio, &c. quod si hereditas aliqua, &c. (ut supra usque ibi,) & ille qui habet entiam partem hereditatis illius, scilicet illam: faciat pro se & participibus suis ejusdem hereditatis & quod iidem participes contribuant ad scilicet illam faciend. ac quedam hered. que fuit C. in R. qua unica secta ad hundred I. de N. tantum debetur, ad ipsum B. & pred. A. I. R. & F. particip. hereditatis predicti. sit devoluta, ut accipimus, & predicti B. qui habet entiam partem hereditatis illius, scilicet illam fac. ad hund. pred. vel ad cur. pred. A. I. R. & F. particip. suis iidem A. I. R. & F. ad sectam illam faciend. contribuer. contradicant, ad grave dampnum ipsius B. & cont. formam provisionis pred. ut dicit & habeas, &c.*

And if there be many Coparceners, and the eldest do the Suit, and the other Coparceners agree with the eldest for a Rate; now the Writ of Contribution shall be brought against the others, who would not contribute, &c. And if many be infeoffed of Land, for which one Suit ought to be done, &c. Now if they agree among themselves, that one of them shall do the Suit, and that the others shall contribute unto him, if he do the Suit, and afterwards the others will not allow him for that Suit according to their Rate, Then he shall have the Writ of Contribution against them, and the Writ shall mention the Agreement, &c. and if they cannot agree, then the Lord shall distrain them all for all their Suits, if the Suit be not done; but if one Feoffee of his own Will do the Suit for them all, without any Agreement for the same made between them, the Lord cannot then distrain the others for the Suit; for as to the Lord, it is not material whether there be any Agreement between them or not; but between the Feoffees, he that did the Suit shall not have the Writ of Contribution against his Companions, without Agreement thereof made betwixt them. But if one Joint-tenant do make a Feoffment in Fee of his Part, his Feoffee shall do a several Suit by himself. But the other Joint-tenants shall do but one Suit by the Statute of *Marsebridge, cap. 9.* But every Tenant in Common shall do several Services and several Suits. And the Process in this Writ is Summons, Attachment and Distress.

shall this now to pred. and as the Stat. de Feoff. &c. 17: it

## Writ de Contra formam Feoffamenti.

**E** **T**HE Writ de Contra formam Feoffamenti lieth, where a Man doth enfeof another before the Statute of *Quia emptores terrarum*, to hold of him by Homage, Fealty, and Rent by Deed, and afterwards he will distrain for Suit or other Services to be done unto him; he who was infeoffed, or his Heir, shall have this Writ of *Contra formam Feoffamenti, &c.*

§ E. 4. 85.  
Br. 1. cont.  
formam  
Feoffamen-  
ti.

**F** And this Writ may be directed unto the Lord himself, or unto his Bailiffs, commanding them that they do not distrain him against the Form of his Grant; and this Writ is a Prohibition in it self. And if the Lord and Bailiffs do contrary to the Writs sent to them, the Tenant thereupon shall have an Attachment, and a Distress; and the Form of the Writ is such:

**B** *Rez I. vel ballivis I. salutem. Cum de Comuni, &c. provisum sit, ne qui occasione tenementor. suor. distringantur ad sectam faciendam ad curiam dominorum suorum, nisi per formam feoffamenti sui ad sectam illam specialit. tenent. aut ipsi vel eorum antecessores tenement. illa tenent. eam facere consarver. ante prim. transfretation. Domini Henrici Regis in Britan. Tibi vel vobis precipimus, quod non distringas vel distringatis A. ad faciend. sectam ad Curiam tuam de I. vel ad Curiam predict. Domini vestr. de N. contra formam provision. pred. & distriction. &c.*

And no Person shall have this Writ of *Contra formam Feoffamenti*, but he who was enfeofed, or his Heirs who are Privies to the Deed; But if the Feoffee to whom the Lands were given to hold of the Feoffor and his Heirs by the Deed, make a Feoffment over to hold of the chief Lord, &c. The Feoffee shall not have this Writ *de contra formam Feoffamenti*, because he is not Party or privy to the Deed, but he shall rebut the Lord by that Deed, to claim other Services than are mentioned in the Deed. And that Writ is a Prohibition unto the Lord and his Bailiffs; and if he distrain after the Writ delivered to him, the Tenant shall have an Attachment against him, and thereupon he shall recover his Damages if it be found for him, &c. and the Process is Prohibition, Attachment and Distress.

And the Rule in the Register is: *If any for Suits undue against the Form of any Statute, to the Court of any to be done, be distrained, he may have a Prohibition against the Distrainer, and after an Attachment if need be: And afterwards Attachment,*



ment, nor can be attached, unless a Prohibition be first directed unto him.

And the Opinion of *Parning* is *P. 10 E. 3.* That if a Man give Land in Frank-marriage, or in Frankalmoign, that the Donor shall not have a Writ of *Contra formam Feoffamenti*; nor his Heirs, because there are not any Services expressed in the Deed, for which Reason he is out of the Statute of *Marlebridge, cap. 9.* but they may rebut the Lord by such Deed.

And if the Lord confirm the Estate of the Tenant to hold by lesser Services, &c. the Tenant shall have a Writ of *Contra formam Feoffamenti*; if he be distrained for more Services than there are specified in the Deed of Confirmation. *M. 16 E. 3. Adwry 243.*

And in a *Contra formam Feoffamenti*, the Person did count up-H on the Deed, and the Distrainer demanded Oyer thereof, and could not have it, *M. 3 E. 2. Action sur le Case 5.*

And the *Contra formam Feoffamenti* lieth only against the Feof- I for and his Heirs.

*Writ de Coronatore eligendo vel exonerando.*

4 E. 4. 44.

**T**HE Writ de Coronatore eligendo lieth, where a Man who is Coroner of any County dieth, or be discharged of his Office, then that Writ shall be awarded unto the Sheriff, that he in full County by the Freeholders of the County, choose another in his Place, and to certify the Election, and his Name who is chosen, in the Chancery.

And in every County commonly there are four Coroners, L and in some Counties six Coroners, and in some Counties less, as the Usage is; and if any of them dieth, or is discharged, then shall issue such Writ:

*Rez Vic', &c. Quia L. nuper unus Coronatorum nostrorum in com. M. tuo diem clausit extremum, ut accepimus: Tibi precipimus, quod si illa est, tunc in pleno com. tuo de assensu ejusdem com. loco ipsius L. eligi fac. unum alium Coronatorem juxta formam statuti inde editi. Et provisum, qui prestitio sacrament. prout moris est, extunc ea fac. Et servet, que ad officium Coronatoris pertinent in com. predicta. Et statim eum eligi fac. quo melius sciat. Et possit officio illi intendere, Et nomen ejus nobis scire fac. Teste, &c.*

And now it appeareth by the Writ, that upon Election made, the Sheriff shall give him his Oath duly to execute his Office, *Vi. Stat. West. 1. cap. 10.*

And the Coroner shall be discharged of his Office by the N King's Writ sent unto him, and thereupon shall issue another Writ

\* Writ directed unto the Sheriff to choose a new Coroner, and that Writ shall recite the Cause of the Discharge of the other Coroner; and the Writ shall be such:

*Rez Vic', &c. Quia R. unus Coronatorum nostrorum com. tui diversis negotiis nostris in com. tuo faciend. ita occupat. est quod ea que ad officia Coronatoris in eodem com. pertinent exercend. vacare non potest, ut pro certo intelleximus, ipsum ab officio illo amovimus: Tibi precipimus, quod unum alium Coronatorum, &c. ut supra vel sic: Quia ex testimonio accepimus fide digno, quod W. T. unus Coronatorum nostrorum com. tui adeo languidus est, & senio confectus, quod ad ea, &c. exercend. non sufficit, ipsum W. duximus ab officio illo removend. Et ideo tibi precipimus, &c. Vel sic: Quia W. unus Coronat', &c. minus idoneus est ad offic' illud exequend. sicut ex relat', &c. Vel sic: Quia accepimus, quod W. coronat. com. predict. nuper elect. terr. vel tenementa in eodem com. non habet, in quibus juxta statum suum morari possit pro predict. offic. exercend. Tibi prec. &c. Vel sic: Quia A. unus coronat', &c. morbo paralyssi percuss. &c. Vel, quia in extremis partibus totius com. morat. per quod ea que ad offic. &c. commode exerceri non potest. Vel, Quia in officium vic. com. predict. est electus. Vel, in viridar. foresta nostr. de S. electus exiit per quod, &c. Vel, Quia non habet centum sol. terra, ut dic. Vel, Quia non est miles, &c.*

L 5 E. 4. acc. By our Judgm. Coroner shall not be discharged by Demise of the King, because he is made by Writ contr. of others, who are by Commission. 4 E. 4. 44.

[ 164 ]

But it seemeth, That at this Day, this last Clause is not Cause for to remove the Coroner: For if he have sufficient Lands within the County, it sufficeth, although he be not a Knight, notwithstanding the Statute which requireth that he be a Knight. For those Words are put into the Statute, to the Intent that he should have sufficient within the County, and for no other Cause. And it seemeth, the King by his Writ may command the Sheriff to choose two or three Coroners, if there want so many in the County.

And if the Sheriff choose one to be Bailiff of the Hundred or Wapentake: Or if the Lord of a Liberty choose one to be Bailiff of the Liberty, who hath not sufficient Land within the County, according to the Statute of West. 2. (but see the Statute of 2 E. cap. 4. thereof) then a Writ shall be sent to the Sheriff for to discharge such Bailiff, and to choose another in his Place, and upon that a Man may have an *Alias*, and *Pluries*, and Attachment against the Sheriff, if that he do not according to the Writ; and the Writ is such:

*Rez Vic', &c. Cum in Statuto apud Westmon. nuper edit. continetur, quod nullus sit vic. vel ball. libertatis Wapentag. hundred. nec tithingi, nisi habeat terras & tenementa suffic. in eodem*



*Writ de Electione Viridariorum Forestæ.*

eodem Comitatu, unde nobis seu populo nostro in hac parte respondere possit, si quis super eum conqueri voluerit, jamque intellexerimus, quod W. de T. qui terras seu tenementa in eodem Comitatu non habet, ball. wapentagii nostri de B. fecisti, in nostri contemptum, & populi nostri in hac parte damnam non modicam & gravamen, & contra formam Statuti prædicti. Et ideo tibi præcip. quod si ita est, tunc ipsum W. a ball. præd. sine dilatione amoveri facias, & alium loco suo competentem constitui vel ordinari fac. juxta formam Statuti præd. Teste, &c.

*Writ de Electione Viridariorum Forestæ.*

**T**HE Writ of Election of the Verderors of the Forest, lieth, where any of the Verderors are dead, or removed from their Offices, &c. Then the King shall send a Writ to choose another in his Place, and it shall be directed to the Sheriff, and is such :

*Rez Vic', &c. Quia A. nuper unus viridar. nostrorum foresta nostr. mortuus est, ut accepimus: ideo tibi præcipimus, quod si ita est, tunc in pleno com. tuo de assensu ejusdem comit. loco prædicti. A. eligi facias unum alium viridarium, qui præstito sacramento prout moris est, extunc ea faceret & conservaret que ad officium viridarii pertinent in foresta prædicti', &c.*

And by that it appeareth, That the Verderor shall be chosen in the same Manner as the Coroner of the County shall be chosen by the Freeholders of the County.

And if a Coroner or Verderor be discharged of his Office by false Suggestion by the King's Writ directed to the Sheriff, then the Party may come into the Chancery, and require a Commission to enquire of the said false Suggestion, and to return the Enquiry before the King into the Chancery; or the Justices of the Forest may certify the King of the false Suggestion under their Seals; and if it be found to be false, then the King may make a *Superfedas* to the Sheriff, that he do not remove the Verderor, if, &c. And if he be removed that he suffer him to exercise his Office as he did before, and the Writ is such :

*Rez Vic', &c. Licet nobis sugg. in cancellar. nostra, quod A. unus viridariorum in foresta nostra de S. non habuit terras seu tenementa infra limites foresta prædicti. nec infra forestam præd. morabatur: Tibi præcip. quod si ita est, tunc in pleno Com. tuo de assens. ejusd. com. loco prædicti. A. eligi faceres unum alium viridar. qui præstit. sacramento, prout moris est, extunc ea fac. & conserva. que ad offic. virid. pertin. in foresta præd. quia tamen testificat. est, coram nobis in cano. nostra per dilecti. & fidel. l.*

de S. Justic. nostr. ultra Trentam, quod idem A. terr. & tenementa habet sufficient. infra forestam prædictæ. & idone. & sufficiens existit pro officio supradictæ. Nos nolentes ipsum A. ab offic. illo occasione hujus falsæ sugg. amoveri: Tibi præcipi quod execut. brevis nostri præd. occasione falsæ sugg. præd. tibi direct. super sed. omnino, & præsat. A. offic. illud exercere permittas, sicut hactenus fieri consuevit. Teste, &c.

Writ for the Election of the Clerk to take Obligations upon Statutes Merchant.

**T**HE Writ for the Election of the Clerk assigned to take and make Obligation thereof by Statute-Merchant, lieth where the Clerk who is assigned to take such Obligation, dwelleth in another Place, or is busied in other Affairs that he cannot intend or follow the Office, or that he hath not sufficient Lands, &c. to answer for his Misdoining; then upon a Surmise made in the Chancery, such Writ shall be made directed unto the Mayor or Bailiff to discharge him, and to choose another; and the Writ is such, viz.

[165]

Rex ballivis & probis hominibus vill. de H. salutem. Quia ex relatu accepimus plurimorum quod B. qui custod. majoris peciæ sigilli juxta formam Statuti de Alton Burnell in villa prædictæ. accipiend. deputat. jam habet, in villa prædictæ. moram non facit per quod ad ea que ad officium suum pertin. in hac parte faciend. intendere, non potest, in mercatorum & aliorum ad dictæ. vill. confluent. dispend. non modic. & gravamen: Vobis mandamus, quod si ita est, tunc loco ipsius R. eligi fac. unum alium homin. de vill. præd. qui ad illam custod. pertin. faciend. melius sciat & possit intendere, & nos de nomine illius quem sic elegeritis, communi sigill. vestro distincte & aperte sine dilatione reddatis certiores, hoc breve nobis remittentes. Teste, &c.

And it appeareth by the Statute de Mercatoribus, That the King shall make the Clerk, and by it appeareth, That the Mayor or Bailiffs shall choose the Clerk, &c. but it seemeth that Writ is granted ex gratia Regis. For he might send a Writ of Discharge unto the Clerk, and make a new Clerk (as it seemeth) at his Pleasure.

Writ



*Writ de non ponendis in Assis & Juratis.*

29 E. 3. 15. One was chosen by Knights in a Writ of Right upon the Grand Assise, and after he shewed a Charter of Exception De non ponendis &c. and it was not allowed, the same Suit in Attaint.

**T**HE Writ *De non ponendis in Assis & Juratis* is grounded upon the Statute of *West. 2. cap. 38.* and upon the Statute of *Articuli super Chartas, cap. 9.* which Statutes declare what Persons the Sheriff ought for to impanel, and what Number he ought to impanel in Juries and Inquests, and the Writs declare the Effects of the Statutes; and the Writ shall be such:

*Reus Vic, &c. Cum inter ceteros Articulos quos dominus Rex quond. Rex Angl. &c. ad emendand. status populi regni sui ordinavit, concessum sit, quod nullus Vic. ballivus ponat in inquisitione nec jurat. plures homines, nec alios, nec alio modo quam ordinat. est per statutum, & quod ponant in inquisitionibus & juratis hujusmodi homines magis propinquos, magis sufficientes, & minus suspectos: Et qui secus fecerit, & inde convictus fuerit, reddat querenti damna sua in duplum, & sit in gravi m'ia nostra: Tibi precipimus, quod in jurata 24 Militum quam H. T. de K. arrainavit coram, &c. per breve nostrum versus W. F. ad convincend. Juratores ass. nove disselsina, que inter ipsam W. & pref. H. T. & alios in brevi nostro originali contentum. facte & capta apud E. per breve nostrum coram nobis de tenementis in C. homines vicines, illius magis propinquos, magis sufficientes, & minus suspectos, per quos rei veritas melius sciri poterit & inquiri, poni fac. juxta formam Articulorum præd. & hoc nullatenus omittas.*

And by this Writ it appeareth: When a Man sueth an **A** Assise of Attaint, or such Actions, in which are Jurors at the first Day, &c. That he may also sue this Writ directed to the Sheriff, that he return the Panel according to the Statute; and if the Sheriff do not accordingly, then it seemeth the Party shall have an Attachment against the Sheriff. And this Writ may be sued as well by the Defendant as by the Plaintiff or Demandant, and also although that the Party do not sue forth the Writ, yet if the Sheriff or Bailiff of the Liberty return a Panel against the Form of the Statute, the Party Defendant or Plaintiff may have an Action upon the Statute against the Sheriff, &c. because the Statute is a Prohibition in it self; and the Form of the Writ of Attachment upon the same is such:

*Reus Coronatoribus suis in Com. Linc. &c. Ponite per vadios, &c. B. Vic. nostrum com. prædict. quod sit ostensur. quare cum inter ceteros Articulos, &c. (usque ibi,) in gravi misericordia nostra, & nos nuper ad prosecutionem H. asserentis quandam inquisi-*

inquisitionem capi deber. coram Justic. nostris præd. de loqueta, que fuit coram eisdem justic. per breve nostrum int. R. potentem & T. tenentem de manerio de S. cum pertin. præcepimus præfat. Vic. quod in inquisit. illa homines magis propinquos magis sufficient. & minus suspectos ponerat, juxta formam Statuti & Articulorum præd. idem Vic. in eadem inquisitione homines magis remotos, minus suffic. & magis suspectos posuit, contra formam eorundem Statuti & Articulorum, ac contra tenorem mandati nostri præd. ut dic. & habeas, &c.

- D** And by the Statute of *Westm.* 2. aforesaid, The Sheriff ought not to impanel Men who are sick or decrepit, nor Men who at the time of the Summons were not dwelling within the County, nor Men above the Age of threescore and ten Years, &c. and if he do, then he, or those who are impanelled by the Sheriff, may sue this Writ unto the Sheriff, commanding him that he do not impanel them, &c.

70 years

And Barons who are Lords shall not be impanelled upon Inquests nor Assizes, &c. if their Presence be not necessary, but they shall have a Writ unto the Sheriff to discharge them, thus :

43 E. 3. 30.  
27 H. 8. 22.

- E** Rex Vic', &c. Quia Barones regni nostri in Assisis, Juratis, seu Recognitionibus aliquibus poni non consuever. ut dicunt, nisi eorum sacramentum adeo sit necessarium, quod sine illis veritas inquiri non possit: Tibi præcipimus, quod dilectum & fidelem nostrum A. in Assisis, Juratis seu Recognitionibus aliquibus non ponas seu poni facias contra voluntatem suam, sine mandata nostro speciali, nisi sua present. ob aliquam causam specialiter exigatur. Teste, &c.

[166.]

But if the Sheriff hath returned any Lord in Juries or Assises, &c. then he ought to bring a Writ unto the Justices, reciting that he is a Peer of the Realm, commanding them for to discharge him, otherwise he shall be sworn, and if he do not appear, he shall lose Issues, &c.

- A** There are also other Writs for those who are sick, or past 70 Years of Age, or those who are not dwelling in the County, and the Writ is such :

Rex Vic', &c. Cum de Com. consilio, &c. provisum sit, quod homines perpetuo languidi. Vel sic, Quod homines tempor. sum. Vic. in patria non commorantes. Vel sic, Quod homines etatem lxx. annorum exceden. non ponantur in Assisis, Juratis, &c. Tibi præcipimus, quod si A. sit perpetuo languidus. Vel sic, Etatem lxx. annorum ~~excedat~~ vel in tempore sum. tua in balliva tua, vel com. tuo morari non fecerit, tunc ipsum, &c. in Assisis, Juratis, seu Recognitionibus aliquibus non ponas, seu poni facias contra formam provisionis præd. Teste, &c.

Gap van  
with Lang  
excess



Clerks who have Lands or Tenements by Descent or Purchase may be pur and sworn in Assises and Inquests as well as other Lay Persons, as appeareth by the Register, and it seemeth the Law is such. But if such Clerk be in the King's Service, he shall have a special Writ for to discharge him, and the Writ is such :

*Rex Vic', &c. Quia Magister R. Clericus in obsequio nostro, vel in obsequio venerabilis Patris J. Eliens. Episc. his diebus moram fac. continuam, ut dicitur: Tibi precipimus, quod ipsum R. occasione terrarum & tenementor. qua tenet in comitat. pradi. in assisi, juratis, seu recognit, aliquibus non ponas seu ponas fac. quantum in obsequio nostro, vel ejusdem Episc. moram facit supra. di. T. p. &c.*

And by the Writ it appeareth, that a Clerk shall be put and returned in Panels and Juries, if he be not in the Service of the King or other Person for whom the King will write to the Sheriff, that he do not impanel him, &c. But if the Sheriff do impanel and return such Clerks, they ought for to appear, otherwise they shall lose Issues, and they have no Remedy if they have not such Writ as before.

And if the Sheriff do impanel, or return them in Juries after such Writ directed unto him, then, as it seemeth, they shall have Attachment against the Sheriff, &c.

But if the Sheriff do return Men who are dwelling in other Counties, or past 70 Years of Age, or those who are sick, then they shall have an Action upon the Statute against the Sheriff, although they have not sued forth such Writ, directed to the Sheriff, because the Statute is a Prohibition to him, that he return not such Persons, and, it seemeth, the Sheriff is bounden to take Notice of the Statute at his Peril; *tamen quare.*

And if the Sheriff do return any Panel-Men who are not sufficient to pass in the Action of Lands and Tenements, &c. then the Juror may have an Action upon the Statute: which is such:

*Rex Vic', &c. Cum ad communem utilitatem populi regni nostri de Commun. consilio ejusdem regni statutum sit, Ne quis penatur in Ass. juratis seu recognitionibus aliquibus, nisi habeat terras aut tenementa ad valenc. xl. s. per Annum ad minus, ita tamen quod coram Justic. itinerant. ad Communia placita in itineribus suis, & etiam in Assisi, juratis seu recogn. quid Civitatibus, Burg. & aliis nullis mercatoribus emiserint faciend. fiat prout hactenus fieri consuevit: Tibi precipimus, quod si A. terrae vel tenementa ad valenc. tanti per annum non habeat,*

zane ipsum A. in Assisis, juratis, seu recogn. non ponat seu poni facias contra formam Statuti, &c.

**E** And if the Sheriff do the contrary, &c. he shall have an Attachment against the Sheriff. And by the Statute the Sheriff ought not to impanel any Juries to try any Matter which shall be tried out of the County, if they may not expend 5 l. by the Year, &c. And if he do, the Party shall have an Action upon the Statute of 21 E. 1. de ponendis in Assisis & Juratis.

**F** And if the Sheriff return any Panel-Men who dwell within ancient Demefn for their Lands within ancient Demefn, then they may have a Writ against the Sheriff, than he do not return them; and the Writ is such:

*Rex Vic. &c. Cum secundum legem & consuetudinem regni nostri hactenus obtentam & approbatam, homines & tenentes de maneriis que sunt de antiquo dominico Coronæ Angl. pro terris & timentis que tenent de eodem dominico in Ass. jurat. seu recogn. aliquibus poni non debeant, nisi tantum in his que in Cur. hujusmodi maner. debeant fieri: Tibi præcipimus, quod homines & tenentes nostros de manerio nostro de I. quod est de antiquo dominico Coronæ Angl. ut dic. pro terris et timentis que tenent de eodem manerio, in assisis, juratis, seu recognit. aliquibus extra Cur. maneriorum prædict. non ponas, seu poni facias contra legem et consuetud. prædict. nisi terras et timentia de alia tenura teneant, per quam secundum formam Statuti de Communi consilio regni nostri inde provisi, in assisis, juratis, seu recogn. poni debeant, et distractionem si quava eisdem hominibus et tenentibus nostris occasus prædict. feceris, sine dilatione relaxes eisdem. Teste, &c.*

And by that Writ appeareth, That all the Tenants may sue the Writ, as they may sue forth a *Monstraverunt*; and if the Sheriff do contrary to the Writ, they shall have an Attachment against him, and any of the Tenants may sue the Writ in his own Name if he will; and then the Writ shall be such: [167]

*Rex Vic', &c. ( ut sup. usque) Tibi præcipimus, quod A. tenentem. Vel sic; A. & B. tenentes de manerio de M. quod est de antiquo dominico, &c. ut supra.*

And although that the Manor be not in the King's Hands; yet the Tenant shall have the Writ against the Sheriff if he impanel them, &c. And also they shall have the same Writ against the Bailiffs of the Liberty who have Return of Writ, if they return any of the Tenants who hold of a Manor which is ancient Demefn, for Juries, Assises, or Inquests, &c.



*Writ upon the Statute of 23 Ed. 3.*

And also the Sheriff ought not to return Coroners in Assises, Juries or Inquests, nor Verderors, nor Foresters, nor other Officers of the Forest, and they may have a Writ for to discharge them; and the Writ shall be such:

*Rex Vic', &c. Quia A. unus Coron. nostrorum com. tui ad ea que ad officium coron. pertinet. in eodem com. exercend. intendere non potest, si in Ass. Juratis seu Recogn. aliquibus ext. eundem com. ponat. Tibi precip. quod si ita est, tunc A. in Ass. Jurat. seu Recogn. aliquibus extra com. tuum non ponas seu poni fac. quo minus officia intend. possit supradiet.*

And by that it appeareth, That the Sheriff may return the Coroner to enquire of Affairs in the County before Commissioners or Justices of the Peace. But upon Actions sued in the Common Pleas, or King's Bench, they shall not be returned into any Panel. And for Verderors or Foresters, or other Officers, the Writ is such:

*Rex Vic', &c. Cum Dom. Edw. quondam Rex Angl. progenitor noster per literas suas patent. concessit pro se & Hered. suis quod forest. viridar. aut alii ministri forest. sua non ponant. in Ass. Juratis seu Recogn. aliquibus extra forestam illam capiend. Tibi precip. quod si A. viridarius noster foresta nostr. de S. existat, aut forestar. &c. tum ipsum A. in Ass. Jurat. seu Recogn. aliquibus extra forestam illam capiend. non ponas seu poni fac. juxta formam provisionis pradict. et distriet. si quam. Vel sic: Quia unus viridar. nostrorum foresta nostr. de S. in com. tuo, ad ea que ad offic. viridar. pertinent, in eadem foresta exercend. intendere non potest, si in Ass. &c. ponatur extra forestam prad. Tibi precipimus, ut supra.*

*Writ upon the Statute of 23 Ed. 3.*

**I**F a Man do retain my Servant being in my Service, for which the Servant departeth from me, &c. and goeth to serve the other, I shall have an Action against him who retained him, and against the Servant, upon the Statute of 23 Ed. 3. And the Writ shall be Attachment against them, because the Statute is a Prohibition to them, that they shall not do so; and the Form of the Writ is such:

*Rex Vic', &c. Si A. fecerit, &c. tunc attachias I. de B. ita quod eum habeas coram Justic. nostris, &c. ad respondend. tam nobis quam prasat. A. quare cum per nos & consil. nostrorum pro communi utilit. regni nostri ordinat. sit. Quod si aliquis messor, saltator. aut alius operar. vel serviens cujuscunque status seu condit. fuerit in servitio alicujus retent. ante suam terram concordat. a dicto servitio sine causa ratiabili vel licentia recesserit  
pan.*

pan. imprisonmenti subeat, & nullus sub eadem pana talem in servitio suo recipere. vel retinere. presumat: Nec ullus wadia, liberationes, merced. seu salaria majora quam solita sunt prestari. anno regni Regis Ed. 3. progenitor. nostri 20. vel annis communibus quinque vel sex proxim. precedentibus, alicui servienti solvas vel solvere permittat sub pana dupl. illius quod sic solum aut promiss. fuerit illi qui ex hoc senserit se gravari. applicand. præd. I. R. de C. nuper servient. præd. A. in servit. suo apud B. retent. qui ab eodem servit. ante finem termini inter eos concord. fact. sibi præmiss. per ipsum I. de salar. plus solit. recipiend. sine causa rationabili & licent. præfat. A. recessit in servit. ipsius I. quantum ipse de præf. R. eidem A. restituend. requisitus fuerit, admisit & retinuit, in nostri contemptum, & ipsius A. grave damnum, & contra formam ordination. præd. attachias etiam præf. R. ita quod cum habeas tunc ibid. ad respondend. tam nobis quam præf. A. quare a servit. ejusdem A. sine causa rationabil. & licentia sua, ut præd. est recessit in nostri contempt. & ipsius A. grave damnum, & contra ordinationem præd. & habeas ibi hoc breve. Teste, &c.

**C** And if a Man be required to serve, and hath not Lands nor Tenements to live upon, nor other Art or Trade, and he refuseth to serve, then he who requireth him to serve shall have this Writ:

Rex Vic', &c. Si W. &c. tunc attachias R. ita quod eum habeas coram Justic. nostris, &c. ad respondend. tam nobis quam præf. W. quare cum per nos & consil. nostrum pro communi, &c. (ut supra usque ibi) ordinat. sit, quod quilibet homo & femina dicti regni nostri, cujuscunque conditionis fuerit liberæ vel servilis, potens in corpore, & infra etatem sexaginta annorum, non vivens mercatura, nec certum exercens artificium, nec habens de suo proprio unde vivere possit, nec terram propriam certa cujus cultura se poterit occupare, & alteri non serviens, si de servient. in servitio congruo considerato statu suo fuerit requisitus, servire teneatur illi qui primo duxerit requirend. & percipiat duntaxat wadia liberation. mercedes, seu salaria quæ in locis ubi servire debeat consuetæ sunt prestari, Anno regni Regis Ed. 3. 20. vel annis communibus quinque vel sex præced. Et si talis vir vel mulier sic de serviendo requisitus hoc facere noluerit, statim capiatur & mittatur proxima gaole, et ibidem sub arcta moretur custod. quosque securis. invener. de servient. in forma prædict. idem R. de conditione hujusmodi existens præfat. W. quantum ipse ad servient. eidem W. pro salario statui suo competentis dictis annis communibus præcedent. cons. sapias requisit. fuerit, penitus servit. recus. in nostri contemptum, et ipsius W. grave damnum et contra formam ordination. prædict. et habeas, &c. Teste, &c.



And if the Servant be retained in Winter to serve, and after he will depart from his Master in the Summer, and serve in another Place, then he whom he served in Winter, shall have a Writ to compel him to serve him in Summer, which is such :

*Rex Vic. &c. Si W. de C. &c. tunc pone I. de S. quod fit, &c. ad respond. tam nobis quam pref. W. de C. quare cum per nos & consil. nostrum pro communi utilitate regni nostri stat. fit, quod nullus serviens cujuscunque stat. fuerit seu conditionis extra villam, ubi moratur in Hyeme ad serviendum alibi in estate, si servitium in eadem villa invenire possit sub pena imprisonment evadat, excepto quod homines in comitat. Staff. Lanc. & Derb. & de March. Wallia tempore Augusti ad laborandum in alius com. venir. & salvo, prout hactenus facer. consuever. redir. possunt, prefat. I. in servitio ipsius W. apud E. in Hyeme nosper retentus, predict. W. seu alicui alio in villa predicta quantum ipse ad serviend. in eadem villa pro salario competenti sepius requisitus fuerit servire recusavit, in nostri contemptum, & ipsius W. grave damnium, & contra formam statuti pred. & habeat ibi nomina pleg. & hoc breve. Teste, &c.*

The Lords of Dowers, or Justices of Peace, may commit Vagrants to Prison, if they will not serve, and they may command the Gaoler to fet him at Liberty without any other Writ.

And if a Man be retained in Service, and go wandering abroad out of his Service, another Man may compel him to serve him, &c. because he is out of Service.

And so if a Man do retain another's Servant, not knowing that he was in the Service of the other, he shall not be punished for so doing, if he do not retain him after Notice of his first Service.

An Infant of 12 Years of Age shall be bound by his Covenant to serve in Husbandry.

A Woman of such Age shall be also bound to serve in Husbandry by her Covenant.

If a Man take an Infant or other out of another's Service, he shall be punished, although the Infant or other were not retained.

An Infant by his Covenant shall be bounden to serve in Husbandry, although he may spend 40 Shillings or 12 Marks by the Year.

And so a Gentleman by his Covenant shall be bound to serve, although he were not compellable to serve. For if a Gentleman, or Chaplain, or Carpenter, or such which shall not be compelled to serve, &c. yet if they covenant to serve, they

they shall be bound by their Covenant, and an Action will lie against them for departing from their Service.

**F** And if a Man do retain one to serve him for 40 Days, and another doth afterwards retain him to serve him for a Year, the first Covenant is avoided, because the Retainer was not according to the Statute.

And so if a Man be retained to serve at every Time he shall be required, it is no Retainer according to the Statute, but a Covenant, if it be by Deed; and without Deed it is void.

**G** And a Man shall not have an Action against an Apprentice upon his Departure, upon the Statute.

**H** And if a Man do retain one to serve him, and doth not express for how long he shall serve him, he shall serve him for a Year; for the Retainer is according to the Statute.

If a Man who is not to have any Servant, do retain one to serve him, &c. the Retainer is void.

**I** He who hath not sufficient Lands of his own to occupy, shall be compelled to serve.

**K** And a Man may retain one for two or three Years, and it is good.

**L** And keeping from the Servant Meat and Drink, is a good Cause for Departure from his Service.

And so for Battery; or Licence to depart, is a good Cause of Departure.

**M** The Lord may take his Villain out of the Service of another, if he hath need of Servants, otherwise not.

**N** If a Woman who is a Servant doth marry, yet it seemeth she ought for to serve.

**O** If the Husband and Wife be retained in Service during their Marriage, &c. if they depart from their Service, an Action upon the Statute lieth against them.

**P** If the Servant be drawn away, the Master may re-apprehend him, and keep him in Spight of him.

**Q** If the Master's Wife do beat the Servant, it is good Cause for the Servant to depart and leave his Service.



*Writ de Restitutione temporalium.*

**T**HE Writ of Restitution of the Temporalities lieth, in case a spiritual Person be elected a Bilhop, and consecrated, &c. then he shall have this Writ unto the Escheator, &c. And so it is of an Abbot or Prior, which is of the King's Foundation, and ought to have the King's Royal Assent, &c. when he is elected and established Abbot or Prior, he ought to sue a Writ to be restored unto the Temporalities; and the Form of the Writ for the Prior is such:

*Rex Escheatori suo in Com. Devon. sal. Cum venerabil. pat. A*  
**H. Exon. Episc. electionem nuper fact. in Eccles. conventuali de P. de dilecto nobis in Christi. fratre I. de C. Canonico ejusdem dom. in Prior. loci illius, cui prius regium assens. adhibuimus et favorem, confirmaverit, sicut per literas patentes ipsius Episcopi nobis inde directas constat: Nos confirmationem illam acceptantes, cepimus fidelitatem ipsius Electi, et temporalia prioratus predicti. (prout moris est) restituisimus eidem. Et ideo tibi precipimus, quod eidem Electo temporalia prioratus predicti. liberes in forma predicti.**

And by that Writ appeareth, when a Priory or Abbey **B** is void which is of the King's Foundation, that they ought for to have the King's Royal Assent to go to the Election; and after the Election made, the Bishop ought to confirm the Election, and to certify the King thereof by his Letters, and thereupon the King to take his Fealty; and he to grant this Writ to restore the Temporalities.

And there is another Writ when the King granted only his Assent to go to the Election, and to make the Prior wish-out any Certificate made before of the Election; and the Writ is such:

*Rex, &c. Cum venerabilis pater, &c. dilectum nobis in Christo fratrem C. de D. Canonicum ejusdem domus in Prior. loci illius electi. cui electioni prius regium assensum adhibuimus & favorem, in Priorem ejusdem loci presecerit & pastorem, sicut per literas patentes ipsius Episc. nobis inde directas constat, nos prefessionem illam acceptantes, cepimus fidelitatem ipsius presetti et temporalia Prioratus predicti. &c. ut supra.*

And the Prior so elected and established, may have a **C** Writ out of the Chancery directed unto the Tenants of the Priory, that they do accept him for their Prior and Lord, &c. and that they be Attendants, &c.

And where the Prior or Abbot ought to have the King's **D** Royal Assent to go to Election, and obtain the same, and after:

afterwards make the Election, and the Bishop doth avoid it, and afterwards they submit unto the Award and Arbitrement of the Ordinary, to name to them one to be Prior, &c. and make him Prior, and certify the King thereof by his Letters, the King thereupon may grant such Writ, viz.

*Rex, &c. Cum venerabilis pater I. Wint. Episc. Elect. nuper fact. in Eccles. S. D. juxta S. de dilecto nobis in Christo fratre T. de N. Canonico ejusdem Domus in Priorem loci illius causavit: Et virtute submissimis conventus loci pred. sibi fact. de providend. eidem Prioratui de Prior. idem illa vice, dilect. nobis in Christo fratrem I. de W. Canonicum ejusdem Prioratus in Priorem loci illius prescecit et pastorem sicut per literas patentes ipsius Episc. nobis inde direct. nobis constat, nos cum eodem I. volent. agere gratiose, ceperimus fidelitatem dicti I. et temporal. Prior. illius prout moris est, restitimus eid. Et ideo tibi precip. &c. ut supra.*

And by that Writ appeareth, that the Writ is of the King's special Grace; for the King might lawfully refuse the Establishment of the Prior, because he was not elected according to the King's Licence and Assent to the same, &c. But yet the common Use is, That if they cannot agree in the Election, to submit themselves unto the Award of the Ordinary.

And there is another Form of Writ where the King grants his Royal Assent to any Chapter to choose the Bishop, and they choose one of the Chapter; and because the Archbishoprick is void, the Guardian of the Spiritualities doth certify that Election unto the King, and his Confirmation upon the same; and upon that the King grants a Writ of Restitution, &c. in such Form:

*Rex, &c. Cum dilect. nobis in Christo Prior et Capitulum Eccles. Christi Cant. Custod. spiritualitat. Archiepiscop. Cant. sede vacante, electionem nuper celebrat. in Eccles. Cathedr. movend. de discreto viro magistro H. de H. Archidiacono induend. et Canonica ejusdem Eccles. in Episc. loci illius, cui prius Regium assensum adhibuimus et favorem confirm. sicut per Literas patent. ipsorum prioris et capituli nobis inde directas nobis constat, nos confirmationem, &c. ut supra.*

**F** And before the Statute of *Præmunire*, the King might seize the Temporalities of the Bishop, if he came to the same by Provision of the Pope; but now he shall forfeit all his Lands and Goods by the Statute of 16 R. 2.

**G** And it appeareth by the Register, if a Bishoprick of *Ireland* be void, that they shall sue to the King here in *England* to go to Election of another, and after the Election made,



*Writ de Restitutione temporalium.*

made they ought to have his Royal Assent to that Election, upon Certificate of the Election to the King. And thereupon a Writ shall be out of the Chancery here to the Chief Justice of *Ireland*, or his Lieutenant, rehearsing the whole Matter, commanding him to take the Bishop's Fealty; and to restore to him the Temporalities; but now the Course in *Ireland* is to make such Writs there in the King's Name, but the King doth nominate the Bishops there, and also in *England*; and then the Chapter shall choose him whom the King hath nominated unto them; and thereupon the Writs are made of course.

But how and in what manner Archbishops and Bishops shall be elected, nominated, presented, invested and consecrated unto the Dignity of an Archbishoprick or Bishoprick, see the Statute thereof made 25 H. 8. cap. 2.

And the King may give Power to another, to give his Assent to go unto, the Election, and to certify the same Election unto him again, and thereupon to take the Fealty of the Abbot, Prior or Bishop, and to certify the King thereof in the Chancery. And the Writ of *Dedimus potestatem* shall be such:

*Rex dilecto suo I. de C. Constabulario suo castri sui de A. B. sal. Compatientes paupertati dilectarum nobis in Christo supprei-  
resse & monialium Priorat. de B. vacantis per mortem bone  
memorie M. nuper Prioresse loci illius, cui licentiam nuper con-  
cessimus eligend. ac volentes ipsarum laboribus & expens. parere,  
gratiose dedimus tibi potestatem prebend. assensum regium vice  
nostra electioni de futura Prioressa in dicta Ecclesia facta seu in  
proximis faciend. Et cum electio hujusmodi per literas patentes  
ipsarum supprioresse & monialium cum sigillo capituli sui signa-  
tas nobis inde directas, tibi fuerit presentata ad hujusmodi  
assensum loci Diocesis per vestr. literas significand. ut quod  
suum est ulterius exquatur, necnon ad recipiend. fidelitat. nomine  
nostro ejusdem Prioresse, si contingat electionem pred. Canonice  
confirmari, & tibi inde per literas patentes ipsius Diocesis  
nobis inde directas constitueris, & ideo tibi mandamus, quod  
circa premissa facias in forma pred. & nos de fidelitate pred.  
cum illam ceperis sub sigillo vestro distinde & aperte reddas  
certiores, mittens nobis tam literas ipsarum supprioresse & mo-  
nialium, quam literas ipsius Diocesis supradict. Teste, &c. ut  
supra.*

And if the Dean and Chapter go to the Election of the Bishop without the King's Assent, and certify the same to the King, the King may choose whether he will assent to the Election or not; and if he will give his Royal Assent

to the same, then he shall send a special Writ to some Person to take Fealty of him; and the Writ in the Register is such:

*Rex dilecto & fideli suo I. Justic. suo Hibern. salutem. Cum dilecti nobis in Christo Decanus & capitulum Eccles. de B. vacan. nuper Ecclesia sua prædict. per mortem bone memor. Lucae nuper Episc. loci illius dilect. nobis in Christo M. I. Decanum Eccles. prædict. in suam Episcopum elegerunt & pastorem, & nobis per suas patentes literas supplicaverunt, ut Electioni regium assensum adhibere dignaremur: Nos licet idem Decanus et Capitulum prius à nobis Eligend. licent. non postulaverint, ut est moris, volentes tamen eis hac vice grac. facere specialem, eidem Electioni Regium assensum duxerimus adhibend. Nolentes, quod quamvis ipsi huiusmodi licentiam minime postularer. molestentur in aliquo seu graventur: Volentes insuper, eid. Electo, et ipsius precat. laboribus et expens. grac. fac. uberiores: vobis dedimus potestatem, quod si contingat Election. huiusmodi per loci metropolitan. Canonic. confirmari, et vobis inde per literas patent. loci ipsius Metropolitan. nobis inde direct. confiteri, tunc fidelitat. ipsius Electi nobis debitam in hac parte nostro nomine recipiatis, et ei temporalia Episcopatus illius prout moris est restit. faciatis vice nostra, receptis prius ab Episcopo Elect. literis suis factis sigillo suo, &c. & sigillo capit. sui signatis, quod gratia nostra, quam eidem Electo ad present. ex mera liberalitate nostra fecimus, nobis vel heredibus nostris non cedat, &c. Teste, &c.*

## Licence to go to Election.

**D** THE Form of the King's Licence to go to Election is thus:

*Rex dilectis sibi in Christo Priori & Conventui Monaster. de Burg. S. Petri sal. Ex parte vestra nobis est humilit. supplicatum, ut cum Ecclesia vestra præd. per mort. bon. memor. W. ultimi Abbatis loci illius pastoris sit solatio destituta, alium vobis eligendi in Abbatem & Pastorem ejusdem domus licentiam vobis concedere dignaremur, nos precibus vestris in hac parte favorabiliter inclinatis, licentiam illam vobis tenore præsen. duximus concedend. mandantes quod talem vobis eligatis in Abbatem & Pastorem, qui Deo devotus, Eccles. vestr. præd. necessarius, nobisque & Regno nostro utilis & fidelis existat. In cuius rei, &c.*

**E** And when they have made their Election, they ought to sue a Writ to have the King's Royal Assent to that Election, and that Assent shall be made by Writ, directed to the Bishop of the Diocese, and shall be such:

Rex



## Writs of Decies tantum.

Rex venerabili in Christo Patri P. eadem gratia Episc. Linc. salutem. Sciatis quod Elothiani nuper fac. in Eccles. conventuali Monasterii de B. vestra Dioces. vacan. per mortem bone memor. W. ultim. Abbatis loci illius de M. superior. eiusdem domus vel de fratre B. Monacho eiusdem domus in Abbatem loci illius Regium assensum adhibuimus et favorem, et hoc vobis tenore presen. significamus, ut quod vestrum est in hac parte exequamini.

And the Abbot, when he is made Abbot, may sue Letters F Patents, directed to his Tenant, reciting how he is made Abbot, and how the King hath restored to him the Temporalities, commanding them that they be attendant upon him as their Lord.

## Writ of Decies tantum.

**T**HE Writ of *Decies tantum* lieth where any of the Jury A who is sworn, taketh of the one Party, or of the other, or of both, to give their Verdict, &c. Then he who will may sue this Writ, for it is an Action popular. And the Writ of *Decies tantum* lieth against all the Jurors, although they severally take Sums of Money, as some more, some less.

21 H. 6. 52. Therefore the Release of the Party is not good against the King. 40 E. 3. 33. 44 E. 3. 36. 36 H. 6. 28.

17 E. 4. 5. And *Decies tantum* lieth against an Embraceor, if he take Money, as well as against a Juror, otherwise not.

One Juror may pray his Companions to pass with the one, or the other, because he is persuaded in Conscience with him.

6 E. 4. 5. And an Embraceor is he who cometh to the Bar with the Party, and taketh in the Cause, or standeth there to survey the Jury, or to put them in Fear; but the Lawyers may plead in the Cause for their Fees, but they cannot labour the Jury, and if they take Moneys so to do, they are Embraceors.

37 H. 6. 31. acc. per Curiam. And the *Decies tantum* doth not lie against the Embraceor, C if he embrace and take no Money; for he ought to take Money, and also embrace, if the Action be maintained.

21 H. 6. 20. 1 Ma. Dyer 95. And *Decies tantum* lieth against the Jurors, although they D do not give a Verdict, if they take Money; and so if they give a true Verdict, a *Decies tantum* lieth if they take Money.

41 E. 3. 5. And a *Decies tantum* may be sued against the Jurors and Embraceors, and it may be sued against the Justices of Nisi Prius by Bill, and it may be adjourned from them in Banco. E And the Form of the Writ is such :

Rex

Rex Just. suis de Banco salut. Cum in Statuto nostro apud W. Certain Jurors took Money of the Party after their Verdict, without any Covenant made before, viz. each a Mark, and were there of convicted by Verdict, and fined each a Mark; so note that is out of the Statute, and there was no committing him to Prison, 39 Ail. 19. Brion. Decies tantum, 15. 8 H. 6. 9 & 10. Not guilty is no Plea in Decies tantum; but he ought to say that he took no Money, 6 E. 4. 45. For in a Writ of Maintenance he must not say he did not maintain.

**F** And upon this Writ the Justices shall make Process for the King against the Party, which Writ shall be a *Pone* (as seems) to attach him to appear, and to answer the King for the same; and there is another Form of Writ for the Party thus:

Rex Ric', &c. Si W. H. fecerit, &c. tunc pone, &c. I. S. I. F. & W. K. &c. quod sint coram nobis à die S. Michael. in tres septimanas ubicunque tunc fuerimus in Angl. ad resp. tam nobis quam pref. W. H. quare cum in Parliament. Domin. Ed. nuper Regis Angliæ, &c. apud Westm. anno regni sui tricesimo octavo tento, inter alia concordatum existat, quod si aliqui juratores in Assisis, juratis & aliis inquisitionibus capiend. inter nos & partem, vel partem & partem, quicquam capiant per ipsos vel per alios de parte conquerentis vel defendentis pro veredicta suo dicendo, & super hoc per processum in quodam articulo de Juratoribus anno regni ejusdem avi nostri tricesimo quarto factò ordinat. convincat. sive sit ad sectam partis que pro seipse, vel pro nobis, aut alterius cujuscunque persone prosequi voluerit, selvas quilibet juratorum prædict. decies tantum quantum ipse recepit, & habeat ille qui faciat sectam, unam medietat. & nos aliam medietatem. Et quod omnes imbraciat. ducend. vel procurand. tales inquisit. in patria pro lucro vel proficuo capiend. puniantur eodem modo & forma sicut juratores, & si jurator vel imbraciator ita convictus, non habeat unde in forma prædict. satisfaciat, habeat prisonam unius anni, prout in ordinatione illa plenius continet. prædict. I. S. I. F. & W. K. juratores in quadam inquisit. que nuper sum. suis & capti coram Justic. Domin. Ric. nuper



21 H. 6. 54. *Exception was taken for want of the Words [grave damnum, &c.] and disallowed, being a popular Action.*

nuper Regis Angliæ secundi post conquestum, de banco apud Westm. per breve ipsius nuper Regis de record. inter R. F. & præd. W. H. de averiis ipsius R. captis et injuste detentis ut dic. passis, pro veredicti. suo in hac parte dicend. ac præf. W. D. de L. I. imbraciatores ejusdem juror. ad eam ducend. et procurand. de præf. R. divers. pecuniar. sum. et alia dona apud villam Westm. cepimus, in nostri contemptum, et ipsius H. grave damnum, et contra formam ordinationis præd. et habeas ibi nomina plegorum, & hoc breve. An Ambidexter is that Juror or Embraceor, who taketh of one Part and the other to restore ten Times as much, &c. See Stat. 27 E. 3. c. 3 33 E. 3. c. 8. 38 E. 3. c. 12.

## Writ of Champerty.

47 E. 3. 9.  
[172]

**T**HE Writ of Champerty lieth, where a Man by Covenant or Agreement made by Writings or by Word, agreeth to have Parcel of the Thing or Land, or Debt which is in Suit, that shall be recovered, if he do recover, to maintain and aid him in the Action, and in the Manner for which he sueth. Then he who is grieved shall have this Action against him who maintaineth the Suit for the same Intent; and the Writ is such:

*Rex Justic. suis de banco salutem. Cum inter ceteros articulos quos Dom. E. nuper Rex Angliæ, &c. ad emendat. status populi regni sui concess. ordinat. sit, quod nullus ministr. suus, nec aliquis alius pro parte rei qua est in placito habenda, negotia que sunt in placit. sibi assumat manutenend. nec aliquis jus suum sub hujusm. convent. alteri dimittat: ac L. placit. loquela que est coram vobis per breve nostrum inter A. petent. & B. tenent. de uno messuag. cum pertinent. in I. pro parte ejusdem habend. jam assumpserit manutenend. contra form. ordinat. præd. ut accepimus. Nos ordinat. illam volent. inviolabil. observ. vobis mandam. quod inspecto tenur. ordinat. præd. ulterius inde fieri fac. quod de juræ & secund. form. ordinat. præd. fuerit. faciend. Teste, &c.*

And upon that the Justices shall award an Attachment against the Party out of the Common-Pleas, &c. returnable at a certain Day.

And this Suit shall be said the King's Suit; but yet the Party may sue an Original Writ out of the Chancery against him who purchaseth Parcel of the Land depending the Plea, &c. And the Statute which giveth the Action, is the Statute of *Articuli super Chartas, cap. 12.* which willeth that no Minister or other for Part of the Things which are in Plea take upon him any Matter which is in Suit; nor nose upon any such Covenant shall give up his Right, and if any do so,

and be attainted thereof, then shall be forfeit unto the King so much of his Lands and Goods of the Taker as doth amount unto the Value of the Part he hath purchased by such taking upon him.

And by those Words it seemeth that he who loseth his Land pendant the Suit, or giveth Parcel thereof pendant the Plea, to the Intent aforesaid, shall be punished as well as he who is the Purchaser.

- D** Anno 30 E. 3. Lib. Ass. It is no Plea to say he did not purchase pendant the Plea; by which it seemeth if he purchase before the Writ sued to maintain, &c. that he shall be punished, &c. by the Statute, *ramen Quere*. For 19 R. it is holden by all the Court, that if a Man bargain for any Lands by Deed, and afterward an Action is brought for the same Land, and afterwards pendant the Plea he maketh Estate to him, to whom he made the Bargain, that it is not Champerty.
- E** A Surrender made by him in the Reversion pendant the Plea is not Champerty.
- F** And if a Man purchase Land *bonâ fide* pendant the Writ, and not to maintain, it is not Champerty.
- G** And a Disseisor in an Assise shall have a Writ of Champerty, if the Disseissee grant Part of the Land by Covenant to maintain, &c.
- H** And a Man may give to his Son in Frank-marriage, or for Life, and it shall not be said Champerty, for the Statute in the End thereof is in such manner. But that is not to be intended, that a Man may not give Counsel Fees for their Pleading.
- I** And in a Writ of Champerty, 17 E. 2. where the Writ did abate for false *Latin*; the Defendant was put to answer the King's Suit for the same Matter.
- K** And if a Man grant a Rent out of the Land, pendant the Suit for the Land, the same is Champerty, altho' that that Rent is not as a Demand, &c.
- L** And Champerty lieth as well upon Covenant made by Word, &c. as if it were made in Writing to have Parcel of the Thing, &c.
- M** And if the Covenant be to have a Rent out of the Land of another which is not in Suit, it is not Champerty. But if he do maintain, &c. he shall have a Writ of Maintenance against him for the same, but not a Writ of Champerty.
- N** And if the Officers of the Court do maintain any Plea pleaded in their Court to have part of the same or other Profit by the Recovery in that Action, the Party grieved shall have such a Writ.

30 Ass. 5.  
Br. Champ.  
pertry 7.

Br. Champ.  
7. Fitz. 11.

Fitz. Cham.

15.

9 H. 7. 18.

acc.

Plo. Com.

465. acc.

17 E. 2.

Champ. 14.

50 Ass. 3.

Br. Champ.

pertry 8.

22 E. 3. 10.

Br. Champ.

pertry 4.

47 E. 3. 9.

6 E. 3. 3.

Fitz. Cham.

10.



*Writ upon the Statute, &c.*

*Rex Vic', &c. Si R. et M. uxor ejus fecer. &c. tunc pons, &c. I. et W. ball. civitat. nostræ Winton. W et W. quod sint coram Justic. &c. ostens. quare cum de Comuni consil. regni nostri provisus sit, quod nullus minister noster vel aliquis alius manuteneat placita, quærel. vel negotia, quæ sunt in curiis nostris, vel alibi de terris et tenementis, aut aliis rebus quibuscunque pro parte rei petit. vel alio proficu; per convent. fac. inde habend. nec aliquis jus suum sub hujusmodi convent. alteri dimittat, præd. I. et W. W et W. quoddam placit. fresca fore. quod est coram Major. et diç. ball. civitat. præd. inter S. et A. uxor. ejus petent. et præf. R. et M. tenentes de uno mes. cum pertin. in civitat. præd. pro parte tenementi præd. et alio proficu inde habend. per convention. jam assumpserint pro præf. S. et A. manuteneatis et manuteneant, ad grave damnum ipsorum R. et M. contra formam Stat. præd. et habeat, &c.*

*Writ upon the Statute, That none be Victualler for the Time that he is Mayor, or Sheriff, or Head-Officer of a Town or Borough.*

**N**OTE, That by the Statute of *York*, no Victualler shall use the Occupation, to sell Victual or Wine in Gros or by Retail, so long as he is in Office in any Town, Borough or City, to keep the Assise of Bread and Wine, upon Forfeiture, &c. If a Man who is a Victualler be chosen to be Mayor, Sheriff, or other Officer of a Town, Borough or City, who by reason of his Office is to keep the Assise; by the Statute of 3 H. 8. cap. 8. it is ordained, That two discreet Persons of the same Town, &c. who are not Victuallers, be chosen and sworn to assise the Assise of Bread, Wine, and Victual, during the Time that he is in his Office, and then, after the Price assessed of Wine and Victual, for the Time, it shall be lawful for him who is chosen Mayor or Sheriff, to sell Wine and Victual for the Time that he is Officer. But that Statute doth not extend to *London, York, or Coventry*, to sell or retail Wine or Victual, but in Gros they may. And by the Statute of 6 R. 2. cap. 9. That Victuallers be not chosen to the Office of Judge in Towns or Cities, but for Want of others, then he shall not sell Victuals upon a Pain of Forfeiture.

But it appeareth by the Statute of 3 H. 8. what Things he may do.

And if any Man in *London, York, or Coventry*, or other Place, offend against those Statutes, then he who is grieved may

may sue a Writ directed to the Justices of Assise, commanding them to send for the Parties, and to do Right, &c. Or the Party grieved may have an Attachment against the Officer, Mayor, Sheriff or Bailiff, who offend contrary to the Statute, to appear before the Justices in the King's Bench, or before the King in the Common Pleas, to answer the Matter. And the Form of the Writ unto the Justices of Assise is such :

*Rex dilectis & fidelibus suis A. & B. Justic. ad Assisas in com. tali capiend. assign. salutem. Cum ad communem utilitatem populi regni nostri statutum sit, quod nullus minister in civitatibus, nec in burgis, qui ratione officii sui debeat custodire Ass. de vinis, seu de victualib. dum sit intendens hujusmodi officio, merchandizat de vinis nec de victualibus in grosso nec ad retalliam. At jam R. de B. nobis dederit intelligi, quod S. & M. ballivi ville præd. & quidam alii ballivi in dicta villa de S. existant, qui ratione officii sui hujusmodi Assisam custodire debent in eadem villa, vina & victualia in grosso & ad retalliam vendunt, contra formam Statuti præd. Nos, si ita sit, remedium in hac parte apponi volentes, Vobis mandamus, quod audita inde querela præd. R. & vocatis partibus coram vobis, earumque rationibus hinc inde auditis, & inspecto tenore Statuti præd. eidem R. tam pro nobis quam pro seipso super hoc debitam justitiam fieri faciat. prout secundum Statutum præd. foret faciend. Teste, &c.*

And if the Action be brought upon the Statute of York, then he who sueth the Action shall have the third Part, and the King shall have the Residue of the Victuals which is forfeited. And also the Form of the Writ of Attachment is such :

*Rex Vie' Ebor. salutem. Ponc, &c. P. de T. de Richmond. nuper ball. vill. Richmond. quod sit coram nobis, &c. ostens. quare cum ad communem utilitatem regni nostri Angliæ de communi consilio ejusdem regni concordat. sit, quod nullus minister, &c. ad retalliam sub forisfactura eorundem; præd. P. dum ball. dictæ ville de Richmond. extitit, de vinis & aliis victualibus diversis ad valenciam centum librarum in prædict. villa Richmond. tam in grosso quam in retallia pluries merchandizavit, & ea ibidem vendidit, ut dicitur, in nostri contemptum manifestum, & dicti populi nostri grave damnum, ac contra formam ordinationis supradict. & habeat, &c. Teste, &c.*



*Writ upon the Statute of Articuli Cleri, that he do not distrain in the Glebe of Parsons; nor in the King's Highway.*

**T**HE Writ that no Distress be taken in the Glebe Land of the Parson by the Sheriff or other Officer is grounded upon the Statute of *Articuli Cleri*, cap. 6. By which Statute it appeareth that the Sheriff, nor other Officer, shall not distrain in the King's Highway, nor in the Glebes of ancient Times given to Rectories, and if any Sheriff or other Person do contrary, then he who is distrained may sue this Writ.

See Marlb. cap. 35. Vi. 17 E. 5. 43. Fitz Ref. eous 14. The Party may Rescous.

And if a Lay-person be distrained in the King's Highway, &c. he shall have an Action upon the Statute of *Marlebridge*. But a spiritual Person shall have his Action upon this Statute. But by the Statute of *Marlebridge* the King's Officers may distrain in the Highway. And after the Writ delivered to the Sheriff, if he be distrained again he shall have an *Alias* and *Pluries*, and thereupon an Attachment. And this Writ is in it self a Prohibition to the Sheriff, and the Writ is such:

*Rex Vic, sal. Cum in Articulis Prælatorum & Cleri Regni nostri per Dom. Edw. nuper regem Angl. avum nostrum, de assensu procerum & magnatum regni nostri concess. continentur, quod districtiones non fiant super Rectores per Vic. aut alios ministros nostros in via regia, aut in feodis quibus olim Eccles. sint dotat. ac jam ex gravi querela dilecti nobis in Christo Abbatis de Valle regali personæ Eccles. de K. intellexerimus, quod tu colore officii tui terras & tenementa quæ sunt de dote & feodo ejusdem Eccles. apud K. nuper ingressus fuisti, & præfatum Abbatem in terris & tenementis prædict. graviter distrinxisti, & inde distringere non desisti, in ipsius Abbatis præjudicium & libertatis Ecclesiasticæ lesion. manifestam, & contra formam articulorum præd. Nos libertates Ecclesiasticas illas observare volentes, Tibi præcipimus, quod districtiones aliquas in terris & tenementis quæ sunt de dote prædict. Eccles. nullatenus facias, nec quicquam quod in libertatis Ecclesiasticæ lesionem aut enervationem articulorum præd. cedere valeat attemptetis, & districtionem si quam præfat. Abbati in feod. Eccles. suæ præd. ut prædictum est, feceris, sine dilatione relaxet eidem. Teste, &c.*

[ 174 ]

And it seemeth, That the Party who is distrained in the King's Highway, or the Parson in the Glebe of his Church, shall have an Attachment against the Sheriff, or other who distrained,

distrained, although they never sued out before this Writ of Prohibition to the Sheriff; because that the Statute is a Prohibition it self to the Sheriff, &c.

And by the Statute of *Articuli super Chartas*, cap. 12. The Sheriff ought not to make excessive Distress for the King's Debt, nor distraint the Plough-Cattle if he can find others. And if the Party will find Sureties to the Sheriff to pay the King's Debt before the Day of the Return of the Writ, the Sheriff ought to deliver back the Cattle. And if the Sheriff do otherwise than is expressed in the said Statute, the Party upon that Statute shall have Attachment against him, or he may sue forth a Writ to inhibit the Sheriff that he do not distraint contrary to the Form of the Statute, and the Writ is such:

*Rex Vic. Deth. salutem. Cum inter ceteros articulos quos celebris memorie Dom. Edw. quondam Rex Angl. avus noster ad emendam. statum populi regni sui ordinavit, continentur, quod nimis gravis districtio non capiatur pro debitis nostris. Et si debitor possit inventis sufficient. securitat. pro d. bit. ill. usque ad unum diem infra diem Vic. quod districtio. hujusmodi interim relaxetur: Tibi precipimus quod si I. de W. invener. tibi sufficient. securitat. de respond. nobis ad proximo. proferum tuum de centum solid. per quos finem fec. nobis coram Justic. nostris de banco pro licent. concord. in uno brevi de conventionone, & quos ab ipso per sum. Scaccar. nostri exigit. ut die. tunc districtioni quam eidem W. facis occasione predict. interim super sed. per securitatem supradictam, & habeas ibi hoc breve. Teste, &c.*

And there is another Form of Writ in such Case, thus:

*Rex Vic, Sec. quod minus gravis districtio non capiatur pro debito nostro, nec nimis remot. ducatur. Et si debitor invenire possit. sufficient. & competent. securitat. de debito illo usque ad unum diem infra diem Vic. infra quem debitor sibi inde remedium acquirere valeat, vel alias de debito illo satisfac. quod districtio. hujusmodi interim relaxetur: Tibi precipimus quod si I. de T. quem pro octo solid. nobis solvend. de exisibus suis coram nobis, & alibi coram Justic. nostris firisfac. virtute sum. Scaccarii nostri tibi direct. distringis, ut die. invenerit tibi sufficient. securitat. juxta formam articulorum predict. pro debito predict. usque ad unum diem infra diem tuum ad quem tu tenebis inde computar. tunc districtionem, si quam eidem I. occasione premiss. fieri feceris, interim relaxet. eidem pro securitate supradicta. Teste, &c.*



*Writ for to seise the Land of the Wife which she holdeth in Dower, who marieth her self without Licence.*

See after,  
263, 264,  
265.

**N**Ote, That if the Tenant holdeth of the King *in Capite* C and dieth, &c. his Wife ought not to marry her self again, without the Licence of the King; and if she doth, then the King may seise those Lands which she holdeth in Dower, until she have paid a Fine to the King, which is commonly one Year's Value of the Land which she holdeth in Dower; and that is by the Statute of *Prærog. Regis*, c. 3. But it appears by the Register, That the King ought to seise as well the Land of the Husband, as the Land of the Wife which she holdeth in Dower.

Staudf. 9.  
It is not  
Law.

And by the same Reason, If the Wife have other Lands of her own Inheritance, besides the Land which she holdeth in Dower; that the King may seise that Land also; and the Writ in the Register for to seise the Land, is such:

*Rex Escheatori suo, &c. Quia Margarita, que fuit uxor Edmundi Baron. Staff. defuncti, qui de nobis tenuit in Capite, se sine Licentia nostra aut dilecti & fidelis nostri Radulphi Basset, cui id quod ad nos pertinuit de maritagio præd concessimus, Thomæ de P. maritavit, sicut ex querela ipsius Radulphi accepimus; Vobis mandamus quod si ita est, tunc omnes terras & tenementa, tam ipsius Thomæ quam prædict. M. in balliva vestra sine dilacione cap. in manum nostram & ea salvo custodia fac. donec aliud a nobis inde habueritis in mandatis. Teste, &c. per cons.*

But now by  
the Statute  
of 23 H. 8.  
cap. 46. the  
Composition  
is given to  
the Master  
of the Ward;  
with three  
of the Coun-  
sel of that

Cause: So they may tax a reasonable Fine at their Discretion, according to the Statute of *Prærogativa Regis*, Staudford 19. acc.

And it appeareth by that Writ, that the King may grant the Mariages of his Widows, as well as of his Wards; and that the Woman may agree with him to whom the Marriage is granted, and by his Assent or Licence if she marry, it seemeth she shall not pay a Fine. And if she marieth without Licence, then he who marieth her doth the King or his Grantee Wrong; and that Wrong seemeth to be the Cause, That the King shall seise the Land of him who marieth the King's Widow without Licence.

And it appeareth by the Register, That the said *Thomas P.* may agree with the said *Ralph Basset*, for which the King shall

shall receive his Seifure; as appeareth, *Rotulo Clerum Anno 8 E. 2.* But yet I conceive, That the King ought to seife but only the Lands which the Woman holdeth in Dower, because the Statute giveth no more but that he shall seife that which she holdeth in Dower; for if she will not claim nor sue for Dower, it seemeth she shall not be fined, nor none of her Land seifed: And also I conceive, That the King cannot grant the Marriage of his Widows as he may do of his Wards; for if she will live single and not marry, she may so do and shall not pay any Fine. *Ideo Quære.*

*If she get Dower at the Hands of the Heir, or of the Committee*

*without Oath. Quære, Whether she may marry without Licence. Staundford 19. No, because presently upon the Assignment she is a Tenant to the King, and not to the Heir. Staundford, Prærog. 18. 40 All. 36. The King's Widow had Dower without Assignment. Vide Staundford 18.*

Writ upon the Statute de Anno Primo E. 3. c. 12  
& 13. Where the King's Tenant alieneth without Licence.

**A**N *Ose*, where the King's Tenant who holdeth of the King in chief, as of his Crown, alieneth the Land which he so holdeth of him for Life, or in Tail, or in Fee, without the King's Licence, then the King ought for to seife the Land for a Fine, &c. But if a Man holdeth of the King, as of any Honour, or Castle, or Manor being in his Hands, which he hath by Descent from any collateral Ancestor, and the Tenant doth alien, as above, his Lands without Licence granted him by the King: Then if the Sheriff or Escheator will distrain or disturb the Possession of the Alienee, he shall have a Writ upon the Statute of 1 E. 3. cap. 13. which shall be such:

*Rex Escheator suo ultra Trent. vel Escheatori suo in Com. S. salutem. Cum de communi consilio regni nostri statutum sit, Ne quis occasione acquisitionis terrarum seu tenementorum, quæ de nobis ut de honoribus tenentur in Capite, licenc. progenitorum nostrorum quondam Regum Angliæ, seu nostra super hoc non obtenta fac occasionentur: Vobis mandamus, quod R. filium I. de C. Capellanum occasione acquisition. quam tempore Domini Edwardi nuper Reg. Angliæ, fec. Robert. de Samby Milit. de una bovata terr. cum pertin. in E. quæ de nobis ut de honore de T. tenet in Capite ut dic. si de nobis sic teneant non occasionentur contra formam Statut. supradicti. Teste, &c.*



*Writ quod Clerici non eligantur, &c.*

And upon that he shall sue an *Aias* and *Pluries*, *vel causam nobis significet*, &c. And thereupon an Actachment against the Escheator or Sheriff if they distrain or disturb him after that Writ directed unto them, if the Lands be holden as above is said. But it appeareth by that Writ, That a Man may hold of the King *in Capite*, as of an Honour, but the same is against the Register in the Beginning of the Register; as appeareth by the *Præcipe in Capite*: But the Use at this Day is to take a Fine of him who holdeth of the King of any Honour, which is the ancient Inheritance of the King, who alieneth his Land without Licence: But *Quærs* what in Right ought to be done in that case.

*Writ quod Clerici non eligantur in Officio Ballivi, &c. pro terris suis.*

**I**F a Man who holdeth certain Lands or Tenements, by Reason of his said Lands ought to be chosen Bailiff, or Beadle, or Reeve, or in such like Office for his Lands; If such a Man be made a Clerk, or is within Holy Orders, then he ought not to be chosen into such Office for his Lands. And if he be elected to such Office of Bailiff or Beadle, &c. he shall have a Writ to discharge him, which shall be such:

*Rex Ballivis L. de L. salutem. Cum secundum legem & consuetudinem regni nostri Angliæ Clerici infra sacros ordines constituti, ad officium Ballivi seu Bedelli eligi non debeant, nec hæcenus consuever, ac jam ex parte T. de M. Magistri Hospitalis nostri de C. capellani acciperimus, quod vos ipsum Magistrum ad Officium Ballivi seu Bedelli maneris prædicti, elegistis; jam de novo, & ipsum Officium illud assumere compellere nitimini, in ipsius Magistri grave damnum, & contra legem & consuetudinem supradictam: Super quo nobis supplicavit sibi per nos de remedio provideri, & quia non est juri consonum, quod dictus Magister, qui nobis in Hospitali prædicto pro salubri statu nostro, & pro animabus progenitorum nostrorum quondam Regum Angliæ, & pro statu ejusdem Hospitalis ac Cantorie, Eleemosynis, & alijs pite operibus in eodem Hospitali manutenedum & sustentandum continuis deservit ad desistendum alibi extra idem Hospital. in secularibus negotiis compellat. Vobis precipimus quod districtioni & compulsioni si quas eidem Magistro ad Officium Ballivi seu Bedelli in Manerio prædicto assumend. feceritis, omnino supersedeatis, & eas sine dilatione relaxetis, & denariis si quos per amerciaments, vel alio modo ex causa prædicta*

*Writ that Pastors nor Prebendaries, &c.*

391

*prædicta ab eo levaveritis, eidem Magistro restitui fac. indilat. sub periculo quod incumbit. Teste, &c.* And he may have an *Alias* and a *Pluries*, and Attachment upon the same.

*Writ that Parsons, nor Prebendaries should not be charged for their Goods in their Possessions in Fifteenths, which are annexed to their Prebends.*

**A** THE Writ for Prebendaries, or other Spiritual Persons to be discharged for their Goods of the Benefice in their Possessions lieth, where the Sheriff or Collectors of the Fifteenths will distrain the Parsons or Prebendaries in their Spiritual Possessions by their Goods being in their Possessions, to be Contributory to the Payment of Taxes or Fifteenths granted, &c. And if they be distrained, they shall have such Writ :

*Rex taxatoribus decime & xv nobis ultimo per communitatem regni nostri Angliæ concessarum in Com. Glocestr. salutem. Ex parte W. Præbendarii Præbendæ de B. in Eccles. de S. nobis est ostens. quod cum vos occasione x. & xv. prædictar. nobis per laicos concessar. in propriis bonis ipsius W. de temporaliibus Præbend. sue prædictæ. annis exeuntibus, quæ ad decimam inter spiritualia in singulis taxationibus, præstationibus, hujusmodi decime taxantur, & de quibus decimis dari consuevit prædictam decimam, & quindecimam inter laicos assidere, taxar. & levare intenditis minus juste, in ipsius W. damnum non modicum & gravamen. Et quia nolumus quod idem W. de hujusmodi bonis suis, de quibus decimam nobis dat, inter spiritualia de prædictæ decima & quindecima per laicos concess. oneret. Vobis mandamus, quod ipsum W. in propriis bonis suis, quæ inter spiritualia ad decimam taxantur, & de quibus decimam nobis dat, ut prædictum est, ratione decime & quindecime prædictæ. nobis per laicos concessa non molestetis in aliquo seu gravatis, & districtione, si quam ei ea occasione fieri feceritis, sine dilatione relaxar. fac. eidem. Provisio quod de terris & tenementis, si quæ per præf. W. vel prædecessores suos ad prædictæ præbend. post Annum Domini Edwardi quondam Regis Angliæ avi nostri vicesimum, acquisita fuerint, nobis de hujusmodi decima & quindecima juxta bonorum & catallorum in dictis terris & tenementis existent, & de eisdem provenient. respondeat. ut est justum. Teste, &c.* And upon that he shall have an *Alias*, *Pluries* and *Attachment*.



*Writts directed to make Proclamation, that none cast Filth or Dung into Ditches or Rivers, near Cities or Boroughs, made Anno 12 R. 2. cap. 10.*

**I**F any one cast any Dung, Filth, or Intrails of Cattle into Ditches, Waters, or other Places which are next to any City, Borough or Town, he who will may sue forth a Writ directed unto the Mayor, or Sheriff, or Bailiff of such Town, &c. That they make Proclamation that none so do, and that those that have so done, that they cause to remove and carry away the same from thence: And this Writ is founded upon the Statute of 12 R. 2. cap. 13. and the Writ is such:

*Rege Ballivis suis Vill. de Novo Castro super Tinam salutem. Cum in statuto in Parlamento nostro apud Canturb. Anno regni nostri 12 tento, edito, inter alia contineat, quod proclamatum fieret tam in Civitate Lond. quam in aliis Civitatibus, Burg. Villis, & eorum suburbis ubi necesse foret, tam infra libertates quam extra, quod omnes illi qui fimos, exitus, intestina, aut alia fatida jactaverant sue posuerant in fossatis, ripariis, aquis, & aliis locis infra, circa, & prope diversas Civitates, Burgos, & Villas regni nostri Angliæ, & Suburb. eorundem, ea totaliter amoverent & asportarent ante festum, &c. sub pena xx l. nobis solvend. Et quod Majores & Ballivi de qualibet Civitate, Burg. & Villa & etiam Ballivi libertatum eos compellerent ad hoc faciendum, sub pena consimili. Et insuper, quod proclamatum fieret tam in dicta Civitate Lond. quam in aliis Civitatibus, Burgis, Villis, & aliis locis superius nominatis, quod nullus cujuscunque conditionis foret, hujusmodi neciva, exitus, fimos, intestina, & fatida in fossatis, ripariis, aquis, & locis supradictis extunc jactaret sive poneret. Et si quis hoc fecerit, vocetur coram Cancell. per breve ad sedem illius qui se inde conqueri voluerit, & si inventus foret inde culpabilis, puniatur secundum discretionem Cancellar. prout in statuto predicto plenius continetur. Jamque ex parte dilectorum nobis in Christo Prioris & fratrum Ordinis Heremitarum S. Augustini dicte Vill. de Novo Castro super Tinam intelleximus, quod quamplures homines ejusdem Ville, fimos, exitus, intestina, & alia fatida in quadam via que se ducit prope mansionem predicti Prioris & fratrum in eadem Vill. jactaverunt & posuerunt, in ipsorum Prioris & fratrum, ac aliorum curijs, & transmissis ibidem nocuent, & Vill. sue periculum*

*periculum manifestum & contra formam statuti predicti. Nos volent. stat. illud inviolabiliter observari, vobis precipimus, strictius injungentes quod in Vill. predicti. ex parte nostra proclamatur fac. ne quis, cujuscunque conditionis fuerit, aliqua nociva, exit. finos, intestina, seu factiva quaecunque in via predicti. jactet seu ponat. Et quod omnes & singuli qui hujusmodi nociva ibidem jactaverint seu posuerint, ea sine dilatione amoveant & asportent juxta formam statuti predicti. Teste, &c.*

And it seemeth, That the Chancellor may award a Pene against him, or an Attachment, to make him come before him in the Chancery; and there punish him according to his Discretion. And it seemeth that he who is grieved by that *Nusance*, may have an Action upon the Statute against him who did the *Nusance*, and recover Damages for the *Nusance* done to him, *tamen Quere.*

But by the Common Law, if a Man doth any Thing to the Annoyance of my Freehold, or of my Land in which I have an Estate for Years, I shall have my Action upon the Case for the same, or a Writ of *Nusance* if it be Annoyance unto my Freehold.

## Writ of Assise of Novel Disseisin.

**A** THE Writ of *Assise of Novel Disseisin* lieth where Tenant for Life, or Tenant in Fee-simple, or in Tail is disseised of his Lands or Tenements, or put out thereof against his Will, that is a Disseisin; and he shall have an Assise of *Novel Disseisin* of that Ouster, &c.

**B** And the Rule in the Register is, That if a Man will bring an Assise of *Novel Disseisin* of Lands in the County where the Common Pleas is; That then the Assise shall be brought in the Common Pleas: And if the Common Pleas be in one County, and the King's Bench in another County, if the Assise shall be brought of Lands in the County where the King's Bench is, then the Assise shall be brought and returnable in the King's Bench: And if both the Benches be in one County, the Usage is to bring the Assise in the Common Pleas or King's Bench at Pleasure; but that, as I think, is against the Rule of the Register.

**C** And the Assise of *Mortdauncestor* shall be brought in the like manner, as the Assise of *Novel Disseisin* shall be, before the Justices of the Common Pleas, or King's Bench; and in the Assise a Day certain shall be put thus; *Usque in diem Jovis* 120.

*See before*  
109. acc.  
*in Attaint.*  
Vi. 7 Ass. 7.  
Br. Assise  
Jovis 120.



## Writ of Assise of Novel Disseisin.

*Jovis post Quindenam, &c.* But in Assises of Mortdauncester the common Day shall be in *Quindenam, &c. vel in O'habis, &c.* as in other Pleas.

40 Ass. 44. B.  
Assise 116.  
For their  
Patent  
ought to be  
dated fif-  
teen Days  
before the  
Day.

And in an Assise of Novel Disseisin in the Common Pleas, or in the King's Bench, the Justices may give Day out of Term, thus, *Usque ad diem Jovis proximo post festum S. Lucie, &c.* because that the Assise hath not any Day of Return in the Term, but Day certain which the Justices will give, and that may be as well out of Term as in Term. And by the Statute of *Articuli super Chartas*, in every Writ of Summons and Attachment there ought to be fifteen Days betwixt the Date and the Return thereof; but in Assise of Novel Disseisin in the Common Pleas, or in the King's Bench, there needeth not be fifteen Days between the Date and Return thereof, as it seemeth by the Statute.

29 Ass. 40.  
Br. Assise  
300.

And in an Assise of Novel Disseisin sued before Justices in Eyre, or before Justices of the King's Bench, or Common Pleas, the Plaintiff ought not to have any Patent to the Justices, for they have Authority without a Patent: And so have Justices of Assise Authority to take Assises of Novel Disseisin without any Patent made unto them by the Statute of *West. 2. cap. 13.* but then the Form of the Writ is such:

*Rex Vic', &c. Questus est nobis A. quod B. injuste & sine judicio disseis. eum de libero tenemento suo in C. post primam transfret. Domini H. Regis filii I. in Vascon. & ideo tibi precipimus, quod si prad. A. fecerit te secur. de clamore suo prosequend. tunc facias tenement. illud rescisiri de catal. qua in ipso capta fuer. & ipsam tenementum cum catal. esse in pace, usque ad primam assisam cum Just. nostri in partes illas venerint, & interim fac. 12. liberos & legales homines de Visn. illi vider. tenement. illud, & nomina illorum imbrevari, & sum. eos per bonos sum. quod sint coram prefat. Just. ad prefat. ass. parati inde facer. recognit. & pone per vad. & salvoz pleg. prad. B. vel Ballivum suum si ipse inventus non fuerit, quod tunc sit ibi ad aud. ill. recogn', &c. & habeas ibi sum. nomina pleg. & hoc breve.*

Which  
proves, that  
the Bailiff  
is Party  
quodam-  
modo.  
Vide 7 Ass.  
12. Br.  
Assise 122.

And if the Writ of Assise be brought before other Justices than before the Justices of Assise in the same County, then the Writ shall be in another Form, which is such:

*Rex Vic', &c. Questi sunt nobis A. & B. uxor ejus quod C. injuste, &c. disseisivit eos, vel prefat. B. de libero tenemento suo in N. Et ideo tibi precipimus, quod si pradit. A. & B. fecerint, &c. in pace usque ad certum diem quem dilecti & fideles*

*fideles nostri R. & F. tibi scire fac & interim, &c. & sum', &c. quod tunc sint coram prefat. R. & F. & his quos sibi associaverimus ad certum locum quem idem R. & F. tibi sciri fac. parati inde facere recognitionem. Et pone, &c.*

**I** And upon that Writ they ought to have a special Patent directed to the same Justices, because they are not the Justices of Assise of that County, and the Patent shall be such :

**K** *Rex dilectis & fidelibus suis R. & F. salutem. Sciatis quod constituimus vos Just. nostros una cum his quos vobis associaverimus ad ass. Novel diss. capiend. quam A. & B. uxor ejus arrain. coram vobis per breve nostrum versus C. de tenementis in N. & ideo vobis mandamus, quod ad certos diem & locum quos ad hoc provideritis ass. illam capiatis factur. inde quod ad Just. pertinet secundum legem & consuetudinem regni nostri, salvis nobis amerciammentis inde provenientibus: Mandamus enim Vic. nostro Linc. quod ad certos diem & locum quos ei sciri fac. ass. illam coram vobis venire fac. In cujus rei testimon. has literas nostras fieri fecimus patentes. Teste, &c.*

**A** And if the Writ aforesaid be directed to the Sheriff, and those who are assigned by the Writ to be Justices of that Assise, be the Justices of Assise in the same County, then it seemeth the Party needeth not to have a special Patent to them for that Assise; for their general Patent to them to take all Assises shall be sufficient for that Assise and all other Assises: For the Justices of Assise use but to make one general Precept for all Assises according to their general Commission and Patent; and not to make a special Precept for every special Writ directed to the Sheriff, and especial Patent made unto them to take any special Assise for such Party.

**B** And if an Assise be brought in the Common Pleas, or King's Bench, there the Form of the Writ is:

*Questus est nobis A. quod B. injuste, &c. (usque ibi) in pace, usque ad diem Sabbati in Osteris S. Michael. proxim. futur. Vel sic, Usque in diem Sabbati proxim. post crastinum annuarum proxim. futur. & interim, &c. & sum', &c. quod, &c. coram nobis apud W. vel coram Justic. nostris apud W. parati inde, &c.*

**C** And in Assise when he purchaseth the Writ, he ought to find Sureties in the Chancery, and then the Form of the Writ is such :

*Regis, &c. Questus est nobis A. quod injuste, &c. diff. cum de libero tenemento suo in N. post primam transierat. Domini H. Regis filii I. in Val. Et quia predicta. A. fecit nos secur.*



*Writ of Assise of Novel Disseisin.*

*secur. de clamore suo proficquand. per C. & D. in Cow. 100. tibi precipimus, quod facias tenementum illud restituere, &c. ut supra.*

And another Form of the Writ against a Body corporate, is thus:

*Questus est nobis A. quod B. Major. Civitatis C. & communitas ejusdem Civitat. injuste, &c. Vel sic, Questus est nobis A. quod I. Abbas beatæ Mariæ Ebor. & frat. P. de C. communiōnis ejusdem Abbatis & frat. I. de P. conversus ejusdem domus injuste, &c. Vel sic, Questus est nobis C. Capellanus Cantariæ in Ecclesiæ de N. quod B. injuste, &c.*

If a Man have a Rent service, or a Rent-charge, or Rent-seck, issuing of Land for Life, in Tail or in Fee, if he be disseised of the Rent, he shall have an Assise, and the Writ shall be general; *quod injuste, &c. disseisvit eum de libero tenemento suo in N.* and shall make his Title to the Rent.

And the Rule in the Register is, That when a Man is disseised of a Rent-charge, or of a Rent-seck, it behoveth that all the Tenants of the Tenements charged, be named in the Writ of Assise, and all the Land put in View, altho' he were disseised but by one Tenant only, but it is otherwise of a Rent service.

And in an Assise of *Novel Disseisin* a Man shall not vouch any one, unless he be named in the Writ, and present when he is vouched, and would presently enter into the Warranty, and warrant the Land, &c.

But in an Assise of *Mortdauncestor*, he may vouch at large. F And a Man shall have an Assise of *Novel Disseisin* of an Office if he have the same for Life; and the Writ shall be, *Quod disseisvit eum de libero tenemento suo in D.* and he shall make his Complaint of the Office, and shew his Title in the Plaint.

§ Ass. 12. Br. And so if a Man have any Profit granted unto him out of Land for Life, or in Fee, as to have the Fruit of Apples, Nuts, Acorns, or other Profits whatsoever, he shall have an Assise of them if he be disseised of them, as appeareth by the Statute of *West. 2. cap. 25.*

And so of Toll, Tonnage, Passage, Pontage, Pannage, C and other like. And if Tenant by Statute-Merchant, or by Statute-Staple be disseised of any Lands which they have in Execution until their Debts be levied, they shall have an Assise of *Novel Disseisin* and recover their Term; and yet they shall have but a Chattel, *scil.* the Land for the certain Term of Years, but that is by reason of Statutes thereof made.

And

And so he shall have an Assise, &c. of the Land which he hath in Execution by *Elegit*, if he be deforced thereof, by the Statute of *West. 2. cap. 18.*

**H** And by the Statute of *West. 2. cap. 25.* Assise is given if one with his Cattle do eat the several Pasture of another, the other may have an Assise of the Pasture, and waive the Possession, although the other do not claim the Freehold of the Land.

**I** And so if the Lord, or other Man who hath a Rent issuing out of the Lands, do often distrain for the Rent or Service where none is behind, the Tenant may have an Assise for this Distress by the Common Law. And that Assise lieth between the Lord and the Tenant, or between the Lord Paramount, and the Tenant Paravail, as appeareth *27 Ass. 51.* But it seemeth reasonable, that the Tenant have the Assise of *Sovient foits* distrained against him who claimeth a Rent-charge out of Land, *tamen quare.* And if a Man sueth divers Assises against one Man in several Towns, or against several Men in several Towns, he may sue forth a Patent to the Justices for all those Assises, and the Form of the Patent shall be such:

*Rex dilectis, &c. salutem. Sciatis quod constituim. vos, &c. ad Ass. Novel. Disseis. &c. quam, &c. de tenementis in N. & ad Assisam Novel. Disseis. capiend. quam idem A. &c. coram vobis per aliud breve nostrum versus, &c. de tenementis. Et sic si plures fuerint.*

[ 179 ]

**A** If a Man be seised of parcel of a Rent which is payable at a Day, and afterwards the Tenant will not pay the Residue of the same Rent which is due at the same Day, he who ought to have the Rent shall have an Assise of *Novel Disseisin* of the whole Rent, as well of that which he is seised of as of the Residue, and that Seisin of parcel of the Rent shall be to him a Seisin of the whole Rent. And if a Man do distrain for his Rent pendant an Assise for the same Rent, he shall abate his Assise; but if he distrain for Homage pendant the Assise for the Rent, which is parcel of that Service, that shall not abate the Assise, for an Assise doth not lie of Homage.

**C** And Seisin of Rent by an Abbot shall be a sufficient Seisin for the Successor to have Assise of the Rent if he be denied the same, or Rescous made against him; but Seisin of Rent of the Father shall not be sufficient Seisin to the Son, to have an Assise of the Rent if Rescous be made unto him of the Rent; because that the Abbot hath the Rent in the Right of his House, which House continueth, and so the Seisin of

*27 Assise 51.  
Br. Ass. 274.  
28 Ass. 50.  
6 Br. Ass.  
291.*

*29 Ass. 21.  
Br. Ass. 302.  
Fitz 288.*

*Quare, if  
for frequent  
Disseis.  
28 Ass. 50.  
Br. Ass. 291.*



7 Ass. 18.  
Br. Ass. 127.  
21 Ass. 13.  
ibid. 163.  
18 Ass. 4. 20.  
per Cur'.

15 H. 7. 10.  
If there be  
sufficient at  
the Time of  
the Im-  
provement,  
altho' not  
after, it is  
not materi-  
al. Ass. 18.

8 H. 6. 17.  
8 Ass. 16.  
Assise 191.

the Predecessor is the Seisin of the Successor, but the Father hath the Rent in his own Right; and the Son shall have the same in his own Right; and then he ought to have a new Seisin. And a Man may have one Assise of several Rents, or of Land and Rent, and Offices and Profits appender in his Soil, and all in one Writ. And the Lord Paramount may have Common appendant in the Lands of the Tenant Paravail to his Lands which he hath by Purchase; and the Tenant Paravail may improve against the Lord Paramount, as well as he may against other Commoner or Neighbour, if he leave him sufficient Common. *Quod vi. M. 19 E. 3 t. Assise in the Abridgment.*

And the Seisin of the Guardian, shall give Seisin to the Ward to have an Assise if he be disseised. And so of Tenant by Statute-Merchant. And Seisin by the Hands of Tenant for Life of Lands out of which a Rent is issuing, is a sufficient Seisin to have an Assise of the Rent, if it be afterwards denied.

And so it seemeth Payment of the Rent by the Tenant for Years of the Land is a sufficient Seisin to have an Assise of the Rent if it be afterwards denied, *Tamen quere.*

A Feme Covert shall not be a Disseisores of any Land if she do not actually enter, nor shall she be a Disseisores by the Husband's Act. And an Infant shall not be a Disseisor by his Commandment. But a Man of full Age may be a Disseisor if he command another to enter into Land.

If a Man recover a Rent, the Sheriff may put him in Seisin by Wood, or by any Parcel of the Land out of which the Rent is issuing.

And Seisin of Rent by a Parson, or a Chantry Priest which they have in the Right of their Church, shall be a Seisin to their Successors to have an Assise of the Rent, if they be denied the same after the Death of their Predecessors as well as of an Abbot, &c. *Quod Vid. 34 E. 3. Lib. Ass.*

A Man shall not be adjudged a Disseisor by the Act of his Tenant at Will: Altho' the Tenant at Will do rescous for Rent, &c. he shall be adjudged the sole Disseisor and not the Tenant of the Freehold: But if the Tenant of the Land pay the Rent unto a Stranger who ought not to have the same, that Payment is a Disseisin to him who ought to have the Rent.

*Writ of Common of Pasture, Turbary or Piscary.*

**T**HE Writ of Assise of *Novel Disseisin*, of Common of Pasture, or of Turbary, or of Piscary, lieth where a Man hath Common of Pasture appendant or appurtenant to his Manor or House, or Land which he hath for Term of Life, or in Fee-simple, or in Fee-tail, if he be disturbed of his Common, so that he cannot take it as he ought to do, he shall have an Assise of *Novel Disseisin* thereof, and the Writ shall be such:

*Rex Vic', &c. Quest. est nobis A. quod B. injuste, &c. dissei-* 11 H. 6. 22.  
*avit eum de commun. pastur. sua in N. que pertinet ad liber.* The Writ  
*tenement. suum in eadem villa, vel in alia villa post primam,* was de li-  
*&c. as in Assise of Land. Et ideo tibi precipimus, quod si præ-* bero tene-  
*dict. A. fecerit te secur. &c. tunc fac. duod. liberos & legales* mento, and  
*homines de visu. illo videre pasturam illam & tenement. & nomina* his Plains  
*eorum imbrevari: Et sum', &c. coram Justic. vel coram nobis,* of Common  
*&c. die Jovis, proxime post crastin. O'Fabis, &c. Vel sic: Co-* of Pasture,  
*ram Justic. nostris ad prim. assis. cum in partes illas venerint, Vel* for which  
*fic: Coram dilectis & fidelibus nostris R. & F. & his quos, &c.* the Writ  
*ut supra.* abated.

And if the Common of Pasture, or Turbary, or Piscary be not appendant or appurtenant to any Manor nor Land, nor Tenement, than those Words in the Writ which belong to his Franktenement shall be left out in the Writ, and then the Writ shall be such:

*Rex, &c. Questus est nobis A. quod B. injuste, &c. dissei-*  
*vit eum de comm. past. sua in N. post primam transfratationem,*  
*&c. (usque ibi) de vicin. illo videre pasturam illam, & nomina*  
*eorum imbrevari, &c. As in the Writ of Assise of Land.*

And the Patent made unto the Justices of the Assise of Common, is as the Patent made to the Justices of Assise of Land, but where it is said in the Patent of Assise of Land in that Place, *de libero tenemento suo, &c.* he shall say in this Patent, *de Communia pastura in N. &c.*

11 H. 6. 22.  
per Paston.

And if a Man have Common appendant or appurtenant to his Freehold which is in his Manor or Land which is in several Counties, and he is disseised of his Common, then he shall have an Assise in the County where the Common is, and another Writ in the County where the Land is, to which the Common is appendant or appurtenant. And if the Land

or



or Common be in one County, and the Land to which the Common is, be in another County, yet the Writ shall be brought in the County where the Land of which the Common is issuing, is, and another Writ in the County where the Land to which the Common is appendant, is. And if the Land be in one County to which the Common is appendant, and the Common be in several Counties, then he shall have several Writs in the County where the Common is, and where the Land is, and the Forms of the Writs are such.

*Questus est vobis A. quod B. injuste et sine iudicio disseisivit eum de Communia Pastur. suæ in N. quæ pertinet ad liberam tenem. suam in R. et K. quæ sunt in confinio Com. tui, et Com. Linc. post primam transiret. Sec. Vel sic, de com. past. suæ in N. in Com. tuo, & Com. Linc. quæ pertinet ad liberam tenem, suam in K. in Com. &c. Vel sic, de Communia pasturæ suæ in R. et K. quæ sunt in confinio Com. tui, et Com. Linc. quæ pertinet ad liberam tenem. suam in K. in prædict. Com. Linc. in eodem confinio, &c.*

And upon these Writs he may have a Patent directed to certain Persons who shall do Justice in that Assise upon all the Writs.

*Rex dilectis, &c. Sciatis quod constituimus vos Justic. nostras, una cum his quos vobis associavimus ad Ass. novæ diss. capiend. quam A. arravinavit coram vobis per brevia nostra versus B. de communia pastur. in R. & K. quæ sunt in confinio Com. N. & L. ideo vobis mandamus, quod ad certos diem & locum in confinio com. prædict. vel in confinio præd. quos ad hoc provideritis assisam illam captatis, factur. &c. Mandamus enim vic. com. præd. quod ad certos diem & locum in confinio Com. præd. vel in Com. prædict. quos eis scire fac. assisam illam, &c.*

And in like manner he may sue several Writs of Assise of Common of Turbary, or of Piscary, or other like profits which are in two Counties. And when a Man hath a Rent which is issuing out of Land in two Counties, if he be disseised thereof he shall have an Assise as before is said of  
 Common, viz. 2. Writs, one Patent as before is said by the

21 H. 6. 9. 10.

7 H. 4. 30.

5 E. 4. 2. ac.

10 Ass. 5.

Br. Ass. 151. Stat. 7. R. 2. cap. 10.

45 E. 3. 12.

15 E. 4. 32.

Ryot.

6 H. 7. 14.

11 H. 6. 12.

15 E. 4. 32.

The same Law where a Man hath Common as an Inhabitant, he shall have it but for those which are levane and couchant within that Town.

And if a Man grant Common unto one for his own Cattel, he cannot use his Common with the Cattel of a Stranger. *A Man presumed to have Common appendant for all manner of Beasts, and it was holden it could not be Common appendant for that the same is not, but for those Cattel which manure his Lands,* 9 E. 4. 3. 37 H. 6. 34. and 14 H. 6. 6. *But it is Common appurtenant.* Old N. B. 26

And so if a Man prescribe to have Common for his own Cattel, he cannot use Common with other Cattel.

But if a Man claim Common for Cattel without Number, or to have Common for twenty Cattel, there he may agist the Cattel of Strangers for Money in that Common. *If a Man hath Common fans Number granted, yet the Tenant shall have Common for his Cattel,* 11 H. 6. 22.

**C** And a Man may claim Common appendant *ratione Messuagii*, but it seemeth it shall be taken that he hath Land lying to his House, &c. which the Cattel ought to soil, &c. *Admittitur. But Prior, It cannot be but to arable,* 20 H. 6. 4. *Hulls acc. 5 Ass. 2. It cannot be but to ancient Land of that, and not to Land improved.* 10 E. 2. acc. *and there the Land to which it may be appendant, is called Aid and Gain.* 22 H. 6. 42. 27 H. 6. 34.

**D** None shall claim Common by Vicinage but the Lord who hath the Possession of the Town, 23 H. 6. But yet it seemeth, that one Neighbour may claim Common by Vicinage in the Land of another Neighbour, although he be Lord of the Town, &c. And so if a Man claim Common in certain Lands so long as he dwelleth in such a Town to such a House, or if he claim Common in the Land until the Lands be sowed, and after the Corn is cut, to have Common there again. 7 E. 4. 268 32 H. 8. Dyer 47. 37 H. 6. 344 acc.

**F** And if a Man be disseised of the Common appendant or appurtenant to his Land, and afterwards he maketh a Feoffment of the Land to which the Common is appendant or appurtenant, he shall not have Assise of that Common nor other Remedy. 10 H. 6. 734 *So if he be disseised of the Land he shall not have Common till his Entry.*

**G** If a Man grant certain Lands to one *Cum Communia in omnibus terris suis*, &c. And doth not exprefs any Place certain, he shall have Common in all his Lands which he had at the Time of the Grant. 5 H. 7. 7. 26 H. 8. 42.

**H** And if a Man have Common of Estovers by Grant, he cannot build new Houses to have Common of Estovers for those Houses. 7 E. 4. 27.

**I** The User of Common by Tenants at Will, shall be a Seisin to him in the Reversion to have an Assise, if he or his Tenant at Will, be after disturbed to use the Common. 14 H. 6. 67.



11 H. 6. 21. And P. 45 E. 3. it appeareth, that he who hath Common K  
 11 H. 7. 7. granted unto him by Specialty, cannot agift other Mens Cat-  
 tel in the Common, but ought for to use the Common with  
 his own Cattel, or such Cattel which he hath to occupy his  
 Land with, &c. or may manure his Lands with Cows which  
 he alloweth to have the keeping for their Manure: But  
 12 Aff. 82. Thorpe said, that if a Man grant to me Common for my  
 1 Thorpe. Cattel, that I may take other Beasts to give me Seisin in my  
 Common, and presently drive them off again, if he who  
 7 Aff. Br. granteth the Common do agree thereunto. Add in Affise  
 1 Affise 121. of Common, all the Tenants of the Land out of which the  
 Common is, ought to be named, &c. as in Affise of a Rent-  
 charge,

If a Man have an Affise of Common, and pendent the M  
 Writ, he useth the Common, the Writ shall abate, but if the  
 Cattel escape into the Land, it shall not abate the Writ al-  
 though they feed there.

And it is to know, Common appurtenant to a Manor N  
 may be for Cattel without Number, or to a certain Number,  
 and may be appurtenant to a Manor by Prescription or by  
 26 H. 8. 4. Grant made since Time of Memory, and that as well for Cat-  
 tel certain, as without Number. As if at this Day a Man  
 1 Plow. Com. granteth to one Common of Estovers, or of Turbary in  
 381. acc. Fee-simple to burn in his Manor, by that Grant it is  
 5 Aff. 9. appurtenant to the Manor, and if he make a Feoffment of  
 the Manor, the Common shall pass to the Feoffee. And so  
 if he grant to a Man and his Heirs Common, as appurtenant  
 to his Manor of F. to common in such a Moor, &c. Now  
 by that Grant the Grantee shall have the Common appur-  
 tenant to his Manor, and if he make a Feoffment in Fee,  
 or for Life of the Manor, the Feoffee or Lessee shall have  
 the Common. As if an Abbot with the Assent of his Con-  
 vent, grant to another and his Heirs, to find a Chaplain to  
 sing in his Chapel in his Manor of D. if he make a Feoff-  
 2 H. 4. 6. ment of the Manor, the Feoffee shall have an Adion of  
 10 H. 7. 13. Covenant against the Abbot and his Successors by that  
 16 H. 7. 9. Grant as it appeareth, M. 2 H. 4. 6. T. Covenant, and H.  
 42 E. 3. 3. 42 E. 3.

*Writ of Certificate upon Assise sued.*

**T**HE Writ of Certificate lieth in divers Manners; one is where the Defendant appeareth by Bail, and pleads to the Assise where his Master hath a Release to plead, or other Matter in Writing, of which the Jury cannot have Notice, then if the Assise pass against the Bailiff, the Master shall have a Writ of Certificate upon that Writing, and thereupon he shall cause the Assise to return, and be sworn to try that Deed, &c. as shall be more fully after shewed.

*As a Fine  
or Recovery.  
8 E. 3. br.  
Assise 426.  
4 H. 4. 5.*

And there is another manner of Certificate, when the Verdict is not well examined by the Justices when they take the Verdict, or when they have not well examined, or fully enquired of the Issue joined, &c.

And the Certificate ought to be sued in the same County where the Assise was sued, and may be sued before the same Justices before whom the Assise passed, or before other Justices. And if the King's Bench or Common Pleas be in the same County where the Assise passed, then the Certificate may be sued in the King's Bench or Common Pleas, if they be in the same County where the Assise passed.

21 E. 3. 3.  
Br. Assise  
63. Vi.  
32 Ass. 1.  
*One shall  
have a Cer-  
tificate up-  
on a Defea-  
sance.  
12 H. 4. 10.  
41 Ass. 5.  
Certificate  
was at the  
Common  
Law before  
Judgments.  
Vi. 8 E. 3.  
Fitz. Assise  
412. Plow.  
Com. 92.*

And that Certificate shall be a Writ directed to the Sheriff, and the Justices shall have a Patent made to them as they shall have in Assise, &c. And the Form of the Patent made to the Justices, shall be such:

*Rez dilectis & fidelibus suis A. B. & C. salut. Quia super quibusdam articulis contingent. Asssam novæ diss. q. inter A. & B. sum. fuit & capta coram vobis p[re]fat. B. & dilecto & fideli nostro I. apud N. per breve nostrum quedam subsunt dubitationes, sicut ex querela ipsius A. accepimus, constituimus vos Justic' nostros, una cum his quos vobis associaverimus ad certific. inde capiend. Et ideo vobis precipimus, quod ad certos diem & locum, quos ad hoc provideritis, certific. illam capiatis, factur. inde quod ad Justic' pertinet faciend. salvis nobis amerciamentis, &c. Mandavimus etiam vic. nostro, &c. quod ad certos diem & locum, quos ei scire faciatis, jurat. illius ass. coram vobis venire faciat, ad certificand. vos super articulis p[re]ad. &c. In cuius rei testimon. has literas nostras fieri fecimus patentes. Teste, &c.*

And the Form of the Writ of Certificate is such:

*Rez Vic', &c. Quia super quibusdam articulis contingent. Ass. nov. diss. qua inter A. & B. sum. fuit & capta coram dilectis & fidelibus nostris H. & R. apud N. per breve nostrum de tenement. in I. quedam subsunt dubitationes, sicut ex querela ipsius A. accepim. constituim. p[re]f. H. & R. vel sic, p[re]f. H. & dilect. &*

H h 2

*fidel.*



## Writ of Certificate upon Assise sued.

*fidel. nostram L. Vel sic, dilecti. & fideles nostros N. & S. Justic. nostros una cum his quos sibi associaverimus ad certifice. inde capiend. Et ideo tibi precipimus, quod ad certos diem & locum, quos præd. N. & S. tibi scire fac. jurat. illius ass. coram eis venire fac. ad certifice. eos super articulos præd. & sum. &c. præd. B. quod, &c. coram, &c. ad audiend. illam certifice. & habeas ibi nomina jurat. & hoc breve.*

And that Writ lieth properly where the Verdict is not well examined. But if he appeareth by Bailiff to the Assise, and plead *Nul tort, &c.* and it is found against him where his Master hath a Release to plead, and doth not plead it; then his Master shall have another Form of Writ upon the Statute of *West. 2. cap. 15.* and the Writ shall be such:

*Rex dilecti. & fidel. suo L. & sociis suis Justic. &c. Cum in Statuto edito apud Westm. contineatur quod si def. contra quem transferit Assisa in sua absentia ostendat cart. vel quiet. clam. super quarum confessione non fuer. juratores examinati, nec examinari potuerint, pro eo quod non fiebat mentio de eis in placitand. & probab. ignorare potuerint confess. hujusmodi scriptorum, Justic. visis script. illis faciant sciri parti que recuperavit, quod sit ad certum diem, & venire faciant jurat. ejusdem ass. Et si per veredictam jurator. vel forte per irroculament. script. ill. verficet, punitur ille qui ass. impetravit cont. fall. suam per certam penam in statut. præd. content. Ac ex querela E. accepimus, quod I. nuper arraignavit quand. assiam no. diss. per breve nostr. versus præf. E. & alios, &c. de tenementis in S. que quidem assia in ipsius E. & aliorum absent. transivit ut dicitur, ac idem E. quoddam scriptum quiet. clam. præf. I. habeat de tenement. præd. super cujus confessione Jurat. non fuer. examinati, nec examinari potuerunt, pro eo quod non fiebat inde mentio placiti: Vobis mandam, quod viso scripto ill. eidem E. in promiss. debitam & festinum justic. complement. fieri fac. juxta form. Stat. præd. T. &c.*

And that Writ is a Patent made to those Justices, and upon that they award a Certificate to the Sheriff, to warn the Party to cause the Jurors in Assise to come before them. And that Patent or Commission is commonly made to other Justices, as unto the Justice before whom the Assise passed, and the same appeareth by the Words of the Patent or Commission.

But by the Statute of *West. 2. cap. 25.* appeareth, That if the Bailiff of the Defendant do alledge a Record in Bar of the Assise, the Justices may take the Assise notwithstanding that Plea of the Bailiff, and give Judgment upon the Verdict, &c. But then the Defendant in the Assise may come to the Justices, and shew that he hath Matter of Record to bar the Plaintiff in the Assise, &c. That at another Time he larred

the Plaintiff in the like Assise, brought by him against the Defendant; or that there is a Writ of higher Nature depending between them for those Lands; and then he ought to sue forth a Writ, to cause the Record to be brought before the Justices before whom the Assise passed, and thereupon when the Record cometh before them, if they perceive that the Record shall be a Bar in the Assise, then the said Justices shall award a special Writ of *Scire facias* out of the Record of the Assise, to warn the Party to be before them, &c. and if he cannot deny it, nor avoid it, then the Defendant shall recover his Seisin again, and double Damages, and the Plaintiff in the Assise shall be imprisoned at the Discretion of the Justices. And if the Defendant in the Assise have not any Record to shew, but a Release, or other Matter in Writing, which might bar the Plaintiff who recovered in the Assise; then if the Defendant shew those Writings to the Justices, before whom the Assise was taken, the Justices thereupon may award a special Writ of Certificate directed to the Sheriff, that he summon in the Party, and that he cause the Jurors in the first Assise, &c. to try that Matter, &c. And if it be found for the Defendant, then the Plaintiff, who recover'd by the Assise, &c. shall lose double Damages, and shall be also imprisoned at the Discretion of the Justices, as appeareth by the said Statute.

**B** But whether the Defendant shall sue a special Patent to the same Justices, to proceed as the Writ aforesaid is, or that they shall proceed and award a special Certificate, upon the Matter in Writing shewed them by the Defendant hath been a Question, because by the Judgment in the Assise, and Execution awarded, their Authority by Commission is determined as some say. But I conceive, That the Statute is a Commission and Patent sufficient to give Authority to them to award a special Certificate to warn the Party, and to cause the Jurors of the Assise to appear before them upon the Matter in Writing shewed unto them, although Judgment be given in the Assise and Execution be past; for if there be such Matter, then their Authority remaineth to punish the Plaintiff for his Suit, and to restore the Defendant again unto his Possession, by Virtue of the Statute, as I conceive.

**C** And if a Man loseth in an Assise by Default where he pleadeth by Bailiff, where he hath Matter in Writing not shewed to the Jurors, he may sue a Certificate upon that Matter before the Justices, at the next Assise following, or before the Justice of Assise, or before the Justices of the King's Bench, or before the Justices of the Common Pleas, and the Form of the Writ is such:



## Writ of Certificate upon Assise sued.

*Rex Vic', &c. Quia, &c. ut supra, (usque ibi,) accepim. Tibi precipimus, quod juratores illius Ass. venire facias coram Justiciis, nostr. ad prim. Assam, cum in partes illas venerint, ad certificand. eos super articul. pr. ad. & sum', &c. pr. ad. B. quod sit ad prefat' Assam coram prefat. Justiciis. ad audiendum illam certifice.*

And if the Certificate be sued before the Justices of the Common Pleas, then the Writ is such:

*Rex Vic', &c. Quia, &c. ut accepimus: Tibi precipimus, quod juratores illius ass. venire facias coram Justic. nostr. apud West. tali die ad certificand. eos, &c. ut supra.*

And if the Certificate be sued before the King, then the Writ is as above:

*Tibi precipim. quod jurator. illius ass. venire fac', &c. coram nobis apud E. die sabbati, &c. ad certificand. nos, &c.*

If a Man in Assise brought against him pleadeth a Release, <sup>D</sup> or other Matter in Writing in Bar of the Assise, and the Plaintiff doth deny the same, by Reason whereof the same doth remain in the keeping of the Chief Justice of the Assise; and afterwards a new Commission is made to the Chief Justice, and to other Persons, to take all Assises which remain to be taken in that County, for which Cause they award a Re-attachment against the Defendant, and a Re-summions against the Jurors; the Defendant may come and plead the Release or Writing, which is in the keeping of the Chief Justice, which was denied, &c. And thereupon the Chief Justice shall have Day until the next Assises, to bring in the Writing; and if before the next Assises the King's Bench be removed to that County, and that Record of the Assises is come into the same Court, and the Defendant is re-attached and appeareth not, but maketh Default, for which the Assise passeth for the Plaintiff, &c. and that Release not pleaded nor shewed, the Defendant shall have a special Writ to the said Justice, in whose Custody the Release or Writing is, to send the same into the King's Bench, and thereupon the Defendant shall have his Certificate out of the King's Bench, against the Plaintiff upon that Matter, and such Writ is in the Register.

If a Man sue a Certificate, he may have a Writ of Assis- <sup>A</sup> ciation upon that Writ, as in an Assise of Novel Disseisin, and also a Writ of *Si non emnes*, as well as he shall have in Assise of Novel Disseisin.

And a Man may sue the Certificate before the same Justices, <sup>B</sup> before whom the Assise passed, and then the Certificate shall issue out of the Rolls of the same Justices: But he may sue his Certificate before other Justices if he will, and then

then the Writ and Patent shall issue out of the Chancery.

**C** And if some of the Jurors be dead, yet it seemeth reasonable that he have the Certificate; and that it be tried by those who are alive, and by others, &c. for that is a new Matter upon which they were not charged before, but see that Matter debated, *H. 7 H. 4. H. 12 H. 4. and 32 E. 3. lib. Ass.*

**D** Anno 43 E. 3. it appeareth that a Man shall have a Certificate before Judgment given in the Assise as well as after Judgment given.

**E** And a Man shall have a Certificate upon an Assise of Dairein Presentment, or an Assise of Mortdauncellor, or *Juris Urrum*; and it is Reason that a Man have a Certificate upon an Attaint, if it pass against him by Default, where he hath Matter to bar the Attaint by Release or other Writing, &c.

**F** And if the Record of Assise be removed into the Common Pleas, the Party may sue a Certificate in the Common Pleas before the Justices there, although the Assise be taken of Lands in another County: See Title *Process*, *H. 33 H. 6.*

**G** And the Process in a Certificate is Summons against the Jury, and the *Venire facias* against the Party, &c. and after a Distress.

**H** And *Nisi prius* shall be granted in a Certificate, if the Land be in another County than where the Certificate is brought.

*7 H. 4. 45. ac. 33 H. 6. 20, 21. Nota, Cape pro fine was awarded pendente the Certificate of Assise.*

Writ of Assise of Nufance.

**I** **A**ssise of Nufance lieth where a Man levieth a Nufance to my Freehold, which I have for Life, in Tail, or in Fee-simple; then I shall have the Writ to redress the Nufance.

*4 E. 3. 36. 80 5 E. 2. 23. Fitz. Nufan. 12.*

**K** And if that the Nufance be done in one County, and the Land to which the Nufance be done is in another County, then he ought to sue several Writs of Assise of Nufance, to each Sheriff a Writ, and a Patent made to certain Persons to be Justices in that Assise, as it shall be in Assise of Common Pasture, or Turbary, or Rent, or the like: And the Form of the Writ is such:

*4 Ass. 3. If Nufance be, and after be to whom the Nufance is, alien the*

*Land, the Feoffee shall not have Assise, because it was before his Interest, but the Tenant shall answer to the Nufance, as well before his Time as after, 19 Añ. 9.*

*Rex Vic', &c. Questus est nobis A. quod B. injuste & sine judicio exaltavit quoddam stagnum in C. in com. tuo ad nocamentum liberi tenementi sui in L. in com. H. post primam transfretationem, &c. Et ideo precipimus, quod si praed' A. fecerit te securum de clamore suo prosequend. tunc fac. 12 lib. ros & legales homines de*



## Writ of Affise of Nufance.

*visu. illo videre stagnum illud & nomina eorum imbreuiar. &c.*

And in the other Writ, which shall be directed unto the Sheriff where the Land is, to which the Nufance is, he shall say in the Writ, *Videre tenementum illud.* So that the Jurors where the Land is, shall see the Land, and the Jurors in the other County, shall see the Pool where the Nufance is done.

And moreover he shall say in the Writ, *Et nomina illorum imbreuiar. Et sum. eos per bonos sam. quod sint coram dilectis & fidelibus nostris R. & F. & his quos sibi associaverimus ad certos dies, & locum in confinio com. præd. quos idem, &c. parati, &c.* And the Form of the Patent is such :

*Rex dilectis, &c. Sciatis quod constituimus vos Justiciarios ad M. ass. capiend. quam B. arrainavit coram vobis per brevia nostra versus N. de quodam stagno exaltato in C. in com. S. ad nocumentum liberi tenementi sui in L. in Comitatu H. & ideo, &c. quod ad certos, &c. in confinio com. præd. quos ad hoc provideritis, assam illam capiatis, factur. quod ad justitiam pertinet, salvis, &c. Mandavimus enim Vic. nostris in com. præd. quod ad certos diem & locum in confinio com. præd. quos ei scire fac. assam illam coram vobis venire fac. In cuius rei testimonium has literas nostras fieri fecimus patentes. Teste, &c.*

21 E. 3. 22. And a Man shall have the like Writ, if a Man have a Way to N  
20 E. 3. 18. his Land or House, and another stop the Way, he shall have  
16 E. 3. Fitz. an Affise of Nufance for that stopping; and if the Way be  
Nufance 3. in one County, and the Land to which the Way is in another  
Vi. 11 H. 4. County, then he shall have two Writs of Affise of Nufance,  
25. It shall be brought to each County one, and a Patent made to certain Persons, as  
in Confinio is aforesaid; and the Form of the Writ is such :

Comitatus.

*Rex, &c. Questus est nobis A. quod B. injuste & sine iudicio arclavit quandam viam in B. in com. tuo, ad nocumentum liberi tenementi sui in C. in com. H. post primam, &c. & interim fac. 12. &c. videre viam & nomina, &c. Et sum, &c.*

And unto the Sheriff where the Land is to which the Way belongeth, the Writ is: *Quare arclavit quandam viam in B. in com. C. ad nocumentum liberi tenementi sui in S. in com. tuo post primam, &c. Et ideo tibi precipimus, &c. videre tenement. & nomina eorum imbrev. & sum, &c. ad certos, &c. in confinio com. præd. quos idem, &c.* And the Patent is such :

*Rex dilectis, &c. Sciatis, &c. ad ass. capiend. quam, &c. per brevia nostr. &c. de quodam via arclata. in B. in com. Bedford ad nocumentum, &c. in C. in Comitatu Hunt. & ideo, &c. (ut supra.)*

11 H. 4. 25. And a Man shall have a Writ of Affise. *Quare injuste & sine iudicio levavit vel prostravit quoddam fossatum in N. ad nocumentum liberi tenementi sui in N. vel levavit, vel prostravit, vel exaltavit, vel deexaltavit quoddam stagnum, &c. vel obstravit*

*struxit, vel arctavit quandam viam in N. ad nocument. &c. vel levavit, vel prostravit quandam sepem in N. ad nocument', &c. vel divert. cursum aque in N. ad nocument. liber. tenement. sui in B. post primam transfretat', &c. (ut in assisa de communia pasturæ usque ibi) de visu. illo videre fossat. illud, stagnum illud, sepem illam, viam illam, cursum aque illius, & tenement. & nomin. eorum imbrevari & sum', &c. ( ut supra in com. pasturæ ) and the Form of the Patent is :*

*Rex dilectis, &c. Sciatis, &c. ad assisam capiend. quam A. &c. 48 E. 3. 17. versus B. de quodam fossato levato vel prostrato in N. vel de quodam stagno exaltato vel deexaltato in N. vel de quodam stagno levato vel prostrato in N. vel de quadam sepe levata vel prostrata in N. vel de quadam via arctata vel obstructa in N. de cursu eujusdam aque diverso in N. Et ideo vobis mandamus, &c. (ut sup.)*

And for what an Assise of Nufance lieth, appeareth by these Verfes:

*fatum, num, s, a,  
Fos slag sepe vi diverse cursus aquarum,  
Pescunt assisam, mercatum, feria, bancum.*

*i. terminari coram Justic. assisar. i. placitari in Banco.*

And it appeareth by these Verfes, to set up a Fair or a Market unto the Nufance of another Fair or Market, thar he unto whose Nufance that Fair or Market is set up, shall have a Writ for so doing returnable into the King's Bench : And the Writ shall be in such Form :

*Rex Vic', &c. Si A. fecerit, &c. tunc sum', &c. P. quod sit coram Justic. nostris apud. West', &c. ostens. quare levavit quoddam mercatum vel quandam feriam in I. ad nocumentum liberi mercati, vel libera feria ipsius A. in eadem villa, vel in alia post primam transfretationem, &c. ut dicit & habeas ibi sum' & hoc breve.*

There is also another Form of Writ for the same which is a Quod permittat, which is such :

*Rex Vic, &c. Precipimus P. quod juste, &c. permittat Episcopum Lincoln. prosternere quoddam mercatum in Uppingham quod P. de M. pater præd. P. cujus hæres ipse est, injuste, &c. levavit ad nocument. liberi mercati C. nuper Episcopi Lincoln. prædecess. præd. Episcopi in Luddington, ut dicit. & nisi fecerit, & præd. Episcop. fuerit te securum, &c. tunc sum. præd. P. quod sit, &c. ostens. quare, &c.*

And that Writ was granted by the Chief Justice and Clerks of the Chancery, by which it seemeth, that a Man may disturb another to have or keep any Fair or Market unto the Nufance of his Fair or Market.



## Writs of Nuisance which are Vicontiel.

By the Statute of 6 R. 2. the Plaintiff may choose to have it before the Justices, or the Sheriff, Register, 199.

**WRITS** of Nuisance which are Vicontiel, are those which do appear by the Verses following,  
*ria ca gultum ges lendium  
 Fab fur porta, domus, vir gur mo marus, ovile,  
 Et pons, tradantur hec viccomitibus.*

And the Form of the Writ is such: *Rez Vic', &c. Quisi est nobis A. de B. injuste levavit vel prostravit quandam dom. vel obstruxit quandam gurgitem in N. ad usament', &c. in eadem villa vel in alia post prim. transfretationem, &c. in Vesi. Et ideo tibi precipimus, quod loquelam illam audias, & postea cum inde juste deduci fac. ne amplius inde clamorem audiamus pro defella justitia.*

After the same Manner are Writs, *de ovili, porta, virgulto, molendino, Latpina, & similibus levatis vel prostratis.* And those Writs may be removed at the Suit of the Plaintiff or Defendant out of the County into the Common Pleas by a *Poor*, with Cause shewed in the Writ, as in a Replevin of his Cattel; and the *Pone* is such:

*Rez Vic', &c. Pone ad petitionem petentis loquelam que est in com. tuo per breve nostrum inter A. & B. de quadam domo levat. vel prostrat. in C. per ipsam B. injuste levat. vel totalit. prostrat. ut dix. & sum', &c. ut in pone de averiis.*

Register, 199.

And the Rule in the Register is, That if he who erected or throweth down a House, Wall, or the like, dieth, that he to whose Nuisance it is, or his Heir, shall have a *Quod permittat* against his Heir of him who did the Nuisance, which Writs are amongst the Writs of *Quod permittat*.

13 E. 3. 22. And a Man shall have an Assise of Nuisance for building of a House higher than his House, and so near his, that the Rain which falleth upon that House, falleth upon the Plaintiff's House.

4 E. 3. Fitz. Nuisance 1. And a Man shall not have an Assise of Nuisance of a Way, if it be not appendant or appurtenant to his Freehold, as if a Man build a House over the Way which I have to my House, or to the Church, I shall have an Assise of Nuisance.

50 E. 3. 12. And in a Writ of Nuisance, the Defendant shall have the View, and shall be esoined; and if afterwards he make Default, a Distress shall be awarded against him for to answer, &c. and not save his Default, P. 42 E. 3. 9.

[ 185 ]

And if a Man levy a Nuisance unto the House of another who hath therein an Estate but for Term of Years, then he shall not have an Assise of Nuisance, but an Action upon the Case

Case againſt him, becauſe he hath no Freehold: But yet it ſeemeth he may enter and abate the Nuſance.

**A** And if a Writ of Nuſance be removed out of the County, and the Sheriff return, that the Defendant hath not any Thing, &c. the Party ſhall have Attachment, Diſtreſs, and no other Proceſs, &c. becauſe it toucheth Freehold. But in an Aſſiſe of Nuſance: The Proceſs is as in Aſſiſe of Novel Diſſeiſin.

But his  
Leſſee ſhall  
have, 13 H.  
3. Fitz. Aſſ.  
437.

**B** And the Pariſhioners may pull down a Wall which is ſet up to their Nuſance in their Way to the Church, quod Pi. 6 E. 2.

**C** And in an Aſſiſe of Nuſance he may in his Plea ſhew the Nuſance to be to divers Freeholds.

**D** And if the Ways be ſtraitened, or the Allies or Lanes in any Town, City or Borough Corporate be filled with Filth or Dung, or ſuch Things by which Means Infection may increaſe, then he who will ſue may procure ſuch Writ to have them cleaned and made clean; and the Writ is ſuch:

*Re: Majori & Ballivis ſuis Oxon. ſalutem. Quia ex testi-*  
*monio accepimus fide digno, quod per finos & ſimarias, necnon por-*  
*earias, & frequent. access. porcorum, ac plures alias ſeditates, qua*  
*in vicis & venellis villa praedict. & suburb. ejusdem exiſtunt, aer*  
*ibidem in tantum corrumpit, & infect. quod magistris & Schola-*  
*ribus in eadem commorant. & aliis ibidem conſervantibus &*  
*traſeuntibus horror abominabilis incutitur, commoditas ſalubris*  
*aeris impeditur, ſtatus hominum graviter leditur, aliaque intole-*  
*rabiles incommoditates, & quamplurima discrimina ex corrupt.*  
*hujusmodi provenire noſcunt. in magistror. & ſcholarium praedict.*  
*& aliorum ibidem converſant. & tranſeunt. nocement. & vite ſuae*  
*periculum manifeſtum. Nos nolentes hujusmodi defectus enormes,*  
*& intolerabiles ibidem ulterius ſuſtiner. Vobis praecipimus, quod*  
*omnes vicos & venellos in villa praedict. & suburb. de finis*  
*& ſimariis, ac aliis ſeditatibus praedict. mundari, & mundatos*  
*impoſterum conſervari ſine dilat. aliqua faciatis, ne per corruptiones*  
*aut ſeditates praed. damnum ſeu periculum aliquibus in veſtri*  
*defect. eveniat in futurum per quod ad vos tanquam ad mandati noſtri*  
*contemptores graviter capere debeamus. Teſte, &c.*

And upon that he ſhall have an Alias, a Pluries, and Attachment, if they do not cleanſe them, &c. But for Villages in the County which are not corporate, ſuch Writ doth not lie.

Writ



*Writ de Association in Assise, and of Writs de  
Si non omnes.*

**A** Writ of Association is a Patent made to one or more, when an Assise of Novel Disseil, or Certificate upon Assise of Novel Diss. is sued. Then the King of his own Motion, or the Plaintiff may sue to have other Persons associated unto the Justices of Assise to take that Assise; and the Form of the Writ or Patent is such:

16 Aff. 6.  
Assise 206.  
Note, there  
is one Si non  
omnes ge-  
neral, which  
is entred of  
Record, and  
remains with  
the Justices  
for their War-  
rant to take  
other Assises;  
and the Special  
Si non omnes  
is annexed to  
the Record, and  
sent as Parcel.

*Rez dilectis & fidelibus suis C. & D. Vel dilecto & fideli suo F. sal. Sciatis quod associavimus vos vel alterum vestrum, vel vos dilecti & fidelibus nostris A. B. & G. ad ass. nove diss. capiend. quom F. arrainavit coram pref. A. B. & G. per breve nostrum versus H. de ten. in N. ita tamen quod si ad certum diem & locum quos iidem A. B. & G. ad hoc providerint vel alterum vestrum vel vos adesse contigerit, tunc vos vel alterum vestrum vel vos ad hoc in socios vel in socium admittant, alioquin iidem A. B. & G. non expectata presentia vestra vel alterius vestri, vel vestra, ad caption. illius ass. procedant. Et ideo vobis mandamus quod vos vel alter vestr. vel vos captioni ass. illius una cum pref. A. B. & G. intendat. in forma prad. fac. inde quod ad justitiam pertinet, secundum legem & cons. regni nostri: Salvis nobis amerciaments inde provenient. Mandam enim eidem A. B. & G. quod vos vel alterum vestrum vel vos ad hoc in socios vel in socium admittant, sicut prad. est. In casus rei testim. has literas, &c.*

See for the  
Expofition  
of (alter)  
Dyer 310  
338.  
L. 5 E. 4. 11.  
Br. Assise  
386.

And upon that Patent of Association the King shall send his Writ unto the Justices of Assise, commanding them thereby to admit him or them, &c. And the Writ is such:

*Rez dilecti & fidelibus suis A. B. & G. salut. Sciatis quod associavimus vobis dilecti & fideles nostros G. & D. vel alterum ipsorum, Vel sic, dilecti & fidelem nostrum F. ad ass. nove diss. capiendum quod E. arrainavit coram vobis per breve nostrum versus H. & alios in brevi nostro originali content. de tenement. in N. vel de commun. pastura in N. ita tamen quod si ad certum diem & locum, quos ad hoc provideritis, ipsi C. & D. vel alterum ipsorum: Vel sic, ipsam F. ad hoc in socios vel in socium admitt. alioquin vos non expectata presentia eorum C. & D. vel alterius ipsorum: Vel sic, vel ipsam F. ad captionem illius ass. procedat. Et ideo vobis mandamus,*

*quod*

quod ipsos C. & D. vel alterum ipsorum: Vel sic, vel ipsum F. ad hoc in socios vel in socium admit. in form. præd. Mandavimus enim eisd. C. & D. quod ipsi vel eorum alt. Vel sic, vel idem F. quod una vobiscum ad hoc intendat vel intendant, sicut prædict. est. Teste &c.

**F** And if several Assises, or Certificates of Assises be sued before several Justices in one County for Lands, Tenements, Rents or Commons, and afterwards the King maketh new Justices to take all Assises or Certificates, and Juries which are to be taken in the same County, the King may make an Association to the Justices new assigned; thus:

Rex dilect. & fidel. suis W. de D. R. de A. & R. de P. salut. [ 186 ]  
 Sciatis quod cum constituerimus vos Justic. nostros ad omnes ass. jurat. & certif. coram quibuscunque Just. nostris per breviam nostram in commitat. Linc. arrainatas capiend. Et postmod. vobis mandaverimus, quod si vos omnes cap. ass. jurat. & certif. prædict. commode interesse non possitis, tunc duo vestrum quos presentes esse contigerit, ad caption. earundem ass. juratarum, & certif. secund. legem & consuetud. regni nostri procederitis, associavimus vobis dilect. & fidel. nostr. A. ad ass. juratas & certif. præd. una vobisc. capiend. ita tamen quod si ad cert. dies & loca, quos vos vel duo vestr. ad hoc provideritis, ipsum A. adesse contigerit, tunc vos vel duo vestrum ipsum A. in socium admittat. alioquin vos vel duo vestrum non expectat. presentia ipsius A. ad caption. ass. juratarum & certif. præd. procedatis, & ideo, &c. mandamus, &c.

And a Patent made to him who shall be Associate, reciting the Patent made to the Justices, and the Writ of *Si non omnes*, and then shall say, *Associavimus vos*, &c. And the Form of the Writ is such:

Rex dilect. & fidel. suo A. salut. Sciatis quod cum constituerimus dilect. & fidel. nostros W. de D. R. de R. & R. de P. Just. nostros ad omnes ass. jurat. & certific. coram quibuscunque Justiciar. nostris per breviam nostram in com. Linc. arrain. capiend. & postmod. eisdem W. de D. R. & R. mandavimus quod si ipsi omnes captioni ass. jurat. & certif. prædict. commode interesse non possint, tunc duo eorum, quos tunc adesse contigerit ad captionem earundem ass. jurat. & certif. secund. legem & consuet. regni nostri procederent, associavimus vos præfat. W. R. & R. & duobus eorum ad ass. jurat. & certif. prædict. in com. prædict. capiend. ita tamen quod si ad certos dies & loca quos iidem W. R. & R. vel duo eorum ad hoc providerint, vos adesse contigerit, tunc ipsi vel duo eorum vos ad hoc in socium admittant, alioquin iidem W. R. & R. vel duo eorum non expectata presentia eorum, ad caption. earundem ass. jurat. & certif. prædict. proced. & ideo vobis mandam. quod caption. ass. jur. & certif. præd. una cum præf. W. R. &



Et R. vel duobus eor. intendatis in form. prad. facturi, &c. salvo, &c. Mandamus etiam eisdem W. R. Et R. quod ipsi vel duo eor. vos ad hoc in socium admittant, sicut prad. est. In cujus rei, &c. his literas nostras fieri fecimus paten. Teste. &c.

L. 5 E. 4.  
111. Br. Ass.  
386.

And afterwards when the King hath made his Justices of Assise by Letters Patents; and by other Letters Patents hath associated unto them another Person, yet he is used afterwards to make other Letters Patents, as well unto the Justices of Assise, as to those whom he hath associated unto them, that if they all do not come at one Time, to take those Assises, Juries, and Certificates, that then those who do come shall take the same Assises, Juries and Certificates: And that Patent is called a *Si non omnes*: And the Form of the Patent is such:

Rez dilectis Et fidel. suis W. de D. R. de A. Et R. de P. Et A. de B. salut. Cam constituerimus vos pref. W. R. Et R. Justiciar. nostros ad omnes ass. &c. (usque ibi) arrain. capiend. Et postmod. vobis pref. W. R. Et R. monstraverimus, quod si vos omnes, &c. procederitis subsequen. quod associavimus vobis Et duobus vestrum pref. A. ad ass. jurat. Et certific. prad. in com. prad. capiend. vobis mandam. quod si vos omnes captioni ass. jurat. Et certific. prad. commode interesse non possitis, tunc tres vel duo vestrum, quorum alterum vestrum vos pref. W. R. Et R. unum esse volumus, ad captivum earund. ass. &c. secundum legem Et cons. regni nostri procedatis, &c. Teste, &c.

And these three Patents next before are commonly made when any Assise is sued; as one to the Justices of Assises, and another Patent to the Clerk of the Assises of Association, and the Patent of *Si non omnes*, as well made to the Justices and the Clerk of the Assises together.

And if the King make his Justices of Assise in any County, and afterwards he maketh an Association to them, and a Patent of *Si non omnes*, &c. And afterwards divers Assises or Certificates of Assise remain before them not determined: The King at the next Assises may make a new Commission unto other Justices to take all those Assises and Certificates, and may make a new Association unto them by another Patent, and a *Si non omnes* also directed unto them.

32 H. 6. 10.

But a general Patent of Assise to take all Assises and Juries, &c. and Association lyeth. But *M. 32 H. 6.* it is holden; that an Association after another Association allowed and admitted doth not lie, nor that the Justices then do not admit other Association in that Writ afterwards, so long as that Writ and Commission stand in Force,

L. 5 E. 4.  
Br. Assise  
386.

But in a special Assise no Association shall be made as it is holden the same Year, *M. 32 H. 6.* for he hath not in the

Writ these Words, *Et his quor sibi associavimus.* But the Writ is directed to the Sheriff without those Words in the Writ, nor those Words are not in the Patent made to the Justices of that special Assise.

**F** But if those Words be in the Writ, and in the Patent made to the Justices, then it seemeth an Association shall be made in that special Assise, as in other. And it appeareth in the Register that the other Association lieth after Association in one Writ.

**G** And upon a new Commission made to other Justices, that the old Justices of Assise shall deliver their Records of the Assise unto the new Justices by Indenture, upon a Writ directed to them to deliver the Records.

**H** And a Man may sue a Patent of Association for several Assises, and the Form of the Writ is such :

*Associavimus vos, vel alterum vestrum, &c. ad Ass. no. diff. capiend. quam A. arrainavit cor. pref. &c. de tenementis in N. & ad ass. no. diff. capiend. quam C. arrain. cor. eisd. &c. versus pref. B. de tenementis in eadem villa. Ita tamen quod si, &c.*

**A** And if the King make two Men his Justices of Assise in one County, and afterwards one of them is elsewhere in the King's Service, so that he cannot intend to take those Assises or Juries, then the King by his Patent may make another Justice in his Room, to take those Assises and Juries, and that Patent is in the Nature of an Association; and the Form of the Writ is such :

*Rex dilecto & fideli suo A. salut. Sciatis quod cum nuper constituer. vos & dilect. & fidelem nostrum G. Just. nostr. ad omnes ass. juratas, & certific. cor. quibuscumque Justiciar. nostris per breviam nostram in Comitatu L. arrain. capiend. ac. pref. G. quibusd. obsequiis nostris de mandato nostro alibi intendat per quod captioni earund. assisar. juratar. & certificat. vacare non potest, ut accepimus, loco ipsius G. constitutum. dilect. & fidel. nostr. W. Justic. nostr. ad assisar. juratas, & certific. pred. una vobisc. capiend. Et ideo vobis mandamus, quod ipsum W. loco ipsius G. ad hoc in sociam admittatis in forma predicta. Mandamus enim eidem W. quod loco ipsius G. una vobiscum ad hoc intendat, &c.*

*Yet he is Judge before they admit him, by Markham, L. 5. c. 4. 111. Br. Ass. 386.*

And a Patent shall be made to him who shall be associate unto them in the Place of G. which shall be such :

*Rex dilecto & fideli suo W. salutem. Sciatis quod cum nuper constituerimus dilectos & fideles nostros A. & G. Justic. nostros ad omnes ass. &c. (ut supra usque ibi) ut accepimus, loco ipsius G. constituerimus vos Justic. nostr. ad ass. jurat. & certific. pred. una cum pref. A. capiend. Et ideo vobis mandamus, quod loco ipsius G. cum pref. A. ad hoc intendat in forma predicta. Mandamus enim eidem R. quod vos loco ipsius G. ad hoc in sociam admittat, sicut pred. est, in cujus, &c.*

And



And of Association unto another to associate him and the two in the Room of him who is dead, and a close Writ shall be directed to the two Justices who are alive to admit him, and it appeareth by the Writ, that if the King maketh three Justices to take Assises, and make them a Patent of *Si non omnes*, that if one of them dieth, yet the other two may proceed; and the Patent is such:

L. 5 E. 4.  
111. Br.  
Assise 286.

*Rex dilecto & fideli suo I. de O. salutem. Sciatis quod cum nuper constituerimus dilectos & fideles nostros G. I. & S. Justic. nostr. ad omnes ass. jurat. & certific. coram quibuscunque Justic. nostr. per brevina nostra in Comitatu S. Ec. arrain. capiend. ac post mortem præd. S. divers. ass. jurat. & certific. coram præfat. I. & I. arrain. existent, nos certis de causis constituimus vos Justic. nostr. tam ad omnes ass. jurat. & certific. coram quibuscunque Justic. nostr. in eum. prædict. arrain. una cum eisdem I. & I. capiend. Et ideo vobis mandamus, quod ad ass. jurat. & certific. una cum præfat. I. & I. capiend. attendat. in forma præd. fact. Etc. Salvis Etc. Mandamus enim prædict. I. & I. quod vos ad hoc in socium admitt. fiat præd. est.*

And a close Writ shall be directed to the Justices to admit the said Justice *W.* into their Society.

And the King may make Association in Juries as well as in Assises, as also in Attaints. And if the King make a Commission to take an Attaint or other Jury, and an Association in the same, and after one of the Justices dieth, the King may make a new Association in the same Writ, and so he may make one Association after another in the same Writ, as appeareth by the Register; and the Writ is such,

*Rex dilect. Etc. I. de M. R. de M. & I. de F. salutem. Cum nuper constituissimus W. de O. & vos præfat. I. de M. & R. Justic. nostr. ad jurat. 24. milit. capiend. quam R. arrain. coram præfat. W. & vobis præf. I. de M. & R. per breve nostr. versus P. ad convincend. jurator. ass. no. diss. qua inter ipsum P. & præf. R. sum. fuit, & capta per breve nostrum apud H. coram præf. W. & vobis præf. R. de tenem. in S. in com. N. & postmodo per breve nostr. associaver. vobis præf. I. de M. & R. vos præf. I. de F. ad omnes ass. jurat. Etc. in dicto com. arrain. una cum præf. W. & vobis cum præf. I. de M. & R. vel duobus vestrum cap. & jurat. ill. coram præf. W. & vobis præf. R. & I. de F. virtute association. præd. usque ad caption. ejusdem extiteris perplacitat. ac idem W. jam diem clausit extrem. loco ipsius W. constituimus dilect. & fidel. nostr. B. ad jurat. illam una vobiscum capiend. Vobis mandamus, quod præf. B. loco ipsius W. ad hoc admittat. & ad jurat. illam capiend. una cum ipso procedatis secundum legem & consuetudinem*

*regni nostr. Mandamus enim pref. B. quod una vobiscum ad hoc intend. sicut predictum est.*

- And thereupon another Patent shall be made to the said B. of Association, as before in other Cases.
- D** And an Association may be made unto the Sheriff upon a Writ of Redisseif. directed to him as well as it may be upon an Assise of Novel diff. as appeareth by the Register; which Writ was awarded by *W. de Harleston.*
- A** And altho' the Assise be discontinued for not coming of the Justices, &c. yet when the Re-attachment is sued, the Writs of Association, and of *Si non omnes* stand in force; and a Re-attachment shall or may be sued to revive those Assises, altho' there be several Adjournments of the Assises, yet the Associations and Writs of *Si non omnes* shall serve for all the Assises.

Furby 2 H.  
4. 2. He is  
Officer,  
Judge and  
Commissioner  
in this  
Writ.

12 H. 4. 19.  
20.  
L. 5 E. 4.  
111. Br.  
Assise 386.  
14 Ass. 15.  
Br. Ass. 196.

## Writ of Redisseisin.

**T**HE Writ of Redisseif. lieth where a Man doth recover by Assise of Novel Diff. Land, Rent or Common, and the like, and is put in Possession thereof by Verdict, and afterwards he is disseised of the same Land, Rent or Common by him by whom he was disseised before. Then he shall have this Writ upon the Statute of *Merton, c. 3.* and the Form of the Writ is such:

**C** *Rex Vic', &c. Monstraver. nobis A. & B. uxor ejus, quod cum R. quond. vir ipsius B. & ipsa B. in Curia nostra coram Justic. nostr. ultimo itinerantibus apud N. in Comitatu tuo. Vel sic, coram dilect. & fidelib. nostr. H. & K. Justic. nostr. ad ass. in Comitatu pred. capiend. assign. apud. Vel sic, si Justic. mort. fuer. coram H. & sociis suis nuper Justic. nostr. ad assis. in Comitatu pred. capiend. assign. apud N. recuperassent seisin. suam versus S. de vigint. acr. terra, & decem solidas. reddit. cum pertin. in K. per recognit. assisa nove diff. inter eos, &c. Vel sic, inter pref. A. B. & S. capt. prefat. S. ipsos A. & B. de pred. terra & redditu. Vel sic, de una acra terra de terra pred. iterum injuste disseisivit: Et ideo tibi precipimus, quod assumpt. tecum custodib. placitorum corona nostra & 12 tam militib. quam aliis liberis & legalib. hominib. de Comitatu tuo de illis qui in prima jurata fuer. quam aliis, in propria persona tua acced. ad pred. terram & tenementum, unde reddit. inde provenit, & per eorum sacramentum diligent. inde fac. inquisit. Et si ipsos A. & B. per prefat. S. de pred. terra & redditu iterum injuste disseisitor inveneris, tunc ipsum S. capias & in prisona nostra salvo custodiri fac. ita quod a prisona illa nullo modo deliberetur sine mandato nostro speciali: Et ipsos A. & B. de pred. terra, & redditu reseisir. & damna sua in duplum, que occasione illius*

Hob. 13:  
65 b.



## Writ of Redisseisin.

*illius redisseis. sustiner. per sacramentum prad. et tanari. & de terris & catal. prad. S. in balliva tua sine dilatione fier. & eistem A. & B. habere fac juxta formam Statuti de hujusmodi redisseis provis. Et scire fac. prof. S. & D. qui terram illam nunc tenet, quod inquisit. ill. faciendo interstis, si sibi viderit expedire. Teste, &c.*

And by that Writ appeareth, That a Man shall have a Redisseisin against the Tenant, if he recover by Assise of Novel Diss. before Justices in Eyre, or before Justices of Assise; and so if he recover in Assise of Novel Diss. in the King's Bench or Common Pleas, if he be redisseised, he shall have that Writ.

If Husband and Wife be disseised, and recover by Assise, and the Husband dieth, and the Wife taketh another Husband, and they be disseised again, by the Register they shall have a Writ of Redisseis. although the Husband were not disseised before; and the Writ willet that the Sheriff enquire whether they were disseised before, and so the Husband was not; but that is not material, because it is the Right of the Wife, and she was disseised before. But if the Wife lose in the Assise of Novel Diss. and afterwards take Husband, and they redisseise the Plaintiff, he shall not have a Writ of Redisseisin, *quod vi. H. 9 H. 4.*

And also a Redisseisin lieth against him who committed the Redisseisin, and against another who was not Disseisor, if he be Tenant of the Land.

And also if a Man recover Land by Assise of Novel Diss. and after is redisseised of parcel of the same, he shall have a Writ of Redisseisin.

And in a Redisseisin against Husband and Wife, the Writ shall be thus in the End. *Et idem A. dotans sua in duplum qua occasione illius rediss. sustinuit de terris ipsorum B. & S. & castallis ipsius B. in ball. tua,* because the Wife hath not any Chattel.

And if the Sheriff will not execute the Writ of Redisseis. he shall have an *Alias* and a *Pluries* directed to him, and if he then do it not, he shall have an Attachment against him to the Coroners, &c. and upon the same, Distress infinite.

And it appeareth in the Register, That a Man shall have a Writ of Association in a Redisseisin, and the Writ is such:

*Rex Vic', &c. Sciatis quod cum nuper ad prosecut. N. vidis suggerent. ipsum in Curia nostra coram, &c. apud K. per brevia nostrum recuperas. seisinam suam versus S. &c. recitando tatum breve (usque tibi) si sibi viderit expedire, associavimus tibi dilect. & fidel. nostrum R. ad pramis. tecum faciend. & explend. ita tamen, quod si ad cert. diem quem ad hoc provideritis, ipsum K. adf. contigerit, tunc ipsum ad hoc in seisinam admitt. alioquin tu non cogito præsencia ipsius R. ad pramis. faciend. & explend.*

proced. Et ideo tibi precip. quod ipsum R. ad hoc in socium admitt. in forma præd. Mandavimus enim eidem R. quod ad præmis. recum facienda. Et explend. intend. sicut prædictum est.

And by the Register, the Writ directed to the Sheriff shall be close, as also the other Writ directed unto him who is associated to him, and yet the same is in its Nature a Patent.

And if a Man recover by Assise of Novel Diss. Common of Pasture, or other Profit appender in the Soil of another, or any Office, or Corrody; if he be redisseited, he shall have a Redisseisin; and the Writ shall be such:

Rex Ric. &c. Monstravit nobis A. quod cum ipse in Curia nostra coram dilect. & fidel. nostr. W. & sociis suis Justic. nostr. ad assis. &c. assign. apud N. per breve nostrum recuperasset seisinam suam versus I. de communia pastur. in S. que pertinet ad liberum tenementum suum in eadem villa, per recogn. assis. nova diss. ibi inde inter eos capt. præd. I. præf. A. de præd. communia iterum injuste disseisivit. Et ideo, &c. acced. ad pasturam illam & per eorum sacramentum, &c. de rationabil. estover. sic recuperasset seisin. suam versus I. de rationabil. estover. suis captis. in tribus milib. acr. hosi. eam pertin. in W. que pertinent ad liberum tenementum suum in eadem per recogn. assis. &c.

And if a Man recover by Assise of Novel Diss. any Land or Tenement before the Bailiffs of any Liberty, where they demand Conusance of Pleas before Justices of Assise, and the Justices grant the same, because the Lands are within that Liberty, and afterwards he be redisseited of the same Land, then he shall have a Writ of Redisseisin; and the Writ shall be such:

Rex Ric. Berks. solvem. Monstravit nobis A. quod cum ipse super arraisas. quondam assis. diss. cor. dilect. & fidelib. nostris I. & sociis, &c. assign. per breve nostr. versus P. de duobus pedibus terræ in longitudine, & uno pede terræ in latitudine cum pertin. in W. que quidem assis. per eosd. Justic. in Cur. Abbat. de Reading iuxta libertates eidem Abbati per cartas progenitorum nostror. quondam regum Angliæ & confirmat. nostram concess. cor. ball. ejusd. Abbat. retinenda fuit placitand. ut eidem A. seisinam suam de terra præd. versus præf. E. in ead. cur. recuperasset per recogn. ass. no. diss. ibi inter eos capt. præf. E. ipsum A. de præd. &c. iterum, &c. ut in primo brevi.

And also a Man shall have a Redisseisin upon a Recovery in Assise of Nufance, de stagno injuste levat. &c. or de cursu aquæ diverso, or de via arctata & obstructa; and the Form of the Writ is such:

Rex Ric. &c. Monstravit nobis A. &c. (usque ibi) assign. arraisaver. quondam assisam versus B. per breve nostrum de quodam stagno injuste levato in N. ad nocumentum liberi tenementi sui in K. & per recognit. ejusdem assis. inde inter eos apud E.



## Writ of Redisseisin.

*capit. coram eisdem Justic. distringavit stagnum illud per pref. B. levatum esse prosteruend. pr. ed. B. stagnum illud iterum injuste & sine iudicio levavit: Et quia hoc injustum est & manifestum contra pacem nostram: Tibi precipimus, quod assumptis tecum, &c. (usque ibi) accedas ad stagnum illud & tenementum, & per eorum sacramentum diligenter inde fac. inquisitionem. Et si per inquisitionem illam inveneris quod prædict. stagnum illud iterum injuste levaverit, tunc ipsum B. capias, &c. (usque ibi) speciali, & stagnum illud sine dilatione prosterne, & eidem A. damna sua ad duplum, quæ occasione illius redisseisin. sustinuit, &c. (usque ibi) sine dilatione fieri habere fac. iuxta formam, &c. ut supra.*

And the like Writs are in the Register of Rediss. for the **C** Mis-turning of a Mill, or of a Way, or of an Office, and the like.

And if the Sheriff do deliver any such, without the special Command of the King, who are convict of such Redisseisins, he shall be grievously amerced, and notwithstanding those who are so delivered, shall be also grievously punished, &c. by the Statute of *Marlebridge, cap. 8.*

And by the Statute of *Westm. 2. cap. 26.* he who recovereth in a Rediss. shall recover double Damages; and the Defendants shall not be bailed by a common Writ; and by the same Statute is given a Writ of Post Diss. in which Writ he shall also recover double Damages against the Defendant.

And if a Man do recover by Redisseisin, and afterwards **D** is disseised again by him by whom the first Redisseisin was before, he shall have a new Redisseisin; and so one Redisseisin after another every Time he is disseised.

And a Redisseisin shall be maintainable against any of the **E** Disseisors.

And if a Man recover Land by Assise of Novel Diss. un- **F**to which a Common is appendant, &c. and after he is disseised of the Common again, he shall have a Redisseisin, &c.

And if a Man sue a Writ of *Droit Close*, and make Proto- **G**station in the Nature of Assise of Novel Diss. and recover in that Writ, and after he is disseised, he shall not have a Redisseisin; for that Writ doth not lie upon an Assise at the Common Law. *M. 14 E. 3.*

And if all the Jurors in the Assise be dead but one, and af- **H**terwards he who recover'd is redisseis'd, &c. it is a Question whether he shall have a Rediss. because that the Statute is *Per primos Juratores & alios, &c.* which see debated in *H. 8. 7.* But it seemeth that the Statute makes the Law, and because it is a penal Statute, it shall be taken strictly; and therefore if all the Jurors be dead but one, that he shall not have a Redisseisin, because he cannot be tried by the former Jurors;

for

for one Juror is not a sufficient Witness himself, to say that it is a Redisseisin of the same Tenements; and therefore it seemeth there ought to be two Jurors to testify the same.

**I** And Tenant by Statute-Merchant or Staple shall have an Assise of Novel Diff. if he be ousted; and also a Redisseisin if he be redisseised.

And so Tenant by *Elegis* shall have an Assise of Novel Diff. and a Redisseis. if he be ousted, by the Stat. of *Westm.* 2. c. 18.

## Writ of Post Disseisin.

**T**HE Writ of Post Diff. is given by the Stat. of *West.* 2. cap. 26. and lieth where a Man recovereth Lands or Tenements by a *Præcipe quod reddat*, by Default or Reddition, and afterwards he is ousted again by him against whom he recover'd, &c. Then he shall have that Writ of Post Disseis. and shall recover double Damages, and the Party shall be punished as he shall be if he were attainted of Redisseisin: But if he recover by Assise of Mortdauncestor or *Juris utrum*, or in those Actions which pass by Juries and Verdicts, then he shall have his Writ founded upon the Statute of *Merton*, c. 3. of Post Disseisin. And that Writ shall be directed to the Sheriff as the Writ of Redisseisin shall be; and if the Sheriff will not execute the Writ as he ought to do, and as he is commanded, then he may sue forth an *Alias* and a *Pluribus vel causam nobis significet*, &c. And if that do not any Thing, nor he return a Cause, then the Party may sue an Attachment against the Sheriff directed to the Coroners, &c. and upon that a Distress; and the Form of the Writ of Post Disseisin is such:

*Rex Vic', &c. Monstravit nobis A. quod cum ipse in curia nostra coram dilectis & fidelibus nostris W. & sociis suis Justic. nostris de banco apud E. per breve nostrum recuperasset seisinam suam versus I. de uno mesuag. cum pertin. in S. per considerationem ejusdem cur. idem I. præfat. A. de prædicta terra postmodo injuste disseis. Et ideo tibi præcipimus quod assumptis, &c. (ut in brevi de rediss. &c.) legalibus hominibus de Com. tuo accedas, &c. (usque ibi) de prædicta terra postmodo injuste disseis. inveneris, tunc ipsum I. &c. (usque ibi) quæ occasione illius post disseis. sustinuit, &c. juxta formam statuti West. de hujusmodi post disseis. provis. & scire fac. præfat. I. quod inquisitio, &c.*

And in a Post Disseisin the Writ shall not say, *Tam de illis qui in prima jurata*, but in Case where he recovereth by Recognizance of the Assise or Jury.



## Writ of Post Disseisin.

And if a Man recover Lands or Tenements in value against the Vouchee in a *Præcipe quod reddat* by Default, and afterwards that he is put in Execution by the Sher. the Vouchee doth disseise him of the same Lands which he so recover'd in Value, he shall have a Post Disseis. of that Land so recover'd in Value against the Vouchee. And the Writ is such:

*Rex Vic, &c. Monstravit nobis C. quod cum B. Prior de D. nuper in curia nostra coram dilect. & fidel. nostris R. E. & sociis suis Just. ciar. nostris de banco apud Westmonasterium per breve petivisset versus præf. C. septem ac. prati cum pertin. in l. idemque C. R. de S. inde placito prædict. vicasset ad warrant. ac per defaultam, quam idem R. postea fecit in eadem Cur. considerat. fuisse, quod præf. Prior recuperaret seisinam suam versus præf. C. de præd. placito, quod idem C. haberet de prato prædict. R. de S. ad valenciam prædict. sept. ac. prati, cujus quidem considerationis preteritum septem ac. prati cum pertin. de prato prædict. R. de S. in G. præf. C. per tunc Vic. nostrum Glouc. virtute injusl. brevis. nostri de judic. sibi in hac parte directi assign. fuer. præf. R. de S. præf. C. de prædicto prato sibi (sic præmittitur) assignat. postmodum injuste disseisivit. Et ideo tibi præcipimus, quod assumpsis tecum, &c. 12. tam militibus quam alius libertis & legilibus hominibus de Comitatu, in propria, &c. accedas ad prædict. præfatum eadem C. assign. & per eorum sacram. diligenter inquis. Et si ipsum C. per prædict. R. de prædict. prato præf. C. assign. postmodum injuste disseis. inveneris, tunc ipsum R. capias & in prisona nostra salvo custodire fac. ita quod a prisona illa nullo modo delibereatur sine mandato nostro speciali, & ipsum C. de prædict. prato sibi assign. restitui, & damna sua in duplum, qua occasione illius post dis. sustinuit per sacrament. prædict. 12. taxavi, & de terris & catallis prædicti R. in habita tua sine dilacione fieri, & eidem C. habere fac. juxta formam statuti de hujusmodi Post disseisin. provis. Et scire fac. præf. R. &c. Teste, &c.*

And if the Defendant make the Default at the *Scire facias* returned, then the Sheriff shall take the Inquest by Default, and the Procefs against the Jury shall be by Precept from the Sheriff to his Bailiff, &c. to summon Twelve, &c.

And if a Man recover in a *Scire facias* upon a Fine, or upon a Recovery had before by Default of the Tenant, he shall have a Post Disseis. against the Tenant, if he be afterwards ousted of the same Land, quod vi. M. 15 H. 7.

And if a Man be convict before the Sheriff upon a *Reddisseisin*, and Post Disseis. then he shall not be delivered out of Prison without the King's special Command, and then

he ought to sue a *Certiorari* to remove the Record into the King's Bench, and there to agree with the King for his Fine. And thereupon he shall have a Writ to the Sheriff to deliver him out of Prison; and the Form of the Writ to remove the Record is such:

*Res Vic', &c. Ex parte Henrici de D. capti & detent. in persona nostra Staff pro quadam realdisseisina per ipsum Isabell, que fuit uxor Ric. de C. de medietate unius messuag. cum pertin. in C. fac. ut dicit. unde coram te & custod. placitor. coron. nostre in Com. tuo per inquisitionem inde apud C. per breve nostrum fact. convict. fuit: Nobis est supplicat. ut cum ipse eidem Isabel. de damn. sibi in hac parte adjudicat. jam sit satisfact. & parat. sit nobiscum finem pro eo quod ad nos pertinet in hac parte, juxta formam statuti de communi consilio regni nostri inde provis. facere: Velimus ipsius deliberationi provider. nos ut eadem H. quod justum fuerit inde facere valeamus, volent. super record. & process. inquisitionis præd. certiorari: Tibi præcipimus, quod si judic. inde reddet. sit tunc record. & process. inquisit. præd. cum omnibus ea tangent. nobis sub sigillo tuo distincte & aperti. mittas, ita quod, &c. ubicunque, &c. ut ulter. super hoc fieri fac. quod de jure, &c. faciend', &c. Teste, &c.*

**A** And that Writ of Post Disseisin ought to be brought by those who first recover'd, or by some of them, and of the same Land which was recover'd, or of part thereof, or against those, or some of them against whom the Recovery was.

But if a Man recover by a *Præcipe quod reddat*, and after he is disseis'd by him against whom he recover'd, and the Disseisor doth make Feoffment, and taketh back an Estate to him and another; he who first recover'd shall have a Post Disseisin against him and his Jointenant, as it seemeth, and he shall be punished by the Statute if it be found against him.

But if he who loseth the Land by Default or Reddition in a *Præcipe quod reddat*, do after disseise him who recover'd, and make a Feoffment in Fee unto another, or for Life, it seemeth he who recover'd shall have a Post Disseisin against him who disseis'd him again, altho' he be not Tenant of the Land; for in a Writ of Post Disseisin, the Demendant shall not have Judgment to recover the Land, &c. But the Sheriff shall put and restore the Plaintiff to his Possession, if he find the Disseisin, &c. and shall take the Defendant, and keep him in Prison until. &c.

And it seemeth, That Non-tenure is no Plea in a Writ of Post Disseisin for the Defendant, but he ought for to answer the Disseisin, &c. when he comes in upon the *Scire*



## Writ of Entry in the Nature of Assise, &amp;c.

facias, &c. And if he make Default upon the Scire facias returned, the Sheriff shall take the Inquest: *Tamen quæret.*

## Writ of Entry in the Nature of Assise, which is called, Entry in de Quibus.

9 H. 5. 11.  
If this Writ  
be brought  
against a  
Parson, he  
shall not  
have Aid of  
the Patron  
and Ordina-  
ry.

A Writ of *De quibus* which is brought in the Place of an *C* Assise is, where a Man is disseised of any Lands, Tenements, or Rents, whereof he hath an Estate in Fee, then he may sue that Writ, and the Writ is such:

*Rex Vic', &c. Prac. A. quod iuste redd. B. unum mesuag. cum pertin. in D. quod clamat esse jus & hereditatem suam, de qua idem A. iniuste & sine iudicio disseisivit prædict. B. post primam transfret. dom. H. Regis in Vasconiam, &c. ut dic. & nisi, &c.*

And if a Man bring a Writ of Disseisin made to his Ancestor, then the Writ is of another Form, thus:

*Præcipe A. quod iuste, &c. redd. B. unum mesuag. cum pertin. in D. quod clamat esse jus & hereditatem suam. & de quo idem A. iniuste & sine iudicio diff. C. patrem prædict. B. vel alium antecessorum præd. B. cuius hæres ipse est post primam transfret. Domini Regis, &c. ut dic. Vel sic, per quod clamat, &c. & in quod, &c. nisi per C. qui illud ei dimisit, qui iniuste E. patrem, vel prædict. B. &c. post primam, &c.*

And in the *Per* and *Cui* thus:

*Quod clamat, &c. in quod, &c. nisi per C. cui D. illud dimisit, qui inde iniuste & sine iudicio, &c. prædict. E. patrem præd. B. cuius hæres ipse est, vel prædict. B. &c. post prim. &c.*

And in the *Post* thus:

*Quod clamat, &c. in quod, &c. nisi post disseisin quam D. iniuste, &c. fecit E. patri vel al. anteces. præd. B. cuius hæres ipse est, vel præfat. B. post primam transfretationem, &c. ut dicit. & unde quæritur, &c. Et nisi, &c.*

And it appeareth by these Writs, that altho' he bring a Writ of a Disseisin made to himself, or of a Disseisin made to his Ancestors, that in both cases the Writ shall be *Quod clamat esse jus & hereditatem suam.*

And if Tenant for Life, or Tenant in Tail be disseised, they may sue a Writ of Disseisin *de Quibus, &c.* but in that Writ it shall not be said, *Quod clamat esse jus suum & hereditatem suam*, and in his Count he shall set forth the especial Estate, &c.

And an Abbot, or Prior, or Master of an Hospital, or a Bishop, shall have a Writ *de quibus* upon a Disseisin of their Predecessors of Lands, Tenements, or Rent, and the Writ shall be such:

*Præcipe*

*Præcipe A. quod iuste, &c. red. Priori de N. unum mesuagium quod clam. esse jus Eccles. ipsius Prioris S. Mariæ de N. Et in quod idem A. non habet ingress. nisi post. diff. quam L. inde injuste & sine iudicio fecit R. quondam Priori de N. prædecess. præd. Prioris post primam, &c. ut dic. unde queritur, &c.*

And if it be a Rent, then thus :

*Rex Vic. præcipe I. M. quod iuste, &c. redd. Priori de C. tres solid. reddit. cum pertin. in D. quod clam. esse jus Ecclesie ipsius Prioris S. Nic. de C. Et de quibus W. D. injuste & sine iudic. disseisvit W. quondam Priorem de C. præd. &c.*

**G** And the Aunt and the Niece shall join in the Writ, upon a Disseisin made to the Father of the one, the Grandfather of the other.

**H** And a Writ of *Entris sur Disseisin* made unto his Ancestors of a Stream lieth, and the Writ shall be, *Præcipe quod reddat unum gurgitem*, and in his Count he shall alledge the Esples in taking of Fishes.

**I** And so he shall have a Writ of *Entris in de quibus* upon the Disseisin of a Passage, *quod vi. H. 8 E. 3.*

**K** And if the Disseisor enfeof the King, who enfeofeth another in Fee, the Disseisee shall have a Writ of *quibus* upon the Disseisin against the King's Feoffee in the *Post*, &c.

12 E. 3. 7.  
23 E. 3. Fitz.  
Entris 11.

**A** And if Tenant in Tail bring a Writ of *Quibus* upon a Disseisin made to himself, he may count that he was seised in his Demesn as of Freehold, without shewing any particular Estate, or how the Estate began, or he may count upon the special Matter, and shew the Gift in Tail, *quod vi. P. 33 H. 6.*

1 Ma. Dyer.  
101.

**B** And a Man may have a Writ of *Entris of Quibus*, upon a Disseisin of a Common, *Quod reddat pastur. ad decem boves, &c. quod vi. P. 4 E. 3.*

**C** And a Man shall not have a Writ of *Entris* in the *Post*, where he may have it within the Degrees, in the *Per*, or in the *Per* and *Cui*

14 H. 4. 10.  
Hankf. 24  
E. 3. 70.

**D** If a Man disseise the Father of a Marsh, and maketh the same Meadow, and the Father dieth, the Son and Heir shall have a Writ of *De quibus* upon a Disseisin made to his Father of that Meadow, and by the Writ he shall demand the Lands, by the Name of a Meadow, and not by the Name of a Marsh.

Yet no Præcipe will lie of a Marsh, because properly it cannot be rendered. 13 E. 3. Br. demand.

And so if it be Land covered with Water, and he is disseised thereof, and the Disseisor make it Meadow, the Disseisee shall have a Writ of *Quibus*, and by his Writ demand the Meadow, and suppose that he was disseised of Meadow by the Writ, &c.

23. 39 H. 6. 8. Vide 39 H. 6. 8. He shall have a Præcipe by the Name of a House.

And so if a Man be disseised of Land, and he build a House upon the same, he shall suppose the Disseisin to be of a House, &c. *Quare* of this.

And

He shall have a Præcipe by the Name of a House.

*Vanoff: 10  
10: 2145*



*Writ of Dum fuit infra etatem.*

And the Writ of *Quibus* upon Disseisin of an Office is such:

*Rex Vic', &c. Praecepit H. Abb. de Burgo. S. Petri, quod iuste, &c. reddat B. officium Serjeantiae in Abbacia de Burgo S. Petri, & redditum 24 panum, quadraginta lagenar. cervisiae, & sex ferculorum cum pertin. in Vill. de Burgo S. Petri, quae clamant esse jus & hereditatem suam, & de quibus idem Abbas injuste & sine iudicio disseis. &c.*

And he who cometh in unto any Land by Record, or by Election, or by Succession, or by Disseisin, the Writ shall be brought against such Person always in the *Post*.

*Writ of Dum fuit infra etatem.*

**A** Writ of *Dum fuit infra etatem* lieth, where an Infant maketh a Feoffment in Fee of his Lands, or for Life, or a Gift in Tail, when he cometh of full Age, he may have that Writ to recover those Lands or Tenements, which were so aliened by him, &c. And within Age, he may enter into the Land, and take it back again, and by his Entry, he shall be remitted to his Ancestor's Right; but yet he shall not maintain that Writ, until he be of full Age of 21 Years, for the Words of the Writ do so suppose, *Dum fuit infra etatem*, by which it appeareth that he is not within Age at the Time of the Writ, &c. and also the Writ is such; *Qui plene aetatis est, ut dicit*, by which it appeareth that he ought to be of full Age, when that he bringeth that Writ; and the Writ is such:

59 H. 6. 42.  
In 16 E. 3. 34.  
A Dum fuit  
infra etatem  
was  
admitted of  
a Rent, and  
yet by some  
the Gift is  
void; but  
the Delivery  
of the Deed  
is not void.

*Rex Vic', &c. Praecepit A. quod, &c. redd. B. qui plene aetatis est, ut dicit, duo messuagia, &c. quae idem B. ei dimisit dum infra etatem fuit, ut dicit, &c. Et nisi fecer', &c.* And so in the *Per*, *In quae idem A. non habet ingress. nisi per C. cui prad. B. illa dimisit.* And in the *Post* thus, *In quod, &c. nisi post dimis. quam prad. B. dum inf. aet. fuit inde fecer. W. ut dic. & unde queritur, & nisi, &c.* But that clause, *Qui plene aetatis est*, shall not be put in the Writs of *Per*, *Cui*, or *Post*, but only in the first Writ, by Grant made by the Demandant to the Tenant.

And if a Man bring this Writ upon the Alienation of his Ancestors, then this Clause, *qui plene aetatis est*, shall not be in the Writ, and yet the Infant shall have a *Dum fuit infra etatem* of a Seisin and Alienation of his Ancestor during his Nonage, and the Writ shall be such:

*Praecepit A. quod, &c. redd. B. unum messuag. cum pertin. quod clam esse jus, &c. & in quod idem A. non habet ingress. nisi per C. patrem, vel alium anteces. pradict. B. cuius heres ipse est quod illud ei dimisit dum infra etatem fuit: Vel sic,*

*Quod*

*Quod clam. &c. & in quod, &c. nisi per C. cui D. avia præd. B. cujus, &c. dum eadem D. &c.* And in the *Post, Quod clam. &c. & in quod, &c. post dimis. quæ D. amita, vel consanguinea prædict. B. cujus heres ipse est, dum eadem D. &c. inde fecit H. ut dic. & unde queritur, &c.*

**K** And if two Infants be Jointenants, and they alien the Land during their Nonage, at their full Age they ought not to sue forth several Writs of *Dum fuit infra etatem*, because their Nonage is the Cause of the Action which is several, for the Nonage of the one is not the Nonage of the other, nor the Alienation of the one the Alienation of the other.

34 H. 6. 3.  
Davers acc.  
19 H. 6.  
Ac de cui  
in vita.

And if the Husband and Wife alien the Wife's Lands, during the Nonage of the Husband and Wife, the Wife at her full Age after the Death of the Husband, shall have a *Dum fuit infra etatem* for such Alienation, *M. 14 E. 3.*

**L** But if the Husband were of full Age, and the Wife within Age, and they both alien the Wife's Lands, and then the Husband dieth, it is a Question whether the Wife shall have a *Dum fuit infra etatem*; and I conceive that she shall have a *Dum fuit infra etatem*, or a *Cui in vita*, as she pleaseth, for when they join in a Feoffment of the Land, it shall be said the Feoffment of the Wife until she disagree; for if the Husband and Wife make a Gift in Tail, or a Lease for Life of the Wife's Lands, rendering Rent, if the Husband dieth, the Reversion is only in the Wife, and she may accept the Rent, and the same shall bind her and her Heirs; and then if she will not accept the Rent, but, because she was within Age at the Time of the Feoffment, she will bring a *Dum fuit infra etatem*, it seemeth she shall not be received so to do, for by that Suit she affirmeth that she made the Feoffment, and then it shall not be said the Feoffment of the Husband only, but the Feoffment of the Wife alone after the Death of the Husband, if she affirm that to be her Feoffment; and by the *Dum fuit infra etatem*, she doth affirm the same, and that she made the Feoffment during the Coverture; and on the other Side it may be said, That she doth not affirm the same to be a lawful Feoffment made by her. And also by the Feoffment of the Husband, the Entry of the Wife shall be taken away; but by the Feoffment of the Wife during her Nonage, his Entry shall not be taken away; and therefore *Quare the Law, &c.*



*Writ of Cui in vita.*

**T**HE Writ of *Cui in vita* lieth, where the Husband doth alien in Fee the Right of Inheritance of his Wife, or the Freehold of his Wife by Feoffment, or Grant for Life, or in Tail: Then after the Death of the Husband the Wife shall have *Cui in vita contradicere non potuit*: And the Writ lieth where the Wife hath an Estate for Life, or in Tail, and the Husband alieneth that Estate and Title of the Wife's, then the Wife after his Death shall have that Writ.

39H. 6. 38.  
Prif. contra  
Vi. 16H. 7.  
8, 9.

And if the Wife do not bring the Writ during her Life, then if she had an Estate in Fee-simple, her Heir shall have a Writ which is called *Sur cui in vita* after her Death. And if the Wife have an Estate in Tail, and her Husband alien, and make a Feoffment of that Estate; then if the Wife dieth, her Heir shall have a Writ of *Formedon* in the Descender to recover that Estate, and not a Writ of *Sur cui in vita*; for those Writs of *Cui in vita*, and *Sur cui in vita*, are Writs founded upon the Common Law, and of an Estate in Fee-simple; for there was not other Estate at the Common Law which could descend, but a Fee-simple: For if the Lord by the Common Law giveth Lands to hold of him, if the Tenant dieth without Heir, he shall have a Writ of Escheat.

And so by the Common Law; If a Man give Lands to one and the Heirs of his Body, &c. if he dieth without Heirs of his Body, the Lord by the Common Law shall have a *Formedon* in the Reversion of that Estate, for want of Issue of him to whom the Gift was made; but yet the Donor shall have an Estate in Fee-simple, as I think, and that appeareth by the Statute, which saith, *De tenement*, *que multoties dantur sub conditione*; by which Words it appeareth, That the Gift had a Condition implied therein; so that it shall revert for want of such Issue, and by reason of the Tenure reserved, &c. but it doth not appear by the Statute that he shall have an Estate-tail of other Nature than the Estate which was by the Common Law, and the Form of the Writ of *Cui in vita* is such:

*A Feme sole made a Deed of Feoffment, but always after continued Seisin of the Land, after*

*she took Husband, who delivered the Land to the Party to whom the Deed was made, the Feme may have a Cui in vita; because she did not execute the Feoffment by Delivery of the Land. 34 E. 2. Fitz. Cui in vita 23.*

*Pl. Com. 29. & 239. 12 E. 4. 3.*

*Hæc Vic', &c. Præcipe A. quod iuste, &c. reddat B. quæ fuit C*

uxor D. unum mes. cum pertin. in N. quod clamat esse jus & hered. suam. Et quod idem A. non habet ingressum nisi per pradiet. D. quondam virum ipsius B. qui illud ei dimisit, cui ipsa in vita sua contradicere non potuit, ut dicit.

- D** And if she hold in Frankmarriage, and the Husband alien, then the Writ shall be, *Quod clamat esse jus & maritag. suam, & in quod idem A. &c. nisi per C. cui prae. D. quond. vir ipsius B. illud, ut supra.*

And this Writ of Cui in vita may be in the Per, Cui and Post, and in the Post the Writ shall be :

*Et in quod idem A. non habet ingressum, nisi post dimissionem, quam prae. D. quondam vir ipsius B. cui ipsa in vita, &c. non potuit, inde fecit, ut dic. & unde queritur, &c. & nisi, &c. Vel sic, Quod clam. esse jus suum de dono S. qui ipsam B. inde feoffavit, & in quod, &c.*

- E** And if the Husband and Wife purchase jointly, and the Husband alieneth all in Fee and dieth, the Wife shall have a Writ in this Form :

*Quod clamat esse jus suum de dono I. qui ipsam B. & prae. C. quondam virum suum inde feoffavit, & in quod, &c.*

- F** And if she have an Estate to her and the Heirs of her Body, and of the Body of her Husband begotten, then the Writ is ; *Quod clamat. tener. sibi & hered. de corpore suo, & de corpore prae. D. quondam viri sui exeuntibus, ex dimissione I. Vel*

- G** sic, *quod clamat esse jus suum ex dimissione quam I. inde fecit eidem B. & prae. D. quondam viro suo, & hered. ipsius B. And there the Husband shall have a joint Estate with the Wife for the Term of her Life.*

- H** And if the Wife claim the Lands in Dower, then the Writ shall be :

*Quod clamat esse dotem suam ex dono D. primi viri, vel secundi viri sui, Et in quod, &c. nisi prae. C. secundum virum ipsius B. vel tertium virum, qui illud ei dimisit, &c.*

And if she hold for Term of Life of Dimission, then the Writ shall be :

*Quod clamat tenere ad vitam suam ex dimissione quam I. inde fecit eidem B. per prae. D. quond. viro suo ad vitam eorundem B. & D.*

- I** And if the Husband and Wife lose by Default the Wife's Lands, after the Death of the Husband, she shall have a Cui in vita for to recover those Lands so lost by Default ; but if a Man recover by a Cesser Lands of the Wife by Default of the Husband and the Wife upon a Cesser during the Marriage had betwixt them ; if the Husband dieth, the Wife shall not have a Cui in vita upon that Recovery, *quod vi. Tri. 4 E. 2.*

11 Aff. 11.  
Br. Aff. 167.  
16 H. 7. 8. 9.  
48 E. 3. 8.  
39 H. 6. 38,  
&c.

Note, The Statute of West. 2. c. 3. extends to give this Account, as well for Recovery, before the Statute as after.  
5 E. 2. Cui in vita 23.

2 E. 4. 13.  
Note the Case of West. 9 E. 4. 16.



9 E. 4. 16. If the Husband and Wife jointly, and the Husband alieneth all in Fee and dieth, the Wife, as it seemeth, shall have a *Cui in vita* of a Moiety, being the third Jointenant; but it seemeth such Alienation is a Severance of the Jointure, *quod vi. Pas. 16 E. 3. Cui in vita* in the Abridgment: And if the Husband alien the Corrody in Fee, which the Wife hath, it shall not be any Discontinuance, but the Wife may demand her Corrody.

If the Husband and Wife exchange the Land of the Wife for other Lands, if the Wife agree unto the Exchange after the Husband's Death, she shall not have a *Cui in vita*. And if the Wife do accept of the Parcel of the Land in Dower, of which she hath a *Cui in vita*, by that Acceptance she shall be barred in her *Cui in vita* of the Residue.

36 E. 3. She shall have a *Cui in vita* of the Residue during the other's Life. 36 E. 3. She shall have a *Cui in vita*, that is, of a Purchase during the Coverture, that he shall not have a *Cui in vita* after the Death of the other; but for, &c. he may. 10 E. 4. 2.

2 E. 2. *Cui in vita*, 19. 8 E. 2. *ibid.* 25.

8 E. 2. *Cui in vita* 28. The Husband gave the Land of the Wife to I. who gave other Land to the Husband and Wife, and to her Son of the Husband, and to the Heirs of him who survived, and that was pleaded by Exchange in Bar, in a *Cui in vita*; and holden no Bar. 20 E. 3. *Cui in vita* 10.

So if she accept a Rent where she and her Husband make a Feoffment. 21 H. 6. 24.

49 H. 6. 45. If Husband and Wife be Jointenants before the Coverture, and the Husband alieneth all the Land and dieth, she shall not have a *Cui in vita* but for a Moiety. But if they be Joint Purchasers during the Coverture, and he alien all the Land and dieth, his Wife shall have a *Cui in vita* of the whole Land, because that during the Coverture as to Purchase, they are but one Person in Law. And the Writ of *Sur Cui in vita* lieth for the Heir of the Wife, where the Husband alieneth all the Land in Fee, and the Writ is such:

*Præc. A. quod, &c. reddat B. unum mess. cum pertin. in N. quod clamat esse jus & hereditatem suam, & in quod, &c. nisi C. per C. quond. virum D. matris præd. B. cujus heres ipse est, quod illud ei dimisit, cui ipsa D. in vita sua contradicere non potuit, ut dicit, nisi, &c.*

And in the *Per* and *Cui* thus:

*Quod clamat, &c. Et in quod, &c. nisi per C. cui D. quond. vir. E. matris, amite, sororis vel consang. præd. P. cujus heres, &c. illud ei dimisit, cui ipsa D. in vita, &c.*

And in the *Post* the Writ shall be thus:

*Nisi post dimissionem quam I. quondam vir C. matris præd. B. & amite præd. M. cujus heres ipse est, cui ipsa C. in vita sua*

contradicere non potuit, inde fecit, ut dicit, & unde queritur, &c.  
& nisi, &c.

**D** And by that Writ appeareth, That the Aunt and the Niece may join in a Writ of *Sur cui in vita*, upon an Alienation made by the Husband, their common Ancestor; or upon a Recovery had against the Husband and Wife, who was the common Ancestor to them, if the second Husband alien the Lands of the Wife. and he and his Wife die, the Issue of the Wife and the first Husband shall have a *Sur cui in vita* against the Alienee; although the second Husband be living, if he were not intitled to be Tenant by the Courtesy; but if the second Husband be intitled to be Tenant by the Courtesy, then the Issue of the first Husband shall not have a *Sur cui in vita* during the Life of the second Husband.

8E.2. Cui in vita 26.

**F** And a *Sur cui in vita* was maintainable of a Rent. *M. 12 E. 3.* And in a *Cui in vita*, the Grant or Gift-alledged in the Writ is not traversable.

44 E. 1.  
Fitz. ib. 30.

**H** If a Man giveth Lands to a Woman to marry her, and they marry, and afterwards the Husband alieneth the Lands and dieth, the Wife shall have a *Cui in vita* of those Lands given her by her Husband.

5 E. 3. 37.  
Cui in vita  
13. 49 E. 3.  
29. Quere.  
But 50 E. 3.  
6. Aff. 5 E. 2.  
Cui in vita  
25.

Writ de sine assensu Capituli.

**I** THE Writ of *Sine assensu Capituli* lieth where a Dean, Bishop, Prebendary, Abbot, Prior, or Master of an Hospital, alien the Lands which they have in the Right of their House, Abbey, or Priory, without the Assent of their Convent, or their Chapter or Brethren, &c. He who is the Successor shall have that Writ, which is such, and may be in the *Per, Cui* or *Post*.

**R** Rex Vic', &c. *Præcipe A. quod, &c. reddat. B. Episcopo de S. unum mess. cum pertin. in N. quod clamat, esse jus Eccles. ipsius Episc. S. Mariæ de S. & in quod idem A. non habet ingressum nisi per H. cui R. quondam Episcop. de S. prædeces prædict. nunc Episc. illud dimisit sine assensu & voluntate capituli sui, ut dicit, &c.*

And for a Master of an Hospital, the Writ shall be:

*Rex Vic', &c. Præcipe A. quod juste, &c. reddat. B. custod. Hospit. S. Mariæ Magd. Linc. unum mess. quod clamat esse jus Hospitalis sui præd. & in quod idem A. non habet ingress. nisi per D. quondam custod. Hospitalis prædict. qui illud ei dimisit sine assensu & voluntate fratrum & sororum ejusdem Hospitalis, ut dicit, & nisi, &c.*

And for a Prebend the Form of the Writ is such:

Rex



*Writ de sine assensu Capituli.*

*Rex Vic', &c. Præcipe A. quod, &c. redd. B. Præbendarij Præbende de D. in Ecclef. B. Petri Ebor. unam mes. &c. in A. quod clamat esse jus Præbend. sua. Et in quod, &c. nisi post dimissionem, quam R. de B. nuper Præbendarius præbend. prædictæ. prædecf. Præbend. prædictæ. sine licentia & voluntate Archiepiscopi Ebor. decani & capituli Ecclef. prædictæ. inde fecit W. de R. ut dicit, & unde queritur, &c.*

And for the Prior of St. John of Jerusalem in England, lieth a Writ upon an Alienation of his Predecessor, thus:

*Quod reddat B. Priori Hospit. S. Joh. Jerusal. in Anglia, &c. quod clamat esse jus Ecclef. sue S. Joh. Jerusal. in Anglia, & in quod non habet, &c. nisi per W. quondam Priorem S. Jo. &c. prædecf. præd. nunc Prioris, qui illud dimisit sine assensu capituli, ut dicit, & nisi, &c.*

And the Process in these Writs are Summons, *Grand Cape*, and *Petit Cape*.

And hereby it appeareth, that a Prebendary shall have a Writ *De sine assensu Capituli*; by which it seemeth that he hath a Fee-simple in the Prebend; and yet one Prebendary may enter upon the Alienation of his Predecessor.

[ 195 ] And also a Prebendary shall have a *Juris utrum* upon an Alienation of his Predecessor, by which it seemeth he hath not a greater Estate than as Parson: But yet it seems reasonable that he have this Writ, *De sine assensu Capituli*; because that he, the Bishop, and the Chapter are but one Body, and are as one Body, altho' the Possessions be severed and divided amongst them; and every one of them is enabled to bring an Action of his own Possession in his own Name.

And a Man may have a Writ of *Sine assensu Capituli* against the same Person by several *Præcipes* in the Writ, of Lands in several Towns, and upon Demises of his several Predecessors, and it shall be good *Quod vi. H. 33 E. 3.*

And if the Prebendary, or a Bishop, or Abbot be disseised, And afterwards he releaseth to the Disseisor; it seemeth the same is an Alienation upon which he may have a Writ *De sine assensu Capituli*; for if the Disseisor die seised after the Release made, the Successor hath not any Remedy but by this Writ, or by a Writ of Right; but if the Disseisor doth not die seised, then it seemeth the Successor may enter upon the Disseisor, notwithstanding the Release of his Predecessor, for by the Release no more passeth than he may rightfully release, &c.

*Writ of Assise of Mort d'Auncestor.*

**C** THE Writ of Mort d'Auncestor lieth, where my Father or Mother, Broether or Sister, Uncle or Aunt, or Nephew or Niece, dieth seised of any Lands, Tenements or Rents, or of a Corody or other Rents; as Hens or Capons, issuing out of other Lands of an Estate in Fee-simple: Now if a Stranger after their Deaths abate in that Land, Rent or Profit, I who am his Heir shall have this Writ of Assise of Mort d'Auncestor.

**D** And if the Auncestor were seised, the Day that he died, of any Lands or Rents, or other like Things of an Estate in Fee-simple, although that a Stranger entereth and disseiseth him of that Land or Rents the Day that he dieth, so that he dieth not seised of the said Land or Rents, &c. yet I who am his Heir shall have that Assise of Mort d'Auncestor, because the Writ doth not suppose that my Auncestor died seised; but the Writ saith, *Parati sacramento recogn. si W. pater, &c. fuit seiscus in dominico suo ut de feodo, die quo obiit, &c.* and the same is sufficient, although he dieth not seised; and the Form of the Writ is such:

**E** *Rex Vic. S. salutem. Si A. fecer. &c. tunc sum. &c. xii liberos & legales homines de visn. de N. quod sint coram Justiciariis nostris ad primam assisam cum in partes illas venerint, vel coram Justiciariis nostris apud Westmon. octabis, &c. vel coram dilectis & fidelibus nostris D. & E. & his quos sibi associaverimus ad cert. diem & locum, quos iidem D. & E. tibi scire fac. parat. sacramento recognoscere, si W. pater pred. A. vel mater, soror, frater, avunculus, vel amita fuit seiscus in dominico suo ut de feod. de uno mesuagio et una virgata terra cum pertin. in N. die quo obiit. Et si obiit post coronation. dom. H. Regis. Et si idem A. propinquior heres ejus sit, et interim pred. mesuag. et terr. videant, et nomina eorum imbrevari fac. et sum. per bonos sum. B. qui pred. mes. et terras nunc tenet, quod sit ibi ad audiend. illam recogn. et habens ibi sum. et hoc brevis. Teste, &c.*

*10 E. 2. Formed. 55. Plo. Com. 239. If a Man hath Issue a Son, and his Wife dieth; and he taketh another Wife, and hath Issue a Son, and Lands are given to him and his second Wife in special Tail; before the Statute De Donis, if the Stranger had abated, no Mort d'Auncestor lieth.*

**F** And upon that Writ he needs not have any special Patent, for the general Patent made to the Justices, shall serve for that Writ. And if the Writ be, *Quod sit coram dilectis & fidelibus nostris D. & E. & his quos sibi associaverimus*, then they



## Writ of Assise of Mort d'Auncestor.

they use to have a special Patent directed to the same Justices, &c. But if the Justices be the Justices of Assise in the same County, then their general Patent shall serve for that Assise as well as if they had a special Patent. And the special Patent is such:

*Rex dilectis & fidelibus suis D. & E. salut. Sciatis quod constituimus vos Justic. nostros una cum his quos vobis associaver. ad ass. mortis antecessoris capiend. quam A. arrain. coram vobis per brev. nostrum de uno mes. & una virgata terr. in N. & ideo, &c. as in the Patent of Assise of Novel disseisin.*

10 Ass. 24.  
Br. Att. 72.  
10 Ass. 4.  
Br. Att. 24.

And a Man may have an Assise of Mort d'Auncestor of several Rents, against several Persons in several Counties; and in the End of the Writ shall be several Summons against the Tenants; and the Form of the Writ is such:

*Rex Vic', &c. Si A. & B. fecer. &c. tunc sum. xii liberos, &c. parati sacramento recognoscere si W. pat. prad. A. & quis prad. B. fuit seistus, &c. de decem solid. redditus cum pertinent. in N. et si obiit, &c. Et iidem A. et B. sunt propinquior. &c. et interim tenementum illud, unde redditus ille provenit, videant, et nomina eorum, &c. et sum. per bin. sum. S. qui sex solid. redditus eis inde defors. et T. qui quat. solid. redditus eis inde defors. quod tunc sint, &c.*

And by this Writ it appeareth, that the Aunt and the Niece shall join in Assise of Mort d'Auncestor, and that is by the Statute of Gloucester, cap. 6.

And if the Heir who bringeth Assise be within Age, he shall not find Pledges; and therefore the Form of the Writ shall be of another Form, and shall not say, *Si A. fec. te, &c.* but thus:

*Rex Vic', &c. sum. &c. xii liber. & legal. homines, &c. si W. pat. prad. A. qui infra etatem est, ut dic. fuit seist; &c. And shall not say in the Writ, Et si obiit post coronas, &c. because it appeareth by the Age of the Demandant; but if many Sisters be Demandants, and some of them be within Age, and some of full Age, then the Writ shall be in the common Form, as if all were of full Age.*

If a Man go beyond the Sea in Pilgrimage, and dieth there, his Heir shall have a Writ of Mort d'Auncestor of another Form, thus:

[ 196 ]

*Rex Vic', &c. Si A. fecer. &c. sum. xii, &c. si W. pat. prad. A. fuit seist. in dominio suo, &c. de reddit. unius clavi gavit. filii, cum pertin. in N. die in quo it. peregrinat. arripuit versus terr. sanct. vel versus Hierosolym. vel versus S. Jacob. in quo itinere obiit; ut dic. & si iter illud arripuit post coronationem, &c.*

And

- And in that Writ it sufficeth if he were seised the Day he went out of the Land, and took the Sea, altho' it was not the Day of his Death. And if the Father enter into Religion, and be professed, the Son shall have a Mort d'Auncestor, if the Stranger abate in the Land; the Writ shall be, *Si W. pater, &c. die quo habitum Religionis assumpsit, in quo habitu professus fuit, ut dicitur. Et si habitum illum assumpsit post coronationem, &c.*
- A** If a Man have a Corody to him and his Heirs, if he die seised, or was seised thereof the Day of his Death, his Heir shall have an Assise of Mort d'Auncestor thereof, if it be taken from him; and the Writ shall be:  
*Rex Vic', &c. Si W. fecer. &c. tunc sum. &c. xii liberos, &c. de Visu. ville Westm quod sint, &c. parati, &c. Si L. mar. pred. W. fuit seista in domin. suo ut de feodo de xl s. reddit. & redditu lxii panum, trium lagenarum vini, xx lagenar. cervisie, & xxx ferculorum cum pertin. in villa Westm die quo obiit. Et si obiit, &c. Et si idem W. &c. & interim ten. uide redditus ille provenit videant, & sum. &c. T. Abbat Westmon. & fratrem R. de B. & fratrem K. de S. commonachos ejusdem Abbatis qui reddit. pred. ei defore. quod tunc, &c.*
- B** And the Order to set the Parcels in the Writ, shall be as in a Writ of Right.
- C** And a Man shall have a Certificate upon this Writ, and also Writs of Association, and *Si non omnes*, as he shall have in Assise of Novel disseisin.
- D** And by the Statute of Gloucester, if Tenant by the Curtesy alien his Wife's Inheritance, and dieth, the Heir of the Wife shall have an Assise of Mort d'Auncestor, if he have not Assets by Descent by the Tenant by the Curtesy, and the same shall be as well where the Wife was not seised of the Land the Day of her Death, as where she was seised thereof, for that Writ is given by the Statute.
- E** If the Lord have the Ward of the Heir of his Tenant, and when he cometh of full Age, the Guardian will not suffer him to enter into the Land, the Heir shall have an Assise of Mort d'Auncestor against the Guardian, by the Statute of Marlebridge, cap. 16.
- F** And the Process in Mort d'Auncestor is Summons against the Party, and if he make Default at the Day of the Assise-Return, then the Plaintiff ought to sue a Resummons, and if he make Default again, the Assise shall be taken by his Default.
- G** And if a Man vouch in Assise of Mort d'Auncestor, and at the first Day the Vouchee make Default, then the Resummons

§ Aff. 13.  
 Br. Default  
 and Appur-  
 tenance,  
 38.



## Writ of Assise of Mort d'Auncestor.

mons shall issue for h against him : And so if the Tenant or Vouchee at the first Day be essoined ; and afterwards at the Day given by the Essoin, the Tenant or Vouchee make Default, a Resummons shall be awarded. But if the Tenant at first Day be essoined, as in the King's Service, and afterwards make Default at another Day, the Assise shall be taken by his Default, &c.

And if the Writ of Mort d'Auncestor be brought by several Summons against several Tenants, then the Assise may be taken one against one Tenant, and another against the other Tenant ; *quod vide 3 E. 3. Itin. North.*

And a Mort d'Auncestor doth not lie for Lands devisable by Will, because the Title may fall to another who is not Heir by the Will of the Auncestor, &c. and yet the Writ is true, that he was seised the Day he died ; *quod vide 23 E. 3. lib. Ass.*

And if a Man be seised in Tail, the Remainder to his right Heirs, and afterwards he die seised without Issue of his Body, and a Stranger abateth, it is a Question if the Heir shall have an Assise of Mort d'Auncestor. And *An 21 E. 3. Itin. Suff. M. 5 H. 4.* the Opinion of some is, That if the Remainder be to his right Heirs, that then he shall not have an Assise of Mort d'Auncestor : But if a Gift in Tail be made unto one, the Remainder to him and his right Heirs, that then he shall have an Assise of Mort d'Auncestor, because he hath the Remainder in Fee to him and his Heirs : But it seemeth he shall not have an Assise of Mort d'Auncestor in the one Case, nor in the other ; for the Words of the Writ are, *Si W. pater, &c. fuit seiscitus die quo obiit in demetico suo ut de feodo saluato*, and that he was not, for he was seised in Demesne *ut de feodo saluato*, and not in Demesne as of Fee, and therefore the Jury cannot find that he was seised in his Demesne as of Fee, for of the Demesne he was seised in Tail. *Quere* of that.

And if the Auncestor dieth seised, and hath two Sisters his Heirs, one of them shall not have an Assise of Mort d'Auncestor against the other, for this Writ lieth against Strangers, and not against Privies in Blood.

And so in Gavelkind, one Brother shall not have a Mort d'Auncestor against the other for the Privy of Blood, but he ought for to sue a *Naper obiit* against his Brother, or one Sister against the other, &c.

And *H. 13 H. 3. Itin. Suff.* the youngest Brother had a Mort d'Auncestor against a Stranger, and shall recover where the eldest went beyond Sea, although he were not dead, because 18 Years passed since the eldest went beyond the Seas.

And

And H. 13 E. 2. it was adjudged accordingly, where the younger Brother recovered in Assise of Mort d'Auncestor, where the eldest went beyond the Sea, and was alive.

Writ of Nuper obiit.

**A** THE Writ of *Nuper obiit* lieth where the Grandfather, Father, Brother, Uncle, or other Ancestors of the Demandant dieth seised of Lands, Tenements or Rents of an Estate in Fee-simple, and after their Death, one of the Heirs of the same Ancestor doth enter and deforce the Demandants; now he or those who are so disseised shall have that Writ against the Coparcener; and that Writ lieth for one Coheir against the others, or for divers Coheirs against many, as the Case is, and it ought to be where the common Ancestor dieth seised of Land, &c. of an Estate in Fee-simple; for if one Sister do deforce another Sister of Land, whereof their Ancestor died seised of an Estate in Tail, her Sister shall have a Formedon against the Sister who deforced her, &c. and not a *Nuper obiit*. And the Form of the Writ is such:

**B** *Rex Vic', &c. Si A. & B. fecerint, &c. tunc sum. &c. C. quod sit coram Justic. nostris apud Westm. tali die, &c. ostens. quare deforc. pras. A. & B. rationabilem partem suam, que eis contingit de hereditate, que fuit W. de N. patris, matris vel alterius antecess. pradiet. A. B. & C. cujus heredes ipse sunt, & que nuper obiit, ut dic. &c. Et habeas ibi sum. & hoc breve, &c. Teste, &c.*

And the Writ may be brought by an Aunt against her Sister and her Niece; and then the Writ shall be such:

*Rex Vic', &c. Si A. & B. uxor ejus fecerint, &c. tunc sum. &c. C. & D. quod sint, &c. ostens. quare deforc. prasat. A. & B. rationabilem partem ipsius B. que ei contingit de hereditate que fuit E. in N. matris pradiet. B. & C. & proave pradiet. D. cujus hered. ipse sunt, & que nuper obiit, ut dic. & habeas, &c.*

**C** And that Writ lieth betwixt Coheirs in Gavelkind, as well as between Women who are Coparceners; and if one Coparcener be deforced by another Coparcener and a Stranger, she shall have a *Nuper obiit* against her Coparcener, and by the Rule in the Register, that Non-tenure shall not abate the Writ.

Br. Entry  
congeable,  
122 Collects,  
that the  
Stranger  
gains no-  
thing of the  
Freehold by  
that Entry,  
quod nota  
H. 6. 8.

**D** And also by the Rule in the Register, in a *Nuper obiit*, Non-tenure of Parcel of the Thing demanded shall not abate the Writ.



And if two of the Coparceners enter after the Death of E their Ancestor and deforce the third Sister, and afterwards they make Partition betwixt them, and then one of the two alieneth her Part unto a Stranger in Fee, yet the third shall have a *Nuper obiit* against her two Sisters notwithstanding that Alienation, and shall recover the third Part thereof, whereof the Coparcener who aliened not was seised, &c.

And for to recover the third Part of the other Coparcener, F which is in the Hand of the Stranger, she ought to sue an Assise of Mort d'Auncestor in her Name, and in the Name of her other Coparceners, &c. or a Writ of Aiel, as the Case is.

16 H. 7. 1.  
per Keble.  
by the Dis-  
claimer the  
Demandant is put  
to his Assise  
of Mort  
d'Auncestor,  
also he is  
barred of  
his Damages  
in the  
Nuper obiit.

And if one Coparcener do enfeof a Stranger in Fee, and G taketh back an Estate to him in Fee, or for Life, yet it seems a *Nuper obiit* lies against him by the other Coparcener, if he do not disclaim in the Blood, M. 2 E. 2. and it seems reasonable. But M. 21 E. 3. and M. 45 E. 3. 7 H. 6. 8. it is holden the contrary: But several Tenancy, or Non-Tenure, is no good Plea in a *Nuper obiit* for the Privity of Blood; but if he claim by Purchase, or disclaim in the Blood, it is a good Plea.

And a *Nuper obiit* lieth betwixt Sisters of the half H Blood.

And if a *Nuper obiit* be brought of the Seisin of the Grand- I father, Darrein Seisin in the Father is no Plea, without alleging a dying seised in the Father, &c.

A *Nuper obiit* lieth of the Seisin of the Great Grand- E father.

And the *Nuper obiit* ought to be brought by that Coparcener who is deforced, &c. against all the other Coparceners, although that some of them have nothing in the Tenancy.

And it appeareth, T. 4 E. 2. that the *Nuper obiit* lieth of L the Seisin of his Father, if the Father were seised the Day that he died; or the Day before, for that amounteth to a dying seised, &c.

And if one Sister hath Issue a Son, and dieth, and the Son M doth enfeof a Woman in Fee of all the Land, and afterwards marries her; the *Nuper obiit* doth not lie by the other Coparcener against the Husband and Wife; but there he may bring a Mort d'Auncestor in his own Name, and in the Name of the Husband against the Husband and Wife.

10 H. 8 E. 2. Itiner. Canc.

A Villain and his Wife shall not have a *Nuper obiit* against N his

his Wife's Coparcener, because he is not enfranchised by the Marriage of one of the Coparceners which was one of his Lords, to whom he was Villain before.

O And if the Father give Lands in Frankmarriage to his Sister, and dieth seised in Fee of other Lands, she shall not have a *Nuper obiit* against her Sister for the Lands in Fee-simple, unless she will put the Lands which were given in Marriage in Hotch-pot, &c.

P A *Nuper obiit* lieth of a Corody.

Q And Voucher, and the View, do not lie in the *Nuper obiit*.

R And the Aunt and the Niece shall join in a *Nuper obiit* against the other Sister or Niece, &c.

## Writ of Quare ejecit infra Terminum.

S THE Writ *Quare ejecit infra Terminum*, lieth where a Man leaseth Lands unto another for Years, and after he entereth and maketh a Feoffment in Fee of the same Lands to a Stranger, or for Life; the Lessee shall have that Writ *Quare ejecit infra Terminum* against the Feoffee or Lessee for Life.

T And in that Writ he shall recover his Term again, and his Damages also if the Term be not ended; and if the Term be ended, he shall recover all his Damages.

U And the Process in that Writ is Summons, Attachment and Distress infinite, and not Process of Outlawry, because the Writ is not *vi & armis*. And the Form of the Writ appeareth after, &c.

A But this Writ of *Quare ejecit infra Terminum*, was devised (as it is said) by a wise Man called *William Moreton*, and for this Cause: For if a Man lease Lands for Years, and after he oust his Lessee, and after he hath put him out, he make a Feoffment of the Land unto a Stranger in Fee; now the Lessee cannot have a Writ of *Ejectione firmæ* against him who is the Feoffee, because he did not put him out, for which in that Case the Lessee had no other Remedy but to enter again into the Land. And if the Feoffee do then put him out, the Lessee may have against him an *Ejectione firmæ vi & armis* for the Wrong done him, and before Entry made by the Lessee, he had not Remedy against the Feoffee. And therefore by the Equity of the Statute of *Westm. c. 24.* (as often as hereafter it shall happen in the Chancery that in one Case a Writ is found, and in the like Case falling under the same Law, and wanting the same Remedy, &c. let the Clerks of Chancery agree, &c.) And by reason of that Statute was this Writ devised.

11 H. 6. 6.  
If the Term  
expire pend-  
ant the  
Writ, yet  
the Writ  
shall not  
abate.

1991



*Writ of Quare ejecit infra Terminum.*

But yet if the Lessor put out the Lessee, and presently make a Feoffment in Fee, so as the Feoffee be Party or privy to the Ouster of the Lessor, then the Lessee shall have a Writ of *Ejectione firma vi & armis* against the Feoffee, because he is Party to the Ouster, and to the Wrong done unto him; and the Writ followeth:

*Rex Vic', &c. Si A. fecerit, &c. tunc sum. &c. B. quod sit, &c. ostensur. quare deforc. pref. A. unum mesuagium cum pertin. in N. quod C. ei dimisit ad terminum, qui nondum prateriit, infra quem terminum idem C. prefat. B. mesuag. illud vendidit, occasione cujus venditionis idem B. pref. A. de mesuagio pred. ejecit, ut dicitur, & habeat, &c.*

And the like Writ lieth where the Son and Heir of the Lessor maketh a Feoffment, &c. and the Feoffee ousted the Lessee.

And if the Lessee granteth over his Term, and afterwards the Lessor maketh a Feoffment of the Land unto a Stranger in Fee. Now the second Lessee shall have that Writ, &c. and the Writ shall be,

*Quare deforc. pref. B. unum mesuag. &c. quod R. cui L. illud dimisit ad terminum qui nondum prateriit, eidem B. dimisit ad eundem terminum, infra quem terminum idem L. mesuagium, &c.*

And so if four let a House to A. for Years, who granteth over his Estate to B. and afterwards two of the Lessors die; and the Survivor maketh a Feoffment unto C. in Fee, B. shall have a *Quare ejecit infra Terminum* against the said Feoffee, and the Writ shall recite the special Matter.

And if a Man do lease Land for Years, and a Lessor doth suffer a Recovery to be against him upon a feigned Title, who entereth, yet it seemeth the Lessee shall have this Writ of *Quare ejecit infra Terminum*, &c. And the Words of the Writ are, *Occasione cujus venditionis*; and yet the same is not properly a Sale, but those Words are but of Form. But before the Statute of 21 H. 8. c. 15. it seemeth that the Tenant for Years could not have falsified the Recovery had against his Lessor.

And if a Man lease Lands for a Term of Years, and afterwards dieth without Heir, and the Lord by Escheat enter and puts out the Termor, it is a Doubt whether he shall have a *Quare ejecit infra Terminum* against the Lord by Escheat; but it seemeth reasonable that he should have it.

And so if the Villain leaseth Lands for Years, and after the Lord of the Villain enter, and puts out the Termor, the Lessee shall have that Writ. And so if a Man lease Lands for

Years,

35 H. 8. 52.  
 &c. 36 H. 6.  
 63. L. H. 8.  
 fol. 74.  
 5 H. 7. 7.  
 7. 17.  
 11 H. 6. 7.  
 Babington.

Years, and afterwards a Stranger put out the Lessee, and disseiseth the Lessor, and afterwards the Lessor releaseth unto him, it seemeth the Lessee shall have the Writ, *Quare ejecit infra terminum* against the Disseisor, &c.

And *Quare ejecit infra terminum* lieth as well against the Lessor, as against his Feoffee; *quod vide* H. 19 H. 6.

**K** And it seemeth that the Sale supposed in the Writ, is not traversable but only the Ejectment, &c. And if so, then it seemeth the Writ lieth against the Lord by Escheat, or against the Lord of the Villain who putteth out the Termor, &c.

But an *Ejectione firme* lieth against the Lord of the Villain, if he put the Termor out of his Lease made by his Villain, before Entry made by the Lord into the Land. And so an *Ejectione firme* lieth against the Lord by Escheat, if he oust the Termor of the Lease made by the Tenant, &c.

And for the Book of 19 H. 6. it appeareth that it is in the Election of the Lessee, to sue a Writ of *Ejectione firme*, or a Writ of *Quare ejecit infra terminum* against the Lessor or his Heir, or against the Lord by Escheat, or against the Lord of the Villain, if they put the Termor out of his Term, &c.

## Writ of Ex gravi Querela.

**L** THE Writ of *Ex gravi Querela* lieth, where a Man is seised of any Lands or Tenements in any City or Borough, or in Gavelkind; which Lands are devisable by Will, Time out of Mind, &c. Now if one who had Lands or Tenements there, doth devise those Lands or Tenements unto another in Fee-simple, or in Fee-tail, he to whom the Devise is made shall have this Writ of *Ex gravi Querela* for to execute that Devise,

Note, That if a Town hath paid 15. it is no ancient Town that may devise.

Per 40 Ass. 41. 39 Ass. Br. Ass. 355. This Writ is not incident to Lands devisable. Quere, If a Devise of a Rent out of the Land devisable be within the Benefit of this Writ. 26 H. 8. 8cc. or 5, &c 4 &c 5 Mar. Dyer 140.

**M** And if a Man do devise such Lands or Tenements unto one in Tail, the Remainder over in Fee unto a Stranger, if the Tenant in Tail enter and be seised by Force of the In-tail, and afterwards dieth without Issue, he in the Remainder shall have such Writ of *Ex gravi Querela* to execute that Devise.

And so if a Man devise Lands or Tenements unto one in Tail, and afterwards the Tenant in Tail dieth without Issue  
of



of his Body; the Heir of the Donor, or he who hath the Reversion of the Land, shall have the Writ of *Ex gravi Querela* in the Nature of a Formedon in the Reverter, to recontinue the Possession of the Land to him who hath the Reversion. And first for Land devised in Tail within the City of London; is the Form of the Writ for the Heirs of the Devisee in Tail, is such:

*Rex Majori & Vic. Lond. salutem. Ex gravi querela I. filie E. & M. sororis ejusdem I. accepimus, quod cum secundum consuetud. in eadem civitate hactenus obtentam & approbatam liceat unicuique Civii ejusdem Civitatis tenementa sua in eadem civitate in testamento suo in ultima voluntate sua tanquam catalla sua legar. cuicunque voluerit, ac S. quondam Civis civitatis prædictæ. in testamento in ultima voluntate sua quatuor shopas cum pertin. in eadem civitate existent. vel quatuor mesuagia, & decem shopas cum pertin. &c. E. habend. sibi & hered. de corpore suo exeuntibus legasset R. & S. uxori ejus, duo mesuag. & iii shopas inde E. & iii shopas inde præfat. I. & M. filiarum & hered. ejusdem in E. deforc. minus juste in ipsarum I. & M. dispend. non modicum & gravamen, & contra voluntatem testatoris prædictæ. ac contr. cons. prædictæ. Et quia eisdem I. & M. injuriar. nolimus in hac parte: Vobis mandavimus, quod vocat. coram vobis partibus præd. auditi que hinc inde earum rationibus, inspectisque tenore testamenti prædictæ. eisdem I. & M. plenam & celerem justit. inde fieri faciat. prout de jure & secundum consuet. prædictæ. fuerit faciend. hactenus in casu consimili ibid. fieri consuevit, vel eisdem I. & M. in hac parte fieri faciat. debitum & festinum justit. complementum prout, &c. Teste, &c.*

40 An. 41.  
Pr. Ca.  
sum; 38.

Locus imperfectus:  
See the next  
Writ.

And it appeareth by that Writ, that the King commandeth C them to do according to the Custom of the City, or to do Justice to the Parties, by which it seemeth, that the Mayor upon that Writ shall award Process to summon the Party, who is Tenant of the Land, to appear at a certain Day, to answer to the Plaintiff in the Nature of a Summons in a *Præcipe quod reddat*; and when he cometh, the Plaintiff ought to shew the Testament, and to count upon the same, and to alledge Seisin of the Land in the Testator, and how that he devised the same to him. And that the Defendant D then plead thereunto, or the Mayor and Sheriff ought to proceed therein according to the Usage of the City. And E that Writ may be sued against several Tenants; and then the Mayor ought to make several Precepts unto every Tenant. And if the Land be in another Borough, then the Writ shall be such:

*Rex ballivis suis de Magn. Yarmouth, salutem. Ex gravi querela, &c. (ut supra) quod secundum cons. in Villa dict. battemus, &c. licet unicuique Burgens. ejusdem Vill. tenementa sua, que sibi acquisierit in eadem Villa, in testamento suo in ultima voluntate sua, &c. (ut supra) Ac N. Burgens. ejusdem Vill. unum mesuagium cum pertin. quod sibi acquisierit in eadem Villa, in testamento suo in ultima voluntate sua W. & heredibus suis legasset R. de E. mes. predict. post mortem pred. N. ingress. illud prefato W. deforc. minus juste, in ipsius W. &c. (ut supra) & quia nolumus, &c. (ut supra.)*

**F** And if a Man deviseth his Lands to his Wife for Life, the Remainder over to another in Fee, and the Tenant for Life entereth, and is seised by Force of the Devise and dieth, and he in the Remainder is deforc'd, he shall have such Writ :

*Ex gravi querela, &c. (usque ubi) voluerint, ac M. quondam Civis ejusdem civitatis D. uxori sue in testamento suo in ultima voluntate sua, quatuor shopas cum pertin. in L. quas sibi acquisierit in eadem civitate, ad vitam ipsius D. habend. legasset, ita quod post decess. ejusdem D. pref. shopæ cum pertinent. pref. E. & hered. suis remanerent, N. quæ shopas illas tenet ex dimissione pred. D. eas pref. E. post mortem ejusdem D. deforc. minus juste, in ipsius E. dispendium, &c.*

**G** And if a Man do devise Lands by his Testament in Tail, the Remainder over in Tail unto another, and the first Tenant in Tail entereth, and dieth without Issue; and the second Tenant in Tail entereth in his Remainder, and dieth without Issue, the Heir of the Donor shall have a Writ of *Ex gravi Querela* in this Form :

*Ex gravi querela, &c. (ut supra) ac I. P. quondam Civis civitatis pred. pat. pred. S. cujus heres ipsa est, unum mesuag. cum pertin. in suburbiis Lond. M. fil. ipsius I. & hered. de corpore ipsius M. legitime procreandis habend. legasset, ita quod si idem M. sine hered. de corpore suo legitime procreat. obiret, predict. mesuag. &c. R. fil. pred. I. & hered. de corpor. pred. R. legitim. procreat. remaneret L. capellan. cantar. ad Altar. S. Joh. in nova opere in Ecclesia S. Pauli Lond. pro anima Magistri W. quond. canon. ejusdem Ecclesie ordin. predict. mesuag. cum pertin. post mortem pred. M. & R. pref. S. ad quem diem mesuag. cum pertin. reversi debet, eo quod uterque M. & R. obiit sine hered. de corpore suo legit. procreat. ut dic. deforc. minus juste in ipsius S. dispendium, &c.*

**H** And it appeareth by the subsequent Writ, That when a Man doth make a Devise of his Lands in London, and also of his Goods, and makes Executors, &c. then the first Executors shall prove the same before the Ordinary; and then after they



*Writ of Ex gravi Querela.*

they shall bring the same before the Mayor into *London*, &c. and it shall be there enrolled, and then upon that Enrolment the Mayor upon the Writ of *Ex gravi Querela* sued for the Lands shall do Execution, and such Process as upon a Fine of Lands, &c. and the Writ is such :

*Rex Majori, &c. Vic. Lond. salutem. Cum ut accepimus, secund. consuetudinem in eadem civitate haecenus obtentam & approbatam, testaments in quibus laici tenementa in praedict. civitate legata fuer. fact. prius probatione eorund. testamentor. coram Ordinari. pro bonis et casualis in eisdem legatis, coram vobis in Hustingo nostro Lond. approbari et irrotulari debeant ad exec. tenementor. sic legator. faciend. Ac jam ex relato R. consang. I. de P. nuper civis Lond. accepimus, quod licet praef. I. unam shopam et duo solar. cum pertin. in Parochia S. Mich. Lond. in eadem civitate, in testamento suo in ultim. voluntate sua praefat. R. legasset, habend. et tenend. sibi et hered. suis imperpetuum, idemque testam. prout moris est, coram Ordin. probatum, existit, tamen E. quae fuit uxor. I. de P. et A. exec. testamenti ejusdem I. testamentum illud penes se detinent, non permittentes illud in Hustingo praed. irrotulari, ut praed. est, in exhib. ipsius R. periculum manifestum, ac contra consuet. praed. Nos volentes eid. R. injuriari in hac parte, vobis mandamus, quod vocatis coram vobis praef. execut. et auditis tam praed. R. quam praed. execus. in hac parte rationibus, ulterius in praemiss. faciatis, quod de jure, et secund. consuetud. civitatis praed. fuerit faciend. et haecenus in casu consimili ibidem fieri consuevit.*

And by that Writ it appeareth, That if a Man have Lands devised unto him in *London* by Will, that he shall have a Writ unto the Mayor, to compel the Executors to bring in the same to be proved before them in *London*, and enrolled in the Hustings.

And if a Man have Lands devised unto him in *Oxford*, the Custom is, That the Testament shall be proved there before the Ordinary, and afterwards it shall be proved before the Mayor of *Oxford*, &c. And if the Mayor will not prove the Will, then he to whom the Devise is made, and also the Executors, who took any Advantage of Administration by that Will, shall have a Writ out of the Chancery directed unto the Mayor and Bailiffs, commanding them to prove the Will, and thereupon they shall have an *Alia* and a *Pluries*, *vel causam nobis significet*, &c. and afterwards an Attachment against them if Need be, returnable in the King's Bench, or Common Pleas.

And by the same Reason he shall have the like Writ against the Mayor of *London* to prove such Will, and to enrol the same,

fame, and upon that an *Alias* and *Pluries* against the Mayor of London, and Attachment if Need be.

And by the same Reason it seemeth reasonable, that a Man shall have a Writ directed to the Ordinary to prove the Will of any Man, &c. and the Form of the Writ is such :

*Res Majori & Ballivis Vill. Oxon. salutem. Querelam T. & M. uxoris ejus accepimus continent. quod cum secund. consuet. in vill. predicta usitatam et hactenus approbatam, testamenta burgensium ville predictæ. ibidem decedentium, super tenement. et possessionibus, si sint ibidem legata, primo coram Ordinari. et secundar. coram vobis in cur. ville predictæ. probar. debeant et consuever. temporibus retroactis, et executores testamenti N. cum pref. T. et M. postquam testamentum predictæ. N. coram Ordinariis ville predictæ. prout moris est, probatum fuit, frequent. illud coram vobis iterato proband. detuler. juxta consuet. predictæ. occasione quorund. tonamentor. in subv. bio ejusdem vill. que præd. N. in ultima voluntate sua eidem M. legaverit, sicut in testamento predictæ. plenius continet. Vos tamen probationem illam hactenus recipere recusastis, et adhuc recusatis minus juste, per quod nec predictæ. executores, nec pref. T. et M. super tenement. predictæ. aut aliis tenementis per præd. N. legati administrationem consequi possint, in retardationem executionis testamenti predictæ. & contra voluntatem præd. N. necnon damnum ipsorum T. et M. & execut. præd. non modicum damnum et gravamen: Nos igitur executoribus T. & M. injuriari nolentes in hac parte, vobis præcipimus, sicut alias præceperimus, quod si ita est tunc præfat. execut. & T. et M. plenam et celer. justitiam in hac parte fieri fac. prout de jure et secundum consuet. præd. in casu consimili fuerit faciend. ita quod querela ad nos inde non perveniat iterata, vel causam nobis significetis, quare mandatis, &c. Teste, &c.*

And it is reasonable that it be so done in every other City where Lands be deviseable by Will, and are devised by Will, That the Executors and the Devisee shall have such Actions against the Ordinary, and also against the Bailiffs of the Town and Boroughs to prove such Wills.

And in Place of a Formedon in the Descender in Tenements devised, is such Writ :

*Ac A. quondam civis, &c. M. filia sue quoddam mesuag. &c. habend. sibi et hered. de corpore suo excent. legasset, T. Mesuagium predictæ. ingres. illud. post mortem præd. M. et W. filii et hered. ejusdem M. pref. L. fratri et hered. predictæ. W. desoreciavit minus juste, in ipsius, &c.*

And it seemeth, that when the Tail is once excepted before of the Devise in the Tenant in Tail, or in the Tenant for

Term



*Writ of Entre ad terminum qui prateriit.*

Term of Life, that then he in the Remainder, or Heir of Tenant in Tail, have a Formedon in the Descender by the Course of the Common Law after the Statute of *Westm.* 2. according to the common Form upon a Gift made in Tail by Deed.

And there is another Form of Writ in the Register in C nature of a Formedon in the Descender.

201/ And if a Man in *London* devise Land unto a Woman for A term of her Life, and afterwards to her Executors to sell, and to convert the Money to her own Use, by the Custom of *London* that Testament ought to be proved before the Ordinary, and afterwards before the Mayor, &c. and to be enrolled, &c. If the Testament be proved before the Ordinary, B and afterwards one Executor doth detain the same, and will not prove it before the Mayor, &c. the other Executor shall have a special Writ directed unto the Mayor and Sheriffs of *London*, commanding them to call the Executors before them, and to see the Testament, &c. and to do Right according to the Custom of the City, and according to the Law, &c. which Writ appeareth in the Register.

2 & 3 Ma.  
Dyer.

Vid. Perkins 164.  
That he in the Remainder shall not take Benefit of the Condition by way of Entry.

And if a Man doth devise Lands to his Wife for the Term C of her Life, upon Condition that if she marry, that the Lands shall remain unto his Son in Tail; and for Default of such Issue, the Remainder to the right Heirs of the Donor in Fee. Now if the Wife taketh a Husband who occupieth the Lands, and he in the Remainder dieth without Heir of his Body; the right Heir of the Donor shall have a special Writ of *Ex grævi Querela* directed unto the Mayor and Sheriffs of *London*, reciting that special Devise, and the Matter as it is, commanding them to call the Parties, and to hear them, and to do Right, &c. And by that it appeareth, that he in the Remainder shall have Advantage of the Condition if it be broken; but the same shall be by way of Action, and not by Entry, for the Condition not performed, which Writ appeareth in the Register.

*Writ of Entre ad terminum qui prateriit.*

A Writ of *Entre ad terminum qui prateriit* lieth where a D Man leaseth Lands or Tenements for Term of Life, or Years, and afterwards the Term expieth, and he to whom the Lease was made, or a Stranger, entereth upon the Lands, and occupieth the same, and desorceth the Lessor, the Lessor or his Heirs shall have the Writ.

And that Writ lieth in the *Per*, *Cui*, and *Poss.* For if the E Lessor hold over his Term, and afterwards maketh a Feoffment,

ment, the Lessor or his Heirs may have that Writ against the Feoffee in the *Per*; and if the Feoffor maketh a Feoffment over, he may have it against the second Feoffee in the *Per* and *Cui*, and against the third Feoffee in the *Post*. And the Form of the Writ is such :

*Rex Vic. &c. Prac. A. quod reddat B. unum gurgitem, &c. in quem id. A. non habet ingressum, nisi per C. cui præd. B. illud dimisit ad terminum qui prateriit, &c. Et nisi fecerit, &c. Et præd. B. fecerit te securum, &c.*

And in the *Post* the Writ is: *Et in quod idem A. non habet ingressum, nisi post dimissionem, quam idem B. inde fecit D. ad terminum qui prateriit, & quod post terminum illud ad præf. B. reverti debet ut die. & unde querit, quod præd. A. ei desore. &c. Et nisi, &c.*

And by those Words *Unde queritur*, in any Writ of Entry in the *Per* and *Cui*, but only in a Writ of Entry in the *Post*.

But if a Man will bring a Writ of Entry, *Ad terminum qui prateriit* of his Father, Mother, or other Ancestor, then there behoveth to be in the Writ the Words, *quod clamat esse jus & hereditatem suam*; and the Form of the Writ is such :

*Rex Vic. &c. Prac. A. quid, &c. redd. B. unum mesuag. cum pertin. in N. quod clamat esse jus & hered. suam, & in quod idem A. non habet ingressum nisi per D. patrem, vel matrem, vel alium antecess. præd. B. cujus heres ipse est qui illud ei dimisit ad termin. qui prateriit ut dicit, & nisi fecerit, &c.*

And in the *Per* and *Cui*, thus: *quod clamat. &c. & in quod, &c. nisi per C. cui D. pat. vel alius antecessor præd. B. cujus heres ipse est, illud dimisit ad termin. qui prateriit, &c.* And in the *Post* thus: *Nisi post dimission. quam R. ac prædicit. B. &c. cujus heres ipse sunt, &c.* Or thus: *Quam C. pater præd. B. & avus prædicit. S. cujus heres. ipsi sunt inde fecit H. ad termin. illum qui prateriit, & quod post termin. illum ad præfat. &c. reverti debet, ut die. & unde queruntur quod prædicit. A. eis desore. &c. nisi, &c.*

And in every Writ of Entry which a Man demandeth of the Possession of his Ancestor, he ought to have these Words in the Writ, *Quod clamat esse jus & hered. &c.* but of his own Possession he shall not have those Words in the Writ, but only in a *Cui in vita*, brought by a Woman of her Inheritance aliened by her Husband, for there she shall have in her Writ these Words, *Quod clamat esse jus & hereditatem suam, &c.* but the same is where the Woman claimeth an Estate in Fee-simple by the Writ, for if she claim but an Estate in Tail, or a Freehold by her *Cui in vita*, then the Writ of *Cui in vita* shall make a special Mention of that Estate, &c.

21 E. 3.  
Brief 308.  
One brought  
the Writ  
upon a  
Leaf by his  
Trespass.



If a Man lease a Manor for Life or Years, unto which an Advowson is appendant, and afterwards the Lessee doth make a Feoffment of the Manor in Fee, and taketh back an Estate of the Manor, except the Advowson, to him for Life; if the Lessor bring the Writ of Entry *Ad terminum qui prateriit*, of the Manor against the Lessee, and doth not make Exception of the Advowson, the Writ shall abate for Non-tenure of the Advowson upon the Matter shewed, as appeareth by the Register.

The Aunt and the Niece shall join in this Writ of *Ad terminum qui prateriit*, as appeareth by a Writ before mentioned.

And if a Man maketh a Feoffment in Fee upon Condition, that if he pay a certain Sum of Money at a certain Day to the Feoffee or his Heirs, that then he shall have the Land again, and that he may enter, if he pay the Money at the Day, and afterwards the Feoffee will not suffer him for to enter: The Feoffor shall have the Writ of *Ad terminum qui prateriit*, because that when he payeth the Money, the other hath no Term in effect; and if he should not have this Writ, he could not have any Remedy but to enter, &c. and thereupon to have an Assize.

And *M. 5 E. 3.* it was adjudged that the Plaintiff should recover in such Action upon such Matter pleaded and shewed; but I do not perceive how the same could be maintained by Reason, because the Fee-simple is not properly said a Term, for then the Lord by Escheat should have a Writ of *Ad terminum qui prateriit*, if his Tenant dieth without Heir, where he cannot have a Writ of Escheat; and in *Ad terminum qui prateriit*, the Lease alledged in the Count is traversable.

If the Husband and Wife lease the Wife's Lands for Years, and the Husband dieth, and the Termor holdeth over his Term, the Wife shall have a Writ of *Ad terminum qui prateriit* if she will, &c. but she ought for to count that she and her Husband leased the Land, &c.

And it appeareth in *8 E. 2. Itin. Canc.* that the Grantee in Reversion shall have a Writ of *Ad terminum qui prateriit* against the Lessee, or his Heir, or Assignee, and yet there is no such Writ in the Register.

Vid. Theol.  
wall, 131,  
132, 228.  
3 E. 3.  
Entre 4.  
Vid. 14 H. 8.  
10. Brook.

202

Vid. 50 E. 3.  
17.

*Writ of Dum fuit non Compos Mentis.*

**C** THE Writ of *Dum fuit non Compos Mentis*, lieth where a Man, who is not of *sane memoire*, alieneth his Lands or Tenements in Fee-simple or in Fee-tail, for Life or for Years, if he be afterwards divorced by his Alienee or Lessee, then he himself shall have this Writ against his Alienee or Lessee, notwithstanding his own Alienation, or his own Lease; and the same appeareth by Writs in the Register, which are of such Form:

*Rex Vic', &c. Præc. A. quod reddat B. unum mess. & xx. acr. terr. cum pertin. quæ id. B. ei dimisit, dum non fuit Compos Mentis suæ, ut dicit, & nisi fecerit, &c. Vel sic, In quod idem A. non habet ingressum nisi per C. cui præd. B. illud dimisit, dum non fuit Compos Mentis, &c. Vel sic, in the Post, in quod idem A. non habet ingress. nisi post dimission. quæ præd. B. dum non fuit Compos Mentis suæ inde fecit D. & unde queritur, &c.*

**D** And some have said, That Writ lieth not by him who alieneth the Land, because he shall not disabie himself nor contradict his own Deed; but that seemeth to be little Reason, for this is an Infirmity which cometh by the Act of God; and it standeth with Reason, That a Man should shew how he was visited by the Act of God with Infirmity, by which he lost his Memory and Discretion for a Time; as if an Infant within the Age of twenty-one Years doth make a Feoffment in Fee, or a Lease for Years, he himself shall avoid his Feoffment or Lease, as well within Age as of full Age, although he shall not have a *Dum fuit infra etatem* within Age, because the Writ doth suppose him to be of full Age, but an Infant of the Age of fourteen Years hath Discretion, as hath been adjudged at such Age, and if he at such Age commit Felony, he shall be hanged for the same, and yet his Feoffment, Lease or Grant, shall not bind him before the Age of twenty-one Years; because he hath not perfect Discretion or Knowledge what he ought to do, or what is to his Profit or Disadvantage before such Age; and therefore he shall alledge, that he was within Age at the Time of the Feoffment, Grant or Lease made by him; by which it appeareth, that he shall alledge, that he had not perfect Discretion at that Time, for that Nonage is an Infirmity of Nature, and cometh by the Act of God; and a *fortiori*, then he who is of *non sane memoire*, shall alledge, that he was not of *Sane memoire* at the Time of his Feoffment or Grant; for he who is of unsound Memory, hath not any Manner of Discretion; for if he kill a Man, it shall not be Felony,



nor Murder, nor he shall not forfeit his Lands or Goods for the same, because it appeareth that he hath not Discretion; for if he had Discretion he should be hanged for the same, as an Infant who is of the Age of Discretion, who committeth Murder or Felony shall be hanged for the same.

And it appeareth in *Britton*, That in Debt upon a Bond, the Defendant said, that he was not of *Sane memoria* at the Time of making the Bond, and holden it was a good Plea.

And if an Idiot doth release all his Right by Deed, yet if it be afterwards found by Office that he is an Idiot, the King shall seize the Land, and the Release shall not bind, &c. *Quod vide* in Title *Seize fac*, P. 32 E. 3. in the Abridgments.

But in the Book of Assises, Anno 35 E. 3. the Tenant in an Assise pleaded the Release of the Plaintiff, and the Plaintiff said, that he was not then of *Sane memoria*, &c. And there the Opinion of two Justices was, that he should not have that Plea; but I do not much regard their Opinion, for the Reasons aforesaid.

And it appeareth in 7 Henry 4. 5. That a Feoffment of an Idiot made by Letter of Attorney is void, and so it seemeth to be of a Man of *Non sane memoria*.

And if a Man of *Non sane memoria* alieneth his Land in Fee and dieth, his Heir shall have such Writ as he may enter, as his Antecessors might have entred, as well as if an infant within Age had aliened his Lands, &c.

And in 25 E. 3. in the Book of Assises, a Man of *Non sane memoria* made a Feoffment in Fee, and took back an Estate to himself for Life, and there it was agreed and admitted, that the same was a Remitter, and thereupon Issue was taken, that he was of perfect Memory, &c. and that was found by Verdict; which see in the Title of Feoffments in the Abridgments.

And the Writ for the Heir upon the Alienation of his Antecessors shall be in such Form:

*Rex Vie, &c. Præcipe A. quod, &c. reddat. B. 20 aer. terr. cum pertin. in N. quædam esse hæc & hereditatem suam, & in quas idem A. non habet ingressum nisi per C. vel alterum antecess. prædicti. B. cujus heres ipse est, qui illas ei dimisit, dum idem C. non fuit Compos Mentis sue, ut dic, &c.*

And thus in the *Per* and *Cui*:

*Quæ clamat, &c. & in quas, &c. nisi per C. cui D. prædicti. B. vel alius antecess. prædicti. B. cujus heres ipse est, illas dimisit, dum idem D. non fuit Compos Mentis sue.*

Or thus in the *Post*.

*Quæ clamat, &c. Et in quas, &c. nisi post dimissionem, quam C. præ-*

Straundford  
Prerog. 34.

Dum non  
Compos  
Mentis,  
was brought  
of the A-  
lienation by  
a Son, and  
admitted,  
18 E. 3.  
Sc. fac. 10.  
12 E. 4. 6.  
39 H. 6. 42.

203

C. proavus, vel alius antecessor. prædicti. B. cuius heres ipse est, dum idem C. &c. inde fecit H. ut dicit, & unde querit, &c.

C And 14 An. of the King was such Writ granted :

D Præcip. R. quod, &c. reddat B. unum redditum trium panum, septem lagemarum cervisie, & septem ferculorum per septimanam, cum pertin. in C. & quem idem B. ei dimisit, dum non fuit Compos Mentis sue, ut dic. & nisi, &c. And the Process is Grand Cape & Petit Cape, as in other Præcipe quod reddat.

## Writ of Intrusion.

E **T**HE Writ of Intrusion lieth, where Tenant for Life, or in Dower, or by the Courtely, dieth seised of such Estate for Life, and after their Death a Stranger doth intrude upon the Land, he in the Reversion shall have that Writ against the Intruder, and the Writ shall be such :

F Rex Vic', &c. Præcipe A. quod iuste, &c. readat. B. unam carucatum terr. cum pertin. in N. quam clamat esse jus & hereditatem suam, & in quam idem A. non habet ingressum nisi per intrusionem quam in illam fecit post mortem C. que fuit uxor D. que illam tenuit in dotem de dono præd. D. quondam viri sui patris vel fratris præd. B. cuius heres ipse est, ut dicit, & nisi, &c.

And in the Per thus :

Et in quod idem A. non habet ingressum nisi per C. qui illud dimisit post mortem D. que fuit uxor E. que illud tenuit in dotem de dono prædicti. E. quondam viri sui.

And in the Per and Cui thus :

Et in quod idem A. non habet ingressum nisi per C. cui D. illud dimisit, que se in illud intrusit post mortem, &c.

And in the Post the Writ is thus :

In quam idem A. non habet ingress. nisi post intrus. quam C. in illud fecit post mortem D. que fuit uxor E. que illud tenuit in dotem de dono prædicti. E. quondam viri sui fratris prædicti. B. cuius heres ipse est, & quod post mortem prædicti. D. ad præfat. B. reverti debeat, ut dicit, & unde queritur, &c. & nisi, &c.

And so that Word. & unde queritur was put in every Writ of Entry in the Post.

G And if a Woman recover Dower against him in the Reversion, or against his Heir, and afterwards she died seised of that Estate, and a Stranger doth intrude into the Land, then he in the Reversion shall have a Writ of Intrusion,



*Writ of Intrusion.*

And in the Writ mention shall be made of the Recovery, thus, *in quod idem A. non habet ingressum nisi per intrusionem quam in illud fecit post mortem C. qua fuit uxor D. que illud in Curia nostra coram Iudicialiis nostris apud W. per breve nostrum per considerationem ejusdem Curia recuperavit ut dotem suam, que ei contingerat de libero tenemento, quod fuit pradiet. D. quondam viri sui in eadem villa versus pradiet. B. Vel sic, versus W. patrem vel alium antecessorem pradiet. B. cujus heres ipse est, ut dicit, & nisi, &c.*

And so she shall have another Writ of another Form, where she recovereth her Dower against the Heir of her Husband, and after the Heir granteth the Reversion unto the said B. and then the Tenant in Dower dieth seised, and a Stranger abateth, the said B. shall have a Writ of Intrusion against the Stranger, and the Writ shall rehearse the whole special Matter, which Writ appeareth in the Register.

And the Aunt and the Niece shall join in a Writ of Intrusion, and if the Heir doth assign Dower unto his Mother, and then commits Felony, for which the Lord claimeth the Reversion, and granteth the same to one in Fee, to whom the Tenant attorneth, and afterwards the Grantee of the Reversion hath Issue two Daughters, and dieth, and one of them hath Issue and dieth: Now the Aunt and the Niece shall join in that Writ, &c. and the Writ shall be such:

*Rez Vic', &c. Praeipe A. quod iuste, &c. reddat B. & M. sorori ejus, & P. & E. fratri ejus unum messuag. &c. In quod idem A. non habet ingress. nisi post intrusionem quam H. in illud fecer. post mortem I. que fuit uxor W. que illud tenuit in dotem de, &c. quondam viri sui de N. patre pradiet. B. & M. & duo pradiet. P. & E. cujus hered. ipsi sunt, ex assign. T. capital. dem. feodi illius, de quo pradiet. I. illud tenuit in dotem ratione felonie per W. de S. filium & hered. pradiet. W. facta, ut dicitur. Et quod post mortem pradiet. I. pradiet. B. M. P. & F. reverti debet per formam assign. pradiet. ut dicitur, & unde querantur, &c.*

[ 204 ] And if a Man intrude after the Death of Tenant by the A Courtsey, the Writ of Intrusion shall be such:

*Praeipe A. quod, &c. reddat B. &c. quod clamat, &c. Et in quod idem A. non habet ingressum, nisi per intrusionem quam in illud fecit post mortem D. qui illud tenuit per legem Angliæ post mortem C. quondam uxoris sue, matris vel amite pradiet. B. cujus heres, &c. ut dicit.*

And in the Per thus:

*Nisi per C. qui illud ei dimisit, qui se in illud intravit, &c. ut supra.*

And in the *Per* and *Cui* thus :

*Nisi per C. cui D. illud dimisit, qui se in illud intravit, &c.*

And in the *Post* thus :

*Nisi post intrus. quam W. in illud fecit post mortem C. qui illud tenuit per legem Angl. post mortem D. quondam uxoris sue, matris præd. B. cujus hæres, &c. Et quod post mortem prædicti C. ad præfat. B. reverti debet, ut dicitur & unde queritur, &c. & nisi, &c.*

And if a Man doth intrude after the Death of Tenant for Life; then he in the Reversion shall have such Writ of Intrusion.

**B** *Rex Vi', &c. Præcipe A. quod juste, &c. reddat B. &c. in quod idem A. non habet ingressum, nisi per intrusionem quam in illud fecit post mortem C. cui prædicti B. vel cui D. pater vel alius antecess. prædicti B. cujus hæres ipse est, illud dimisit ad vitam ipsius C. ut dicitur, & nisi, &c.*

And in the *Per* thus,

*In quod idem A. &c. nisi per C. qui illud ei dimisit qui se in illud intrus. post mortem W. cui prædicti B. vel R. pater vel alius antecess. prædicti B. cujus hæres, &c. illud dimisit ad vitam ipsius W. &c.*

And in the *Per* and *Cui* thus :

*In quod, &c. nisi per C. cui D. illud dimisit, qui se in illud intravit, &c.*

And in the *Post* thus :

*Nisi post intrus. quam D. in illud fecit post mortem I. cui B. vel alius antecess. prædicti B. cujus hæres, &c. illud dimisit ad vitam ipsius I. Et quod post mortem ipsius I. ad præf. B. reverti debet, ut dicitur, & unde queritur.*

**C** And in the Register there are other Forms of Writs, where the Reversion of the Tenant is granted by Fine or otherwise, which shall be *ex assignatione*.

**D** And the Heir in Tail shall not have a Writ of Intrusion; if a Man do intrude after the Death of Tenant in Dower, or of Tenant by the Courtesy, or after the Death of Tenant for Life, he in the Reversion in Tail shall not have a Writ of Intrusion, but he shall be put to his Writ of *Formedon*; for that Writ lieth for him who hath the Reversion in Fee-simple, or for Term of Life, and not for him who hath the Reversion in Tail or for Term of Years; for it lieth not but for him who hath a Freehold, after the Death of Tenant for Term of Life, or of Tenant in Dower, &c.

And he in the Remainder shall have a Writ of Intrusion, if a Man do intrude after the Death of Tenant for Life; and



// so the Assignee of the Remainder shall have such Writ.

If Lands be given to two, and to the Heirs of one of them, and he who hath the Fee dieth, and then the Tenant for Life dieth, the Heir of him in Remainder shall have such Writ.

*In quod, &c. nisi per intrusionem quam in illud, fecit post mortem C. que fuit uxor D. que illud tenuit ad vitam suam ex dimiss. quam R. inde fecit eidem C. & p̄fate. D. quondam viro suo, & hered. ipsius D. patris p̄diti. B. cujus heres, &c. ut dicit, & nisi, &c.* And the Process in that Writ is Summons, *Grand Cape* and *Petit Cape*.

*Writ of Cui ante Divortium.*

**T**HE Writ of *Cui ante Divortium* lieth, where the Husband alieneth the Wife's Land which she had in Fee-simple, or in Tail, or for Life, unto a Stranger in Fee-simple, in Fee-tail, or for Life, and afterwards the Husband and Wife are divorced, then the Wife shall have that Writ against the Alienee; and the Form of the Writ shall be such:

*Rex Vic, &c. Præcipe A. quod iuste, &c. redd. B. que fuit uxor D. unum messuagium cum pertin. in N. quod clamat esse suum & hereditatem suam & in quod, &c. nisi per p̄diti. D. quondam virum ipsius B. qui illud ei dimisit, cui ipsa ante divor. inter eos celebr. contradicere non potuit.*

And that Writ lieth in the *Per*, *Cui*, and *Post*, as doth the other Writ of *Cui in vita*.

And if the Husband do alien unto an Abbot in Fee, and afterwards the Husband dieth, the Wife shall have a Writ of *Cui ante Divortium*, in the *Post*, against the Successor of the Abbot, and the Form of the Writ shall be thus:

*In quod idem Abbas non habet ingressum nisi post dimiss. quam p̄diti. D. quondam vir ipsius B. cui ipsa ante divor. contradicere non potuit inde fecit L. quondam abbat. de B. ut dic. & inde queritur, &c.*

And the Heir shall have a *Sar cui ante Divortium*, where the Wife dieth before the Action brought, as well as he shall have a *Sar cui in vita*: But of an Estate-tail, the Heir shall not have a *Sar cui in vita ante Divortium*, but shall be put to his Formedon in the Descender.

And the Aunt and the Niece shall join in that Writ, as they shall do in a *Sar cui in vita*; and the Process is, Summons, *Grand Cape* and *Petit Cape*.

*Writ of Causa Matrimonii prælocuti.*

**A** **T**HE Writ of *Causa Matrimonii prælocuti* lieth, where a Woman giveth Lands unto a Man in Fee simple, unto the Intent that he shall marry her, and afterwards he will not marry within convenient Time, when he is required by the Woman. Then the Woman shall have that Writ, and the Form of the Writ is such: [25]

**B** *Rex Ric', &c. Præcipe A. quod iuste, &c. redd. B. unum mes-  
suagium, quod eadem B. ei dimisit causa matrim. inter eos prælo-  
cui, quo eam duxisse debuit in uxorem, & nondum duxit, ut dic',  
&c.*

And in the *Per* and *Cui* thus:

*In quod, &c. nisi per C. cui præd. Et B. illud dimisit causa  
matrimonii, &c. & non duxit, ut dicit, Et unde queritur,  
&c.*

**C** And it seemeth, That that Writ lieth for the Woman, where she giveth Lands to a Man for Term of his Life, for the Intent to marry her, as well as where she giveth it in Fee-simple. But if she giveth it to a Man in Tail for to marry her, &c. although he will not marry her, it seemeth she shall not have that Writ against him, by that Means to avoid and defeat the Estate-tail; for that shall be contrary to the Statute of *Donis conditionalibus*. And a Man upon a Condition in Law shall not make void the Statute. For the Statute makes a Law certain by express Words of Gift in Tail. And then it is not Reason, that it should be aneanted by Intendment, or by a Thing averrable, which is not expressed, and shall be taken contrary to the Statute. And the Heir shall have that Writ as well as the Woman her self, and the Writ shall be: C. 2 part 7. 3 & 4 Ma. Dy. 146.

**D** *Præcipe A. &c. quod redd. B. &c. quod dicit, &c. & in quod* But if he  
*non habet ingressum nisi per C. matrem prædicit. B. cuius hæres ipsa expressi an*  
*est, qua illud ei dimisit causa matrim. &c. & nondum duxit, &c.* Entry if he  
*& nisi, &c.* he may a-  
lien, but till

3 And it may be in the *Per*, *Cui* and *Post*, as the Case is.

4 And also the Aunt and the Niece may join in the Writ.

And if a Man do give Lands unto a Woman unto the In-  
tent to marry him, although that the Woman will not marry  
him, &c. he shall not have a Writ *Causa Matrimonii prælocuti* in  
that Case, and also that the Woman do after marry him;  
yet the Woman shall hold the Land to her and her Heirs, &c.  
and if the Husband do afterwards alien them, the shall have  
a *Cui in vita* for those Lands. 5 E. 2. Br. Cond. 203.



## Writ of Entry in Casu proviso.

If a Woman do enfeoff a Stranger by Deed of Land in Fee, C  
to the Intent to enfeoff her, and one who will be her Huf-  
band, if the Marriage doth not take Effect she shall have the  
Writ of *Causa Matrimonii pralocuti* against the Stranger, not-  
withstanding that the Deed of Feoffment be absolute; *quod vi.*  
in Titie *Affise*, 34 E. 3. lib. *Affise*.

14 H. 8. 19. A Woman did enfeoff a Man upon Condition that he H  
Brudenell. should take her to Wife, and he had a Wife at the Time of  
24 H. 8. 9. the Feoffment, and afterward the Woman for not perform-  
it's a good ing of the Condition, entred again into the Land, upon the  
Condition. 30. Aff. 17. second Feoffee, and her Entry was adjudged lawful, and the  
Condit. 17. Condition is good, *Anno 40 E. 3. lib. Aff.*

& Br. Con- And the Husband and Wife may sue that Writ of *Causa I*  
dit. 119. *Matrimonii pralocuti* against another who ought to have mar-  
ried her.

8 E. 2. En- And if a Woman maketh a Feoffment in Fee by Deed, K  
try 78. acc. reserving Rent, then she shall not have that Writ of *Causa*  
of a Condi- *Matrimonii pralocuti* for the Rent reserved, because it is pro-  
tion expres- ved that the Reservation was the Cause of the Feoffment; but  
sed. if she hath a Deed to shew and prove that the Feoffment  
Co: 75 Note 3 & was to the Intent that he should marry her, then she shall  
4 Ma. Dy. maintain her Action notwithstanding the Reservation made  
147. One cannot aver  
40 a Consideration a-  
gainst a  
Consideration ex-  
pressed by  
Deed. Vid.  
14 El. Dy.  
211, 212.

And a Woman may sue *Causa Matrimonii pralocuti* without L  
any Writing shewed to prove the same, where she maketh a  
Feoffment without Deed to a Man in Fee, to the Intent to  
marry her, &c. and the Proceſs is Summons, *Grand Cape* and  
*Petit Cape*, &c.

## Writ of Entry in Casu proviso.

THE Writ of Entry in *Casu proviso*, is given by the Statute 3  
of Gloucester, cap. 7. and that Writ lieth where Tenant  
in Dower doth alien in Fee, for Life or in Tail, the Land  
which she holdeth in Dower; he who hath the Reversion in  
Fee, or in Tail, or for Life, shall maintain that Writ against  
the Alience; and against him who is the Tenant of the Free-  
hold; of the Land during the Life of the Tenant in Dower,  
&c. And the Writ may be made in the *Per*, *Cui* and *Post*,  
and the Writ shall be such:

*Rex Vic, &c. Praecepto A. &c. quod redd. B. &c. quod cla-*  
*mat, &c. & in quod A. &c. nisi per C. que fuit uxor D. qui illud*  
*ei dimisit, que illud tenuit in dower de dower pred. D. quan-*  
*dam viri sui, patris vel alterius antecessoris predicti. B. exus*  
*hatis, &c. & quod post dimiss. per ipsam C. presat. A. contra*  
*fermat*

formam statut. Glouc. de communi consilio regni nostri inde proviso, fact. in feod. ad pref. B. reverti debet per formam ejusdem statuti, ut dicit, & nisi, &c.

And in the Per thus :

In quod idem A. non habet ingressum nisi per C. cui D. que fuit uxor E. illud dimisit, que illud tenuit in dotem, & quod post dimiss. &c.

And in the Post thus :

Præcipe A. quod, &c. redd. B. &c. quod clamat, &c. & in quod, &c. nisi post dimissionem quam C. que fuit uxor D. que illud tenuit in dotem de dono prædict. D. quondam viri sui patris prædict. B. cujus hæres ipse est, inde fecit F. & quod post dimission. per ipsam G. &c. (usque ibi) revertere debet per formam ejusdem statuti, ut dicit, & unde queritur, & nisi, &c.

[ 206 ]

**A** And if a Woman do recover her Dower against the Heir, and afterwards doth alien in Fee, the Heir shall have the Writ of Casu proviso; and in the Writ he shall mention the Recovery, as he shall do in a Writ of Entry ad communem legem, upon an Alienation made by Tenant in Dower, &c. And although a Woman alien in Tail, or for Life, yet the Writ is always of one Form.

**B** If a Man grant the Reversion of Lands, which are holden of his Inheritance in Dower to another, and the Tenant attorneth, and afterwards the Tenant in Dower doth alien in Fee, the Grantee of the Reversion shall have such Writ de assignatione.

Præcipe A. quod, &c. redd. B. &c. & in quod, &c. nisi per C. que fuit uxor D. que illud de prædict. D. tenuit in dotem de dono prædict. D. quondam viri sui ex assignatione, quam W. filius & hæres prædict. D. inde fecit præfat. B. & quod post dimission. &c.

And if the Heir grant the Reversion in Fee, and the Tenant attorneth, and afterwards the Grantee granteth the same over, and the Tenant doth attorn; and afterwards the Tenant in Dower doth alien the Fee, the third Grantee of the Reversion shall have such Writ De casu proviso.

Rex Vic', &c. Præcipe A. quod, &c. reddat B. &c. quod clamat, &c. & in quod, &c. nisi per, vel post dimissionem, &c. (as the Case is) quam C. que fuit uxor D. que illud tenuit in dotem de dono prædict. D. quondam viri sui de præfat. B. ex assignatione quam E. de quo præfat. C. illud tenuit in dotem ex assignatione F. de quo eadem C. illud tenuit in dotem ex assignatione quam G. filius & hæres prædict. D. inde fecit præfat.



*Writ of Entre in consimili casu.*

*pref. F. inde fecit W. Et quod post dimis. per ipsam C. pref. A. &c.*

If the Writ be in the *Per*, and if the Writ be in the *Post*, C then the Writ shall be :

*Et quod post dimissionem per ipsam C. reverti debet per formam, &c.*

And the Aunt and the Niece may join in that Writ where D the Tenant in Dower doth alien in Fee, and they have the Reversion by Descent from their Ancestor, and the Process is E Summons, *Grand Cape*, and *Petit Cape*, &c.

*Writ of Entre in consimili casu.*

The Writ is not maintainable against Tenants in Tail, after Possibility of Issue extinct. Old Tenure. 13 E. 2. Entry conceivable 56.

THERE is another Writ of the like Nature, which is called F a Writ of *Entre in consimili casu*; and that Writ lieth where Tenant by the Courtesy, or for Life, or for another's Life, doth alien in Fee, or in Tail, or for Life, now he in the Reversion, who hath an Estate therein for Life, or in Fee-simple, or in Tail, shall have that Writ during the Life of the Tenant for Life, who aliened, and that Writ is not given by the Statute of Gloucester, which gave the Writ of *in Casu proviso*; but it is formed and granted upon the Statute of Westminster, 2. cap. 14. Which willeth, that as often as it shall happen in the Chancery, that in one Case a Writ is found, and in the like Case falling, wanting the same Remedy; now the Clerks of the Chancery shall agree in the making the Writ, and that appeareth, H. 3 E. 2.

And if the Tenant by the Courtesy doth alien, he in the G Reversion shall have such Writ :

*Præcipe A. quod, &c. redd. B. unum Messuagium, &c. quod clamat, &c. Et in quod, &c. nisi per C. qui illud ei dimisit, qui illud tenuit per legem Angliæ post mortem E. quondam uxor. sue matris, proavo, vel avo præd. B. cujus heres ipse est, Et quod post dimissionem per ipsam C. pref. A. inde fac. in feodo ad præf. B. reverti debet per formam Statuti in consimili casu proviso, ut dicit, Et nisi, &c. Et in quod, &c. nisi per C. cui D. illud dimisit qui illud tenuit per legem Angliæ. Et in quod, &c. nisi post dimissionem quam C. qui illud tenuit per legem Angliæ, &c. ut supra, cujus, &c. inde fecit F. Et quod post dimissionem &c.*

And if the Tenant for Life alien, then he in the Reversion shall have a Writ in this Form :

*Rex Vie, &c. Præcipe A. quod iusto, &c. reddat B. unum messuagium, &c. in quod idem A. non habet ingressum nisi per C. cui præd. B. illud dimis. ad vitam ipsius C. Et quod post dimis.*

*Dimission. per ipsum C. presat. A. inde fac. in feodo. ad presat. B. reverti debeat per formam Statuti, &c. ut supra.*

And Note, That by that Writ it appeareth, that the Writ doth suppose, that the Tenant for Life doth alien in Fee; and although he grant but for Life, or in Tail, yet the Writ doth suppose that he alieneth in Fee, &c. But that is not material; For if it be in Fee, or in Tail, or for Life, it is a Forfeiture of his Estate.

And so in the Case, in the Writ *in Casu proviso*, and in the Writ of *Entre ad communem Legem*, it supposeth the Alienation to be made in Fee, although it be but for Life, or in Tail, for that there is no other Form: And it may be made in the *Per, Cui* and *Post*, and that without Title made in the Writ, because it is of a Lease made by the Defendant himself to the Tenant who alieneth: But if the Father or other Ancestor lease for Life, and dieth, and afterwards the Tenant for Life alieneth in Fee, &c. now the Heir who is in the Reversion, shall have a Writ, which shall comprehend a Title in it, and shall be such:

*Rex Vic', &c. Praeipit A. &c. quod, &c. redd. B. unum mes-suagium, &c. quod clamat, &c. Et in quod, &c. nisi per C. & D. uxor. ejus quibus I. pater, vel mater, vel alius antecess. praed. B. cujus heres ipse est, illud dimisit, ad vitam ipsorum C. & D. & quod post dimissionem, &c.*

[207]

And there the Writ doth suppose, that the Wife did demise it, &c. and yet she shall have a *Cui in vita* after the Death of her Husband, to recover the Freehold, notwithstanding the Alienation made by her Husband. And if Tenant for Life grant his Estate unto another, and the Grantee alieneth in Fee, &c. then the Writ shall be:

*In quod idem A. &c. nisi per C. cui D. qui illud tenuit ad vitam suam ex dimissione praed. B. illud dimisit ad eundem terminum, & quod post dimiss. &c.*

A And if a Man lease Lands for Term of Life, and afterwards dieth, and his Heir grants the Reversion to B. and the Tenant attorn, and afterwards the Lessee for Life granteth his Estate over to one who alieneth to A. in Fee, now B. shall have such Writ:

*Praeipit A. quod, &c. redd. B. &c. in quod, &c. nisi per C. qui illud ei dimisit, qui illud tenuit ad vitam D. de pres. B. ex assign. quam I. filius & heres R. qui quidem R. illum pres. D. dimisit ad eundem terminum, inde fecit pres. B. & quod post dimiss. &c.*

If H. lease Lands unto R. for Life, and afterwards granteth the Reversion to B. in Fee, and R. attorn, and afterwards R. alieneth in Fee, B. shall have this Writ.

Rex



*Writ of Entrie in consimili casu.*

*Rez Vic', Sec. Præcipe A. quod, Sec. redd. B. in quod, Sec. nisi per R. qui illud ei dimisit, qui illud tenuit ad vitam suam de præf. B. ex assign. quam I. qui illud præfat. R. dimisit ad eundem terminum, inde fecit præf. A. Et quod post dimiss. Sec.*

And if Lands be given unto two, and the Heirs of one of them, and he who hath the Fee dieth, and afterwards the Tenant for Life alieneth in Fee, the Heir of him in the Remainder shall have this Writ :

*In quo, Sec. nisi per C. qui illud ei dimisit qui illud tenuit ad vitam suam ex dimissione, quam H. inde fecerat eidem C. & D. Et hered. ipsius D. patris prædicti. B. cujus heres ipse est, Et quod post dimissionem, Sec.*

And by that appeareth, That he in the Remainder shall have a Writ of *in consimili Casu*, if Tenant for Life alien in Fee.

And if an Abbot or Prior lease Lands for Life and ta-  
lieneth, and the Prior dieth, the Successors shall have this  
Writ.

Vide 3 E. 2.  
Entrie 6.  
contra.  
For it is  
not given  
by the Sta-  
tute of  
Gloucester.  
Bar West. 2.  
cap. 24. sec  
206. fol.

*Præcipe A. quod, Sec. redd. B. unum missuagium, Sec. quod clam' esse jus Eccles. sue S. Thomæ Martyris de K. Et in quod, Sec. nisi per C. cui D. illud dimisit, qui illud tenuit ad vitam suam ex dimissione quam S. quondam Prior de K. præceded. præd. Prioris inde fecit præf. D. Et quod post. dimiss. Sec.*

And if Tenant in Tail make a Lease for Life, and the Ten-  
nant for Life alieneth in Fee, the Tenant in Tail shall have a  
Writ *in consimili Casu*. And so it seemeth, if Tenant in Tail  
do lease the Land unto another for the Life of the Lessee, and  
dieth, and the Tenant for Life alieneth in Fee; the Heir in  
Tail may choose to have a *Formedon*, or to sue the Writ of  
*consimili Casu*, living the Tenant for Life. For the Tenant  
in the Action shall not have the Plea to abate the Writ, to  
say, that he hath Title to have a *Formedon* of the Land,  
&c. But if Tenant in Tail lease Lands for the Term of his  
own Life, which is not any Descent, and afterwards the Ten-  
nant for Life doth alien in Fee, and the Tenant in Tail dieth,  
his Heir shall not have a Writ of *consimili Casu*; but shall be  
put to his *Formedon* in that Case. For there he hath not Title  
to have any other Action by Colour of any Demise; but in the  
Case before, he had Title by Reason of the Discontinuance  
made for Life, to claim by Reason of the Right in Reversion  
descended to him, so that he had Right by Reason of the  
reversion in his Father reserved upon the Lease, and also by Reason  
of the Title of the Entail to choose what Action he would  
have, *tamen Quare*.

- E** A Lease was made to one for Term of Life, the Remainder unto another in Fee, and afterwards the Tenant for Life did alien in Fee, for which he in Remainder brought a Writ *de consimili Casu*, and the Writ was abated, *Paf. 7 E. 3.* But the Court there said, that the Cause was, because he in the Remainder was not to have the Remainder *in factio* until it fell, and that after the Death of Tenant for Life; and it is not like unto a Reversion: But the Law is not taken so at this Day, but that he in the Remainder hath the Remainder vested in him, as he in the Reversion hath the Reversion: For he shall have an Action of Waste, and shall enter for the Alienation of his Tenant, as well as he in the Reversion, and therefore it followeth, that the Remainder is in him *in factio*, for which Cause I conceive, that Judgment was not rightly given. And *Hil. 18 E. 2.* it was holden by Justice *Herle*, that the Writ did lie for him in the Remainder, &c. And the Heir in Tail brought a Writ of *Consimili Casu* upon an Alienation made by Tenant by the Courtesy, and the Writ was maintainable. *T. 31 E. 1.*

*sa: 12<sup>mo</sup> 27*  
*Cap: 3<sup>o</sup>*

Writ of *Entrie ad communem Legem*.

- G** THE Writ of *Entrie ad communem Legem* lieth, where Tenant in Dower, or Tenant by the Courtesy, or for Life, do alien in Fee or for Life of another, or in Tail the Lands which they hold, &c. after their Death, he in the Reversion, who hath it in Fee or for Life, shall have that Writ of *Entrie ad communem Legem*, and the Writ shall be such, &c.
- H** *Rex Vic. &c. Præcipimus A. quod iuste, &c. redd. B. &c. quod clamat esse jus & hereditatem suam & in quod idem A. non habet ingressum, nisi per C. que fuit uxor D. que illud ei dimisit, que illud tenuit in dotem de dono prædicti. D. quondam viri sui patris vel aliter. antecess. prædicti. B. cuius, &c. ut dicit, &c. & nisi, &c.*
- A** And this is a Writ for the Heir in the Reversion, who hath the same by Descent, and may be in the *Per, Cui* and *Post.*
- B** And if a Woman recover Dower, and afterwards alieneth in Fee, and dieth: Then the Writ of *Entrie ad communem* shall mention the Recovery, &c. And if the Tenant by the Courtesy alieneth in Fee, and dieth, the Heir shall have such Writ:

[ 208 ]



*Writ of Entre ad communem Legem.*

*Præcipe quod, &c. redd. B. &c. quod clamat, &c. in quod idem A. non habet ingressum nisi per C. qui illud tenuit per legem Angliæ post mortem D. quondam uxoris sue, matris præd. B. cujus heres ipse est. ut dicit, &c.*

And may be brought in the *Per, Cui* and *Post*, as the Case is.

And if Tenant by the Courtesy alien the Fee, and dieth, he in the Reversion who is Heir in Fee-simple, may sue that Writ, or an Assise of Mort-dauncestor given by the Statute of *Gloucester*, cap. 3.

And if Tenant for Life alieneth in Fee, and dieth, he in the Reversion may have that Writ in divers Forms. One, if he have the Reversion by Descent, the Writ shall be:

*Præcipe A. quod, &c. redd. &c. quod clamat, &c. & in quod idem A. non habet ingressum nisi per C. cui prædict. B. vel C. pater, vel alias antecess. prædict. B. cujus heres, &c. illud dimisit ad vitam ipsius C. ut dic. &c.*

And he may leave out these Words in the Writ, *Quod clamat esse jus & hereditatem suam, &c.* when the Demandant made the Grant to the Tenant for Term of Life who aliened, &c.

And that Writ may be in the *Per, Cui* and *Post*, as the Case is. And he may bring a Writ of *Ad terminum qui præterit* if he will, if the Tenant for Term of Life doth alien, and dieth, as it shall please him.

And if Tenant for Term of Life do grant over his Estate unto another, and he in the Reversion granteth the Reversion in Fee, and the Tenant doth attorn; and afterwards the second Grantee doth alien in Fee, the Grantee in the Reversion shall have such Writ.

*In quod idem A. non habet, &c. nisi per C. qui illud ei dimisit, qui illud ad vitam suam tenuit de præf. B. ex assignatione quam I. qui illud præf. C. dimisit ad eundem terminum, inde fecit præf. B. ut dicit.*

And it may be in the *Per, Cui* or *Post*, as the Case is, and in the Writ which is in the *Post*, shall be this Clause:

*Et quæ post mortem prædict. C. ad præfatum B. reverti debet per formam assignationis præd. ut dicit, & unde queritur, &c. ut dicit, &c.*

Writ

Writ of Cessavit.

H THE Writ of Cessavit lieth in divers Ways. For one Writ is where there is Lord and Tenant, and the Tenant will not pay his Rent, nor do his Services, as Suit, &c. to his Lord as he ought to do, nor hath sufficient goods or Chattels upon the Land to be distrained for the Rent or Services behind; but suffereth the Lands to lie fresh, not occupied for two Years following together; then the Lord of whom the Lands are holden, may have the Writ against the Tenant, and if it be found for him, he shall recover the Land, if the Tenant will not find Sureties to pay the Rent then after; and that Writ is of such Form:

Tenant in Dower shall have a Cessavit, and lay the Seisin in her Husband: 1 E. 1. Cessavit. 54. 43 E. 3. 15. 9 H. 7. 16. He for Life shall have Cessavit 45

Cessavit, but not Lessee for Years, for that is a Praecept. 12 R. 2. Cess. of a Rent 5 H. Cessavit of Advowson 23 E. 3. Cessavit 46. 43. E.

Rex Vic. &c. Praecepto A. quod, &c. read. B. unum mesuagium, &c. quod idem A. de eo tenet per certa servitia, &c. quod ad ipsum B. reverti debet per formam Statuti de communi Consilio regni nostri inde provisi, eo quod praedict. A. in faciend. praedict. servitia per biennium jam cessavit, ut dicit, &c.

And that Writ is given by the Statute of West. 2. cap. 21. and may be brought in the Per, Cui and Post.

The Per thus: In quod idem A. &c. nisi per C. qui illud dimisit, qui illud de prof. B. tenuit per certa servitia, &c. quod ad ipsum B. &c. (ulque ibi) provisi, eo quod praed. A. vel eo quod praedict. C. in faciend. praedict. servitia per biennium jam cessavit.

48 E. 3. 4. The Seisin was alleged in the Feoffor and the Cesser in the Feoffee, 39 E. 3. Br. Cess. 19 acc.

And it ought to be alleged in the Writ by whom the Cesser was.

And in the Per and Cui thus: In quod, &c. nisi per C. cui illud dimisit, qui illud de praefat. B. tenuit, &c.

Note that if the Feoffee himself cease, the Writ shall be in the Per but general;

And in the Post thus: In quod, &c. nisi post dimissionem quam A. qui illud de praefat. B. tenuit per certa servitia inde fecit A. de E. &c. quod ad ipsum R. reverti debet, eo quod praed. &c. ut dicit, &c. Et unde queritur, &c. nisi, &c.

Cont. If the Feoffor cease before the Feoffment; so if the Disseisee cease before the Disseisin the Writ shall be in the Post, 21 E. 3. 44. Br. Cess. 17.

And there is another Form of Cessavit, without making Mention of any Entry; thus:

Praecepto W. de F. & A. uxori eius quod, &c. reddant Abbati de S. duo mesuagia, quae I. de B. de eo tenuit per certa servitia, &c.

2



*Et que ad ipsam Abbatem, &c. ex quod predicti. W. & A. in faciend, &c.*

And the *Cessavit* lieth for Suit of Court; but the Donor in Tail shall not have a *Cessavit* against the Tenant in Tail: But if a Man maketh a Gift in Tail, the Remainder over in Fee unto another, or unto the Right Heirs of the Tenant in Tail, there, in that Case the Lord of whom the Lands are holden *immediate*, shall have a *Cessavit* against the Tenant in Tail, because that he is Tenant to him, &c.

44 E. 3. 27.  
14 H. 6. 15.  
19 E. 2.  
Cess. 30.  
28 E. 3. 95.  
ib. 34. & 35. acc. but there it is said, that if the Tenant cease, and makes a Gift in Tail, that the Lord may have *Cessavit* in the Per.

10 E. 4. 1.  
&c. 2.  
37 H. 6. 45.  
he pleads  
that the  
Land was  
sufficient to  
his Distress  
without  
saying overt  
and good:  
2 H. 4. 5.  
M. 2 H. 4. 5.  
35 H. 6.

And if a Man cease to pay his Rent and Services for two Years, and inclose the Land, so as the Lord cannot distrain, if he break not the Gates, or the Hedges of the Land which make the Inclosure, the Lord shall have a *Cessavit*, although the Tenant hath sufficient Cattel upon the Land to be distrained for the Rent. For the Land ought to be open, and also there ought to be sufficient to distrain for the Rent, &c. But the Land is not open to his Distress, &c. and so open to his Distress, is a good Plea, without saying more in such Case,

And if the Cattel of a Stranger do escape into the Lands, those Cattel are not sufficient or overt to his Distress: But if they be the Tenant's Cattle, it is otherwise.

If three Men hold by one entire Rent, as by a Horse, and the Lord doth recover two Parts of the Land against two of them, and the third findeth Sureties, &c. the whole Rent is extinct by that Recovery.

And a Man shall not have one *Cessavit* for Lands which are holden by several Services; but he ought to sue several Writs.

If the Lord do distrain pendant his Writ of *Cessavit* against his Tenant, the Writ shall abate.

And the Lord shall have a Writ of *Cessavit* against Tenant for Life, where the Remainder is over in Fee to another.

The Quantity of the Service is not traversable in a *Cessavit*, but the same shall be taken by Protestation.

The Seisin of the Services is not traversable in a *Cessavit*, but in *Cessavit* generally the Tenure is traversable.

The Aunt and Niece shall not join in a *Cessavit* for a Cesser made before the Title accrued to the Niece: But for a Cesser in both their Lives they shall join in a *Cessavit*.

And a Man may have a *Cessavit* against several Persons, and several Tenants by several *Præcipes*, &c. but not by one *Præcipe*.

20 E. 3.  
Cess. 47.  
11 E. 3.  
Cess. 50.  
13 E. 2.  
ib. 51.  
26 E. 3.  
Cess. 61.  
7 H. 4. 20.

A *Cessavit* doth not lie for him in the Reversion against Tenant for Life, nor against Tenant in Dower, but against Tenant by the Curtesy by the Lord Paramount, because he is Tenant to the Lord Paramount: *Tamen Quære* of that Case. But Tenant by the Curtesy, Tenant in Dower, or Tenant for Life, shall have a *Cessavit* against the Tenant who ceaseth.

It is a good Plea in a *Cessavit* to say, That he did not cease for two Years before the Writ brought.

And by the Opinion of *Thorpe* and *Hankford*, a Man shall not have a *Cessavit* against an Abbot or a Prior of the Lands of their Foundation; but I know no difference but that the L. shall have a *Cessavit* against an Abbot or a Prior as well as against others, of the Lands which he holdeth of them by Rents or other Services; but for the Lands which they hold in *Frankalmoigne* a *Cess.* doth not lie for not doing the Service, neither doth a *Cessavit* lie for not doing Homage or Fealty.

18 Aff. 1.  
Br. Cess. 208

And if a Man holdeth Lands in several Counties by one Tenure and one Service, if he cease, &c. a *Cessavit* doth not lie. *Quod vi. M. 18 E. 3. t. Affis.*

And there is another Writ of *Cessavit* grounded upon the Statute of *Westm. 2. cap. 41.* That if a Man give Land unto a religious House, or unto another, to find a Chaplain] to sing Divine Service, or to find certain Tapers to burn before such an Image, or to distribute certain Bread and Beer every Week unto poor Men. Now if these Services be not done for two Years, nor sufficient Distress upon the Lands for the Time to distrain for those Services, then he or his Heir who gave the Lands, shall have a Writ of *Cessavit*, thus:

*Rex Vic'*, &c. *Præcipe S. Episcopo Wigorn. quod, &c. redd. H. Comiti D. unum mes. &c. in villa de W. quod M. nuper Comes D. frater præd. H. cujus hæres ipse est, dedit W. quondam Episcopo W. & successoribus suis Episcopis loci præd. ad celebrandum annuatim obitum I. fratris & B. matris præd. T. & etiam obitum ejusdem T. & R. de H. post eorum decess. Et quod ad præf. Comitem reverti debet per formam, &c. in quod præd. Episcopus in celebrand. obitum præd. per biennium jam cessavit, ut dicit. T. &c.*

*Et aliter pro Chantaria: Præcipe Abbati de N. quod, &c. redd. B. & C. uxori ejus unum mes. &c. quod R. proavus præd. C. cujus hæres ipse est, dimisit E. quondam Abbati de N. vel eidem Abbati & success. suis Abbatib. de N. ad inveniend. quendam Canonicum pro animabus antecess. & success. ejusdem R. in Abbacia de N. divina celebrant. Et quod ad præf. B. & C. reverti debet per*

M m

formam



*formam statuti de communi consilio regni nostri super hujusmodi dimiss. provis. de quod præd. Abbas in inveniend. præd. Canonium per biennium jam. cess. ut dicit; & nisi, &c.*

And the like Writ may be sued against a Parson for Lands given to his Predecessor in Fee, to say Divine Service in such a Chapel from three Weeks unto three Weeks.

And so a Man shall have such Writ for Lights, or for drinking for the Poor, or other Almsdeeds, if the said Almsdeeds be withdrawn for two Years together.

And where a religious Man, or other spiritual Person bringeth that Writ of *Cessavit*, it shall not be said in the Writ, *Quod clamat esse jus & hereditatem suam*, &c.

And a Man shall have a *Cessavit* for not doing of several Things which he ought to do thus:

*Præcipe A. &c. quod, &c. reddat B. &c. quod T. proventus præd. B. dedit W. quondam rectori, &c. & success. suis rectorib. &c. ad inveniend. quendam Capellanum divina pro animab. antecess. ejusdem T. in Eccles. &c. celebrantem, & duas cereas aduras toto tempore, quo Missa illa dicitur. Et quod ad ipsum B. reverti debet, eo quod præd. &c. in inveniend. præd. Capellanum, & cereas per biennium jam Cessavit, &c.*

[ 110 ]

And the like Writs may be made in the *Per*, *Cui* and *Post*.

There is another Writ of *Cessavit* founded upon the Statute of *Glocest. c. 3.* where a Man giveth certain Lands in Fee-farm, to find him certain Estovers to burn in the Winter, &c. or clothing, or to pay the fourth Part of the Value of the Land yearly, and afterwards he ceaseth, and lets the Land lie fresh, not manured for two Years together; then he or his Heir who gave the Land, shall have the Writ of *Cessavit* which followeth, *viz.*

*Rex Vie, &c. Præcipe A. quod, &c. reddat B. annum mes. &c. quod idem B. ei dimisit ad feodi firmam, reddendo inde per annum eidem B. tertiam partem vel quartam partem veri salis. mesuag. præd. &c. quod ad ipsum reverti debet per formam Statuti de communi consilio regni nostri inde provis. eo quod præd. A. in solutione præd. firm. per biennium jam. Cess. ut dicit, & nisi, &c.*

And in the *Per* thus: *Et in quod idem A. non habet ingress. nisi per E. patrem præd. B. cujus haer. ipse est, qui illud ei dimisit ad feodi firmam. Vel sic in the Per and Cui: Nisi per D. cui præd. B. vel C. pat. præd. B. cujus haer. ipse est, illud dimisit ad feodi firmam.*

And

And in the *Post* thus: *Nisi post dimissam quam præd. B. vel C. pos. prædicit. B. cuius hæres ipse est, inde fecit D. ad feodi firmam, &c. cess. ut dicitur, & unde queritur, &c. & nisi, &c.*

**B** And if a Woman give Lands in Fee-farm, rendering to her the Moiety, or the third Part of the Value, and afterwards taketh Husband, and the Tenant ceaseth for two Years, and suffereth the Land to lie fresh, and doth not pay the Rent, the Husband or Wife shall have a Writ of *Cessavit*, and the Writ shall suppose *Quod ad prædicit. A. & B. (his Wife) reverti debet*, and not the to Wife only.

**C** And *Note*, That these Gifts in Fee-farm, to render the third Part, or the fourth Part, or to find a Chaplain to say Divine Service, or to find him Clothing or Estovers, or to distribute, &c. upon which a Writ of *Cessavit* lieth, it behooveth that this were made before the Statute of *Quia emptores terrarum*, &c. upon which Feoffments a Tenure is reserved and implied in the Gift. But if a Man at this Day after the Statute of *Quia emptores*, will give Lands in Fee-farm to render the third or the fourth Part of the Value of the Land, or to find a Chaplain, &c. if the Tenant ceaseth, &c. the Donor nor his Heir shall not have a Writ of *Cessavit*, because there is not any Tenure betwixt them. *Quod vide M. 45 E. 3. t. Cess.*

But if a Man giveth Lands in Tail at this Day to find a Chaplain, or to render a third Part to the yearly Value, or to find Estovers yearly, if the Tenant ceaseth of these Services, it is a Doubt whether the Donor shall have a *Cessavit* to recover the Lands.

And it seemeth that the Donor shall have a *Cessavit*; for a Writ of *Cessavit* is given by the Statute of *West. 2. cap. 41.* for Lands given to find a Chaplain, or to find Tapers, or distribute Alms to poor Men. But then it seemeth that the same is intended of Gifts in Fee-simple, because that the Statute of *Westm. 2. cap. 41.* saith:

*That an Action shall lie for the Donor or his Heir to demand the Lands so given in demesne, as it is appointed in the Statute of Gloucester of Tenements demised to do, or render the fourth part of the Value, or more, and upon which Feoffments a Tenure was reserved and implied, because the Statute of Quia Emptores, &c. was made after the Statute of Westm. 2.*

And also before the Statute of *Quia emptores terrarum*; If a Man make a Feoffment in Fee, and doth not say of whom the Feoffee shall hold, &c. then the Feoffee ought to hold of the Feoffor and his Heirs. By which it appeareth, that if a Man at the Time of the making of the Statute of *W. 2.* gave Lands to hold in Fee-farm, rendering the Value, or the third



*Writ of contra formam Collationis.*

Part, &c. that he held of the Feoffor and his Heirs, although that no Tenure was expressed therein. And the Statute of *Glouc.* was made Anno 6 E. 1. and the Statute of *Westm.* 2. made Anno 30 E. 1. and the Statute of *Quia emptores terrarum*, was made Anno 18 E. 1. And therefore if a Man maketh a Feoffment in Fee at this Day, to find Tapers burning, or to render the third Part of the Value, or the like Services, he shall have an Action of Covenant upon that Feoffment, if it be made by Deed indented, and no other Remedy for the same, as I conceive.

And if Land be given before the Time of Memory to find D a Chaplain to sing in his Chapel within his Manor every Week. Now by the Statute no Man shall have a *Cess.* for the Cessor of such Service, but the Donor or his Heir; but upon that special Matter, he shall have a special Writ for him who is seised of the Manor, if he and his Ancestors have been seised of the Manor Time out of Mind, against him who ought to do Service. *T. Anno 7 H. 2.*

And a *Cessavit* doth not lie against an Abbot or Prior for E a Cessor of Services of Lands which they hold in *Frankalmagne*, because no Service certain is expressed in the Gift. Also it appeareth before the Statute, that the Lord could not have a *Cessavit* against the Tenant, but that he might seise the Lands for the Arrearages of the Rent or Services by Judgment of the Court, if it were found that they were behind, *Quod vi. P. 20 H. 3.* But at this Day he cannot do so, but bring a *Cessavit*.

*Writ of Contra formam Collationis.*

Vide 2 & 3 Ma. Dyer 109. *Tit. it seems by Br. Aliation 15.* **T**HE Writ of *Contra formam Collationis* lieth, where a P Man giveth Lands or Tenements to an Abbey, or other House of Religion before the Statute of *Quia emptores terrarum*, to hold of him in *Frankalmagne*, and afterwards the Abbot or the Convent do alien the same Land unto *That Bishop, Dean, and Chapter, and others who are not religious, are not within this Statute.* 40 E. 3. 27. *The Writ doth not lie but where the Land is given in Frankalmagne.*

The Donor or his Heir may sue that Writ of *Contra formam Collationis*, and that Writ always ought to be sued against the Abbot who aliened, or his Successor, and not against the Tenant of the Land. But when he hath recovered the Land against the Abbot or his Successor, then he ought

ought to sue forth a *Sci. fac.* against the Tenant of the Freehold of the Land, and the Tenant may plead in bar Matter, which may prove that the Demandant hath no Title, or

**B** that he hath released his Title. And if he who recovereth by the *Contra formam Collationis* doth enter upon him who is Tenant of the Freehold of the Land, then it seemeth the Tenant shall have an Assise against him.

**C** And that Writ of *Contra formam Collationis*, lieth only for him or his Heirs, who gave the Land in *Frankalmoigne*, and not by any Stranger. But if he who ought to have the Action dieth, and doth not bring any Action for the same, yet his Heir may bring the Action for to recover the Land. For the Alienation doth give Right and Title to him who gave the Lands, or unto his Heirs for to recover the Lands, and to have the Lands again for that Alienation. And it lieth against the Successor upon an Alienation made by his Predecessor. And yet such Writ brought against the Successor, upon the Alienation made by the Predecessor, was

**D** abated, *H. 17 E. 3.* But yet notwithstanding it seemeth the Writ well lieth, because that the Right is given to him who gave the Lands, and unto his Heirs, to have the Lands again by the Statute, and that Right cannot die. For the Heir shall have the Action upon the Alienation made in the Life of the Father, because the Right of the Action doth descend, and by the same reason the Heir of the Donor shall have the Action against the Successor upon Alienation made by the Predecessor, because the Right doth accrue to the Donor or his Heir by Alienation, for which Cause it is reason that he have the Action against the Successor to recover that Right, and to prove the same; the Form of the Writ in the Register is such:

*Rex Vic', &c. Præcipe Abbat. de N. &c. quod, &c. reddat B. unum messuag', &c. quod eidem domui collatum fuit in liberam elemosinam per præd. B. vel per H. patrem præd. B. cujus hæres ipse est, & quod per alienationem per ipsum Abbatem, vel per R. quondam Abbatem de N. prædecess. prædict. Abbatis contra formam collationis præd. inde facta in seadum ad præfat. R. reverti debet, ut dicit, &c. nisi, &c.*

And that Writ of *Contra formam Collationis* doth not lie, although the Abbot alien in Fee, &c. but where the Abbot and Convent in Fee, &c.

**E** And if a Man do recover in Value Lands against an Abbot, who entreth in the Warranty and loseth, &c. the Founder shall have a *Contra formam Collationis* upon the same, as it appeareth in the Book. *M. 45 E. 3. 18.*

*Contra formam Coll. 12 H. 4. 17. Hankford cont. to Fitz-Herb.*

*21 H. 4. 68. Hankford.*

*Old Ass. 14. It lieth of a Rens.*



28 E. 3.  
Contra formam collationis 6.

If an Abbot and Convent alien an Advowson in Fee, at F the next Avoidance the Founder or his Heir may present unto the Advowson, because they cannot sue a *Contra formam collationis*.

And if an Abbot and Convent alien the Lands which are G given by the King in *Frankalmoine*, some say that the King may enter; but it seemeth that he ought for to sue forth a *Seize factas* upon an Office found of the said Alienation. See the Case, *M. 45 E. 3. 18.*

And that Writ of *Contra formam collationis* is given by the H Statute of *Westm. 2. cap. 41.* and the Process is Summons, *Grand Cape* and *Peitir Cape*.

43 H. 6. 6.  
contr.

And a Writ of *Contra formam collationis* lieth as well for I Land which was not given for the Foundation of the Monastery, if it were given in *Frankalmoine*, as for Lands of the Foundation; but it ought for to be given in *Frankal-*

40 E. 3. 27.

*noisgue* before the Statute of *Quia emptores, &c.* For a Man could not give Lands after the Statute of *Quia emptores, &c.* unto an Abbot or Prior to hold in *Frankalmoine*, because he ought to hold of the Lord Paramount, of whom the Tenant held before. But the King at this Day may give Lands in *Frankalmoine* to an Abbot or Prior, for that he is not bound by the Statute. And also the King may licence his Tenant to give Lands unto an Abbot or Prior in *Frankalmoine* in Fee-simple, to hold in *Frankalmoine*; for he may dispense with the Statute, and grant such Authority to his Tenant if he will. But it seemeth another Lord cannot grant such Licence to his Tenant, by reason of the Interests of the Lord Paramount. But the King and all the Mesne Lords together may grant Licences unto the Tenants Paravail, who have the Fee of the Lands, that they may alien the same to an Abbot or Prior to hold of him in *Frankalmoine*, or to grant the same unto a lay Person, to hold of him by certain Services, because that the Statute of *Quia emptores, &c.* was made only for the Advantage of the K Lords; and therefore they all may dispense with the Statute, which see *4. contra formam collationis. Lib. 2. Ent. 119.* And there it appeareth, That the Heir shall have the Action against the Successor of the Abbot, who aliened in the Time of his Ancestor.

## Writ of Formedon in the Descender.

**L** THE Writ of Formedon in the Descender is grounded upon the Stat. of *Westm. 2. cap. 41.* and lieth where a Man giveth Lands to one, and the Heirs of his Body begotten: Or unto a Man and a Woman, and to the Heirs of their Bodies begotten; or unto a Man and a Woman who is his Cousin in Frankmarriage, by Force of which Gift they are seised, and afterwards he alieneth those Lands, or is disseised of them, and dieth, his Heir shall have that Writ of Formedon in the Descender, to recover those Lands given in Tail. [ 212 ]

And so upon every Gift in Tail of Lands or Tenements, if the Ancestor doth alien the Lands or Tenements, or be disseised or deforced thereof, and dieth, he who is Heir unto the Lands by Force of the Gift, shall have that Writ of Formedon in the Descender, against him who is Tenant of the Lands or Tenements, or Pernor of the Profits of the same Lands or Tenements. But that Writ against the Pernors of the Profits is given by the Statute of *Anna 1. lib. 7. cap. 1.*

**A** And in special Case, a Man may have a Formedon in the Descender of the Profit appenden in any Lands or Tenements, or issuing out of any Lands or Tenements: As if a Man grant 20 s. or 20 s. issuing out of any Land or Tenement, unto a Man, and the Heirs of his Body begotten; or unto a Man in Frankmarriage with his Daughter. Now if the Donee alien that Rent, or is disseised of the Rent, and dieth, his Heir, who is his Son or Daughter, shall have the Writ of Formedon in the Descender of that Rent.

**B** And so if a Man grants the Moiety of the Profits arising out of his Mill unto another Man, and the Heirs of his Body, and the Donee dieth, and his Heir is deforced of the Profits, the Heir shall have a Formedon in the Descender for those Profits, and the Form of the Writ is such:

*Rex Vic, &c. Praecipit W. Magistr. Hospitalis S. T. Martyni de S. quod, &c. reddat I. C. medietatem exituum provenientium de duobus molend. ipsius Magistri in M. quon. B. quondam Magister Hospitalis, &c. dedit W. de C. & heredibus de corpore suo excunt. & que post mortem, &c.*

And so it seemeth, That if a Man granteth to one and the Heirs of his Body, Pasture for twenty Oxen, or for an hundred Sheep, &c. and the Donee die, and his Son, who is his Heir, is deforced thereof, then he shall have a Formedon in the Descender, and the Writ shall be:



## Writ of Formedon in the Descender.

*Rex Vic', &c. Præcipe, &c. quod reddat A. B. pastur. ad viginti boves, vel ad centum oves in centum acris terre in M. quam, &c.*

But if a Man granteth Common of Pasture to one and the Heir of his Body begotten, which hath Cattle, and the Donee dieth, and the Heir is deforced of the Common, the Heir shall not have a Formedon in the Descender of the Common, but a *Quod permittat*, in the Nature of a Formedon, and shall count upon the Gift and the especial Matter. But the Writ of Formedon is an Action suñcestral. For if he who is seised by Force of the Tail be disseised of the Land, he shall have an Assise of Novel Disseisin, or an Action of Trespas at his Pleasure, and not a Formedon. And what manner of Gift shall be said a Gift in Tail, and what nor, appeareth by Mr. Littleton in his Chapter of Estate-tail, and therefore it is not necessary to express the same here. But the Forms of the Writs of Formedon are many, D as appeareth by the Register, thus:

Vido 2 Elz.  
Dyer 216.

*Rex Vic', &c. Præcipe A. quod, &c. reddat B. manerium de N. cum pertin. quod C. dedit D. & E. uxori ejus, & hered. de corporibus ipsorum D. & E. executibus, & quod post mortem præd. D. & E. præfat. B. filio & hered. præditi. D. & E. descendere debet per formam donationis præditi. ut dicit, & nisi, &c.*

20 H. 6. 36.

And if the Gift be made in Frank-marriage, then the Form of the Writ is such: *Quod C. dedit B. in liber. maritag. cum fil. ejusdem C. & quod post mort. præditi. D. & E. præf. B. fil. & hered. præd. D. & E. descend. debet, &c.*

1. H. 4. 19.

And in his Writ of Formedon he ought for to make mention of every Man who was seised by Force of the Tail, and to name him Son and Heir in his Writ, in this Manner: *Et quod post mortem præditi. D. & E. & F. filii & heredes eorundem D. & E. præf. B. filio & heredi ejusdem F. descendere debet, &c.*

But if any of the Heirs in Tail were not seised by Force of the Tail, but over-live their Father, and die before that they enter into the Land, or have any Seisin thereof; then they need not for to name them Heirs in the Writ, but only in this Manner:

*Et quod post mortem præditi. D. & E. filii ejusdem D. & F. filii præditi. E. præfat. B. filio præditi. F. & consanguineus & heredi præd. D. descendere debet, &c.*

And so he ought always to make the Demandant Cousin and Heir, or Son and Heir to him who was last seised of the Tail, as the Case is; and the surest Way for the Demandant is, to make every Man who is named in the Writ, Son and

Heir

Heir in the Writ, although they were not seised of the Lands by Force of the Tail; for it is not material whether they were seised or not, although he name them Heir in the Writ, *quod vi. Anno 8 and 11 H. 6.*

And if Tenant in Tail hath issue two Sons, and dieth, and a Stranger abateth, and entreth into the Land, and afterwards the eldest Son dieth before he entreth into the Land, the youngest Son shall have a Writ of Formedon in the Descender, and needeth not name his eldest Brother Heir to his Father in the Writ, but only Son, because he never had Seisin of the Land, but only held the Estate; but if the eldest Brother had entred, and was seised by Force thereof, and died without Heir of his Body, then the youngest Son who is his Brother and Heir, ought to mention the eldest in the Writ and to name him Son and Heir to his Father, and to make himself Brother and Heir unto him.

A And if the Heir in Tail be seised by Force of the Tail or not, and after enter into Religion, and be possessed, then his Heir shall have a Writ of Formedon in the Descender in such Form:

*Et quod post mortem præd. D. & postquam E. filius & hæres præd. D. habitum religionis assumpsit, in quo habitu professus fuit, ut dicit, præfat. B. filio & hæredi ejusdem E. descendere debet, &c.*

But if the Father maketh a Feoffment in Fee, or leaseth the Land for Life, and entreth into Religion, and is professed: Yet his Heir shall not have a Formedon in the Descender, *quia habitum religionis assumpsit, &c.* during the Father's Life, because the Father may lawfully give his Lands during his Life; and after the Death of the Father, he may bring his common Writ of Formedon, if he will, or that special Writ, *quia habitum religionis assump.* at his Election, as it seemeth.

B And if Tenant in Tail goeth upon Pilgrimage, and dieth in his Journey, his Heir shall have a Formedon against a Stranger who entreth and abateth; and the Form of the Writ shall be:

*Et quod post mortem præd. D. & postquam E. fil. & her. præd. D. iter peregrinationis arripuit versus S. Jacobum, in quo itinere obiit, ut dicit, præf. B. fil. & her. &c.*

C And if Tenant in Tail hath issue two Daughters, and one of them hath issue a Son and dieth, and afterwards the Tenant in Tail dieth, and a Stranger abateth; now the Daughter and the Son of the other Daughter shall have a Formedon in this Form:

*Quod reddat B. & C. unum mesungium quod D. &c. & quod post mortem præd. E. & F. unius filiarum ejusdem E. præf. B. alteri filiarum*



*Writ of Formedon in the Descender.*

*filiarum prædict. E. & B. filis prædict. E. & consanguinis & heredi prædict. E. descendere debet, &c.*

And if Tenant in Tail hath issue two Sons, and dieth, and the eldest Son entreth, and hath issue and dieth, and his Issue entreth and dieth without Issue of his Body, then the youngest Son the Tenant in Tail shall have such Writ of Formedon, if he be deforced of the Land.

*Et quod post mortem prædict. D. & E. fil. & her. ejusdem D. & F. fil. & her. ejusdem E. præfat. B. fil. præd. D. & consanguines & heredi prædict. E. descendere debet.*

And if a Man give Lands in Tail unto a Woman and the Heirs males of her Body, and of R. her late Husband begotten; if the Woman die, and a Stranger doth abate, her Heir male begotten by R. her Husband, shall have a Formedon in this Manner:

*Quod C. dedit D. que fuit uxor R. & heredibus masculis de corpore ipsius D. & præfat. R. quondam viri sui exuentibus, & quod post mortem præd. D. præf. W. fil. & heredi ejusdem D. de corpore suo & corpore præd. R. procreas descendere debet, &c.*

And if a Man give Lands to R. and unto the Heirs which the said R. shall beget on his first Wife, then the Form of the Writ of Formedon is such:

*Quod W. dedit R. & heredi quos idem R. de prima uxore sua procrearet; & quod post mortem prædict. R. & A. fil. G. quam primo duxit in uxorem præf. I. filio & heredi ejusdem R. de præf. A. prima uxore sua procreato descendere debet, &c.*

And if a Man give Lands unto a Woman and unto the Heirs which he himself shall beget on the Body of the said Woman, and after they have Issue between them two Daughters, and one of them hath issue a Daughter and dieth, and after the Donor and the Donce dieth, the Aunt and the Niece shall join in a Formedon for that Land, if they be deforced thereof, and the Writ shall be such:

*Quod R. dedit M. & heredi quos idem R. de corpore ipsius M. procrearet, & quod post mortem prædict. M. & A. unius filiarum ejusd. M. de corpore suo per præf. R. procreas, & præf. I. alteri filiar. ejusd. M. de corpore suo per præf. R. procreas, & I. de S. filis præd. A. & consanguines & heredi ejusd. M. descendere debet, &c.*

And if Lands be given to a Man and his Wife, and to the Heirs of their two Bodies, and they have issue a Son and die, and the Son is seized, and hath issue three Daughters, which have issue and die in the Life of their Father, and after one of the Daughters have issue and claime<sup>h</sup> in the Life of the Grandfather, and afterwards the Father and the three Daughters die, the Coparceners of the three Daughters shall have a Formedon in such Form:

*Et quod post mortem præd. E. & F. & W. fil. & hæred. eorund. E. & F. & A. M. & K. filiarum præd. W. & Saræ fil. præd. M. præfat. A. filie præd. A. & Johan. fil. præd. K. & W. alter. filio præd. S. consanguineis & hæred. præd. Wilhelmi descendere debet, &c.*

- I** And if Lands be given to R. and F. and to the Heirs of the Body of R. begotten, and R. hath issue four Daughters, and he and one of his Daughters enter into Religion, and are professed, and I. dieth, and afterwards one of the Daughters of R. dieth before they have any Possession of the Lands, and the other two Daughters do survive, and are deforced of the Land, they shall have a Formedon in such Form:

*Quod T. dedit R. & I. & hæred. de corpore ipsius R. exeunt. & quod post mortem præd. I. & postquam præd. R. & Gracia una filiarum præd. R. habitum religionis assumpser. & in quo habitu professi sunt, ut dicitur; de etiam post mortem E. alterius filiarum præd. R. præfat. M. & A. aliis duabus filiabus ejusdem R. post mortem E. alterius filiarum præd. R. præf. M. & A. descendere debet, &c.*

- K** And if the Reversion of Tenant in Dower be granted to a Man in Tail, and after the Death of Tenant in Dower he is seised of the Land by Force of the Gift, and hath Issue and dieth, and the Issue entreth and hath a Daughter and dieth, and afterwards a Stranger entreth and abateth in the Land, the Heir of the Issue in Tail shall have a Formedon in this Form:

[ 214 ]

*Quod I. de H. tenet in dotem de hæred. I. de S. & quod idem I. concessit W. de S. & hæred. de corpore suo exeuntibus post mortem pd. I. habend. & quod post mortem præd. I. & W. & R. filii & hæred. ejusd. W. præfat. Isabella filie & hæred. præd. W. descendere debet.*

- A** And if a Man lease Lands for Life, and afterwards grants the Reversion in Tail, and then Tenant for Life dieth: Now if a Stranger abate in the Land, the Grantee in the Reversion shall have such Writ:

*Quod I. dedit P. ad vitam suam, & quod eadem I. postmodum concessit præfat. F. & hæred. de corpore suo exeunt. post mortem ipsius P. habend. & quod post mortem præd. P. præf. F. remanere debet per formam donationis & concess. præd.*

And if a Man lease Lands for Term of Life, and afterwards grants the Reversion in Tail, by Fine unto a Man and his Wife, and unto the Heirs which he shall beget on the Body of his Wife, and afterwards the Tenant for Life dieth, and the Husband and Wife enter and are seised by Force of the Tail, and die, and a Stranger abareth and entreth into the Land; the Heir shall have a Formedon thus:

*Quod*



*Another Writ of Formedon in the Descender.*

*Quod A. dedit B. ad vitam ipsius B. & quod idem A. per finem inde in Curia Domini E. quondam Regis Angliæ avi nostri, coram C. & sociis suis tunc Justic. &c. per breve suum levavit, concessit D. & E. uxori ejus, habend. post mortem ejusdem B. eisdem D. & E. & hered. quos idem D. de corpore ipsius E. procrearet & quod post mortem prædict. B. D. & E. præfat. F. filio & hered. præd. D. & E. de corpore ipsius E. per præf. D. procreato, descendere debet per formam donationis, & finis prædict. ut dicit, &c.*

*Another Writ of Formedon in the Descender.*

**T**Here is another Writ of Formedon in the Descender, <sup>B</sup> which is called a Writ of Formedon of Land, which he holdeth in Coparcenary, and that Writ lieth properly, where Tenant in Tail dieth seised, and hath issue many Daughters, and they enter, and make a Division and Partition of the Land betwixt them, and one of the Coparceners after the Partition doth alien her Part and dieth, her Heir shall have that manner of Writ of Formedon, and that Writ lieth for Lands given in Frank-marriage, as well as for other Lands given in Tail.

And if Lands in Gavelkind be entailed and descend to many Brethren, as Heirs to their Father, and they make Partition betwixt them of the Lands, and afterwards one alieneth his Part and dieth, his Heir shall have a Formedon of that which they held in Parts, and the Form of the Writ is such:

*Rex, &c. Præcipe A. quod, &c. reddas B. quatuor viginti acr. terr. cum pertin. in D. quas una cum aliis quatuor viginti acr. terr. cum pertin. in eadem vil. L. dedit T. in liber. maritag. cum I. filia prædict. L. & quas post mortem prædict. T. I. & M. fil. & unius hered. eorundem T. & I. que illas tenuit in partem suam, ipsam de prædict. cent. & sexaginta acris terræ per partitionem, inter ipsam M. & R. sororem ejusdem M. filiam & alter. hered. prædict. T. & I. inde fact. contingens. præfat. filio & hered. prædict. M. descendere debet, &c.*

And if two Coparceners be Tenants in Tail by Descent <sup>C</sup> from their Father or Mother, and afterwards they make Partition, and one Coparcener hath Issue and dieth, and the other Coparcener dieth without Issue, the Heir of that Coparcener who hath Issue shall have a Formedon in this Form:

*Et quod post mortem præd. T. & I. & K. filia & unius hered. eorundem T. & I. que illas tenuit in partem suam, ipsam de prædict. centum & sexaginta acr. terr. per partem, inter ipsam K.*

Et M. soror. ejusdem K. fil. Et alteram hered. præd. T. Et I. inde fact. contingent. Et præf. M. præf. G. filio præd. M. Et consanguineo Et hered. præd. K. descendere debet, &c.

And it appeareth by the Register, That a Man shall have a Writ of Formedon of Land which he held in Partition by the Name of the Moiety in special Cases, as where two Coparceners are Daughters of Tenant in Tail, and they make Partition betwixt them of the Land, and afterwards one Sister dieth without Issue, and the other Sister alieneth the Land, and hath Issue and dieth, the Issue of the Coparcener who had Issue, shall have a Formedon of all the Land in Tail in this Form :

Rex Vic', &c. Præcipe F. quod, &c. reddat H. 10. Mesung. 20. acr. terr. cum pertinentiis, &c. quæ I. dedit A. Et hered. de corpore suo exeuntibus, Et quam post mortem præd. A. Et M. fil. Et unius hered. ejusd. A. quæ medietat. præd. mesung. Et terr. tenuit in purpartem suam, Et B. fil. Et alterius hered. præd. A. quam alteram medietatem eorundem Mesungior. Et terr. tenuit in purpartem suam; per partition. inde inter ipsas factam, quæ quidem B. diem medietatem præf. M. contingent. post mortem ejusdem M. ut soror Et heres ejusdem M. tenuit, præf. H. filio Et heredi præd. B. descendere debet.

And the Writ is good, because by the Death of one Sister without Issue, the Partition is made void, and the other shall have the whole Land as Heir in Tail.

D And if a Man give Lands in Tail unto I. his Daughter, and to the Heirs of her Body, and I. hath Issue two Daughters and dieth, and they enter and make Partition between them, and afterwards one of the Daughters hath Issue two Daughters, and one of the two Daughters hath Issue four Daughters, and die, and afterward the Aunt who was one of the Daughters of the Donee dieth without Issue, &c. and a Stranger abateth, the four Daughters, and the Issue of the other Sister shall have a Formedon in such Form :

[ 215 ]

Quod reddat tria Mesuagia, centum acr. terræ, Et viginti acr. prati, Et cent. solid. redditus, cum pertin. in N. quæ una cum Manerio de B. cum pertinentiis, A. dedit I. filio suo Et heredibus de corpore ipsius I. exeunt. Et quæ post mortem præditi I. Et C. fil. Et unius hered. ejusdem I. quæ illam tenuit in purpartem suam, ipsam post mortem præd. I. de præd. Moner. Mesung. terra, præf. Et readitu per partition. inter ipsam C. D. filiam Et alteram heredem ejusdem I. inde fact. contingent. Et præd. D. Et A. Et E. præd. D. præf. Margaret, Margery, Katherine Et Constantine, filiarum præd. A. Et T. filii præd. E. Et consanguineo Et heredi præd. C. descendere debent, &c.



## Another Writ of Formedon in the Descender.

And if the Moieties of any Land be given to the Husband and Wife, and unto the Heirs of their two Bodies begotten, and they have Issue four Daughters and die, and the Sisters enter and make Partition betwixt them, and afterwards the two Sisters die without Issue, and the third Sister alieneth, and dieth without Issue; the four Sisters shall have a Formedon in this Form:

*Et qua post mortem prædictor. Rogeri & Agnetis, & Alicie fil. junioris, & unius hæredum eorundem Rogeri & Agnetis, qua eadem Alicia jun. distam quartam partem tenuit in purpartem suam, ipsam de prædict. medietat. per partitionem inter ipsam & Isabel. & Aliciam seniores, & præf. Matildam filiar. & tres alteras hæred. prædict. Rogeri & Agnetis uxoris ejus inde factam contingens, & prædict. Isabelle fil. Rogeri & Alicie senioris præf. Matildæ sorori & hæredi ejusdem Alicie junior. descendere debent, &c.*

And to make a full Declazation of the Case of Formedon in the Descender, upon which the Writ is founded, it is necessary to have the Pedigree made in the Writ, which you shall see here following:

Henry Russel.

Elizabeth his Wife.

Henry Russel.

John. John. Alice.

Joan,  
John,  
Giffard.

Maud,  
married  
to F.

Margaret,  
Wife Harper.

Roger.  
John,  
Botre.

Thomasus,  
James,  
Pencot.

Margery,  
Thomas,  
Cale.

Isabel,  
Thomas,  
Trevetben.

Henry  
Giffard.

Ralph  
Trevetben.

Henry Russel gave Land to Henry Russel and to Elizabeth his Wife, to Henry their Son, and to the Heirs of the said Henry the Son of his Body lawfully begotten, and died, and after Henry Russel the Father and Mother died, and Henry Russel

the Son was seised by Force of the Tail, and had issue *Joan*, *John* and *Alice*, and *Alice* had issue *Joan*, *Maud* and *Margaret*, and *Joan* was married to *John Gifford*, and had issue *Roger Gifford*, who had issue *Henry Gifford*, and *Maud* was married to *F.* and had Issue *Joan*, married to *John Botreux*, *Thomasin* married to *James Penros*, *Margaret* married to *Thomas Cole*, and *Isabel* married to *Trevethen*, and *Isabel* had issue *Ralph Trevethen*, and *Margaret* was married to *William Harper*; and *Henry Russel* the Son died, and *John* his Brother entred and was seised by Force of the Tail and died, and a Stranger abated, and all the Heirs in Tail are dead, but *Margaret Harper* the Wife of *William Harper*, *Henry Gifford*, *Thomasin* married to *James Penros*, *Joan Botreux* married to *John Botreux*, and *Margery Cole* married to *Thomas Cole*, *Joan*, *Margaret* and *Ralph*, Son of the said *Isabel*; now these Coparceners shall join in the Formedon, and the Writ shall be such:

Rex Vic<sup>o</sup>, &c. Præcipe Reginaldo Rees quod, &c. reddas Will. Harper & Margaret. uxori ejus, Henrico Gifford, Jacobi Penros & Thom. uxor. ejus, Johanni Botreux & Johann. uxor. ejus, Thom. Cole & Marger. uxori ejus, & Radulpho Trevethen, manorium de R. cum pertin. quod Henr. Russel dedit Henrico de Russel & E. uxori ejus, & Henrico filio corundem Henr. de Russel, & hered. de corpore ipsius Henr. filii Henr. excunt. & quod post. mortem prædict. Henr. de Russel, & E. & Henr. filii Henr. & Johan. filii & hered. ejusdem Henr. filii Henr. & Johan. fratris & hered. ejusdem Johan. filii Henr. & Alic. sororis ejusdem Johan. fratris Johannis & Johannæ unius, & Matildæ alterius fil. ejusdem Aliciæ, & Rogeri filii prædict. Johannæ fil. Aliciæ, & Johannæ unius filiarum prædict. Matild. præfat. Margaret. uxor. Wilhelmi tertie filiarum prædict. Aliciæ, Henrico Gifford fil. prædict. Rogeri & Thomasinæ, Johan. uxori Johan. Margerix uxori Thom. ceteris filiabus prædict. Matild. & Radulpho filio prædict. Isabellæ fil. Matild. & consanguineo & hered. prædict. Johannis fratris Johannis descendere debet, &c.

[ 216 ]

Another



Another Writ of Formedon in the Descender, called  
Insimul tenuit.

**T**Here is another manner of Writ of Formedon in the A  
Descender, which is called *Formedon qui insimul tenuit*; and that Writ lieth by one Coparcener, or by one Heir in Gavelkind of Lands entailed, where they hold the Lands entailed in Coparcenary without any Partition made between them of the same, and afterwards one Coparcener doth alien her Part unto a Stranger in Fee, and dieth without Issue, or hath Issue and dieth; or if she dieth seised, and hath Issue, and a Stranger doth oust the Issue, or the other Coparcener doth put out the Issue, the Issue, or he who is Heir to the Tail of those Lands, shall have that Writ of Formedon against the Stranger, or the other Coparcener, who deforced her of the Land.

*Rex Vie, &c. Precipit Abbati Westmon. Sec. quod reddat B. & I. uxori ejus duas partes triginta solidat. redditus, mille alborum panum pretii 20. solid. & quinque lagenarum cervis. pretii decem denariorum cum pertin. in B. que una cum tertia parte eorundem solidat. redditus, panis & cervis. cum pertin. in eadem villa, A. dedit G. & B. uxori ejus, & hered. de corporibus ipsorum G. & B. exeuntibus, & que post mortem pred. G. & B. & R. filii & hered. eorundem G. & B. & T. filie & hered. ejusdem R. & W. filii & hered. ejusdem T. & M. filii & unius hered. ejusdem W. qui illas duas partes, & dict. partem cum K. filia & altera heredum pred. W. insimul tenuit, & D. fil. & hered. ejusdem M. & pred. K. am. pred. C. & P. fil. ejusdem K. prefat. I. fil. pred. F. & consanguineus et hered. pred. D. descendere debent per formam donat. pred. &c.*

And by that Writ it seems, That *I.* is seised of the third B  
Part of those Rents; and bringeth this Writ of two Parts of that Rent.

And there is another Writ of Formedon and *Insimul tenuit*, where he shall make his Demand by the Name of the Moie-ry, and that is where one Coparcener is deforced of her Part, and the other Coparcener is in Possession of her Part, and the Writ is such:

*Precipit Abbati Westmon. quod, &c. redd. B. & I. uxori ejus medietat. triginta solidat. redditus, & reddit. mille albor. panum, pretii decem solid. & quinque lagenarum cervis. pretii decem denariorum, &c. cum pertin. in villa Westm. quam una cum alia medietate eorundem triginta solidat. redditus, &c.*

redditus panis & cerviſiæ cum pertin. in eadem villa, A. dedit G. & B. uxori ejus, & hered. de corporibus eorundem G. & B. executibus, & quam poſt mortem præd' G. & B. & F. filii & hered. eorundem G. & B. & T. fil. & hered. ejusdem F. & W. filii & hered. ejusdem T. & R. filii & unius hered' ejusdem W. qua illam & præd. aliam medietat. cum M. filia & altera hered. præd. W. inſimul tenuit & E. filio ejusdem R. præſat' I. fil. prædiſt. E. & conſanguineo & hered. prædiſt. R. descendere debet, &c.

C And it appeareth by that Writ, that one Coparcener ſhall have the Writ of *Formedon* in the *Inſimul tenuit* againſt a Stranger upon the Poſſeſſion of his Anceſtor, without naming the other Coparcener who hath her Part in Poſſeſſion.

And if a Man do bring a *Formedon* in the Descender upon the Seiſin of his Brother, and as Heir to his Brother; he ſhall not mention in the Writ, that his Brother is dead without Iſſue: But if a Man bring a *Formedon* in the Descender as Conſin and Heir to him, he ought to mention in the Writ how he is Couſin and Heir to him, and he ought to make himſelf Heir unto him who was laſt ſeiſed, and that by the ſame Writ.

D And a Man ſhall have a *Formedon* in the Descender upon a Gift in Tail made after the Statute *de Donis*, if the Alienation be made after the Statute, and not before.

E And if Lands in Tail deſcend to two Coparceners, and one entreth into the whole, and the other hath Iſſue and dieth, and ſhe which entreth into the whole dieth without Iſſue, the Iſſue of the other Coparcener ſhall have ſeveral Writs of *Formedon*, one of the Seiſin of the Grandfather, and in that Writ he ſhall not ſay *Inſimul tenuit*, &c. becauſe her Mother was never ſeiſed; but of the other Moiety of the Land of the Seiſin of her Aunt, the Writ ſhall ſay, *Qui inſimul tenuit* with her Mother; for that Seiſin was a Seiſin to her Mother, if ſhe would, &c. And if one Coparcener after the Death of the Anceſtor enter into the whole, and alieneth in Fee, and dieth without Iſſue, the other Coparcener ſhall demand the Moiety as Heir unto her Father, and the other Moiety as Heir unto her Siſter.

F

A And if the Heirs in Tail of Gavel-kind bring a *Formedon* in the Descender, the Writ ſhall be of common Form, as the Writ of *Formedon* brought by Siſters, and in the Count he ſhall ſhew the Cuſtoms.

B A *Formedon* ſhall be brought of Gorges but not of an Advowſon.

And if Tenant in Tail be indebted to the King in the Exchequer,



chequer, and dieth; and his Heir entreth into the Lands, and is distrained in the entail Lands for the King's Debt: Now if the Father's Executors have Affets or Goods, or if the Father hath Lands in Fee-simple in the Hands of others, which he hath aliened; the Heir in Tail shall have a special Writ unto the Treasurer and Barons of the Exchequer, rehearsing the whole Matter; commanding them that they do enquire thereof; and if it be true, that they do surcease to charge him upon the entailed Lands, and the Writ is such:

*Rex Thesaurario & Baron. suis de Succario salutem. Monstravit nobis R. filius I. de W. quod licet ipse non tenet terras seu tenement. que fuer. pradiet. I. prout 12. Messag. & 2. caruat. terr. in I. cum pertin. quod pradi. I. & C. uxor. eius. mat. pradi. R. quorum haeres ipse est, tenuer. sibi & hered. de corporibus ipsorum I. & C. exantibus ex dono & concessione H. de C. per finem inde in Car. Domini E. &c. avi nostri levatum, & que post mortem pradiet. I. & C. ad manus ipsius R. virtute finis pradi. devener. vos nihilomin. ipsam R. in terras & tenement. pradi. quod sic tenent in feod. talliato, pro centum libris nobis pro arreitag. extant. manerii de Oifford. prafat. I. per vos postquam gubernacula regni susceperimus. & ten. pradi. dictis I. & C. in feod. talliato sic data & concess. fuer. commiss. reddend. omiff. tam pradi. hered. pradiet. I. quam tenent. terrar. & tenement. qua fuer. ipsius I. in feods. simplici, qui de debitis suis de jure debent onerari & sufficient. habeant unde debita illa levari possint, distringitis, & ipsam ea occasione inquietatis multipliciter & gravatis minus juste, &c. super quo nobis supplicavit sibi per nos remedium adhiberi: Nos nolentes prafat. R. in hac parte injuriari, vobis mandamus, quod si vobis modo legitimo constare poterit mess. & terras pradi. pradietis I. & C. in forma pradi. data & concess. fuisse, ipsiusque R. aliqua alia terras & tenementa que fuerunt pradi. I. praeter eadem mess. & terram, que ad manus suas virtute finis devenerunt, non tener. ac dictum heredem seu tenent. pradi. sufficient. habere, unde dicta debita levari possint, sicut pradi. est tunc pradi. R. de pradi. centum libris erga nos exonerari, & quietum esse faciat. illos qui inde de jure onerari debent, prout justum fuerit, onerantes. Teste, &c.*

And by that Writ it appeareth, That if the Heir or the other Ter-tenants were not sufficient for to pay the Debt, the Lands which the Heir hath in Tail shall be charged; for some say that the King is not bound by the Statute of *Domis*, &c. but that he is in the same Case he was before; *Quare* thereof.

And if a Man do alien his Lands in Fee, and afterwards become indebted to the King, &c. If the Alienee be distrained for that Debt, he shall have a special Writ to the Treasurer and Barons of the Exchequer, rehearsing the whole Matter commanding them for to surcease, &c.

And so if a Man be distrained for a Debt or Duty due to the King, as Executor, or as Pledge for him who is the King's Debtor, he shall have a special Writ unto the Treasurer and Barons of the Exchequer, to enquire thereof, and to do Right.

*Writ of Formedon in the Remainder.*

**T**HE Writ of Formedon in the Remainder lieth, where a Man giveth Lands to one in Tail, and afterwards the first Tenant in Tail dieth without Issue of his Body, and a Stranger doth abate and deforce him in the Remainder; he in the Remainder, or his Heir, shall have that Writ of Formedon in Remainder. **H** And so if the first Tenant in Tail alieneth in Fee, and dieth without Issue of his Body begotten, he in the Remainder in Fee shall have a Writ of Formedon in the Remainder to recover his Estate, &c.

And if a Man giveth Lands for Term of Life, the Remainder to another, and the Heirs of his Body begotten, and the Tenant for Life dieth, and a Stranger abateth and deforceth him in the Remainder, that he cannot enter, he in the Remainder, or his Heir, shall have a Formedon in Remainder to recover his Estate, &c.

So if a Man make a Gift in Tail, the Remainder in Fee to another, and the Tenant in Tail alieneth in Fee or in Tail, or for Life, and dieth without Issue, he in the Remainder, or his Heir, shall have a Formedon in the Remainder to recover that Land.

And it seemeth the same Law shall be, if a Man lease Lands for Term of Life, the Remainder to another in Fee, and the Tenant for Life doth alien in Fee, or in Tail, or for Life, and dieth, and a Stranger abateth and deforceth him who ought for to have the Remainder; then he in the Remainder, or his Heir, shall have a Formedon in the Remainder to recover that Land: *Quod vid. 24 E. 3.*

**A** And that appeareth to be but reasonable, because he hath Right for to have the Land; and then it is but Reason that he have an Action for to recover the same: And that appeareth by the Statute of *West. 2. cap. 24.* which willett,



[218] *Quod quotiescunque de auctero evenerit in Cancellar. facta in uno eisa reperit. breve, in consimili casu cadente sub eodem jure, & simili remedio indigente; concordent Clerici in Canc. in brevi faciend. For which it seemeth that such Writs are granted.*

And also upon the Statute of *Donis conditionalibus*, there is not the Writ of Formedon given by express Words, but a Writ of Formedon in the Descender; but yet it was never doubted, but that if a Man make a Lease for Life, the Remainder in Tail to another, that he in the Remainder in Tail, or his Heir should have a Writ of Formedon in the Remainder, after the Death of the Tenant for Life, if he were deforced of the Land; and that is by Equity of the Statute of *Donis*, as it seems: For no Formedon in the Remainder is given by any Statute; and therefore it seems it shall be taken by Equity of the Statute; yet some have doubted thereof; and the Form of the Writ for him who claimeth the Remainder in Fee-simple, after the Estate-tail determined, is such:

*Rex Vic, &c. Praecepit A. quod, &c. reddat. B. unum messuag. B. xx. acr. terr. &c. qua C. dedit D. & hered. de corpore suo executibus ita quod si idem D. sine hered. de corpore suo exeunt. obierit, praed. messuag. & xx. acr. terr. cum pertinent. praef. B. & heredibus suis remanerent. Et quod post mort. praedicti D. praefat. B. remanere debent per formam donationis praedicti. eo quod praedicti D. obiit sine hered. de corpore suo exeunte, ut dicit, & nisi, &c. tunc sum.*

And for the Heir of him upon whom the Remainder was entailed: Thus,

*Et quae post mort. praedicti D. & B. praef. i. filio & hered. praed. B. remanere debet per form. &c. eo quod praed. D. obiit sine hered. de corpore suo exeunte, ut dicit, & nisi, &c.*

And if a Lease be made for Term of Life, the Remainder C unto another, and unto the Heirs of his Body begotten; now after the Death of Tenant for Life, if he in the Remainder be deforced of the Land by Abatement of a Stranger, then he shall have such Writ:

*Quod A. debet B. ad vitam ipsius B. ita quod post mortem ejusdem B. praedicti. mess. & xx. acr. terr. cum pertin. D. & hered. de corpore suo executibus remanerent, & quod post mortem praedicti B. & D. praef. W. filio & heredi ejusdem D. remanere debent per formam, &c.*

z & 3 Ma.  
Dyer 125.  
6 L. 3. 5.  
And if a Reversion be granted to another in Tail, and the D Tenant for Life dieth seized, and the Stranger abates and enters the Land; the Grantee in Reversion shall have a Formedon in such Form:

*Qua C. dedit T. ad vitam ipsius T. & qua idem G. postmodum concessit prefat. P. & M. quondam viro suo habend. post mortem praed. T. prefat. P. & M. & hered. de corp. ipsor. P. & M. exeuntibus & qua post mortem praed. T. prefat. M. remanere debent per form. concessionis praed. ut dic. &c.*

**E** And if *A.* give a Manor except 13 s. 4 d. Rent to *R.* and *I.* his Wife, and to the Heirs of their two Bodies begotten, and the Remainder to one *I.* in Fee, and afterwards *R.* aliens one House and one Acre of Land to one Man, and three Acres to another, and two Acres of Land to a third Person, and the Residue of the Manor unto one *B.* in Fee, except the Rent of 13 s. 4 d. and afterwards the Husband and Wife die without Issue betwixt them; he in the Remainder shall have such Writ against the Alienee.

*Præcipe D. quod, &c. reddat I. manerium de F. cum pertin. exceptis uno mess. sex acr. terr. & tresdecim solidat. & quatuor denar. redditus in eodem manerio. Et præcipe G. quod, &c. reddat eidem I. unum messuag. & xx. acr. terr. cum pertin. in F. Et præcipe T. quod, &c. reddat, eidem I. tres acr. terr. &c. Et præcipe L. quod, &c. reddat eidem I. duas acr. terr. cum pertin. quod A. dedit R. & I. uxori ejus & hered. de corporibus ipsorum R. & I. exeunt. ita quod si iidem R. & I. sine her. de corpor. &c. obierint, prædicti. mess. sex acras terr. & maner. except. mess. sex acr. terr. & redditu præd. prefat. I. & heredibus suis remaneant, &c.*

And by that it appeareth, That a Man shall have a Writ of Formedon in Remainder against several Tenants by divers *Præcipes* in one Writ.

And if a Man lease Lands for Life, the Remainder in Tail, &c. the Remainder over in Fee to another, and the Tenant for Life dieth, and the Tenant in Tail alieneth in Fee, and afterwards the Alienee doth alien two Parts of the Land to one Tenant, and the third Part of the Land to another Tenant, and then the Tenant for Life dieth, and then the Tenant in Tail dieth without Issue: He in the Remainder in Fee shall have a Formedon in the Remainder, in such Form:

*Præcipe A. quod, &c. redd. B. duas partes unius mess. cum pertin. in N. Præc. F. quod, &c. reddat eidem B. tertiam partem unius mess. cum pertin. in eadem villa, quas D. dedit C. ad vitam ipsius C. ita quod post mortem ipsius C. præd. duas partes & tertia pars prefat. B. & her. de corpore suo exeunt. remanerent & si præd. F. sine her. de corpore suo exeunte obierit, præd. duas partes & tertia pars prefat. B. & her. suis remanerent, & qua post mort. præd. C. & F. prefat. B. remanere debent per form. donationis præd. eo quod. præd. F. obit sine hered. de corpore suo exeunt. ut dicit, & nisi, &c.*



And by that appeareth how that he shall have one Writ by several *Præcipes* against several Tenants.

[ 219 ] If a Man lease to one twenty Acres of Lands for Life, and he dieth, and the Reversion descendeth to his Brother, and he dieth, and the Reversion descendeth to his two Sisters, and they do make Partition of the Lands, and ten Acres are assigned to one Sister to have to her and her Heirs, and the other ten Acres are allotted to the other Sister and her Heirs; and one of the Coparceners grants the Reversion of her Part and ten Acres to a Man and his Wife, and the Heirs of their two Bodies begotten, and afterwards the Tenant for Life dieth, and a Stranger doth enter and abate in the Land; the Husband and the Wife who are in the Remainder, shall have a Writ of Formedon in the Remainder in this Form:

*Præc. R. de N. quod redd. K. & A. uxori ejus decem acr. terr. cum pertinentiis in N. quas una cum aliis decem acr. terr. cum pertinentiis in eadem villa R. de S. dedit W. ad totam vitam suam, & quas M. de B. soror & una hered. N. de S. fratri & hered. præd. R. de S. cui quidem M. reversio præd. decem acr. terr. assignata fuit in partem suam, ipsam de prædictis viginti acris terr. per partem. inter ipsam & Luciam soror. & alteram hered. præd. N. de S. inde factam post mort. præd. W. contingunt. conceit præfat. R. & her. de corporibus ipsorum R. & A. exanti post mort. ejusd. W. habend. & que post mortem ejusdem W. præf. R. & A. remanere debent per formam concessiois prædict. ut dicunt. & nisi fecerint, &c. & præd. &c.*

And if he who hath the Remainder, or his Heir, be once A seized of the Lands by Force of the Remainder; then he shall never have a Formedon in Remainder for that Land, but a Formedon in Descender, because the Remainder is once executed. And no Tenant shall have a Formedon in Descender, nor in Remainder, where he is once in Possession by Force of the Entail, or by Force of the Remainder; for after that, he hath Possession of the Land by Force of the Tail, or by Force of the Remainder, if he be pur out, he shall have an Assise of Novel Disseisin, or the Writ of *Quibus*, in the Nature of an Assise, &c.

If a Remainder be given to two or three Heirs, and one B dieth, and the other surviveth and afterwards dieth, his Heir shall have a Formedon in the Remainder, as Heir to him, without mentioning in the Writ that he survived the other Joint-tenant, &c.

And in a Formedon in the Remainder, he ought for to show the Deed thereof, if the Demandant do require *Oyer* of

of the Deed, but in the Count he shall not speak of any Deed; but the Tenant ought for to demand *Oyer* thereof, and then the Demandant shall shew the same, and in the Count shall not mention the Deed.

- D** And if the Remainder be once executed in the Writ of Formedon in the Descender, he shall never mention that Remainder, but the general Writ of Formedon shall serve in that Case, as appeareth by the Rule in the Register.

*Writ of Formedon in Reverter.*

**T**HE Writ of Formedon in the Reverter lieth where one giveth Lands to a Man in Tail, or in Frank-mariagewith his Daughter, and afterwards the Donee or his Heirs dieth without Issue of his Body; then the Donor or his Heirs may bring a Writ of Formedon in the Reverter against him who is Tenant of the Lands so given.

And so if one Man giveth Lands unto another in Tail, and the Donor granteth the Reversion in Fee unto another, and then the Donee in Tail dieth without Heir of his Body, the Grantee of the Reversion shall have a Writ of Formedon in the Reverter to recover that Land: But if he grant the Reversion unto another in Tail, and then the Donee dieth without Heir of his Body, then that Grantee of the Reversion shall have a special Writ, as appeareth before, amongst the Writs of Formedon in the Remainder; and for the Heir of the Donor, the Form of the Writ is such:

*Præcipe A. &c. quod redd. unum mess. & viginti acr. terr. cum pertin. in G. quod C. pater præd. B. cujus hæres ipse est, dedit I. & E. uxori ejus & hæ. de eor. corporibus exeunt. & quod post mort. præd. I. & E. ad præf. B. reverti debet per form. donationis præd. I. & E. obierunt sine hæred. de corporibus suis exeunt. ut dicit, & nisi, &c.*

*Vid. 4 Eliz. Dy. 216. A. 22 H. 6. 36*

- F** And if Lands be given in Tail, the Remainder to another in Tail, and afterwards the first Tenant in Tail dieth without Issue, and the second Tenant in Tail in the Remainder doth enter into Religion, and is professed; the Donor or his Heirs shall have such a Writ of Formedon in the Reverter:

*Quod C. pat. D. cujus hæ. ipse est, dedit F. & hæredibus de corpore suo exeunt. ita quod si idem F. sine hæred. de corpore suo exeunt. obierit, præd. mess. &c. H. & hæred. de corpore suo exeunt. remaner. & quod post mortem præd. F. & postquam præd. H. habit. religion. accessit ad præf. D. reverti debet per form. donationis præd. eo quod præd. F. obiit sine hæred. de corpore suo exeunte, &c. & nisi, &c.*



## Formedon in Reverter.

And if *C.* give Lands in Tail to *E.* and to *F.* his Wife, and *G.* unto the Heirs of their two Bodies begotten, and the said *C.* hath Issue *G.* and *B.* and dieth, and afterwards *G.* dieth, and *B.* granteth the Reversion to *H.* for Life, and afterwards *E.* dieth, and *F.* dieth without Issue of their Bodies, &c. *B.* shall have a Formedon in the Reverter in this Form :

[ 220 ] *Quod C. dedit E. & F. uxori ejus, & hered. de corporibus, &c. exeuntibus, & quod G. filius & heres prædicti. C. frat. præd. B. cujus heres ipse est, post mortem præd. E. concessit H. ad totam vitam suam post mortem præd. F. habend. & quod post mortem prædictor. F. & H. ad præfat. B. reverti debet per formam donationis & concess. præd. eo quod prædicti. E. & F. obier. sine hered. de corporibus suis exeuntibus, &c.*

And it seemeth in that Case, That if *H.* had survived *F.* and had entred into the Land, and had been seised of the Land for Term of his Life, and then had died, that then the said *B.* shall not have a Formedon in the Reverter, but a Writ of Entry *ad terminum qui præterit.* But if *H.* have not entred into the Land after the Death of *F.* then the said *B.* shall have the Writ of Formedon in the Reverter. But if *H.* have entred into the Land after the Death of *F.* and had aliened the Land in Fee, then *B.* ought to have had a Writ of Entry *in consimili casu* during the Life of *H.* and after the Death of *H.* a Writ of Entry *ad communem legem.*

And if *F.* lease Lands unto *P.* for Term of Life, and hath Issue a Son and a Daughter, and dieth, and the Son granteth the Reversion to *I.* and to the Heirs of his Body begotten, and afterwards the Tenant for Term of Life dieth, and the Tenant in Tail dieth without Issue, &c. and then the Son who was Donor dieth, the Daughter shall have a Formedon in the Reverter in this Form :

*Quod F. dedit P. ad totam vitam suam, & quod T. filius & her. præd. F. frater præd. B. cujus her. ipse est, concessit I. habend. post mortem ipsius P. eidem I. & hered. de corpore suo exeunt. & quod post mortem prædicti. P. & I. præfat. B. reverti debet per form. donation. & concessionis prædicti. & quod præfat. I. obiit sine her. de corpore suo exeunte, ut dicit, &c.*

And if Lands be given in Tail, and the Tenant in Tail hath Issue two Daughters, and afterwards one of the Daughters hath Issue a Daughter *B.* and the other Daughter hath Issue another Daughter *C.* and afterwards *B.* hath Issue *I.* and then all the Daughters die, and then the said *I.* dieth without Issue of his Body, the Donor or his Heir shall have such Writ :

## Formedon in Reverter.

489

*Et qui post mort. prædict. E. & F. & M. & A. filiar. & her. eorund. E. & F. & I. fil. præd. M. & her. eorundem M. & A. ad præf. I. de B. reverti debent, &c. eo quod prædict. L. & c. fil. prædict. M. obiit sine hered. de corpore suo exeunt.*

**C** In a Formedon in the Reversion in his Count he ought to lay the Esplees in the Donor, and in the Donee.

**D** In a Formedon in the Reverter he ought to mention the eldest Brother who survived his Father, &c. because he held the Estate, although that he was not seised of the Land; as if the Donor hath Issue two Daughters and dieth, and the eldest Son dieth before he entred into the Land. In a Formedon in the Reverter brought by the youngest Son, he ought to mention the eldest Son, who was his Brother, because he was once Heir to the Donee; but if the eldest die in the Life-time of the Father, then the youngest Son in the Writ brought by him shall not mention him as Heir to the Father, because he was never Heir *in factō* to the Father, but in a Writ of Right, which is called *Præcipe in Capite*, brought by the youngest Son, as heir to his Father, although the eldest Son be dead in the Life of the Father, yet in his Count he ought to make mention of the eldest Son, because by Possibility he might have held the Estate, and have been Heir to his Father.

**E** And if a Man give Lands in Tail, and the Tenant in Tail hath Issue and dieth, and the Issue dieth without Heir of his Body before he entred into the Land, the Donor may bring a Formedon in the Reverter, supposing that the Donee died without Issue, &c. and that Writ was awarded good, *M. 18 E. 2*, because the Issue was not living at the Time of the Purchase of the Writ; and he cannot have a Formedon in the Reverter of the Seisin of the Issue, because the Issue died before he had any Seisin of the Land.

## Writ of Ejection Firmæ.

**F** **T**HE Writ of *Ejection firmæ* lieth where a Man doth lease Lands for Years, &c. and afterwards the Lessor doth eject him, or a Stranger doth eject him of his Term, the Lessor shall have a Writ of *Ejection firmæ*; and the Form of the Writ is such:

Vide 1 & 2  
M. Dy. 177.  
Ingrave's  
Case.

**G** *Rez Vi<sup>o</sup>, &c. Si A. fecerit, &c. tunc pone, &c. B. quod sit coram Justic. nostris, &c. ostensurus quare vi & armis manerium de I. quod præf. T. dimisit A. ad termin. qui nond. præterit, intravit, & bona & satall. ejusdem A. ad valent. &c.*

in



*in eod. manerio inventa cepit & asportavit, & ipsum A. a firm. sua prediſt. eiecit, & alia enormia ei intulit ad grave damnum, &c.*

And there is another Form of Writ thus :

*Oſtenſ. quare vi & armis manerium de B. quod I. pref. A. dimiſſi ad termin. 7. annor. infra termin. illum intravit, & illud per magnum tempus occupavit, & ipsam A. quo minus exitus manerii prediſt' juxta form. dimiſſi prad. percipere potuit, impedivit, & bonis, &c.*

6 R. 2. Fitz. Ejectione firme. c cont.

And in that Writ he shall recover his Term again, if the Term be not ended, and the Process is Attachment and Distress, and Process of Utlagary. And Anno 14. H. 7. in *Ejectione firme* brought against a Stranger, the Plaintiff had Judgment for to recover his Term, and thereupon the Defendant brought a Writ of Error, and the Judgment was affirmed, and Execution awarded for the Plaintiff.

And 17 H. 8. Such Judgment was given in the Common Pleas, that he should recover his Term and his Damages.

[ 221 ]

If a Man lease Lands for Years, and afterwards suffer a feigned Recovery against him by a Writ of Entry in the Post, or other Writ, if he who recovereth entreteth, the Termor shall have an *Ejectione firme* against him by Force of the Statute of 21 H. 8. cap. 15. because the Statute giveth him Power to retain, hold, and enjoy his Term. And by that it appeareth, that he who recovereth doth Wrong unto him, if he oust him of his Term; but before the said Statute, the Lessee could not have such Writ, because he who recovered came in by Course of Law.

And if a Man lease Lands for Years, and afterwards granteth the Reversion in Fee, and the Lessee attorneth; now if the Grantee of the Reversion do put out the Termor, he shall have an *Ejectione firme* against him. And so if the Reversion do escheat, and the Lord by Escheat eject the Termor, he shall have an *Ejectione firme* against him.

And if he in the Reversion be a Villain, and the Lord claim the Reversion, and afterwards eject the Termor, he shall have an *Ejectione firme* against him.

## Writ of Aiel or Befaiel.

**D** THE Writ of Aiel or Befaiel lieth, where the Grandfather or Great Grandfather was seised in his Demefin as of Fee of any Lands or Tenements of Fee-simple the Day of his Death, and dieth, and a Stranger doth abate or entreth the same Day upon him, and deforceth the Heir, the Heir shall have that Writ of Aiel or Befaiel, as the Case is, and it beverth not that the Grandfather die seised; or if he be seized the Day that he died, it sufficeth to maintain this Action; and the Form of the Writ is such:

Note, That in this Writ a Man cannot make Title higher than his Befaiel; or the Brother of his Befaiel, 3 E. 3. Item

nota Fitz. Aiel. 6. 40 E. 3. 38. It was found by Assise, that the Ancestor did not die seised, yet no Estoppel to have Cousinage; for if he were seised the Day in which he died, it sufficeth.

**E** Rex Vic', &c. Praeipe A. quod iuste, &c. redd. B. unum mes- In Aiel the  
suag. cum pertin. in E. de quo W. avus praed. B. avia praed. B. vel Defendant  
proavus, vel proavia praed. B. cujus haeres ipse est, fuit seist. in said, that  
Dominio suo, ut de feodo die quo obiit, ut dic. & nisi fecerit, &c. the Aiel  
& praedicti. B. fecerit secur', &c. tunc sum. praedicti. A. &c. had Issue  
W. eldest  
Survived the Aiel, and committed Felony, and was abjured, and afterwards taken  
and in Eyre adjudged a Felon; and good Plea, 6 E. 3. Fitz. Aiel.  
Son, who

**G** And the Procès in that Writ is Summons and Grand Cape before Appearance; and after Appearance, if the Tenant make Default, a Petit Cape shall be awarded.

And although that the Ancestor go in Pilgrimage beyond the Sea, and there dieth, yet the Writ of Aiel shall be general, as is aforesaid

And so if the Grandfather enter into Religion, and is professed, the Heir shall have a Writ of Aiel, if the Stranger do abate, and the Writ shall be general, and shall not speak of his Entry into Religion, or of his Profession, &c.

**H** And the Aunt and the Niece shall join in a Writ of Aiel of the Seisin of their Grandfather, by Equity of the Statute. And the Statute shall serve for those dying seised before the Statute, as for those dying seised since the Statute.

And two Coparceners brought a Writ of Aiel, and by their Count they did suppose the Ancestor to be Great Grandfather to the one, Tresaiel to the other, and yet it was adjudged good. And the Writ in the Register is such:

6. In Befaiel, the Release of the Aiel Warrant is good Plea, 12 E. 3. Joinder in Action.



*Writ of Cousinage.*

*Rex Vic', &c. Prac. A. quod iuste, &c. redd. B. & C. anam molendinum, &c. de quo D. avus prædicit, B. & proavus præd. B. eujus hered. ipsi sunt, fuit seiscitus, &c.*

*Writ of Cousinage.*

**T**HE Writ of Cousinage lieth, where the Tresaiel was I seised in his Demesne as of Fee the Day he died of any Lands or Tenements, and dieth, and a Stranger doth enter and abate, then his Heir shall have his Writ of Cousinage. And the Form of the Writ is such :

*Rex Vic', &c. Prac. A. quod iuste, &c. redd. B. anam mes. K cum pertin. in N. de quo W. consanguineus vel consanguinea præd. B. cujus heres ipse est, fuit seiscitus in dominico suo ut de feod. die quo obiit, ut dicit, & nisi, &c.*

And a Man shall have a Writ of Cousinage of the Seisin of L the Brother of the Tresaiel.

21 E. 3. Brief  
308. it is  
admitted  
that Tresaiel  
is Cousin.  
And the Heir of the Lord who was his Tresaiel may have M a Writ of Cousinage of the Rent of the Signiory against the Tenant, if he deforce him of the Rent, and may count of the Seisin of his Tresaiel; or if he will, he may have a Writ of Customs and Services against the Tenant at his Election.

46 E. 3. 15. N  
12 H. 7. 4. a Writ of Cousinage, and if he do, the Tenant may abate the  
4 B. 3. Aiel 4. Writ by pleading the Seisin of the Great Grandfather; and also a Man shall not have a Writ of Cousinage of the Seisin of his Great Grandfather, but shall be put to his Writ of Besaiel, &c.

Nor a Man shall not have a Writ of Cousinage of the Death of his Uncle, because he may have an Assise of Mort d'Aunceffor of his Seisin.

44 E. 3. 13. O  
And Cousinage doth not lie between Privies in Blood, no more than an Assise of Mort d'Aunceffor, but shall be put to their Naper obiit.

14 E. 3.  
Cousinage  
6. And if a Tresaiel goeth beyond Sea and entreteth into Religion, and be professed; yet the Writ of Cousinage shall be general as the Writ of Aiel shall be. And the Process is Summons, *Grand Cape*, and *Petit Cape*.

*Writ of Ad quod damnum.*

**T**HE Writ of *Ad quod damnum* lieth, where a Man will give Lands or Tenements in Mortmain, as to a Religious House, or to a Body Politick in Fee-simple, then he ought for to have the King's Licence, and the Licence of the chief Lords to make such Gift or Grant, and before such Licence be granted, and the Course is to sue unto the King, to have a Licence to sue that Writ out of the Chancery, directed unto the Escheator, to enquire what Damage it would be to the King, or unto other Persons, if the King do grant such Licence: And upon the Return of that Writ certified in the Chancery, the King ought to give Leave, that he may alien or give in Mortmain; and that Inquisition ought to be certified into the Chancery under the Seals of the Escheator and of the Jurors, by whom the Inquisition was found. And the Form of the Writ is such:

**A** *Rez dilecto sibi I. de K. Escheatori suo in com. L. salutem. Præcipimus tibi, quod per sacramentum proborum & legalium bonorum de Bolliva tua vel de comitat. tuo. per quos rei veritas melius sciri poterit, diligenter inquiras, si sit ad damnum vel ad præjudicium nostrum vel aliorum, si concedamus B. quod ipse annuum messagium, duas acras terræ, & unam acr. prati cum pertin. in W. dare possit & assignare cuid. Capellano divina pro anima ipsius B. & animab. patris & matris, ac antecess. suorum, & omnium fidelium defunctorum in Capella Beata Mariæ de W. vel in Ecclesia Parochiali beata Mariæ de S. singulis diebus celebraturo Habend. & tenend. eidem Capellano & successoribus suis Capellanis divina in Eccles. prædict. vel in ead. Capella pro animabus prædict. singulis diebus, prout prædictum est, celebraturo in perpetuum, necne, & si sit ad damnum vel præjudicium nostrum, aut aliorum, tunc ad quod damnum & quod præjudicium nostrum, & ad quod damnum & quod præjudicium aliorum. Et quorum, & qualiter, & quomodo, & de quo, vel de quibus præd. mess. terra & pratium tenean. & per quod servitium, & qualiter & quomodo, & quantum valeant per annum in omnibus exitibus, juxta verum valorem eorundem, & qui & quos sunt medii inter nos & præf. B. de Mess. terra & pratium prædict. & que terra & que tenementa eidem B. ultra donationem & assignationem præd. remaneant, & ubi, & de quo, vel de quibus, teneantur, & per quod servitium, & qualiter, & quomodo, & quantum valeant per annum in omnibus exitibus & si terra & tenementa eidem B. remaneant ultra donationem & assignationem præd. sufficient. ad consuetud. & servitia eam de præd. messuag.*



Writ of *Ad quod damnum*.

messuag. terra, & prato sic datis; quam de aliis terris & tenem. sibi retentis, debita facient. & omnia alia & singula onera qua sustinuit, & sustinere consuevit, ut in sectis, visibus franci pleg. auxiliis, tallagiis, vigiliis, finibus, redemptionibus, amerciments, contributionibus, & aliis quibuscunque oneribus emergentibus sustinend. Et quod idem B. in assis, juratis, & aliis recognitionibus quibuscunque poni possit, prout ante donationem & assignationem predictam poni possit, ita quod patria per donationem & assignationem predictam, in ipsius B. defectu, magis solito non oneretur seu grauetur, & inquisitionem inde distincte & aperte factam nobis in Cancell. nostra sub sigill. tuo & sigillis eorum, per quos facta fuerit sine dilatione mittatis, & hoc breve. Teste, &c.

Or thus: Quod heredes ipsius B. in ass. juratis, & aliis recognitionibus quibuscunque poni possint, prout antecessores sui ante donationem & assignationem predictam. poni consuever. ita quod patria, &c.

By which it appeareth, That it is Damage to the Country, that a Freeholder who hath sufficient Lands to pass upon Assises and Juries, should alien his Lands in Mortmain, by which Alienation his Heirs should not have sufficient Lands after the Death of the Father, to be sworn in Assises and Juries.

And by the Rule of the Register, If a Chaplain or a Woman will give their Lands or Tenements in Mortmain; yet in the Writ of *Ad quod damnum*, shall be that Clause, *Et quod iidem, &c. in assis, juratis, & aliis recognition. quibuscunque poni possint*; by which it appeareth, they ought to have sufficient Lands, besides Lands to descend to their Heirs.

And if a Chaplain and Laymen will alien in Mortmain C jointly by Licence, then the Writ of *Ad quod damnum* shall be in this Form:

*Et quod idem A. & B. & hered. predicti. B. Capellani, in assis, juratis, &c. poni possint, prout idem A. & antecessor. ipsius B. Capellani ante donationem, &c. poni consuever. ita quod patria, &c. in ipsius A. & hered. predicti. B. defectu, magis solito non oneretur, &c.*

And if one Abbot will give Lands or Tenements in Mortmain D to another Abbot or Prior, or Body corporate, yet he ought to have the King's Licence so to do, because of the Words of the Statute of Mortmain. *Ita quod terr. & tenementa ad manum mortuam non deveniant quoquo modo.* And there he ought for to sue a Writ of *Ad quod damnum* to enquire as aforesaid. But in the Writ shall be this Clause, *Et quod idem Abbas, &c. in ass. & jurat.*, &c. nor that Clause, *Ita quod*

*ad patris, &c.* shall not be put in that Writ of *Ad quod damnum.* But now the common Experience is, that they will not sue the Writ of *Ad quod damnum* when they purchase Leave to alien in Mortmain, but the Use is, to have these Words in the End of the King's Patent of Licence; *&c. absque aliquo brevi de ad quod damnum, seu aliquibus aliis brevibus, inquisitionibus, aut mandatis nostris superinde habend. & prosequend.* But it seemeth, those Patents are dubious whether they be good or no; if it be evidently proved, that such Patents are unto the Damage of others who are the King's Tenants, and by which the King's Tenants ought to have Wardships of Escheats, *&c.* and by which the King loseth the Wardship of his Tenants, or that the King loseth any Advantage which he might have, if such Patents were not granted. And therefore I conceive, that the best Course is, to sue forth such Writs of *Ad quod damnum*, to enquire to what Damage such Licences in Mortmain shall be to the King or others, so that the King be not deceived in his Grant. And see a good Cause for the same in the Title of Grants in the Abridgment, *H. 16 E. 3.*

And there is another Writ of *Ad quod damnum*, if it be to the Damage, *&c.* If the King grant to *B.* that he may give five Houses, *&c.* to *C.* Guardian of the Chapel of our Lady *St. Mary*, and to his Successors, Guardians, and Chaplains of the foresaid Chapel, for the Maintenance of the said Guardian, and two Chaplains to do Divine Service in the said Chapel, and in the Church of *P.* *&c.* in the Honour, *&c.* and for the Souls, *&c.*

And if the King will give Licence to one to grant a Rent unto an Abbot and his Successors, yet he ought for to sue forth a Writ of *Ad quod damnum*, if he have not these Words in the Patent; and this without any Writ of *Ad quod damnum*, *&c.* And the Form of the Writ is such:

*Si concedamus eid. A. quod ipse cent. marc. redditus cum pertin. in N. dare possit, & assignare dilectis nobis in Christo Abbati & Conventui de N. ac Priori & Monachis in Prioratu S. Jacobi Bristol. que est cella ejusdem Abbatis commorantibus, ad inveniend. duos Capellanos, &c. in Eccles. prioratus præd. tenend. eidem Abbati & Conventui ac Prioratui & Monachis in dicto Prioratu commorantibus & successoribus suis, ad inveniend. duos Capellanos &c. in Eccles. Prioratus prædicti. ut præd. est, singulis diebus celebratur. in perpetuum necne. Et si sit ad dampnum, &c. ad quod damnum, &c. & de quo, vel de quibus præd. redditus teneatur, & per quod servic. & qualiter, & quomodo, & qui, & quot sunt medii, ut in primo brevi.*

And



Writ of *Ad quod damnum*.

And it is not said in the Writ, what the Value is yearly, because Rent ought not to be extended.

And if a Man sue to the King for a Licence to give an Advowson to two Chaplains, and to their Successors to hold to their proper Use, and that they may hold the same to them and their Successors, appropriate for ever, to say Divine Service, &c. he shall have a Writ of *Ad quod damnum*, to enquire, what Damage such Grant would be to the King or others, and that Writ appeareth in the Register. And in the Writ of *Ad quod damnum* the Substance of the Licence, to alien in Mortmain, ought to be expressed.

And if a Man will exchange Lands, Tenements, or Rents with another Abbot, or Body-Corporate, upon the Licence granted, he ought to sue forth a Writ of *Ad quod damnum*; and in the Writ both the Lands which are given, and the Lands which are taken in Exchange, ought to be mentioned, and to enquire of them as afore is said.

There is another manner of Form of *Ad quod damnum*, where the King granteth a Licence unto an Abbot or a Prior to purchase twenty Pound Land, and afterwards one Man will give Lands to the said Abbot of the Value of five Pounds, another will give him Lands of the Value of forty Shillings, and another Mans Lands of the Value of twenty Shillings; the Form of the Writ of *Ad quod damnum* shall be such:

Rez Escheatori, &c. *Præcipimus tibi, &c. si sit ad damnum, &c. si concedamus A. quod ipse unum messuagium, & centum acras terræ in N. B. de C. quod ipse unum messuagium, & 40 acras terræ in eadem villa E. de F. quod ipse 30 acras terræ in eadem villa dare possit, & assignare dilectis nobis in Christo, &c. habend. sibi & successoribus suis in partem satisfactionis 20 l. terrarum & reddituum per annum, quas Dominus Edwardus nuper Rex Angliæ avus noster per literas suas patentes eisdem Abbati & Conventui, tam de feodo suo proprio quam alieno, exceptis terris & tenementis quæ de ipso avo nostro tenebantur in capite concessit acquirend. & etiam I. de N. quod ipse unum messuagium cum pertinent. in eadem villa dare possit & assignare eisdem Abbati & Conventui, habend. & tenend. sibi & successoribus suis in perpetuum in excambium, pro uno messuagio in eadem villa eidem I. de N. per præd. Abbatem & Conventum dandis & concedend. habend. & tenend. eidem I. de N. & heredibus suis in excambium præd. sicut prædictum est in perpetuum necne, & si sit, &c. ut supra.*

And by that Writ it appeareth, That he may have one Writ for divers Purchases to be made. And also that a Licence made unto an Abbot, in the Time of one King,

Fide 1681.  
Plow.Com.  
457. D.

- is good to purchase Land in the Time of another King.
- H** There is another Writ of *Ad quod damnum* where the King granteth to an Abbot, or to a Bishop, Licence for to purchase an Advowson, and to appropriate the same to him and his Successors for ever.
- And another Writ where the King granteth unto an Abbot or Bishop, Licence for to appropriate an Advowson whereof they are seised in Fee in their own Right.
- By which it appeareth, that a Bishop or an Abbot could not have appropriated an Advowson whereof they were seised in Fee in their own Rights, without the King's Licence; and if they did, it was forfeited for Mortmain.
- I** And if an Abbot holdeth of another Man by a certain Rent, service, the Lord cannot release unto the Abbot that Rent without the King's Licence; and if he do, it is Mortmain, and the King shall have the Rent; and therefore is the Writ of *Ad quod damnum* ordained, that where the Lord hath Licence to release unto the Abbot that Rent, to enquire to whose Damage the same shall be, &c. as it shall be of Lands, &c.
- A** There is another Form of *Ad quod damnum*, where the King giveth a Licence to alien Lands and an Advowson which are holden of him *in Capite*, unto an Abbot, and that he do appropriate them. And another Form of Writ where the King granteth a Licence to one to alien certain Lands, and a Reversion of other Lands to a Chaplain in Mortmain.
- And if the Villain of an Abbot or Prior do purchase Lands or Tenements in Fee, the Abbot or Prior cannot enter into them without the King's Licence; and if he do, it is Mortmain. And it seemeth that the Law is such, because there is a Writ of *Ad quod damnum* in the Register, to enquire to whose Damage the same is; and if the King granted such Licence unto an Abbot or Prior, that they may enter into such Lands or Tenements which their Villains have purchased.
- C** And see the Statute *De Religiosis*, how that Case shall be taken to be within the Words of the Statute, or by Equity of the Statute.
- And it appeareth by the several Forms of Writs of *Ad quod damnum* which are in the Register, that the Writ ought to be made according to the Letters Patents of Licence, because he ought to rehearse the Effect of the Letters Patents therein; and therefore the Forms of the Writs of *Ad quod damnum* do vary as the Letters Patents themselves do vary. And it appeareth by the Register, that if a Man do purchase Letters Patents of Licence to give Lands unto an Abbot in Exchange for a Rent, which the Abbot releaseth to him, &c. that he shall have a Writ of *Ad quod damnum* thereupon.

38 Aff. 52.  
Br. Mortm.  
20. it is no  
Mortmain.  
21 E. 3. 18.  
Br. Mortm.  
16. &c 37. it  
is no Mort-  
main, be-  
cause the  
Rent is ex-  
tinct.



And if a Man do purchase a Licence to found a House<sup>E</sup> with Lands, or to make a Prebendary, and to give Lands to the same, &c. that he ought to have a Writ of *Ad quod damnum*, &c. upon the same.

And if a Man doth devise Lands or Rents to his Executors<sup>F</sup> and to their Heirs, to dispose according to his Will, and afterwards he maketh his Will, that they give the same in Mortmain; they ought to have the King's Licence to make the Grant, and a Writ of *Ad quod damnum* upon the same, as appeareth by the Register.

If an Abbot, or a Dean and Chapter, have a Rent in Fee<sup>G</sup> issuing out of Lands, and the Tenant of the Land will grant by his Deed, that they and their Successors shall distrain for that Rent in other Lands, it appeareth by the Register, that he ought to have the King's Licence to make such Grant. And a Writ of *Ad quod damnum* shall be to enquire what Damage or Prejudice the same shall be to the King or others, &c. and yet it is hard to prove, how that shall be taken to be within the Words of the Statute of Mortmain, because such Grant is a good Grant of a Rent in Fee, although that there were not such Rent before to the Abbey, or Dean and Chapter. It seemeth that the Grant made without Licence shall be as a new Grant in Law.

9 H. 6. 9.  
41 E. 3. 15.  
9 H. 6. 9.  
1 Aff. 10.  
Br. Aff. 105.

There is another Manner of Writ of *Ad quod damnum*, and that is, where the King's Tenant will alien his Lands which he holdeth of the King to another in Fee, or in Tail, or for Life, then by the Course of Law he ought to have the King's Licence by his Letters Patents so to do, and before the Alienation be made, the King ought to be certified by a Writ of *Ad quod damnum*, what Damage or Prejudice that Alienation shall work to the King: But at this Day that Writ is not used to be granted, but only the Licence to alien without Regard to any Writ of *Ad quod damnum* to enquire thereof. But yet such Licence must not be allowed of by the Justices when the same is shewed, without bringing a Writ out of the Chancery unto the Justices, which is called *Quod permittat*, &c. for which see M 33 H. 6. in Title *Fines*. And the Form of the Writ of *Ad quod damnum* is such:

Re<sup>z</sup> Escheatori, &c. *Præcipimus, &c. inquisit. si sit ad damnum vel præjudicium, &c. Si concedamus I. quod ipse de manerio suo de N. cum pertinent. quod de nobis tenetur in capite, ut dicitur, seoffare possit P. habendum & tenendum sibi & heredibus suis de nobis & heredibus nostris, per servitia inde debita & consueta in perpetuum, necne. Et si sit ad damnum vel præjudicium nostrum aut aliorum, &c. Et quod præjudicium*

judicium aliorum, & quorum, & qualiter, & quomodo. Et si manerium prædict. teneatur de nobis in Capite, ut prædictum est, an de alio. Et si de nobis, tunc per quod servitium, & qualiter, & quomodo, & quantum prædict. manerium valeat per annum in omnibus exitibus juxta vetum valorem ejusdem. Et si quæ terra & tenementa remaneant eidem I. ultra manerium prædict. tunc quæ terra & tenementa, & ubi, & de quo, vel de quibus teneantur, utrum videlicet de nobis, an de alio, & si de nobis, tunc per quod servitium, & qualiter, & quomodo. Et si de alio, tunc de quo, vel de quibus, & per quod servitium, & qualiter, & quomodo, & quantum valeant per annum in omnibus exitibus. Et inquisitionem inde distinte & aperte, &c.

And if the King will grant a Licence unto his Tenant who holdeth of him in *Capite* to alien unto another in Fee, and to take back an Estate unto him and his Wife, and unto the Heirs of their two Bodies begotten, from the same Alienee; and for Default of such Issue, the Remainder unto another in Fee-tail; and for Default of such Issue, the Remainder to the right Heirs of the first Donee, he in that Case shall have a Writ of *Ad quod damnum*, &c. to enquire, &c. and yet such Writs are not used to be granted upon such Licence.

There is another Writ in the Register, that if the King's Tenant doth alien his Lands, of which a Woman holdeth Part in Dowry for Term of her Life, and another holdeth other Parcel thereof for Term of her Life, and he himself holdeth the Residue in Fee. Now he shall have a Writ of *Ad quod damnum*; rehearing all the Estates and Licences.

If the King granteth Lands to one for Life, and afterwards granteth the Reversion to *D.* in Fee, and then *D.* dieth, and his Heir granteth the Reversion to *R.* and *W.* in Fee, and afterwards *R.* and *W.* grant the Reversion to *M.* for Life, and all those Grants are made without Licence, and afterwards *M.* sueth to have a Licence, that she may enter after the Death of the first Tenant for Life; she shall first have a Writ of *Ad quod damnum*, to enquire, &c. and the Writ shall be such:

Rege dilecto Clerico suo *F.* de *C.* Escheat. suo in Comitab. *C.* salutem. Supplicavit nobis *M.* ut cum *A.* dudum concessisset quod unum messuagium cum pertinenti in *N.* quod de nobis teneatur in capite, ut dicitur, & quod *I.* & *B.* uxor ejus tenent ad vitam ipsius *B.* ex dimissione prædicti *A.* quod etiam post mortem ipsius *B.* ad præfat. *A.* & hered. suos reverti deberet post mortem ejusdem *B.* *D.* & hered. suis remaneret. ac *F.* filius & heres ipsius *D.* ulterius concessit quod messuagium prædictum cum pertin. quod ad ipsum *F.* & hered. suos ratione concessionis &



Writ of *Ad quod damnum.*

attornamenti sibi in hac parte facti. post mortem ejusdem B. reverti deberet, post mortem ipsius B. R. & W. & hered. suis remaneret, iidemque R. & W. concessissent, quod mes. prædicti. cum pertin. quod ad ipsos R. & W. & hered. suos ration. concess. & attorn. prædicti. sibi de præmiss. facti. post mortem ipsius B. reverti debet, post mortem ejusdem B. præf. M. ad totam vitam suam remaneret: ita quod post mortem ipsius M. mes. illud cum pertin. post mortem ipsius B. K. & hered. ipsius K. remaneret licentia nostra super hoc non obtenta, Velimus concedere eidem M. quod ipsa mes. illud cum pertin. post mortem ipsius B. ingredi possit & tenere ad totam vitam suam de nobis & heredibus nostris per servitium inde debita & consueta, ita quod post mortem ipsius M. prædicti. mes. cum pertin. præfat. K. & heredibus ipsius K. remaneat, tenend. de nobis & hered. nostris per servitium prædicti. in perpetuum: Nos per vos certiorari volentes, si absque damno & præjudicio nostri aut alterius cujuscunque supplicationi prædicti. annuer. velimus in hac parte, vobis mandamus quod per sacramentum, &c. (ut supra usque ibi) aut aliorum, si concedamus præfat. M. quod ipsa mesuag. prædicti. cum pertin. post mortem ipsius B. ingredi & tenere possit in forma prædicta necesse. Et s. &c. (ut supra.)

And by that it appeareth that an *Ad quod damnum* shall be awarded, where the King granteth a Licence unto one for to enter into the Land, which Land the King might grant for a Fine for Alienation. And also it doth appear by that Writ, that a Clerk and a Chaplain was then Escheator of the County.

And if B. the King's Tenant doth alien to A. in Fee, and afterwards A. giveth back the same Lands to the same B. and C. his Wife in Tail, and then A. dieth, and then B. dieth without Heir of his Body, and afterwards D. Brother and Heir of A. doth release all his Right in the Land unto C. who was the Wife of B. in Fee without the King's Licence, if the King will pardon that Trespass for making of that Release, a Writ of *Ad quod damnum* shall be awarded to enquire what Damage or Prejudice the same shall be to the King, and the Writ appeareth in the Register; but such Writs are not used to be sued forth at this Day, but such Pardons are allowed for the Terrenant, without any such Writ of *Ad quod damnum*, &c. But yet if the King be damnified by any such Pardon, in any Point whereof he had Notice; whether the same shall make void the Pardon or not, *Quære.*

And if the King will grant to one to make a Ditch of a certain Length in his own Land, next to the King's Pond adjoining, to draw the Water from the Pool by the Ditch to his Mill, rendring yearly to the King and his Heirs a certain

taid

tain Rent, a Writ of *Ad quod damnum* shall be awarded for to enquire what Damage the same shall be to the King, and the Writ shall recite the Grant, and the Rent reserved.

**B** And if there be an ancient Trench or Ditch coming from the Sea, by which Boats and Vessels use to pass to the Town, if the same be stopped in any Part by Outragiousness of the Sea, and a Man will sue to the King to make a new Trench, and to stop the ancient Trench, &c. they ought first to sue a Writ of *Ad quod damnum*, to enquire what Damage it will be to the King or others.

**F** And if the King will grant to any City the Assise of Bread and Beer, and the Keeping of Weights and Measures, an *Ad quod damnum* shall be first awarded, and when the same is certified, &c. then to make the Grant.

And it appeareth by the Register, that upon every Grant to be made by the King, of Lands, Tenements, Liberties, or other Things, that a Writ of *Ad quod damnum* shall be first directed to the Escheator, to enquire what Damage it will be to the King or others; and in those Writs in the Register, appear notable Forms of Grants made in divers Manners; for in every Writ the Manner of the King's Grant, and the Effect thereof is specified and recited in the Writ of *Ad quod damnum*.

**A** And if a Man will give Lands unto the King in Fee, unto the Intent that the King shall give them to a religious House, yet a Writ of *Ad quod damnum* shall be directed to the Escheator to enquire what Damage that shall be to the King, or others, if the King should accept thereof, and give the same to the Religious House.

**B** And if the King seifeth Lands aliened in Mortmain, and afterwards will give them again to the Abbot, &c. in Fee, yet a Writ of *Ad quod damnum* shall be awarded, to enquire to whose Damage it shall be, &c.

And so if an Abbot purchaseth Lands without Licence, and afterwards the King will pardon him for the Purchase, and grant that he may retain and keep the Lands, yet an *Ad quod damnum* shall issue to enquire, &c.

**C** And if the King's Tenant doth alien without Licence, for which the King seifeth the Lands: If the King will restore the Lands and pardon the Trespas, yet the Writ of *Ad quod damnum* shall issue forth to enquire what Damage it is to the King, if he make such Grant; but that is not in Use at this Day; but to pay a Fine, and upon the Licence to enter, without suing such Writ.

If the King be Lord, and there be Mesne and Tenant, and the Tenant holdeth of the Mesne by Homage and so.

1. Bro. 26  
267 Day  
341



and the Mesne holdeth of the King *in Capite*, and afterwards the Mesne doth release unto the Tenant the 20 s. to hold to him and his Heirs by Homage, and a Penny without the King's Licence, the King may seize those Services; and if he will by his Grant make Restitution to the Tenant Paravail, an *Ad quod damnum* shall be granted, to enquire to whose Damage, &c.

And it appeareth by the Register, that if the King's Tenant doth intrude after the Death of his Ancestor, without suing his Livery, if the King will pardon the Intrusion, yet a Writ of *Ad quod damnum* shall issue to enquire to whose Damage the King's Pardon shall be, &c. D

If a Forester of the King's Forests, who holdeth his Office of the King, granteth the same to another, he ought to have the King's Licence; and before such Licence shall be granted, a Writ of *Ad quod damnum* shall issue, what Damage such Licence shall be to the King. E

And so if the King will licence one to cut down his Trees or his Wood in his Forest, and to make Assart of the Wood, or to put it to Tillage, a Writ of *Ad quod damnum* shall be awarded, as appeareth by the Register. F

And if the King will grant Parcel of his Waste within his Forest to another in Fee, rendering Rent, and that the Feoffee may enclose the same with a Hedge or a Ditch, &c. a Writ of *Ad quod damnum* shall be awarded, to enquire to what Damage of the King or others the said Grant shall be. G

And if he will lease the same for Years, rendering Rent, a Writ of *Ad quod damnum* shall be awarded to the Keeper of the Forest to what Damage of the King or of his Forest the same shall be.

And if the King will grant Part of his Free Chase to one in Fee rendering Rent, and that he may enclose the same with Hedge and Ditch, &c. a Commission shall be directed to certain Persons, to enquire what Damage to the King or others the same shall be, &c. and thereupon a Writ shall be directed to return the Enquest and Panel before the Commissioners at a certain Day assigned by the Commissioners; and the Commissioners shall make a Precept to the Sheriff to do the same, and to return them at the Day appointed by them by their Precept.

And now it appeareth by those Writs in the Register, that in ancient Times, upon every Grant, Lease, Release, Confirmation or Licence to be made by the King, that first a Writ of *Ad quod damnum* was to be awarded, to enquire H

Writ of being quit of Toll.

enquire of the whole Truth and every Circumstance thereof, and what Damage or Prejudice the King should have by the same; and upon such Inquisition certified and returned, to make the Grants, Releases, Confirmations, or Licences.

But now the Experience is contrary, but in the Patents of Grants of Licence they put in the End these Words.

*Et hoc absque aliquo Breui de Ad quod damnum, seu aliquibus aliis Breuib; sine inquisitionibus aut mandatis super inde habend. fiend. aut prosequend., &c.*

† But in Patents of Licences, or in a Patent of Release or Confirmation made by the King, those Words, *absque aliquo Breui de Ad quod damnum*, are not in those Patents of Releases or Confirmations: But yet by Reason of the ancient Course and Form of the Register, it seemeth that the Patents were the better if those Words, *Et hoc absque alio Breui de Ad quod damnum*, were put into the Patents. *Quere* of the Rigour of the Law, what shall be done in those Cases where the Patents want those Words, &c.

*Wrausob  
petitioni  
aliconis  
is in sequ  
the Law  
Smith it is  
with. on  
Vaugh: 33*

Writ of being quit of Toll.

I THE Writ to be quit of Toll lieth, where the Citizens or Burgesles of any City or Borough have been quit of Toll throughout the Realm by Grants of the King's Progenitors, or by Prescription; then if the said Citizens, or any Man of the said Cities or Boroughs, come with their Merchandizes unto any Fair or Market, and there sell them, or buy any Merchandize, if the King's Officer will demand Toll of them against the King's Charter, or against the Usage or Custom, then they may sue forth and have such Writ: *viz.*

*345, Dy  
269 (19)*

*Rez Ballivis suis de I. salut. Cum per Chart. nostram concesserimus Burgenf. Vill. nostra de S. quod ipsi & eorum hered. ac success. Burgenf. ejusdem Villa. imperpetuum sint quiet. de Toloneo per totum regnum nostrum & potestatem nostram; vobis precipimus, quod ipsos Burgenfes de Toloneo vobis in villa nostra predict. prestando quietos esse permittatis, juxta tenorem charta nostra predict. ipsos contra tenorem ejusdem non molestent. in aliquo seu gravanter. T. ste, &c.*

[ 227 ]

A And upon that he may have an *Alias*, a *Pluries*, and Attachment against the Bailiffs, or those that do grieve him against the Form of the Charter: And the *Pluries* is returnable in the King's Bench, or in the Common Pleas, at the Will of him who would have it. And in that Writ shall be the Clause, *Vel causam nobis significes.*



## Writ of being quit of Toll.

And if the Grant to be quit of Toll be of the Grant of the King's Progenitors, then the Form of the Writ is such :

*Rex Ballivis I. de B. salutem. Cum inter cetera libertat. Burgensibus villa nestrā de C. per Chartas progenitorum nostrorum quondam Regum Angl. concessas, concessam sit eisdem, quod ipsi & heredes sui imperpet. sint quieti de Toloneo per totum Regnum nostrum, quas quidem Chartas per Chartam nostram jam confirmavimus, & insuper concessimas eisdem, quod licet ipsi aliqua vel aliquibus Libertatum & Quietantiarum in eisdem Chartis content. hactenus plene usi non fuerint, ipsi tamen, haered. & successores sui Libertatibus & Quietantiis prad. & earum qualibet de cetero, absque inquietatione vel impedimento, gaudeant & utantur; Vobis praecipimus, &c.*

But that last Clause shall not be in the Writ, if the King C have not made such Confirmation to them. And upon that he may have an *Attai*, and a *Pluris*, and Attachment, if Need be, against those who take the Toll, &c.

And the like Writ may be for those who ought to be quit D of Murage, Pontage, Picage, Lastage, Passage and the like, if they be grieved or disturbed.

And it appeareth in the Register, that King Edward [the first did grant unto Merchants, Strangers and Aliens, that they should be quit of Murage, Pannage and Pontage, &c. If they were grieved and disturbed for the same, they should have such Writ, viz.

*Rex Collectoribus muragii, pannagii & pontagii in villa de S. salut. Cum pro prestationibus & custum. nobis per Mercat. extraneos & alienigenas de bonis & mercimoniis suis infra regnum nostram adductis, per Chart. celebri memoria Domini Edwardi. quondam Regis Angliae, avi nostri quam inspeximus, concessum sit eisdem, quod si ipsi salvo & secure in regnum & potestatem nostram veniant cum merchandis suis quibuscunque, de muragio, pannagio & pontagio liberi & quieti, prout in Charta pradict. plenius continet; Vobis mandamus quod B. & socios suos Mercator. de Societat. &c. alienigenas, de muragio, pannagio & pontagio, in Villa pradict. prestand. quietos esse permitt. juxta tenorem Chartae pradict. ipsos cont. tenorem ejusdem non molestantes in aliquo seu gravantes; & Districion, si eis ea occasione feceritis, sine dilatione relaxetis eisdem; & si quid ab eis a xx. die Augusti, anno. &c. ea occasione levaveritis, id eis sine dilatione restituatis. Teste, &c.*

And if any City or Borough ought to be quit of Toll E for the Merchandises which they buy in another Town or Place, if any of them be compelled to pay Toll, all the Corporation may bring the Writ by the Name of their

their Corporation, and may have an *Alias* and Attachment thereupon, if Need be, with these Words at the End of the Writ, *Et districtionem, si quam eis ea occasione fecerit.* &c. as before.

And the like Writ a Man may have against those who will compell him to pay a certain Sum of Money towards Reparation of any Bridge, of which he ought to be quitted.

And it appeareth by the Register, that spiritual and religious Persons ought to be quit of Toll, Customs, Murage, Pontage and Pannage, and of the like, for their Goods; and if they be troubled to pay the same, they shall have such Writ.

*Rex Ballivis suis de B. salut. Cum persone Ecclesiasticae secundum consuetudinem hacten. in regno nostro usitatum & approbatam ad Toloneum, Pannagium & Muragium de bonis suis Ecclesiasticis alicubi in eodem regn. prestand. nullaten. teneant. vobis precipimus, quod R. Personam Ecclesie de E. ad Toloneum, Pannagium vel Muragium de bonis suis Ecclesiasticis vobis in Vill. nostra predict. prestand. non distringatis, contra consuetud. predict. dum taxamen Merchandisas aliquas non exerceat de eisdem & Districtionem, si quam, &c.*

But Herle Justice said, that those Words, *Dum Merchandisas aliquas, &c.* were of no Effect, because, by his Opinion, they are acquit of all Things, although they do not Merchandise: But now the Statute of *H. 8.* is that they shall not Merchandise.

And another Form of Writ for spiritual Persons is in this Form.

*Cum secundum consuetud. &c. obtentam, persone Ecclesiasticae ad Toloneum aliquod seu aliam Custumam de bonis suis Ecclesiasticis, vel de aliis pro sustentatione sua emptis, prestare non debeant; vobis precipimus, quod A. Person. &c. ad Toloneum aliquod vel aliam Custumam de bonis suis Ecclesiasticis venditis, seu de aliis pro sustentat. sua exempt. nullatenus distringatis, contra cons. pred. & Districtionem, &c. ut supra.*

[ 228 ]

A By which Writs it appeareth how spiritual Persons shall be discharged of those Tolls, and Impositions, and Exactions for their Goods which they sell or buy for their Sustainance, &c.

Tenants of ancient Demesne by the Custom of the Realm ought to be quit of Toll, &c. in every Market, Fair, Town or City throughout the Realm; and upon that every one of them may sue to have Letters Patents under the King's



## Writ of being quit of Toll.

King's Seal, to all the King's Officers, and to Mayors, Bailiffs, &c. and the Form of the Patent is such:

*Rex universis Ball. & ministris ubicunque infra regnum nostrum Angl. constitutis sal. Cum secundum cons. &c. [ ut supra per totum regnum nostrum ] Vobis mandamus, quod homines de manerio nostro d: S. si id Maner. de antiquo Dominico Corone Angl. sit, ad Toloneum vobis, &c. juxta cons. prad. & Districcion. si, &c. In casus, &c. Teste, &c.*

And also the Tenants of ancient Demesne may have a Writ directed to the Bailiffs, or Mayor, or others who will compel them to pay Toll, that they suffer them to go quit, &c. and the Form of the Writ is such:

*Rex Ballivis A. de I. salutem. Cum secundum consuetudinem regni nostri habemus obtentam & approbatam, homines & Tenentes de antiquo Dominico Corone Angliæ quieti sint & esse debent a præstatione Tolonei per totum regnum nostrum, vos nihilominus homines & Tenentes de manerio de S. quod est de antiquo Dominico Corone Angliæ, ut dic. ad Toloneum vobis de bon. & rebus suis in eadem Villa præstand. gravit. distringit. & ipsos ea occasione multipliciter inquietatis, minus juste, ad grave dampnum ipsorum hominum & Tenent. & contra cons. prædict. sicut ex querela sua accepimus; & quia eisdem hominibus & Tenentibus injuriari nolumus in hac parte, vobis præcipimus, quod si ita est, tunc hujusmodi Districcionibus & inquietacionibus eisdem hominibus & tenentibus ea occasione de cætero inferendis desistentes, ipsos de hujusmodi Toloneo vobis de bonis & rebus suis prædict. in eadem Villa præstand. quietos esse permittatis, juxta consuetudinem prædict. & Districcionem, si quam, &c.*

And by the Writ aforefaid it doth appear, that Tenants in ancient Demesne shall be quitted of Toll, as well those Tenants who hold of the Manor which is ancient Demesne, which is in the Seisin or the Possession of another Man than of the King, as the Tenants of ancient Demesne which hold of the Manor in ancient Demesne which is in the King's Hands and Possession.

And it appeareth also that they shall be quit of Toll for their Goods and Chattels which they Merchandise with others, as well as for their other Goods; for the Writ is general, *pro bonis & rebus suis.*

And it appeareth that that Writ may be sued by all the Tenants, as a Writ of *Monstraverunt* shall be sued; and also that every particular Person who is grieved may sue forth the Writ if he will.

And also the Lord in ancient Demesne himself shall be as well

well acquitted of Toll throughout the Realm as the Tenants in ancient Demesne shall be; and that appeareth by the Register, of an Attachment sued by the Lord of the Manor in ancient Demesne against the Bailiffs of C. because they took Toll of him. And they shall not be only quit of Toll, but also of Pontage, Passage, and the like.

C And also they shall not be contributory to the Expences of the Knights in Parliament; and if the Sheriff will distrain them, or any of them, to be contributory for their Lands in ancient Demesne, then they may sue forth a Writ directed to the Sheriff, that he do not compel them to be contributory to the Expences of the Knights, &c. Commanding them in the same Writ, that if they do distrain them, or any of them, that they re-deliver the Distress, &c. And the Writ may be sued by all together, as a *Monstraverunt* shall be directed to the Sheriff, or by any of them who are distrained.

D And Tenants at Will within ancient Demesne shall be discharged of Toll as well as the Free Tenants, or Tenants for Term of Life, or for Term of Years of Lands in ancient Demesne, shall be discharged of Toll for their Goods, &c.

E And see 7 H. 4 that a Tenant in ancient Demesne may Merchandise, buy and sell, and shall not pay Toll: And the same agreeth with the Register. But T. 9 H. 6 it is holden that they shall not pay Toll of Things coming of their Tenements within ancient Demesne, not for things bought for their Sustainance, &c. but for other Things it is a Question: But forasmuch as they shall be quit of Pontage, Murage, and Passage, I conceive that they shall be quit of Toll generally, although they do Merchandise with their Goods. And the Toll ought always to be paid by the Buyer, and not by the Seller: If it be not by some special Custom &c.

19 H. 6. 66:  
Newton.

F And the Villains of Lords who come to Parliament shall not be Contributaries to the Expences of the Knights of the Counties who come to the Parliament; but the Lords shall have Letters in their own Names, directed to the Sheriff, commanding him that he do not distrain their Villains to be Contributory to those Expences of the Knights, and if he hath distrained them, to deliver the same to the said Villains.

[ 229 ]

And it seemeth reasonable that the Villain may, if he will, sue the Writ, as well as the Lord, &c. which Writs do appear amongst the Writs to be quit of Toll.

A And also Chaplains who are Masters of the Chancery, who are Attendants at Parliaments, shall not be contributory by Reason of their Benefices unto the Expences of  
Proctors



Proctors made for the Clergy who come to the Parliament; and if they be, they shall have a Writ to the Archdeacon and his Officers, commanding them for to discharge them, and upon that they may have an *Alias*, and a *Pluries*, and Attachment against them; and the Writ is such:

*Rex Archidiacono Midd. & ejus Offic. ac eorum Commissar. salut.*  
*Cum in Parlamento nostro apud Westmonasterium anno regni nostri quarto convocato, per Nos, & per Pralatos, Comites, Barones, & totum Concilium nostrum, ibidem concord. fuisset, quod Clerici nostri de Cancellar. beneficiati, in Parliamentis, Consiliis & Tractatibus nostris, ad obsequendum nobis & populo regni nostri personatim existant, ad contribuendum ration. Benefic. suorum expens. Procuratorum de Clero aliquarum Dioc. ad hujusmodi Parliamenta, Consilia & Tractatus de mandato nostro venientium, dum in eisdem presentes forent, essent quieti: Nos Concordiam predictam. illam in omnibus, maxime cura expens. predictam. propter absentiam illorum qui distis Parliamentis, &c. non interfuer. present. volentes observari, Vobis mandamus, quod T. Personam Eccles. de N. Lond. Dioc. qui Cleric. de Cancell. nostra est, & qui in Parlamento nostro apud Westmon. ultimo tento in obsequio nostro & communitat. populi regni nostri presens fuit, ad contribuendum ratione Beneficium sui predictam. expens. Procuratorum qui ad dictum Parliamentum pro Clero dictae Dioces. venit. seu aliorum Procuratorum qui ad alia Parliamenta, &c. per nos nunc tenenda venire conting. dum hujusmodi obsequiis invenerit, nullatenus compellat. seu per ministros vestros aliqualis. compelli permit. sed ipsum de expens. hujusmodi quietum esse faciat. juxta Concordiam supradictam; & si quid ab eo ea occasione levatum fuerit, id ei sine dilacione restituat. necnon Processibus, si qui ad Censuras Ecclesiasticas contra ipsum ex causa predicta. facti fuerint, supersederi, & sement. si qua in ipsam fulminata fuerit, sine dilacione revocari faciatis. Teste, &c.*

*Quere for that Statute: And by that appeareth, that the Parliament may bind the Clergy by the Acts and Statutes made in Parliament.*

*Writ de Libertatibus allocandis.*

**T**HE Writ *de Libertatibus allocandis* lieth where any Citizen or Burges, or other Man, is impleaded before the King's Justices, Justices Errant, or Justices of the Forest, and he claimeth and pleadeth any Grant of Liberty made unto him by the King, or unto any City or Borough whereof he is a Burges, and the Justices do delay to allow that Liberty; then he, who is so delayed by the said Justices may sue forth such Writ directed to the Justices, commanding them to allow the same: And the Writ is such:

*Rex Justiciar. suis de Banco salutem. Quia Burgens. nostri de N. per Chartas progenitor. nestror. quond. Regum Angl. clamant habere diversas Libertates, quibus ipsi & antecessores sui Burgens. ejusdem ville a tempore confessionis Chartarum predict. semper habemus usi sunt & gavis, sicut dicunt: Vobis mandamus quod ipsos Burgens. Libertat. predict. coram vobis in Banco uti & gaudere permittat. juxta tenorem Chartar. predict. prout eis uti & gaudere debent, ipsique & antecessores sui predict. Libertat. illis a tempore predict. semper habentus rationabiliter uti & gaudere consueverant. Teste, &c.*

And if any do claim a special Liberty to be impleaded within the City or Borough, and not out of the City, then the Writ shall be special, thus:

*Rex eisdem, &c. salutem. Cum inter ceteras Libertates quas ad meliorationem Ville nostrae de R. per Chartas progenitor. nostrorum quondam Regum Angl. concessae sunt Burgensibus ejusdem Ville, concessum sit eisdem, quod ipsi non implacitent seu implacitentur alibi quam infra Burgum predict. coram, &c. ejusdem Ville, de aliquibus tenur. intrinsecis, seu transgr. & contractibus infra eund. Burgum factis, prout in Chartis predict. plenius continet. qua quidem Libertate iidem Burgenses & antecessores sui ejusdem Ville Burgens. a tempore concess. Chartar. predict. semper habent. rationabiliter usi sunt, sicut dicunt: Vobis mandamus quod eosdem Burgenses Libertate predict. coram vobis uti & gaudere permittat. juxta tenor. Chartar. predict. prout ipsi eis uti debent, ipsique & antecessor. sui pred. a tempore pred. semper habentus uti & gaudere consuever. Teste, &c.*

And every one who claimeth any Liberty, and justifieth by the same any Act done by him in any Court before any Manner of Justice or Justices, and the Justices will not allow that Liberty, or delay to allow the same, then he may sue forth that Writ. And those Writs are of several Forms, as appeareth by the Register, and may be sued by



## Writ de Corrodio habendo.

a Body Corporate, or by any single Person, as the Case shall happen, &c. And the Barons of the Cinque-poits may sue forth such Writs, if they be delayed to have their Liberties allowed unto them.

And the like Writ may be sued to the Justices of the Forest, commanding them to allow Charters granted to any Persons, to have Pasture, or to be quit of Pannage there.

## Writ de Corrodio habendo.

So every  
common  
Person, if he  
be Founder,  
and doth  
not give in  
Frank-al-  
moigne:  
44 E. 3.  
24 & 50.  
All. 6.

THE Writ de Corrodio habendo lieth where the King is the Founder in the Right of his Crown of any Abbey or Priory, or other Religious House. Now of common Right the King ought to have a Corrody, and a reasonable Allowance for any of his Vadelets in the same House. And so of every Bishoprick in England or Wales, the King ought to have a reasonable Pension for his Chaplain, until the Bishop have promoted him to a convenient Benefice. And the Form of the Writ for the Corrody is such:

Vide 21 E. 4. 8. That the King writ for his Vadelet by his Prerogative, by which Br. collect, that a Founder, common Person, shall not have a Corrody.

14 H. 6. 11. If the King found a Frank Chapel, he shall not have a Corrody, nor Pension.

1 E. 4. 10.  
The Writ  
ought to  
contain the  
King's Title  
to the Cor-  
rody.

*Rex dilectis suis in Christo Priori & conventui de N. salut. Volentes dilecto Paledio nostro de S. sibi de sustentatione congrua provideri, ipsum ad vos duximus transmittend. rogantes quatenus ipsam S. in Domum vestram predictam. admittentes, ei talem sustentationem in omnibus qualem P. jam defunct. habuit cum vixit in eadem ministrari, & ei Literas vestras communi Sigill. Domus vestre signatas, mentionem de hiis que de eadem Domo vestra sic percipiet facientes, sibi super hoc fieri & ei liberare fac. pro quo nobis agend. Demum vestra predicta. tener. volumus special. in futuro & quid inde ad hanc rogatum nostrum duxeritis faciend. nobis rescribiti per present. portatorem. Teste, &c.*

There is another Form of Writ, where the King will write for the Servants of his Grandfather or Father, thus:

*Rex eisdem &c. salutem. Attend. grata & laudabilia obsequia que dilecti. serviens noster A. exi nostro & nobis hactenus impend. volentes eidem A. cui de sustentat. sua per ipsos avum seu patrem vestram aut nos non. est provisum, de hiisjuncti sustentatione providere, ut tenemur, ipsum ad vos duximus destinand. rogantes quaten. ipsum A. in Domum vestram predictam. admitt. ei talem sustentat.*

stent. & in victu & vestitu & al. necessariis qual. R. jam defuncti. habuit. ad mand. dilecti avi nostri de dicti. Domo vestra percipiend. ministraretis, sibi que Literas vestras patent. &c. ut supra.

And so where the King is Founder of any Abbey or Priory of Nuns, the King shall have a Corrody for the Queens Maidens, or others of her Cousins, for whom he pleaseth for to write, &c. But if the King will write unto an Abbey of Monks, for a Maiden to have a Corrody there for her Sustainance, &c. It seems the same shall not be obeyed, for the Inconveniency thereof; nor contrary, if he write to a Nunnery for his Vadelet, to have a Corrody there: *Tamen quare.*

There is another Form of Writ thus :

*Rex dilectis & fidelibus suis Abbati & Conventui de B salutem. Volentes de gratia nostra speciali dilecto Vadelecto nostro R. prætexus boni servitii sui nobis impensi & impend. cui de sustentat. congrua, &c. ut supra.*

And upon these Writs, if the Abbot or Prior will not do according as he is directed to do by the Writ, an *Alias* and a *Pluries* shall be awarded, *vel causam nobis significes*, shall be in the Writ of *Pluries*, and shall be returned unto the King's Bench; and if he do not return the same, an Attachment shall be awarded against the Abbot, Prior, or Priores.

And if the King write for such Corrody unto an Abbey or Priory, and they grant Parcel of the Corrody unto him for whom the King writeth, but not all, nor so much as others had before; then the King, upon a Surmise thereof made in the Chancery, shall grant a Writ of *Sicut alias*, directed unto the said Abbot or Prior, &c. desiring them that they grant the like Livelihood in all Things as any other hath had before in the same House. And if the Abbot or Prior upon the *Pluries* return any Matter of Excuse, wherefore he ought not to grant such Corrody, which Return seemeth unto the Court where the Return is made, be it in the Chancery or in the King's Bench, to be no sufficient Return, then the King shall grant such Writ :

Note. If an Abbey which a common Person hath cometh to the King by Escheat, yet he shall not have a Corrody because it is not of his Foundation. L. 5 E. 5. 118. Br. Corrod. 1. 6. Yet the King may have a Corrody where he is not Founder, but that is by Special Grant. 1 E. 4. 10.

38 E. 3. Br. Contemp. 5. & 39 H. 6. 48. If the Abbot will not admit the King's Vadelet, he who ought to be admitted shall recover Damages, and not the King, for that the King hath only the Presentation to the Corrody, and the Party the Damages.

44 E. 3. 25. per Knevit, if the King and another give Land to erect, &c. the King is Founder.

22 E. 4. 17, 18, 19. Hussey and Fairfax. If an Abbot grant to A. to have a Corrody, nihil operatur by the Grant; but if he grant a Corrody, or so much Bread and Ale, &c. it is a good Grant of those Things, but it is no Corrody, but a Profit; for every Corrody hath his Beginning by the Foundership.

Rex



## Writ de Corrodi habendo.

Rez, &c. salut. Cum nuper volentes dilectio nobis N. preterea diutini servie. sui Dem. Ed. nuper Reg. evo nostro & nobis hacten. impens. de sustentat. congrua providere, ipsum ad vos miserimus, & vobis plur. mandaver. rogantes quatenus eund. N. in Domum vestram admitteretis, & ei talem sustentationem. &c. concederetis, & Literas, &c. faceret. vel causam nobis significaretis, quare mandat. vestris toties vobis inde directi. minime parvifertis; et vos quasd. causas excusat. nobis in Conc. nostram miseritis quas insufficient. reputavim. Vobis igitur mandamus firmiter injungentes, quatenus eund. N. in domum vestram, &c.

[ 231 ]

And if an Abbot or Prior at the King's Request do grant a Corrody to B. for Life, and afterwards B. will surrender the Grant of his Corrody unto the Abbot or Prior, to the Intent that C. have the same for his Life, then he ought for to sue a Writ to the Abbot or Prior thus:

Rez dilectis sibi, &c. Priori & Conventui de R. salutem. Cum dilectus nobis S. quondam certam sustentationem in Prioratu vestro predicti. ad rogatum nostrum obtinet, & in voluntat. existat, quod dilecti. Vadelictus noster N. habeat totum statum quem idem S. habet in sustentatione predicti. & ad illam effectum S. Literas patentes sibi de dicta sustentatione per vos factas vobis restituere sit paratus, sicut dicit, supplicans nobis ut assensum nostrum ad hoc prabere dignemur: Nos supplicationi illius S. annuimus, & insuper volentes pref. N. gratiam uberiores facere in hoc parte, vobis mandamus rogantes, quod si idem S. dictas Literas ad effectum predicti. restituere voluerit, tunc receptis penes vos Literis illis, ipsum N. in Domum vestram predicti. admittentes, ei sustentat. predicti. ad totam vitam ipsius N. de dicta Domo vestra percipiend. concedas. eique Literas vestras patentes ad eandem sustent. sub sigill. Domus vestre predicti. fieri & ei deliberari fac; & quod ad hanc rogatum nostrum duxeritis faciend. nobis rescribat. per present. portatorem. Teste, &c.

19 E. 3.

Fines 50. A.

Fine was

levied of a

Corrody.

10 Aff. 41.

Br. Corro-

dia 8. nuper obiit of a Corrody, and dec. de libero tenem, quod vide 14 H. 6. 13.

and 12. Affise lieth of a Corrody, contrary of a Pension.

And upon that he shall have an Alias and a Pluries, and Attachment, if Need be.

And if an Abbot or a Prior admit one to a Corrody, upon the King's Writ sent him, if he dieth who is so admitted, the King may write for another to have the same Corrody.

But if the King have a Pension in any Abbey or Priory for his Chaplain, if the Abbot or Prior upon the King's Letter grant a Pension to his Chaplain, and the Chaplain dieth,

dieth, the King cannot write for, or grant a new Pension unto another Chaplain during the said King's Life; and if he do, the Prior is not bound to grant the same; but it is otherwise of a Corrody. 14 H. 6.  
11 and 12.

And yet some say, that upon the Cession of an Abbot or Prior, the King shall have a new Pension granted to his Chaplain; but *Quere* of that. 14 H. 6. 12.

C And if the King have a Corrody in an Abbey or Priory to have certain Bread, and certain Gallons of Beer, &c. the King may grant the same to several Men; but where he hath a Corrody to have Livelihood of one Man, to sit with the Servants of the Abbot, there he cannot grant the same but to one Man only. And the King may release to the Abbot or Prior, his Title to the Corrody, if he will. 8 E. 4. 17. Br.  
acc. Grant  
pl: 95. Daug.  
255  
14 H. 6.  
11 and 12.

E And if the Abbot or Prior do receive one to a Corrody upon the King's Letter, and thereupon doth make him a Grant thereof; thereby the Abbot or Prior and their Successors shall be bound for ever. Otherwise it seemeth if the Abbot had granted the same upon the King's Request.

F And T. 4 E. 3. it is holden, that the Abbot or Prior who holdeth of the King in *Frankalmoigne* shall not be chargeable with any Corrody. 50 Aff. 6.  
44 E. 3. 24.  
acc.

## Writ de Annua Pensione.

AND when the King hath a yearly Pension out of an Abbey or Priory for his Chaplain, the King shall send his Writ unto the Abbot or Prior, &c. to grant the said Pension to his Chaplain; and the Writ shall be such:

*Rex dilectis in Christo Abbati & Conventui de C. salutem. Cum vos ratione nova creationis vestra pref. Abbat. teneamini uni de Clericis nostris, quem vobis duxerimus nominand. in quadam Annua Pensione de Domo vestra percipiend', quousque sibi provi- sum sit de Beneficio Ecclesiastico competenti; ac nos promotionem dilecti Clerici nostri A. a suis exigent. meritis affectantes, ipsum ad hujusmodi Pensionem a vobis percipiend. duxerimus nominand'; Vobis igitur mandamus, quatenus eidem A. talem Pensionem de dicta Domo vestra in forma predict. percipiend', qua dantes de- beat, percipientemque fortius obligatum reddere debeat, concedatis Literas vestras dat. sigill. Capituli vestri signat. eidem A. super hoc fieri facient'. Et quod inde duxer. faciend', nobis sine dilat. rescribat'. Teste, &c.*

F P

And



And the Form of the Grant of the Pension is such :

*Universis ad quas presentes Literæ pervenerint Abbas de T. & H. Conventus ejusdem loci salar', &c. Noveritis nos, ad instantiam Illustrissimi Principis Ed. Dei gratia Reg. Angl', dedisse & concessisse dilecto nobis in Christo A. Clerico centum solidos sterlingorum in Festo S. Mich. annuatim de Camera nostra percipiend', quousque eidem A. de Beneficio Ecclesiastico competenti sibi per nos fuerit provisum & hoc ei quam citius facultas se obtulerit facer. promittimus. Diē. autem A. per se, vel suum Procur. legit. ad hoc constitut', diē. v l. singulis annis apud S. recipiat. In cujus, &c. commun. sigill. Domus nostræ duximus apponend'. Dat' in Capitulo nostro, &c.*

And it appeareth by an ancient Roll in the Exchequer, of what Abbies or Priors the King ought to have a Corrody and Pension, and of what a Pension only, and of what a Corrody only; the Copy of which followeth :

*The Names of the Corrodies and Pensions in England which are of the King's Gift, according to the Book in the Exchequer.*

<b>I</b> n the Abbey of <i>Glassenbury</i> ,	1 C. 1 P.	In the Abbey of <i>Hide</i> ,	1 C. 1 P.
In the Abbey of <i>Mochelny</i> ,	2 C. 1 P.	In the Abbey of <i>Battel</i> ,	1 C. 1 P.
In the Abbey of <i>Tewksbury</i> ,	1 C.	In the Abbey of <i>Waverly</i> ,	1 C.
In the Abbey of <i>Clive</i> ,	1 C. 1 P.	In the Abbey of <i>Molmsbury</i> ,	2 C. 1 P.
In the Abbey of <i>Ford</i> ,	1 C.	In the Abbey of <i>Stoveborn</i> ,	1 P.
In the Abbey of <i>Buckfast</i> ,	1 C.	In the Abbey of <i>Southwick</i> ,	1 C. 1 P.
In the Abbey of <i>Shervburn</i> ,	1 C. 1 P.	In the Abbey of <i>Susester</i> ,	2 C. 1 P.
In the Abbey of <i>Abbatsbury</i> ,	1 C. 1 P.	In the Abbey of <i>Stonley</i> ,	1 C.
In the Abbey of <i>Bewaly</i> ,	1 C. 1 P.	In the Abbey of <i>Bristokton</i> ,	1 P.
In the Abbey of <i>Shafisbury</i> ,	1 P.	In the Abbey of <i>Hartey</i> ,	1 C.
[ 232 ] In the Abbey of <i>Winton</i> ,	1 C.	In the Abbey of <i>Reading</i> ,	1 C. 1 P.
In the Abbey of <i>Wurwel</i> ,	1 P.	In	

the Abbey of <i>Meffenden</i> , 1 C.	In the Abbey of <i>Tutsharsh</i> , 1 C. 1 P.
the Abbey of <i>Gloucester</i> , 2 C. 1 P.	In the Abbey of <i>Pipwel</i> , 1 C. 1 P.
the Abbey of <i>Langton</i> , 1 P.	In the Abbey of <i>Leicest.</i> 1 C.
the Abbey of <i>Pershore</i> , 1 C. 1 P.	In the Abbey of <i>Newsted</i> , 1 C.
the Abbey of <i>Winchcomb</i> , 1 C. 1 P.	In the Abbey of <i>Pomfret</i> , 1 C. 1 P.
the Abbey of <i>Osney</i> , 1 C. 1 P.	In the Abbey of <i>Worstore</i> , 1 C.
the Abbey of <i>Tame</i> , 1 C.	In the Abbey of <i>Blish</i> , 1 C.
the Abbey of <i>Dorchester</i> , 1 C. 1 P.	In the Abbey of <i>Walsham</i> , 2 C. 1 P.
the Abbey of <i>Abingdon</i> , 2 C. 1 P.	In the Abbey of <i>Barking</i> , 1 C.
the Abbey of <i>Evesham</i> , 1 C. 1 P.	In the Abbey of <i>Tower-hill</i> , 1 C.
the Abbey of <i>Godstow</i> , 1 P.	In the Abbey of <i>Bernoudsey</i> , 1 C.
the Abbey of <i>Notley</i> , 1 C.	In the Abbey of <i>Christchurch-</i> <i>land</i> , 1 C. 1 P.
the Abbey of <i>Southampton</i> , 1 C. 1 P.	In the Abbey of <i>Feverham</i> , 1 C.
the Abbey of <i>Lilfil</i> , 1 C.	In the Abbey of <i>Chirsey</i> , 1 C.
the Abbey of <i>Shrewsbury</i> , 1 C. 1 P.	In the Abbey of <i>St. Mary in</i> <i>York</i> , 1 C.
the Abbey of <i>Chester</i> , 1 C. 1 P.	In the Abbey of <i>Durham</i> , 1 C. 1 P.
the Abbey of <i>Vale-Royal</i> , 1 C.	In the Abbey of <i>Tinnouth</i> , 1 P.
the Abbey of <i>Burton</i> , 1 C. 1 P.	In the Abbey of <i>Wisby</i> , 1 C. 1 P.
the Abbey of <i>Thorney</i> , 1 C. 1 P.	In the Abbey of <i>Mwes</i> , 1 C.
the Abbey of <i>Ramsay</i> , 1 C. 1 P.	In the Abbey of <i>Alney</i> , 1 C. 1 P.
the Abbey of <i>Peterborough</i> , 1 C. 1 P.	In the Abbey of <i>Warden</i> , 1 C.
the Abbey of <i>Crowland</i> , 1 C. 1 P.	In the Abbey of <i>Croston</i> , 1 C.
the Abbey of <i>St. Benedict</i> <i>Norfolk</i> , 1 C. 1 P.	In the Abbey of <i>Selby</i> , 1 C.
the Abbey of <i>Bay</i> , 1 C. 1 P.	In the Abbey of <i>Sparhall</i> , 1 C.
	In the Abbey of <i>Dorsey</i> , 1 C.
	In the Abbey of <i>Spalding</i> , 1 C.



*Writ de Annua Pensione.*

In the Abbey of <i>St. Augustine</i> in <i>Canterbury</i> , 1 C. 1 P.	In the Priory of <i>Worcester</i> , 1 C.
In the Abbey of <i>Iborsiton</i> , 1 C. 1 P.	In the Priory of <i>Sealsworth</i> , 1 C. 1 P.
In the Abbey of <i>Twierdars</i> , 1 C.	In the Priory of <i>Dunstable</i> , 1 C. 1 P.
In the Abbey of <i>Novyton</i> , 1 P.	In the Priory of <i>Royston</i> , 1 C.
In the Abbey of <i>Cotesball</i> , 1 C.	In the Abbey of <i>Kennelworth</i> , 1 C. 1 P.
In the Abbey of <i>Monmouth</i> , 1 C.	In the Priory of <i>Coventry</i> , 1 C.
In the Abbey of <i>Westminster</i> , 1 P.	In the Priory of <i>Tutbury</i> , 1 C.
In the Abbey of <i>St. Saviour's</i> in <i>Canterbury</i> , 1 C. 1 P.	In the Priory of <i>Ely</i> , 1 C.
In the Abbey of <i>Daventry</i> , 1 C.	In the Priory of <i>Bedwell</i> , 1 C.
In the Abbey of <i>Cristal</i> , 1 C.	In the Priory of <i>Northwich</i> , 1 C. 1 P.
In the Abbey of <i>Stratford</i> , 1 C.	In the Priory of <i>Lentou</i> , 1 P.
In the Abbey of <i>Milton</i> , 2 C.	In the Priory of <i>Sesward</i> , 1 C.
In the Abbey of <i>Serne</i> , 1 C. 1 P.	In the Priory of <i>Merton</i> , 1 C. 1 P.
In the Abbey of <i>Combs</i> , 1 C.	In the Priory of <i>Lewes</i> , 1 C.
In the Abbey of <i>Grenuby</i> , 1 P.	In the Priory of <i>Wenlock</i> , 1 C.
In the Abbey of <i>Morival</i> , 1 C. 1 P.	In the Priory of <i>Winchester</i> , 1 C. 1 P.
In the Priory of <i>Bath</i> , 1 C.	In the Priory of <i>Bardsey</i> , 1 C.
In the Priory of <i>Montagu</i> , 1 C.	In the Priory of <i>Standaest</i> , 1 C.
In the Priory of <i>Tarvostock</i> , 1 C.	In the Priory of <i>St. Andrew</i> in <i>Northampton</i> , 1 C. 1 P.
In the Priory of <i>St. Augustine</i> in <i>Bristol</i> , 2 C. 1 P.	In the Abbey of <i>Bodmyn</i> in <i>Cornwall</i> , 1 C.
In the Priory of <i>Almsbury</i> , 1 C.	In the Abbey of <i>St. James's</i> in <i>Northampton</i> , 1 C. 1 P.
In the Priory of <i>Stethorne</i> , 1 C.	
In the Priory of <i>Bradflow</i> , 1 P.	

*Writ de Idiota inquirendo & examinando.*

**A** *Note*, That the King by the Law, of Right, is for to defend his Subjects, their Goods and Chattels, Lands and Tenements; and therefore in the Law every loyal Subject is taken into the King's Protection; and if he be put out of the King's Protection for his Offence, then every Man may do to him as against the King's Enemy, and he hath no Remedy for the same by the King's Laws. And because that every Man is within the King's Protection, an Idiot, who cannot defend or govern himself, nor order his Lands, Tenements, Goods, nor Chattels; the King of Right ought for to have him in his Custody, and to rule him and his Lands and Tenements, Goods and Chattels; and that appeareth by the Statute of *Prærogativa Regis*, cap. 8.

**B** And therefore when the King is informed, that one who hath Lands or Tenements is an Idiot, and is a Natural from his Birth, the King may award his Writ to the Escheator of the County where such Idiot is, or unto the Sheriff, to enquire thereof; and the Writ which shall be directed to the Escheator shall be such:

Staundf. 34.  
18 E. 3.  
Sci. tac. 10.

*Rex Escheatori suo, &c. salutem. Quia accepimus quod I. de B. Fatuus & Idiota existit, ita quod regimini sui ipsius, terrarum, tenementorum, bonorum & catallorum suorum non sufficit, & quod ipse in fatuitate sua magnam partem terrar. & tenement. suorum alienavit, & etiam magnam partem bonorum & catallorum suorum dissipavit, in exhered. suam, & nostri præjudic. manifestum: Nos indemnitati ipsius I. in hac parte prospicere volentes, vobis mandamus, quod ad ipsum I. in propria persona vestra accedatis, & ipsum viis & modis quibus super statu suo melius poteritis informari circumspicite examinatis, & nihilominus per sacramentum proborum & legalium hominum de Ball. vestra, per quos rei veritas melius sciri poterit, diligenter inquiret, si idem I. Fatuus & Idiota sit, sicut præd. est, necne: Et si sit, tunc utrum a nativitate sua, an ab alio tempore; & si ab alio tempore, tunc a quo tempore, & qualiter, & quomodo; & si lucid. gaudeat intervallis; & si id. I. in eod. statu existens terras aut tenementa aliqua alienavit, necne; & si sic, tunc quos terras & quæ tenementa, & ubi, & cui vel quibus, & in cujus vel in quor. manib. ter. & tenementa sic alienat. existunt, & qualiter, & quomodo, & quæ terr. & quæ tenementa sic adhuc remanent, & de quo vel de quibus tam terr. & tenem. sic alien. quam terr. & tenementa*

[ 233 ]



*Writ de Idiota inquirendo & examinando.*

*menta sibi retenta, teneant, & per quod servie, & qualis, & quomodo, & quantum valeant per ann. in omnibus exitibus, & quis propinquior her. ejus sit, & cujus atatis. Et inquire. inde distincte & aperte fact. nobis in Cant. nostram sub sigillo vestro & sigillis eorum per quos, &c. mittas, & hoc breve. Teste, &c.*

And there are two other Manners of Writs of another Form in the Register, which are directed unto the Escheator, to go to such Idiot, and to examine him; and to enquire thereupon. And the Form of the Writ which is directed unto the Sheriff for to enquire of an Ideot is such:

*Rex Vie, &c. Præcip. tibi, quod per sacram, &c. diligent. inquiras utrum I. de B. frat. & heres T. de B. a. natus sit. sua tempore semper habens purus Idiota extiterit, per quod custodia terrar. & tenementorum suorum in C. ad nos debeat pertinere, an per Infortunium vel alio modo in hujusm. infirmitat. postea incidere, propter quod hujusmodi custod. ad nos pertinet. non debeat; & si per Infortunium vel alio modo, tunc per quod infortunium, & quali, & quo modo, & cujus atatis fuerit, & de quo terre & tenementa immediate teneat, & per quod servie, & quis modo ea teneat, & quant. valeant per ann. in omnibus exit., & quis medio tempore exit. eorum percepit, & inquire. inde distincte & aperte, &c.*

And there is a Form of Writ directed to the Sheriff, for to enquire of Idiots, which is much of the like Form as the first Writ above is; and it is directed to the Escheator to make the Enquiry.

And although a Man be found Idiot by Inquisition taken before the Escheator, or before the Sheriff, and by their Examination, &c. and that be returned into the Chancery; yet he who is so found Idiot may in Person, or by his Friends, come into the Chancery before the Chancellor and the King's Council, and shew the Matter, and pray that he may be examined before the Chancellor and the King's Council, whether he be Idiot or not; or he may sue forth a Writ out of the Chancery to certain Persons, to bring him who is so found Idiot before the King and his Council to *Westminster*, to be there examined; and if he be brought thither and examined, and found to be no Idiot, then the Inquisition found before the Escheator, or Sheriff, and also the Examination which the Sheriff hath made, and returned thereupon, shall be of no Effect, but the same Office shall be taken as void, without any other Traverse, as it seemeth. And the Writ which shall be directed to the Party to bring the Idiot before the King's Council shall be such:

Rex I. de T. sal'. Quia datum est nobis intelligi, quod R. frater tuus, filius & her. B. defuncti patris tui, Idiota est, & non sane mentis existit ita quod regimini sui ipsius aut terrarum suarum providere non sufficit; Nos, volentes de statu præd. R. fratris tui certiorari, tibi præcipimus, firmiter injungentes, quod statim visis present', præd. R. in custodia tua existent', ut d. e', coram nobis & Concilio nostro apud Westm. sine dilatione duci fac', ita quod sit ibidem hac instante die Jovis, ibid. coram eod. Concilio nostro examinand', & ad faciend' de eo quod per advisamentum Concilii nostri super hoc duxerimus ordinand'. Et hoc sub pena centum librarum nullatenus omittas. Teste, &c.

- B And he who shall be said to be a Sot and Idiot from his Birth, is such a Person who cannot accompt or number Twenty-pence, nor can tell who was his Father, or Mother, nor how old he is, &c. so as it may appear that he hath no understanding of Reason what shall be for his Profit, or what for his Loss: But if he have such Understanding that he know, and understand his Letters, and do read by Teaching or Information of another Man, then it seemeth he is not a Sot, nor a natural Idiot.

## Writ de Apostata capiend'.

- C THE Writ de Apostata capiend' lieth where a Man doth enter into Religion, and is professed, and afterwards he leaveth his House, and is Vagrant, and running about the Country, against the Rules of his Order of Religion; then the Abbot or Prior where he is professed may certify the same under his Seal into the Chancery, and pray to have a Writ to the Sheriff to apprehend him, and deliver him to the Abbot or his Attorney; and the Form is such:

Rex Vic', &c. salut'. Quia frat. I. Canonicus de A. spreto Habitu Ordinis illius, in Habitu seculari de patria in patriam in Balliva tua vagatur & discurrit, in anima sue periculum & ordinis sui scandalum manifestum, sicut dilect. nobis Abbas de A. vobis significavit per Literas suas patentes: Tibi præcipimus, quod præf. I. ubicunque in Ball. tua inveniri contigerit, sine dilatione arrestes, & præd. Abbati, vel ejus in hac parte Attorn', liberes, secund. Regulam Ordinis præd. castigand'. Teste, &c.

[ 234 ]

- A And upon that he may have an Alias and Pluries against the Sheriff, and an Attachment, if he will not execute the Writ.

- B There is another Writ of another Form thus:



*Writ de Leproso amovendo.*

*Rex eidem, &c. salutem. Quia frat. T. Monachus de S. Ordinis Clunassen, in Ordine illo professus, spreto Habitu Ordinis illius, &c. sicut dilectus nobis in Christo Abbas de B. per Literas suas patens, nobis significavit; Tibi præc. quod præf. &c. ut supra.*

And it seemeth, that although he who departeth from his House or Religion doth not change his Habit, yet if he be Vagrant, &c. and the Abbot of the House do certify the same, he shall have such Writ, notwithstanding these Words in the Writ (*spreto Habitu, &c.*) for those are but Words of Form, and not of Substance; for the Habit of Religion is the Obedience and Profession which he hath made to such Rule, &c. and if he relinquish that Obedience, and the Rules of that Religion, and departeth, it seemeth that he doth relinquish the Habit: And if that Departure be certified by any Abbot where such Person was remaining, and under his Obedience when he departed and relinquished his Religion, the same is sufficient to have such Writ upon such Certificate; or if it be certified by him who is the Visitor of the religious House, &c. But there are not any Writs in the Register framed upon such Certificate made by any Visitor or Abbot of any other House, upon which the Party who left his Habit was not remaining at the Time, and therefore *Quare* of the same.

*Writ de Leproso amovendo.*

**T**HE Writ *de Leproso amovendo* lieth where a Man is a Lazar or a Leper, and is dwelling in any Town, and he will come into the Church, or amongst his Neighbours where they are assembled, to talk with them, to their Annoyance and Disturbance; then he or they may sue forth that Writ for to remove him from their Company, and the Writ is such:

*Rex Vic. vel Majori & Vic. Lond. sal. Quia accepimus quod I. de N. leprof. existit, & inter homines Civitatis prædictæ. communis. conversatur, & cum eis tam in locis publicis quam privatis communicat; & se ad locum solitarium, prout moris est, & ad ipsum pertinet, transferri recusat, ad grave damnum hominum prædictæ, & propter contagionem morbi prædictæ. periculum manifestum; Nos hujusmodi periculo, prout ad nos pertinet, præcaver. & super præmiss. quod iustum est & iustit. fieri volentes, vobis præcipim. quod assumptis vobiscum aliquibus discretis & legalibus hominib. de Civitat. præd. non suspectis, qui de persona præf. I. de N. & hujusm. morbo notitiam habent meliorem, ad ipsum I. accedatis, & ipsum in præsentia præd.*

prædict. hominum faciatis diligent. videri & examinari; & si ipsum Leprosum esse inveneritis, ut prædictum est, tunc ipsura honestiori mod. quo poteritis a communicatione præd. hominum amoveri, & se ad locum salutarium ad habitand. ibid. prout moris est, transferri faciatis indilat. ne per hujusmodi commun. conversationem suam hominibus præd. dampn. vel periculum eveniat quoquo modo. Teste, &c.

F And upon that he may have an *Alias* and a *Pluries*, and Attachment against the Mayor, or against him to whom the Writ is directed, if he will not execute the Writ.

G But it seemeth, if a Man be a Leper or a Lazar, and will keep himself within his House, and will not converse with his Neighbours, that then he shall not be moved out of his House. But there are divers manners of Lepers; but it seemeth that the Writ is for those Lepers who appear to the Sight of all Men that they are Lepers by their Voice, and their Sores, and the Putrefaction of their Flesh, and by the Smell of them: But for those who are infected with that Disease in their Bodies, and it doth not appear outwardly upon their Bodies; *Quare*, Whether such Writ lieth for to remove them.

Writ De deonerando pro rata portione.

H THE Writ De deonerando pro rata portione lieth where a Man holdeth ten Oxgangs of Lands by Fealty, and 20 s. Rent of the King, and the Tenant doth alien one part, or one Oxgang, to one Man, and another Oxgang to another Man in Fee, and so to others the rest of the Oxgangs, and the Sheriff or the King's Officer will distrain one of the said Tenants for the whole Rent; then he who is distrained may sue forth that Writ, which is thus:

Rex Vic, &c. salutem. Monstraverunt nobis I. A. & W. quod cum quatuor bovas. terra cum pertin. in E. que fuer. B. & que de nobis tenentur per servitium tresdecim solid. per annum, reddendorum per manus Vic. nostri Com. præd. qui pro tempore fuerit, ad manus præd. I. A. & W. necnon ad manus T. ex perquisito suo devenerunt; & licet iidem I. A. & W. duas bovas. terre inde tantummodo teneant, tu tamen prædict. tresdecim solid. annuos a præf. I. A. & W. omisso præf. T. qui dictas duas bovas. terre residuas tenet, exigis, & ipsos I. A. & W. pro præd. tresdecim solidis annuis nobis reddend. per varias Districiones compellis, in ipsor. I. A. & W. dispendium non modicum & gravamen, super quo nobis supplicaver. eis congruum remedium adhiberi. Et quia eisdem

[ 235 ]

I.



## Writ De deonerando pro rata portione.

I. A. & W. injuriari nolumus in hac parte, tibi præcipimus, quod si inquisit. super præmiss. faciend. vel alio modo legitimo, tibi constare poteris præd. quatuor bovatas terr. per servitium tresdecim solidorum de nobis tantummodo teneri, & ipsos I. A. & W. duas bovatas terræ inde, & præd. T. alias duas bovatas terræ residuas tenere, ut est dictum, tunc acceptis a præf. I. A. & W. iis quæ ad nos pertinent pro rata portione tenuræ suæ quam inde tenent, ipsos de residuo servit. præd. quietos esse permittas. Proviso semper, quod dict. residuum servitii illius a præf. T. ad opus nostrum levet. ut est justum. Teste, &c.

Br. Appar-  
count 21.

And it appeareth by that Writ, that notwithstanding the A Statute of *Quia emptores terrarum*, that if the King's Tenant do alien part of the Lands held of the King, yet the King or his Minister may distrain one of the Tenants for the whole Rent, &c. although that the Statute saith, *quod festus teneat pro particula illa*, &c. But it seemeth the King is not bound by the Statute, but a common Person is. For if a Man hold 20 Acres of Land by Fealty, and 20 s. Rent of another Man, and he alieneth one Acre to one in Fee, and another Acre to another in Fee, the Lord shall not distrain the Alienee but for the Rate and Value of the Land which he hath purchased, and shall not distrain one Alienee for the whole Rent, &c. But if the King's Tenant doth alien part of the Lands which he holdeth of the King without Licence, then the King may chuse whether he will take the Alienee for his Tenant, or not; and then it is a Question whether the Alienee shall have such Writ: But if the Alienee doth pay a Fine to the King for the Alienation, it is reason that he have such Writ as before, if he be distrained for the whole Rent which issueth out of all the Lands, whereof he hath purchased but Part, &c.

29 H. 8. f.  
28. Perkins  
129.

And the like Writ as before is awarded to the Queen's Officers, where they distrain one Tenant for the whole Rent, where he holdeth but part of the Lands, and several other Tenants hold the Residue thereof.

Br. Appar-  
count 21.

And if a Man who holdeth 130 Acres of Land, ought by his Tenure thereof to repair such a Bridge, if he alien in Fee 20 Acres to one, and 20 Acres to another, and one of them only be distrained to make the Reparations upon a Presentment found; he shall have a special Writ to the King's Officers, that they do not distrain him, but according to the Rate of his Proportion of the Land which he holdeth. And the Writ is such:

29 H. 8.  
f. 28.

Rex dilectis & fidelibus suis I. de T. & sociis suis Just. magistris ad inquirend. de defectibus magni Pontis Cant. & ad defectu

defectus illos reparari & emendari faciend. assignatis, salutem. Ex parte R. nobis gravit. conquerent. est monstratum, quod cum presentat. sit coram vobis, quod idem R. tenet quatuor hid. terr. cum pertin. in D. in Com. præd. quæ de reparatione Pontis præd. ab antiquo onerari consuever. or thus, quæ ad reparation. Pontis præd. teneri assententur; & licet ipse nisi tantum xx. acres terræ de dictis quatuor hid. terræ, & quidam alii totum resid. eorundem quatuor hidar. teneant; vos tamen, occasione. Presentac. præd. septem libras, ad quas dictæ quatuor hidæ terræ pro reparatione Pontis prædicti. apporionat. sunt, de eodem R. ac si ipse quatuor hidar. terr. prædicti. integre tenuerit, cum non teneat, omnibus aliis Tenentibus prædicti. levar. nitimini, & ipsum ea occasione gravit. distringi & multipliciter inquietari faciatis, in ipsius R. grave dampnum, & status sui depression. manifestam, super quo nobis supplicavit de remedio provider. Et quia ipsum R. in hac parte indebit. nolumus onerari, vobis mandamus, quod si per inquisition. inde in presenc. ipsius R. si interesse voluerit, capiendam, vel alio modo legitimo, vobis constare poterit ipsum R. nisi xx. acr. dictar. quatuor hidarum terræ tantummodo tenere, & resid. earund. quatuor hidarum terræ in manibus aliorum Tenentium existet, ut est dictum, tunc dictas septem libras, ad quos dict. quatuor hidæ terræ pro reparatione Pontis prædicti. sic assesse sunt, tam de præf. R. quam de aliis tenentibus prædicti. viz. de quolibet eorund. juxta ratam tenuræ suæ earund. quatuor hidar. terræ, nemini in hac parte parcend., nec aliquem Tenent. earund. ultra ratam tenuræ suæ indebite onerand. levar. fac', Present. præd. non obstante. Et si quid ab eodem R. ultra portionem tenuræ suæ minus juste levatum fuerit, id ei sine dilatione restitui fac'. Teste, &c.

**C** There is another Form of Writ for the King's Tenant, where he is distrained for all the Rent, where he holdeth but part of the Lands out of which the Rent ought to be paid; which see in the Register.

But look the Statute of 34 Edw. 3. cap. 15. That if the King's Tenant in Capite alieneth his Lands in Fee without Licence, the Alienation shall not bind the King, but that he shall have his Prerogative of those Lands and Tenements; and therefore *Quere* the meaning of that Statute, and what is intended thereby.



## Writ of Superſedeas.

**T**HE Writ of *Superſedeas* lieth in divers Caſes: As if a Man be ſued, and a *Capias* or *Exigent* be awarded againſt him, he may by his Friend ſue forth a *Superſedeas* out of the Place where the *Capias* or *Exigent* was awarded againſt him; or out of the Term he may ſue forth a *Superſedeas* out of the Chancery directed to the Sheriff, that he take Sureties of him, &c. to appear at the Day, &c. and that he let him at Liberty; or he may find Sureties in the Chancery to appear at the Day of the Return of the *Capias* or *Exigent*; and upon this he ſhall have a *Superſedeas* to the Sheriff, that he let him go, if he have arreſted him thereupon; and if he have not arreſted him, that then he do not arreſt him, but ſuffer him to go in Peace. And the Form of the Writ is ſuch:

*Rex Vic', &c. Cum A. impletet coram nobis per Breve noſtrum B. & quosdam alios in diſſo Brevi noſtro contentos, de quadam tranſgreſſ. eidem A. per preſat. B. & alios prædiſt. illata, ut dicitur, ac idem B. pro eo quod non venit coram nobis ad reſpondend. præſat. A. de tranſgreſſione prædiſt. in Exigend. in Com. tuo poſitus ſit ad utlagand', ipſo de Exigend. prædiſt. penitus ignorante, unde nobis ſupplicavit, ut, cum ipſe paratus ſit ſuper præmiſſ. in omnibus ſtare juri, velimus ei in hac parte ſubvenire: Nos, Supplicationi prædiſt. quatenus juſtum fueris annuentes, tibi præcipimus, quod ſi prædiſt. B. in Com. tuo perſonaliter accedens ſe reddiderit Priſone noſtræ, ut eſt iuris, tunc Exigend. præd. Superſedeas; & poſtmod. ſi idem B. invenieris tibi ſufficientes Manuſcaptores, qui cum manuſcapient habere coram nobis ad talem diem quo Breve noſtrum de Exigend. prædiſt. coram nobis eſt retornabile, ad reſpondendum præſat. A. de tranſgr. prædiſt. & ad faciendum ulterius & recipiendum quod Curia noſtra conſiderabit in præmiſſ. tunc præſat. B. a Priſona prædiſt. (ſi ea occaſione & non alia, detineatur in eadem) interim deliberari fac. per Manuſcaptionem præd. & habeas ibi nomina Manuſcap. præd. & hoc Breve.*

And when he findeth Sureties in the Chancery for to appear at the Day of the Return of the *Exigent*, then he ſhall have a *Superſedeas* of another Form, which ſhall be ſuch:

*Rex Vic', &c. Supplicavit nobis C. quod cum B. impletet coram nobis per Breve noſtrum præſat. C. & quosdam alios de quadam tranſgr. eidem B. per præſat. C. & alios prædiſt. illata,*

ut dicit. & licet idem C. paratus sit pref. B. de transgr. præd. si qua fuerit, respondere, & in omnibus stare jur. secundum Legem & consuetudinem regni nostri Angliæ, ipse tamen, pro eo quod tu coram nobis retornasti, quod idem C. non fuit inventus in Ball. tua, iuxta Processum inde coram nobis habitum, per te in Exigend. positus existit in Com. tuo ad utlagand; velimus ejus indemnitati in hac parte providere. Nos, pro eo quod W. R. & I. manuceper. coram nobis in Cancell. nostra habere pref. C. coram nobis ad diem quo Breve nostrum de Exigend. vers. ipsum C. est retornabile, ad respond. pref. B. de transgr. præd. vol. eid. C. &c. si in Exigend. præd. occasione præmissi. & non alia, positus existat, ut est dictum, tunc in Exigend. ill. ulterius faciend. interim Superfedeatis per Manucaption. suprad; & habeas ibi tunc hoc Breve. Teste, &c.

**B** And if the Clerk, who hath the Keeping of the Rolls for the Taking of Statute-Merchants, forge a Bond in the Name of another, and putteth the Mayor's Seal, and a Seal in the Name of the Party, to the same, and makes an Enrolment thereof in the Rolls, and afterwards doth certify the same into the Chancery, for which a *Capias* is awarded against the Party; then he against whom such Process is sued forth may come into the Chancery, and have a Writ directed unto the Sheriff, relating therein the whole Matter, and reciting that the Party hath upon the Matter sued forth an *Audita querela*, directed to the Justices of the King's Bench, commanding them to call the Parties before them, &c. and commanding the Sheriff, that if the Party who is sued will find sufficient Sureties to the Sheriff, to appear at the Day in the King's Bench, and to pay the Debt, if he be condemned, that then he do surcease to arrest or to trouble him, &c.

**C** And if a Man do cite another by the Pope's Bull personally to appear at the Court of Rome, &c. against the Statutes; now if he who made the Citation be committed to Prison, he may sue in the Chancery to have a special Writ directed to the Sheriff, rehearsing the Matter, commanding him, that if the Parties will find sufficient Sureties, Body for Body, to appear before the King and his Council at a certain Day, and perform what the Court shall adjudge or be decreed for the King or Council, that then he let him at large: And by that Writ the Sheriff ought to set him at Liberty; and if he will not, he shall have an *Alias* and a *Pluries*, and Attachment against him.

**D** If a Man depart from his Master without sufficient Cause, and another knowing the same, doth retain him, for which the Master bringeth a Writ against him for the retaining of  
his



his Servant, upon which a *Capias* is awarded, he may in the Chancery find Sureties to appear *in Bonto* at the Return of the Writ, and have a *Superſedeas* thereupon to the Sheriff, not to arreſt him; and if he have arreſted him, to ſet him at Liberty.

[ 237 ] And the like Writ and *Superſedeas* ſhall be awarded out of the Chancery, if the Action be brought againſt the Servant for his Departure, and a *Capias* awarded, &c. he may find Sureties in the Chancery for to appear at the Day, and have a *Superſedeas* to the Sheriff, that he do ſurceale for to arreſt him, &c.

And if a Man be ſued in the Common Pleas in Debt, or in Treſpaſs for Damages, and a *Capias* or *Exigent* is awarded, if the Debtor do find Sureties in the Chancery to appear before the Juſtices at the Day of the Return of the Writ, and to ſtand right according to Law, he ſhall have a *Superſedeas* to the Sheriff not to arreſt him; and if he hath arreſted him, to ſet him at large. But it ſeemeth, that upon a *Capias* or *Exigent. ad ſatisfaciendum*, the Sheriff ought not to let the Party at Liberty after he hath taken him, becauſe he is in execution for the Party, &c. And ſo upon an *Exigent* awarded in a Writ of Account, he may ſue forth ſuch *Superſedeas*.

And ſo if a Man doth become Surety for another, to pay a Fine in the Common Pleas or King's Bench, and the Fine is not paid, &c. for which cauſe Proceſs of Utlagary is awarded againſt the Surety, &c. at the *Exigent* awarded againſt the Surety, he may ſue forth a *Superſedeas*, and find Sureties in the Chancery to appear at the Day, and to ſtand right to the Law; and thereupon he ſhall have a *Superſedeas* to the Sheriff, that he do not arreſt his Surety, and if he hath arreſted him, that he let him at Liberty.

And it ſeemeth reaſonable that ſuch Writ ſhall be granted, becauſe the Fine is a Duty to the King, and the King may reſpite the ſame if he pleaſe; but if an *Exigent* be awarded upon a Judgment at the Suit of the Party, ſuch *Superſedeas* is not allowable.

If a Man be indicted before Juſtices of the Peace, and put in *Exigent*, he may find Sureties in the Chancery to appear at the Day of the Return of the Proceſs awarded by the Juſtices of Peace, and thereupon have a *Superſedeas* to the Sheriff not to arreſt him, and if he have arreſted him, to ſet him at Liberty; and that Surety ſhall be Body for Body, &c.

If a Man be put in the *Exigent* at the Suit of another in ſeveral personal Actions, he may find Sureties in Chancery,

cery Body for Body, to appear to every Action at the Return of the Writs; and thereupon he ſhall have a *Superſedeas* to the Sheriff, reciting that he hath found Sureties in Chancery to appear at the Days, &c. commanding him not to arreſt him, &c. And the Forms of the Writs of the *Superſedeas* are in divers Manners.

**E** And if a Man be indicted before Juſtices of Peace, and a *Capias* or *Exigent* be awarded thereupon, and afterwards the Indictment is removed by *Certiorari*; the Party out of the Chancery may ſue forth a *Superſedeas* to the Sheriff not to arreſt him, &c. becauſe the Indictment is removed by *Certiorari*, &c. or the Juſtices of Peace *ex Officio* ought for to award a *Superſedeas* to the Sheriff after the *Certiorari* is come to them, to remove the Indictment, as it ſeemeth: *Tamen quare*. And in ſuch Caſe he may have a *Superſedeas* out of the Chancery directed to the Sheriff, commanding him, that if the Party will yield himſelf to the Sheriff, and find Sureties to appear at the Day of the Return of the Writ, that then the Sheriff do not arreſt him, &c.

If a Man ſueth a Knight of *St. Johns of Jeruſalem*, and other by their proper Names, and not by the Name of Knight of *St. Johns*, &c. And he be ſued to the *Exigent*, the *Superſedeas* ſhall be purchaſed in the Name of the Prior, and of the ſaid Knight his *Confrater*, in the Chancery, and there they may find Sureties to appear at the Day; and thereupon they ſhall have a *Superſedeas* to the Sheriff, that he do not arreſt him, &c.

**F** If a Man be condemned in Debt or Treſpaſs by falſe Verdict, and a *Capias* be awarded to arreſt the Party, now if the Party ſueth an Attaint, he may come into the Chancery, and there find Sureties that he ſhall appear at the Day, &c. and will answer the Party, and ſatisfy the King and the Party what belongeth to them, if the Attaint doth paſs againſt him; and upon the ſame he may have a *Superſedeas* to the Sheriff, that he do not arreſt him, and the Form of the Writ is ſuch:

**G** *Rex Vic*, &c. *Monſtravit nobis A. quod cum B. nuper implacitoſſet in Cur. noſtra coram Juſtic. noſtris nuper itinerant. in Com. prædict. præfat. A. & quosdam alios de quadam tranſgr. eidem B. per præf. A. &c. illata, ut dicebat de qua quidem tranſgr. idem A. per Inquiſition. (in quam ſe poſuit coram præfat. Juſticiariis) convictus fuit, per quod prædict. A. carcerali cuſtod. extitit mancipatus, in eadem moraturus quouſque nobis de eo quod ad nos pertinet in hac parte, & præf. B. de dampnis ſibi adjudicatis, fuerit ſatisfact. ac jam præf. A. arrainavit*  
per



## Writ of Superseas.

per Breve nostrum retornabile cor. nobis, &c. ubicunque, &c. quendam Juratam xxliij. Militum ad conveniend. Juratores, inquisitionis predict. & nobis supplicaverit, ut, pendente Jurata predict. sic coram nobis, ipsum A. a Prisona qua sic detinetur levare faciamus, ita quod eam prosequi possit secund. Legem, &c. Nos, volentes pref. A. in premiss. &c. subdeuere, & pro eo quod id. A. inveniit coram nobis in Cancellar. nostra certos Manuceptores, viz. A. & B. de Com. tuo, qui manuceperunt, viz. quilibet eorum de satisfaciend. tam nobis de eo quod ad nos pertinet, quam pref. B. de dampnis, ut predictur, adjudicatis, si Jurata predict. contra eum transferit, seu idem A. cum non fuerit prosectutus: Tibi precipimus, quod ipsum A. a prisona predict. si ea occasione, & non alia, detinetur in eadem, sine dilatione deliberari fac. per Manuceptionem suprad. ita quod Juratam predict. prosequi possit, prout decet; & habeas coram pref. Justic. ad diem predict. hoc Breve. Teste, &c.

[ 238 ]

If a Man be condemned in Trespas, and the Plaintiff *A* prayeth an *Elegit*, and a *Capias* is awarded against the Party for the King's Fine, the King may grant a *Superseas* directed to the Sheriff, that he do not arrest the Defendant upon the *Capias*, because that the Plaintiff hath made his Election to have his Execution by *Elegit*.

And if in Trespas the Defendant do agree with the Plaintiff pendant the Suit, he shall have a *Superseas* to the Sheriff, that he do not execute the Process sued forth against him; but then it seemeth the same Agreement ought for to appear upon Record in the Court, &c.

If a Man be condemned in Trespas, and the Defendant *C* doth bring an Attaint, and the Plaintiff sue an Execution by *Elegit*, and a *Capias* is awarded against the Defendant for the King's Fine; the Defendant in Chancery may sue a *Superseas* of the *Capias*, reciting in the Writ how that the Defendant hath brought an Attaint, and that the Plaintiff hath sued forth an *Elegit*, commanding the Sheriff to whom the *Superseas* is directed, that if the Defendant do yield himself to Prison, and there find Sureties to the Sheriff to satisfy the King for what doth belong to him. &c. that then he do deliver him out of Prison upon that Security, if he conceive the same to be sufficient Security.

If a Man sueth a Writ *de uxore abducta cum bonis viri*, *D* and a *Capias* or *Exigent* be awarded thereupon, the Defendant may find Sureties in the Chancery, Body for Body, to appear at the Day; and upon the same he shall have a *Superseas* to the Sheriff, to set him at Liberty, if he have arrested

arrested him. And so upon an Appeal of Rape, if the Defendant in Chancery finds Sureties, Body for Body, to appear at the Return of the Writ, and to stand to the Law, he shall have a *Superfedeas* to the Sheriff to set him at Liberty, &c.

E And so if a Writ be granted out of the Chancery to attach one to find Sureties of Peace for a Menace to another, he may put in Security in Chancery by Surety to keep the Peace, and thereupon have a *Superfedeas* to the Sheriff, reciting the Matter, commanding him to set him at Liberty, if he have arrested him.

If a Man sueth a *Supplicavit* out of the Chancery, to arrest a Man to find Sureties of Peace, the Defendant who is arrested, may have a *Superfedeas* in Chancery to the Sheriff, commanding him not to arrest him; and the Writ shall be such :

*Rex, &c. salutem. Licet nuper ad supplic. M. nobis suggerentis I. eidem M. de vita sua ac mutilation. membrorum suorum graviter compinatum fuisse, tibi per breve nostrum præperimus, quod ipsum I. coram te personaliter venire faceres, & ipsum ad sufficient. Manuceptores inveniend. qui ipsum I. sub certa pana, sibi per te rationabiliter imponend, pro qua respondere volueris, manucap, quod ipse damnum vel malum aliquod eidem M. non inferret, seu inferri procuraret, compelleres, & quod si hoc coram te facere recusaret, tunc ipsum caperes, & in prisona nostra de N. salvo custodiri faceres, donec Securitatem invenerit in forma præd: quia tamen R. & S. &c. coram nobis in Cancell. nostra personaliter comparentes manuceper. pro prædict. I. quod ipse damnum vel malum aliquod eidem M. de corpore suo non inferret, nec inferri procurabit, videlicet, quilibet eorum sub pana xx l. quas concesser. de terris & catallis suis ad opus nostrum levand' si idem I. damnum aliquod eidem M. de corpore suo intulerit, aut inferri procuraverit: Tibi præcip, quod execution. Brevis nostri prædict. tibi in hac parte directi Superf. per Manuception. prædict, &c. Teste, &c.*

And if the Justices of Peace do award a Precept of a Warrant against a Man to find Sureties for the Peace, he against whom the Warrant is, may find Sureties in the Chancery for to keep the Peace, &c. and upon the same have a *Superfedeas* to the Justices of the Peace, that they do surcease, &c. to arrest him; &c. and thereupon the Justices ought to surcease to make any Warrant against him afterwards; and if they have made any, that they ought to award a *Superfedeas* to the Sheriff, commanding him to surcease: And the Writ directed to the Justices of the Peace is such :



*Writ of Superſedeas.*

*Rez dilecti. & fidel. ſuis, Juſtic. ſuis ad Pacem noſtram in Com. Berk. conſervand. assign', ſalut', &c. Supplicavit nobis W. quod cum ipſe metuat ipſum ad proſecutionem T. per vos capi & arreſtari, ac graviter impropſonari, quousque ſecuritatem inveniret, quod idem W. dampnum vel malum aliquod eid. T. de corpore ſuo non faciat, nec fieri procurabit, velimus Captioni & Arreſtationi prædicti. per ſufficient. Manuceptores Superſederi jubere: Nos, pro eo quod R. S. P. & F. de Com. W. in Cancell. noſtra perſonaliter conſtituti manuceperunt pro ipſo W. quod ipſe dampnum vel malum aliquod eid. T. de corpore ſuo non faciat, nec fieri procurabit, viz. quilibet eor. ſub pena centum librarum, quas ceſſerant de terris & catallis ſuis ad opus noſtrum levare, in caſu quod dampnum vel malum aliquod eidem T. de corpore ſuo per præſat. W. vel procuration. ſuam eveniat, ſupplicationi prædicti. annuentes: Vobis mandamus, quod Captioni & Arreſtationi corporis prædicti. W. ea occaſi. no faciend. ſuperſed. omnino per Manucap. ſupradicti', &c. Teſte. &c.*

[ 239 ] And if the Wife be in Fear or Doubt of her Husband, that he will beat her or kill her, &c. ſhe may ſue a *Supplicavit* in Chancery againſt her Husband, to find Sureties that he do not beat her, nor evil intreat her, and ſor to govern, rule, and chaſtiſe her reaſonably; and the Writ is ſuch:

*Rez Vic', &c. Supplicavit nobis R. ux. I. B. quod cum ipſa de vita ſua, &c. per præſ. I. B. graviter & manifeſte comminata exiſtat, velimus pro ſecuritate ipſius R. in hac parte provider'; nos, ſupplicationi prædicti. annuentes, tibi præcipimus, firmit. injungentes, quod ipſam I. B. coram te corporalit. venire fac', & ipſum ad ſuffic. Manucept. invenierend', &c. ut ſupra, quod ipſe præſat. R. bene & honeſte tractabit & gubernabit, & quod ipſe dampnum vel malum aliquod eidem R. de corpore ſuo, alit. quam ad virum ſuum ex cauſ. regimin. & coſtit. ation. ux. ſuae licite & rationabilit. pertinet, non faciet, nec fieri procurabit, quous modo compellat. Et ſi hoc coram te, &c.*

And if a Man in a Court-Baron in a Writ of Right, or in a other Court, as in *London*, in a Writ of Right vouch a Foreigner to Warranty, &c. the Tenant who voucheth may ſue forth a *Superſedeas* directed to the Court, commanding them that they do not proceed in the Plea, until the Warranty be determined, &c. *quod vide* in the Register, fol. 5. 11. & 13. And upon the ſame he may have an *Alias*, and a *Pluries* and an Attachment, againſt the Bailiffs or Mayor of *London* and Sheriff, if they will not forceaſe, &c.

And if a Man ſueth a Prohibition to the Spiritual Court B and to the Parſon, and notwithstanding the Spiritual Judge doth proceed to excommunicate the Party, and upon Certificate

Certificate thereof in the Chancery a Writ of *Excommunicato capiendo* is awarded; he who sued the Prohibition shall have a *Superseas* to the Sheriff, reciting the whole Matter, commanding him that he do not arrest the Party; and if he have arrested him, that he deliver him: *Quod vide* in the Register, fol. 67. And he may have a *Superseas* out of that Court out of which the Prohibition did issue, &c.

If the Collectors of the Subsidy or Tenths granted by the Clergy, are excommunged by the Ordinary for their Contumacy, &c. and that be certified, and thereupon a Writ directed to the Sheriff for to arrest them, if it be testified in the Chancery afterwards by the Sovereign of the Collectors, that they have satisfied and submitted themselves; then upon that a *Superseas* shall be directed to surcease to arrest them; and if he hath arrested them, that he deliver them.

And if the Bishop do certify an Excommunication into the Chancery, against one for a Contempt in a Suit depending before him, and thereupon a Writ of *Excommunicato capiendo* be awarded; if the Official do by his Letters after certify in Chancery, that the Defendant hath appealed to Rome, or elsewhere: Now upon that Certificate, he shall have a *Superseas* to the Sheriff, that he do not arrest him pendant the Appeal; and if he have arrested him, that then he do deliver him, &c.

And so if he who is excommunicate sheweth in Chancery the Pope's Letters, testifying that he hath appealed, &c. he shall have a *Superseas* to the Sheriff, commanding him for to surcease, &c. and if he hath taken him by Force of the Writ of *Excommunicato capiendo*, that then he do deliver him; *quod vide* Registr. fol. 68.

C If a Man take one as his Villain, and the other sueth a Writ *de homine replegiando*, and he claimeth him as his Villain; he who is taken may put in Sureties in Chancery, to yield himself and his Goods, if, &c. and thereupon he shall have a *Superseas* directed to him who took him, not to take him; and if he hath taken him, that then he do deliver him. Registr. 79, 80.

D If a Man do hold Plea in the County of a Trespass which is *Vi & armis*, &c. the Defendant may sue out of the Chancery a *Superseas* unto the Sheriff or to the Bailiffs of the Hundred where the Plea is holden, reciting that a Plea of Trespass *Vi & armis* shall not be holden in a less Court than before the King, or other Justices by his Commandment. Registr. fol. 111.



*Wri. of Superfedeas.*

And upon a Writ of Error brought of a Judgment given **E** in London or other Court, the Party shall have a *Superfedeas* directed to the Mayor and Sheriffs, or other Officer, to surcease to award Execution. *Regist. fol. 129.*

If a Man be distrained by a Process which issues out of **F** the Exchequer, as Executor to an Accomptant there, he may have a *Superfedeas* out of the Chancery directed to the Treasurer and Barons of the Exchequer, furnishing that he is not Executor nor Surety for the Accomptant, &c. commanding them that they do surcease, until they have enquired the Truth thereof.

And the like Writ is given where the Barons do award **G** Process of Distress against any one who hath not any of the Lands of him who was the Accomptant, &c. but of his Purchase before he was Accomptant. *quod vi. Regist. 144.*

And if the Sheriff doth hold Plea of 40 s. the Defendant **H** may sue forth a *Superfedeas* that he do not proceed, &c. or after Judgment he may sue a *Superfedeas* directed to the Sheriff, commanding him not to award Execution upon such Judgment; and upon that an *Alias*, a *Pluries* and an Attachment. *Regist. 145.*

If a Man for Debt of 10 l. sue in the County by divers **I** Pleas there, every Plea under the Sum of 40 s. where the Debt is one entire Debt, the Defendant may sue a *Superfedeas* to the Sheriff, commanding him not to hold Plea in those Pleas.

If a Man sue one in the County before the Sheriff for **J** Breach of Covenants, to his Damage of 10 l. or above the Sum of 40 s. then the Defendant may sue a *Superfedeas* to the Sheriff that he do surcease; *quod vi. Regist. 146.*

[ 240 ]

And if a Man do sue forth an *Audita querela*, to avoid a **K** Statute-Steaple or a Statute-Merchant, he shall have a *Superfedeas* to the Sheriff, not to do Execution hanging the Plea, &c. *Regist. 113.*

*Note*, That the Constable of *Dover*, who is Warden of the **L** Cinque-Ports, cannot hold Plea of a Thing which doth belong to be determined in the County, if it be not of a Thing concerning the keeping of the Castle of *Dover*; and if he do, the Party shall have a Writ directed unto him, to surcease; and upon the same an *Alias*, and a *Pluries*, and an Attachment; and the Writ shall be such:

*Rez dilecto & fido suo B. Constabulario Castri sui Dover,*  
*& Custodi Quinque Portuum suorum, vel ejus locum tenenti,*  
*salutem. Cum inter ceteros Articulos quos Dominus. Ed. quondam*  
*Rex Angl. avus noster, ad emendam populi regni sui commisit, or-*  
*natumque*

*Ainatum sit, quod Constabularius Castri Dover non implicet ad Portum Castri prædicti. aliquod Placit. forinsecum de Com', quod non tangit Custodiam ejusdem Castri; ac vos quodd. Placitum inter W. de C. & P. de quodam debito quod idem W. a præfat. P. exigit, & quod quidem Placit. Custodiam Castri prædicti. non tangit, coram vobis ad Portum Castri illius teneatis, & ipsum P. ea occasione per varias d'strictiones inquietatis minus juste, contra tenorem Articulorum prædicti, sicut ex parte ipsius P. vobis datur intelligi: Nos, Articulos prædicti inviolabiliter observari volentes, vobis mandamus, quod si ita est, tunc de Placito illo cor. vobis ulterius tenendo Superfedeatis omnino, ipsamque P. contra tenorem eorandem Articulorum non molestetis in aliquo seu gravetis; & D'strictionem, si quam, &c.*

**C** And if the Constable doth hold Plea of any Thing of which he ought not for to hold Plea, the Party shall have his Action upon the Statute, although he doth not sue forth any Writ before directed to the Constable.

*Writ de Procedendo ad Judicium.*

**D** NOTE, That by the Statute made *An 2 E. 3. cap. 8.* it is enacted, That Commandment be not eicher by the Great Seal, nor the Petty Seal to delay common Right; but if such Commandments come, &c. that the Justices shall not surcease to do Right in any Point.

And by the Statute made *An. 14 E. 3. cap. 14.* the Justices shall not surcease for the great Seal or lesser Seal.

And by that it appeareth, That the King's Justices shall proceed according to Law, notwithstanding the King's Commandments directed and delivered to them: And if the Party thinketh in his Conscience, that such Commandments shall be made, then he may sue forth a Writ upon that Statute, commanding them to proceed, notwithstanding such Commandments, and the Writ shall be such:

*Rex dilectis & fidelibus suis, W. Sec. & sociis suis Justic. ad Assis. in Com. Salop. assign', salutem. Cum in Parlamento nostro apud Northampton An. Regni nostri 2. convocato, per Nos, Prelatos, Comites, Barones, & alios Magnates, ac totam Communite. regni nostri in eodem Parlamento existentes, concord. fuerit & statutum, quod non mandetur per Magnam Sigill. nostrum nec per parvum Sigillam nostram, ad Communem Legem impediend. seu prorogand., & si talia mandata veniant, quod Justic. ea de causa ad Justic. fac. nullatenus supers. prout in Statut. præd. plenius continet: Vobis mandam', quod ad Justic. paribus in Assis. Novæ diss. quam T. arrainavit coram vobis*



his Servant, upon which a *Capias* is awarded, he may in the Chancery find Sureties to appear *in Banco* at the Return of the Writ, and have a *Superſedeas* thereupon to the Sheriff, not to arreſt him; and if he have arreſted him, to ſet him at Liberty.

[ 237 ] And the like Writ and *Superſedeas* ſhall be awarded out of the Chancery, if the Action be brought againſt the Servant for his Departure, and a *Capias* awarded, &c. he may find Sureties in the Chancery for to appear at the Day, and have a *Superſedeas* to the Sheriff, that he do ſurceaſe for to arreſt him, &c.

And if a Man be ſued in the Common Pleas in Debt, or in Treſpaſs for Damages, and a *Capias* or *Exigent* is awarded, if the Debtor do find Sureties in the Chancery to appear before the Juſtices at the Day of the Return of the Writ, and to ſtand right according to Law, he ſhall have a *Superſedeas* to the Sheriff not to arreſt him; and if he hath arreſted him, to ſet him at large. But it ſeemeth, that upon a *Capias* or *Exigent. ad ſatisfaciendum*, the Sheriff ought not to let the Party at Liberty after he hath taken him, becauſe he is in execution for the Party, &c. And ſo upon an *Exigent* awarded in a Writ of Account, he may ſue forth ſuch *Superſedeas*.

And ſo if a Man doth become Surety for another, to pay a Fine in the Common Pleas or King's Bench, and the Fine is not paid, &c. for which cauſe Proceſs of Utlagary is awarded againſt the Surety, &c. at the *Exigent* awarded againſt the Surety, he may ſite forth a *Superſedeas*, and find Sureties in the Chancery to appear at the Day, and to ſtand right to the Law; and thereupon he ſhall have a *Superſedeas* to the Sheriff, that he do not arreſt his Surety, and if he hath arreſted him, that he let him at Liberty.

And it ſeemeth reaſonable that ſuch Writ ſhall be granted, becauſe the Fine is a Duty to the King, and the King may reſpite the ſame if he pleaſe; but if an *Exigent* be awarded upon a Judgment at the Suit of the Party, ſuch *Superſedeas* is not allowable.

If a Man be indicted before Juſtices of the Peace, and put in *Exigent*, he may find Sureties in the Chancery to appear at the Day of the Return of the Proceſs awarded by the Juſtices of Peace, and thereupon have a *Superſedeas* to the Sheriff not to arreſt him, and if he have arreſted him, to ſet him at Liberty; and that Surety ſhall be Body for Body, &c.

If a Man be put in the *Exigent* at the Suit of another in ſeveral personal Actions, he may find Sureties in Chancery;

cery Body for Body, to appear to every Action at the Return of the Writs; and thereupon he ſhall have a *Superſedeas* to the Sheriff, reciting that he hath found Sureties in Chancery to appear at the Days, &c. commanding him not to arreſt him, &c. And the Forms of the Writs of the *Superſedeas* are in divers Manners.

**E** And if a Man be indicted before Juſtices of Peace, and a *Capias* or *Exigent* be awarded thereupon, and afterwards the Indictment is removed by *Certiorari*; the Party out of the Chancery may ſue forth a *Superſedeas* to the Sheriff not to arreſt him, &c. becauſe the Indictment is removed by *Certiorari*, &c. or the Juſtices of Peace *ex Officio* ought for to award a *Superſedeas* to the Sheriff after the *Certiorari* is come to them, to remove the Indictment, as it ſeemeth: *Tamen quere*. And in ſuch Caſe he may have a *Superſedeas* out of the Chancery directed to the Sheriff, commanding him, that if the Party will yield himſelf to the Sheriff, and find Sureties to appear at the Day of the Return of the Writ, that then the Sheriff do not arreſt him, &c.

If a Man ſueth a Knight of *St. Johns of Jeruſalem*, and other by their proper Names, and not by the Name of Knight of *St. Johns*, &c. And he be ſued to the *Exigent*, the *Superſedeas* ſhall be purchaſed in the Name of the Prior, and of the ſaid Knight his *Confrater*, in the Chancery, and there they may find Sureties to appear at the Day; and thereupon they ſhall have a *Superſedeas* to the Sheriff, that he do not arreſt him, &c.

**F** If a Man be condemned in Debt or Treſpaſs by falſe Verdict, and a *Capias* be awarded to arreſt the Party, now if the Party ſueth an Attaint, he may come into the Chancery, and there find Sureties that he ſhall appear at the Day, &c. and will answer the Party, and ſatisfy the King and the Party what belongeth to them, if the Attaint doth paſs againſt him; and upon the ſame he may have a *Superſedeas* to the Sheriff, that he do not arreſt him, and the Form of the Writ is ſuch:

**G** *Rex Vic', &c. Monſtravit nobis A. quod cum B. nuper implacitaſſet in Cur. noſtra coram Juſtic. noſtris nuper itinerant. in Com. pradiſt. preſat. A. & quosdam alios de quadam tranſgr. eidem B. per preſ. A. &c. illata, ut dicebat de qua quidem tranſgr. idem A. per Inquiſition. (in quam ſe poſuit coram preſatis Juſticiariis) convictus fuit, per quod pradiſt. A. carcerali cuſtod. extitit mancipatus, in eadem moraturus quouſque nobis de eo quod ad nos pertinet in hac parte, & preſ. B. de dampnis ſibi adjudicatis, fuerit ſatisfact'. ac jam preſ. A. arrainavit per*



Rez Sen. & Mareſchallo Hoſpitiſui, ſalutem. Cum inter ceteros articulos quos Dominus Edwardus quondam Rex Angl', avus noſter, ad emendationem ſtatus populi ſui conceſſit, ordinatum ſit, quod Sen. & Mareſchallus Hoſpitiſui noſtri non teneant Placita de Libero tenemento, de Debito, Conventione, Tranſgr', ſeu contractu hominum populi, niſi tantummodo de Tranſgr. Hoſpitiſui noſtri & aliis Tranſgr. infra virgam, & de Contractibus & Conventionibus qu. aliqui de eodem Hoſpitiſui aliis de eodem Hoſpitiſui fecerint, & in eodem Hoſpitiſui, & non alibi; et jam ex querela A & B. accepimus, quod vos, ad proſecutionem l. de l. Placitum inter pref. A. & l. qui de eodem Hoſpitiſui non ſunt, ut dicitur, de quod. Debito quod idem A. de pref. l. exigit, tenetis coram vobis, in ipſius A. damnum non medicum & gravam, & contra formam Ordinationis' predicti: Nos igitur, volentes dictam Ordinationem in omnibus & ſingulis ſuis articulis obſervari, vobis mandamus, quod ſi ita eſt, tunc de Placito illo coram vobis ulterius tenendo Superſedeatis omnino, ipſum A. contra tenorem Ordinationis predicti. non moleſtantes in aliquo ſeu gravam; & Diſtinctionem, ſi quam, &c. Teſte, &c.

And if the Plea be lawfully begun before the Steward and Marshal of the King's Houſe within the Verge, and before the Plea be ended the King doth remove; now the Plea is thereby diſcontinued, and then it behoveth the Party to commence his Action at the Common Law, and not within the Verge before the Steward and Marshal; and if he do, the Party grieved ſhall have ſuch Writ;

Rez Senefch. & Mareſchal. Hoſpitiſui, ſalutem. Cum inter ceteros articulos quos Dominus Edwardus quond. Rex Anglie, avus noſter, ad emendationem ſtatus populi ſui conceſſit, ordinat. ſit, quod Senefch. & Mareſch. Hoſpitiſui noſtri non teneant Placita de Libero tenemento, de Debito, de Conventione, ſeu Contractu, hominum populi, niſi tantummodo de Tranſgr. Hoſpitiſui noſtri, & aliis Tranſgr. factis infra virgam, & de Contractibus & Conventionibus qu. aliquis de dicto Hoſpitiſui fecerit alteri de eodem Hoſpitiſui, & in eodem Hoſpitiſui, & non alibi, & nullum Placitum de Tranſgr. placitum aliud, quod non ſit attributum per nos antequam nos eximus virgam ubi Tranſgr. facta ſuit, & Placit. ill. celeriter de die in diem placitent & terminent, ita quod placitent. & terminentur antequam exeamus eandem virgam ubi tranſgres. facta ſuit, & ſi forte infra bondas illius virga terminari non poterint, ceſſent hujusmodi Placita coram Senefchall. & Mareſchall', & ſint Querentes ad Communem Legem; et jam ex gravi querela A. & B. accepimus, quod vos ad ſellam R. de B. ipſos, &c. ad reſp. coram vobis predicti. R. de quadam Tranſgr. eid. R. per prefat. A & B. infra virgam noſtram apud E. an', &c. 17.

*falla, ut dicitur, quod quid. Placitum per vos attachatum non fuit antequam virgam ill. ex. vinus. distringitis, & ipsos ea occasione multipliciter inquietatis minus iuste, in ipsorum A. & B. dispendium non modicum & gravamen, & contra tenorem articulorum predict. Nos igitur, volentes dictam Ordinationem, in omnibus & singulis suis articulis, inviolabiliter observari, Vobis mandamus, quod si ita est, tunc ipsos A. & B. ad resp. coram vobis de huiusmodi Transgress. nullatenus distringatis, sed de Placito illo coram vobis ulterius tenend. omnino Superf. & Districionem, si quam, &c. Teste, &c.*

**A** And if a Man be sued by Plaint before the Steward and Marshal of the King's House, who is not of the King's Household, and the Debtor plead, and affirmeth the Jurisdiction of the Court; and the Cause be adjudged against him; yet he shall have an Action upon the Statute against the Party who sueth him there; *quod vide T. 3 H. 3. Title Estoppel.*

*Writ of Certiorari to remove Records, &c.*

**B** **T**HE Writs of *Certiorari* for to remove Records out of one Court into another, are of several Forms; and the Form of the Writ to remove the Record of Re-disseisin is such:

*Rex Vic, &c. Quia quibuscumque certis de causis certior. velimus super Recordo & Processu cuiusdam Inquisition. facte coram te & custonibus Placitorum Curie. nostre in Com. tuo apud N. per Breve nostrum super quadam Rediss. I. per R. facte. ut dicitur, de uno Messuag. cum pert. in N. Tibi precipimus, quod si iudicium inde redditum sit, tunc Recordum & Processum predict. cum omnibus ea tangentibus nobis sub sigillo tuo distincte & aperte mittas, & hoc Breve, ita quod, &c. ubicumque, &c. ut inspellis Rec. & Processu predict. ulterius inde fieri fac. quod de jure & secundum Legem & consuetudinem regni nostr. Angl. fuer. faciend. Teste, &c.*

**F** And he may move it after a Disseisin, &c.  
And if a Man be attainted in a Redisseisin or a Postdisseisin, and hath no Lands within the County to be put in Execution, he may remove that Record by a *Certiorari* into the King's Bench, and there have Execution. And he may remove a Recovery in an Assise of Novel Disseisin into the King's Bench by a *Certiorari* in like Manner. But the Writ of *Certiorari*

*See a Recovery in ancient Deemesne. 39H. 6. 3 & 4.*

*But see 44 E. 3. 28. 36 H. 8. Br. Certiorari 20. There is no such Writ of Certiorari to remove the Record in Common Banco immediately, but first in the Chamber. Tit 43 Aff. 20. the contrary is admitted.*

faith,



faith, *si iudicium inde redditum sit, tunc Record<sup>r</sup>, Process. Sec.* as above. By which it appeareth that it ought, that Judgment be given in the Assise, &c. otherwise it seemeth he shall not have the Writ; for the *Certiorari* is said to remove the Record, to the Intent that he may sue forth Execution upon the same when it is removed in the King's Bench, for there they may award Execution into every County to execute the same.

21 Ed. 3. 5.  
Br. Cert.  
Action 5.  
If a Man do recover Lands by Assise of Novel Disseisin, and the Defendant will sue a Certificate before other Justices, there he ought to sue forth a *Certiorari* to the Justices of Assize, to certify the Record unto the new Justices, who hold Plea upon the Certificate, and the Words (*ſine dilacione*) shall not be put in any Writ which hath a certain Day of Return.

And if a Man recover by Assise, and the Defendant will sue an Attaint before other Justices, then he ought for to have a *Certiorari* to the Justices of Assise to certify the Record, *ſi iudicium redditum ſit*.

And if a Man recover before Justices in Eyre in an Assise of Novel Disseisin, the other Party may sue forth an Attaint before other Justices, and have a *Certiorari* to the Justices in Eyre to send the Records before the other Justices.

37 H. 6. 16.  
And the King may send his Writ of *Certiorari* to the Barons, Treasurer, and Chamberlains of the Exchequer, to certify the Record of Assise in the Treasury in their Custody into the King's Bench.

9 E. 4. 50.  
Choc. 24 E.  
3. 24.  
15 E. 4. 5.  
8 E. 4. 25.  
26.  
There is another Writ of *Certiorari* to the Treasurer and Chamberlains of the Exchequer, to certify the Record of the Assize taken, but the Judgment was not given, because the Defendant died; but the Writ is of little Effect, for that by the Death of the Defendant before Judgment the Writ is abated.

And if a Man will sue an Attaint upon Recovery in an Assise, which Record of Assise is in the Treasury, then he who bringeth the Attaint ought to sue a *Certiorari* to the Treasurer and Chamberlains of the Exchequer, to certify the Record of Assise before the Justices before the Attaint be sued forth.

If a Man do recover Damage in an Assise of Novel Disseisin, and before he hath Execution of the Damages, the Record is sent into the Treasury; then he may sue a *Certiorari* to the Treasurer and Chamberlains, to certify the Record of Recovery in the Assise before the King, that Execution may be awarded for the Damages.

[ 243 ]

And if a Man recover Lands and Damages in an Assise of Fresh Force, and the Defendant hath not any Thing within the

the City or Borough for to satisfy the Damages; then the Party may sue a *Certiorari* to the Mayor or Bailiffs, to certify the Record into the King's Bench, that he may have Execution of the Damages recovered.

C If the King maketh certain Persons Justices of Assize, &c. in one County, and afterwards at another Assises he maketh other Justices of the same County; a general *Certiorari* shall be sued to the first Justices, to certify all the Records of Assize and Juries which were taken in that County before the new Justices.

D And in Assize of Novel Disseisin if the Verdict pass for the Plaintiff, and before Judgment be given a new Commission is to other Justices of the same County, the Party for whom the Verdict passed, may sue forth a *Certiorari* to the first Justices, to remove the Record into the King's Bench, to have Judgment given there upon that Assize and Verdict pass; or may have a *Certiorari* to the first Justices, to send the Record before the new Justices, that they may give Judgment thereupon: And it behoveth to have another Writ unto the new Justices, to receive the Record, and that they proceed to Judgment. And when the Record is removed after Verdict given before other Justices, and they delay to proceed to Judgment upon the Verdict, the Party for whom the Judgment should be given may sue forth a Writ directed to them *quod receptis & visis Record, & Proecess. prad.* they proceed to Judgment, &c. And thereupon the Party may have an *Alias*, and a *Pluries, Vel causam nobis significes*: And if they will not do any Thing, whether he shall have an Attachment is a Question; for there is a Statute made *A. 3 E. 3.* which willeth, that Commissioners in special Case limited by the Statute shall be punished for their Misdoings, but it seemeth it shall not be, if the Statute be not made, for that Cause only.

E And *An. 27 E. 3.* in Assize, a Justice was indicted, for that he caused an Indictment, which was found to be but Trespass to be entred in Record as Felony, &c. And the same was adjudged a void Indictment, because it was to make void a Record. But yet it seemeth he might be indicted, for taking of Money, or for other Falsity, which doth not destroy and defeat the Record. *Quere.*

F And a Man may have a Writ to the same Justices before whom the Verdict passed, &c. to proceed to Judgment, as well as he shall have a Writ to other Justices before whom the Record is removed.

G If a Man in an Assize of Novel Disseisin, or other Action real, before Justices in Eyre vouch one to Warranty,  
who



*Writ of Certiorari to remove Records.*

who presently entred into Warranty, and afterwards loseth; the Plaintiff shall recover, and the Tenant shall have Judgment to recover in Value against the Voucher: now if he who recovered in Value, will have Execution of the Lands recovered in Value, he ought to sue a *Certiorari* to the Treasurer and Chamberlains of the Exchequer, to certify the Record in Assise into the Chancery; and when it is there certified, the King shall send the Record by *Mittimus* into the Common Pleas, and thereupon the Justices shall award a *Scire Facias* against the Party against whom the Recovery was, to come and shew why Execution should not be done of Lands in Value.

And a Man may sue a *Certiorari* directed to the Justices of H Assise, to remove the Records of Assise into the Chancery, and also a Deed which is before them, &c. and afterwards he may sue forth a Writ of *Mittimus* unto the new Justices of Assise of those Records, and of the Deeds which remained before the other Justices.

And if the Husband and Wife sue a Bond, which is made to the Wife, in the Common Pleas, and the Deed is there denied, for that they remain in the keeping of the *Custos Brevium*, and the Husband dieth; the Wife may have a Writ out of the Chancery directed to the *Custos Brevium* in the Common Pleas, that he deliver the Deed to the Wife, because the Plea is determined by the Death of the Husband.

And when the Justices in Eyre come, and shall be in any County by the King's Commission, then a Writ shall be sent to the Justices of the Common Pleas, to adjourn all the Pleas of that County which are in the Common Pleas before the Justices in Eyre, to be determined before them: And if the Justices in Eyre cannot determine the Pleas before they depart out of the County, then a Writ shall be sent to the Justices in Eyre, to send those Records and Pleas which are not determined nor adjudged into the Common Pleas again. And the Writ shall be such:

*Rex dilecto & fideli suo S. salut. Cum Loquela que fait cor. Justic. nostris de Banco per Breve nostrum int. S. Petent. & J. Tenent', de uno Messuag. cum pertin. in T. in Com. N. una cum Brevi predicti, cor. vobis & sociis vestris nuper Justic. nostris itinerant. in Com. predicti, missa fuisset placitanda, ac Placitum illud quibusd. cert. de caus. in itinere predict. remanserit indiscussum, absque hoc quod idem Placit. alicubi adjornat. fuisset placitand', per quod ex parte ipsius S. nobis est supplicat, ut sibi in premiss. Justic. facere volumus; Nos ea de causa attendentes expediens fore, quod Just. nostri de Banco super Record. & Processu*  
*Loquela*

le prædicti cor. vobis & præfat. sociis vstris in itinere  
 ti. certiorant', vobis mandam', quod Record. & Process. præd.  
 am Brevis præd. & omnibus aliis ea tangentibus, præf. Just.  
 de Banco sub sigillo vstro distincte & aperte sine dilata-  
 mittatis, & hoc Breve, ut his inspectis, ulter. proced. in  
 la præd. secund. Legem. & cons. regni nostri valeant. Teste,

nd if an Assise of Novel Disseisin be brought in the  
 's Bench, and the Defendant alledge and plead, that there  
 Writ of a higher Nature depending in the Common Pleas  
 re same Land between the Plaintiff and Defendant; then  
 ey be at Issue, whether there be such a Writ depending  
 ot, the Defendant ought to sue a *Certiorari* out of the  
 cery to the Justices of the Common Pleas, to remove  
 certify the Records into the Chancery; and upon the same  
 fied, he shall have a Writ of *Mittimus* out of the Chancery  
 he Justices of the King's Bench; with which Writ  
 King shall send the Tenor of the Record which is there  
 the King's Bench. And the Writ of *Mittimus* shall be

Br. Brief:

414. Vid.

22 H. 6. 15.

23 Ass. 14.

Br. Brief.

282.

40 E. 3. 32.

Br. Brief:

304.

ex dilecto & fideli suo R. de W. & sociis suis Just. ad Pla-  
 coram nobis tenenda assign. salut. Cum R. P. nuper arraina-  
 quendam Assisam novam dist. cor. nobis apud West. per Breve  
 m versus B. de ten'tis in A. & duo messuag', tres carucatas  
 , viginti acras prati; cum pertinent. in eadem Villa in villa  
 s. idemq; H. placitand. in Assisa illa allegasset, quod Breve  
 tiori natura tunc & diu ante pendebat inter partes prædict.  
 v dilectis & fidelibus nostris W. & sociis suis Justiciariis  
 is de Banco, & Record. & Process. inde coram præfat. Just.  
 is de Banco habita ad Warrantum vocasset, ut accepimus Nos  
 idem. expediens esse & necesse. quod vos super tenor. Record.  
 Process. prædict. coram præfat. Just. de Banco habit. certiore-  
 tenorem illum quem coram nobis in Cancell. nostra venire feci-  
 vobis mittimus sub pede sigilli, mandant'. quod inspectis Re-  
 & Processu prædict. ulterius fieri fac. quod de jure & secun-  
 Legem & cons. regni nostri fuerit faciend. Teste, &c.

nd if a Man do recover in an Assise of Novel Disseisin  
 re Justices of Assise in the County, and before Execution  
 of the Damages the Record is removed into the Chan-  
 by *Certiorari*; he who recovered in the Assise may sue  
 h a Writ of *Mittimus* to send the Record into the King's  
 ch, commanding them for to proceed, and to award Exe-  
 gn. And the Writ is such:



*Writ of Certiorari to remove Records.*

*Rez dilectis & fidel. E. & sociis suis Justic. nostris ad Placita coram nobis tenend. assign. salutem. Cum I. per Recogn. Ass. de nova dist. quam W. arrain. coram B. & sociis suis nuper Just. Domini Edwardi quondam Regis Angl. avi nostri, ad Ass. &c. assign. versus R. & alios, &c. de Tenementis in T. recuperasset seisinam suam de uno messuag. cum pertin. in D. per consider. cur. pradiet. & dampna sua, que ad x. li. taxabantur, sicut per Record. & Process. Ass. pradiet. que coram nobis certis de causis venire fecimus plenius apparet; ac Executio Judicii quoad dampna recuperanda adhuc restat faciend', sicut ex parte ipsius I. nobis dat. intelligi. Nos igitur, volent. dictum Judic. execut. debite demandari, Record. & Process. pradiet. vobis mittim. sub pede sigill. nostri, mandantes, quod vis. Record. & Process. pradiet. ulter. quoad exec. Judic. pradiet. fieri faciatis quod de jure & secundum Legem & cons. regni nostri fueris faciend'. Telle, &c.*

And if a Man recover Lands by Assise of Novel Disseisin before Justices of Assise, and the Defendant hath a Writ of *Warrantia Chartæ* depending in the Common Pleas, the Party may sue a *Certiorari* to remove the Record of the Assise in Chancery, and thereupon have a *Mittimus* of the Record of Assise to the Justices of the Common Pleas, and in the End of the Writ shall be said, *ut his inspectis, securius procedere valeant in Placito Warrantie pradiet. secund. Legem, &c.*

And in Assise of Novel Disseisin, if the Defendant plead two or three Recoveries in Assise before other Justices, which Record is in the Treasury, &c. now if the Record be denied, for which he sueth a *Certiorari* to the Treasurer and Chamberlains of the Exchequer, to certify the Records at a certain Day into the Chancery; if they at the Day certify any Records, but do not certify that there are other Rolls of the same Justices remaining in the Treasury in the Tower of London, so as that they have not made a full search of the Records; then the King shall send to the Justices of Assise his Writ, reciting the Matter, commanding them for to continue that Assise until another Day, so as the Defendant be not damaged by failing of the Record. and the same seemeth to be reasonable.

And if a Man be bound in a Statute-Staple to pay a certain Sum of Money at a Day certain, after the Day the Party who hath the Statute, may come to the Mayor of the Staple and shew him the same, and pray him to certify the same into the Chancery; and if the Mayor will not so do, then the Party who hath the Obligation may come into the Chancery, and shew the same there, and pray a *Certiorari* to

the Mayor to certify the Inrolment of the Statute: And if the Mayor do return, that he hath twice, or oftner, certified the same before that Time, as appeareth by the Inrolment made by the Mayor, if there appear no such Certificate upon Record in the Chancery, then he who hath the Bond of the Statute may sue forth a new *Certiorari* to the Mayor, reciting in the Writ, that there is not any Certificate recorded in the Chancery, commanding him to certify the Inrolment of the Statute which is before him; and upon the same he may have an *Alias* and a *Pluries* against the Mayor, if he will not certify the same, and also an Attachment against the Mayor, directed to the Sheriff, &c.

[ 245 ]

A The Writ of *Certiorari* is an original Writ, and issueth Vid. 10 El. sometimes out of the Chancery, and sometimes out of the Dyer 274. King's Bench, and lieth where the King would be certified 275. of any Record which is in the Treasury, or in the Common Pleas, or in any other Court of Record, or before the Sheriff and Coroners, or of a Record before Commissioners, or before the Escheator; then the King may send that Writ to any of the said Courts or Offices, to certify such Record before him *in Banco*, or in the Chancery, or before other Justices, where the King pleaseth to have the same certified: and he or they to whom or who the *Certiorari* is directed ought to send the same Record according to the Tenor of the Writ, and as the Writ doth command him; and if he or they fail so to do, then an *Alias* shall be awarded, and afterwards a *Pluries*, *Vel causam nobis significes*, and after an Attachment, if a good Cause be not returned upon the *Pluries*, wherefore they do not send the Record.

*But see Lambert 411. The Use at this Day is, to award a Subpoena to the Commiss. 37 H. 6. 30. Marle.*

B Also the King might by such Writ of *Certiorari* send for the Tenor of the Record, or for the Tenor of the Tenor of the Record, at his Election; and those Writs ought for to be obeyed, and the Records sent, as the Writ commandeth them to do; and the Form of some of those Writs here followeth:

*Rez dilecto & fideli suo R. salut. Quia quibusdam certis de causis Certiorari volumus super Record. & Process. Utlag. in I. Com. T. promulgat. & coram vobis & sociis vestris Just. nostris ad divers. Felonias in Com. praed. audiend. & termin. assign. retornat: Vobis mand. quod tenor. Record. & Process. praed. or thus, tenor. Record. & Process. Utlag. praed. cum omnibus ea tangent. nobis in Cave nostra sub sigillo vestro distincte & aperte sine dilacione mittatis, & hic Breve. Teste, &c.*

And



## Writ of Certiorari to remove Records.

And to certify an Indictment taken before the Justices in Eyre, the Form is such :

*Rex, &c. Quia super Presentatione factam coram vobis & sociis vestris Justic. nostris itinerant. in Com. Lincoln. de morte A. unde B. captus & detentus in prisna nostra de N. reatus est, & etiam super inquisitione inde coram vobis ibid. facta. quibusdam certis de causis volumus certiorari; Vobis mandamus, quod irrotationem Presentat. & Inquisitionis predict. nobis sub sigillis vestris distincte & aperte sine dilacione mittatis, & hoc Breve. Teste, &c.*

And there is another Form of Writ directed to the Coroners :

14 Aff. 40.  
Br. Certiorari.  
the Writ was awarded to the Executors of the Coroner.  
Vid. 36 H. 6. 24. for Certiorari to the Coroners. Vid. 2 Eliz. Dyer 223. Procter's Case.

*Rex Coronator, suis in Com. Lincoln. salut. Quia quibusdam certis de causis certiorari volumus super Recordis & Processu cujusdam Appell. quam W. nuper Probator. defuncti. fecit versus S. de quadam Robertia quam id. W. & B. in Com. &c. ad invicem fecisse dicebantur: Vobis precipimus, quod Record. & Process. ejusd. Appell. cum omnibus ea tangentibus, vobis sub sigillis vestris, &c. And that Writ lieth where a Man before Justices becometh an Approver, and the Coroner appointeth him to make his Approvement, and afterwards the Approver dieth; the King may write unto the Coroner to send him the Record of the Approvement.*

And another Form of Certiorari to the Mayor and Sheriffs of London.

*Rex Major. & Vic. London. salutem. Quia quedam negotia per Appell. Indictamenta & Attachiamens. coram vobis in Civitate pred. Lond. nuper intrata nondum terminantur, & quedam Inquisitiones in eadem Civitate facte fuerint retornat, quorum quidem negotiorum Inquisitiones, Record. & Process. penes vos resident, ut dicitur, & qua omnia per dilectos & fideles nostros B. C. & D. Justic. nostros ad diversum transgr. in Civitate pred. fact. audiend. & terminand. assign. expediri volumus, & finalit. terminari: Vobis mandamus, quod predict. Record. & Process. cum omnibus ea tangent. pref. Justic. sub sigillis, &c.*

And if the King by Virtue of any Writ of Certiorari, remove any Record before any of the Justices, he may afterwards send for that Record, and remove the same before himself, or other Justices, at his Election; and then the Writ is such :

*Rex, &c. Quia quibusdam certis de causis Certiorari volumus super Record. & Process. cujusdam Inquisitionis capte coram dilectis & fidelibus nostris W. & P. Justic. nostris ad Gastam nostram de N. assign. deliberand., pro morte E. unde C. pro morte predict. reatus fuit, ut dic. que quidem Record. & Process.*

*Coram vobis certis de causis venire facimus, quæ penes vos resident, ut dic. Vobis mandamus, quod Record. & Process præd. cum omnibus ea tangent, vobis sub sigillis vestris distinet, &c.*

- G** And when the King would be certified of an Outlawry in the County, then the *Certiorari* shall be as well to the Sheriff as to the Coroners of the County to certify the same. But if a Man be condemned in the King's Bench, and afterwards outlawed for the King's Fine upon his Condemnation; if he will sue forth a Pardon of the Outlawry, he ought to have a *Certiorari* out of the Chancery, to certify the Record of the Condemnation, which shall be such:

*Rex dilecto & fideli suo I. Sec. Capitali Justic. suo, salut. Cum E. de quadam transgr. F. vi & armis facta coram nobis convictus, & pro eo quod non venit coram nobis ad satisfaciend. nobis de redemptione sua que ad nos pertinet in hac parte, & præfat. F. de dampnis sibi in hac parte adjudicat. in Exigend. posit. fuisset ad utlagand. et ea occasione postmodum utlagat. que quidem utlag. coram nobis jam est retornata, ut accepimus ac idem E. nobis supplicaverit, ut cura ipse præf. F. de dampnis suis præd jam satisfecerit, velimus ei Utlag. præd. gratiose pardonari. Nos ea de causa certior. volentes super Record. et Process. Utlag. præd. et si idem E. præfato F. de dampnis præd. satisfecerit (ut dictum est) necne, Vobis mandamus, quod nos super præmiss. sub sigillo vestro distinet et apert, &c. reddatis certiores.*

[246]

- A** And if a Man be indicted before Justices of Gaol-delivery of Felony, and afterwards is acquitted; then if he who is acquitted doubteth he shall be troubled by reason of the same Indictment, he may sue forth a *Certiorari* to remove that Record and Process of the Inquisition, &c. into the Chancery, &c.
- B** And if a Man do recover Debt or Damages before Justices of Oyer and Terminer, and hath not Execution, he may remove the Record and the Process into the King's Bench, and there sue Execution, and have a *Scire factas* upon the Record, &c.

14 H. 7. 15.  
15 H. 7. 5.  
36 H. 6. 23.  
39 H. 6. 34.

And if a Man do recover Damages in an Action of Trespass before Justices of Oyer and Terminer, and hath the Party in Execution by reason of the Judgment; if the Party in Execution dieth in Prison, he who recovered may sue a *Certiorari* to the Justices to remove the Record into the King's Bench, that the Justices there may award Execution as the Law requireth in such Case. And, I think, in that Case, that the Party shall have Execution by *Electis*, or by *Scire factas*; for it seemeth not to be reasonable, that the

34 H. 6. 47.  
CONTRA.  
4 E. 4. 39.  
33 H. 6. 48.  
Danby.  
47 E. 3  
Execut. 41.



Death of him who dieth in Prison should be a Satisfaction to the Party. *Tamen quare*, for the same is a Doubt.

If a Man be arraigned of Murder, and found guilty *se defendendo*, for which he is bailed, or committed to Prison, he may have a *Certiorari* to remove the Record into the Chancery, that he may sue forth a Pardon thereupon according to the Course of the Law, &c.

If a Man recover Damages in Trespass in the King's Bench, and hath the Defendant's Lands in Execution by *Elegit*, and then he who recovereth is disseised by the other, for which he bringeth an Assise before the Justices of Assise; he who bringeth the Assise ought to have a *Certiorari* to the Chief Justice of the King's Bench, to certify the Record and the Proceedings to Judgment given in the King's Bench, and of the Execution there; and the Plaintiff may have the Record in Chancery exemplified under the Great Seal, if Need be, to the Justices of Assise.

And if a Man recover by Assise of Novel Disseisin, and the Party will sue an Attaint in the Common Pleas, or in the King's Bench, he ought to sue a *Certiorari* to the Justices of Assise, to remove the Record in the King's Bench, or into the Chancery, &c. that he might send the same before the Justices before whom the Attaint is sued, &c.

And it appeareth by the Register in the Title [*Certiorari*] that if false Judgment be given before the Steward and Marshal of the King's House, upon a Plaint there sued, that the Party may sue an Attaint by Writ before the Steward and Marshal to attaint that Jury, &c. and that the King may send a *Certiorari* to certify the Record into the Chancery, which shall be directed to the Steward and Marshal of the King's House; but the Record shall be certified under the Seal of the Steward only, as appeareth by the Words of the Writ, &c.

There is another Writ of *Certiorari* directed to the Treasurer and Barons of the Exchequer, to certify the King of the Debt which *J.* oweth unto him, and of the Debt which the Ancestor of the said *J.* owed the King, and which are clear Debts, and to certify the same without Delay under the Exchequer-Seal, and not into the Chancery, nor into the King's Bench.

There is another *Certiorari* directed to the Justices of H Gaol-delivery, to certify the Record and Proceedings upon an Indictment of Murder, and Acquittal thereupon into the Chancery, &c.

There is another *Certiorari* to the Justices of Peace, to

Col. 59: 370  
7a  
Ja. 4to  
no Exorukion

certify into the Chancery the Tenor of the Records and Procefs of Outlawry of feveral Perfons returned before them.

**K** There is another Writ of *Certiorari* directed to the Steward and Marshal of the King's House, to certify under the Seal of the Steward into the King's Bench an Indictment taken before the Steward and Marshal, which the King would have to be determined only before him in the King's Bench.

**L** There is another Writ of *Certiorari* to the Mayor and Sheriffs of *York*, to certify the Tenor of the Record and Proceedings in an Affise of *Fresh Force* sued before them in the same City without Writ, and to certify the Tenor of the Record and Proceedings in the Chancery.

**M** There is another Writ of *Certiorari* to the Bishop of *Oxford*, to certify into the Chancery how many Persons were admitted, instituted and inducted into such a Church, since the Statute of King *Edward IV.* until this Time, and at whose Presentation, and by what Title, and in what Manner.

**N** There is another Writ of *Certiorari* to the *Custos breviaum*, to certify the King in the Chancery the Tenor of the original and judicial Writs, and the Warrants of Attorney which are in his Custody concerning such an Action or Suit.

**O** And another Writ directed to the Treasurer and Chamberlains of the Exchequer, to certify the King in the Chancery the Record and Proceedings of a Writ of *Quo Warranto* sued by the King's Ancestor, King *Edward I.* against the Abbot of *Westminster*, for certain Liberties claimed by the said Abbot, &c.

[ 247 ]

**A** And another Writ of *Certiorari* to the Commissioners of Sewers, to certify the King in the Chancery at a certain Day all the Presentments before them made against such a Person, &c.

**B** And a Writ of *Certiorari* directed to the Chief Justice of the Common Pleas, to certify the Tenor of a Record and Proceedings of Utlagary against such a one in *London*, remaining in *Middlesex* before the Justices of the Common Pleas, and to certify the same into the Chancery.

**C** And if a Baron who is a Peer of the Realm, be sued in the Common Pleas, and Procefs be awarded against him by *Capias* or *Exigent*, then he may sue a *Certiorari* in the Chancery, directed to the Justices of the Common Pleas or King's Bench, testifying that he is a Peer of the Realm, commanding them to award such Procefs against him as



they ought to do against a Peer of the Realm; and the Writ is such:

*Rex Justiciar. suis de Banco salutem. Mandamus vobis, si G. T. mil. coram vobis ad seſſam alicujus per Abſionem personalem implacitatus exiſtat, talem Proceſſum, et non alium, verſ. ipsum in Abſion. predict. fieri faciat. qual. verſus Dominus, Magnates, Comites, ſeu Barones Regni noſtri Angliæ, qui ad Parliamenta noſtra de ſummonitione venire debent, aut eorum aliquem, ſecundum Legem et conſ. Regni noſtri Angl. fuer. faciend. quia præd. G. T. unum Baron. regni noſtri præd. ad Parliamenta noſtra de ſum. Regia venient. record. et hoc vobis mandamus, et aliis quor. intereſt innotescimus. Teſte, &c.*

And if a Man recover Damages and Coſts in an Aſſiſe of Novel Diſſeiſin, he may ſue a *Certiorari* to remove the Record into the Chancery, directed to the Juſtices of the Aſſiſe, to the Intent that the King may ſend the ſame to any of his Courts, that he who recovereth may ſue Execution of the Damages recovered; and upon that Record ſent into the King's Bench, he ſhall ſend that Record into the Common Pleas by Writ of *Mittimus* directed to the Juſtices there, that they do as they ought for to do according to the Law, to make the Damages to be levied.

There is another Form of *Certiorari* by theſe Words:

*Rex Vic. &c. Volentes certis de cauſis certior. ſuper tenorem Record. et Proceſſ. Utlag. in W. de B. de Com. N. Husbandman, in eodem Com. or thus, in Huſtings noſtro London. promulgat. et coram Juſticiar. ipſius Regis de Banco cert. quod quidem Record. et Proceſſum idem Rex coram eo cert. de cauſis vobis ſcit, ut die. ac ſc. idem W. ſc. redd. priſonæ Mariſhalciæ ipſius Regis coram eo occasione predict. necne: Idem tenor. Record. et Proceſſ. Utlagar. predict. necnon Certificatio redditionis illius eidem Regi in Cancell. ſuam, ſub ſigillis J. F. Capital. Juſtic. ſui ad Placita coram ipſo Rege tenens. diſſinſe et aperta ſine dilatione mittantur cum hac Billa. Teſte ipſo Rege apud Weſtra. xii die Martii, anno Regni ſui 30.*

And by that it appeareth, although the Record be remaining *in Banco*, yet the King may ſend to remove it into the Chancery.

And if a Man be arraigned of Murder, and it is found that he killed the Party *ſe Defendens*, he ought for to ſue a *Certiorari* to remove the Record into the Chancery, and upon the Removal thereof to have his Pardon; and the Form of the Pardon doth appear in the Regiſter, fol. 287, and 288.

**G** And if a Man be attainted in Assise of Novel Disseisin before the Justices of Assise, of a Disseisin with Force, and be afterwards outlawed for the King's Fine; if he will have a Pardon of the Utlagary, he ought for to have a *Certiorari* directed to the Justices of Assise, to certify the King in his Chancery the Tenor of the Record of the Assise, and also another Writ to the Justices, to certify the King in his Chancery whether the Defendant in the Assise hath yielded himself to Prison, and hath satisfied the Party his Damages. And if the same be so certified in the Chancery, then upon that Certificate he shall have his Pardon of the Outlawry, and the Form of the Charter of Pardon appeareth in the Register, 288.

And if a Man be condemned in the Common Pleas in Debt, and Outlawry upon the same; then, before he shall have his Pardon, he ought for to yield himself to the Prison of the Fleet, and satisfy the Party, and the Record of his Condemnation and of the Satisfaction ought to be certified by *Certiorari* unto the King in his Chancery; and thereupon he shall have his Pardon, and that is by the Statute of 5 E. 3. cap. 12.

And if a Man be outlawed severally at the Suit of three several Persons in several Actions in which he was condemned, he ought to sue a *Certiorari* to remove the Tenor of those Records and Process into the Chancery; and also to have a *Certiorari* to the Justices of the Common Pleas, if the Suit be there, to certify the King in Chancery whether he hath yielded himself to the Prison of the Fleet, and hath satisfied the Parties; and when the Chief Justice hath certified the same into the Chancery, then he shall have his Pardon for the Outlawries, and not before; and the Form of the Pardon appears in the Register, 288.

**H** There is another *Certiorari* to the Escheator, to certify the Manner and Cause of taking of Land into the King's Hands after the Death of one; and the Writ is such:

*Rex Escheatori, &c. salutem. Cum quibusdam cert. de causis certior. volumus super mod. & caption. terr. & tenementor. que fuer. I. defuncti in B. in Ball. tua per te in manum nostram, ut dicit. seisc. Tibi precipimus, quod nos in Cancellar. nostra super mod. & causa supradict. sub sigillo tuo distinct. & apert. sine dilations redd. certior. hoc breve nobis remittentes. Tiste, &c.*

But note, that it is enacted by Statute, That if the Escheator find any Office of any Lands or Tenements for the King, [ 148 ] that he ought for to return the Office into the Chancery,



*Writ of Forcible Entry upon the Statute.*

or into the Exchequer, within a Month after the finding thereof, upon pain of 20 l. payable to the King, and to him that will sue for the same; and that Statute was made Anno 8 H. 6. cap. 26.

There is another *Certiorari* directed to the Escheator, to certify the King in Chancery, at his Peril, the Value of the Knights Fees and of the Advowsons which I. had, who is dead, who held of the King the Day of his Death in Capite; and the Writ is such:

*Rex Escheatori, &c. Volent. certis de causis certior. super rurs valore Feod. Milit. & Advoc. Ecclesiar. que fuer. I. defuncti. qui de nobis tenuit in capite. in Bull. tua die quo obiit, & qua occasione. mortis ejusd. I. capt. sunt in manum nostram; Tibi precipimus, quod Feod. illa & Advocat. praed. per sacrament. &c. diligenter. extendi facias, quantum, viz. valeant per ann. in omnibus exit. juxta valor. eorumdem, & Extentam illam distinte & aperte fact. nobis sub sigillo tuo & sigillis eorum per quas fact. fuer. sine dilacione mitt. & hoc Breve. Teste, &c.*

And if a Lunatick or a Madman doth kill a Man, or if a Man doth kill a Man by Misfortune, or if an Infant of 8 Years old doth kill a Man; if they will sue a Pardon for the same, the Use is, to sue a *Certiorari* to remove the Tenor of the Record and Process into the Chancery, and thereupon to have a Pardon; and in the Register do appear several Forms of such *Certioraries* to remove such Records, which a Man may see there more fully, and therefore they are not here mentioned.

*Writ of Forcible Entry upon the Statute of 8 H. 6.*

**T**HE Writ upon the Statute of 8 H. 6. of Forcible Entry C lies where a Man is disseised or put out of his Lands or Tenements with Force, whereof he is seised as of an Estate of Freehold in Fee-tail, or in Fee, or for Life; he may sue forth that Writ of Forcible Entry upon that Statute: Or if he be disseised or put out of his Lands and Tenements peaceably, and afterwards the Disseisor, or he who ousteth him, doth keep and detain the Lands and Tenements with Force, then he who is put out may sue that Writ if he will, and in that Writ he shall recover his Damages and his Costs treble for what he is found damaged by the Jury, and what he hath expended in that Suit.

If a Man enter into any Lands and Tenements, and disseise another with Force, and keepeth the Lands and Tenements

nements and detaineth them with Force; then he who is ousted and disseised may have that Writ, although the Words of the Statute are in the Disjunctive, *scil.* Where a Man is disseised with Force, or where a Man doth disseise one peaceably, and afterwards doth keep the Lands with Force; because the Intent of the Makers of the Statute was to punish such Force, whether it were upon the Entry and Disseisin, or upon the keeping and detaining of the Lands, &c.

**E** And note, That none can have or maintain that Action but he who hath a Freehold in the Lands or Tenements at the least; for Tenant for Years cannot maintain the Action, because the Words of the Writ are, *expulit & disseisivit*; and Tenant for Years cannot be disseised, &c. And the Form of the Writ is such:

**F** *Rex Vic. &c. salutem. Si A. fecerit, &c. tunc pmo B. &c. ad respondend. tam nobis quam p̄satis, A. quare cum in Statuto in Parlamento apud Westmon. anno regni Regis H. nuper Regis Angliæ 6. progenitor. nostri 8. tento edit. inter cetera continetur, Quod si aliqua persona de aliquibus terris seu tenementis manu forti expulsa sit & disseis. vel pacifice expellat. & postea manu forti extratenet. vel aliquod Fossament. vel Disfont. nuntio inde post talem ingress. pro jura possessor. defraudando & solvend. aliquo modo fiat, habeat pars in hac parte gravata versus talem Diss. Assisam novæ diss. vel Breve de Transgr. & si pars gravata per Assisam vel per Action. Transgress. recuperet, & per Veredit. vel alio modo per debit. Legis formam inveniat, quod pars Def. in terr. & tenement. vi ingress. fuerit, vel ea post ingressum suum per vim tenuerit, recuper. Quercus dampna sua ad triplum versus Def. & ulter. Finem & redemption. nobis faciat: p̄ced. B. p̄satis. A. de Liber. tenemento suo in B. manu forti expulit & disseisivit, & eum sic expuls. & disseis. extratenet de eod. in nostri contemptum, & ipsius A. dampn. non modicum & gravam. ac contra formam Statuti p̄ced. & contra pacem nostram. Et habeas ibi nomina Plegior. & hoc Breve. Teste, &c.*

**G** And the Process in that Writ is Attachment and Distress, and Process of Utlagary, &c.

**H** If a Man entereth with Force into Lands and Tenements to which he hath Title and Right of Entry, and put the Tenant of the Freehold out of those Lands or Tenements; now he who is so put out with Force shall not maintain an Action of Forcible Entry against him who had Title or Right of Entry, because that that Entry is not any Disseisin of him; but he may indict him for this entering by Force, and



[249] by this Indictment he shall be restored to his Possession again; and that is by the Statute of 8 H. 6. c. 9. And in this Action of Forcible Entry the Plaintiff shall recover treble Damages, as well for the occupying of the Lands, as for the first Entry therein. And a Man may have a Forcible Entry of a Rent, as well as of Lands.

23 H. 8. f. 5. And if a Man entereth and disseiseth another with Force, and afterward the Disseisee re-entereth again; yet the Disseisee may bring his Action of Forcible Entry, and recover his treble Damages, although he be seised of the Land at the Time of the Action brought; but if a Man continueth three Years in peaceable Possession, without Interruption, then he may hold the Lands with Force, and shall not be punished for that Force; and by the same Statute.

And in the Writ of Forcible Entry, the Defendant may plead Not guilty, and it shall be a good Plea; but if the Defendant doth plead Matter in Bar, yet he ought in the End of his Plea in Bar to traverse the Entry with Force, which is alledged, as to say, *Absque hoc* that he did enter with Force, &c. but yet the Demandant or Plaintiff ought to answer the special Matter alledged in the Bar, without answering to the Traverse with Force &c.

17 H. 7. 17. And if the special Matter alledged in the Bar be found for the Defendant, he shall be excused, and the Force shall not be enquired of; and if it be found with the Plaintiff, and against the Defendant, the Defendant shall be attainted of the Force, and shall pay treble Damages and Costs, without Enquiry of the Force; and the same is the Usage at this Day. And one Joint-tenant, or Tenant in Common, may maintain this Action against his Companion, if he be put out with Force, &c.

And if a Man do enter with Force, and doth detain with Force any Lands or Tenements; the Party may have his Action upon the Statute of Northampton, made An. 2 E. 3. c. 3. and the Writ shall be such:

*Rex Vic', &c. Quia datum est nobis intelligi, quod quamplurimi malefactores & pacis nostre perturbatores in Conventibus congregati, armati, & modo guerrino arratiati, apud nos acceder. & clausam & domos querund. ligeorum nostrorum ibid. per vim & potentiam armat. intrar. & res, redditus & proventus, ac alia bona sua quacunq. de quibuscunq. possessionibus suis ibidem proveniunt. capere consent. & aspectare intendunt, & ad hoc parant, in nostri contempt. ac quorundam de populo nostro ibidem terrorem & commotionem manifestum, ac contra formam Statuti apud Northampton. de armis*

*contra*

contra pacem Domini Ed. nuper Regis Angliæ tertii, progeniti nostri, non portand. editi, & contra pacem nostram: Nos, Statutum prædict. inviolabilis, observar. & idem infringentes juxta vim et effectum ejusdem Stat. castigari facere volentes et puniri, tibi præcipimus, quod apud Villam de C. et alibi in Com. tuo ubi necesse fuerit, publice proclam. et ex parte nostra firmit. inhiberi fa. ne quis, cujuscunque Stat. sive conditionis fuerit, ibidem armatus contra pacem nostram ac formam Stat. præd. accedat, nec armatam potent. nec quicquid aliud ibidem seu alibi fac. per quod Pax nostra seu Stat. præd. ledi, vel popal. noster terreri, turbari, aut indebite gravari poterit quovis modo, sub pœna amissionis armorum suorum, et incarcerationem corporum suorum ad voluntatem nostram, prout in Statut. prædict. plenius continetur. Et omnes illos quos post et contra Proclamation. et Inhibitionem præd. inveneris contraria facientes, vel per inquisitionem per te modo et form. debitis capiend. inveneris feciss. una cum armis et armaturis suis secum invent. arrestar. et capi, et corpora ipsorum arrestator. in prisona nostra, quovis aliud à nobis pro deliberatione sua habueritis in mandat. salvo custodir. ac arma, et armaturas præd. appreciari, et nobis inde respond. fac. Nos vero in Cancell. nostra sub sigillo tuo de nominibus arrestator. præd. ac de armis et armaturis suis et quæ et cujuscumodi fuerint, et de pretio vel de vero valore eorund. ac de toto facto tuo in hac parte, redd. distinet. et aperte sine dilation. certiores, hoc breve nobis remitt. Teste, &c.

## Writ of Mainprise.

**G** THE Writ of Mainprise lieth properly where a Man is taken for Suspicion of Felony, or indicted of Felony, for the which Thing by the Law he isailable, and he offereth sufficient Sureties unto the Sheriff or others who have Authority to bail him, and he or they do refuse for to let him to Bail; then he who is so kept in Prison may sue forth such Writ:

Rex Vic, &c. Ex parte R. capti & detenti in Gaola nostra Glouc. pro quodam Latrocinio cujuscumque equi apud S. ut dicitur, facto, unde coram te per quand. Inquisitionem ex officio tuo captam indictatus est, ut dicit. nobis est ostensum, quod licet ipso tibi frequent. obtulerit suffic. Manucaps, qui eum manucaperent, juxta formam Statut. apud Westmon. dudum editi, in quo continetur, quod de hujuscumodi Latrocinii coram Vic. vel Ballivis per Inquisitiones ex officiis suis captas indictati replegiabiles sunt, dum tamen bona fave sint; tu tamen Manu-

captorum



captores illos a prefat. R. recipere, & ipsum per Manuceptionem hujusmodi a Gaola prædict. hucusque deliberare distulisti, & adhuc differis, in ipfius R. dispendium non modicum & gravamen & vita sue periculum manifestum, & contra formam Stat. præd. & quia volumus quod idem R. in prisona, præd. contra firmam Statuti præd. diutius detineatur, Tibi præcipimus, quod si idem R. bonæ fame sit, & per Inquisitionem coram te ex officio tuo captam de Latrocinio præd. indictatus fuerit, ut præd. est, & pro eodem Latrocinio, & non alia occasione, in prisona prædict. detineatur, & invenerit tibi suffic. Manuceptores, qui eum manucapere voluerint habere coram Justic. nostris ad Gaolam nostram prædict. deliberand. assignate vel assignandis, in proxim. adventu eorund. pro Gaola illa deliberand. ad stand. recte de Latrocinio prædict. secundum Legem & consuetud. regni nostri Angliæ, tunc ipsum R. a prison. prædict. interim deliberari fac. per Manuception. supradict. juxta formam Statut. prædicti; & habeat ibi nomina Manuceptor. illorum, & hoc Breve. Teste, &c.

But note, That it is ousted by the Statute made An. 18 E. 3. A  
c. 4. that the Sheriffs shall not take the Indictments by Writs or Commission directed unto them. And see the Statute of Westm. cap. 15. for those who shall be bailed.

And if a Man be indicted of Felony before the Bailiffs of B  
the Hundred, and put into the Gaol for the same, if he offer sufficient Sureties to the Bailiffs, and they will not bail him, then he who is imprisoned may have such a Writ unto the Sheriff thus:

Rex Vic', &c. Ex parte I. nobis est ostens. ut cum ipse per quosd. amulos suos de Latrocinio cujusdam bovis Ric. &c. apud R. facte, ut dic. coram Ball. E. de B. de Hundr. suo de P. per Inquisitionem ex officio eorund. Ball. captam, indictatus, & ea occasione captus, & in prisona nostra de D. detentus existat; & licet idem I. frequent. sibi obtulerit sufficent. Manuceptores, qui eum manucaperent, juxta formam Statuti apud Westmon. dudum editi, in quo continetur, &c. ut supra. Tibi præcipimus, quod si idem I. bonæ fame sit, & per Inquisitionem coram eisdem Ballivis ex officio suo captam de Latrocinio præd. indictatus fuerit, ut prædictum est, & pro eodem Latrocinio, &c. ut supra, &c.

And there is another Writ for a Man who is taken for C  
Suspicion of Felony, and kept in Prison; and another Writ for him who is arrested and kept in Prison for Petty Larceny, &c. But this Clause shall then be put into the Writ, viz. Si de aliis Latrocinis prius rehati non fuerint: But this Clause, dum tamen bonæ fame sint, shall not be put in that Writ, where it is sued for him who is taken for Petty Larceny.

And

And if a Man who is of good Fame be appelled by an Approver, for which Cause he is arrested and kept in Prison; then he may sue a Writ to the Sheriff, to let him be bailed upon good Sureties.

And so if a Man be appelled by an Approver, and be taken and kept in Prison, and afterwards the Approver dieth; he may sue a Writ to the Sheriff to set him at Liberty upon sufficient Bail, if he be not a notorious Felon, although he be not a Man of good Fame.

**E** And if a Man be indicted as Accessary to a Murder, as by his Assent and Procurement, or Receipt, &c. or of aiding or counselling, &c. and be taken for the same, he may sue a Writ to the Sheriff to take Bail of him, until the Principals be convicted or attainted, if they be of good Fame; but the Statute of *Westm. cap. 15.* doth not speak so largely as the Writs in the Register do, for the Statute doth not speak of Commandment, Abertment, or Consent, &c.

**F** And if a Man be taken by the King's Commission, and kept in Prison for Felony, or evil Doing, he may by his Friends put in Sureties in the Chancery, that he will appear before the Justices, &c. and be of good Behaviour, &c. and that Body for Body; and thereupon he shall have a Writ out of the Chancery unto the Sheriff, or unto the Constable of the Castle, where he is imprisoned, to set him at Liberty, if he be imprisoned for that Cause, and for no other.

**G** And if a Man be indicted before Justices of Peace of Trespass, and imprisoned for the same by Process, he may sue a Writ out of the Chancery, directed to the Sheriff, to take Bail of him to appear before the Justices at the Sessions, and to set him at Liberty; but the Justices of Peace may take Bail of him, and set him at Liberty, if they so please.

**H** If a Man be indicted of Trespass before the Justices of the Peace, and put in Prison therefore, he may sue a *Certiorari* to remove the Judgment into the King's Bench, directed to the Justices of Peace, and a *Habeas Corpus* to the Gaoler, that he bring the Party at his Costs before the King in his Bench such a Day, &c.

**I** And if a Man be indicted of Forestalling, and put in Prison for the same, he may sue a Writ out of the Chancery to the Sheriffs, to take Bail of him to appear before the Justices, &c. to answer the Trespass, and then to set him at Liberty.

**K** And if a Man sue a Writ of Error upon false Judgment given against him in any City or Borough, where he is condemned



demned, and kept in Prison; he may sue a Writ out of the Chancery, directed to the Mayor or Bayliffs of the City or Borough, to take Surety of him to answer what shall be due to the King and to the Party, if the Judgment be affirmed, commanding them for to set him at Liberty.

[251] And so if a Man sueth an Appeal of Maihem against another, and afterwards he is arrested at the Suit of the Defendant, or of another in any City or Borough, to the Intent that he may not sue his Appeal; he may have a Writ out of the Chancery to the Bayliffs or Mayor, that he take Sureties of him to answer to the Party there, and that they set him at Liberty; and all those Writs appear in the Register.

And if a Man be appelled of Robbery, he may sue a Writ out of the Chancery to the Sheriff, that he take Sureties of him to appear before the Justices, &c. and that he set him at Liberty; and if he have not arrested him, that he do not arrest him, if the Party offers to find such Sureties to the Sheriff, &c.

And if a Man be sued in Debt or Trespas, and be arrested by *Capias* or *Exigent*, and kept in Prison, he may sue a Writ to the Sheriff out of the Chancery, to take Bail of him to appear at a Day, &c. and that he set him at Liberty, &c. But now by the Statute made *Anno 23 H. 6.* every Sheriff is bounden to let to Bail every one in his Custody, who is arrested by Writ, Bill or Warrant, in any Action Personal, or upon Indictment of Trespas, if they offer reasonable Sureties to appear at the Day, &c. in such Places where the Writ, Bill, &c. is returnable, &c. but Persons condemned, or outlawed, or excommunicated, or taken for Surety of the Peace, or Persons who are committed to Prison by the Commandment of any Justice, and Persons wandering who refuse to go serve, who remain in the Custody of the Sheriff, all those Persons are excepted, for the Sheriff ought not to let such Persons to Bail.

If a Man be condemned in Trespas before Justices of the Peace, and be arrested and put into Prison in the Custody of the Sheriff, he may sue a Writ out of the Chancery to the Sheriff, that he take Bail of him, and set him at Liberty; and also he may have a Writ directed to the Justices of the Peace, commanding them to take Bail of him, and set him at Liberty: Or if the Party do find Sureties in the Chancery to appear and stand right in Law, then he shall have a Writ directed to the Justices of Peace, or unto the Sheriff, to set him at Liberty.

- D** If a Man be bounden in a Statute Merchant payable at a Day certain, and at the Day he pay part of the Money, and hath a Release from the Conusee, of the Residue, if the Conusee sue Execution, and arrest the Party who hath the Release, then the Recognisor may sue in Chancery, &c. by his Friends, and find Sureties, Body for Body, that he shall appear such a Day in the King's Bench, and pay the Money there, if he cannot otherwise be discharged; and thereupon he shall have a Writ to the Sheriff, reciting the whole Matter, and how he hath found Sureties in the Chancery, as is aforesaid, commanding him for to set him at Liberty; and thereupon the Sheriff ought for to set him at Liberty; and if he will not so do, he shall have an *Alias*, and a *Pluries*, and an Attachment against the Sheriff, &c.
- E** And if a Man be condemned in any Court, and he is taken in Execution, and afterwards he is removed by a *Habeas Corpus*, or a *Certiorari* in Chancery; he shall not be bailed, but shall be remanded to Prison, there to remain according to the Law, until he hath satisfied the Party Plaintiff, &c. *An. 2 H. 5. cap. 2.*
- F** And two Justices of the Peace, whereof one is of the *Quorum*, may let Men suspected of Felony, or other Persons who areailable, to Bail, until the next General Sessions of Gaol-delivery: But the Justices of Peace are bound there to certify at the next General Sessions, or Gaol-delivery that Recognizance unto the Justices, &c. upon Pain of Forfeiture of 10 *l.* and that is by the Statute of 3 H. 7. *cap. 3.*
- G** And he who is acquitted of Murder within the Year at the King's Suit, shall not be released out of Prison until he find Sureties to appear at any Time the Justices will require him until the End of the Year, &c. because the Party may sue his Appeal after against him within the Year, &c.
- H** And what Persons areailable, and what not, appeareth by the Statute of *Westm. 1. c. 15.*  
And the Justices of Gaol-delivery may punish those who let Men to Bail, who are notailable, by the Statute *de Finibus, cap. 3.*
- I** And *An. 4 E. 3. cap. 2.* The Marshal of the King's House cannot let those to Bail who are indicted or appelled of Felony, who are committed to them, &c. but the Justices of the King's Bench may punish them, &c. And *An. 5 E. 3. cap. 8.* they cannot let to Bail those who render themselves



at the Exigent in Felony, and are committed to the Marshal, nor by Bailly nor Baston; and if they do, they shall be imprisoned for half a Year, and fined at the King's Pleasure.

*Writ of Diem clausit extremum.*

**T**HE Writ of *Diem clausit extremum* properly lieth, where the King's Tenant, who holdeth of him in Capite, as of his Crown, by Knight's Service, or in Socage, dieth seised, his Heir within Age, or of full Age; then that Writ ought to issue forth, and the same ought to be at the Suit of the Heir, &c. for upon that, when the Heir cometh of full Age, he ought for to sue Livery of his Lands out of the King's Hands; and the Writ is such:

*Rex dilecti. sibi W. de K. Escheatori suo in Com. Devon. salut. Quia W. de S. qui de nobis tenuit in capite, Diem clausit extremum, ut accepimus; Tibi precipimus, quod omnia terras & tenementa de quibus idem W. fuit seiscitus in dominico suo ut de feodo in Balliva tua die quo obiit sine dilatione cap in manum nostram, & ea salvo custodiri fac. donec aliud inde preceperimus, & per sacramentum proborum & legal. hominum de Balliva tua, per quos rei veritas melius sciri poterit, diligenter inquiras, quantum terra & tenementorum idem W. tenuit de nobis in capite, tam in dominico, quam servitiis, in Balliva tua die quo obiit, & quantum de allis, & per quod servit. & quant. terra & tenementa illa valent per annum in omnibus exitibus, & quo die idem W. obiit, & quis propinquior heres ejus sit, & cujus status: & inquis. inde distincte & aperte fact. nobis in Cancellar. nostra sub sigillo tuo, & sigillis eor. per quos fact. fuerit, sine dilatione mittas, & hoc Breve. Teste, &c.*

4 Eliz.  
Dyer 213.  
They shall  
be only of  
the Lands  
in Socage in  
Capite,  
and not of  
the Lands  
holden of  
other Lords.

Staundf. 13.  
Plo. Com.  
204.

And if the King had a Ward, and afterwards one who holdeth of the said Ward his Lands by Knight's Service dieth, his Heir within Age, or of full Age; then a *Diem clausit extremum* after his Death shall issue in this Form:

*Rex dilecti, &c. Quia I. de S. qui de hered. W. de O. defuncti, qui de nobis tenuit in capite, infra etatem et in custodia nostra existens tenuit per servic. militare, Diem clausit extremum ut accepimus; Tibi precipimus, quod omnia terras et tenementa, &c. et per sacramentum, &c. quantum terrarum et tenementorum idem I. ten. de hered. præd. et quis propinquior heres ejus sit, &c. ut supra.*

And if the Heir dieth being in the Custody of the King, then shall issue another Writ of *Diem clausit extremum* in this Form:

Rex, &c. Quia R. de H. filius et heres I. de H. defuncti, qui de nobis tenuit in Capite, nuper dum infra etatem et in custod. nost. a fuit Diem clausit extremum, ut accepimus; Tibi precipimus, quod per sacramentum, &c. inquiras, que terr. et que tenementa per mortem præd. I. et ratione minoris etatis heredis præd. I. ad manus nostras devenere, et sic in manu nostra existunt, et quantum inde de nobis tenent in capite, et quantum de aliis, et per quod servitium, et quantum, &c.

C And if the King's Tenant dieth who holdeth by Knight's Service, and his Wife be endowed, and the King hath the Wardship of the Lands for the Nonage of the Heir, and afterwards the Tenant in Dower dieth, the Lands being in Ward in the King's Hands; then a *Diem clausit extremum* shall be sued in this manner:

Rex dilecto sibi N. de B. Majori Civitate, sue London. & Escheatori suo in eadem Civitate, salutem. Quia E. que fuit uxor I. de B. dudum defuncti, que quasdam terras et quedam tenementa de nobis tenuit in dotem de hereditat. præd. I. quondam viri sui, Diem clausit extremum, ut accepimus; Tibi precipimus, quod omnia terras et tenementa que eadem E. sic tenuit in dotem de hereditat. præd. I. in Balliva tua, &c. per sacramentum, &c. diligenter inquiras, quas terras et tenementa eadem E. sic tenuit in dotem de hered. in Balliva tua die quo obiit, & quantum inde de nobis tenet in capite, et quantum de aliis, et per quod servitium, &c.

D Otherwise after the Death of Tenant for Life of Lands, of which the King hath the Reversion in Ward:

Quia A. qui quasdam terras et quedam tenementa de hered. E. consanguin. et hered. H. de P. defuncti, qui de Rege tenuit in capite, infra etatem et in custodia Regis existens, tenuit ad terminum vite sue, Diem clausit extremum, &c. Tibi precipimus, &c. Or thus; Quia A. qui quasdam terras et quedam tenementa de nobis tenuit per Legem Angl. de hered. M. uxoris sue dudum defuncte, Diem clausit extremum; Tibi precipimus, &c.

E And if Tenant for Life, the Remainder to the King and his Heirs, dieth, the King shall have a *Diem clausit extremum* in this manner:

Quia A. que fuit uxor, &c. qui quasdam terras & quedam tenementa tenuit ad vitam suam, et que post mortem ipsius A. nobis et heredibus nostris remanere debent, Diem clausit extremum, &c. Tibi precipimus, &c. que eodem sic tenuit, &c. et que post mortem, &c. remanere debent, &c. Or thus; post mortem præd. B. ad manus nostras ratione minoris etatis, præfat. hered. deven. &c.

And



And there are divers other Forms of Writs in the Register after the Death of Tenant for Life, or Tenant in Dower.

And if the King hath the Temporalties of the Bishop in his Hands, and afterwards one who holdeth by Knight's Service of these Temporalties dieth, his Heir in Ward to the King, then the *Diem clausit extremum* shall be in such Form:

*Rex, &c. Quia B. qui de Archiepiscopatu Cantuar. vacant. & in manu nostra existent. tenuit per servic. militare, Diem clausit extremum, &c. Tibi precipimus, &c. de quibus idem A. fuit scitatus in dominico suo ut de feodo, &c. & tenuit de Archiepiscopatu prad. sine dilacione, &c.*

And if the King hath an Idiot in his Custody, and afterwards the Idiot dieth, the Writ of *Diem clausit, &c.* shall be thus:

*Rex, &c. Quia B. de C. nuper Fatuus & Idiotus, cujus terræ & tenementa ratione Fatuitatis ejusdem in manu nostra existent, Diem, &c. ut accepimus; Tibi precipimus, quod per sacramentum, &c. diligent. inquiras quæ terræ & quæ tenementa ratione Fatuitatis prad. B. in manum nostr. capta fuerunt, & adhuc in manu nostra existent, & de quo vel de quibus tenentur, & per quod servitium, & quantum terra ille valet, &c. & quis propinquior, &c. & Inquisit. &c.*

[253]

And if a Writ of *Diem clausit extremum* be sent to the Escheator, and the Escheator be removed from his Office, or dieth before he make the Enquiry, &c. then shall issue forth another Writ of *Diem clausit extremum*, which shall be such:

*Rex, &c. Cum nuper dat. nobis intelligi, quod I. de B. qui de nobis tenuit in capite, Diem clausit, &c. preceperimus dilectis nobis W. de O. nuper Escheatori nostro in Com. prad. quod omnia terras & tenementa, &c. [ut supra, mutatis mutandis] ac idem W. ab Offic. prad. jam sit amotus, per quod Executio brevis nostri prad. fieri non potest: Nos super premiss. volentes certior. tibi precipimus, quod per sacramentum, &c. diligent. super premiss. fac. Inquisit. & eam distincte, &c. Tiste, &c.*

And another Form of Writ in this manner:

*Rex dilectis. &c. Cum nuper dat. nobis intelligi, quod I. de B. qui de nobis tenuit in capite, Diem clausit, &c. preceperimus dilecto & fidei nostro H. de B. nuper Escheatori nostro in eodem Com. quod omnes terras, &c. sine dilacione caperet in manum nostram, &c. donec aliud inde precepissem. & per sacramentum, &c. inquireret quantum terra, [ut in primo Brevis] ac idem H. antequam prad. Breve fuerat execut. ab Officio prad. fuerat amotus: Nos volentes super premiss. plenius certiorari, tibi precipimus, quod super arsculis pradictis. & eorum singulis diligenter facias inquisit. & eam distincte & aperte factam, &c. ut supra.*

But

But if the first Escheator do make Inquiry by Force of the Writ, and afterwards dieth before the Inquisition be returned into the Chancery, &c. then a *Certiorari* shall be awarded against his Executors, to certify the same Inquisition; because it is a good Matter of Record when it is found, and the Jurors have put their Seal unto the same.

If the King's Tenant, who holdeth of him by Knights-Service, dieth, his Heir within Age, and no Writ is awarded within one Year after his Death, then, after the Year is past, a Writ called a *Mandamus* shall issue forth; and that Writ doth not vary in Words from the Writ of *Diem clausit extremum*; and the Writ is such:

*Rex dilecto sibi W. de E. Escheatori suo in Com. B. salut'. Praecipimus tibi, quod per sacramentum proborum & legal. hominum de Balliva tua, per quos, &c. diligenter inquiras quas terras & qua tenementa I. de B. tenuit de nobis in capite, tam in dominico quam in servitio, in Balliva tua die quo obiit, & quantum de aliis, & per quod servitium, & quant. terrae & tenementa illa valeant per annum in omnibus exitibus, & quo tempore idem I. obiit, & quis propinquior, &c. & cujus aetatis, & quis vel qui terras & tenementa illa a tempore mortis praed. I. occupavit vel occupaverunt, & exitus & proficua inde percepit vel perceperunt, & quo titulo, & qualiter, & quomodo, &c. & Inquisitionem, &c.*

**C** And Note, That if a Man sue a Writ of *Diem clausit extremum*, it ought to be sued within the Year, and after the Year he shall have that Writ of *Mandamus*, and not a *Diem clausit extremum*. And if a Man sue forth a Writ of *Diem clausit extremum*, and he loseth the Writ, or the same is taken from him with Force against his Will, he shall not have a new *Diem clausit*, &c. But if he hath a *Diem clausit*, &c. and the Heir be found within Age, and that the King hath Title to him, because that his Ancestor held of the King at the Time of his Death by Knights-Service, and afterwards the Heir dieth being in Ward to the King, and no Writ of *Diem clausit extremum* within the Year after his Death; yet there a *Mandamus* shall not be awarded after the Year of the Death of the Ward, but a new Writ of *Diem clausit extremum*, because the Heir died in Ward to the King; and that is by the Rule of the Register.

**D** Or if the King's Tenant who holdeth of the King by Knights-Service in chief dieth, the Heir may have a special Commission directed to certain Persons, to enquire what Lands, &c. his Father held the Day of his Death, &c. and that special Commission shall be as good for the Heir as a Writ of *Diem clausit extremum* after the Death of his Ancestor. And upon such



*Writ of Diem clausit extremum.*

Commission and Inquisition taken thereupon, and found and returned in the Chancery, the Heir at full Age shall have his Livery as well as upon a Writ of *Diem clausit extremum* sued forth, &c. But upon a general Commission to enquire of all Wards, &c. the Law is otherwise; for the Heir upon such a Commission and Inquisition returned shall not have Livery.

When the Heir who is in Ward to the King by reason of Lands holden in *Capite* cometh to his full Age, then he shall have a Writ directed to the Escheator, to prove his Age, before he shall have Livery of his Lands, and the Writ is such:

*Rex dilecto sibi I. de B. Escheatori suo in Com. B. salutem. Quia E. A. de B. qui M. sororem & unam her. R. defuncti, qui de Domino Ed. nuper Rege Angliæ, Avo nostro tenuit in Capite, duxit in uxorem, dicit pref. M. plene ætatis esse, & petit a nobis terras & tenementa quæ sunt de hereditate ipsius M. & quarum una pars in manu nostra, & alia pars in custod. I. de H. ex commissione dicti avi nostri, usque ad legitimam ætatem hered. ejusdem existunt, sibi reddend', per quod volumus quod eadem M. quæ apud G. in Com. N. nota est, & in Ecclesia ejusdem villa baptizata fuit, ut dicitur, ætatem suam probet coram te: Tibi præcipimus, quod ad certos diem & locum, quos ad hoc provideris, probationem illam per sacramentum tam militum quam proborum & legalium hominum de Balliva tua, per quos probatio illa capi & veritas ætatis præd. M. melius sciri poterit & inquireri, capias, & scire fac. pref. I. quid tunc sit ibi, ad ostendend', si quid pro se habeat vel dicere sciat, quare præd. A. & præd. M. ut illi quæ plena ætatis est, si plene ætatis sit, terras & tenementa præd. reddere non debeamus; & Probationem illam sic captam nobis sub sigillo tuo, & sigillis eorum per quos capta fuerit, sine dilatione mittas, & hoc B. ex. Teste, &c.*

And by that Writ it appeareth, that the Writ of *Etate probanda* shall be directed unto the Escheator of the County where the Heir was born, and not where the Lands of the Heir lie; but yet it seemeth reasonable that he may sue it where the Lands lie; for it may be that he was born where the King's Writ doth not run, or in Ireland, or beyond the Sea, as in *Calais*, &c.

There is another Form of Writ thus:

*Rex, &c. Quia M. de P. filius & heres F. defuncti, qui de nobis tenuit in capite, dic. se plena ætatis esse, & petit a nobis terras & tenementa quæ sunt de hereditate sua, & in custodia nostra usque ad legitimam ætatem hered. præd. sibi reddi, per quod volumus, &c. [usque ibi, melius sciri poterit & inquireri, capias, & tunc sic.] Et probationem illam, &c. ut supra.*

There is another Form when the King committeth the Ward

Ward during his Nonage, then when he will sue an *Etate probanda*, he ought to make mention of the same Commitment.

And if a Man be in Ward unto the King by reason of the Temporalties of a Bishoprick in the King's Hands, when the Heir cometh of full Age he ought for to sue forth an *Etate probanda*; and the Writ shall mention the whole Matter; and yet he doth not hold of the King *in Capite*.

And when the Heir hath proved his Age, and the Writ is returned, then he ought to do his Homage to the King, or agree with the King for the respiting of the Homage, and he shall have such Writ:

*Rex eidem Escheatori, &c. Scias quod cepimus Homagium I. de H. filij & heredis B. de H. defuncti, de omnibus terris & tenementis que idem B. pater suus tenuit de nobis in capite die quo obiit, & ei terras & tenementa illa reddidimus: Et ideo tibi precipimus, quod accepta Securitate a prefato I. de rationabili Releuio suo nobis solvendo ad Scaccarium nostrum, eidem I. de omnibus terris & tenementis predictis, & de quibus prefatus B. pater suus fuit seifit in dominico suo ut de feodo in Balliva tua die quo obiit, & que occasione mort. ejusdem B. capta sunt in manum nostram, plenam Seifin. habere fac; salvo jure cujuslibet. & salva Matilda, que fuit uxor B. rationabili Dote sua, ipsum de terris & tenementis pred. secundum legem & cons. regni nostri Angliæ contingent, & per nos assignand. Teste, &c.*

And the Writ aforesaid lieth, where the Heir was of full Age at the Time of the Death of his Ancestor, and sueth his Livery; but if the Heir were in Ward, and hath proved his Age, then he shall have a Writ thus:

*Rex, &c. Quia N. de E. filius & her. B. de C. defuncti, qui de Domino Edward. nuper Rege Angl', Avo nostro, tenuit in capite, etatem suam coram te sufficiens. probavit, sicut per Probationem de mandato nostro captam & in Cancell. nostram retorn. est compertum; ceperimus Homagium ipsius N. de omnibus terris & tenementis que idem R. pater suus tenuit de dicto Avo nostro in capite die quo obiit, & ei terras & tenementa illa reddidimus: Et ideo tibi precipimus, quod eidem N. de omnibus terris & tenementis pred., & de quibus pred. R. pater suus fuit seifitus in dominico suo ut de feodo in Balliva tua die quo obiit, & que per mortem ejusdem R. in manum dicti Avi nostri capta fuer. & in manu nostra sic capta existunt, plenam Seifin. habere fac. salvo jure cujuslibet. Teste, &c.*

And if the Husband seifed in Ece in Right of his Wife be outlawed of Felony, for which the Lands came into the King's Hands, and afterwards the Husband who is outlawed dieth; a Writ of *Diem clausit extremum* shall be awarded, which shall be such:



Quia A. cuius terr. et tenementa, quæ ipse tenuit de jure et hereditate N. nuper uxoris suæ adhuc supersit, ad manus Domini Edward. nuper re. i. Angliæ quarti post Conquest, occasione cuiusd. Ulagar. in ipsam A. pro quadam Felonia unde inuictatus fuit, ut dicitur, promulgat, devener, et in manu Domini Henrici, &c. patris nostri, existerunt, et sic in manu nostra existunt, Diem clausit extremum, &c. Tibi præcipimus, quod per sacramentum, &c. inquiras quæ terra et quæ tenementa ration. Felon. præd. ad manus ipsius nuper Regis devener, et adhuc in manu nostra sic existunt, et de quo vel de quibus tenentur, et per quod servitium, et qualiter, et quomodo, et quantum terr. et tenementa illa valeant per ann. in omnibus exitibus, juxta verum valer. eorum, et quis vel qui terras et tenementa illa a tempore perpetrationis Felon. præd. occupavit vel occupaver, et exitus et proficua inde percepit vel percep, qua titulo, qualiter et quomodo: Et laquisit, &c.

## Quæ plura.

[ 355 ] **T**HE Form of the Writ of Quæ plura is such: Rex Escheatori suo, &c. salut. Quia dat. est nobis intelligi quod A. defunct, qui de nobis tenuit in capite, tenuit die quo obiit plura terr. et tenementa in Com. prædict, quæ in Inquisition ind. post mortem prædict. A. de mandato nostra capta, et in Cancellar. nostra retornat, specificantur: Tibi præcipim, quod per sacramentum proborum, &c. inquiras quæ plur. terras et tenementa idem A. tenuit in Com. prædict. die quo obiit, et de quo vel de quibus illa plura terr. et tenementa teneantur, et per quod servit, et quantum valeant per ann. in omnibus exitibus; et Inquisitionem, &c.

The Writ of *Melius inquirendo* lieth, where the first Office is found by virtue of a Writ of *Diem clausit extremum*, the which Office wanteth Certainty in divers Points, as in the Tenure of divers Londs, or in the Value of any of them, &c. then shall issue forth such Writ of *Melius inquirendo*: But if the first Office be found by the Escheator *virtute officii sui*, and not by virtue of any Writ or Commission, and the Office wanteth Certainty in divers Things, as before; then a *Melius inquirendo* shall not issue forth, but the Office and Inquisition returned shall be as void, because it is not found by virtue of any Commission or Writ, but only *ex officio* of the Escheator, without any Command to him to do the same; and therefore the same shall be taken as void, if it want Certainty in any Point.

*Melius inquirendo.*

**T**HE Form of the Writ of *Melius inquirendo* is such:  
 Rex Escheat', &c. salut. Cum per quamdam Inquisit. coram A. Escheatore nostro in Com. præd. de mandas. nostro capt. & in cancell. nostra retornat', sit compert', quod N. defunctus tenuit divers. terras & tenement', cum pertin. in Com. præd. & quis propinquior heres ejusdem N. sit ex parte patris sui Juratores Inquisitionis prædictæ. ignorant, tamen ex parte R. matris prædictæ. N. fil. W. B. est ejus heres propinquior, & ætatis viginti unius annorum & amplius; & quia in Inquisitione prædictæ. quis propinquior heres ipsius N. existat minime specificat'; Tibi præcipimus, quod per sacrament', &c. inquiras quis propinquior her. præd. N. existit, qualiter & quomodo: Et Inquisitionem, &c.

There is another Form of Writ of *Melius inquirendo*, because he doth not specify in the Inquisition what Estate the Tenant had in the Lands; or because he doth not shew in the Office of whom, or of who the Lands were holden; or because he doth not mention in the Writ the true Value, and the King is informed that the Lands are of greater Value than is certified by the Office. And Note, That a *Melius inquirendo* shall be awarded upon a Surmise made in Court, that the Lands are of a greater yearly Value than is declared by the Office; and upon like reason upon a Surmise made that they are holden by other Services, or that the Tenant was seised of other Lands or other Estate than is mentioned in the Office, a *Melius inquirendo* shall be awarded.

*Writ of Livery.*

**T**Here is another Form of Writ of Livery, where the King's Tenant in Capite dieth, his Heir within Age, and the King seisseth the Ward, and afterwards that Heir dieth within Age, and in Ward to the King, for which the Lands come unto his Heir who is within Age, and in Ward to the King; now when that Heir cometh of full Age, he shall have a Writ of Livery in this Form:

Rex dilecto, &c. Escheatori suo in Com. I. salut. Quia I. frater & her. S. fuit & her. I. S. defuncti, qui de nobis ut de Honore H. in manu nostra existent. tenuit per servic'. reddend ad Wardam Castri Dover. decem solidi per annum, ætatem suam cor. Roger. de W. nuper Escheat. nostr. in Com. præd', suffic. probavit. sicut per Probat. illam de mandato nostro capt', & in Cancell. nostræ retorn', est compertum; cepimus Homagium & Fidelitatem



tem ipsius I. fratris S. de omnibus terris et tenem. qua præd. I. S. pat. tenuit de nobis ut de Honore pã. die quo obiit, et que post mortem præd. I. S. patris, et ratione minoris ætatis ipsius S. qui quidem S. dum infra ætatem et in custodia nostra fuit diem clausit extremum, ad manus nostras devener', debet', et eidem I. fratri S. omnia terr. et tenem. illa cum pertin. reddidimus. Et ideo tibi præcipimus, quod eidem I. fratri S. de omnibus terris et tenem. præd. cum pertin. et de quibus præd. I. S. pater fuit seisit. in dominis suis ut de feodo in Ball. tua die quo obiit, et que per mortem ipsius S. patris, et ratione minoris ætatis ipsius S. ad manus nostras devener', et sic in manu nostra ratione minoris ætat. ejusdem I. fratris S. adhuc existunt plenam Seisinam haber. fac', salvo jure cujuslibet. Teste, &c.

And when an Heir shall have Livery at his full Age, and holdeth one Manor in Capite of the King by Knights-Service, and holdeth other Lands in several Counties of others, then a Writ shall issue to the Escheator of the County where he holdeth in Capite; and the Form shall be such: *Scias quod cepimus Homagium, &c.* And the Writs to other Escheators being thus: *Cum ceperimus Homagium, &c.*

[ 156 ]

And it appeareth by the Writ before, that to hold Land to render a certain Rent for the guarding of the Castle of Dover shall be a Tenure in Capite, and by Knights-Service; and it may be that in ancient Time he should guard the same, and yet the taking of the Rent doth not alter the Nature of the Tenure. *Quere.*

If two Men by Licence purchase Lands holden of the King in Capite, and afterwards one of them dieth, the other shall have the Lands cum exitibus out of the King's Hands upon the Matter found by Inquest; but by the Register he ought to shew the Licence in the Chancery.

And if the King's Tenant who holdeth in Socage dieth, his Heir of the Age of fourteen Years and more, and the King seiseth the Lands, he ought for to sue Livery of them. But it seemeth the King ought not for to seise the other Lands which he holdeth of other Lords by other Services, &c. and if he do, the other Lords shall have a Writ of *Amovendo manum*, which is called an *Ouster le main, una cum exitibus, &c.* so as they shall have the Issues and Profits thereof which were taken by the King. and the Form of the Writ is such:

*Rex dilecto sibi A. Escheatori suo, &c. Quia accepimus per Inquisit. quam per te facta fecimus, quod I. de T. defunctus tenuit in dominio suo ut de feodo, die quo obiit, unum mesuagium & unam bovata. terra cum pertin. in K. de nobis in capite, ut de Honore*

E. 3. 41.

Honor.

Berkehan.

stead. 20.

29 H. 8. 24.

4 Eliz. Dyer

217. Rute

acc. Plow.

Com. 109.

204. 20 Eliz.

Dyer 362.

Honore Abbatis Mariæ in manu nostra existent, per fidelitatem et per servitium trium solidorum et novem denar. nobis annuatim reddend, et quod non tenuit aliqua alia terras et tenementa de nobis in capite ut de Corona in Balliva tua die quo obiit, per quod custod. terr. et tenement. que fuer. præd. I. die præd. ad nos ad præf. debent pertin. et quod tenuit die prædict. divers. alias terras et tenementa de diversis dominis pro divers. servic; quodque N. filius p[er] I. est h[er]es ejus propinquior, et ætatis sexdecim annorum et amplius; cepimus fidelitatem ipsius N. de mes. et terris prædict. et ea reddidimus. Ideo tibi præc. quod accepta Securitate a præf. N. de rationabili Relevio suo nobis solvend. ad Scaccarium nostrum, eidem N. de mesuag. et terr. prædict. que occasione mortis ipsius I. cepisti in manum nostram, plenam Seisnam habere facias, salvo jure cuiuscumque: De aliis vero terris et tenementis, que præfatus I. tenuit de aliis dominis in Balliva tua die quo obiit, que similiter ea occasione mortis prædict. I. cepisti in manum nostram, te ulterius non intronittas, salvo jure nostro et ulterius cuiuscumque, et exitus, si quos de terris et tenement. que de aliis dominis sic tenent perceperit, illis ad quos pertinent liberes.

And by this Writ it appeareth, that the Heir in Socage being of full Age at the Time of the Death of his Ancestor shall have *Livery cum exitibus*; but if he were within the Age of fourteen Years at the Time of his Ancestor's Death, the prochieu amies must sue an *Ouster le main cum exitibus*: But the other Lords shall have an *Ouster le main* for the Lands holden of them by Knights-Service *cum exitibus*.

**D** And if the King hath the Custody of an Idiot and of his Lands, which are holden of the King *in Capite*, and the Idiot dieth, and his Heir be of full Age; the Heir shall have a Writ of Livery in this Form:

Rex Escheatori, &c. Quia accepimus per Inquisic. quam per te fieri fecim, quod diversa terr. & tenementa cum pertin. in O. in manum domini Ed. quondam Regis Angl' avi nostri, ration. Foruitatis & Idiot. W. de P. jam defuncti capta fuer. & in manu nostra sic existunt, & quod eadem terr. & tenement. tenentur de nobis in capite, ut de Honore Abbatis Mariæ in manu nostra existent. per servitium octavae partis unius feodi milit'. & sac' Sect. ad Wapentag. nostrum de Holdernes. de tribus septimon. in tres. ac red. ardo ad Wardam Castri nostri de Skipton ad medium Quadragesim. decem & septem denarios; quodque Galfridus, filius Will. de Redmain consanguineus præd. Will. est h[er]es ejusdem Will. propinquior, & plena ætatis; cepimus Fidelitatem ejusdem Galfrid. de omnibus terr. & ten. præd. & illa ei reddidimus, ac Homag. ejusd. Galfrid. usque ad Festum Paschæ



*Pascha proxima futur. de gratia nostra speciali respiciamus: Et ideo tibi precipimus, quod accepta Securitate a prefat. G. de rationabil. Relevio suo nobis reddend. ad Scaccar. nostrum, eidem G. de omnibus terris & increment. prad. in manu nostra exist. plenum Seisin. habere fac', salvo jure cognoscibet. Teste, &c.*

And when the Heir in Ward unto the King is of full Age, he shall have a Writ out of the Chancery unto the Keeper of the Privy Seal, testifying that he is of full Age: and thereupon he shall have a Privy Seal unto the King's Chamberlain to receive his Homage: And when he hath taken his Homage, he shall have a Writ from the Chamberlain to the Chancellor, testifying that he hath taken his Homage; and thereupon he shall have a Writ of Livery. And all this Matter appeareth at large in the Abridgments, in the title Livery, which see there.

And if three Coparceners be in Ward to the King, the first Coparcener who first cometh of Age shall sue Livery, and shall have Partition made thereupon.

And if an Heir female be in Ward to the King, and holdeth of other Lords in Socage; now when she cometh of the Age of fourteen Years she shall not sue Livery of the Lands holden in Socage, but she shall tarry until her Age of sixteen Years, if she be not married before that Age, for the

[ 257 ] shall sue Livery but once for all her Lands, &c.

And if the Heir of full Age sueth his Livery, and omitteth any Parcel of his Inheritance, as an Advowson, or a Reversion, or one Acre of Lands which is not found by the Writ of *Deon clausit extremum*, and thereupon sueth his Livery; if it be found afterwards by another Office, that his Ancestor died seised of that Advowson, Reversion, or Acre of Land, which was not found by the first Office upon which he sued his Livery before, then the King may reseise all the Lands, &c. and the Heir shall answer the King for all the Rents, Issues and Profits received in the mean Time by the Heir, &c.

If the King's Tenant holdeth by Knights-Service and is *Capite*, and also holdeth other Lands of the Archbishop of Canterbury by Knights-Service, and dieth seised, his Heir within Age; the King shall have the Lands holden of him in Ward, and the Archbishop shall have the other Lands holden of him in Ward: And that is by the Statute of *Prærogativa Regis*, c. 1. And if the King seiseeth all the Lands, the Archbishop shall have an *Ouster le main cum exitibus*.

And if the King's Tenant who holdeth *in Capite* and by Knights-Service, dieth seised, and a Stranger doth abate, for which

which the Heir at full Age recovereth by Assise of Mort d'Ancestor; yet he ought for to sue his Livery, and to do his Homage, and the Abator shall answer the King the mean Profits and Issues received. And the Writ de Ætate probanda may be directed to certain Commissioners to enquire of the Age of the Infant, as well as unto the Escheator, and the Form of the Commission is such :

## Commission pro Ætate probanda.

**R**EX dilectis, &c. Sciatis quod assignavimus vos ad inquirend. per sacrament. tam militum quam aliorum proborum & legal. hominum de visn. de N. in Com. Linc', si I. filius & hæres B. apud N. natus, & in Ecclesia ejusdem Ville baptizatus, & qui ratione minoris ætatis sue in custodia nostra existit, plen. ætatis sit, ut dicit, necne. Et ideo vobis mandamus, quod ad certos diem & locum, quos ad hoc provideritis, Inquisitionem illam faciatis, & illam distincte & aperte fact, nobis in Conc. sine dilatione mittatis, & hoc Breve. Mandavimus enim Vic' nostro Linc', quod ad diem & locum quos ei scir. fac. venire fac', &c. In cujus rei testimonium, &c. And thereupon a Writ shall be sent to the Sheriff to return an Impanel before the Commissioners at a certain Day by them appointed. And the Writ shall be such :

Rex Vic', &c. Præcipimus tibi, quod sum. per bonos Sum. tam milites quam alios probos & legales homines de visn. de N. quod sint coram dilectis & fidelibus nostris A. B. & C. & hiis quos sibi associavimus, ad certos diem & locum quos eidem A. B. & C. tibi scire faciant, parati sacramento recognoscere, si F. filius & hæres D. apud N. natus, & in Ecc'es. ejusdem Vill. baptizatus, qui ratione minoris ætatis sue in custodia nostra existit, plene ætatis sit, ut dicit, necne; & interim ad præd. eccles. & Villam accedant, & veritatem ætatis præd. F. diligens. inquirent: Et nomina eorum imbrevari fac'. Et scire fac. E. & S. custodibus terre præd. heredis, quod tunc sint ibi ad audiend. illam Recogn., & ad ostendend', si quid ob stare debeat quor. præd. I. terras & tenementa sua habere non debeat; & habeas ibi nomina illorum duodecim, & hoc Breve. Teste, &c.

**E** And thereby it appeareth, that if the King hath committed the Wardship of the Land unto another, that the Committee shall be warned to be there; but if the King hath the Lands in his own Hands, then that Clause, Et scire facias E. & S. Custodibus, &c. shall be omitted out of the Writ.

**F** And by the Rule of the Register, a Woman shall do Homage and Fealty, and shall pay a Relief when she sueth her Livery, if she be of full Age at the Time of the Death of her



*Writ of Livery after the Death of the Tenant in Dower.*

**R**EX dilecti sibi T. de S. Escheatori suo in Com. Ebor', salu- B  
tem. Scias quod cepimus Homagium & Fidelitatem dilecti  
& fidelis nostri R. Barou. de F. nobis pro omnibus terris & tenementis  
quae A. quae fuit uxor R. de N. quondam uxor R. nuper  
Baronis de F. post mortem praedicti R. nuper Baronis de F. primi  
viri ipsius A. avi ipsius R. nunc Baronis de F. de nobis tenuit in  
capite die quo obiit, debet, & ei terras & tenementa illa cum per-  
tin. reddidimus: Et ideo tibi praecipimus, quod accepta Securitate  
a praef. R. nunc Barone de F. de rationabili Relevio nobis solvend.  
ad Scaccarium nostrum, eidem R. nunc Baroni de F. de omnibus  
terris & tenementis praed. cum pertin. quae praefat. A. ten. in do-  
cem post mortem praed. R. viri sui, avi praed. nunc Barou', de her-  
editate praedicti. in Ball. tua die quo obiit, & quae post mortem  
praedicti. A. accept. sunt in manum nostram plenam Seisnam habere  
fac'; salvo jure cujuscumque. Teste, &c.

And by that it appeareth, That Tenant in Dower who is  
endowed in the Chancery, &c. of Lands holden of the King  
in Capite, or of other Lands which are in the King's Hands  
by the Death of his Tenant, that she shall hold them of the  
King, and the Heir shall have Livery of those Lands after  
her Death; yet it seemeth that the Reversion of those Lands  
which she holdeth in Dower remaineth not in the King, but  
in the Heir; and if she commit Waste, the Heir shall pu-  
nish the Waste.

There is another Form of Writ of Livery, after the C  
Death of the King's Tenant, who holdeth parcel in Fee, or  
parcel in Tail, or for Life, thus:

*Writ of Livery after the Death of Tenant in Tail and  
Tenant for Life.*

**R**EX dilecti, &c. Escheatori suo in Com. Salop. & March.  
Walliae eidem Com. adjacent', salutem. Quia cepimus  
Homag. & Fidelitas. dilecti & fidelis nostri I. de B. filii &  
haered. I. de B. senioris, de omnibus terris & tenementis cum per-  
tin. quae idem I. tenuit de nobis in capite, tam in feodo quam ad  
termin. vice, die quo obiit, & quae post. mort. dicti I. patris  
dicto I. filio pertin. descendere, vel eid. I. filio & S. ux. ejus &  
haered. de corpor. suis exeuntibus debeat aliquant. reman', & ei  
terras & tenementa illa reddidimus: Ideo tibi praecipimus, quod  
accepta Securitate a praef. I. de rationabili Relevio suo nobis  
solvend. ad Scaccar. nostrum, eidem I. filio de omnibus terris &  
tenemen-  
[ 299 ]

cepimus Homag. G. de N. filii I. de N. defuncti, de omnibus terris et tenentis que idem I. tenuit per Legem Angl. die quo obiit, ut de jure N. nuper uxor. ejus jam defunctæ, que de nobis tenuit in capite, matris præd. G. cujus her. ipse est, nobis debet, et terras et tenementa illa ei reddidimus: Et ideo tibi præcipimus, quod accepta Securitate ab eodem G. de Relevio suo nobis solvend. ad Scaccarium nostrum, eidem G. de omnibus terris et tenementis præd. cum pertina. que per mortem prædict. I. capta sunt in manum nostram, plenam Seisinam habere fac. salvo jure cujuscumque. Teste, &c.

And thereby it appeareth, That the Tenant by the Courtesy shall have the Lands after the Death of his Wife, without suing an *Ouster le main* for those Lands holden of the King, but that the Heir after his Death shall sue his Livery for them, &c. because that the Tenant by the Courtesy doth remain Tenant to the King.

And if a Man have Lands which are held of the King *in Capite* by the Courtesy, and he hath other Lands in Fee, and dieth; his Heir shall sue Livery as well for the Lands whereof the Tenant was seised in Fee, as for the Lands which he held by the Courtesy, altho' the Lands of which the Tenant by the Courtesy was seised in Fee were not holden of the King *in Capite*, &c. because that as well those Lands are seised into the King's Hands, as the Lands which he held by the Courtesy; and the Writ shall be such:

Rex dilecto sibi, &c. Escheat. in Com. Eborac. salutem. Scias quod cepimus Homag. et Fidel. G. filii et heredis W. de S. et I. que fuit uxor ejusdem W. de S. defunctor, de omnibus terris et tenementis que præd. W. de S. pater suus tenuit tam per Legem Angl. de hereditate prædict. I. quond. uxoris sue post mortem ipsius I. quam in dominico suo ut de feodo die quo obiit, et ei terras et tenementa illa reddidimus: Et ideo tibi præcipimus quod accepta Securitate a præf. G. filio W. de rationabili Relevio suo nobis solvend. ad Scaccarium nostr. eidem G. filio W. de S. de omnibus terris et tenementis prædict. cum pert. in. et que prædict. W. de S. pater suus tenuit tam per Legem Angl. post mortem prædict. I. quond. uxoris sue, quam in dominico suo ut de feodo in Ball. tua die quo obiit, et que post mortem ipsius W. de S. capta sunt in manum nostram, Seisinam habere fac. salvo jure cujuscumque. Teste, &c.

And if the King's Tenant dieth, and after his Death his Wife be endowed, then after the Death of the Tenant in Dower, the Lands which she held in Dower shall be seised into the King's Hands, and the Heir shall sue Livery of them. And the Writ shall be such:



*Writ of Livery after the Death of the Tenant in Dower.*

**R**EX dilecto sibi T. de S. Escheatori suo in Com. Ebor', salu- B  
 tem. Sciat quod cepimus Homagium & Fidelitatem dilecti  
 & fidelis nostri R. Baroni de F. nobis pro omnibus terris & tena-  
 mentis que A. que fuit uxor R. de N. quondam uxor R. nuper  
 Baronis de F. post mortem predicti R. nuper Baronis de F. primi  
 viri ipsius A. avi ipsius R. nunc Baronis de F. de nobis tenuit in  
 capite die quo obiit, debet, & ei terras & tenementa illa cum per-  
 tin. reddidimus: Et ideo tibi precipimus, quod accepta Securitate  
 a pref. R. nunc Barone de F. de rationabili Relevio nobis solvend.  
 ad Scaccarium nostrum, eidem R. nunc Baroni de F. de omnibus  
 terris & tenementis pred. cum pertin. qua prefat. A. ten. in do-  
 tem post mortem pred. R. viri sui, avi pred. nunc Baroni, de he-  
 reditate predicti. in Ball. tua die quo obiit, & qua post mortem  
 predicti A. accept. sunt in manum nostram plenam Seisinam habere  
 fac'; salvo jure cuiuslibet. Teste, &c.

And by that it appeareth, That Tenant in Dower who is  
 endowed in the Chancery, &c. of Lands holden of the King  
 in Capite, or of other Lands which are in the King's Hands  
 by the Death of his Tenant, that she shall hold them of the  
 King, and the Heir shall have Livery of those Lands after  
 her Death; yet it seemeth that the Reversion of those Lands  
 which she holdeth in Dower remaineth not in the King, but  
 in the Heir; and if she commit Waste, the Heir shall pu-  
 nish the Waste.

There is another Form of Writ of Livery, after the C  
 Death of the King's Tenant, who holdeth parcel in Fee, or  
 parcel in Tail, or for Life, thus:

*Writ of Livery after the Death of Tenant in Tail and  
 Tenant for Life.*

**R**EX dilecti, &c. Escheatori suo in Com. Salop. & March.  
 Wallie eidem Com. adjacent', salutem. Quia cepimus  
 Homag. & Fidelitat. dilecti & fidelis nostri I. de B. filii &  
 heredi I. de B. senioris, de omnibus terris & tenementis cum per-  
 tin. que idem I. tenuit de nobis in capite, tam in feodo quam ad  
 termin. vite, die quo obiit, & qua post. mort. dilecti I. patris  
 dilecti I. filio pertin. descendere, vel eid. I. filio & S. ux. ejus &  
 heredi. de corpor. suis exeuntibus debeat aliquant. reman', & ei  
 terras & tenementa illa reddidimus: Ideo tibi precipimus, quod  
 accepta Securitate a pref. I. de rationabili Relevio suo nobis  
 solvend. ad Scaccar. nostrum, eidem I. filio de omnibus terris &  
 tenemen-

tenement. præd. cum pertin', & de quibus præd. I. pater suus fuit seifis. in dominico suo ut de feodo talliato, quorum Reverso ad diff. I. filium pertinet, in Balliva tua die quo obiit, & que per mort. ejusd. patris sui capta sunt in manum nostram, plenam Seifinam habere facias, salvo jure cujuslibet. Teste, &c.

And if Tenant in Tail holdeth of the King in Capite, and dieth, the Heir then of full Age, he shall have such Writ of Livery.

*Writ of Livery for the Heir in Tail.*

**A** REX, &c. Scias quod cepimus Homag. & Fidelitat. dilect. nobis W. &c. filii & heredis W. de B. defuncti, de omnibus terris & tenementis que præd. W. pater suus sibi & her. suis de corp. suo excunt', ex dono & concessione W. de S. per Finem inde in Cur. nostra de licent. nostra levat', de nobis in capite die obitus sui tenuit, & terras & tenementa illa ei reddidimus: Et ideo tibi præcipimus, quod accepta Securitate a præfat. W. &c.

And if the King's Tenant holdeth by Petit Serjeanty, and dieth, and his Heir be within Age of eighteen Years, then he shall have a Writ to have Seifin of the Lands, thus:

*Writ of Livery for Lands by Petit Serjeanty.*

**B** REX dilecto, &c. Escheat. suo in Com. Suff. salutem. Quia accepim. per Inquisition. quam per te fieri fecimus, quod T. P. defunctus tenuit in dominico suo ut de feodo die quo obiit decem mesuag', centum acr. terre, quadraginta acr. prati, & decem acr. pasture, triginta acr. more, ac viginti solid. reddit. cum pertin', in W. in Com. præd. de nobis in capite, per servitium viginti solid. nob. ad Manerium de L. annuatim solvend. pro omni servitio, & quod non tenuit aliqua alia terr. seu tenementa in dominico suo ut de feodo de nobis, nec de aliis, in Com. præd. die quo obiit, & quod W. filius præd. T. est heres ejusd. T. propinquior, & etatis decem & octo annor. & amplius; Tibi præcipimus, quod capta Fidelitate ipsius W. juxta form. cujusd. schedule præsentibus interclusa. & accepta Securitate ab eod. W. de rationabili Relevio suo nobis solvend. ad Scaccar. nostrum, eid. W. de mesuag', terra, prati, mora & redditu præd. cum pertin', que per mort. præd. T. capta sunt in manum nostram, plenam Seifinam habere fac', salvo jure cujuslibet. Teste, &c.

And thereby it appeareth that the Heir in Socage shall not have Livery cum exitibus, &c. if he pass the Age of fourteen Years; but within the Age of fourteen Years he shall have Livery cum exitibus, &c. and the same is holden for a Difference at this Day.



*Writ of Livery for the Aunt, &c.*

The King's Tenant hath issue a Son *D. de B.* and two C Daughters, and dieth; and the said *D. de B.* hath Livery, and afterwards hath issue a Son *H. de B.* and dieth, the said *H.* being in Ward to the King for his Nonage, and afterwards one Sister hath issue a Son and dieth, and afterwards *H.* dieth being in Ward to the King, and his Aunt and the Son of the other Sister, being of full Age, sue to have Livery: Now they ought to have a Writ directed to the Escheator, by which it shall be commanded to the Escheator to make Livery to them, and to make Partition between them of those Lands which are in the King's Hands, so as each Coparcener shall have part of the Lands which are holden of the King in Capite; and the Writ shall be such:

*Writ of Livery for the Aunt and Niece to make Partition.*

**R**EX dilectio sibi *A. de H.* Escheat. suo in Com', &c. salutem. Scias quod cepimus Homagium et Fidelitatem, tam de *D. de B.* filio *A. de B.* unius foris *D. de B.* quam de *T. de B.* aliter foris, præd. *D. de B.* consanguin. et hered. *H. de B.* filii et her. prædict. *D. de B.* defuncti. quod de nobis tenuit in capite, nobis, pro omnibus terris et tenem. quæ præd. *D. de B.* tenuit in capite, quæ per mort. præd. *D. de B.* et ratione minoris ætatis *H. filii et her. ejusd. D. de B.* qui quidem *H.* dum infra ætat. et in custod. nostra fuit Diem clausit extremum, ad manus nostras devenit, debita, et eisd. *D. de B.* et *T.* terr. et tenem. præd. reddidimus; et ideo tibi precipimus, quod accepta Securitate a præf. *D. de B.* et *T. de B.* rationalibus Releviis suis nobis solvend. ad Scaccar. nostrum, fallaque legali partitione omnium terrarum et tenem. cum pertin. in Balliva tua, quæ per mort. prædict. *D. de B.* et ratione minoris ætatis prædict. *H.* ad manus nostras devenit, et in manu nostra adhuc existunt, juxta Extent. inde factam, vel aliam si necesse fuerit iterato faciend., in duas partes equal. in present. prædict. *D. de B.* et *T.* vel Attorn. suorum in hac parte præmuniend., si interesse voluerint, eisd. *D. de B.* et *T. de B.* partibus suis, ipsi inde juxta partition. ill. secundum Legem et consuetud. regni nostri Angl. contingent. plenam Seisnam haberi fac. salvo jure cuiuslib. Proviso semper, quod utraq; præd. *D. de B.* et *T. de B.* partem terr. et tenem. quæ de nobis tenent in capite, et partem suam habeant, et tenem. noster existat cum pertin. ill., &c. Teste, &c.

And if a Man and his Wife hold a Manor of the King in A Capite in Tail, and die, and have issue two Sons, and the younger Son is found Heir by virtue of a Writ of Diem clausit

*clausit extremum, and of full Age, and the King maketh Livery unto him of the Manor, and afterwards by another Office found by Commission, &c. it is found that the elder Brother is Son and Heir, &c. then upon the last Office found, the King shall send a Scire Facias directed to the Sheriff, to warn him to shew why the Manor shall not be re-seised into the King's Hands, and he to answer the Profits received in the mean Time. And if the Sheriff do return the Writ served, and that the Party is warned and doth not appear; then the King shall re-seise the Lands, and shall make Livery of that Manor unto the elder Brother; and the Writ by which the Service shall be made shall be such:*

*Writ of Livery, and to make void a Livery made before.*

**R**EX dilecto sibi, &c. Escheatori suo in Com', &c. Cum nos nuper, comperto per Inquisitionem H. de S. Escheatoris nostri in Com. præd. ad mandatum nostrum captam, & in Cancell. nostram retornatam, quod I. filius H. B. defuncti, & T. uxor. ejus que præf. I. quondam virum suum supervixit. similis defuncti. tenuerunt diebus quibus obierunt in feodo talliat. sibi & her. suis de corporibus suis executibus Manerium de I. cum pertin. in Com. præd. de nobis in capite per servitium milit. & quod T. filius præd. I. & T. tunc fuit propinquior her. eorund. I. & T. & plena ætatis, cepimus Homagium et Fidelitat. ipsius T. nobis pro Man. præd. debita, et ei Man. illud cum pertin. reddidimus, illudque sibi mandaverimus liberari, sicut per inspectionem Rotulorum Cancellariæ nostræ plene liquet; ac postmodum supplicanti. nobis H. B. filio et hered. eorund. I. et T. ut cum per quandam aliam posteriorem Inquisitionem, per præf. Escheat. de mandat. nostro captam, et in Cancell. nostram retornatam, sit compertum, quod præd. I. et T. tenuerunt diebus quibus obierunt in feodo talliato sibi et hered. suis de corporibus suis executibus præd. Manerium cum pertin. de nobis in capite per servitium militare in forma prædict. et prædict. H. filius prædict. I. et T. ætatis quadraginta et sex annorum, est frater senior ejusdem T. et heres eorundem I. et T. propinquior, absque hoc quod prædict. T. est heres eorundem I. et T. propinquior, prout per dictam primam Inquisitionem supponit, velimus Man. prædict. cum pertin. in manus nostras resumi, et eidem H. ut fratri seniori prædict. T. et propinquiori her. eorundem I. et T. liberari jubere; ac nos volentes in hac parte fieri quod est justum præcepimus per Brev. nostr. Vicecom. nostr. Com. prædict. quod scire faceret præf. T. quod esset cor. nobis in Cancellar. nostra



nostra in Ollavis S. Hilarii proxima, præterit, ubicunque tunc foret, ad ostendend. si quid pro se haberet aut dicere sciret, quare Man. præd. cum pertinens, una cum exitibus inde perceptis, in manum nostram resumant, & idem Man. præf. H. ut fratri seniori ejusdem T. filio & propinquiori her. eorum. I. & T. liberari, & nobis de exitibus præd. per præf. T. sic percept. respond. non deberet, & ad faciend. ulterius & recipiend. quod Cur. vestra consideraverit in hac parte; ac prædict. Viccom. nobis restituerit, quod scire fecit præf. T. quod esset curam nobis in Canc. vestra ad diem prædict. ubicunque tunc foret, ad ostend. quod Breve nostr. prædict. requirebat, ad quem diem præd. T. in Cand. prædict. solemniter vocat. non comparuit, per quod considerat. fuit, quod Manerium prædict. cum pertin. una cum exitibus inde perceptis, in manum nostram resumant, & nobis de exitibus eisd. respondeatur, diemque Maner. præf. H. liberet; cepimus Homagium & Fidelit. ejusd. H. nobis pro Manerio prædict. cum pertin. debita, & ei Maner. illud cum pertin. reddidimus; Tibi præcipimus; quod resumpto in manum nostram Manerio præd. cum pertin. in Balliva tua, una cum exitibus præd. & accepta Securis, a præf. H. de rationabili Relevio suo nobis solvend. ad Seacc. nostr. eid. H. de Manerio præd. cum pertin. plenam Seisin. sine dilacione haber. facias, juxta consider. præd.; salvo jure custodit. & salvo nobis exitibus de Maner. præd. a tempore mortis præd. T. sic percept. Teste, &c.

*Writ of Livery and Partition which shall issue out of the Chancery unto the Escheator upon Partition there made.*

**T**HE Writ which shall be directed to the Escheator to deliver Seisin of Lands unto one Coparcener, or divers, where any of them are within Age, and in Ward, is made in several Manners. One manner of Writ is, when one Coparcener is of full Age, and the other Coparcener is within Age, and in the Custody of P. to whom the King hath committed the Wardship; then by the Assent of the King's Committee the Partition may be made in the Chancery during the Nonage of the Heir in Ward; and then the Writ directed to the Escheator shall be such:

[ 261 ] *Rex dilecto sibi I. de W. Escheat. suo in Com. Som. & Dor. salutem. Sciatis quod ex assensu P. Sec. Custod. T. de M. filie A. unius sororum T. de B. defuncti, qui de nobis tenuit in capite, infra etatem & in custodia nostra existens, consanguin. & unius her. cui una propars, & C. sororis, & alterius her. prædict. T. de B. plena etatis existens, cui altera propars tam*  
*terrorum*

terrarum & tenementor. que Margeria, que fuit uxor T. de B. senior. similit. defuncti, tenuit in decem, seu alias ad terminum vite sue heredi. et. pred. T. de M. & C. die quo obiit pertinent; assignauimus pref. C. maneria, terr. & tenementa subscripta, viz. manerium, &c. habend. in partem ipsius C. ipsam de omnibus maneriis, terris & tenementis predicti. secundum Legem & cons. regni nostri contingent, & eidem C. cuius Homagium & Fidelitatem cepimus, & partem suam predicti. reddidimus: Et ideo tibi precipimus, quod accepta Securitate de pref. C. de rationabili Releuio suo nobis solvend. ad Scaccarium nostrum, eidem C. predicti. maner' &c. cum pertin. suis in Balliua tua liberes habend. in partem. sua pred'; salvo iure cuiuslibet, &c.

- A If the King's Tenant hath Issue R. N. his Son, and Alice his Daughter, and dieth, and afterwards R. N. hath Issue a Son F. and two Daughters E. and C. afterwards R. N. dieth seised, F. being within Age, and afterwards F. dieth seised in Ward to the King within Age; and after his Death it is found by Vertue of an Office by Writ, that E. and C. are his Sisters and next Heirs, and of full Age; and afterwards by another Office it is found by Commission, &c. that M. Son of the said Alice, one of the Sisters of the said R. N. and J. another Sister of the said R. N. Father of the said F. was Cousin and next Heir to the said F. and of full Age; upon which the Sisters of the said F. came into the Chancery, and had a *Seire facias* against the said M. Son of the said Alice, and the said J. &c. to shew wherefore they should not have Livery of the Lands as Heirs, &c. And that Writ of *Seire facias* was made returnable the Monday, which was the second Week of Lent; by which it appeareth, That the Writs which shall be sued in Chancery, may be returned there in the Vacation Time, out of Term; and upon the Return of that *Seire facias*, the said M. came and granted that he was not Heir, &c. whereupon the two Daughters E. and C. had Writ of Livery directed to the Escheator, reciting all the Matter, and reciting in the Writ, that the King had respited their Homage until a certain Day, commanding the Escheator that he make Partition betwixt them, and that he assign to each of them a Part of the Land which is holden of the King *in Capite*; which Writ shall be returned and enrolled in the Chancery; the which Writ is in the Register, fol. 316.



*Partition and Livery after the Death of Tenant by the Courtesy.*

**I**F it be found by Office by Virtue of a Writ, that *B.* held *B.* the Manor of *B.* by the Courtesy of *England*, in the Right of *E.* who was his Wife, which Manor is holden of *P.* by Knight's Service; and it be farther found by the same Office, that *B.* is dead, and *M.* and *A.* are his next Cousins and Heirs, and one of them is within Age, and the other of full Age: Then he who is of full Age, shall have a Writ of Livery to the Escheator, that he take Security for the Payment of his Relief, and that he make Partition betwixt the two Heirs, viz. *M.* and *A.* in the Presence of him who is of full Age, and in the Presence of the *Prochein amies* of him who is within Age, and that he deliver Seisin of his Part to him who is of full Age, and that he retain in the King's Hand the Part of the other Siffer. Which Writ shall be returned and enrolled in the Chancery, and that Writ appeareth in the Register, fol. 317.

And the like Writ is in the Register, where the King's Tenant dieth, one of his Daughters within Age, and the other of full Age, in the same Folio 317.

*Partition and Livery for Lands in Socage.*

**I**F a Man holdeth Lands of *G.* in Socage, as of his Manor *C.* of *B.* which *G.* and the Manor is in the Ward of the King for the Nonage of *G.* and also he holdeth other Lands of other Lords by other Services, and dieth, and hath Issue two Daughters, whereof one is within Age, and the other of full Age; they shall have Livery out of the King's Hand, sc. the *Prochein amies* of the Heir within Age shall have Livery *cum exitibus*, and the other Daughter shall have Livery *sine exitibus*, and a special Writ shall be directed unto the Escheator in that Case, reciting the whole Matter, and how that the King hath taken Fealty of her who is of full Age, and delivered to her her Parr, commanding the Escheator by the Writ, that he take Security of her of full Age for her Relief, and that he make Partition betwixt the Daughters of the Socage Land; and that he deliver the Part of the younger unto her *Prochein amies*, with the Issues and Profits of that Part from the Death of the Ancestor; and that he intermeddle not with the Lands holden of the other Lords; which see in the Register, fol. 318.

**A** If the King's Tenant hath Issue three Daughters, and he giveth Part of his Lands unto one of his Daughters in Frank-marriage, and one of the other two Daughters hath Issue within Age and dieth, and afterwards the Tenant in Frank-marriage dieth, his Heir of full Age, and then the King's Tenant dieth, and then by Office *virtute Brevis* it is found, that the Daughter of the King's Tenant, and the Issue of the two Daughters are Heirs to the King's Tenant, and that the Issue of one of the Daughters is within Age; and afterwards by another Office it is found, that the King's Tenant gave Part of his Lands to one of his Daughters in Frank-marriage, for which upon that Office found, the other Daughter, and the Issue of the second Daughter, who is within Age, have a *Scire facias* against the Issue of the Daughter who was advanced in Frank-marriage, to shew at a certain Day in the Chancery wherefore the Lands, of which the King's Tenant died seised, &c. should not be delivered to them as Heirs only unto the King's Tenant; and if the Issue of her who was advanced in Frank-marriage, being warned by the *Scire facias*, and so returned warned by the Sheriff, maketh Default, or cannot shew Matter sufficient to maintain her Title; then thereupon a Writ of Livery shall be awarded to the Escheator, rehearsing how that the King hath taken Homage and Fealty of the eldest Daughter, and that he hath rendred to her her Part, commanding the Escheator, that he take Security of the eldest Sister to pay her Relief into the Exchequer, and that he make Partition in two equal Parts in the Presence of the Parties, if they will come, and that he deliver Seisin to the Sister of full Age of her Part, and that he retain the other Part in the King's Hands for the Nonage of the Daughter of the other Sister. See the Writ thereof in the Register, fol. 320.

**B** If *A.* holdeth a Parcel of Lands in Socage of *B.* which *B.* is in Ward to the King, and also the said *A.* holdeth another Parcel of Lands of *C.* in Socage, who is also in Ward to the King for Nonage, and also the said *B.* holdeth other Lands of several other Lords by other Services, and afterwards the said *A.* hath Issue seven Daughters, and afterwards one of the Daughters hath Issue within Age and dieth, and then *A.* dieth, and all that Matter be found by Office, then upon that Office returned, they shall have a Writ to the Escheator, commanding him that he take Fealty of the six Daughters for their Parts, and for their Reliefs to be paid in the Exchequer, and that he make Partition of all the Lands into seven Parts in the Presence of the Parties, if they will be there, and



that he deliver full Seisin to the six Sisters of their Parts, and that he keep in the King's Hands the Part of her who is within Age, until the King otherwise command him; and that he deliver the Lands and Tenements which are holden of the other Lords, which are assigned for the Part of her within Age, unto the *Prochein amie* of the Infant to whom the Inheritance cannot descend, and that he deliver the Issues and Profits of the Lands holden of other Lords, than of those Lords who are in the Custody of the King, to those who of Right ought to have them. And after that this Writ is awarded to the Escheator, if the Escheator be removed after that he hath made the Partition according to the Writ, and before the Return of the Writ, then the Sisters may sue forth a new Writ to the new Escheator, reciting the whole Matter, and how the Escheator was removed before he had executed the Command unto him, commanding the new Escheator, that if the Partition be not made, that he do all such Things as the other Escheator ought to have done, and retain in the King's Hands, &c.

And then if the new Escheator upon that new Writ, return unto the King in Chancery, that by Vertue of the said Writ he hath made Partition of seven Parts of those Lands, and that he hath retained in the King's Hands, the Part of her who is within Age, and that he hath delivered unto three of the Sisters their Parts, and that the other three Sisters did not come to take their Parts, so that they remain in the King's Hands; upon such Return the said three Sisters may come into the Chancery, and pray to have a Writ unto the Escheator, with the Transcript of the Partition to be enclosed therein, commanding him to take Security of them for their Reliefs, &c. and that he deliver to them their Parts appertaining unto them, according to the Partition made, retaining in the King's Hands the Part of her who is within Age, until he command to the contrary, and that he return the Writ, and what he hath done upon the same, under his Seal, fully and openly without Delay. See the Writ thereof in the Register, 319.

And it appeareth by the Register, That if the King's Tenant hath Issue two Daughters, and one be within Age, and the other of full Age, and dieth, that she who is of full Age may sue unto the King to have the Custody of her Sister's Part during her Nonage, and to sue Livery of the other Moiety: And thereupon she shall have a special Writ unto the Escheator, rehearsing how the King hath taken her Homage, and hath assigned unto her the Moiety of the Lands, &c. which appertained.

tained unto her for her Part, and that he hath committed the Custody of the other Part unto her, during the Nonage of the Heir the other Coparcener, commanding the Escheator by the Writ, that he take Security of her to pay her Relief into the Exchequer, and that he deliver Seisin of the Moiety unto the Heir of full Age, until the full Age of the other Coparcener within Age, with the Issues and Profits of the other Moiety from the Death of the Ancestor. And thereby it appeareth, that when the other Coparcener within Age cometh of full Age, they both shall sue forth a new Livery jointly. See the Register, fol. 320.

[263]

**A** And it appeareth by the Register, That if a Man hath Lands in London in Fee, and hath Issue two Daughters, and leasech the Lands for Life, and dieth, and afterwards the Tenant for Life dieth, the Daughters of full Age, and all the same be found by Office; the two Daughters shall sue forth a Writ of Livery for those Lands, because they are holden of the King in Burgage, and the Writ shall be directed to the Escheator, commanding him to make Partition of those Lands betwixt the Daughters. And if one Daughter be indebted to the King, then by the same Writ he shall command the Escheator, that he retain the Part of her who is indebted in the King's Hands, until he hath other Command, and that he deliver the other Part unto the other Daughter: Reciting the same Writ, that he hath taken Homage and Fealty of the other Daughter: And moreover, by the same Writ the Escheator shall be demanded, that he take Security of the other Daughter for the Relief of that Coparcener, if any be due, &c. and that he return the whole Matter into the Chancery under his Seal, &c.

**B** And if the King's Tenant who holdeth of him *in Capite* in Fee dieth, and hath Issue three Daughters, his Heir of full Age, and another Woman who holdeth in Dower other Lands for Term of her Life of the Assignment of her Husband; which Lands are also holden of the King *in Capite*, dieth, and the Reversion of those Lands are the Inheritance of the said Daughters; they shall have one Writ of Livery unto the Escheator for all those Lands, reciting the whole Matter, and how that he hath taken their Homage and Fealty, or that he hath respiced the same till a certain Day, &c. and that he render to them their Parts, commanding the Escheator, that he take Security of them for to pay their Reliefs, &c. and that he make equal Partition between them in their Presence, if they will appear, and that he give full Seisin to each of them of their Parts; with such a Provision, that each



of them shall have Part of that Rent which is so holden of the King *in Capite* for her Part, so that each of them be Tenant to the King, &c. And it appeareth by that Writ, that a Rent may be holden of the King by Knight's Service *in Capite*, as well as Lands. See the Register, fol. 318.

## Writ de Dote assignanda.

Torrors 43

**T**HE Writ *de Dote assignanda* lieth where it is found by C Office, that the King's Tenant was seised of Tenements in Fee or in Fee-tail the Day he died, &c. and held of the King *in Capite*; then the Wife may and ought to come into the Chancery, and there make Oath that she will not marry without the King's Licence: And thereupon the King may assign her Dower in the Chancery of those Manors and Lands, and thereupon she shall have a Writ unto the Escheator where the Lands are, which shall be such:

*Rex Escheatori suo in Com. B. salutem. Sciatis quod de terris & tenementis que fuer. N. defuncti, qui de nobis tenuit in capite, & que occasione mortis ejusdem N. capt. sunt in manum nostram, assignavimus I. que fuit uxor prad. N. tertiam partem Maner. de T. & C. in Com. T. cum pertinent', necnon iii. partem parpart. que fuit ipsius N. Car. libertatis Honoris Winton. & vis. franci pleg. in dicto Com. T. habend. in Dotem suam de Maneriis & parpart. pradicti secundum Legem & cons. regni nostri Angliæ contingent'; necnon de assensu Edwardi Principis Walliæ, filii nostri charissimi, custod. Maner. de R. in Com. Buck', qu. ad l. li. & Manerii de N. cum pertinent. in dicto Com. B. que ad x. li. extendant per annum, sicut per Extentas iud. de mandato nostro facti. & in Carta nostram return', est compert'. assignavimus prad. I. dicti Maner. de N. cum pertinent. pro dote sua dictorum Maner. de R. & N. habend. in forma prad. Et ideo tibi precipimus, quod videm I. dictam Maner. de N. cum pertinent. liberes habend. in dotem suam, sicut prad. est. Teste, &c.*

And when the Wife hath made her Oath in the Chancery, D she may have a Writ of *Dote assignanda* to the Escheator, to assign her Dower; and the Writ shall recite; that she hath made her Oath in the Chancery, &c. But the Use is to make the Assignment of the Dower in the Chancery, and to award a Writ unto the Escheator, to deliver the Lands assigned unto her; and although the King doth commit the Custody of the Land unto another, yet the King may assign Dower unto the Wife in Chancery, and she shall have a Writ unto the Escheator to deliver unto her that Dower, as appeareth by the Register. And the Writ shall be such:

*Rez Escheatori, &c. salutem. Cum inter ceter. terras & tenement. I. que fuit uxor N. defuncti, qui de nobis tenuit in capite, per nos de terris & tenement. que fuer. prad. N. in dotem assignat', assignaverimus eidem I. partem Maner. de Grouby cum pertinent. in Com. prad', necnon tertiam partem purpartis que fuit ipsius N. Cur. libertatis Honoris W. & visum franci plegii in eodem Com', habend' in dotem in forma predicta: Tibi precipimus, quod eidem I. cujus sacrament, quod se non maritabit sine licentia nostra recepimus, dictas tertias partes in Balliva tua, in presentia custod. eorundem Maner', & tertie partis, per vos inde pramuniend', si interesse voluerit, vel attornati sui in hac parte, assignar. & liberari fac', habend' in dotem sicut predicta est; & cum assignationem illam, Sec. Teste, &c. And if the Wife after the Death of the Husband doth come into the Chancery, and prayeth her Dower there; the King may grant a Writ unto the Escheator, commanding him to take Security of the Wife, that she do not marry her self, and that the Escheator do assign Dower unto her. And the Writ shall be such :*

[ 254 ]

*Rez Escheatori, &c. Præcipimus tibi quod, capto sacramento M. que fuit uxor W. defuncti, qui de nobis tenuit in capite, quod se non maritabit sine licentia nostra, eidem rationabil. dotem suam, ipsam de omnibus terris & tenem. que prad. W. quondam vir suus tenuit in dominico suo ut de feodo in Balliva tua die quo obiit, & que per mortem prad. W. capta fuer. in manu nostram, & in manu nostra sic existunt, secundum Legem & cons. regni nostri Angliæ contingent. per Extent. inde fact. vel aliam si necesse fuer. iterato faciend. in presentia B. per te inde pramuniend. si interesse voluerit, assign. fac', & cum Assignation. ill. su feceris, eam sub sigillo tuo distinde & aperte mittar, ut eam in rotulis Canc. nostre, prout moris est, irrotul. faciamus. Teste, &c.*

**A** And if a Man dieth seised of Lands which are holden by Knight's Service, of any Manor, or otherwise, as in any Abbey, Bishoprick or Priory, or such as are in the King's Hands by Reason of the Vacancy of the Abbey or Bishoprick, &c. then if the Wife will have Dower, she ought to sue in the Chancery, to have such Writ directed unto the Escheator, to assign her Dower; but there the Wife shall not make Oath, that she shall not marry without the King's Licence, as appeareth by the Writ; which is such :

*Rez, &c. Præcipimus tibi quod A. que fuit uxor B. defuncti qui de Abbate de Burgo S. Petri nuper vacantis, & in manu nostra existens, tenuit per servicium militare rationabil. dotem suam de omnibus terris & tenement', &c. que prad. B. vir suus tenuit de Abbacia prad. in Balliva tua die quo obiit, & que post mortem ipsius B. in manu nostra existunt, &c. ut supra.*



*Writ de Dote assignanda.*

And the like Writ may be sued by the Wife for Lands, which her Husband held by Knight's Service of the Manor of him, who is in the Ward to the King; by Reason of his Non-age; but there she shall not make Oath, that she will not marry her self, no more than in the Case before.

And the King may assign Lands in Dower in the Chancery, rendering Rent yearly to the King, &c. because the Lands do exceed the very Value of the third Part of all the Tenements whereof she ought to have Dower. And then upon that Assignment made in Chancery she shall have and sue such Writ to the Escheator.

*Rex Escheat', &c. Sciatis quod de terris & tenementis que fuerunt E. de B. defuncti, qui de nobis tenuit in capite, & que occasione mortis ejusdem E. capta sunt in manum nostram, assignavimus M. que fuit uxor predicti. E. Maneria subscripta, videlicet, Maneria de B. & C. &c. cum pertin. in Comitatu tuo que ad centum libras exienduntur per Annam, habend. in Dotem, ipsam de terris & tenement. pred. secundum Legem & cons. regni nostri Angl' contingens, reddend. inde nobis per annum ad Scaccar. nostrum tantam quod excedit dotem supradict'. Et ideo tibi precipimus, quod eidem M. dicta Maneria cum pertinen. liberis, ei habend. in dotem suam in forma predicti. Teste, &c.*

And if the Wife be impotent, so as she cannot come into the Chancery to make Oath, and to demand her Dower, then she may sue a special Writ directed to certain Persons to take her Oath, and to receive Attorney for the Wife to sue for her Dower in the Chancery, &c. and the Writ appeareth in the Register, fol. 298.

And if the King make Livery unto the Heir at his full Age, D saving unto the Wife her Dower to be assigned by the King; then if the Wife will demand Dower, she ought for to sue for the same in the Chancery; and if she do demand her Dower there, then shall issue a special Writ unto the Escheator, that he warn the Heir for to be in Chancery at a certain Day, &c. and there the Wife shall have the same Day to receive her Dower, &c. And the Writ which shall issue against the Heir shall be such:

*Rex Escheat', &c. Cum Dominus Edwardus nuper Rex Angl. pater noster, xx. die Januar. proxime preteritis cepit Homagium T. de B. filii & hered. T. de B. defuncti, de omnibus terris & tenementis que idem T. pater suus tenuit de dicto patre nostro die quo obiit, &c. & terras & tenementa illa reddiderit eaque sibi mandaver. liberari, salvo jure cuiuscumque, & salva M. que fuit uxor predicti. T. rationabili Dote sua, ipsam de terr. & tenement. predicti, secundum Legem & cons. regni*

*Writ de Dote assignanda.*

regni nostri Angliæ contingent', & ei prout moris est assignand', sicut per inspectionem Rotul. Cancell. dicti patris nostri nobis constat; ac prefat. M. nobis supplicaverit, ut ei Dotem suam, ipsam de terr. & tenement. prædict. contingent. secundum Legem & cons. regni nostri Angl', assignari faciamus, per quam diem dedimus prefat. M. quod sit in Canc. vestra in crastin. Animarum, &c. ubicunque, &c. ad recipiend. Dotem suam prædict': Tibi præcipimus, quod scire fac. pref. T. quod ad diem prædict. interfit Assignat. Dotis prædict', si sibi viderit expedire; & habeas ibi nomina, &c. & hoc Breve. Teste, &c.

But if the King maketh Livery unto the Heir by his Writ directed to the Escheator, by which Writ he commandeth his Escheator to deliver unto him Seisin of all his Lands, &c. *salvo jure cuiuslibet*; and he putteth not in the Writ these Words, *salva M. que fuit uxor. &c. rationabili dote sua, ipsam de terr. & tenement.* &c. *contingent'*, & *per nos assignand'*: Then in that Case the Wife ought to sue her Writ of Dowry against the Heir, if she will demand Dower of those Lands, because the King made Livery generally of those Lands by his Writ, without any Reservation of Dower to be assigned by him, &c.

[265]

**A** And if the King make a Reservation of Dower to be assigned by him by his Writ of Livery which is directed to the Escheator, if the Wife never demand Dower, or if she hath Dower assigned unto her by the King in Chancery, yet after the Assignment made by the King, the Reversion thereof is in the Heir, and he shall not sue Livery of that Reversion after the Death of the Tenant in Dower, because the Writ of Livery doth not reserve any Thing to the King but Assignment of Dower to the Wife, but the Writ doth command the Escheator to deliver Seisin of all the Land, and that the Escheator doth, and by that the Livery of all the Land passeth from the King; and therefore it followeth, that when the Wife is assigned her Dower by the King in Chancery, that yet the Reversion doth remain in the Heir, &c. for which he shall not sue a new Livery of that Reversion after the Death of the Tenant in Dower, &c. *Tamen quare* of that Case.

**B** And if the Wife be assigned Dower in the Chancery, and afterward it is surmised by the Heir, or by another for the King, that the Land assigned to the Wife is not extended to the very Value, but that the Land assigned to her is much more in Value than it is extended at, and that the Lands which remain in the King's Hands are extended to the very Value, &c. then the King shall send a Writ to the Escheator to make a new Extent: And upon that Writ returned, if it be found that the Land assigned to the Wife is of greater Value,

*If the Land assigned to the Wife be omitted, she shall have a Scire facias to reseise the Land, and shall be new extended, 43 Aff. 32. Br. Dower 65. &c.*



*Writ de Levari facias.*

*Et.* then upon Return thereof a *Scire facias* shall be awarded against the Wife, to shew Cause wherefore she shall not be anew endowed, *Et.* and if she be warned, and maketh Default, it seemeth she shall be new endowed for her Default; or if she appear, and cannot say any Thing contrary to that new Extent, she shall be endowed anew, so as Part of the Land assigned to her, shall be taken from her at the King's Pleasure; or the King may make a new Assignment of all that she had in Dower, if he pleaseth, and a new Writ shall be to the Sheriff to deliver her Seisin thereof, so newly assigned to her: *Quere* the Use of this Point.

And if the Wife make Oath, That she will not marry her self without the King's Licence, and is endowed upon the same, *Et.* and afterwards she marrieth without Licence, *Et.* then the King shall send a Writ to the Escheator, that he reseise all the Lands which she holdeth in Dower, as appeareth by the Register, and not all the other Lands which she or her Husband had in their own Right; and the Writ is such:

*Rex Escheatori, &c. Cum A. que fuit uxor I. de B. defuncti, qui de nobis tenuit in capite, que nuper sacramentum prestavit corporale, quod se non maritaret sine licentia nostra, jam se W. de P. maritaverit, licentia nostra super hoc non obtenta ut accepimus; Nos, contemptum hujusm. nolentes transire impunitum, necnon indemnitati nostre volentes prospicere in hac parte, tibi precipimus, quod si ita est, tunc omnia terras & tenementa que predicti W. & A. tenent, in dotem ipsius A. de heredit. predicti. I. in Balliva tua sine dilacione cap. in manum nostram, ita quod de exitibus inde provenientes nobis respondeas ad Scaccar. nostrum, quousque nobis de satisfactura ad nos inde pertin. satisfact. fuerit, vel aliud inde duxerim. demandand. Teste, &c.*

*Writ de Levari facias.*

**T**HE Writ of *Levari facias* is a Writ which shall issue out of the Record, and shall issue sometimes out of the Chancery, and sometimes out of other Courts where the Record is. As if a Man be bounden in a Recognizance in the Chancery in 20 *l.* to be paid at the Feast of St. Michael next following, then if he do not pay the Money at the Day, a *Levari facias* shall be directed to the Sheriff, that he levy the Sum on his Goods and Chattels: And the Form of the Writ is such;

*Rex I. liccom', &c. Quia I. filius B. soluisse debuit M. de B. xx l. E. in Festo S. Michaelis, anno regni nostri, &c. sicut constat nobis per inspectionem Rotulor. Cancell. nostre & eas ei nondum solvit, ut die*

*Tibi precipimus, quod præd. pecuniam de terris & catallis ipsius I. in Balliva tua sine dilatione levari facias, ita quod eam habeas in Cancell. nostra in Crast. Nativ. S. Johan. Bapt. prox. futur'. ubicunque tunc fuer', præf. M. ibid. liber. & hoc nullatenus omittas: & habeas ibi hoc Brieve, &c.*

- F** And he may have an *Alias* and a *Pluries*, *Vel causam nobis significes*, directed to the Sheriff; and if he will not return the Writ, he shall have an Attachment against the Sheriff.
- G** And this Writ is given by the Common Law before the Statute of *West. 2.* which gave the Writ of *Elegit*. But this Writ ought to be sued within the Year after the Day of Payment to be made by the Recognisance; for after the Year and Day of Payment to be made, if he do not sue forth this Writ, then he ought to have a Writ of Debt before the Statute of *West. 2.* which gave the *Scire facias* against him who was so bounden by Recognisance; but now by that Statute
- H** he shall have the Writ of *Scire facias*, to make him come at a certain Day into the Chancery, to shew what he can say why he ought not to pay the Sum, &c. And if the Sheriff upon the *Levari facias* return that he hath levied 10 l. of the Sum, &c. which he hath delivered to the Party, &c. then upon that Return, he who ought for to have the Money, may sue forth a *Sicut alias levari facias* directed to the Sheriff, for to levy the Residue of the Sum: Which Writ shall be such:

[ 266 ]

*Rex Vic', Sec. Quia T. Abbas de B. sol'viffe debuit R. centum libras, &c. in Festo, &c. anno, &c. sicut constat, &c. & eas, &c. per quod tibi præceperimus, quod præd. pecuniam de terris & catallis ipsius Abbatis in Balliva tua sine dilatione levari fac', ita quod eam haberes in Crast', &c. ubicunque, &c. præf. R. ibid. liberand'; ac tu nobis retornasti, quod cepisti in manum nostram per diversas vias de bonis & catallis ipsius Abbatis ad valenc', &c. qu. inde levasti, & præf. R. habere fecisti; Tibi precipimus, quod resid. debiti præd. de terris & catallis ipsius Abbatis in Balliva tua sine dilatione levari facias, ita quod illud habeas coram nobis a die, &c. ubicunque, &c. præf. R. ibid. liberand': & hoc nullatenus emittas, &c. Teste, &c.*

- A.** And if a Parson be bounden in a Recognisance in Chancery <sup>12 H. 4. 17.</sup> in 200 l. to pay at a certain Day, &c. and he doth not pay <sup>13 H. 4. 17.</sup> the same at the Day, then the Recognisee shall have a *Levari facias* directed to the Bishop, or a *Levari facias* directed to divers Bishops, to levy the Money of his Spiritual Goods; and the Writ shall be such:

*Rex venerabili in Christo Patri, Sec. Salut. Quia I. Persona Ecclesia de S. Com. H. vestra Dioc', & T. de L. Persona Ecclesia*



## Writ de Levari factas.

*Ecclesie de M. Com. de B. Dio. Linc<sup>ie</sup>, soluisse debuer. magistro P. darent. libras in Festo omnium Sanctorum, &c. anno, &c. sicut constat, &c. ut dicit; Vobis mandamus, quod centum & viginti marcas de sum. prad. de bonis & catallis ipsius I. in dicta Dio. vestra sine dilatione levari fac<sup>is</sup>, ita quod easdem centum & viginti marcas habeamus in Canc. nostra ubicunque, Sec. pref. F. ibid. liberand<sup>is</sup>; & hoc nullatenus omittat<sup>is</sup>; & habeatis ibi hoc breve. Mandavimus etiam W. Linc. Episcopo, quod ipse centum & viginti marcas, Sec. residuas de bonis Ecclesiasticis ipsius T. in dicta Dio. levare faceret in forma prad. Teste, &c.*

But if the Parson hath Lands of his own Purchase, he may have a Writ to the Sheriff to levy the same, &c. But now by the Statute of *West. 2. cap. 18.* he may sue forth an *Elegit* upon the Recognisance made in the Chancery, directed to the Sheriff, to have Execution of the Moiety of his Lands, and of all his Goods and Chattels, except his Beasts of the Plough, and to deliver them to the Heir for his Maintenance; and the Form of the Writ is such:

*Rex Vicecom<sup>is</sup>, Sec. Quia R. undecimo die Feb. ult. praterito, in Cancell. nostra recognovit se debere N. viginti libras, quos ei soluisse debuit in Festo, &c. tunc prox. sequenti, sicut constat, &c. Cancell. nostra, & eas ei nondum solvit, ut die<sup>is</sup>; ac idem N. juxta Stat. inde editum, eligit sibi liberari pro prad. viginti libris omnia catalla & medietatem terre ipsius R. tenend. juxta formam prad. viginti librarum, per rationabilem appretiation. eorundem, exceptis bobus & asinis caruca, in presentia pradicti R. per te inde promuniend<sup>is</sup>, si interesse voluerit, faciend<sup>is</sup>, pref. N. vel suo certo Attornato fac<sup>is</sup> liberar<sup>is</sup>; & si catalla illa ad valenc. prad. viginti librarum non sufficient, tunc catalla illa sic minus valenc. per rationabilem appreciation<sup>em</sup>, ac etiam medietatem terrae ipsius R. in Baliva tua per Extent. similiter in presentia tua in forma prad. faciend<sup>is</sup>, pref. N. vel dicto suo Attornato fac. liberar<sup>is</sup> tenend. ut liberum tenementum suam, quousque dictum debitum inde fuerit levatum. Et de eo quod inde fec. nobis in dicta Cancell. nostra tali die, ubicunque tunc fuerit, sub sigillo tuo distincte & aperte constare facias; & habeas ibi hoc Breve. Teste, &c.*

And after the Year and the Day of Payment passed of the Recognisance, the Recognisee ought for to sue a *Scire facias* against the Recognisor, to shew what he can say why the Recognisee should not have Execution; and if he be returned upon that Writ warned by the Sheriff, if he do not appear, or if he do appear, and cannot say any Thing wherefore he should not have Execution, then the Recognisee

nisee may sue forth the Writ of *Elegit* to have Execution of all his Goods, and of the Moiety of his Lands: And if the Sheriff return the *Elegit*, that the Recognisor hath made a Feoffment in Fee of Part of the Lands to divers Tenants, &c. and that he hath enfeoffed the King of the Residue; then upon that Return the Lands whereof the King is seised by that Feoffment are discharged. But he may sue a *Scire facias* to warn the other Tenants to appear at a certain Day, to shew Cause wherefore the said Lands shall not be delivered in Execution; and if they be warned, and do not appear, or if they come, and cannot say any Thing, &c. to bar the Execution, then the Recognisee shall have Execution against them of those Lands by Writ of *Elegit*, &c. but he shall have the *Elegit* before that he sueth the *Scire facias* against those Tenants.

**D** And if a Man be bounden by Recognisance in the Chancery, and the Recognisor hath certain Indentures of Defeasance; then, if the Recognisee will sue Execution upon the Recognisance, the Recognisor may come into the Chancery, and shew the Indentures of the Defeasance, and that he is ready to perform them, and thereupon he shall have a *Scire facias* against the Recognisee returnable at a certain Day in the Chancery; and in the same Writ he shall have a *Superseas* directed to the Sheriff, that in the mean Time he do not Execution by Vertue of the Writ sued forth by the Recognisee. And if the Sheriff upon any such Writ return, that he hath sent to the Bailiff of the Liberty to do Execution, which Bailiff hath returned him no Answer; then upon that Return he shall have a new Writ directed to the Sheriff, with a *Non omittas* therein, that he enter the Franchise and do Execution, &c.

[ 267 ]

**A** And a Man may sue Execution by *Scire facias* upon a Recognisance made in the Time of another King in the Chancery, or in the Common Pleas, or in any Court of Record. And the King may by his Commission give Authority to one to receive a Recognisance of another Man, and to return the same into the Chancery; and by Vertue of that Commission, if a Man doth before the Commissioners acknowledge a Debt to be paid to another at a certain Day, &c. and certify the same into the Chancery with the Commission, &c. then upon the Certificate thereof, if he do not pay the Debt at the Day, he shall have an *Elegit* upon the Conuſance so taken, as well as if it were taken in the Chancery; and the Form of the Commission is such:

*Rez dilecto & fideli suo R. de M. salut. Sciatis quod dedimus  
vobis*



*Writ de Levari facias.*

vobis potest. recipiend. Recognit. quam I. de H. vobis facere voluerit G. de T. de quocunque pecunia summa; & ideo vobis mandamus, quod cum Recogn. illam recuperitis, nos inde, ac de die sive diebus solutionis, necnon de die caption. ejusdem, in Canc. nostra, sub sigillo vestro, distincte & aperte reddat. certior. hoc Brev. nobis remittentes. Teste, &c.

And there is another Form thus: Rex, &c. Sciatis quod dedimus vobis potest. recipiend. hac vice, nomine nostro, Recognitionem, quam I. de T. de quocunque debito facere voluerit coram vobis; & ideo vobis mandamus, quod cum Recogn. illam reperitis, nos ind. sub sigillo vestro distincte, &c.

And by that Commission he hath general Authority to take Recognisance of any Man who will acknowledge any Debt before him to any Person whatsoever, &c.

See before  
130. H.

In note, That Capias ad Satisfaciend. lieth not upon a Recognisance. 34 H. 6. 45. 48 E. 3. 14.

Vi. 38 E. 3.  
12 Br. Execution 42.

If a Man be bounden in Recognisance in 100 l. to pay **B** at five several Days 20 l. then immediately after the first

Day of Payment is past, he may sue an *Elegit* for 20 l. and at the second Day he may sue another *Elegit*, or *Levari facias* of other 20 l. and so of all the 20 l. every Day of Payment, and he shall have such Writ of *Elegit* for the Payment that shall be

made at that Day, and shall not stay his Suit till all the Days of Payment are past.

And if two be bound in Recognisance in Chancery, viz. **C** *quilibet eorum in solid. recogn. se debere*, &c. he may sue several *Scire facias* against them to have the Money levied of their Goods and Lands, &c.

If a Man be bound in a Recognisance in Chancery or other **D** Court of Record, and afterwards the Recognisee dieth, his Executors may sue forth an *Elegit* to have Execution of the Lands of the Recognisor. And if the Sheriff return that the Recognisor is dead, then the Executors shall sue a special *Scire facias* against the Heir of the Recognisor, and against those who are Tenants of the Lands which he had at the Day of the Recognisance made; and that Writ of *Scire facias* shall recite and shew that the Executors who sue the Writ have elected to have the Moiety of the Lands which the Recognisee had at the making of the Recognisance; and the Form of the Writ is:

Rex Vic, &c. Cum I. de W. tali die & an. &c. in Cancell. nostra recognovit se debere N. nuper Duci Lanc. cent. libras, quas si solvisse debuit in Festo, &c. tunc prox. futur', sicut constat, &c. & eas ei nondum solvit, ut dicit', ve W. B. & C. Exec. prad. nuper Duci defuncti, juxta Stat. inde edit', eleger. sibi liberari pro prad. cent. libris omnia catalla & medietat. terra ipsius I. W. tenend.

tenend. juxta form. Statuti præd<sup>i</sup>; per quod tibi Præceperimus, quod scire faceres præfat. I. de W. quod esset in Cancell. nostra tali die proxim. futur<sup>o</sup>, ubicunque, &c. ad ostend. si quid pro se habere vel dicere sciret, quare omnia catall. sua & medietas terr. sue præf. Execut. pro prædict. cent. libris liberari non deberent, juxta form. Statuti prædict<sup>i</sup> ac tu nobis retornaveris, quod prædict. I. de W. mortuus est; Tibi præcipimus, quod scire fac. Hered. ipsius I. de W. necnon Tenentibus terr. quæ fuit ejusdem I. de W. die Recogn. præd. quod sint in Cancell. nostra, &c. proxim. futur<sup>o</sup>, ubicunque, &c. ad ostendend. si quid pro se habeant vel dicere sciant, quare mediet. terræ quam ipsi tenent de terra prædict. præf. Execut. pro præd. centum libris liberari non debeant, juxta form. Stat. præd. Et habeas ibi nomina illor. per quos, &c. Teste, &c.

And thereby appeareth, That if a Man be bounden in a Recognifance, &c. although that the Recognifce dieth, yet his Executors cannot sue forth an *Elegit* to have Execution of the Recognifance within the Year after the Day of Payment, without suing forth a *Scire facias* against the Recognifor, &c. But against the Heir of the Recognifor, or the Ter-tenants; the Recognifce or his Executors ought to sue forth a *Scire facias*, &c. otherwise if they be ousted, &c. by such Execution of their Lands, they shall have an Assise of Novel Disseifin, &c.

14 A. 7. 16.

15 A. 7. 16.

## Writ de Idemptitate nominis

**T**HE Writ de Idemptitate nominis lieth, where a Man is sued in a Personal Action, and upon the *Capias* or *Exigent* awarded, another Man, who beareth the same Name,, is arrested by Force of the Writ, then he who is so arrested shall sue forth this Writ of *Idemptitate nominis*: and this Writ shall be directed sometimes to the Escheator, if he or his Goods be arrested by him, or unto the Sheriff, if he be vexed or molested by him, and the Form of the Writ is such:

Rez dilectio sibi I. de S. Escheatori suo in Com. Linc<sup>ie</sup>, salut<sup>em</sup>, Cum nuper, ut accepimus I. de R. de London. Taverner jam defunctus ut dic<sup>itur</sup>, pro eo quod non venit coram Justic. nostris de Banco ad respondend. R. de tempore quo fuit Receptor denorior. ipsius R. in Exigend. positus fuisset in Hustingo nostro London. ad utlagand. & ea occasione die Lunæ proximo post Festum S. Petri in Cathedra anno regni nostri decimo, utlagatus; ac jam ex parte I. de R. de Lond. Baker intelleximus, quod licet ipse non sit idem I. de R. qui ad sectam ipsius R. utlagatus fuit, nec aliqua bona seu catalla que fuerunt ejusdem utlagati ad manus suas devenit: tu tamen, propter Idemptitatem hujusmodi nominis & cognominis I. de R. præcedens ipsum I. de R. de London. Baker esse

[ 285 ]



## Writ de Idemptitate nominis.

esse eundem I. de R. de Lond. Taverna; qui sic utlagatus fuit, bona & catalla ejusdem I. de R. de Lond. Baker, colore ejusdem Brevis nostri, de bonis & catallis que predicti I. de R. de Lond. Taverna habuit in Balliva tua die promulgationis Utlagar, predicti in manum nostram capiend', in manum nostram seire intendis & ipsam ea occasione multipliciter inquietas minus julle in ipsius I. de R. de Lond. Baker, dampnum non modicum & gravamen; super quo nobis supplicavit sibi per nos de remed. provid': Et quia ipsam I. de R. de Lond. Baker indebite pręgravari nolumus, tibi præc', quod si per inquisition. vel alio modo legitime tibi constare poterit, predicti I. de R. de Lond. Baker, non esse eundem I. de R. de L. Taverna, qui sic utlagat. fuit, nec aliqua bona seu catalla que fuerunt ejusdem utlagati die promulgationis Utlagarie predicti, ad manus suas devenisse, ut est dictum, tunc captioni honorum & casualorum ejusdem I. de R. de L. Baker, occasione Utlagar. predicti, in manum nostram superfl. omnino Proviso semper, quod de omnibus bonis & Catall. que predicti I. de R. de L. Taverna habuit in Balliva tua die promulgat. Utlagar. predicti, si qua fuer', nobis resp', ut est justum. Teste, &c.

And so if a Man be distrained by Process out of the Exchequer for to accompt, &c. for another Person who hath the same Name which he hath, then he shall sue that Writ to the Barons of the Exchequer and to the Treasurer, and the Writ shall be such: A

\*Rex Thesaurar. & Baronibus suis de Scaccar. salutem. Monstravit nobis J. Clerke de N. quod cum quidam J. Clerke nobis in quodam Compoto de exitibus passagii Viridis castri. reddend. die quo obiit tenebat. qui quidem J. Clerke mortuus est, & vocabat. dum vixit, J. Clerke de A. ut dicit', ac pro eo quod predicti J. Clerke de N. habet idem nomen & cognomen sicut præfat. J. Clerke de A. ad reddend. nobis Compot. de exitibus predicti. multipliciter. inquietari facitis minus julle, ut accepimus, super quo idem J. Clerke de N. nobis supplicaverit, ut sibi de remedio in hac parte subvenir. velimus: Nos iam pro nobis quam pro præfat. J. Clerke quod justum fuer. fieri volentes in hac parte, vobis mandam'. quod si per aliqua memorand. dicti Scaccarii, vel per inquisitionem inde, si necesse fuerit, inveneritis ipsam J. Cl. de A. Commission. nostram de Officio illo habuisse, & exitus inde prætextu hujusmodi Commission. nostre aut alio modo recepisse, & ipsam J. Clerke de N. hujusmodi Commission. nostram non habuisse, nec se inde in aliquo intromisisse, & ipsam J. Clerke de N. propter Idemptitat. nominis & cognominis, & non alia de causa, coram vobis impetit. fuisse; tunc ipsam J. Clerke de N. ad reddend. nobis compotum de exitibus predictis ad

*idem Scaccar', prout justum fuerit, exonerari & quietum esse fac', Processum debis. vers. pras. J. Cl. de A. si superflus sit, vel har', executores, seu terrarum & tenementorum ipsius J. Cl. de A. si mortuus fuerit, tenentes, juxta juris exigent. facientes. Teste, &c.*

**B** And if a Man be taken by a *Capias utlagatum*, he may sue forth a Writ *de Idempitate nominis* in the Chancery directed to the Justices of the Common Pleas, if the Process be sued there, or unto the Justices of the King's Bench, if the Process be there, commanding them to make Enquiry, &c. as afore is said, &c. so as this Writ seemeth but as a Commission to make Enquiry, and to know the Truth; and upon that Writ directed to the Justices, they shall award a Writ unto the Sheriff to make the Enquiry, &c. but if a Man be outlawed in the Common Pleas, and taken by *Capias*, he may come into the Common Pleas, and pray a Writ of Enquiry whether he be the same Person, without suing the Writ *de Idempitate nominis*.

And if an *Exigent* be to be awarded against one, if one who hath the same Name come and saith that he is ready to answer, then the Plaintiff may say that he is not the same Person, and then the Plaintiff shall put a Diversity of the Names, and the same shall be entred, and then the *Exigent* shall be awarded according to that Difference which the Plaintiff hath made.

At the *Exigent* returned the Defendant appeareth by *Su. per se deas*, and the Plaintiff saith, that he that appeareth is not the same Person: And the Opinion of *Hanke* was, that he shall be put to his *Idempitate nominis*, and shall not that way avoid the Outlawry.

**C** And if an *Exigent* be to be awarded upon an Indictment, if one cometh and saith, that he hath the same Name as he against whom the Process upon the Indictment is awarded, and prayeth that the King's Attorney may put a Difference of their Names; the same shall not be done, for that should change the Indictment, because the Process ought to be made according to the Indictment; and if he be grieved by the Process, he must sue forth the Writ *de Idempitate nominis*, and shall not have other Remedy, &c. And he may have that Writ to the Justices of the Peace if they award Process of *Utlagary* upon Indictments taken before them, and also to the Justices of *Gaol-delivery*, as appeareth by the Register, fol. 195, 196.

[ 269 ]



*Writ de Homagio respectuando.*

**T**HE Writ of Respite of Homage lieth, when the Heir **A** comes of full Age who holdeth of the King *in Capite*, and ought to sue his Livery, then the Order is, that he first do Homage to the King, and thereupon to have his Writ of Livery to the Escheator; but the King of Grace and Favour may respite his Homage as he pleaseth: And thereupon he shall have a Writ unto the Escheator testifying the same, and commanding him to deliver him Seisin of the Lands; and the Writ shall be such:

*Rex dilecto, &c. Escheat' suo, &c. salutem. Scias quod respectuamus Homagium I. soror. & her. I. filii T. de B. defuncti, nobis de omnibus terris & tenem. que prad. I. frater suus tenuit de nobis in Capite die quo obiit debitum, usque ad Festum S. Michael. prox. futur', & terras & tenem. illa ei reddidim'. Et ideo vobis mandam', quod accepta Secur', &c.*

*Writ de Hæretico comburendo.*

**N**ote, it appeareth by *Britton* in his Book, that those **H** Persons shall be burnt who feloniously burn others Corn or others Houses, and also those who are Sorcerers or Sorceresses; and Sodomites and Hereticks shall be burnt; and it appeareth by that Book, *lib. 1. cap. 17.* that such was the Common Law. But note, That the Person who shall be burnt for Heresy ought to be first convicted thereof by the Bishop who is his Diocesan where he dwelleth, and abjured thereof, and afterwards, if he relapse into that Heresy or any other, and thereof be condemned in the said Diocese, then he shall be sent from the Clergy to the Secular Power, to do with him as it shall please the King, &c. And then it seemeth the King, if he will, may pardon him the same. And the Form of the Writ is such:

*Rex, &c. Majori & Vic London. salutem. Cum venerabilis pater Thom. Archiepiscopus Cantuar', totius Angliæ Primas, & Apostolica Sedis Legatus, de consensu & assensu ac consilio Episcoporum & Confratrum Suffragan. suorum, necnon totius Cleri Provinciae suæ in Concilio suo Provinciali congregat', juris ordinibus in hac parte requisit. in omnibus observat', W. Savaci', aliquando Capellanum, in Hæres. dampnat', & per ipsum Willielmum præsentem in forma juris abjurat', & ipsum Will. in Hæresim prad. relaps', per suam sententiam definitivam Hæreticum manifestum pronunc. & declarav', ac degradandum fore decernerit, & ab em-*

*ni prerogativa & privilegio Clericali ea de causa realit. degradaverit, ipsumque Will. Foro Seculari relinquendum esse decreverit, & realiter reliquit, juxta Leges & Canonicas Sanctiones editas in hac parte, ac Sancta Mat. Ecclesia non habet ulterius quid fac. in præmissis: Nos igitur, zelator Justitiæ & Fidei catholica cultor, volentes Ecclesiam Sanctam ac jura & libertates ejusdem manuteneri & defendere, & hujusmodi Hæreses & Errores de Regno nostro Angliæ (quæ in nobis est) radicibus extirpari, ac Hæreticos sic convictos animadversione condigna puniri: attendentesque hujusmodi Hæreticos in forma præd. convictos, & damnatos juxta Legem divinam & humanam canonica institutione, & in hac parte consuetudinarum, ignis incendio comburi debere; vobis distinctione quo possimus præcipimus, firmiter injungentes, quod præf. Will', in custodia vestra existent', in aliquo loco publico & aperto infra Libertat. Civitatis præd. causa præmissa cor. populo public. igni committ', ac ipsum in eod. igne realit. comburi fac', in hujus criminis detestationem, aliorumque Christianorum exemplum manifestum: Et hæc sub periculo incumbente nullatenus omittatis. Teste, &c.*

**D** And by that Writ it appeareth, That a Man ought to be convicted of the Heresy by the Archbishop and all the Clergy of that Province, and abjured for the same, and afterwards anew convicted and condemned by the Clergy of the same Province, and that in their General Council of Convocation. But now by the Statute of Hen. 4. cap. 15. it is enacted, That every Bishop in his Diocese may convict a Man of Heresy, and abjure him, &c. and afterwards convict him anew thereof, and condemn him, and warn the Sheriff or other Officer to apprehend him, and burn him, &c. And that the Sheriff or other Officer ought to do the same by the Precept of the Bishop, and without any Writ from the King to do the same. And that is the Cause (as it seemeth) that that Writ is not put in the new Registers, because that Writ ought not at this Day to be sued forth, but is as it were void by reason of the said Act

But now by the Statute made Anno 25 H. 8. cap. 14. that Statute which was made Anno 2 H. 4. is repealed and made void. And now it is enacted by this late Statute, That he who is abjured for Heresy, and afterwards falleth into Relapse, and is convicted thereof before the Ordinary, that yet the Ordinary ought not for to commit him to the Lay Power to be burnt, without the King's Writ first obtained for to burn him, as appeareth by the said Statute of 25 H. 8. [ 270 ] cap. 140. more at large.



*Writ upon the Statute of Marlebridge for a Fine for  
Non-fair pleading.*

**T**HE Writ upon the Statute of *Marlebridge* for not fair A  
Pleading lieth, where the Sheriff or other Bailiff in  
his Court will take a Fine of the Party, Plaintiff or Defen-  
dant, because he did not plead fairly, &c. And the Writ  
shall be directed to the Sheriff himself, or Bailiff, or him  
who will demand such Fine; and it is a Prohibition to him,  
commanding him that he do not demand such Fine; and it  
may be sued by the whole Hundred, or by all the County  
together, where he will require such manner of Fine of  
them. And the Writ is such:

*Rex Vic, &c. Cum de communi consilio, &c. provis. sit. quod B  
nec in itineribus Justic, nec in Com, Hundred, vel in Curia Ba-  
ronis de cetero ab aliquibus capiantur Fines pro pulchre placitand,  
neque per sic quod non occasione: Tibi precipim, quod ab W. hu-  
jusmodi Finem de cetero non exigas, vel exigi facias, contra form.  
provisionis prad; et distinctionem, si quam, &c.*

And for the Hundred the Writ shall be such: *Tibi precipim,  
quod a communitate Hundredi de l. hujusmodi Finem de ce-  
tero non exigas, vel exigi facias, contra form, &c.*

And by the Rule in the Register it may be against every C  
other Man who will distrain for such Fine, and he may have  
an *Alias* and a *Pluries*. and an Attachment upon the same:  
And if after the first Writ of Prohibition delivered he dis-  
trains for such Fine, then the Party who is distrained may  
sue forth an Attachment against the Sheriff or Bailiff, or  
him who distraineth him; and the Form of the Attachment  
is such:

*Rex Coronatoribus suis in Com Linc salutem. Si A, fecerit, &c.  
tunc ponite, &c. B. Vic nostrum, vel Vic nostrum Com. pradit,  
quod sit cor Justic. nostris, &c. ostens. quare cum de communi con-  
silio, &c. [usque ibi, ab aliquibus non capiantur Fines pro pulchre  
placitand, neque per sic quod non occasione:] idem Vic, vel  
idem B. distrinxit pref. A. pro hujusmodi Fine prestand. in Com.  
prad, contra form. provision. prad, ac contra prohibit. nostram.  
Et habeat ibi, &c. Et Averia ipsius A. ea occasione capta interim  
delibrari fac. Teste, &c.*

But Note, That he may sue forth that Writ of Attach-  
ment against the Sheriff, or other, although that he never  
sued forth any Writ of Prohibition before directed to the  
Sheriff or Bailiff; but then he ought for to be distrained  
for

For that Fine; for the Statute in it self is a Prohibition to the Sheriff, and to all others, that they do not distrain for such Fine for fair Pleading; but if the Sheriff, or other, demand such Fine, and doth not distrain for the same, then he cannot have a Writ of Attachment for such Demand made, because he is not damnified by the Demand, &c.

Attachment upon a Prohibition. Br. 13. Vid. 9 H. 6. 61. and 19 H. 6. 54. Afcue.

*Grants made by the King expressed and contained in the Register, to be remembered.*

**R**EX Ballivis & probis hominibus Villa de P. salutem. Sciatis quod de gratia nostra speciali concessimus vobis in auxil. Ville præd. parviana, quod a die consecutionis præsentium, usque ad finem quinque annorum proxim. sequent. plenarie complendorum, capiatis in eadem Villa Consuetudines subscriptas; viz. de quolibet Synnag, &c. Et ideo vobis mandamus, quod Cons. prædict. usque ad finem termini prædict. capiat, ut prædict. est; completo autem termino dictor. quinque annor, dicta Cons. penitus cessent & deleant. In cuius, &c.

*Grant of a Stewardship.*

**R**EX, &c. Sciatis quod concessimus dilecto & fideli nostro W. de H. officium et regimen Seneschalciæ, &c. cum omnibus ad dictum officium pertin, quamdiu nobis placuerit: Et ideo vobis mandamus, quod eid. W. in omnibus tanquam Seneschall. pareat, respondeatis, et fideliter intendatis. In cuius, &c.

*Grants of Letters Patent.*

**S**EE in the Register notable Forms of Grants of Letters Patent made by the King in divers Manners, especially among the Writs of *Ad quod dampnum*, and also after the Writs of *Corrodio habendo*. And there is a Patent made, *De custodia Forestæ Regis, in recompensationem certæ summæ, aliqui per Regem ad vitam suam concessam.*

And other Patents there made upon Indentures between the King and others, upon a borrowing of Money by the King, by which Patents the King doth grant to hold and keep Covenant, &c.

The Grant of the King of the first Benefice which shall happen void is such:

Rex



[ 271 ]

Rex Cancellario suo qui nunc est, vel qui pro tempore fuerit, vel Castedi magni sigilli, salutem. Promotionem dilecti Clerici nostri A. prætexitu boni servit' sui tam Dom. Edwardo quondam Regi Angl', avo nostro quam nobis impensi, cordit. affectantes, ac volentes ipsum a præmissa consideratione favore prosequi gratioso, volumus quod idem A. ad primum Beneficium Ecclesiasticum, taxationem viginti marcarum excedens, vacaturum, quod ad Præsentat. nostram pertinuerit, et quod duxerit acceptand', præsentetur. Et ideo vobis mandamus, quod eidem A. Literas nostras de Præsentat. ad primum Beneficium Ecclesiasticum vacaturum, quod ad nos sic pertinuerit, & quod duxerit acceptand', sub præd. magno Sigillo nostro in forma præd. habere faciat. In cujus, &c. Teste, &c.

But such Grants are not in use at this Day.

A Grant of the King to one of his Chaplains of a yearly Pension out of the Exchequer, until he be promoted unto a Benefice, is thus:

Rex omnibus ad quos, &c. salutem. Attendens grata et laudabilia obsequia que dilectus Clericus noster A. nobis ante hæc tempora gratant. exhibuit, super quibus tam per dilectum et fidelem nostrum W. quam alios fideles nostros, sumus certitudinaliter informati, sperantesque quod in nostris agend. sue officii, et benevolentia puritate continuabit successivis ætibus in futur', ac volentes ipsum munere prosequi gratioso; concessimus ei quandam annuam Pensionem xx. marcarum percipiend. singulis annis ad Scaccar. nostrum ad Festa Paschæ et S. Mich. per æquales portion' quousque ei per nos fuerit prævisum infra regnum Angl' de Beneficio Ecclesiastico quod duxerit acceptand'. In cujus, &c. Teste, &c.

There is another Grant in the Register, fol. 295. made by the King to one, to give him Authority to reconcile the King's Enemies who have left their Obedience, and adhered unto other the King's Enemies, &c. and to grant Pardon to them; and the Grant is such:

Rex universis et singulis, &c. ad quos, &c. salutem. Sciatu quod nos de fidelitate probata et circumspectione provida dilecti & fidelis nostri Antonii Lucy plenarie confidentes, dedimus eidem Antonio plen. tenor præsent. potest. nomine nostra recipiend. ad fidem & pacem nostram homines de partibus de Galloway in Scotia, ad fidem & pacem nostram non existent', & alios qui eidem Scotis contra nos adhaerent, seu adhaeserunt, et cum eis contra nos de inimicitia nostra fuer', et qui ad fidem et pacem nostram venire voluer', et quos ad fidem et pacem huiusmodi fore viderit admittend'; et Literas de Pardonatione dictarum adhaeserunt et inimicitia, necnon de huiusmodi admittance ad pacem

