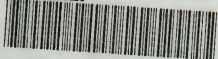
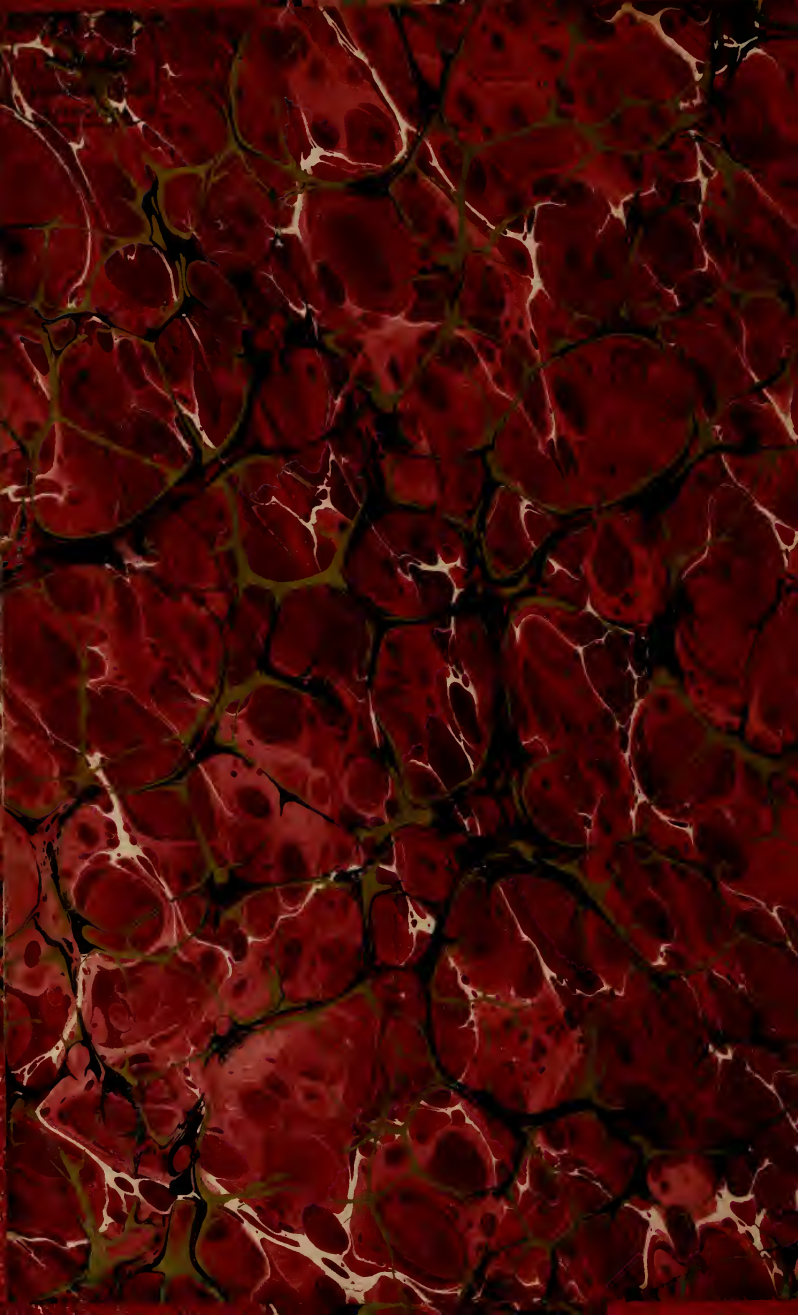
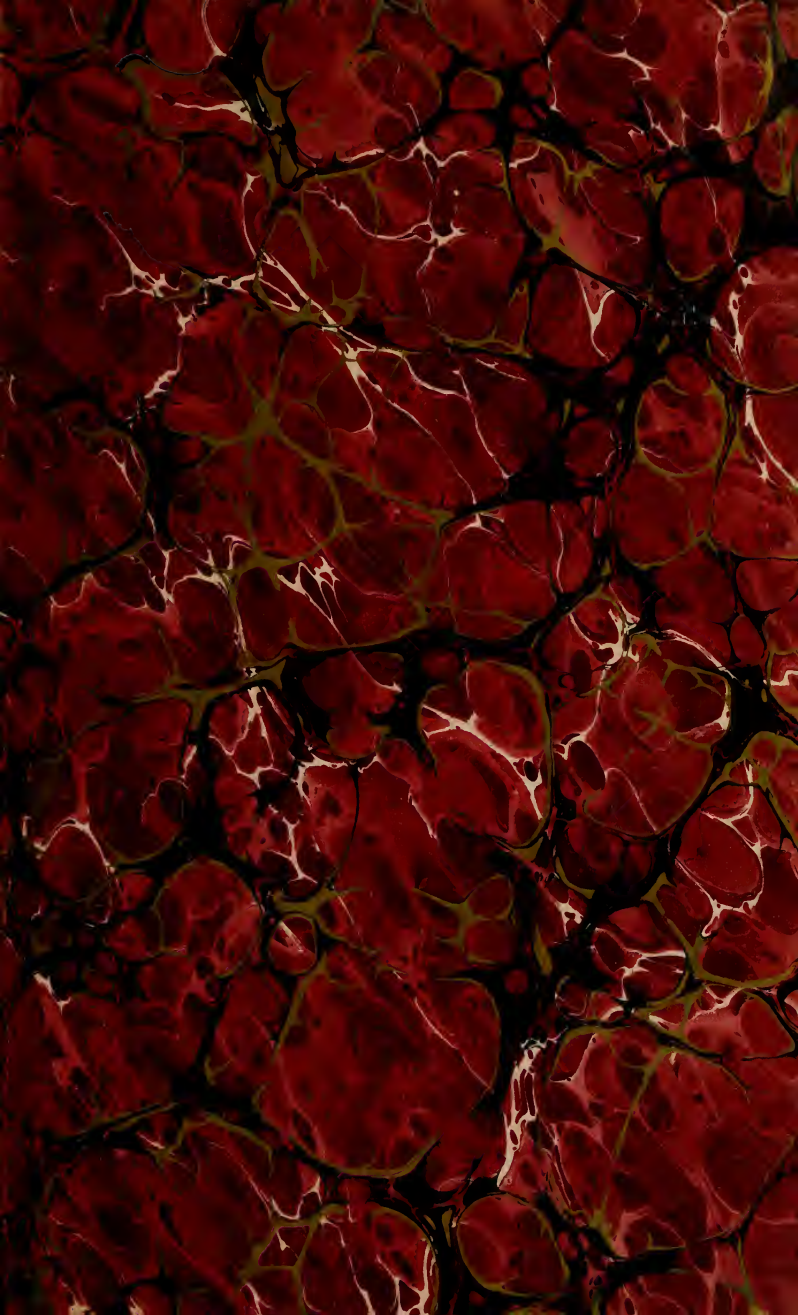


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THE
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THE
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OF
B A I L I F F
OF A
LIBERTY.

12. Apr. 1820.

*Guilielmus Meinchen
Empsit
Pretio 4.1*

By JOSEPH RITSON, Esq.
BARRISTER AT LAW,
LATE HIGH BAILIFF OF THE SAVOY.

Bailivus cujuscunque manerii esse debet in verbo verax, et in opere diligens ac fidelis, ac pro discreto approatore cognitus, plegiatus, & electus, qui de communioribus legibus pro tanto officio sufficienter se cognoscit, et quod sit ita justus, quod ob vindictam vel cupiditatem non quærat verfus tenentes domini, vel aliquos sibi subditos, occasiones injustas, per quas destrui debent, seu graviter ameriari. FLETA. l. 2. c. 73.

* *The Translation attempted below by* 

LONDON:
PRINTED BY A. STRAHAN,
LAW-PRINTER TO THE KINGS MOST EXCELLENT MAJESTY;
FOR J. BUTTERWORTH, LAW-BOOKSELLER,
FLEET-STREET.

Translation.

1811.

* *The Bailiff of every Manor ought to be a Man of Veracity, diligent and faithful in his office known chosen and engaged for his discrete Approovership - He should be sufficiently acquainted with the Common Law for such Office should be so far just as to seek, not for the Discontentment or Advantage, against his Lord's Tenants a his Office, any unjust Occasions to destroy or preserve any*

LOAN STACK

JS3045
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ADVERTISEMENT.

THE little work now offered to the public was originally compiled by Mr. Ritson about the same period as similar treatises, on *The Office of Constable*, and *The Jurisdiction of the Court-Leet*, published in his lifetime. The authors attachment to the subject, it is believed, induced him to defer the publication of the present digest, in the hope of increasing its value by ampler information or more diligent research; and this object appears to have been sufficiently pursued, during the latter years of the authors life, to answer his wishes, as the work was left by him in every respect ready for the press.

The editor feels it due to the memory of his much honored and lamented uncle to add, that the recent publications to which Mr. Ritson's name, from interested motives, has been, very unwarrantably, affixed, are not intitled to any credit.

JOSEPH FRANK.

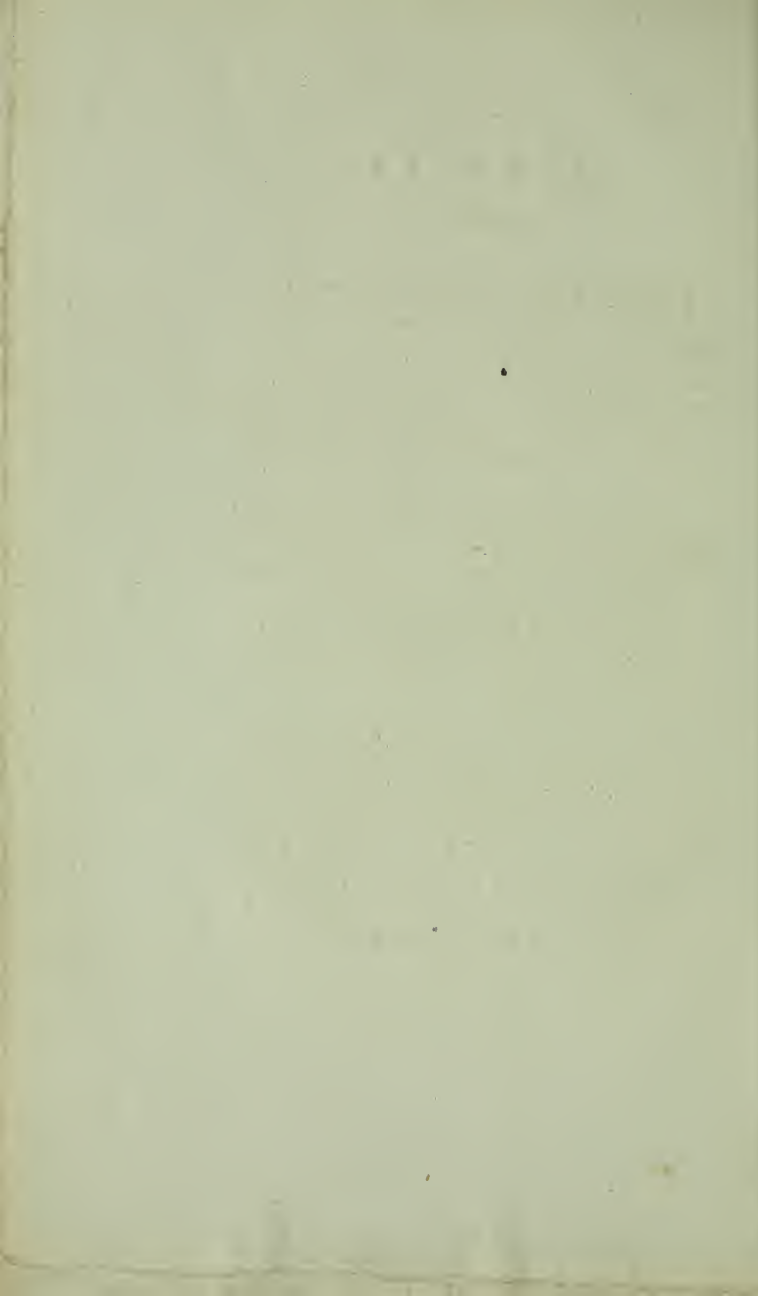
Stockton-upon-Tees,
1st February 1811.

P R E F A C E.

THE subject of the following digest is not, as may be hastily imagined, a matter of mere curiosity or antiquarian research. The officer of whom it treats exercises his function in many parts of the kingdom, in its fullest extent, at this day; though the attention requisite in certain branches of his duty may in some places, no doubt, have induced him to neglect them.

The want of such a compilation as the present must have been more or less felt by every one who has acted in the execution of this office; and indeed it ought to seem much more extraordinary (considering the multitude of similar publications on other subjects) that it should not have been attempted long ago, than that it appears at present.

Little can, and less need be said in favour of a work which has no obligations either to genius or to judgement: some labour, however, has undoubtedly been exerted in the compilation, which, should it have the good fortune to prove so far serviceable to those whom it most concerns, as to render the discharge of an ancient and honorable office an object of less difficulty or hazard, the 'compiler' will not have reason to regret.



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INTRODUCTION.

BAILIFF (*Baillif*, or *Baillie* French; *Ballivus*, Latin; from *balliare* to deliver, intrust, or commit,) is the name given by the Normans to those ministers of the law whom the Saxons called *gerefa*, *greve* or *reve**: an appellation which, however corruptly, we still retain in the word *sheriff*, (*rcyne-gerefa*, or *sbire-reve*,) and by which the bailiff of a manor is in many parts of the kingdom known to this day. The sheriff himself did not, it is true, long continue to enjoy the title of bailiff, which gave place to the more honorable one of *vicecomes* or *viscount* (*qui fungitur vice comitis*,) by which name alone he was constantly stiled in all judicial proceedings, till the progressive ascendancy of the English tongue restored to him his ancient and original appellation. His county, however, is still called his *bailiwick* †, he is often mentioned in *Magna Charta* and ancient statutes along with *alii ballivi*, and is himself frequently included under that title ‡. Between this officer and the bailiff

of

* From *gerefen* *tollere, rapere, exigere. Exactor Regis* (*sc. mulctarum & jurium suorum*). *Ideo scil. quod mulctas regias et delinquentium facultates, in fisco raperent, exigent, deportarent.* Spelman, *voce REVE.*

† See *Co. Lit.* 168, *b.* Whenever the sheriff in any judicial proceedings speaks or is spoken to of his county, the law in fact has regularly no other name for it; *in comitatu meo* or *tuo* for instance has (frequently at least) a very different meaning.

‡ 2 *Inst.* 19. Blount, *voce Bailiff.* And see *Fortescue on Monarchy*, 124. *Scd quis vicecomes . . . fuit . . . magnus domini Regis ballivus*
M. Paris

of a hundred, manor or liberty, such a perfect resemblance appears to have subsisted, in all respects, that there cannot be a doubt that both were the produce, if not of the same hand, at least, of the same system. The division of the kingdom into counties, hundreds and tithings, is well known to be owing to the wise policy of the great Ælfred*; each county, hundred or tithing is agreed to have been subjected to an officer known by the common name of the *gerefa*; he who presided over the county at large being usually, by way of distinction, called the *heh* or *ryne-gerefa* and sometimes the *ryne-man*, as the others were stiled the *hunored* and *ryning-gerefa* or the *hunderer*, and *tithingman*†. We are but imperfectly acquainted with the duty of this officer till after the conquest. It is said, indeed, that the sheriff, in the time of the Saxons, was not the minister of the King, but the officer of the *Saldeþman* or *þopl* ‡. And what this alderman or earl was to the county, the lord or thain was, no doubt, to his manor or liberty, and what the sheriff was to the former, the inferior *gerefa* or bailiff was to the latter. Certain it is that not only the several courts of which we shall have occasion to speak, but what we now call manors or liberties, existed from a very

M. Paris. 801. The governors of the city of London were originally called portreves, then bailiffs, then sheriffs, and at last mayors. *Stow's Survey*, by Strype. *B. v. c. 6.*

* *Ingulphus* (apud scriptores post Bedam). 870. *Gul. Malmesburiensis de Gestis Regum.* *Ibi.* 44. *Camdens Britannia.* clxvii. *Seldni Analecra, Opera.* ii. 922. Notes upon Draytons Polyolbion. Song xi. (Works. iv. 1839.) Shires, however, it is certain there were before this time. See Bradys Hist. of Eng. i. 84. 116. and Sir J. Spelmans Life of Ælfred. 110.

† The *prapostus villa*, or bailiff of a manor, was also called the *tungerefa* or *Tungreve*. *Vide Spelman, vocæ Græfo.*

‡ Hicckel, *Dif. Epis.* 49.

early

early period, nor was it possible for the Norman Kings to enlarge, in favour of their own countrymen, the amazing powers which almost every petty Saxon thain or lord exercised in his jurisdiction, either from the nature of the constitution and ordinary course of law, or the liberal grants of the Saxon monarchs: powers which the Norman jurists never found themselves able to express in a different language*.

The sheriff was originally elected by the freeholders or suitors of the great Court Baron of the county, commonly called the County Court; the bailiff by the freeholders of the hundred or manor, suitors to the Court Baron of each division†: and when the right of election in the former case was wrested from the people by the Norman tyrants‡, the same right in the latter case was usurped by the lord of the hundred or manor. The sheriff presided as judge in the folk-mote or leet of the county, the bailiff in that of the hundred or manor. The former sat as principal executive officer of the County Court; the bailiff, of the Court Baron; the freeholders or suitors being the judges in each to this day: and though both seem to have been

* Infangtheof, outfangtheof, thol, theam, foc, fac, blodwite, fythewite, flyhtewite, sledwite, ferdwite, hengewit., leirwite, childwite, wardwite, grithbrech, hamfocn, forstall, ordel, orefte, flemenefrith, miskennyng, burgbruch, &c. &c.

† Kennet, Par. Ant. Glof. v. *præpositus*. Another title common to sheriff, bailiff, and reve.

‡ This privilege was restored to the people by the *Articuli super Chartas*; 28 E. 1. c. 8. but resumed in the following reign, and has ever since continued in the crown. 9 E. 2. f. 2. *Jenk.* 229. They enjoy the right of electing the coroner still; chiefly, it is supposed, because it has not been thought worth taking from them.

anciently

anciently considered as the Kings courts, yet offences were in one alledged to be *contra pacem ballivi*, and in the other *contra pacem vicecomitis* *. The fines and amer-ciements imposed in these courts were levied, and the proces of the court executed by the sberiff and bailiff in the same manner ; each having his serjeants or inferior officers to assist him : and in the proceedings of the above courts, or others nearly similar, and held by or before the same persons, was comprehended the whole system, as well of the civil as of the criminal law of that age, not only before the institution of judges itinerant, but (in many cafes at least) long after. The revenue of the crown was collected and accounted for by the sberiff and bailiff within their respective jurisdictions : And as each of them governed the tenants in peace, so he led them forth to war when necessity required †. Each of them had likewise his

* *Fleta. l. 2. c. 53. § 1.* The *steward* has been in possession of this branch of the bailiffs office for many centuries. When this transfer took place would be scarcely possible to discover. It should seem, however, to have been gradual, and might possibly have its rise from the *Senescallus*, the *Stýpeard* or *major-domo* being sometimes more conversant in forensic matters than the bailiff, whose office chiefly concerned the management of the lords demesne and other out-of-door concerns. The *Mirror* (written in the time of *E. 2.*) constantly speaks of the bailiff as judge of the court leet ; see also *Ken. Par. Ant.* p. 319. And thus Finch, speaking of the County Court and Court Baron, says “ the suitors are the judges and the *bailiff* and sberiff are but ministers.” *Law.* 248. And hence, perhaps, it has been held that both offices might be enjoyed by one and the same person. *Cro. Jac.* 178. (cites 29 *H. 8.*) And it should seem from Bracton that writs were indifferently directed to either the steward, or the bailiff, *ballivo vel senescallo. l. 5. c. 32.*

About the time that this separation took place, the lowest branches of the bailiffs office were transferred to an inferior minister, named a *reeve*, of whom we read at large in *Fleta. l. 2. c. 76.* But possibly this was only the case in extensive manors and demesnes, where a single person was found unequal to the discharge of the united functions of *steward, bailiff,* and *reeve.*

† Lambards *Perambulation of Kent.* p. 484.

proper *aid* or *scot*, which he assessed upon the landholders within his bailiwick, who frequently complained of it as an intolerable grievance, and as such it was at length abolished. The Kings writ is thought not to have run as it now does till about the institution of the Eyre or Iter of the Justices by K. H. 2.* How his commands were signified before this invention does not clearly appear †; but certainly after it took place, the execution of the writ (though necessarily directed to the sheriff) was as much the duty of the bailiff within the franchise, as of the sheriff without; nor could the latter, without a special authority, interfere in the most trivial matter which belonged to the other. In short, whatever the sheriff did or could do in the county at large the bailiff could do and did within his franchise, whether hundred ‡ or manor. Such was the ancient constitution, and such in a great measure will appear from the following sheets to be the law at this day.

* V. Prynne, *Animad. on 4 Inst.*, p. 150. *Hickes. Dif. Ep.*, p. 8. 48. See however in Madox, *Hist. Ex.* p. 100. an instance of justices itinerant in the time of K. Stephen. Writs unknown to the Saxons. *Hickes. u. f.* p. 8.

† A collection of all the writs and charters that can be met with of the first three or four Norman kings would be a useful, curious, and interesting work.

‡ Most hundreds have, by statute or otherwise, been united to the body of the county and power of the sheriff. But many of them, having been granted in fee, still exist as independent franchises.



THE
OFFICE
OF
BAILIFF OF A LIBERTY.

BOOK I.
Of a FRANCHISE OR LIBERTY*.

CHAPTER I.
OF FRANCHISES IN GENERAL.

A FRANCHISE is a royal privilege in the hands of Royal privilege.
a subject; and is forfeited by misusing it. Forfeiture.
Finch, 164.

If a franchise be of record in any court of the King Record.
it is sufficient. 27 H. 6. 9.

Allowance of franchises in *Quo warranto* or in Eyre *Quo warranto.*
shall conclude the King, for this is the suit of the King

* Note, that these words are in this work used in two different senses, but both equally common: viz. 1. for the privilege itself, as the franchise or liberty of *Retorna Brevium*: 2. for the manor or territory in or over which that privilege is exercised, as the Liberty or Franchise of the Savoy. There will seldom, if ever, be any confusion or obscurity on this account.

to try franchise; *contra* of allowance in the Common Bench or other court. 10 *H. 7.* 13. *Br. Fraunches & Liberties*, 40.

General statute. Franchise bound by general statute, *tam* within *quam* without the franchise. 19 *H. 6.* 1.

Franchise or other special liberty or privilege shall not be defeated by general statute. 19 *H. 6.* 64.*

Prisons. Albeit divers lords of liberties have custody of the prisons and some in fee, yet the prison itself is the Kings *pro bono publico*; and therefore it is to be repaired at the common charge; for no subject can have the prison itself. 2 *Inst.* 589.

None can claim a prison as a franchise, unless they have also a jail-delivery of felony, which the dean and chapter of Westminster hath not, and therefore ought to send a calendar of 'prisoners' to Newgate, or return the *Habeas Corpus* to *B. R.* with a claim of their franchise. 1 *Salk.* 343.

Magna Charta. By *Mag. Char.* c. 38., are saved to all archbishops, &c. earls, barons, and all others, all liberties and free customs which they had enjoyed before.

*Saving of
Liberties and
Customs.*

In the preamble to many of the old statutes it is stipulated that all the lords spiritual and temporal, and the other lieges of the King having liberties and franchises, shall have and enjoy all their liberties and fran-

* Vide *Co. Lit.* 115. and the case of the King against Fugh. *Douglas* 179.

chifes which they have of the grant of the Kings progenitors and of his own grant and confirmation. This is the constant preface to the petition rolls to which the King always answers "*Le Roy le voet.*" *Rot. Parl. passim.* And that all persons and corporations may fully enjoy their liberties, [and] franchises, [was] one prime cause of calling parliaments, and so declared, and the conservation of them one chief petition of the commons when violated. *Abridgement of the Records* *. *Table, voce Liberties.*

CHAPTER II.

OF THE LIBERTY OF *Retorna Brevium*, OR RETURN OF WRITS.

BY *W. 2. c. 39.* The treasurer of the exchequer shall deliver in a roll all the liberties in all shires that have return of writs. And if the sheriff answer that he hath made return to the bailiffs of any other liberty than is contained in the said roll, the sheriff shall be forthwith punished as a disheritor of the King and his crown †. And if peradventure he answer that he hath returned

Roll of Liberties, having

Return of Writs

* Published by Prynne under the name of Sir Robert Cotton, but said to have been actually compiled by William Bowyer, keeper of the records in the Tower in the time of Queen Elizabeth.

† In the Kings Bench the sheriff returned *Mand' ballivo' Libertatis de D.* and it was said that he hath not such a franchise, and if it be inrolled in the chancery that A. hath *retorna brevium*, yet if it be not inrolled in the exchequer, as the statute of *W. 2. c. 39.* and if the sheriff return other liberty he shall be punished as a disinheritor of the Crown by such statute, and the justices may send *certiorari* out of chancery to the treasurer, that he bring the roll of liberties in his hand, and shew it to the justices. *II E. 4. 4 Br. Retorne de briefe. 98.*

Non omittas.

returned the writ to the bailiffs of some liberty that indeed hath return who hath done nothing therein*, the sheriff shall be commanded that he shall not omit by reason of the aforefaid liberty, but that the kings precept shall be executed; and that he make known to the bailiffs to whom he returned the writ that they be at a day contained in the writ to answer why they have not made execution of the kings precept. And if

This Roll of Liberties is supposed to be lost; at least the clerks of the *Treasurers Remembrancers office*, on inquiry there, could give no account of it; any more than the bag-bearer of the Kings could of the "little booke," mentioned by Powell to be in the *Kings Remembrancers office*, "intituled, *Liber de Ball. pro Angl.* of all the balliwicks throughout England," which he calls "an ancient booke, made Anno 1180."

Per Curiam, where the bailiff makes insufficient return, the sheriff may return *quod nullum dedit responsum*, for an insufficient return is as no return; and in *præcipe* against two, the bailiff returns the one summoned and the other not, this is no answer, and if the sheriff return this, he shall be amerced, but by *Vavifour* if the bailiff make dubious return and the sheriff return it over he shall not be amerced, *quære.* 5 H. 7. 27. *Br. Retorne de briefe.* 89.

In *Præcipe quod reddat*, to the grand capias the sheriff returned *quod mandavi ballivo, libertatis*, who returns that he hath taken the land into the hands of the King, and says nothing that he hath summoned the tenant. *Martin*, another summons with *non omittas* shall be awarded, and the sheriff shall not be amerced, for the bailiff hath not served the writ; for as much as he had in commandment to do two things, and he has done but one; and so it is as if he had said nothing either of one or the other. *Babb*, a *non omittas* shall not be awarded but where the bailiff hath not given any return, but here he hath given a return which is not sufficient, and for this he shall be amerced. T. 4 H. 6. [25.] *Fitz. Amercement.* 1.

In trespass the sheriff returned the *Capias quod mandavit Ballivo Libertatis, qui sic respondit quod cepit corpus*; but the bailiff does not bring in the body; but the defendant would have answered by attorney, and was not received. And the plaintiff prayed *Siout alias* to the sheriff, and *non omittas*. And for that the writ was served he could have nothing but a writ to the sheriff to distrain the bailiff to fend the body, &c. 27 E. 3. 7.

* This *nihil* is to be understood, not only where nothing at all is done, but also where the bailiff of the liberty maketh an insufficient return, for that is *nihil* in law, and therefore a *non omittas*, &c. 2 *Inst.* 452.

they

they come at the day and acquit themselves that return of the writ was not made to them, the sheriff shall be forthwith condemned to the lord of the same liberty, and likewise the party grieved by the delay in restitution of damages. And if the bailiffs come not at the day, or come and do not acquit themselves in manner aforesaid, in every judicial writ, so long as the plea endureth, the sheriff shall be commanded that he omit not because of the liberty, &c.

That the statute, in this respect, was little more than a declaration of the common law, appears from *Bracton*. l. 5. c. 32.

By 12 E. 2. c. 5. Of returns which shall be made Indenture.
to sheriffs by bailiffs of such franchises as have full return of the Kings writs, an indenture shall be made between the bailiff of the franchise by his proper name, and the sheriff by his proper name. And if any sheriff change the return so delivered to him by indenture, and thereof be convicted at the suit of the lord of the franchise, of whom he shall have received such return, if the lord shall have sustained any damage, or his franchise be imblemished, and at the suit of the party who shall have sustained damage by that occasion, he shall be punished on behalf of the King for his false return, and render to the lord and to the party double damages.

Return of writs may be claimed by prescription as Prescription.
appertaining to a manor. But more especially may it be claimed as appertaining to an honour. *Hardres.*
423.

Escheat,

Where a man hath *Retorna Brevium*, which liberty comes to the hands of the king by escheat *vel aliter*, this unity in the King shall not extinguish the liberty. *Keilwey. 72.**

A dangerous
liberty!

This liberty of *Retorna Brevium* (saith C. B. Hale) is a dangerous liberty for him that hath it; for he is to be responsible for all the defaults of his bailiffs, as escapes, &c. And if the bailiff do not account for the collection of the Kings revenue he is responsible for it; 'tis a feather in his cap, but a thorn in his foot. 2. *Vent. 406.*

Sheriff.

This liberty though it carries an exemption, yet it doth not exclude, but that the sheriff may execute

* (1.) The King may have liberties by the suppression of abbeys (32 *H. 8.*) or by other means. And a liberty shall not be intended to be extinct, unless it be so shewn, but shall be said to be still in *esse. Cro. Jac. 242.*

When the King grants any privileges, liberties, franchises, &c. which were privileges, liberties, or franchises in his own hands as parcel of the flowers of his crown, as *bona et catalla felonum fugitivorum utlagatorum* &c. *bona et catalla rariata, extrabur; deodanda, wreccum maris,* &c. within such possessions, there if they come again to the King, they are merged in the crown, and he has them again in *Jure Corona*; and if the wreck, or goods waived, estrays, &c. were appendant before to possessions, now the appendancy is extinct, and the King is seised of them in *Jure Corona*. But when a privilege, liberty, franchise or jurisdiction was at the beginning erected and created by the King, and was not any such flower before in the garland of the crown, there, by the accession of them again to the crown they are not extinct nor the appendancy of them severed from the possessions; as if a fair, market, hundred, leet, park, warren, *et similia*, are appendants to manors, or in gross, and afterwards they come back to the King, they remain as they were before, in *esse*, not merged in the crown, for they were at first created and newly erected by the King, and were not in *esse* before, and time and usage have made them appendant. 9 *Rep. 25, b.*

writs

writs within it. But then it is a wrong for which the lord of the liberty may have his action: but in some cases the sheriff may lawfully do it, as in the case of the King. *A non omittas, &c.* in case of execution of a writ of waste, whereto he is particularly empowered by the statute, and sometimes where the thing is divided*. (By Hale C. B.)
2 Vent. 406.

If

* Writ issued to the sheriff to enquire of waste, who returned *quod mandavi ballivo libertatis qui mihi nullum dedit responsum*, and for this he was amerced, and *scut alias* awarded, because by the writ he is judge and hath power to enter the franchise. *T. II H. 4. (81.) Fitz. Retourne del vicount. 53.* But

Note, that sometimes the sheriff is judge, as in redisseisin, waste, and admeasurement, and the process shall be served by the baily as is said. *Diversite des Courts. Court Baron.*

Ejectione Custodie [under *W. 2. c. 35.*], at the distress with proclamation the sheriff returned *mandavi ballivo libertatis, &c.*; and by *Thirning* and *Markbam*, the sheriff shall be amerced, for the proclamation is to be made by the sheriff by the statute. Therefore because the distress with proclamation is a thing entire, he ought to have entered the franchise and served the whole writ himself: and *Rikbill* and *Tirwit e contra* and that he did well, as in a *praecipe quod reddat* of land, part in gildable, and part in franchise, the sheriff shall make precept for parcel, and shall serve the rest himself. *2 H. 4. 1. Br. Ejectione Custodie. 1.*

If a distress with a proclamation be granted, and the defendant hath nothing but within a franchise, the sheriff shall make proclamations in the county, and the baily of the liberty shall distrain him. *2 Inst. 442.*

Where the issue is of land part gildable and part in franchise, the panel shall be returned part by the sheriff and part by the bailiff of the franchise, and they may join [in the return]; and the distress [shall be] by the sheriff only if the bailiff be slack. *19 H. 6. 48. 67. Br. Retourne de briefe. 50.*

If assise be brought of tenements in two franchises the sheriff shall write to each bailiff, and both shall serve. *Abr. Ass. 92, b.*

Assise was brought of tenements in two vills, one vill was within the franchise and the other in gildable, and the bailiff of franchise made the panel, and for this it was challenged; for those of a franchise cannot have the view by commandment of bailiff of land out of the franchise, &c.

*Gildable
Land*

Warrant.

If an action be brought in a county, and the place where, &c. is the franchise of another who hath return and execution of writs within the said franchise, yet the writ shall issue to the sheriff, and he ought to make over a warrant to the bailiff of the franchise to execute the same writ; and the writ shall not be directed to the bailiff, &c. for he is not officer to the court. And moreover it shall be intended that all vills in the county are within the power of the sheriff till the contrary be made appear by return of the sheriff. 35 H. 6. 42.

To the sheriff the writ must be directed, though it be for a thing done in a franchise, and he shall send to a [i. the] bailiff of the franchise who shall serve it as a servant to the sheriff*, and the sheriff return it *Finch.* 238.

And so the court thought. *H. 18. E. 3. quare*, how the writ shall be served? It seems that the writ shall abate, and that he shall be put to several writs, and namely where he may sever the thing, &c. for otherwise it will follow that the bailiff of the franchise shall never serve a writ, for a man may always put in the writ, part of the land gildable, &c. *quare. Abr. Aff. 93.*

* He is not servant to the sheriff, nor is any way subject to him (having as good authority in his office, and being as ancient an officer as himself).

Upon an issue the sheriff returned to the *Venire Facias*, and to the distress, as to 4 jurors he returned the writ served, and as to the remainder he returned *mandavi ballivo de B. qui nullum*, &c. Fortescue prayed that the sheriff should be amerced, for no writ may be returned by two ministers *f.* part by the sheriff and part by the bailiff. *Newton, e contra.* And afterwards, by advice of all the justices, the sheriff was amerced. *H 19 H. 6. Abr. Aff. 144. 145.*

It was assigned for error that in affize it appeared by the return of the sheriff, that he had found pledges before himself, and the bailiff of the franchise, to whom the return belonged, served all the rest of the writ; and the return adjudged good. 21 H. 7. 14.

And

And though the sheriff serve an execution in a franchise, yet it is good. And the lord of the franchise is driven to his action upon the case against the sheriff, for the sheriff is immediate officer. *Id. Ib.*

Service by sheriff.

Where the sheriff makes execution in franchise it is good, for he is immediate officer to the court; otherwise where bailiff makes execution in the guildable; and the lord of the franchise in the first case shall have his remedy for infringing the franchise. 11 H. 4. *Br. Execution.* 32.

If the sheriff without *Non Omittas* serve process within liberty or franchise that hath return of writs it is good. 11 H. 4. 9. 20 H. 7. 7. But the lord of the franchise shall have action upon the case against him. *Fitz. Nat. bre.* 95.* But if the King be party the lord hath no remedy, for the writ for the king is always *Non Omittas* in law. 41 *lib. Ass.* 17. *Crompt. J. P.* 164.†

The King party.

Where the king is party the *venire facias* shall make mention of *non omittas*; for where the King is party

* H. 49 E. 3. B. R. Rot. 4. Linc. proces per attachment per billam versus vicecomitem directed ad coroner for the disturbing a lord of a liberty. L. C. J. Hales Discourse concerning the Courts of K. B. and C. P. (Hargraves Tracts, vol. i. p. 363.)

† In the *Auclarium Additamentorum* to Watts's edition of Matthew Paris is a warrant from the sheriff of Essex and Hertford to the bailiffs of the liberty of St. Albans, reciting a writ to the sheriff to summon the knights and freeholders of the said counties, &c. to be before the Kings commissioner with an express *non omittas* in case of the default of the bailiffs of liberties; which proves that the writ for the King was not at that time (37 H. 3.) a *non omittas* of itself.

the

the sheriff shall not write to the bailiff of the franchise, but serve the process himself. 41 *Aff.* p. 17. *Br. Fraunches & Liberties*, 18.

The King hath no other minister than the sheriff, and where the king is a party no franchise shall be allowed. *Fitz. Chal.* 129.

Where the King is party as against felon or otherwise in action, the franchise shall not take place, but the sheriff ought to enter the franchise and serve the process, unless this clause *licet fuerimus pars* be in the charter, in which case it seems otherwise. 38 *Aff.* p. 19. *Br. Fraunches & Liberties*, 31.

If the King grant *returna omnium brevium*, yet he shall not have return of the summons of the exchequer. 22 *Aff.* p. 49. *Br. Patentis*, 32.

Arrest by sheriff.

Per Glynn Ch. J. Mich. 1658; if one be arrested by the sheriff of the county within a liberty, without a *non omittas*, yet the arrest is good; for the sheriff is sheriff of the whole county, but the bailiff of the liberty may have his action against the sheriff for entering his liberty*; but upon a *quo minus*, a sheriff may enter any liberty, and execute it *impune*. *R. S. L.* 116. *cites Pract. Reg.* 72. *Viner, Franchises*, (B.) 6.

* It seems that the sheriff ought to take notice of such a liberty at his peril, without the party shewing his grant to him but merely upon his saying that he hath one, because it is a matter of record. 1 *Roll R.* 119. *Town of Derby v. Fuxley*.

The sheriff, upon a *non omittas, capias utlagatum*, or *quo minus*, may enter and make an arrest in any franchise. *L. P. R. 635. Viner, Franchises, (B.) 6.*

Non omittas, Capias utlagatum, Quo minus.

In the county of Suffolk are two liberties, one of St. Edmund Bury, and the other of St. Ethelred of Ely : suppose a *capias* comes at the suit of *A.* to the sheriff of Suffolk, to arrest the body of *B.* the sheriff makes a mandate to the bailiff of the liberty of St. Ethelred, who makes no answer ; in that case the plaintiff shall have a writ of *non omittas*, and by force thereof he may arrest the defendant within the liberty of Bury, although no default was in him [*sci.* in the bailiff of that liberty.] 5 *Rep.* 92.

Non omittas

But this is to be understood of the process of the Kings Bench ; for Common Pleas recites the *capias*, the sheriff's return, that he has made his mandate to the bailiff, who has given no answer, and then gives the sheriff power to enter the liberty ; but in the Kings Bench, on the sheriff's return on the *Latitat*, the authority is general, *non omittas propter aliquam libertatem*, which gives the sheriff power to enter not only that liberty, but all the liberties within the county : And this seems to be grounded on the words of the *latitat*, (*viz.*) *latitat* and *discurrit*, so that the defendant is supposed to skulk and run from one place to another ; and therefore the *non omittas* was made general, that he might not run from one liberty to another. *Gilb. Hist. C. P. 24.**

A warrant

* Rule to shew cause why a writ of *non omittas capias ad respondend.* should not be quashed, discharged. The objection to the writ was, that it recited a mandate to have been issued forth by the sheriff to the bailiff

Justice of peace. A warrant of a justice of peace to arrest for felony may be executed in a franchise within the county, for it is the kings suit, in which a *non omittas* is virtually included. 2 *Hale P. C.* 116.*

Process. By 5 *G. 2. c. 2. § 3.*, in particular franchises and jurisdictions the proper officer there shall execute such process [i. e. where cause of action in superior court is under 10 l. in inferior court under 40 s.] [made perpetual by 21 *G. II. c. 3.*]†

Sheriffs deputy By 13 *G. 2. c. 18. § 6.*, for the better and more speedy execution of process within particular franchises or liberties, the sheriff of every shire, being no city or town made a shire, within which there is any franchise or liberty, the lord or proprietor whereof is

bailliff of a liberty without naming what liberty, but leaving a blank for the same. The court held the objection to be valid, and that the proper way to take advantage of the defect is by motion; but it appearing that bail was put in to this writ before a judge, the objection now comes too late. *Barnes.* 416.

* Where the sheriff serves the process once of a thing local or permanent, as in *Præcipe* of land and such like, he cannot after return *mandavi ballivo*; but *e contra* of a thing transitory which may remove. 5 *H. 7. 27. Br. Ret. de brieve.* 89.

Thus in *Alias Summons* in Dower the sheriff can't return *mandavi ballivo*, for he ought to have made this return upon the first writ, that so the court might have awarded a *non omittas*; but if it relates to matters transitory, then the sheriff may return *mandavi ballivo* on the issuing of the second process, as on an *alias capias*, for the body might be in the liberty on the issuing of the second process, though it was in the guildable in the first; and therefore the return of the first process does not conclude him from returning the liberty to the second process. *Gilb. Hist. C. P.* 26.

† *Urtin* moved to stay proceedings, the process being served within the franchise of Bury St. Edmonds, and not by the proper officer, contrary to the late act of parliament. *Per Cur'*: The act only preserves and saves the jurisdiction of particular liberties. The person injured must bring his action, the court cannot stay proceedings. *Barns.* 404.

of right intitled to the return of writs within such franchise or liberty, shall (if required by any such lord or proprietor) within one month next after such request made to him for that purpose, nominate and appoint one or more sufficient deputy or deputies, at the proper costs and charge of such lord or proprietor, to be resident at some convenient town or place in or near such franchise or liberty, to be for that purpose appointed by the lord high chancellor of Great Britain, and the chief justices of his Majesty's courts of Kings Bench and Common Pleas for the time being, or any one of them, who is and are hereby authorized and empowered to appoint such convenient town or place as to him or them shall seem meet, and to settle and direct what costs and charges shall be paid therefore by such lord or proprietor; and such deputy or deputies shall reside at such town or place so to be appointed as aforesaid, and shall have authority in the sheriff's name, and is and are respectively authorized and empowered to receive and open all such writs and process (the execution or return whereof doth of right belong to the lord or proprietor of any such franchise or liberty) and thereupon in the name, and under the seal of the sheriff, to make and issue out such warrant or warrants to such lord or proprietor, as by law is requisite, for the due execution of such writs or process; and every such deputy or deputies is and are hereby required, upon tender of any such writ or process, to receive and open the same, and to issue out such warrant thereon, without delay, in such manner and form as the sheriff himself may or ought to do, without taking any further or other fee than what is now due and accustomed for such warrant; upon pain that every such sheriff or deputy respectively,

tively, who shall be guilty of any wilful neglect or default in the premises shall be liable to be punished for the same, as for a contempt of one of his Majesty's said Courts of Chancery, Kings Bench, or Common Pleas (as the case shall require), and shall likewise make satisfaction to the party or parties that shall receive damage thereby.

Ca. and non omittas. *Note.* It is now usual to take out the *capias* and *non omittas* together, without staying for the sheriff's return*. *Gilb. Hist. C. P.* 26.

Note, If any of your defendants live within a liberty where the sheriff may not enter, you must get the sheriff to direct his warrant on your writ to the bailiff of such liberty, who may execute it; but if the bailiff of such liberty do not execute it, then you must at the return of your writ, get the sheriff to return a *mandavi ballivo* thereon, and thereupon you make out a writ called a *non omittas*, directed to the sheriff, and upon that writ the sheriff's officers may, upon the sheriff's warrant made out thereon, enter and execute the warrant within such liberty. *1 Instructor Clericalis.* 44.

And *Note,* The usual practice in such case is if the defendant dwells in the country, to send down a *non omittas* with the *latitat* for dispatch. *Ib.*

* How far such a practice is consistent with the rights of the lord of the liberty or with the law of the land (and particularly with the act just above recited) is submitted to those whose duty it is to support both.

In Yorkshire it is usual for the sheriff to direct the warrant as well to the bailiff of the liberty as to one or more of his own bailiffs, who may take defendant if found *extra libertatem*. This method is unobjectionable, it prevents delay and answers all the purposes of a *non omittas*.

SCAC.

SCAC. E. 1725.

L. Digby v. Meech et al.

Bill to establish plaintiff's right to the manor, &c. of Sherborn Castleton in the county of Dorset, to Greenwax fines, &c., and also poundage fees on executions and *Retorna Brevium*, &c. by virtue of a grant 14 Jac. I. The bill was brought against three succeeding sheriffs of the county, and Templeman, who had been the under sheriff for three or four years, and as to him to have an account of what poundage fees, &c. he had received within the liberty: the title set forth by plaintiff was, that king James I. granted to sir John Digby (after earl of Bristol), from him they descended to George, from him to John earl of Bristol, *and on his death vested in plaintiff.*

Greenwax.

It was objected at the hearing that here was not a sufficient title set forth, it not appearing how the premises vested in plaintiff, whether by descent, settlement, or how.

And *per tot' cur'* the bill ought to be dismissed for that reason; the bill being to establish a right, as well as for an account; and upon this the cause went off, but plaintiff had liberty to amend his bill. *Hanbury, 195.*

BOOK II.

Of the BAILIFF of a FRANCHISE or LIBERTY.

CHAPTER I.

OF HIS QUALITY.

THE bailiff of a franchise or liberty is he who in a free place, or portion of a county, taken away from the power of the sheriff, executes the business of the sheriff. *Spelman.*

Minister to the King. The bailiff of the franchise is not minister to the sheriff but to the King. 8 E. 4. 17.

Officer *per se*. The bailiff of a franchise is an officer by himself, and hath not to do with the sheriff. 21 H. 7. 23.

The bailiff of a liberty is not servant to the sheriff, for the sheriff cannot make other return but according to that which the bailiff of the liberty certifies him. *Keilwey*, 89.

Kings bailiff. The Kings bailiff of his manor is immediate officer to the King. 33 H. 6. 29.

The bailiff of a liberty is such an officer as the court will take notice of. *Pasch.* 24 Car. B. R. Q. S. P. R. 122.

CHAP.

CHAPTER II.

OF HIS CREATION OR APPOINTMENT, AND INTEREST
IN HIS OFFICE.

ONE may be bailiff by a simple grant [i. e. by Parol, patent or
parol] or patent or inheritance. *H. 33 H. 6. [3]*
Fitz. Monstrauns de faitz, &c. 93.

A man may be bailiff of the King without patent or writing. *7 H. 7. 10. Br. Bailie. 46 & v. 2 & 9.* Bailiff of the
King.

A man may be made bailiff to the King by naked matter of fact as well as to a common person. *Keilwey, 174, b.*

If the King make one his bailiff of his manor, to which manor waif, stray and leet are appendant, by patent, in this case the bailiff shall have the waif, stray and leet, because he occupies in right of the King, and he shall account to the King; and therefore this is an advantage of the King, for which reason the bailiff shall have all. *8 H. 7. 3.*

Corporation having return of writs may make bailiff (to execute them) without writing, by parol. Corporation.
Moor, 552.

But a man may not make bailiff or steward for life, or in fee, without deed. *21 H. 7. 36.* Bailiff for life. }

Discharge by
purchaser.

Bailiff of a manor * for life, with fee or other profits for the execution of his office, cannot be discharged by a purchaser of the manor (*contra* if no fee or profit). *Cro. Eliz.* 859.

CHAPTER III.

OF HIS QUALIFICATION.

Sufficient land.

BY 4 *E.* 3. *c.* 9., no sheriff, bailiff of hundred, wapentake, or franchise, shall be henceforth if they have not land sufficient in the places where they are ministers whereof to answer the King and his people, in case any man will complain against them. Re-enacted by 5 *E.* 3. *c.* 4.

Oaths.

By 27 *Eliz.* *c.* 12. § 2., all persons that shall be admitted to or take upon them the executing of the office of an undersheriff, before he intermeddle with the use or exercise of the said office, shall receive and take a corporal oath upon the Holy Evangelists, before the justices of assize, or one of them, of the same circuit wherein that county is whereof he shall be undersheriff, or before the *Custos Rotulorum*, or two justices of the peace whereof one to be of the *quorum* of the said county, for and concerning the supremacy, in such manner and form as that oath is expressed and declared in one act of parliament made and ordained

* Whatever is said of the bailiff of a manor is in general applicable to the bailiff of a liberty, every liberty being likewise a manor; though every manor be not a liberty.

in the first year of the reign of our Sovereign Lady the Queen's Majesty*, together with which oath he shall in like sort, before the same person or persons, receive and take another corporal oath as followeth, (that is to say) I *A. B.* shall not use or exercise the office of undersheriff corruptly during the time that I shall remain therein, neither shall or will accept, receive or take, by any colour, means or device whatsoever, or consent to the taking any manner of fee or reward of any person or persons for the impaneling or returning of any inquest, jury or *tales*, in any court of record for the Queen, or betwixt party and party, above two shillings or the value thereof, or such fees as are allowed and appointed for the same by the laws and statutes of this realm, but will, according to my power, truly and indifferently, with convenient speed, impanel all jurors, and return all such writ or writs touching the same as shall appertain to be done by my duty or office, during the time that I shall remain in the said office. So help me God.

By § 4., every bailiff of franchises, deputy and clerk of every sheriff and undersheriff, and every other person and persons which shall have authority, or take upon him to impanel or return any inquest, jury or *tales*, or to intermeddle with execution of process in any court of record, shall before he or they intermeddle with any further execution thereof, receive and take the oaths aforesaid corporally before the person or persons appointed by this act to minister the same,

* By 1 *H.* and 11. *M.* stat. 1. c. 8., the oath of supremacy is taken away, and certain other oaths substituted in lieu thereof.

or before the head officer of the place (if it be a town corporate), changing only the words (the office of the undersheriff) contained in the oath expressed in this act, to such words as are convenient for the deputation, office, or place in which the party which taketh the oath is to be exercised in: and if any the said persons limited to take the oath aforesaid, do take upon him to impanel or return any inquest, jury or *tales*, or to intermeddle with the execution of process not having before taken the oaths aforesaid, every [such] person shall lose and forfeit the sum of forty pounds of current English money, the one moiety to be to the use of our Sovereign Lady the Queen, the other to him or them that will sue for the same.

CHAPTER IV.

OF HIS POWER AND CAPACITY; *i. e.* WHAT HE
MAY OR MAY NOT DO OR BE.

Steward.

A BAILIFF may be steward of the same manor; for they may well stand both together. (29 *H. 8.* in *Bro.*) *Cro. Jac.* 178.

Deputy.

Bailiff of a liberty may well have a deputy. *Cro. Jac.* 242.*

Lease of land.

Bailiff of lord may lease the land, and good, at will, for he is accountable, and debt lies for the lord. 2 *E. 4. 4 Br. Bailie*, 32 *Lease*, 34.

* And such deputy it should seem ought to be made by writin (9 *Rep.* 51, *b.*). Though it is said 21 *H. 7. 37.* that the sheriff or a steward may make deputy without deed.

But

But if he reserve no rent the lease is void. 1 *Roll. Rent. Rep.* 258.

Bailiff of a manor may lease the piscary for years. *Lease of piscary.*
3 *H. 4 12 b.* 1 *Roll Abr.* 339.

Bailiff cannot make lease of the manor, nor of *Lease of manor.*
parcel of the manor, without especial command for
that purpose. *M. 8 E. 4. 13. Fitz. Bayllyff. 3. Br.*
Bailie, 41.

A bailiff cannot by any usage make lease of the land *Lease of land.*
of his master [for] an estate of freehold. 19 *Aff. 9.*
1 *Roll. Abr.* 339.

Bailiff of a manor may pay rents issuing out of the *Payments.*
manor, and shall have allowance, but *e contra* where
he pays debts of the lord due by contract or obligation,
for this is out of his power. 4 *H. 7. 14. Br.*
Bailie. 27.

Bailiff may justify cutting the great trees for repair *Cutting trees,*
of a house, or the covering of it as it was before, but *&c.*
not with more costly covering, and the same law is of
amending pale, hedge, or such like, without command
of his lord; but he cannot cover with tile what was
before thatch, nor make new house, nor make pale
where hedge was before, unless by special command-
ment of his master. 12 *H. 7. 25. Br. Baillie, 42. &*
vide plenius Trespas. 288.

A bailiff may give licence to another to walk over *Licence to walk*
the ground, for this is a trespass to the possession only, *over ground.*

and the bailiff hath the disposition of the profits of the possession. (*dub.*) 1 *Roll. Abr.* 339.

Damage feasant. A bailiff of a manor may himself or command another to take beasts *damage feasant* on the land, for he hath the care of all things within the manor. 1 *Roll. Abr.* 339.

General acts. He may do any thing for his masters benefit, but not to his prejudice without his assent. *Cro. Jac.* 178.

And therefore he cannot give seisin of rent, nor exchange the lords land. (41 *E.* 3. 26) *Cro. Jac.* 178.

**Distress for
americiament.**

Bailiff without special warrant from the steward cannot distrain for americiament in a leet, *Moore*, 607. 574.

Popham said, that defendant as bailiff of the manor cannot distrain for americiament by reason of his office without an especial warrant from the steward or lord, no more than a sheriff may levy americiaments of *B. R.* without warrant. But *Gawdy*, *e contra*, that he may distrain for lawful americiaments by reason of the office. *Cro. Eliz.* 698.

Bailiff cannot distrain *ex officio* for americiaments. *Cro. Eliz.* 748.

Bailiff cannot distrain for americiament by command of the lord of the manor, nor otherwise than
by

by virtue of a precept directed to him by the steward of the court. *Carth.* 75.*

Bailiff of a franchise which hath *Retorna Brevium* Arrest. cannot arrest a man without warrant to him made by the sheriff upon the writ in his hands. *Keilwey*, 86 b.†

Bailiff of a liberty may deliver his prisoner to the sheriff without more circumstance; as he may be discharged by his parol from keeping him any longer. *Cro. Car.* 447.‡

Delivery of
prisoner. }

Bailiff

* It is an old rule of the duchy court that the bailiffs of the liberties of the duchy may distrain for fines and ameraciements for the king, and keep the same fifteen days, and if the party distrained refuse to pay his fine or ameraciement, then the bailiff may sell the same, unless the party distrained will enter into bond to pay the said fine or ameraciement at a day prefixed in the duchy court, or else shew good cause; but in this case there is no replevy to be granted against the king. And all this it seemeth the bailiff shall do *ex officio*. The fines and ameraciements within the liberties of the duchy are, however, usually levied by writ of *levari facias* & *capias* out of the duchy court. And,

Duchy Court
of
Lancaster.

By Keble, precept to bailiff by nude parol is as effectual in court *Baren* as by writing, because the trial shall be all *per pais* and not by the record: for all is but matter *in fait*. *Quod fuit concessum*. 16 H. 7. 14.

† Per Levinz serjeant. In fact the sheriffs make no warrants to the bailiffs of liberties, but they only send the writ to them; and they execute it upon some general warrant, which they have from the sheriffs to execute all writs according to the agreement between the sheriffs and bailiffs. But (*per curiam*) this general warrant serves for a warrant to every particular case, for there must be a warrant in writing, because a command by parol to the bailiff of a liberty is not sufficient, 1 L. Ray. 190. *Hammon v. Jermyn*.

N. B. This assertion of the learned serjeant, though founded it is possible on some instance within his knowledge, can never be understood as true with respect to general practice.

‡ Bailiff of a liberty arrested the party, and delivered him to the sheriff's deputy, from whom he was rescued, and judgement for the plaintiff. *Burgh v. Appleton, Sheriff of Essex*, cited *Cro. Jac.* 242. See the Pleadings *Declarations in the Upper Bench*, 50. See also c. vi. (pl. 1.) c. ix. (fo. 50.)

Process.

Bailiff of a franchise cannot execute a process within his franchise, but by the precept of the sheriff. 29 *E.* 3. 42. *Coron.* 462. 2 *Hale P. C.* 68.*

Writ of inquiry.

Case, judgement by *nil dicit*, writ of inquiry of damages to the sheriff of Norfolk, who returns a *mandavi ballivo*, and sets down an inquisition before bailiff and 40l. damages. Upon writ of error, agreed by all the judges that the return was insufficient, for it was apparently untrue, and against law, because the warrant was directed to the sheriff himself to be executed in any part of the shire, and no venue contained in this inquest of office, as there is in other writs which intitles the bailiffs of liberties. But yet the court would not reverse the judgement, because there were divers of the like both in the K. B. and C. P. especially in Suffolk and Norfolk in later times. *Hobart.* 83.

Elegit.

Bailiff of a liberty may make an inquisition and extent upon an *Elegit* by warrant from the sheriff, and shall deliver the moiety, and not the jury. *Cro. Car.* 319.

But in *Boothman v. Earl of Surry*, T. 27 G. 3. B. R. Defendant being bailiff of the liberty of Hallamshire, in the county of York took his prisoner to York jail and there delivered him into the custody of the sheriff, and upon action of debt brought against him for an escape, judgement for the plaintiff. *N. B.* Neither of the cases in Crokè was cited by defendants council.

* In the *Register* are divers examples of original writs directed to bailiffs of liberties: as for instance; writs of right patent, writs *de warrantia d'ci*, writs of trespass, writs of *superseatas*, writs *de cartis reddendis*, writs *de attornato pro custode*, writs *de attornato pro seña facienda*, writs *de statuto*: The duchy court constantly issues writs of *levari facias* to bailiffs of the duchy liberties; in all these cases the bailiff is immediate officer to the court, and hath nothing to do with the sheriff, contrary to the argument in *Skin.* 413, and *vide F. N. B. passim.*

Bailiff

*Duchy
of Lancaster.*

Bailiff of a franchise funder 23 *H. 6. c. 9.*] has power to take a bail bond, and must take it to himself, and by the name of his office. *Comyns. 380.*

Bail-bond. }

Bailiff of a franchise may take bond in sheriff's name.
3 *Keble, 71. 117. 125.*

Bailiff of hundred* may waive his franchise and arrest as sheriff's bailiff. 3 *Keble, 71.*

Waiver of franchise.

Capias or distress against two, sheriff may serve as to one and bailiff as to the other. 31 *H. 6. 13.*

Capias against two.

Where process issues, and the sheriff or bailiff is plaintiff, yet he may serve the process; and the sheriff is not bound to take cognisance if the bailiff be plaintiff or not, for it may be another of the same name.
36 *H. 6. 1. Br. Retorne de Briefe. 65.†*

* This must be understood of a hundred in fee with *retorna brevium* in the hands of a private person, of which there are several instances; every other bailiff of hundred being a mere servant to the sheriff. And note, that, where a man is *bailiff of fee* in a county (*i. e.* a bailiff itinerant, who hath the execution only of writs within the county or hundred in fee) the sheriff shall not write to him as to *bailiff of franchise*, and for his act *non mittas* shall not issue, nor shall he make mention of him in his return. 27 *Aff. p. 65. Br. Retorne de briefe, 69.*

† The sheriff of a county made a warrant *ballivis suis* to arrest the body of such a man, and the bailiffs of the liberty return a rescous; and exception was taken to it, because the warrant was *ballivis suis*, and the return was made by these who were not his bailiffs; and it was adjudged good, for the liberty might be within his bailiwick, and so are all the precedents. *March. 25.*

‡ But the defendant himself shall never take advantage of a liberty, as if the bailiff of a liberty be defendant in any action, and process of *Cap' or Feri Fiaz'* comes to the sheriff against him, the sheriff shall execute the process against him; for a liberty is always for the benefit of a stranger to the action. 5 *Rep. 92.*

By

By 2 *E. 3. c. 3.* Lords of franchises, and their bailiffs in the same, shall have power to execute this act; which prohibits all men, except the Kings servants in his presence, and his ministers in executing his precepts, &c. from coming before the Kings justices, or other the Kings ministers doing their office, with force and arms, or bringing force in affray of the peace, or going or riding armed by night or by day in fairs, markets, or in the presence of the justices or other ministers, or in any part elsewhere, upon pain to forfeit their armour to the King, and their bodies to prison to the Kings pleasure.

Attorneys.

By 4 *H. 4. c. 19.*, no steward, bailiff or minister of lords of franchises which have return of writ shall be attorney in any plea within the franchise or bailiwick whereof he is such officer or minister.

CHAPTER V.

OF HIS DUTY *i. e.* WHAT HE MUST OR SHALL DO
OR NOT DO.

Return of pre-
cept.

BAILY of a liberty must return his precept [to the sheriff]. 2 *Keble*, 838.

Where the sheriff returned *capias quod mandav;* *ballivo de D. qui respondit quod cepit corpus*, &c. and hath not the body at the day, the bailiff is bound to bring in the body, and not the sheriff, by *Hill*; but by *Hank* he ought to deliver it to the sheriff, and he to bring it in as officer immediate, as upon *fieri facias* the
the

the sheriff commands the bailiff to levy the money, he delivers it to the sheriff, so that the sheriff may have it at the day: *contra Thirn*, and agreed with *Hill. 11 H. 4. 48 Br. Retorne de Briefe, 35**.

By *W. 1. (3 E. 1.) c. 15.*, such as be indicted of Bail-larceny, by inquests taken before sheriffs or bailiffs by their office, or of light suspicion, or for petty larceny which amounteth not above the value of 12d. if they be not guilty of other larceny before that time, or guilty of the receipt of felons or of commandment or of force. or of aid of felony done, or guilty of some other trespass for which a man ought not to lose life or member, and a man appealed by the prover after the death of the prover, if they be not known common thieves, shall be let out by sufficient surety, whereof the sheriff will be answerable. And if sheriffs or others let go upon surety any that is not repleviable, if he be sheriff, constable, or other bailiff of fee, and who hath keeping of prisons, and thereof be attainted, he shall lose his fee and bailiwick for ever. And if under sheriff, &c. do it contrary to the will of his lord, he shall be imprisoned three years, and be fined at the Kings pleasure. And if any withhold prisoners repleviable after the prisoner hath offered sufficient surety he shall be in the grievous mercy of the King; and if he take reward for delivering him he shall render double to the prisoner, and moreover shall be in the grievous mercy of the King.

* See before, p. 23. In Yorkshire, when bailiff of the liberty has no prison of his own, the usage is for him to bring the body to the sheriff, who makes out an ordinary commitment to the county jail.

By

By 23 H. 6. c. 9. Sheriffs, undersheriffs, bailiffs of franchises, &c. shall let out of prison all manner of persons by them arrested or being in their custody by force of any writ, bill or warrant in any action personal, or by cause of indictment of trespass, upon reasonable sureties of sufficient persons, having sufficient within the counties where such persons be so let to bail or mainprise, to keep their days in such place as the said writs, bills or warrants shall require: Such person or persons which shall be in their ward by condemnation, execution, *capias utlagat'* or *excommunicatum*, surety of the peace, and all such persons which shall be committed to ward by special commandment of any justice, and vagabonds refusing to serve according to the form of the statute of labourers, only except. And that no sheriff, nor any of the officers or ministers aforesaid shall take or cause to be taken, or make any obligation for any cause aforesaid, or by colour of their office, but only to themselves, of any person, nor for any person which shall be in their ward by the course of the law, but by the name of their office, and upon condition written, that the said prisoners shall appear at the day contained in the said writ, bill or warrant, and in such places as the said writ, bill or warrant shall require. And if any of the said sheriffs, or other officers or ministers aforesaid, take any obligation in other form by colour of their offices, that it shall be void; and that he shall take no more for the making of any such obligation but 4d. (penalty, treble damages to the party grieved and 40 l. half to the King and half to the party suing.) And justices of assises, of the bench and of the peace, to enquire, hear and determine, &c.

By

By 13 C. 2. *ft.* 2. *c.* 2. § 2., no person or persons who shall happen to be arrested by any sheriff, under-sheriff, coroner, steward, or bailiff of any franchise or liberty, &c. by force or colour of any writ, bill or process issuing out of his majestys courts of the Kings Bench and Common Pleas, or either of them, in which said writ, bill or process, the certainty and true cause of action is not expressed particularly, and for which the defendant or defendants in such writ, bill or process named, is and areailable by the statute in that behalf made in the three and twentieth year of the reign of the late King Henry the Sixth, shall be forced or compelled to give security, or to enter into bond with sureties, for the appearances of such person or persons so arrested, at the day and place in the said writ, bill or process specified or contained in any penalty or sum or sums of money exceeding the sum of forty pounds to be conditioned for such appearances; and all sheriffs and other officers and ministers aforesaid, shall let to bail and deliver out of prison, and from their and every of their custodies respectively, all and every person and persons whatsoever, by them or any of them arrested upon any such writ, bill or process wherein the certainty and true cause of action is not particularly expressed, upon security in the sum of forty pounds and no more, given for appearance of such person or persons so arrested unto the said sheriff or officer aforesaid, according to the said statute in the said three and twentieth year of the reign of the said late King Henry the Sixth in that behalf made and provided.

By 32 G. 2. *c.* 28. § 1., no sheriff, under-sheriff, bailiff, serjeant at mace, or other officer or minister
Treatment of
person arrested.
 whatsoever,

whatsoever, shall convey or carry, or cause to be conveyed or carried any person or persons by him or them arrested, or being in his or their custody by virtue or colour of any action, writ, process or attachment to any tavern, alehouse or other public victualling or drinking house, or to the private house of any such officer or minister, or of any tenant or relation of his, without the free and voluntary consent of the person or persons so arrested or in custody; nor charge any such person or persons with any sum of money for any wine, beer, ale, victuals, tobacco or any other liquor or things whatsoever, save what he, she or they shall call for, of his, her or their own free accord; nor shall cause or procure him, her or them to call or pay for any such liquor or things, except what he, she or they shall particularly and freely ask for; nor shall demand, take or receive, or cause to be demanded, taken or received directly or indirectly, any other or greater sum or sums of money than is or shall be by law allowed to be taken or demanded for any arrest or taking, or for detaining or waiting till the person or persons so arrested or in custody shall have given an appearance or bail, as the case shall require, or agreed with the person or persons at whose suit or prosecution he, she or they shall be taken or arrested, or until he, she or they shall be sent to the proper gaol belonging to the county, riding, division, city, town or place where such arrest or taking shall be; nor shall exact or take any reward, gratuity or money for keeping the person or persons so arrested or in custody out of the gaol or prison; nor shall carry any such person to any gaol or prison within four and twenty hours from the time of such arrest, unless such person or persons so arrested shall refuse to be carried

carried to some safe and convenient dwelling-house of his, her or their own nomination or appointment within a city, borough, corporation or market-town, in case such person or persons shall be there arrested; or within three miles from the place where such arrest shall be made, if the same shall be not the house of the person arrested, and be within the county, riding, division or liberty in which the person under arrest was arrested; and then and in any such case, it shall be lawful to and for any such sheriff or other officer or minister to convey or carry the person or persons so arrested and refusing to be carried to such safe and convenient dwelling-house as aforesaid, to such gaol or prison as he, she or they may be sent to by virtue of the action, writ or process against him, her or them.

By § 2., no sheriff, undersheriff, bailiff, serjeant at mace, or other officer or person, shall at any time or times hereafter take or receive any other or greater sum or sums for one or more nights lodging, or for a days diet, or other expences of any person or persons under arrest, on any writ, action, attachment, or process other than what shall be allowed as reasonable in such cases by some order or orders made by the justices of the peace at some general or quarter-sessions which shall be held for the county, riding, division, city, town or place where such arrest or taking shall be.

Expences of persons arrested.

By § 3., every sheriff, undersheriff, and bailiff of any liberty, &c. shall deliver a printed copy of the several clauses contained in this act relating to bailiffs, serjeants and other officers and persons who shall be employed under them respectively to execute any

Printed copy of clauses.

writ, process or attachment, or who shall arrest any person on any action which shall be entered or otherwise within their respective sheriffwicks or jurisdictions, to every such bailiff, serjeant, officer, and other person, and shall make it part of the condition of every security or bond which shall be given or made to any such sheriff or undersheriff, or bailiff of any liberty, by any bailiff, serjeant at mace, or other officer or person who shall be employed or intrusted to execute any such writ or process as aforesaid under him, them or any of them, that every such bailiff, serjeant at mace, or officer and other person respectively, shall and will shew and deliver a copy of the said clauses to every person he shall arrest by virtue of any process, action, writ or attachment, or under any warrant made out thereon, and carry or go with to any public or other house where any liquor shall be sold, and also shall and will permit every such person who shall be so arrested, or any friend of him or her to read over the same clauses, before any liquor, meat or victuals shall be at any such public or other house called for or brought to any such person who shall be so under arrest there; and in case any bailiff, serjeant at mace, or other officer or person shall in any respect offend in the premises, every such offence besides the breach of the condition of every such security bond, shall be accounted and deemed a misdemeanor in the execution of the process or action on which any such person was arrested, and shall be punishable as such by virtue of this act.

Privilege of persons arrested in sending for necessaries.

By § 4., every sheriff, undersheriff, bailiff of any liberty, gaoler and keeper of any prison or gaol, and other person and persons, to whose custody or keeping

ing any one shall be arrested, taken, committed or charged in execution, by virtue of any writ, process, or action, or attachment, shall permit and suffer every such person and persons, during his, her and their respective continuance under arrest or in custody or in execution for any debt, damages, costs or contempt, at his, her and their free will and pleasure, to send for or have brought to him, her or them, at seasonable times in the day-time, any beer, ale, victuals or other necessary food, from what place he, she or they shall think fit, or can have the same; and also to have and use such bedding, linen or other necessary things, as he, she or they shall have occasion for and think fit, or shall be supplied with during his, her or their continuance under any such arrest or commitment, without purloining or detaining the same, or any part thereof, or enforcing or requiring him, her or them to pay for the having or using thereof, or putting any manner of restraint or difficulty upon him, her or them, in the using thereof, or relating thereto; and no such prisoner or prisoners shall pay any thing in respect thereof to any such sheriff, undersheriff, bailiff of any liberty, gaoler, keeper, or other person as aforesaid.

By 3 H. 7. c. 3. every sheriff, bailiff of franchise, and every other person having authority or power of keeping of gaol or of prisoners for felony, shall certify the names of every such prisoner in their keeping, and of every prisoner to them committed, &c. at the next general gaol-delivery in every county or franchise where any such gaol or gaols have been or shall be, there to be kalendered before the justices of the deli-

Certificate of felons.

verance of the same gaol, upon pain to forfeit for every default an hundred shillings.

Felons goods.

By 1 R. 3. c. 3. no sheriff, &c. nor bailiff of franchise shall take or seize the goods of any person arrested or imprisoned for suspicion of felony before that the same person be convicted or attainted of such felony according to law, or else the same goods otherwise lawfully forfeited; upon pain to forfeit double the value of the goods so taken, to him that is so hurt in that behalf.

Return of jurors.

By W. 2. (13 E. 1.) c. 38. In one assise no more shall be summoned than four and twenty; and old men, above three score and ten years, being continually sick, or being diseased at the time of the summons, or not dwelling in that county, shall not be put in juries or petty assises. Nor shall any be put in assises or juries though they ought to be taken in their own county who have less tenement than to the value of twenty shillings by the year. And if such assises and juries ought to be taken out of the county, none shall be put in them who hath less tenement than to the value of forty shillings by the year, those except who are witnesses in charters or other writings whose presence is necessary, so long as they are able to travel. Nor ought this statute to be extended to great assises in which sometimes it behoveth to put knights not resident in the county by reason of the scarcity of knights, so long as they have tenement in the county.

By

By 21 E. 1. *st.* 1. no sheriff, &c. stewards or bailiffs of liberties shall put in any recognisances of juries, inquests, assises, and attainds, out of their proper counties to be made, any of their bailiwicks,* unless he have lands or tenements to the value of a hundred shillings by the year at least.

By the *Articuli super chartas*, 28 E. 1. c. 9. no sheriff nor bailiff shall put in inquests nor in juries more people or others, or in other manner than is ordained by statute and shall put in such inquests and juries the most near, most sufficient and least suspicious.

By 42 E. 3. c. 11. as to the return or answer of bailiffs of franchises they shall make their answer to the sheriffs six days before their session upon the pain of 20l. And in all manner of panels arrayed by sheriffs, or bailiffs within franchise, shall be put the most sufficient and worthy of faith and not suspected who have the best knowledge of the truth and [are] the most near.

By 11 H. 4. c. 9. no indictment shall be made but by inquest of the Kings lawful liege people returned by the sheriffs or bailiffs of franchises, without any denomination to the said sheriffs or bailiffs of franchises before made by any person of the names which by him should be impanelled, except it be by

* *De ballivis suis*; the printed translation reads "any of their bailiffs;" but this is only one out of numberless instances of its gross and shameful inaccuracy.

the officers of the said sheriffs or bailiffs sworn and known to make the same.*

By 2 *H. 5. ft. 1. c. 8.* bailiffs of franchises shall cause to be impanelled sufficient persons [who have lands, &c. to the 'value' of 10l. a year, to inquire of riots before the kings commissioners] upon pain to lose to the King 40l. in case such sufficient persons may be found within the same franchises.

By 2 *H. 5. ft. 2. c. 3.* no person shall be admitted to pass in any inquest upon trial of the death of a man, nor in any inquest betwixt party and party in plea real nor in plea personal, whereof the debt or the damage declared amounts to 40 marks, if the same person have not lands or tenements of the yearly value of 40s. above the reprises thereof.

By 6 *H. 6. c. 2.* bailiffs of franchises shall make their returns or answer to the sheriffs in special assizes [*i. e.* as to panels between demandant and tenant] eight days before the session, upon pain of 40l.

By 8 *H. 6. c. 9.* when the justices or justice [of the peace] make enquiries [of forcible entries], they shall make their warrants and precepts to the sheriff of the county, commanding him on the Kings behalf to cause to come before them sufficient and indifferent persons dwelling about the lands entered, to enquire of such entries, of whom every one who shall

* This act extends to inquests before coroners. *Gro. Car. 134.*

be impanelled to enquire in this behalf shall have land or tenement of the annual value of 40s. at least above reprises. And that the sheriff return issues upon every of them at the day of the first precept returnable 20s. and at the second day 40s. and at the third time 100s. and at every day after double. And if any sheriff or bailiff within a franchise having return of the Kings writ be slack and make not execution duly of the said precepts to him directed to make such enquiries, he shall forfeit to the King 20l. for every default and moreover shall make fine and ransom to the King.

By 15 *H. 6. c. 5.* no sheriff, bailiff of franchise, or coroner in actions or writs of attaint of plea of land of the yearly value of 40s. or more, or action of detinue of deeds concerning lands or tenements of like value or more, or personal, whereof the judgement of the recovery shall extend to the sum of 40l. shall return or impanel in any inquisition or inquest, any persons but such as be inhabiting within his bailiwick, which have estate of fee simple, fee tail or freehold in lands and tenements of the yearly value of 20l. or more, nor shall return in the Kings court less issues in the said action of attaint than 40s. at the first writ of distress, and 100s. at the second writ of distress, and the double of every other writ of distress against the persons impaneled and returned to be sworn in the same actions (upon pain of 10l. to the King and 10l. to the plaintiffs. Remedy if there be not sufficient men in the franchise who have lands of the yearly value of 20l.)

By 23 *H. 6. c. 9.* sheriffs, undersheriffs, bailiffs of franchises, nor any other bailiff, shall return upon any

writ or precept to them directed for returning any inquests or any panels thereupon to be made, any bailiffs, officers, or servants to any of the officers aforesaid, in any panel by them to be made; nor shall take any thing by colour of his office for the making of any return or panel, and for the copy of any panel but 4d.

By 27 *Eliz. c. 6. § 1.* in all cases where any jurors to be returned for trial of any issue joined in any of the Queens courts of Kings Bench, Common Pleas and the Exchequer, or before justices of assize ought to have estate of freehold in lands, &c. of the clear yearly value of 40s. the jurors shall every of them have estate of freehold in lands, &c. to the clear yearly value of 4l. at the least, (penalty on sheriff, &c. for returning that cannot dispend so much, 20 l.)

By § 2. upon every first writ of *habeas corpora* or *distringas* with a *nisi prius* delivered of record to the sheriff or other minister or ministers to whom the making of the return shall appertain, [such sheriff, &c.] shall return in issues upon every person impanelled and returned upon any such writ at the least 10s. and at the second writ 20s. at the least, and at the third writ 30s. and upon every writ further double the issues last afore specified, until a full jury be sworn, or the process otherwise determined, upon pain of 5 l.

By 27 *Eliz. c. 7.* no bailiff of any liberty, nor any his or their deputy or deputies, shall of himself return any juror, or deliver to the sheriff, his undersheriff, deputy or deputies, the names of any persons

to

to be returned upon any panel or jury, without the true addition certified under his or their hands to the sheriff, of the place of dwelling or abode of every person so to be returned at the time of the said return, or within one year next before the said return, or some other addition by which the party returned may be known.

By 4 & 5 W. & M. c. 24. § 15. all jurors (other than strangers upon trials *per medietatem lingue*) who are to be returned for trials of issues joined in any of the courts of Kings Bench, Common Pleas, or Exchequer, or before justices of assize, or *nisi prius*, *oyer and terminer*, gaol delivery, or general quarter-sessions of the peace in any county of the realm, shall have in their own names, or in trust for them within the same county, ten pounds by the year at least above reprises, of freehold or copyhold lands or tenements, or of lands and tenements of ancient demesne, or in rents, in fee-simple, fee-tail, or for the life of themselves or some other person; and that upon every writ of *venire facias* the sheriff, coroner, and other ministers, unto whom the making of the panel shall appertain, shall not return in any such panel any person unless he then have 10 l. by the year at least as aforesaid, in the same county where the issue is to be tried; upon pain to forfeit for every person, &c. the sum of 5 l.

By § 16. no sheriff or bailiff of any liberty or franchise, or any of their ministers, shall return any such person or persons as aforesaid, to have been summoned by them, unless such person and persons shall have been duly summoned, by the space of six days

*It also appears
by this Statute
Plaintiff is to
declare vs.
(Deft. in prison)
of Bailiff of a
Franchise
within 2 Terms
See Hill. v. Bird
v. Prisoner*

at least before the day on which they ought to make their appearance; nor shall directly or indirectly take money or other reward to excuse the appearance, of any juror, by any of them to be summoned or returned, upon pain to forfeit for every such offence the sum of 10*l*. [Continued by 7 & 8 *W.* 3. *c.* 32. 9 *G.* 1. *c.* 8. § 2. EXP.]

By 7 & 8 *W.* 3. *c.* 32. § 4. all constables, tythingmen and headboroughs of towns in each county, or their deputies, shall yearly at the general quarter-sessions of the peace to be holden for each county, riding or division, in the week after the feast of St. Michael the arch-angel, upon the first day of the said sessions, or upon the first day that the said sessions shall be held by adjournment at any other particular division or place, return and give a true list in writing of the names and places of abode of all persons within the respective places for which they serve, qualified to serve upon juries, with their titles and additions, between the age of one and twenty and the age of 70 years, to the justices of the peace in open court; which said justices, or any two of them, at the said sessions, shall cause to be delivered a duplicate of the aforesaid returned list, by the clerks of the peace of every county or riding, to the sheriffs or their deputies, on or before the first day of January next following, and cause the said lists to be fairly entered into a book, by the clerk of the peace, to be by him provided and kept for that purpose, amongst the records of the said court of sessions; and no sheriff shall impanel or return any person or persons to try any of the issues joined in any of the courts [of K. B. C. P.

C. P. or E.] or to be or serve in any jury at the assizes, sessions of *Oyer and Terminer*, gaol delivery, or sessions of the peace that shall not be named or mentioned in the said list.

By § 5. every summons of any person qualified to any of the aforesaid services shall be made by the sheriff, his officer or lawful deputy, six days before at the least, shewing to every person so summoned the warrant under the seal of the office wherein they are nominated and appointed to serve; and in case any juror so to be summoned be absent from the usual place of his habitation at the time of such summons, notice of such summons shall be given by leaving a note in writing, under the hand of such officer, containing the contents thereof, at the dwelling-house of such juror, with some person there inhabiting the same*. [Made perpetual by 6 G. 2. c. 37.]

By 4 *Ann. c. 16. § 6.* every *Venire facias* for the trial of any issue in any action or suit in any of her Majesty's courts of record at Westminster shall be awarded of the body of the proper county where such issue is triable. But

By § 7. nothing in this act contained shall extend to any writ, declaration or suit of appeal of felony or murder, or to any indictment or presentment of treason, felony or murder or other matter, or to any process

* By § 9. The inhabitants of Westminster are exempted from serving in any jury at the sessions before the justices of the peace for the county of Middlesex.

upon any of them or to any writ, bill, action or information upon any penal statute.*

View.

By § 8. in any actions brought in any of her Majesty's courts of record at Westminster, where it shall appear to the court that it will be proper and necessary that the jurors who are to try the issues in any such actions, should have the view of the messuages, lands or place in question, in order to their better understanding the evidence that will be given upon the trials of such issues, in every such case the respective courts in which such actions shall be depending, may order special writs of *Distringas* or *Habeas corpora* to issue, by which the sheriff or such other officer to whom the said writs shall be directed, shall be commanded to have six out of the first twelve of the jurors named in such writs, or some greater number of them, at the place in question some convenient time before the trial, who then and there shall have the matters in question shewn to them by two persons in the said writs named to be appointed by the court; and the said sheriff or other officer who is to execute the said writs shall by a special Return upon the same, certify that the view hath been had according to the command of the said writs.†

By 3 G. 2. c. 25. § 2. duplicates of the lists [made according to 7 & 8 W. 3. c. 32. 3 & 4 Ann. c. 18.

* This proviso, with respect to actions or informations upon penal statutes, is taken away by 24 G. 2. c. 18. § 3.

† By 3 & 4 Ann. c. 18. §§ 3, 4, particular directions are given relative to the return of jurors within the county of York. See also 1 Ann. §. 2. c. 13. § 3. and 7 & 8 W. 3. c. 32. §§ 7, 8.

and

and this act] when delivered in at the quarter sessions of the peace, and entered in 'the' book to be kept by the clerk of the peace for that purpose, shall, during the continuance of such quarter-sessions, or within ten days after, be delivered or transmitted by the clerk of the peace to the sheriff of each county, or his undersheriff, in order for his returning of juries out of the said lists; and such sheriff or undersheriff shall immediately take care that the names of the persons contained in such duplicates shall be faithfully entered alphabetically, with their additions and places of abode, in some book or books to be kept by him or them for that purpose.

By § 4. no persons shall be returned as jurors to serve on trials at any assizes or *nisi prius*, or at the great sessions, or at the sessions for the counties palatine, who have served within the space of one year before in the county of Rutland, or four years in the county of York, or of two years before in any other county, not being a county of a city or town*.

By § 5. the sheriff, undersheriff, or other officer to whom the return of juries shall belong, shall from time to time enter or register in a book to be kept for that purpose, the names of such persons as shall be summoned, and shall serve as jurors on trials at any assizes or *nisi prius*; or in the said courts of great

* By 4 G. 2. c. 7. § 1. this clause not to extend to the county of *Middlesex*. And by § 2. no person shall be returned to serve as a juror at any session of *nisi prius* in the said county, who has been returned at any such session, in the two terms or vacations immediately preceding.

fections or sessions for the counties palatine, together with their additions and places of abode alphabetically, and also the times of their services; and every person so summoned, and attending or serving as aforesaid, shall (upon application by him made to such sheriff, undersheriff or other officer) have a certificate testifying such his attendance or service done, which certificate the said sheriff, &c. is to give without fee or reward; and the said book shall be transmitted by such sheriff, &c. to his successor from time to time.

By § 6. no sheriff, undersheriff, bailiff or other officer or person whatsoever shall directly or indirectly take or receive any money or other reward to excuse any person from serving or being summoned to serve on juries; and no bailiff or other officer appointed by any sheriff or undersheriff to summon juries, shall summon any person to serve thereon other than such whose name is specified in a mandate signed by such sheriff or undersheriff, and directed to such bailiff or other officer.

By § 8. every sheriff or other officer to whom the return of the *Venire facias juratores*, or other process for the trial of causes before justices of assize or *nisi prius* in any county in England shall belong, shall, upon his return of every such writ of *Venire facias* (unless in causes to be tried at bar, or in case where a special jury shall be struck by order or rule of court) annex a panel to the said writ, containing the christian [names] and surnames, additions and places of abode of a competent number of jurors named in such lists as qualified to serve on juries, the names of the same persons

persons to be inserted in the panel annexed to every *venire facias*, for the trial of all issues at the same assizes in each county; which number of jurors shall not be less than 48 in any county, nor more than 72, without direction of the judges appointed to go the circuit and sit as judges of assize or *nisi prius* in such county, or one of them.

By § 18. any person or persons having an estate in possession in land, in their own right, of the yearly value of 20 l. or upwards, over and above the reserved rent payable thereout, such lands being held by lease or leases for the absolute term of 500 years or more, or for 99 years or any other term determinable on one or more life or lives, the names of such persons shall be inserted in the respective lists as aforesaid, in order to their being inserted in the freeholders book*.

By § 20. the sheriffs or other officers to whom the returning of juries doth or shall belong, for any county, city or place, shall not impanel or return any person or persons to serve on any jury for the trial of any capital offence, who at the time of such return would not be qualified in such county, city or place, to serve as jurors in civil causes for that purpose. [Made perpetual by 6 G. 2. c. 37. § 1.]

By 51 H. 3. §. 4. (*De Districcione Scaccarii*) Distress
When a sheriff or other the Kings bailiff doth take the beasts of another for the Kings debt, or any other

* By 4 G. 2. c. 7. all leaseholders in the county of *Middlesex*, upon leases where the improved value shall amount to 50 l. or upward *per annum*, over and above all ground rents or other reservations, shall be liable and obliged to serve upon juries.

cause,

cause, they to whom the beasts belong may feed them without disturbance so long as they be impounded, without giving any thing for their keeping. And the beasts, nor no other distres taken for the Kings debt, nor for any other cause be given, ne sold within fifteen days after the taking. And if any bring the tally of a payment made in the exchequer the distres shall cease. And if he bring the tally of any sheriff or bailiff of payment made to him of the thing demanded, and will find pledges to be at the exchequer at the next account, to do what shall be right, then the distres shall cease. But no man of religion nor other shall be distrained by his beasts that gain his land nor by his sheep, for the Kings debt or the debt of another, nor for any other cause, by the Kings bailiff nor by any other man, but until they can find another distres or other chattels sufficient whereof they may levy the debt or that is sufficient for the demand, except impounding of beasts when a man finds them doing damage according to the law and usage of the land. And that the distresses be reasonable after the amount of the debt or demand according to reason and not outrageous. Howbeit all sheriffs and bailiffs who have received the kings debts of the summons of the exchequer, and have not acquitted the debtors thereof at their next account, shall be punished according to the statutes lately made.

Replevin.

By *Stat. de Marleberge* (52 H. 3.)* c. 21. if the beasts of any man be taken and wrongfully

* That this statute was made in a parliamentary council at *Westminster*, in the *forty-third* year of this King, and not at *Marleberge*, in the *fifty-second*, is proved by Mr. Prynne in his *Animadversions on 4 Inst.* p. 190.

withholden,

withholden, the sheriff after complaint made to him thereof, may deliver them without let or gainfaying of him that took the said beasts, if they were taken out of liberties. And if they were taken within liberties and the bailiffs of the liberty will not deliver them, then the sheriff for default of those bailiffs shall cause them to be delivered.

By *W. 1. c. 17.* if any take the beasts of others and cause them to be driven to a castle or fortrefs*, and there within the close of such castle or fortrefs detain them against gage and pledge, after the beasts shall be solemnly demanded by the sheriff or by the Kings bailiff, at the suit of the plaintiff, the sheriff or bailiff taking with him the power of his county or of his bailiwick † shall assay to make the replevin of the beasts from him that took them or from his lord, or from others of the men of his lord whatsoever they be, found in the place where the beasts were chased; and if any deforce him of the deliverance of the beasts, or that no man be found for the lord, or for him that took them, to answer and make the deliverance after the lord or taker shall be admonished thereof by the sheriff or bailiff, if he be in the country or near or there whereas he may be conveniently warned by the taker or any other of his, to make deliverance, if he were out of the country when the taking was, and did not cause the beasts to be delivered

* And so it is if he that distrain chase the distress into any other house, park or other place of strength. *2 Inst. 193.*

† *Note,* every man is bound by the common law to assist not only the sheriff in his office for the execution of the Kings writs, but also his bailly that hath the sheriffs warrant, &c. and if they do it not, being required, they shall be fined and imprisoned. *2 Inst. 195.*

incontinent,

incontinent, that the King for the trespasss and despite shall cause the said castle or fortrefs to be beaten down without recovery; and it is to wit, that where the sheriff ought to return the Kings writ to the bailiff of the lord of the castle or fortrefs or other to whom the return belongeth, if the bailiff of the franchise will not make deliverance after that the sheriff hath made his return unto him, then shall the sheriff do his office without further delay as is aforesaid and upon the aforesaid pain; and in like manner, deliverance shall be made by attachment of plaint made without writ, and upon the same pain.

Hue and cry.

By *W. 1. c. 9.* all generally are to be ready and appareled at the commandment and summons of sheriffs, and at the cry of the country to pursue and arrest felons, when need shall be, as well within franchises as without. And if default be found in the lord of the franchise, the King shall take the franchise to himself; and if the default be in the bailiff he shall be imprisoned one year, and after be grievously fined, and if he hath not whereof to be fined he shall be imprisoned two years: And if sheriffs, coroners, or other bailiffs, within franchise or without, conceal or consent or procure to conceal the felonies done in their bailiwicks, or that they will not attach or arrest the misdoers where they can, &c. and be attainted thereof, they shall be imprisoned for one year and after be grievously fined, and if they have not whereof to be fined, shall be imprisoned for three years.

By *Stat. de Wynton (13 E. 1. ft. 2.) c. 6.* sheriffs and bailiffs within franchises and without, higher or lower, and that have any bailiwick or forestry in fee

or

or otherwise are to take good heed that they follow the cry with the country, and that they have horfes and armour to do it.

If bailiffs of liberties have come at the hue levied according to this statute is one of the articles of inquiry thereupon. 34 *E. 1. ff. 2.*

By 12 *E. 2. c. 5.* sheriffs and other bailiffs who receive the Kings writs returnable in his court shall put their proper names with their returns, so that the court may know of whom they took such returns if need be. Names to returns.

By 5 *E. 3. c. 14.* if any man have suspicion of evil of roberdesmen, wastours and drawlatches, be it by night or day, they shall be incontinently arrested by the constables of the towns. And if they be arrested within franchises, they shall be delivered to the bailiffs of the franchises, and kept in prison till the coming of the justices assigned to deliver the gaols. And in the mean time the bailiffs of the franchises shall inquire of such arrests and at the coming of the justices return their inquests before them and that which they have found, and the causes of taking, with the bodies, and the justices shall proceed to the deliverance of those arrested according to the law. And in case bailiffs of franchises have not enquired of such arrests they shall be amerced. Roberdesmen, &c.

By 22 *H. 8. c. 5. § 5.* the justices of peace of the shire, city or town corporate, within which any decayed bridges, or any part thereof, shall happen to be, shall have power to enquire, hear and determine all annoyances being within the limits of their Decayed bridges.
E commissions

commissions or authorities, and if the annoyance be presented, then to make process into every shire against such as owe to make or amend any such bridges. And all sheriffs and bailiffs of liberties and franchises shall truly serve and execute such process as shall come to their hands from the said justices of peace afore whom any presentment shall be had for any such annoyance, according to the tenour and effect of the said process to them directed, without favour, affection or corruption, upon pain to make such fine as shall be set upon them, or any of them, by the discretion of the said justices.

Attendance on
the justices.

All lords that have franchises, or their bailiffs, shall attend upon the justices of assise and gaol delivery, upon pain of forfeiture of their franchises. 20 E. 4. 6. *Br. Forfeiture de terres, &c.* 115.

By 27 H. 8. c. 24. § 7. all stewards, bailiffs, and other ministers of any liberties or franchises which in times past have used or ought to attend upon the justices of assise, justices of gaol delivery, and justices of the peace at large in any county, shall be attendant to the justices of assise, justices of gaol delivery, and justices of peace of the same shires wherein such liberties and franchises be, and make due execution of all process to them to be directed, for ministration of justice within such liberties or franchises; and all such bailiffs or their deputies or deputy shall give their attendance and assistance upon the sheriff, together with the sheriff's bailiffs at all courts of gaol-delivery from time to time, for execution of prisoners according to justice.

If

It was an article of inquiry at the sessions if the bailiffs of liberties and franchises had duly executed their office, which consists in three points *viz.* In due execution of the precepts to them sent, and in due returns to be made to the sheriff of those precepts, and that they took nothing for doing their office, except the fees to them assigned and due by course of law. *Fitz. Jusf. P. fol. 28. (Crompton. 49.)*

Inquiry at sessions.

And this inquiry was by virtue of 20 E. 3. c. 6. whereby it is ordained, that the justices assigned to take assises shall have commissions sufficient to inquire in their sessions of sheriffs, escheators, bailiffs of franchises, and their under-ministers, &c. and of the gifts, rewards, and other profits, which the said ministers do take of the people to execute their office, and that which pertaineth to their office, and for making the array of panels, putting in the same suspect jurors and of evil fame; &c. and to punish all them which thereof shall be found guilty according as law and reason requireth, as well at the Kings suit as at the partys.

By *stat. de Scac. 51 H. 3. ff. 5. § 1.* all sheriffs, fermors, bailiffs of franchises, and other who ought to come to the profer in the exchequer the morrow of St. Michael and the morrow of the clause of Easter, to pay their farms, rents and issues which belong to the King, shall come at the aforesaid terms, and there bring in full the aforesaid farms, rents and issues, and pay them into the exchequer. And if any fail to pay fully what he ought to pay as before is said, his body to remain without departing till he have paid or made agreement. And he who shall not come at the aforesaid

Account.

terms shall be amerced according to the usages of the exchequer. And at the same terms the sheriffs and bailiffs shall bring their monies, and shall pay into the exchequer what they have received at the summons of the exchequer and the other debts of the King, and of all the things aforesaid, shall be ready and prepared to make account.

By § 2. all the bailiffs of franchises who ought to levy the debts of the King, and shall be answerable to the sheriffs at their commandment according to the estreats of the summons of the exchequer, shall come and answer sufficiently. And those who shall not, their bodies shall remain in custody of the sheriffs; and the sheriffs, for their defaults, shall send to levy the debts by their own bailiffs wherever they can, as they have used to do in time passed. And if the bailiffs do not come to answer at the day, the sheriffs shall let them know, the sheriffs shall enter into the franchise, and cause the debts to be levied by their own bailiffs.

By § 7. when a sheriff or bailiff hath begun to account, no other shall be received to account until the first that is appointed hath fully accounted, and that the sum be received.

By § 9. about the feast of St. Margaret before the Exchequer be closed, they shall every year narrowly search and see if a sheriff or other bailiff who ought to have accounted that year have not. And if he be a sheriff, &c. And if he be another bailiff he shall be summoned or distrained that he come at a certain day to account, so that no account be suffered to sleep.

By

By 42 E. 3. c. 9. estreats shall not be doubled by ^{Estreats.} the sheriffs, but the copy of the estreats wherein they touch the franchises of lords shall be delivered to the bailiffs of the franchises under the seal of the sheriff, and the same bailiffs shall yield their account in the Exchequer by the same copies and no other.

By 8 & 9 W. 3. c. 27. § 15. it shall and may be lawful for any person or persons, who have or hath any debt or debts, sum or sums of money due or owing to him from any person or persons who shall be and reside within the White-Friers, Savoy, Salisbury Court, Ram Alley, Mitre Court, Fullers Rents, Baldwins Gardens, Montague Close, or the Minories, Mint, Clink, or Deadmans Place, upon legal process taken out against such person or persons, to demand and require the sheriffs of London and Middlesex, HEAD BAILIFF OF THE LIBERTY OF THE DUCHY OF LANCASTER, or high sheriff of the county of Surrey, or BAILIFF OF THE LIBERTY OF THE BOROUGH OF SOUTHWARK for the time being (as the case shall require, if the plaintiff think it requisite) or their respective deputy or deputies, officer or officers, to take and they are thereby enabled respectively to take the *posse comitatus* or such other power as to them shall seem requisite, and enter the said pretended privileged places, and to arrest, and in case of resistance or refusal to open the doors, to break open any door or doors to arrest such person or persons upon any mesne or other process, extent or execution, or to seize the goods of any such person or persons upon any execution or extent. (Penalty on the officer, for neglect or refusal to execute process, 100l. and on those who resist him 50l. each, commitment to gaol,

Bailiffs of the Savoy, and Borough of Southwark.

Duchy -

and, on conviction, imprisonment and pillory, and for rescuing a prisoner 500l. and, on nonpayment within one month after judgement, transportation, and on inhabitants concealing any guilty of rescous, transportation, unless they pay the whole debt and costs.)

CHAPTER VI.

OF HIS INDEMNITY AND PROTECTION.

Arrest, and non-
return of writ.

IF the sheriff command the bailiff of the franchise, who arrests the defendant and sends him to the sheriff, if the sheriff return no writ, the bailiff shall not be charged, for the arrest of the bailiff of the franchise was lawful, and it shall be against reason that the non-return of the sheriff should prejudice him. 3 E. 4. 17. And see also 21 H. 7. 22. *Keilwey*, 87. 89.

Mandate.

If the sheriff write to a bailiff of franchise in such form, *Ballivo libertatis, &c. salutem, mandatum Domini regis recepi in hæc verba*, and rehearse how the King commands by writ to take the body of such a one, where no writ comes to the sheriff, this is a good excuse to the bailiff of the franchise, and the party shall have his remedy against the sheriff. *Dalton. Sheriff.* 112.*

* This case is printed by Mr. Dalton as an extract in French, and he refers to 10 H. 6. 37. But there is no such folio in that year. Mr. Dalton has certainly the appearance of having been a very industrious man, but the most gross inaccuracy is perhaps the least of his faults. He is therefore to be read and quoted (if at all) with great caution. And it might not be amiss if the same caution were extended to Master Kitchin, who deserves the title of an authority little better than Mr. Dalton.

If upon a *feri facias* against an administrator, the sheriff makes a warrant to the bailiff of a franchise to execute it, and afterward the bailiff is removed, and another bailiff elected, and afterward the old bailiff returns in his own name to the sheriff that the administrator had not any goods *preterquam*, &c. which is false, and afterward the sheriff makes the return accordingly to the court, yet no action for this false return lies against the old bailiff, for the return ought to be made in the name of the new bailiff, and so the sheriff has accepted a return as of a mere stranger, which is void; and he ought to take conusance of the right ministers of the law, and therefore the old bailiff for this false return is not punishable, but the sheriff.

Old bailiff and
new bailiff.

1 *Roll. Abr.* 99.

Upon writ to the sheriff he first made warrant to bailiff of liberty, and after to his own bailiff, who arrested the party and suffered him to escape; and then sheriff returned *mandavi ballivo*; upon affidavit of fact sheriff was ordered to attend. And agreed action lay against sheriff for false return as *non est invent.* &c. and his amerciaments were estreated. 12 *Mod.* 311.

False return of
sheriff.

Action upon the case is maintainable against the sheriff for making the return of a bailiff who was not bailiff at the time of the return, and who had not executed the writ. *Moore*, 432.

Rule for the bailiff of the [liberty of the] duchy of Lancaster to return the sheriff's mandate on a *fi. fa.* discharged, the warrant having been directed to officers of plaintiff's nomination, and not to the officers of the bailiff of the [liberty of the] duchy. *Barnes*, 416.

Duchy.

Escape from
gaoler of liberty.

An attachment of contempt issued forth against defendant, for not bringing Waldron's body into court, pursuant to a peremptory rule; and defendant having been examined upon interrogatories, it was referred to the prothonotary (as usual) to examine whether he had cleared himself of the contempt, or not. The prothonotary reported the matter specially; and the fact appeared to the court to be, that Waldron being confined in the Gatehouse prison, Westminster, for a criminal matter, was, by leave of a judge, charged there with a bailable action, in the following manner: A *capias ad respondendum* was directed to the sheriff of Middlesex, who made a *mandate* to the high bailiff of Westminster, and defendant was charged in custody therewith, and afterwards escaped from the keeper of the Gatehouse, which is the prison for the liberty of Westminster, to which prison the high bailiff is obliged to carry his prisoners within 24 hours after arrest. The high bailiff being called upon for a return of the *mandate*, returned *cepi corpus*, and that Waldron remained in the custody of the keeper of the Gatehouse. Both the chief bailiff and the keeper of the Gatehouse are appointed by, and hold their places under, the dean and chapter of Westminster, and both give security to the dean and chapter; but the keeper gives no security to the high bailiff. The Court were of opinion, that the high bailiff had cleared himself of the contempt, and ordered the attachment to be discharged. The high bailiff did every thing in his power to secure the prisoner, and ought not to be criminally punished. *Respondet superior* extends to civil matters only. The prosecutor may bring his action for the escape. *Barnes*,

Gatehouse
Westm.

If prisoner taken by a bailiff of a franchise escapes Escape, from the bailiff, the sheriff shall not have action upon the case against him, because he is not chargeable *ouster*, but the bailiff is only chargeable. 1 *Roll. Abr.* 98.

J. S. was taken in execution by *Ca. Sa.* by the bailiffs of a liberty in Suffolk, by warrant of the sheriff of the county. The bailiffs before the return of the *Ca. Sa.* brought him to Westminster in the county of Middlesex, and from thence, at the plaintiffs request, carried him to Lambeth in Surrey, where he remained under their custody till the day of the return of the writ, when they delivered him to the Kings Bench according to the writ; this, by the advice of all the justices, was adjudged no escape; for they thought that in whatever county in the way or out of the way to Westminster, the sheriff detains or brings the prisoner, if it be before the return of the writ it is no escape. *Moore*, 299. *Burton [Boyton] v. Andrews*, 3 *Rep.* 43. S. C.

If a bailiff of a manor pays the relief of his master to the lord to whom it is due, he shall be allowed this upon his account, though he had no warrant from his master so to do, because this is a casual thing of common course. (*Contra*, of a thing that is not casual of common course.) 41 *E.* 3. *Account.* 33.

If the Kings bailiff distrain for rent and rescous is Rescous, made, the bailiff shall have the writ of rescous and not the King. *F. N. B.* 101.

If the sheriff send unto the bailiff of the liberty to levy fines and amercements for the King, and the bailiff distrain,

disfranchise, and rescous is made, the lord of the liberty shall have a writ of rescous, for the rescous, the battery, and assault, and loss of service, all in one. *F. N. B.* 101.

If a man sue forth execution, and hath *capias* directed to the sheriff to arrest the party, and the sheriff make his warrant to the bailiff of the Kings liberty to arrest him, and he doth arrest him, and others rescue him from the bailiff, he who sued forth the execution shall have the writ of rescous; but yet it seems reasonable that the bailiff shall have a writ of rescous in such case, for some say he shall be chargeable, &c. *F. N. B.* 101.

Pontefract.

A warrant was from the sheriff to the bailiff of the 'liberty' of Pomfret, who executed it, and rescue was made, and the bailiff brought the action against the rescuers to recover damages: and it was held that the bailiff may have this action in his own name, to recover damages for this. *Clay.* 149. *Foster v. Legerd.* (*Viner, Rescous. A.* 3.)

Inquest by sheriff.

If bailiff of franchise return certain names to the sheriff, and the sheriff return other names, though the inquest returned by the sheriff shall be taken, yet bailiff shall have action against him. 30 *Aff. p.* 5. *Br. Retorne de briefe.* 73.

Return by 7 & 8 *W.* 3. c. 32. § 6.

By 7 & 8 *W.* 3. c. 32. § 6. the return to the justices [directed by this act] shall be a good excuse and bar in law for the sheriff, for such summons and returns [as thereby directed]: and if any action or information shall be brought or prosecuted against any sheriff for such return, the said sheriff may plead the

the general issue, and give this act in evidence; and if the plaintiff be nonsuited, discontinue his action, or if a verdict be given for the defendant, or a *noli prosequi* be entered in any information, or a verdict pass for the defendant thereupon, the plaintiff or informer shall pay treble costs, to be awarded by the court in which such action or information was prosecuted, and levied by usual process. Note, that although the word *Sheriff* be alone made use of in this clause, yet it seemeth that the bailiff of the franchise shall in such case be intitled to the full benefit thereof.

In ordinary cases the Act of a Bailiff is the Act of the Sheriff - but the Bailiff of a Franchise is not the Officer of the Sheriff. He gives him no security. Ackworth vs Kempe. 1778. Douglas's Reports 10.

CHAPTER VII.

OF HIS RESPONSIBILITY AND PUNISHMENT.

BY 12 E. 2. c. 5. if any sheriff or other bailiff in his returns leave out his name he shall be grievously amerced to the Kings use. Omission of name in return.

By 1 E. 3. st. 1. c. 5. against the false return of bailiffs of franchises, which have full return of writs, a man shall have averment, and recover as well against them as against the Kings sheriff, as well of too little issues returned as in other cases, so that it fall not in prejudice of the lords in imblemishment of their franchises. And all the punishment [shall] fall only upon the bailiffs by punishment of their bodies if they have not whereof to answer. False returns.

An action is maintainable against bailiff of a franchise who makes false return, and not against the sheriff. *Moore*, 432.

If

If the bailiff of a franchise makes a false return to the sheriff, and the sheriff returns it to the court accordingly, an action upon the case lyes against the bailiff, and not against the sheriff, for no default is in him. 1 *Roll. Abr.* 98. For the sheriff ought to accept the return of the bailiff if it be sufficient in law, and not to examine the truth of it. 1 *Roll. Abr.* 99.

Writ *ad distringendum ballivum.*

Debt, the sheriff returned *Capias, Quod mandavi ballivo, &c. qui respondit quod cepit corpus*, and the person does not come, and the sheriff was amerced [Q. *For what reason?*] and writ awarded *ad distringendum ballivum ad habendum corpus, &c.* 47 *E.* 3. 25. *Br. Retorne de briefe.* 24. But yet

[In] *Replevin* [where] the sheriff returned the *Capias, Quod mandavi ballivo, qui mihi respondit quod haberet corpus ejus hic ad hunc diem*, and the body did not come, *non omittas* was awarded, and not *distringas ballivum ad habendum corpus.* 38 *E.* 3. 1. *Br. Retorne de briefe.* 44.

Case; for that upon a *Capias* directed to him against J. S. he made a warrant to a bailiff of a franchise to arrest the said J. S. which was done accordingly, and yet the sheriff returned *non est inventus*. Resolved *per tot. cur.* that the action well lay; and Anderson said, that if the sheriff had returned that he had sent to the bailiff of the liberty, who had given this answer, that he had arrested the body, it had been good, and the sheriff had been discharged, and the process should have issued against the bailiff of the liberty to bring in the body. *Cro. Eliz.* 729.

Where

Where sheriff returned *quod mandavi ballivo, &c.* Bailiff plaintiff, who is plaintiff, if the bailiff returns *quod cepit corpus* hath not the body of the defendant, and hath him not at the day, &c. the bailiff shall be amerced, and not the sheriff; and the sheriff is not bound to take conufance if the bailiff be plaintiff or not, for it may be another of the fame name. 36 H. 6. 1. Br. *Retorne de briefe.* 65.

Capias, the sheriff returned *mandavi ballivo, & quod ipse cepit corpus, sed illud hic habere non potest quia languidus est, &c.* False return for extortion. And defendants wife came and said that he is not sick but detained by the bailiff for extortion, and prayed remedy. Whereupon a writ issued to the bailiff to return the body, and to appear; and upon examination it was found that the party was not sick, whereupon the bailiff was committed to the Fleet to make fine, and the writ against the bailiff was *subpoena* 40l. to appear and bring the body, &c. 11 H. 6. 42. Br. *Retorne de briefe.* 123.

If a writ of execution comes to the sheriff, and he makes mandate to the bailiff of franchise, who takes him, and after suffers him to escape, action lyes against the bailiff of the franchise, and not against the sheriff. 5 E. 4. 1 b. 2. *Brook, Escape* 40. 1 *Roll. Abr.* 99 *Noy.* 27. *Bull.r. N. P.* 69.

If a man be in prison for execution in a county or in a liberty, the gaoler cannot bring him out of the county or liberty, unless in special case; and if he does it the prisoner may have action of false judgment, unless he has special authority, as by privy seal to be at Westminster, or the like. 30 H. 6. 6. Br. *Escape, pl.* 44.
If

If a warrant out of a *Fieri facias* to levy a debt at the suit of J. S. be directed to an under-bailiff of a liberty, and he by force thereof levys the debt, and afterwards conceals the writ, nor makes any certificate thereof, an action upon the case lyes against the under-bailiff, because he has made a personal tort. 1. *Roll. Abr.* 94.

Non-return of
the warrant.

If the bailiff of the franchise arrest the party, and do not return the warrant to the sheriff, action of false imprisonment lyes against him for the party. *Keilwey*, 86, b.*

Eyres sued a writ out of *C. B. versus* Smith, directed to the sheriff of York, who sent a warrant to Simpson, the bailiff of the liberty of Pomfret, who did not return the writ [warrant]: upon which he was amerced 50 l. (*viz.* time after time) and that was estreated into the exchequer: afterwards Eyres and Smith agreed, and upon producing a certificate from the attorney for the plaintiff that the debt was satisfied, these amerciements were discharged upon motion to the barons. *Note*, There ought to be a constat of the estreats, and, as the clerks said, the court uses not to discharge the amerciements, but 'allows' you to compound them. 1 *Salk.* 54.

* If execution be directed to a sheriff to arrest any man or to make execution within a liberty, and the sheriff directs his warrant to a [1. the] bailiff of the liberty for to make execution of the process, 'who' makes it, and after is a fugitive, and not able to answer for that, the lord of the franchise shall answer for that, and shall be liable to answer for his bailiff, by all the justices. 2 *Brownlow.* 50.

Rule made for an attachment of contempt against the bailiff of the liberry of Holderness, in the county of York, for not returning a *mandate* made by the sheriff, on an attachment of privilege, pursuant to a peremptory rule to return the same within six days notice, without any return of a *mandavi ballivo*, antecedent to the said peremptory rule; on an affidavit of service of that rule, and an affidavit of searching the sheriff's office, after the expiration of the six days, and that the *mandate* was not returned; all the officers present reporting this to be the practice. *Barnes*, 35.

Though by agreement between a bailiff of a franchise and his deputy, the deputy is restrained to serve process beyond such a sum, yet if he serves process of a greater sum without other warrant, and after levies the money, the bailiff shall be chargeable. *Litt.* 33. *Viner, Actions* [*Case. Discrit.*] *F. c.* 5.

If the bailiff of a franchise that hath a gaol, hath the custody of a felon, he is chargeable for his escape, and not the sheriff or his gaoler. 1 *Hale P. C.* 595. Escape of felon.

By 27 *H. 8. c.* 24. § 9. the King, his heirs and successors, shall have all manner of fines, issues, amerciaments and forfeitures that shall be lost, forfeit or assessed by or upon any stewards, bailiffs or other ministers or officers of any franchises or liberties, for non-execution, mis-execution or insufficient returns of such writs, warrants, precepts or other process, which to them or to their deputies shall be directed, or for any contempt or other misdemeanor whatsoever it be, concerning their offices, in and for the due execution or administration of justice. And the amerciaments King to have fines on bailiff.

Amerciaments
for insufficient
returns.

ments for insufficient returns of writs or other process made by stewards or bailiffs of liberties or franchises, having returns of writs and execution of the same, shall be put and set upon the heads of such stewards or bailiffs, and not upon the sheriffs*.

Acts against the-
riffs extended to
bailiffs.

By § 14. every statute and act theretofore made and being in force against sheriffs, their under-sheriffs, bailiffs or other ministers, for making or returning of panels or juries, or for due execution or serving of any writs or other process, or for taking of fees, or for reformation of extortions, or for any other thing or things concerning their offices, and all pains and penalties contained in every such statute shall be extended to all stewards, bailiffs and other ministers and officers of liberties and franchises having returns of writs and executions thereof, in like manner, form and condition as they extend to the sheriffs, their under-sheriffs, bailiffs or other ministers. (But by § 15. this article not to be prejudicial to any steward, bailiffs of franchises or to their deputies or clerks for exercising and occupying their offices above one year.)

Returning per-
sons not sum-
moned.

By 27 *Eliz. c. 6.* § 3. if any sheriff, undersheriff, bailiff or other minister do return any person or persons to be summoned to appear in any jury, wherein he shall for default of his appearance lose or forfeit any issues, where in truth such person shall not be lawfully

* Before this statute, when the return which the bailiff of the franchise made to the sheriff was not sufficient, the court has refused to amerce the bailiff, because he was not minister to the court. *T. 20 E. 3. Fitz. Retourne del vicount. 113.*

summoned, the same sheriff, &c. shall forfeit, lose and pay unto the said person or persons so returned double the value of the issues by such juror or jurors lost or forfeited for his [or their] default of appearance.

By § 4. if any sheriff, &c. or any bailiff of franchise, shall receive, take, or have by himself or by any other, any sum of money, reward or any other profit, directly or indirectly, or do take any promise, make any agreement, or assent to have any sum of money, reward or other profit, directly or indirectly, of any person or persons, for the sparing, not warning, or not returning of any person to be sworn as juror, for the trial of any issue joined or to be joined in any of the Queens Majestys courts [of K. B. C. P. or E.], or before any justices, every sheriff, &c. or bailiff of franchise so offending, to forfeit for every such offence the sum of 5l. (half to the Queen, and half to the person suing.)

Taking money, &c. for not returning jurors.

By 27 *Eliz. c. 12.* § 5. if any undersheriff or other person mentioned in this act, shall do or commit any act or acts contrary to the oaths aforesaid, or either of them (See B. II. C. 3.) or contrary to the true intent and meaning of this act, every such person so offending shall forfeit and lose for every such offence, to the party or parties grieved, his or their treble damages.

Offences against 27 *Eliz. c. 12.*

By 7 & 8 *W. 3. c. 32.* § 6. if the sheriff, his deputy or deputies, bailiff or bailiffs, shall summon and return any freholder or copyholder, to 'try any issues joined in any of the courts [of K. B. C. P. or E.] or to be or serve on any jury at the assizes, sessions of *oyer and terminer,*

Summoning persons contrary to 7 & 8 *W. 3. c. 32.*

terminer, gaol delivery or sessions of the peace', otherwise than as 'directed by this act,' (See B. II. C. 5.) or in any ways neglect his or their duty or duties in the service or services of them required by this act, or excuse any person or persons for favour or reward, or allow of any writ of *non ponendis in assizis & juratis*, or other writ, to excuse or exempt any person or persons from the service of any jury or juries, under the age of 70 years, such sheriff, deputy or bailiff shall for every transgression forfeit the sum of 20l. to be recovered by the party or parties grieved or injured, or whom else will sue for the same.

Summoning persons contrary to 3 G. 2. c. 25. § 3.

By 3 G. 2. c. 25. § 3. in case any sheriff, under-sheriff, bailiff or other officer to whom the return of juries shall belong, shall summon and return any person or persons to serve on any jury in any cause to be tried before the justices of assize or *nisi prius* or judges of the great sessions, or the judge or judges of the sessions for the counties palatine, whose name is not inserted in the duplicates delivered or transmitted to him or them by the clerk of the peace, if any such duplicate shall be delivered or transmitted, any judge or justice of assize or *nisi prius* or judge or judges of the said great sessions, or the judge or judges of the sessions for the said counties palatine, shall and may, upon examination in a summary way, set such fine or fines upon such sheriff, &c. for every such person so summoned and returned as aforesaid as the said judge or justice of assize, *nisi prius*, &c. shall think meet not exceeding 10l. and not less than 40s.

Wilful transgression contrary to 3 G. 2. c. 25. § 4.

By § 4. if any sheriff shall wilfully transgress [in returning any persons as jurors to serve on trials at any

any assizes or *nisi prius*, or at the great sessions, or at the sessions for the counties palatine who have served within the space of one year before in the county of Rutland, or four years in the county of York, or of two years before in any other county, not being a county of a city or town,] any judge or justice of assize, or *nisi prius*, &c. may and is required, on examination and proof of such offence, in a summary way, to set a fine or fines upon every such offender as he shall think meet, not exceeding 5*l.* for any one offence.

By § 6. if any sheriff, undersheriff, bailiff or other officer shall wilfully transgress [in taking or receiving any money or other reward to excuse any person from serving or being summoned to serve on juries; or any bailiff or other officer appointed by any sheriff or under sheriff to summon juries, in summoning any person to serve thereon other than such whose name is specified in a mandate signed by such sheriff or undersheriff, and directed to such bailiff or other officer], any judge or justice of assize, *nisi prius*, &c. may and is required, on examination and proof of such offence, in a summary way, to set a fine or fines upon any person or persons so offending as he shall think meet, not exceeding 10*l.* according to the nature of the offence.

Wilful transgression contrary to
3 G. 2. c. 25.
§ 6.

By 32 G. 2. c. 28. § 12. every sheriff, undersheriff, bailiff of any liberty, bailiff, serjeant at mace, gaoler and other officer and person as aforesaid, who shall in anywise offend against this act (see before C. 5.) shall, for every such offence (over and above such penalties and punishments as he or they shall be liable

Offences against
32 G. 2. c. 28.

unto by the laws now in force) forfeit and pay to the party thereby aggrieved the sum of 50l. to be recovered with treble costs of suit, by action of debt, bill, plaint or information, in any of his Majesty's courts of record at Westminster.

Account.

By *Stat. de Marleberge* (52 H. 3. c. 23.) if bailiffs which ought to make account to their lords do withdraw themselves and have no lands nor tenements whereby they may be distrained, they shall be attached by their bodies, so that the sheriff in whose bailiwick they be found shall cause them to come to make their account.

*This appears to have been the See
origin of the present practice
of arrest for Debt. W. H. 181*

Wreck and stray,
&c.

Account lies of wreck and stray though the bailiff does not feize it; for he shall account of all that he received and might have received. *Br. Account. pl. 94.* (cites 10 H. 7. 6.)

So of toll, and of the profits of a common pound.
Ibid.

CHAPTER VIII.

OF HIS FEES.

Arrest.

BY 23 H. 6. c. 9. sheriffs, undersheriffs, bailiffs of franchises, nor any other bailiff, by occasion or under colour of their office, shall take any other thing of any person by them to be arrested or attached for the omitting of any arrest or attachment, for fine, fee, suit of prison, mainprize, letting to bail, or shewing any ease or favour to any such person, for their reward or profit,

profit, but such as follow, *viz.* For the sheriff, 20d.; the bailiff which maketh the arrest or attachment, 4d.; and the gaoler, if the prisoner be committed to his ward, 4d.; nor for the making of any return or panel, and for the copy of any panel, but 4d. (Penalty treble damages and 40l.)

By 29 *Eliz. c. 4.* it shall not be lawful to or for any sheriff, undersheriff, bailiff of franchises or liberties, nor for any of their officers, ministers, servants, bailiffs or deputies, by reason or colour of their office or offices, to have, receive or take of any person or persons whatsoever directly or indirectly for the serving and executing of any extent or execution, upon the body, lands, goods or chattels of any person or persons whatsoever, more or other consideration or recompence than 12d. for every 20s. where the sum exceedeth not 100l. and 6d. for every 20s. being over and above the said sum of 100l. that he or they shall so levy or extend, and deliver in execution, or take the body in execution for, by virtue and force of any such extent or execution, upon pain to lose and forfeit to the party grieved his treble damages, and to forfeit the sum of 40l. (half to the Queen and half to the informer or plaintiff.)

Extent or execution.

The bailie of the franchise on 29 *Eliz. cap. 4.* takes all execution fees. 3 *Keble. 71.*

By 3 *G. 1. c. 15. § 16.* it shall not be lawful for any sheriff, &c. or for the bailiff of any franchise or liberty, by reason or colour of their office or offices, or by reason or colour of their executing of any writ or writs of *habere facias possessionem aut seisinam*,

Habere facias possessionem aut seisinam.

to demand, ask, or receive any other or greater consideration, fee, gratuity or reward, than is hereafter mentioned (which shall be lawful to be demanded and taken); that is to say, the sum of 12d. for every 20s. of the yearly value of any manor, messuage, lands, tenements and hereditaments, whereof possession or seisin shall be by them or any of them given, where the whole exceedeth not the yearly value of 100l. and the sum of 6d. only for every 20s. *per annum*, over and above the said yearly value of 100l. (Penalty 200l.)

Extent and
liberate, &c.

By 8 G. 1. c. 25. § 5. no sheriff to take for the extent and *liberate & habere facias possessionem* or *seisinam* on the real estate, by virtue of such extent, any more than the above fees. (Same penalty.)

Process, under
10l. &c.

By 5 G. 2. c. 2. § 2. no attorney, bailiff or other person, shall have, take, charge, or demand more than 5s. for the making and serving a copy of such process issuing out of any superior court [where cause of action is under 10l.], or more than 1s. for the making and serving a copy of such process, issuing out of any inferior court [where cause of action is under 40s.]

English notice.

By § 3. no fee or reward shall be taken for the English notice by this act required to be written upon every copy of process [where cause of action in superior court is under 10l. in inferior court under 40s.] to be served upon any defendant.*

* This notice is to the effect following, *viz.* A. B. *You are served with this process, to the intent that you may by your attorney appear in his Majesty's court of ——— at the return thereof, being the ——— day of ——— in order to your defence in this action.*

CHAPTER IX.

PLEADINGS.

ONE may be bailiff by a simple grant (*i. e.* by Creation. parol) or patent or inheritance, and therefore no need to shew how. *H.* 33. *H.* 6. [3] *Fitz. Monstrauns de faitz*, &c. 93. and *Br. Bailie.* 2.

Where a man justifies distrefs as the Kings bailiff Patent. of his manor, for rent or services arrear, and prays aid of the King, he shall have it without shewing patent how he is made bailiff, for he claims to the use of the King; but where he claims to his own use by the King, there he ought to shew patent; and it was held by the serjeants, that if a man justify as bailiff of the King by reason of his manor which he hath by reason of the duchy of Lancafter, that the defendant shall not have aid of the King before issue joined. Duchy. Aid of the King. 15 *H.* 7. 17. *Br. Aude del roy*, 51.

Bailiffs of a corporation (in avowry for beasts taken Corporation. *damage feasant*) need not shew how the corporation was incorporated, nor say by their precept, nor need precept be in writing for such a matter as this. 3 *Lev.* 107.

Bailiff who distrains ought to shew in what right Distref. he distrains. 7 *H.* 4. 28. *Br. Distrefse*, 78.

To bailiff justifying distrefs for amerciamento, it Distref. for amerciamento. sufficeth to take conufance of the pretientment and no more and *non refert* as to him, whether it be true or not. 41 *Ed.* 3. 27. 24 *Ed.* 3. 26. *Cro. Eliz.* 748.

Bailiff justifying distress for amerciamment, in trespass ought to set out some estreat of the court or warrant from the steward, and justify under that. 1 *Salk.* 108.

Bailiff justifying distress for amerciamment in leet in trespass may plead *presentatum fuit* without averring the fact, for *non refert* as to him whether the offence was done or not since there was a presentment: a difference between replevin and trespass; in the first the bailiff is an actor, and is to recover, which shall be upon the merits; in trespass he is only to excuse the wrong. 1 *Salk.* 107. 3 *Salk.* 52.

Exchequer.

If a man be amerced in the Kings leet, and upon process out of the exchequer the bailiff distrains him for the amercement, and he brings trespass, he ought to bring this action of trespass in the office of pleas of the exchequer, for the bailiff levied it as officer of this court. 1 *Roll. Abr.* 539. and *vide Lane*, 55.

Averment.

If bailiff do any thing which touches his bailiwick, as payment of rents and such like, which are due in right of the manor, it is reasonable that he should have the averment, but of a thing which doth not touch his bailiwick it is not reasonable that he should have the averment without warantry. 42 *E.* 3. 6. *Br. Ac-compt.* 26.

Where bailiff of franchise [under 23 *H. 6. c. 9.*] takes bailbond, to himself, by the name of his office, sufficient in pleading to shew generally that he is such a person as had authority to take bail. *Comyns*, 380.

Debt

Debt upon bond by the plaintiff who was chief bailiff of the liberty of Pontefract in Yorkshire, but he did not declare as *capital ballivus*, but yet by the whole court it was held good; for otherwise the defendant might have craved *oyer*, and have [had] it entered *in hæc verba*, and then have pleaded the statute of 23 H. 6. that it was taken *colore officii*, but now it shall be intended good upon the demurrer to the declaration. And *Ellis*, J. said, that so it was lately resolved in this court in the case of one *Conquest*. And judgement was given for the plaintiff. 2 *Mod.* 36.

Bailiff of an inferior court the process whereof he executes, must shew the jurisdiction of that court in pleadings. 1 *Keble*, 53. Inferior court.

Cary bailiff of Westminster *v.* Buckhurst for entering his liberty and executing a *fi. fa.* Demurrer that it doth not appear how plaintiff was seized of the office. Judgement for plaintiff, inquiry of damages to 49l. Affirmed in error. Upon a trial the right must have been proved if the defendant had taken issue, and no inconvenience in this form of declaring. 1 *Show*, 17. *Comb.* 31. S. C. Trial.

Where a bailiff is charged directly with a tort, it ought to be shewn that he is bailiff of a liberty, who has *Returna Brevium*. *Comyns*, 379. Tort.

Declaration against bailiff of Westminster, because plaintiff doth not say of what liberty he is bailiff, and whether he hath execution and return, bad; because otherwise Declaration *v.* bailiff.

otherwise no colour to charge him, and therefore ought to be specially shewn. *Cro. Car.* 330.

Pernor.

Against a *pernor* the plaintiff need not shew how he claims the privilege of return of writs; but in a *quo warranto* where the defendant must make a title he ought to shew it. *Hardres*, 423.

Return of the writ.

Bailiff of a liberty in justification need not shew the return of the writ. *Cro. Car.* 447.

Sheriff's return.

Debt, to the *capias* the sheriff returned *non est inventus*, the plaintiff shewed that the sheriff made a precept to the bailiff of the franchise to take the body, who took him and delivered him to the sheriff, which he would aver, &c. *Tota curia*, you shall not have this averment against the return of the sheriff. Nor in any case, but too little issues by the statute. *H. 2 H. 4.* 14. *Fitz. Averment*, 17.

In case against a bailiff for the false return of *nulla bona* upon a *fieri facias*, the question was upon the evidence at the trial, whether the bailiff of a liberty shall be concluded in point of evidence by the return of the sheriff? and *per curiam*, he is concluded; and if the sheriff makes any other return than that which the bailiff makes to him, he may have his action against the sheriff; and it was said that Holt, chief justice, was of this opinion. See 36 *Hen. 6.* 40 [1.] *L. Raym.* 184.

Mandate.

Upon a demurrer, Powel said that the plea was naught, because it sets forth a mandate to the bailiff of

of the liberty, and did not shew that it was under the hand and seal of the sheriff. 2 *Vent.* 193. But see 1 *Ventris*, 46. that on motion to quash a return of a rescous, because it was *mandavi ballivis*, who took him *virtute warr' præd'*, and it was said, *mandavi* did not imply that it was in writing, the exception was disallowed by the court.*

Where any thing is shewed to be done within a County. liberty or a franchise, there it is not necessary to shew within what county that liberty or franchise doth lie. *Trin.* 23. *Car. B. R.* For the franchise hath no relation to the county. *S. P. R.* 404.

* And quære whether mandate be ever pleaded to be under the *band* of the sheriff.

Nota, that *mandavi* does not mean, and of course should not be translated, *I have commanded*, but *I have sent to*. The sheriff cannot command the bailiff of the franchise, having no sort of authority over him in any case whatever.

APPENDIX.

No. I.

CAPIAS BILL.

Middlesex. THE sheriff is commanded that he take *A. B.* if he may be found in his bailiwick, and him safely keep, so that he may have his body before the lord the King, on Wednesday next after fifteen days from the day of Easter, to answer *C. D.* gentleman, of a plea of trespass; and also to a bill of the said *C.* against the aforesaid *A.* for one hundred pounds of debt, according to the custom of the court of the said lord the King, before the King himself to be exhibited, and that he have there then this precept.

No. II.

WARRANT TO THE BAILIFF OF THE LIBERTY.

To the bailiff of the liberty [of the Lord the King] [of his duchy of *L.*] of *E.*

Middlesex. By virtue of the Kings writ issued out of his Majestys Court of Kings Bench at Westminster, to me directed, I command you that you take *A. B.* if he may be found in your liberty and him safely keep, so that you may have his body before the lord the King, on Wednesday next after fifteen days from the day of Easter, to answer *C. D.* gentleman of
a plea

a plea of trespass; and also to a bill of the said *C.* against the aforesaid *A.* for one hundred pounds of debt, according to the custom of the court of the said lord the King, before the King himself to be exhibited.
Dated the _____ day of _____ 17 — .

R. (the attorneys name.)

Oath for 5*l.* and upwards.

Before you arrest the defendant, beware he is not an ambassador or servant to an ambassador, or in some other way privileged or protected.

Precept signed _____ inst.

F. G. }
H. I. } Sheriff.

No. III.

BAILIFFS WARRANT TO HIS UNDER-BAILIFFS.

J. K. esquire, bailiff of the liberty of [the lord the King] of *E.* in the county of Middlesex, to *L. M. N. O.* and *John Doe*, my deputies, greeting. By virtue of a precept in writing, under the seal of the sheriff of the said county, to me directed, I command you and every of you jointly and severally, that you, some or one of you take *A. B.* if he shall be found in my bailiwick, and him safely keep, so that I may have his body before the lord the King, on Wednesday next after fifteen days from the day of Easter, to answer *C. D.* gentleman of a plea of trespass; and also to a bill of the said *C.* against the aforesaid *A.* for one hundred

hundred pounds of debt, according, &c. to be exhibited. Dated the — day of — 17 — .

R.

By the same bailiff.

Before your arrest, &c. (*as above.*)

Oath for 50l. and upwards.

Precept signed — inf.

No. IV.

CHIEF BAILIFFS RETURN.

To *F. G.* and *H. I.* esquires, Sheriff of the county of Middlesex.

J. H. esquire, bailiff of the liberty [of the lord the King] of *E.* in the said county, doth hereby certify and return, that by virtue of a warrant in writing under the seal of the said sheriff to him the said bailiff directed, he hath taken the body of *A. B.* which he is ready to have before the lord the King, (*Œc. as in the warrant*) as by the said warrant he is commanded. (*Or thus: that A. B. whom, (Œc. See the indenture post.)*)

By the same bailiff.

No. V.

Form of an indenture of return between the bailiff of a liberty and the sheriff, according to the statute of York*.

This indenture made, &c. between *J. K.* esquire, bailiff of the liberty of the lord the King of *E.* in the county

* The 'compiler' not finding an example of this indenture in any book, has been tempted to frame something resembling what he conceives it

county of *M.* of the one part, and *F. G.* and *H. I.* esquires, sheriff of the said county, of the other part, witnesseth, that the said bailiff hath certified and returned unto the said sheriff, that by virtue of a certain warrant in writing under the seal of the said sheriff to him the said bailiff directed, he the said bailiff hath taken the body of *G. H.* gentleman, which he will have ready before the lord the King at Westminster, at the day therein contained. Or thus: which he hath delivered to the said sheriff. Or thus: that *G. H.* gentleman, whom the said bailiff was lately, by a certain warrant in writing, under the seal of the said sheriff, to him the said bailiff directed, commanded by the said sheriff to arrest, is not found in his bailiwick. (*And so of other returns*). In witness, &c.

*See Impar
Shiriff*

No. VI.

SHERIFFS RETURN.

By virtue of this writ to me directed, I have commanded *J. K.* esquire, bailiff of the liberty [of the lord the King] of *E.* in the county of Middlesex, who hath the full return of all writs, and the execution thereof within the liberty aforesaid, and to whom the execution of this writ doth wholly belong to be done, for that no execution in any other place in my bailiwick out of the said liberty could be made, which

it has been. It is, however, more for curiosity than use, as the bailiff seems completely deprived of the benefit of the statute by the modern stamp acts. The effect may nevertheless be attained by a simple memorandum as follows: BE IT REMEMBERED, that *J. K.* esquire, bailiff, &c. hath certified and returned unto *F. G.* and *H. I.* sheriff, &c. that by virtue, &c. Witness the hands of the said bailiff and sheriff, the — day of ——— 1790.

said

faid bailiff answereth that he hath taken the body of the within named *A. B.* which he hath ready at the time and place within mentioned. *Or thus* ; that the within named *A. B.* is not found in his bailiwick. *Or thus* : who hath given me no answer.

No. VII.

NON OMITTAS.

George the third, by the grace of God, of Great Britain, France and Ireland, King, defender of the faith, and so forth. To the sheriff of Middlesex, greeting: We command you that you omit not by reason of any liberty of your county, but that you take *A. B.* if he may be found in your bailiwick, and him safely keep, so that you may have his body before us on ————— next after five weeks of Easter, to answer *C. D.* gentleman, of a plea of trespass and also to a bill of the said *C.* against the aforesaid *A.* for one hundred pounds of debt, according to the custom of our court, before us to be exhibited, and have you then there this writ. Witness, Lloyd Lord Kenyon at Westminster, the — day of — in the 29th year of our reign.

FINIS.

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