

his Bailiff, and held good. And note; the Form of this Writ against a Guardian in Socage differs from the Form of that against a Bailiff; &c. *viz.*

Account against Guardian in Socage.

GEORGE the Second, &c. To the Sheriff of M. Greeting. If A. shall make thee secure for prosecuting his Clamor, then summon by good Summoners B. that he be before our Justices at Westminster (such a Day) to shew wherefore when (whereas) by the Common Council of our Realm it is provided; That the Guardians of Lands and Tenements held in Socage, unto the Heirs of those Lands and Tenements when their full Age they have attained; shall make their reasonable Account of the Issues of those Lands and Tenements provenient (coming forth) from the Time wherein that Wardship they had, by Reason of the Minority of the Heir aforesaid, the same B. the foresaid A. his reasonable Account of the Issues provenient of the said Lands and Tenements in N. which are held in Socage, and whereof the Wardship the same B. had whilst the foresaid A. within Age was, to make refuseth, as is said; and therefore we command, &c.

And if one be found in Arrears on his Account, and the Plaintiff arrests him in London, he may sue a Writ out of Chancery, directed to the Sheriff, rehearsing the whole Matter, and commanding him to detain and keep in Prison the Party so arrested, until he has satisfied and paid the Arrears, *viz.*

F. N. B.  
118. C.

GEORGE the Second, &c. To the Sheriff of London, (or to the Keeper of the Gaol of New-

Newgate, &c.) Greeting. *Whereas of the Common Council of our Kingdom it has been enacted, That if any Bailiffs (who are bound to render an Account to their Lords, after rendering their Account) were in Arrearage, they might be arrested by their Bodies, and by Testimony of the Auditors of the Account aforesaid, might be delivered into our next Gaol, and by the Sheriff or Keeper of the same Gaol received, and under good Custody be there kept, until they shall satisfy their Lords of those Arrearages. And (whereas) B. late Bailiff of A. having the Care and Administration of all his Things and Goods (or Receiver of the Pence of him A.) from whatsoever Cause and Contract to the Profit of him A. provenient, after his Account thereof rendered, is still in Arrearage of 100 s. to be paid to the foresaid A. as we have received from the Plaint of the foresaid A. We command you (or thee) That the foresaid B. by the foresaid A. (being) by the Occasion aforesaid, arrested by the same A. without Delay, you (or thou) receive, and in our Prison of N. you cause safely to be kept, until to the foresaid A. of his Arrearages aforesaid it shall be satisfied according to the Form of the Statute aforesaid.*

There is also a Writ in the Register for delivering a Man out of Prison, who was taken on a false Suggestion in the *Monstravit*. But of that and the rest of the Writs there, the Precedents above delivered may give sufficient Light to direct any ordinary Capacity in translating and understanding the Nature of those Writs. I shall therefore in this Place no longer insist on *Writs of Account*, but proceed in the next Place to shew the Nature and Forms

Registr. 137.

Of the Writs of Admeasurement.

*Writ of Admeasurement, its Nature,*  
Finch. 55.  
See F.N.B.  
117.

THIS Writ called in *Latin Breve de Admensuratione* seems to be founded on that Rule of moral Right, *sumum cuique tribuere*, to give to every Man his due; and therefore the Law, will in many Cases (as it ought in all) construe and dispose of Things with Proportion and Equality: And hence this Writ was formed to bring those to Equity and Moderation who usurp more than their Share or Part; and to that End it formerly lay in divers Cases, though the Precedents in the *Register* and *Fitz. Nat. Brev.* have given us the Forms thereof only of two Kinds, *viz.*

Two Kinds thereof.

Writs of Admeasurement { 1. Of Dower,  
2. Of Pasture;  
Touching each of which I shall Discourse in their Order.

1. Of Dower.  
F.N.B. 489.  
Regr. Orig.  
171.

First, A Writ of *Admeasurement* of *Dower*, generally lies where the Widow of the Deceased withholdeth from the Heir or his Guardian, more Lands in the Name of her Dower than are of Right belonging to her. But more particularly, this Writ lies when the *Heir*, while he is within Age, endoweth the *Wife* of more than she ought to have Dower of; or if the *Guardian* endows her of more than the third Part of the Lands, of which she ought to have Dower, then the Heir, at his full Age, may sue this Writ against the *Wife*, and thereby she shall be admeasured,

By the Heir.



measured, (*viz.* reduc'd to her proper Share) and the Surplus which she had in Dower, shall be restored to the Heir. But in such Case there shall not be assigned a-new any Lands to hold in Dower, but to take from her so much of the Lands which amount to above the third Part of all the Lands of which she ought to be endowed.

And if the Heir, under Age, before the Guardian enters into the Land, shall assign to the Wife more Lands in Dower than she ought to have, then the Guardian shall have this Writ of *Admeasurement* against the Wife by the Stat. *Westm. 2. c. 7.* and although the Guardian bring the said Writ, and do pursue it against the Wife, yet the Heir, at his full Age, by the same Stat. shall have the Writ against the Wife; also the Heir shall have the Writ for a Dower, assigned in the Time of his Ancestor.

*By the Guardian.*

If the Guardian assigns for Dower more than she ought to have, the Heir, during his Nonage, shall not have the Writ of *Admeasurement*. But if the Heir himself makes such Assignment, then by *Fitzherbet*, it seems reasonable that he himself, during his Nonage, may have this Writ. Yet *Quere Fitzherbert*, Tit. *Admeasurement* 13. That the Heir within Age shall not have an *Admeasurement* of his own Assignment. See *F. N. B.* 149. B. contr.

*Where it lies*

And if the Guardian assigns for Dower more than she ought to have, and afterwards grants over his Estate, his Grantee or Assignee shall not have this Writ. But if the Heir within Age assigns to her more than she ought, he

that is *Guardian in Right* may have the Writ; but if he grant over his Estate, his Grantee, who is only *Guardian in Fact*, shall not have it, because it was only a Thing in Action given to his Grantor.

*Improvement.*

If the Wife, after the Assignment of Dower, shall improve the Land, &c. an Admeasurement doth not lie of that Improvement; but if the Improvement be by Casualty of a Mine of Coal, Lead, &c. occupied in the Husband's Life-time, it is doubted; but without Doubt she cannot dig new Mines, for that is Waste.

Dr. and Stud. 84.

If the Ancestor dies seised, and the Husband dies before he enters into the Land, yet the Wife shall be endowed, although her Husband had but a *Possession in Law*. But a Man shall not be Tenant by the Curtesy of his Wife's Land, if there be not a *Possession in Fact*, except in Special Cases; as of an Advowson or a Rent, where she dies before the Day of Payment, &c.

Perk. 89.

*Note.*

And note; Though a Woman be endowed in *Chancery* by the King, &c. yet the Heir shall have a Writ of Admeasurement against her, if the King, &c. has assign'd to her more for her Dower than she ought to have.

Now this Writ of *Admeasurement of Dower*, is *Vicontiel*, i. e. wherein the Sheriff is Judge, and shall be pursued in the County before the Sheriff; and for an Heir is in this Form,

Form of the Writ for an Heir.

GEORGE the Second, by the Grace of GOD, &c. To the Sheriff of L. greeting:  
Plained hath to us A. the Son and Heir of B. That C. who was the Wife of the foresaid B.

*both more in Dower of the Frank-tenement (Freehold) of the foresaid B. her some Time Husband in N. than she ought to have, and (or) to her belongeth to be had; and therefore we command thee, that justly and without delay, thou cause to be admeasured that Dower, so that the foresaid C. may not have more in Dower of the Inheritance of the foresaid A. than she ought to have, and to her belongs to be had, according to her reasonable Dower. And that the aforesaid A. may have of that Dower, that which he ought to have, and which to him belongs to be had, least any more Clamor we hear thereof. Witness myself at W. &c.*

And for a Guardian the Writ is thus:

*GEORGE, &c. Plained both to us A. For a Guardian of the Lands, and Heir of B. That C. who was the Wife of the foresaid B. hath more in Dower of the Frank-tenement (&c. to) so that the foresaid C. may not have more in Dower of the Inheritance of the foresaid Heir, than she ought to have; and that the foresaid Guardian may have of that Dower that which he ought to have, &c.*

And when the Plaint is commenced in the County-Court, the Plaintiff may by *Pone*, Removal by Pone, &c. remove it into C. B. without Cause, and the Defendant may remove it with Cause, to be assigned in the *Pone*, as in Cases of *Account*, *Replevin*, &c. And when the Writ of Admeasurement is so removed into C. B. and Process thereupon awarded against the Defendant, according to the Statute (which

is Summons, Attachment and Distress, &c.) then the Sheriff cannot make the Admeasurement, but is to extend all the Lands particularly, and return the same into C. B. and thereupon the Admeasurement shall be made by the Judges of that Court.

*Gravelkind.*

Note; in some Places, as in *Kent*, of Lands in *Gavelkind*, the Wife shall have a Moiety of her Husband's Lands in Dower. And in some Places, as in *Taunton-Dean*, &c. she shall have, during Widowhood, &c. all the Lands which her Husband died possessed of, and this is called *Free-Bench*.

*Free-bench.*

2. *Admeasurement of Pasture, where it lies.*

The next Writ of *Admeasurement* is that of *Pasture*: This lies between Commoners, viz. those who have Common of Pasture appendant to their Freeholds, or Common by Reason of Vicinage, &c. in Case any one or more of them do surcharge the Common, by putting therein more Cattle than he or they ought to have Common for. For in such Case the Commoner, who is thereby aggrieved, may have this Writ of Admeasurement of Pasture; and by this Suit all the Commoners shall be admeasured, as well those who have not surcharged the Common, as he who has surcharged it; and he who brings the Action shall be also admeasured. And it has been also adjudged, That one Neighbour shall have a Writ of Admeasurement of Common against another Neighbour, &c. where they inter-common, by Reason of *Vicinage* or Neighbourhood.

*But where not.*

Neither the Tenant shall have this Writ against his Lord, nor the Lord against his Tenants; for if the Tenant surcharge the Common with Cattle, &c. the Lord may distress



distrein the Surplufage of the Cattle Damage-feasant, but may not have a Writ of Admeasurement; (Q.) and by some he may have an Affise against the Tenant for the Surcharge; for that he is disturbed of the Profit of his Land.

And if the Lord furcharge the Common, the Tenant shall not have an Admeasurement, but he may have an Affise of Common against the Lord, for the same Reason. And so if the Lord do make Approvement of the Common unto himself, and do not leave sufficient Common to the Tenant, the Tenant shall have an Affise of Common, but not a Writ of Admeasurement.

Yet he who has Common Appurtenant certain, or Common in Gros certain, shall be admeasured, and a Tenant shall have this Writ against him. But he who has Common Appurtenant, without Number, or Common in Gros without Number, shall not be stinted, nor will a Writ of Admeasurement lie against him.

*Common certain and without Number.*

This Writ of Admeasurement of Pasture is also Vicontiel, *i. e.* wherein the Sheriff is Judge; and it is therefore directed to him, and is not returnable. And the Form thereof is thus:

*Form of the Writ.*

GEORGE the Second, &c. To the Sheriff of D. greeting: Plained hath to us A. that B. and C. his Wife, have unjustly surcharged his Common of Pasture in N. so that in it more Beasts and Cattel they have than they ought to have, and to them belongs to have, (be had) and therefore we command thee, that justly, and without Delay, thou cause to be admeasured

F.N.B. 125.



that Pasture, so that the foresaid B. and C. may not have in it more Beasts and Cattel than they ought to have, and to them belongs to have (be had) according to their Frank-tenement (Freehold) that they have in the same Town; and that the foresaid A. may have in that Pasture, so many Beasts and Cattel as he ought to have, and to him belongs to be had, lest thereof any more Clamor we bear (for Default of Justice.) Witness myself at Westminster.

Note the  
Words *vel*  
*causam*, &c.  
are only added  
in the *Pluries*.

And if the Sheriff does not thereon make the Admeasurement, there may be had an *Alias*, and *Pluries vel causam nobis significes*, (an *Otherwiles*, and an *Oftentimes*, or signify to us the Cause) and if he do not return the *Pluries*, an Attachment may be had against him.

Also this Plea may be removed out of the County into C. R. by a *Pone* (a *Put*) at the Plaintiff's Suit, without shewing Cause, or at the Defendant's with shewing Cause in the Writ, which Writ of *Pone* is thus:

A *Pone* or  
*Put*.

*Put at the Petition of the Demandant, before our Justices, &c. (i. e. of C. B. at Westminster) such a Day, the Plea which is in thy County, by our Writ, between A. and B. concerning Common of Pasture in N. to be admeasured, and summoned by good, &c. the foresaid B. That he be then there, the foresaid A. thereon to answer, &c. and have thou there the said Summoners and this Writ, and the other Writ. Witness, &c.*

The Course of  
Proceeding in  
an *Admea-*  
*surement*.

The Course of proceeding on a Writ of Admeasurement is thus: After the Writ issued, the Plaintiff shall enter his Plea in  
the

the County-Court before the Sheriff, as is done in a Replevin sued by Writ, and thereupon the Sheriff shall make a Warrant to warn the Defendant to appear; and if he comes and pleads nothing in Bar, or grants (admits) the Suggestion of the Writ, the Sheriff shall make the Admeasurement.

But if the Defendant, when he appears, shews Cause to the Sheriff, wherefore the Admeasurement should not be made, the Sheriff ought not to make it on that Writ, but the Plaintiff ought to remove the Plea by *Pone* into *C. B.* by which *Pone* the Defendant shall have Day to appear, and plead there; and if he appear not, then shall issue a *Distringas* (thou may'st distrein) directed to the Sheriff to distrein the Party.

And note; such Day shall be given by the *Distringas*. *Distringas*, that two Counties may be kept between the Date of the Writ and the Return. And in those Counties Proclamations shall be made, That the Defendant come in and shew Cause why the Admeasurement should not be made; and if he do, not come in at the Return of the *Distringas*, then a Writ shall be awarded to the Sheriff (*Quære* if on Affidavit, Certificate, &c.) for him to make the Admeasurement by the Defendant's Default; which Writ is given by Stat. *West.* 2. c. 8. and is in this Form:

GEORGE the Second, &c. To the Sheriff, &c. Whereas A. had lately plained to us, That B. and C. unjustly had surcharged his Common of Pasture in N. so that in it more Beasts and Cattel they had than they ought to

that seems not regarded in Fitzherbert, &c. have

*Pone.*

*Admeasurment by the Defendant's Default.*

*Note; The Recital ought to be in the Preter-Tense, as here, tho'*

\* Tho' Nihil  
be returned  
to each of  
the three  
Writs, yet  
by the Stat.  
they shall  
proceed  
to the Ad-  
measure-  
ment.

have, and to them belonged to have had, by which (or whereupon) we commanded thee that justly, &c. [reciting the former Writ to] Cla-  
mour we bear; and thou nothing \* thereupon hast (as yet) done, as from the Plaint of him A. we have received. And whereas, in our Writ of Admeasurement of Pasture, we appointed that after the grand Distress, Days should be given, within which two County-Courts might be held, at which it should be proclaimed, that the Defendant come (in) to answer the Actor, (i. e. the Plaintiff) at which Day, if he should not come, Admeasurement should be made by Default. (Now) Thee we command, as otherwhiles thee we had commanded, that justly, and without Delay, thou cause to be admeasured the Pasture before said, according to the Tenor of another our Writ, to thee thereupon directed, and according to the Form of our Statute thereupon provided and set forth (published) so that we by the foresaid A. need not hereupon be again solicited. Witness, &c.

Court of De-  
claration.

And when the Plea is removed by *Pone*, into the Common Pleas, and both Plaintiff and Defendant appear there, the Plaintiff shall count there according to the Form in the Book of *Entries*, fol. 128. And if the Defendant grants (or consents) to the Admeasurement, then shall Issue to the Sheriff this Writ, viz.

A Writ of  
Execution.

GEORGE the Second, &c. To the Sheriff, &c. We command thee, that taking with thee twelve, &c. by whom, &c. who neither, &c. in thy proper Person thou go the Common of Pa-  
sture



sture (in N. &c.) to admeasure; and by the Oaths of them thou cause to be admeasured the Common of Pasture aforesaid, so that the foresaid S. and C. Defendants have not more, &c. and to them belongs to be had, according to their Frank-tenement (Freehold) which they have in the same Town. And the Admeasurement which shall so be made, do thou cause to be known (certified) before our Justices, &c. under thy Seal, and the Seals of them, &c.

And if an Admeasurement be once made by the Sheriff, on a Writ directed to him, as aforesaid, and the Defendant afterwards again surcharge the Common, then the Party who sued the first Writ, shall have another Writ, called *De Secunda superovagatione*.

GEORGE the Second, &c. To the Sheriff, &c. Hath shewn to us A. That whereas he lately brought to thee our Writ of Common of Pasture in N. to be admeasured, which B. unjustly surcharged; and thou that Pasture, by our Precept, as the Manner is in our Realm, didst admeasure; and (whereas) the same B. that Pasture after the Admeasurement foresaid, hath again unjustly surcharged, to the no small Loss and Grievance of him A. and against the Form of the Statute hereupon provided: And because to the said A. according to the Form of the same Stat. We are willing to give help, as we are bound, We command thee that thou in thy proper Person go to that Pasture, and by the Oaths of honest and lawful Men of thy Bailiwick, by whom the Truth of the Matter may be the better known, inquire thou diligently of (concerning) the

A Writ of second Surcharge.

N. B. The King is bound to protect his Subjects in their Rights, &c.



*the second Surcharge of the same Pasture. And if by that Inquest the said Pasture, after the said Admeasurement, thou findest to be again unjustly surcharged, then of those Beasts in that Pasture, beyond the due Number put (therein) after the first Admeasurement (or of the Price of them) answer to us at the Exchequer, and amove the Surcharge above said. Witness, &c.*

*Writ of second Surcharge when out of Chancery, and when the Common Pleas.*

But note; Upon a Writ of *Admeasurement*, awarded to the Sheriff, whereon he makes the Admeasurement (without any Judgment of the Court) if the Defendant afterwards surcharges the Common, the Writ of *Second Surcharge* shall be awarded out of the *Chancery*. But upon a Judgment given in the *Common Pleas*, of Admeasurement, &c. If the Defendant afterwards surcharges the Common, this Writ of *Second Surcharge*, shall be awarded out of the *Common Pleas*.

See F. N. B. 126. G. The Form of a Count or Declaration in a Writ of Admeasurement of Common of Pasture.

*The Count or Declaration.*

*And from whence, (i e. having recited the Matter of the Writ before) the foresaid Plaintiff plaineth, That whereas he is seised of one Messuage, with the Appurtenances in N. to which the same Plaintiff hath and ought to have Common of Pasture, with four Horses, &c. in one hundred Acres of Pasture, called B. every Year, by the whole Year appertaining; and the foresaid Defendant is also seised in his Demesne, as of Fee, of four Tard-Lands, with the Appurtenances in the same Town, to which the same Defendant hath and ought to have Common of Pasture, with one hundred Horses, twenty Oxen, &c. every Year,*  
by

*by the whole Year: The foresaid Defendant unjustly hath surcharged the Common of Pasture aforesaid, called B. so that in it he hath more Beasts and Cattel than he ought to have, and to him belongeth to have (therein) wherefore, he saith, that he is worsted (Deteriorat' est) and hath Damage to 20 l. (and thence he brings his Suit) and he demandeth an Admeasurement, (of the said Common) &c.*

See also Fitzherbert's *Natura Brevium*, of the Writs *Quod Permittat, Quo Jure, De Communia Pasturæ*, &c. all relating to Common.

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## Of Writs of Adjournment, &amp;c.

*Writs of Ad-  
journment re-  
spect*  
1. *Time.*

THESE Writs of *Adjournment*, do usually Respect either the Time when or the Place where Courts of Justice were accustomed to be held; and when used to the former Intent, do signify no more than a postponing the Time (*i. e.* the whole Term, or some one or more Returns therein) for holding the ordinary Courts of Justice to some future Day, in order to prevent a Discontinuance of Process, with without such Writ, would otherwise accrue. And this, upon emergent Occasions, as War, Pestilence or Famine, or Disturbances in Government, has been sometimes, and no Doubt may lawfully be done.

2. *Place.*

But it may well be Questioned, whether the King's Writ of Adjournment of the Parliament, or Courts of Justice, in the latter Sense, can be said to be consistent with Law. For though some of our Princes have attempted to adjourn a Parliament to *Oxford*, &c. or the Courts of Justice to *Abingdon*, *York*, &c. yet such Attempts seem contrary to the Rule and Reason of the Common Law, and never met with either Approbation or Success.

*See the 52d  
Law of Ed-  
ward the Con-  
fessor.*

By the ancient Constitution, Parliaments were to be held twice yearly, at stated Times and Places, *viz.* soon after the Calends of *May* and the Calends of *October*, at *London* or *Winchester*, *York* or *Gloucester*; and no Adjournment could then be, either of the Time or Place, without Consent of Parliament.

And

# Of Writs of Adjournment, &c. 143

And as to the Courts of Justice, though the Chancellor and Chief Justice were to follow the Person of the King, yet it is evident, that all Suits between Subject and Subject were to be heard and determined in a known and certain Place; and that *Magna Charta*, in this Particular, was no more than a Revival of the ancient Common Law; *Quod Communia placita tenentur in aliquo loco certo.*

*Courts of Justice to be held in Places certain, &c.*

And being thus established both by Common and Statute Law, I conceive the King cannot, by any Writ of Adjournment, legally transfer the Court of C. B. to any other Place than were both the Common Law and that Statute have fixed it.

Besides, I think all the Superior Courts of Justice at *Westminster*, may now claim an Usage Time immemorial, as to the Place where they are held, notwithstanding some short Intervals in the Cases before-mentioned; and consequently that no Writ of Adjournment, to any other Place, can now be valid in Law, without an Act of Parliament empowering the King thereto.

As to Forms of Entries of Adjournments of the Time or Term, we have divers Precedents in our Books, whereof this that follows is an Entry in C. B.

*Forms of entering an Adjournment in C. B.*

It is to be remembered, That the Lord the King, that now is, sent to his Justices of the Bench, his closed Writ in these Words, *George, &c. [and so recite the whole Writ.]* By Virtue of which Writ, all (Writs) Pleas, Bills, Precepts and Proseses, and other the Premises whatsoever, Returnable, or having

*See Officina Brevium 7. but note divers Mistakes there.*



Day before the Justices here, in the foresaid eight Days or fifteen Days, or three Weeks of *Holy Trinity*; be adjourned from the same eight Days, or fifteen Days, or three Weeks, and have *the same* Day until eight Days of *St. Michael*. And it is thereupon prefixed to the Parties in the same Pleas, Writs, Bills, Precepts and Proseses to be the same eight Days of *St. Michael*, before the Justices here. It is moreover commanded to all and singular Sheriffs, Officers, and other the King's Ministers whatsoever of that Part of his Kingdom of *Great Britain*, called *England*, that they do respectively retain in their own Hands all and singular the Writs, Bills and Precepts, returnable before the Justices here in the said eight Days, fifteen Days or three Weeks of *Holy Trinity*; or in the Interim, from hence from the foresaid eight Days of *Holy Trinity* to any (Return) Day. And those to return at the foresaid eight Days of *St. Michael*, before the Justices here. So that the same Justices may at the same eight Days of *St. Michael*, proceed upon the same Writs, Bills, Precepts and Proseses, and make Proseses thereupon, as if those Writs, Bills, Precepts and Proseses, and other the Premises so returnable in the said eight Days, fifteen Days or three Weeks of *Holy Trinity*, or in the Interim at any Day certain, from hence to the said eight Days of *St. Michael*, be returned before our said Justices here in the said eight Days of *St. Michael*, without any (further) Adjournment.

The Writ directed to the Sheriffs, &c. upon such Adjournment, is thus:

GEORGE, &c. *To the Sheriffs of N.* Writ of Adjournment  
*greeting: We command you that all and singular our Writs and Proseses to you delivered, and to be delivered, and before us eight Days, fifteen Days, and three Weeks of Holy Trinity next coming, or on any Days certain after eight Days, fifteen Days, or three Weeks of the foresaid Holy Trinity, or in the Interim, having by you to be returned, ye retain with you (in your Hands) until three Weeks of St. Michael next coming; and these then have before us, wheresoever then we shall be in England; together with the Returns and Executions of the same, and this Writ, that we may be able then to proceed in the same Writs and Proseses, as to the Prosecution thereof appertains, as of Right, in this Part, we shall see (fit) to be proceeded. Witness myself, &c.*

*Note; This is the Stile of B. R.*

The Form of a Return endorsed on the same Writ.

*BT Virtue of this Writ, at the Day of the Return thereof, viz. at the Eighth Day after St. Michael, within contained, we signify to the Lord the King, that all Writs, Precepts and Mandates whatsoever, which before the said Lord the King, as well of eight Days, fifteen Days and three Weeks of Holy Trinity then next coming, as on Days certain, after the said eight Days, or fifteen Days, or three Weeks of Holy Trinity, or in the Interim, have Day to be pleaded, prosecuted or returned, and have*

L. come

## Of Writs of Adjournment, &c.

come to our Hands, We have retained every of them with us, and (now) at the foresaid three Weeks of St. Michael, have them before the Lord the King, together with the Returns and Executions of the same, and this Writ, as within to us it is commanded.

A. B. } Sheriffs of the County  
C. D. } within named.

The Form of pleading a Writ of Adjournment is thus:

Form of  
pleading an  
Adjourn-  
ment.

Treasur'  
Brevium 5.

AND now at this Day, to wit, Monday next after eight Days of St. Michael, until which Day the foresaid C. D. had Licence of Imparling to the Declaration Debt aforesaid, and then to answer, &c. at which Day the Plea aforesaid was adjourned by the Writ of the said now Lord the King, of Common Adjournment, before the same Lord the King, at Westminster, until a Month of St. Michael, at which Day the Plea aforesaid was further adjourned, by Writ of the said Lord the King of Common Adjournment before the same Lord the King at Westminster, in the County of Middlesex, to the Town of Reading, in the County of Berks, until in the Morrow of Souls, (then next) at which Day before the Lord the King, at the Town of Reading aforesaid, came as well the said C. D. &c.

Or thus.

Another  
Form.

TO answer, &c. before which Day the Plea aforesaid was adjourned by Writ of the Lord the King of Common Adjournment, from the  
Town

*Town of Reading aforesaid, to Westminster, in the County of Middlesex, until eight Days of St. Hillary, at which Day before the Lord the King came as well, &c.*

But notwithstanding the Words of the Pleas *supra*, call these Writs Writs of *Common Adjournment*; yet I conceive these Writs to be very Special in their Nature and Form, and that their Legality may well be Questioned, for the Reasons above hinted.

*Quære* also if an *Adjournment* of C. B. by Writ, can be good, where a whole Term intervenes, or where it is to a Day certain, that is, not a common Return-Day.



Of Writs of Admeasurement, see before.

Of Admissions of Officers, Infants, &c.

Kinds of Admissions.

THERE are three Kinds of *Admissions* of Use in the Courts of Law; as the Admission of Officers, as Prothonotaries, Filicers, &c. to their respective Offices. The Admission of Infant Plaintiffs to sue by either their next Friend, or a Guardian, or to defend by a Guardian only, and an Admission of one to sue or defend in *Forma Pauperis* (in Form, or after the Manner of a poor Person). And although none of these Admissions are by Writ, but only by Entries on the Rolls or Records of the respective Courts; yet seeing they are of frequent Use in the Law; and the two later the very primary Authority of the Parties suing or defending in that Manner, and to be entred at the Commencement of such Suit or Defence, it may not be improper to give some Precedents of such Admissions respectively. And first of Admissions to Officers.

1. Prothonotary.

And here we may observe, as to the several Prothonotaries of the Court of Common Pleas, That the Office of first or chief Prothonotary, being in the King's Gift, is conferred by Letters Patent, which being a Matter of Record, there needs not any formal Entry to be made of his Admission; but the several Offices of the second Prothonotary, being in the Gift of the *Custos Brevium*, or Keeper of the Writs; and of the third Prothonotary

chonotary in the Disposal of the Chief Justice of the Court, of these there are to be respective Entries made on the Records of the said Court, in the following Manner, viz.

An Admission of the second Prothonotary to his Office thus:

*In the Term of St. Michael, in the fourth Year of King George the Second.*

*Meddlesex ss.* IT is to be remembered that—<sup>2. Prothonotary.</sup> lately having and occupying in the Court of the King here, the Office of one of the Prothonotaries of this Court; to wit, the same Office which—during his Life-time, lately had, held, exercised and occupied; and which said Office *A. B.* during his Life-time, in Time past, and immediately before the said—had, held, exercised and occupied, he the said—such a Day of the Month, in this same Term (or in the last Vacation of the Term precedent) died, after whose Death that Office was vacant, and continued so vacant until the—Day of *November*, in this same Term, at which said—Day, *Henry Earl of Litchfield*, chief Clerk of the Lord the King, in this Court, and Keeper of the Writs and Rolls of the said Lord the King of the same Court, To whom, by Reason of that Office, the Donation or Presentation of one of the Prothonotaries of this Court is known of Right to belong, came here in Court in his proper Person; and gave the Court here to understand that the said Office of one of the Prothonotaries by the Death of the said—was void; and that

he the said H. Earl of L. had given and granted the same Office to *W. B.* and constituted and ordained him to have, hold, exercise and occupy the said Office. And the same *W.* being in his proper Person to be admitted to the said Office, was presented to Sir R. E. Knt. Chief Justice of the Lord the King of this Court, *To whom, by Reason of his Office, belongeth the Admission of every Person to the same Office, whensoever it is void,* by the said Chief Clerk of the Lord the King, and Keeper of the Writs and Rolls of the said Lord the King, of this Court, requiring the same Chief Justice, that he would admit the same *W. B.* to the said Office of one of the Prothonotaries, and that he would think him worthy to be put in the full Possession of the same. And thereupon the same Chief Justice here, by mature Deliberation and Advise ment in the Premises, and Consideration and Respect being had, as well to the Ability, as to the long and continued Attendance and Exercise of the said *W.* in this Court, did admit the same *W.* to that Office, and swore him well and faithfully to occupy and exercise the same Office, and put the same *W.* into the full Possession of the same Office, to have, hold and exercise the same to the said *W.* for the Term of his Life, as fully and entirely, and in the same Manner and Form as the said— [*naming two or three of the Predecessors*] or any or either of them heretofore had, held, exercised and occupied the same, receiving therein the Wages, Fees, Profits, Commodities and Emoluments to the same Office due and accustomed.

And

And as to the Office of the third Prothono-<sup>3. Prothono-</sup> notary, there is said to be an Entry among<sup>tary.</sup> the Pleas of Lands in C. B. in *Easter Term*, the Third of King *Charles I.* Roll, the 42d, which is thus translated into *English*;

*Brownlow,*

*Middlesex ff.* **I**T is to be remembred, that the *See Moyle's* Seventh of *May*, in the same *Entries 3.*

Term, *Thomas Richardson*, Knt. Chief Justice of the Lord the King, in the Common Bench there *freely* granted to R. M. Gent. one of the Clerks of *Richard Brownlow*, Esq; Chief Prothonotary of the Court of Common Bench aforesaid *here*, the Office of the third Prothonotary of the Bench aforesaid *here*, now being void by the Death of *T. Waller*, Esq; late third Prothonotary of the same Court of the Bench aforesaid *here*, and admitted the same *Robert* to that Office, to have, hold and enjoy to the same *Robert*, for Term of his Life, as his Free Tenement, according to the Custom of the Court aforesaid, used and approved, from the Time whereof the Memory of Man is not to the contrary; and also the same *Robert*, as well the Oath of the King's Supremacy, (*now the Oath of Abjuration, &c.*) according to the Form of the Statute in that Case made and provided, as his Corporal Oath well and faithfully to demean, and behave himself in the same Office before-hand taken, as the Custom is, into the Corporal Possession of the same Office put and instituted, to hold, occupy and enjoy the same in Form as aforesaid, so fully and wholly, and in the same Manner and Form as the same *T. W.* late had, held, oc-



cupied and exercised the same Office, perceiving and taking in the same Office the Wages, Fees, Profits, Commodities, &c. to the same Office due and accustomed.

2. *Admission of Infants.*

As to the Admission of Infants, we may observe, That an Infant, under the Age of Twenty-one, is esteem'd in the Law, as one wanting Discretion, and so not capable of suing or defending in any Suit or Action, either in Person or by Attorney; and not being capable of constituting an Attorney himself, the Law has so far taken Care of him, and his Interests, as to empower the Courts of Justice to appoint or constitute some Person or Persons to act in his stead, and as Attornies for him, *viz.* Guardians and *prochein Amies* (next Friends) both which are to be admitted by the Court, the former usually when he sues (though he may also sue by his Guardian), but in the Case of defending his Rights, the Law will not intrust that Power with a next *Friend* or *Kinsman*, (who perhaps might, from private Motives, give up those Rights, by a feint Defence) but has solely intrusted such Defence in the Hands of a *Guardian*, to be appointed by the Court.

*The Form of admitting an Infant to sue in C. B. by his next of Kin is thus:*

In the Term of St. Michael, in the Fourth Year of King George the Second.

Foley,

*IT is to be remembred that this Day, to wit* To sue in  
*Friday, or any other Day of such a Return,* C. B. by his  
*J. K. and L. M. are admitted by the Court of* next Friend.  
*our Lady the Queen here to prosecute for, and*  
*on the Behalf of J. S. who is an Infant within*  
*the Age of One and Twenty Years, as the next*  
*of Kindred of him the said J. S. against N. S.*  
*late of, &c. Gentlemen, in a Plea of Trespass*  
*and Assault, [or whatsoever the Nature of the*  
*Action is] &c.*

*By the Court, &c.*

And such Admission, I conceive, ought to be filed with the Filacer of the County where the Action is laid, who is to give you a Copy thereof, signed by himself.

*A Præcipe to a Cursitor for a Deputation (or Commission) for an Infant to chuse two Guardians in C. B.*

*Warwick ff.* **D**eputation to admit *Jervase P. Esq;* and *John B. Gent.* to Guardians  
in C. B. Of-  
ficio Brev.  
14.  
 appear and defend in the Court of the Lord the King, of the Bench, for *Mary P. Spinster,* being within Age, in a Plea of Partition of the Manor of *F.* with the Appurtenances in *A.* and *C.* at the Suit of *O. J. Bart.*  
A Com-

A Commission to be directed to *A. B. C. D.*  
*E. F.* and *G. H.* Esqs.

*The Return made thereupon.*

*Warwick* ss. *J. Ervase P.* Esq; and *John B.*  
Gent. are admitted by the  
Court of the Lord the King, of the Bench,  
here to appear and defend for *Mary P.* Spin-  
ster, being within Age, as Guardians of the  
same *Mary*, at the Suit of *O. J.* Bart. in a  
Plea of Partition, &c.

They are admitted this 23d Day of *Ja-*  
*nuary*, in the Third Year of the Reign,  
&c.

*A. B.*  
*E. F.*  
*G. H.*

Fee for the Deputation 18 s. 4 d. (Sign'd  
by three of the Commissioners.)

*Admissio: in*  
*E. R.*

*Note;* The above was on a Special Admis-  
sion; but the usual Form of admitting an  
Infant, before a Judge in *B. R.* to defend by  
a Guardian, in all Actions, &c. at the Plain-  
tiff's Suit, is in this Form,

*Southampton* ss. *A. B.* who is within the Age  
of One and Twenty Years,  
is admitted by the Court of the Lord the  
King (held) before the King himself by *C. L.*  
Gent. his Guardian, to defend all Kinds of  
Actions and Suits in the same Court, depend-  
ing at the Suit of *E. F.*

*Raymond.*

## Of Writs of Allowance, &c.

**U**NDER this Head I find two Kinds of Writs of Allowance; the one is for an Allowance of two, three or more Hustings held in London, in order to the speedier Outlawing of a Person there; the other is a Writ of Allowance to a Judge of an Annuity, and to retire from Business, by Reason of his Age and Infirmity.

*two Kinds.*

The former Kind of Writs run in this Form,

**T**HE King to the Sheriffs of London, greeting: We command you, that allowing those two (three or four) Hustings, at which A. B. late of T. was demanded, and hath not appeared as yourselves have sent (returned) to us in the Octaves, (eight Days) &c. last past, you further demand him A. B. from Hustings to Hustings, at your next Hustings, or until, according to the Law and Custom of that Part of our Kingdom of Great Britain, called England, he be outlawed if he does not appear; and if he does appear, then that ye cause him to be taken and safely to be kept, so that you have his Body before us from the Day of Easter, in fifteen Days wheresoever we shall then be in England, to answer to C. D. in a Plea of Trespass; and have you there this Writ.

1. Of an Allowance of the Hustings, for an Outlawry.

Those two, (three or four) Hustings within The Return mentioned, being allowed, at which the within named A. B. was the second (third or fourth) Time



# Of Writs of Allowance, &c.

*Time demanded, and hath not appeared, and which were held in the Guildhall of the City of London, on Monday, next after the Feast of St. B. and on Monday, next after, &c. [And so mention the several Days and Year on which the Hustings were held] the said A. B. did not appear at the said Hustings, or at any of them; whereupon on Monday next after, &c. in the Year aforesaid, the said A. B. was the fifth Time demanded, and hath not appeared; therefore he, by the Judgment of the Coroners of the said City of L. is outlawed.*

The Answer of  $\left. \begin{array}{l} T. P. \\ \text{and} \\ H. G. \end{array} \right\}$  Sheriffs.

Another and better Form of the said Writ, wherein the Cause of the Suit is shewn, &c.

**Thesaurus  
Erev. 3.**

*THE King to the Sheriffs of London, greeting: We command you that allowing those three Hustings, at which R. S. late of L. &c. was demanded, and hath not appeared, as you yourselves have sent (returned) to us in the Octaves (eight Days) of St. Martin, last past, you cause him R. from Hustings to Hustings, to be further demanded, until, according to the Law and Custom of that Part of our Kingdom of Great Britain, called England, he be outlawed; if he does not appear; and if he shall appear, then that you take him, and in our Prison keep safely, so that you have his Body before us, from the Day of Easter, in fifteen Days, wheresoever we shall then be in England, to satisfy to W. T. as well of twenty Pounds of Debt, which*

which the same W. lately in our Court, before R. E. Knt. and his Companions, our Justices of the Bench at Westminster, against him hath recovered, as of 6l. 6s. 8d. which unto the same W. in the same our Court were adjudged for his Damages, which he hath sustained, by Occasion of the Detention of that Debt whereof he (the said R. S.) is convicted, as by Inspection of the Record, and the Processes thereof, which we for certain Causes have caused to come before us, stands of Record; and thereupon in our Court before us, it is considered, That the said W. shall have against him R. Execution; and have ye there this Writ. Witness, &c.

The Record removed by Error into B. R.

The other Kind of *Writ of Allowance*, is for an Annuity, &c. to a Judge, and may more properly be stiled *Letters Patent*, being directed to the Judge himself, among others, in this Form.

2. *A Writ of Allowance to a Judge, &c.*

GEORGE the Second, by the Grace of GOD, King of Great Britain, &c. to the Treasurer, Chancellor, Chamberlains and Barons of our Exchequer; and also to our faithful and beloved E. P. one of our Justices of the Common Bench, greeting: Know ye, That we considering the Debility of the Body of the said E. P. broken with Infirmity and old Age; and also the Tediousness and Prolixity of Labour which attendeth the Office of one of the Justices of the Common Bench, which he is wont to undergo, &c. And further, of our more abundant Special Grace, certain Knowledge and mere Mention, and for the laudable Service by you the said E. P. done to us and our dear Father of happy Memory; and for all Things by you the said

E. P.

E. P. heretofore performed to the Good of the Common-wealth, &c. We for us, our Heirs do give and grant to you the said E. P. one Annuity or annual Rent of 100 l. of lawful Money of Great Britain yearly to you the said E. P. and your Assigns, for and during the natural Life of you the said E. P. to be paid at the Receipt of the Exchequer of us, our Heirs and Successors; by the Hands of our Chamberlains, and of our Heirs and Successors for the Time being, out of our Treasure, from Time to Time, happening to be in the Hands of us, our Heirs or Successors, at the four most usual Feasts, &c. by equal Portions, yearly to be paid during the Life of him the said E. P. wherefore we will, and by these Presents firmly enjoining, we command, as well to our Treasurer, Chancellor, Chamberlains and Barons of our Exchequer, and of our Heirs and Successors, for the Time being, as to all and singular other our Officers and Ministers, and all of our Heirs and Successors whatsoever, for the Time being, to whom it shall belong, in this behalf, that they and every of them, upon the sole Demonstration (shewing) of these our Letters Patent, or the Inrolment of them, without any Writ or Warrant from us, our Heirs or Successors, to be prosecuted or obtained, the said Annuity of 200 l. by the Year, unto the said E. P. or his Assigns, they should pay and deliver, or should cause to be paid and delivered, in Form as above; and that these our Letters Patent, or the Inrolment of them, shall be as well to the said Treasurer, Chancellor, Chamberlains and Barons of our Exchequer aforesaid, and of our Heirs and Assigns, as to all and singular other our Officers and Ministers, and of our Heirs and Successors whatsoever, for the Time being,

being, to whom in this Behalf it shall belong, a sufficient Warrant in this Behalf, although express Mention of the true yearly Value; or of the Certainty of the Premisses, hereby granted or of any of them, or of any other Gift or Grant, by us, or any of our Progenitors, to the said E. P. heretofore made, be not made in these Premisses, any Statute or Ordinance, Provision, Proclamation or Restriction to the contrary thereof, before now had, made, done, enacted, ordained, or provided, or any other Cause, Matter or Thing whatsoever to the contrary notwithstanding. In Testimony, &c.

By which later Clause, it appears, some Judges have taken it for good Law, That in the Cases of Grants of Annuities, Pensions and yearly Payments to the Judges of our Laws, &c. the King has the Power of dispensing with any Statute, &c. to the contrary. *Sed heu! heu!*

*Hec ex sulphureo exurgunt Acherontis Averno.*

With open Mouths the sulphurous Flood  
they drain,  
Hence Laws and Statutes yield to private  
gain.

Of



E. P. heretofore performed to the Good of the Common-wealth, &c. We for us, our Heirs do give and grant to you the said E. P. one Annuity or annual Rent of 100 l. of lawful Money of Great Britain yearly to you the said E. P. and your Assigns, for and during the natural Life of you the said E. P. to be paid at the Receipt of the Exchequer of us, our Heirs and Successors; by the Hands of our Chamberlains, and of our Heirs and Successors for the Time being, out of our Treasure, from Time to Time, happening to be in the Hands of us, our Heirs or Successors, at the four most usual Feasts, &c. by equal Portions, yearly to be paid during the Life of him the said E. P. wherefore we will, and by these Presents firmly enjoining, we command, as well to our Treasurer, Chancellor, Chamberlains and Barons of our Exchequer, and of our Heirs and Successors, for the Time being, as to all and singular other our Officers and Ministers, and all of our Heirs and Successors whatsoever, for the Time being, to whom it shall belong, in this behalf, that they and every of them, upon the sole Demonstration (shewing) of these our Letters Patent, or the Inrolment of them, without any Writ or Warrant from us, our Heirs or Successors, to be prosecuted or obtained, the said Annuity of 200 l. by the Year, unto the said E. P. or his Assigns, they should pay and deliver, or should cause to be paid and delivered, in Form as above; and that these our Letters Patent, or the Inrollment of them, shall be as well to the said Treasurer, Chancellor, Chamberlains and Barons of our Exchequer aforesaid, and of our Heirs and Assigns, as to all and singular other our Officers and Ministers, and of our Heirs and Successors whatsoever, for the Time being,

being, to whom in this Behalf it shall belong, a sufficient Warrant in this Behalf, although express Mention of the true yearly Value; or of the Certainty of the Premisses, hereby granted or of any of them, or of any other Gift or Grant, by us, or any of our Progenitors, to the said E. P. heretofore made, be not made in these Premisses, any Statute or Ordinance, Provision, Proclamation or Restriction to the contrary thereof, before now had, made, done, enacted, ordained, or provided, or any other Cause, Matter or Thing whatsoever to the contrary notwithstanding. In Testimony, &c.

By which later Clause, it appears, some Judges have taken it for good Law, That in the Cases of Grants of Annuities, Pensions and yearly Payments to the Judges of our Laws, &c. the King has the Power of dispensing with any Statute, &c. to the contrary. *Sed heu! heu!*

*Hec ex sulphureo exurgunt Acherontis Averno.*

With open Mouths the sulphurous Flood  
they drain,  
Hence Laws and Statutes yield to private  
gain.

Of

Of the Writ De amovendo Ballivo;  
(for removing an Under-Sheriff,  
&c.)

Writ to  
move an Un-  
der-Sheriff.

**I**T having been enacted by divers Statutes,  
in order to prevent Extortion and Op-  
pression in Under-Sheriffs and their Officers,  
that no Sheriff, Under-Sheriff, Bailiff, &c.  
should continue in Office above one Year,  
except in Sherifalties that are hereditary  
or of Fee: The following Writ was form'd  
thereupon.

See the Stat.  
of Articles  
on the Char-  
ter.

*THE King to the Sheriff of Kent, Greeting:  
Whereas in the Statute made at Westminster,  
in the . . . . Tear of the Reign of King Hen-  
ry the 5th, entituled, An Act, &c. it was a-  
mong other Things ordained and established, that  
such who are Sheriffs, Bailiffs (i. e. Under-  
Sheriffs, &c.) should not be in any such Office  
for three Tears next following (except Sheriffs,  
Bailiffs (Under-Sheriffs, &c.) whose Sherifal-  
ties are hereditary) and you, by your Oath late-  
ly taken, are bound firmly to observe the Statute  
aforesaid: And we have lately understood, that  
A. B. one of the Bailiffs (or Under-Sheriffs) of  
your County, the Sherifalty of which is not he-  
reditary to you, as it is said, hath continued  
for more (divers) Tears in the same Office  
against the Form of the Statute aforesaid: We  
willing inviolably to observe the Statute afore-  
said, command you, as other times we have  
commanded you, that if it be so, then you re-  
move without Delay the same A. B. from his  
said*

This was a  
Pluries.

*said Office, and suffer him not any further (longer) to exercise or continue in the same Office in the County aforesaid, against the Form of the Statute aforesaid, or signify the Cause to us wherefore you have not obeyed our Command, at another Time therein to you directed. Witnesses, &c.*

But note, tho' the above Writ be founded *Note.* on a Statute, yet it appears from divers Precedents in the *Register, &c.* that the like Writ lay at Common Law; for as Sheriffs, Escheators, Coroners, and other Officers were originally yearly eligible; so if they continued to exercise their Offices after the Year expired (without being re-elected) a like Writ lay to remove them: The Common Law herein imitating the Law of Nature, preserving its Vigour by *Rotation* and *Circuitry*. For as a Stagnation of Elementary Bodies begets *Putrifaction*; so a Quiescence of Offices in the same Officers causes *Corruption, &c.* *Officers Yearly Eligible.*



- Of Writs of Assise, &c.

*Assises vari-  
ous.*

THESE Writs of Assise are of various Kinds and Forms, as may be seen in the *Registr.* and *F. N. B. &c.* as Assises of Novel Disseisin of Lands, of Rents, of Offices, on his Ancestor's Death, of the last Presentment, &c. as also an Assise of Nuisance; of which see before.

*Antiently the  
most beneficial  
Remedy,*

*now by laid aside.*

But these Writs of Assise, tho' esteem'd by our Ancestors as the most certain and speedy Remedy for Recovery of Rights, and establishing Possessions; yet for that the Jurors therein (commonly called Recognizors, being usually twenty-four of the best Freeholders) often controuled the good Pleasure of the Judges, and frequently rendred their Directions vain; other Methods for Trying Rights by Ejectment, &c. were for good and profitable Purposes introduced, and this Method of Trial by Assise thought fit to be laid aside. Yet seeing a good Parliament may revive and restore antient Laws and Usages, I shall here add a Precedent or two of Writs of Assise in the *English* Language, *viz.*

The Form of a Writ of *Assise* of Land.

*Assise of  
Lands.  
See Aston's  
Entries 122.*

*THE King, &c. To his Coroners in the  
County of Lincoln, Greeting. Complained here  
to us, T. W. Esq; and Eliz. his Wife, That  
W. Lord W. Knt. E. D. Knt. E. T. Widow,  
and W. T. Clerk, have unjustly, and without  
Judgment disseised them of their Freehold in G.  
within*

within three Tears now last past. And therefore we command you, That if the foresaid T. and E. his Wife shall make you secure for prosecuting his Claim, then cause that Tenement to be reseised of the Chattles which therein were taken, and that Tenement with the Chattles to be in Peace until a certain Day, which our beloved and faithful E. M. Knt. our Serjeant at Law, and H. B. our Attorney General, shall cause you to know; and in the Interim cause twelve free and lawful Men of that Vicinage, Neighbourhood, to see that Tenement, and the Names of them to be imbreviated (impanelled) and summon them by good Summoners, that then they be before the foresaid E. and H. and those whom they unto them shall associate at a certain Day, which the said E. and H. shall cause you to know, prepared thereof (thereupon) to make Recognition; also put by Sureties and Pone. good Pledges, the foresaid W. Lord W. Ed. Eliz. and Wm. (or their Bail, if they shall not be found) that they be then there to hear that Recognition; and have you there the Summoners, the Names of the Pledges and this Writ. Witness my self at Westminster, &c.

Because R. T. Knt. now Sberiff of the County aforesaid, took to Wife one Katherine, who is yet living, the Daughter of B. T. Knt. and M. his Wife, who was Sister of G. T. the Father of H. T. the Father of the foresaid Eliz. the Wife of the foresaid Thomas: And because R. C. one of our Coroners of the County aforesaid, is Servant of the said W. Lord W. let Execution of this Writ be made by the Residue of our Coroners of the County aforesaid, so that neither the foresaid Sberiff, nor the foresaid

The Cause mentioned in the Writ, why it was directed to the Coroners, &c.

Here appears the notable Care the Law had to prevent Partiality, &c. in Officers and Ministers of Justice.

R. C. the Coroner, do any way concern themselves with the Execution of this Writ.

(Sign'd) Baron.

(Underwritten thus.)

For 40s. paid into the Hanapar.

Pledges of Prosecuting { John Doe  
Richard Roe.

(The Return Endors'd.)

THE within named W. Lord W. E. D. Knt. Eliz. T. Widow, and W. T. Clerk, were attached by one Ox of the Price of 50's. The Residue of the Execution of this Writ appears in a certain Schedule to this Writ annex'd.

The Coroners of the Lord the King in the County within named (excepting the within named R. C.).

} Rich. Nailer,  
Jo. Cappe,  
Tho. Dunne,  
Jo. Wilson, and  
Jo. Maire.

The Summoners of the Jurors aforesaid.

} Jo. Hart,  
Rich. Smart.

The Manucaptors (or Summoners) of the Jurors aforesaid, and of every of them.

} Will. Dent,  
Jo. Sent,  
Phil. Man,  
Nich. Fann.

Oyer pray'd.

And the said W. Lord W. E. D. Eliz. and W. T. by E. S. their Attorney come, and the same Eliz. T. Widow, prays Oyer of the foresaid Writ of Assise, and also of the Return of the same Writ; she also prays Oyer of

of the Letters Patent of the same Assise, and they are read to her in these Words, *Edw. by the Grace of God, &c.* Which being read and heard, the same *Eliz.* by protesting *Protestation.* that the foresaid *R. T. Knt.* now Sheriff of the County aforesaid, did not take to Wife *Katherine* Daughter of the foresaid *B. T.* and *M.* his Wife, &c. and also protesting that the foresaid *R. C.* is not, nor was on the foresaid Day of suing out the foresaid Writ of Assise, a Servant of the foresaid *W. Lord W.* as the said *Thomas* and *Eliz.* his Wife by the foresaid Writ do above suppose; For Plea the same *Eliz.* saith, That the foresaid Writ of the Assise aforesaid, sued out in the Manner and Form aforesaid, and also the Return of the same are not sufficient in Law to compel her *Eliz.* to answer to the foresaid Writ; and that she to that Writ sued out in Manner and Form aforesaid, has no need, nor is by the Law of the Land bound to answer; and this she is ready to aver. Whereupon she demands Judgment, and that the Writ aforesaid may be quashed, &c. whereupon it is considered by the Court, that the foresaid *Eliz.* should answer to the Writ aforesaid, saving always to herself all and all Manner of Advantages in the Writ aforesaid apparent. *Denurrer to the Writ, &c.* *Answer over.*

*F. N. B.*

*177. L.*

And note; a Patent call'd a Patent of Assise (of which Oyer is pray'd above) is necessary, where the King appoints special Commissioners (as the Serjeant and Attorney General are above) to take the Assise. But if the Assise be taken by Justices itinerant, or other known Judges of *B. R.* or *C. B.* there needs no Patent of Assise.



The Patent of Assise for appointing special Justices is in this Form.

Patent of  
Assise.  
*Ibid.* 178.

*THE King to his beloved and trusty E. M. and H. B. Greeting. Know ye, that we have appointed you our Justices, together with those whom we have associated to you, to take the Assise of New Disseisin (or of whatever it be) which A. and B. his Wife have arraigned before you, by our Writ against C. &c. of a Tenement in N. and therefore we command you, that at a certain Day and Place, which to this (Business) you shall appoint, ye take that Assise, to do thereupon what belongs to Justice, according to Law and the Custom of our Realm, saving to us the Amerciaments thence provenient. For we command our Sheriff of L. that at a certain Day and Place, which ye shall make him to know, he do cause that Assise to come before you. In Testimony, &c.*

Where and in what Cases an Assise will lie for Rents, Tolls, Passage, Paviage, Pontage, &c. See F. N. B. 178, 179, &c.

Of a Writ of Assumpsit, (he assumed  
or promised.)

A Writ of Assumpsit (or he promised) is *The several*  
in its proper Nature only a Writ on the *Kinds of Pro-*  
*Case*, being founded on some Promise made or *mises.*  
implied, and wherein the Case or Cause of  
Action ought to be specially set forth, as in  
other Writs on the Case.

All Promises are either express'd or impli- *1. Implied.*  
ed: An implied Promise is where the Promise *See F. N. B.*  
is raised upon a Presumption or Implication *145. G.*  
of Law, tho' the Party himself does not ex-  
press it; as every Tradesman of manual Oc-  
cupation that undertakes the doing of a Thing  
for Hire, as a Smith, Taylor, Carpenter, &c.  
if he does not do his Business well, this Writ  
may be sued against him upon a Promise by  
Implication, that he promised *to do it well.*  
So a Carrier, Bargeman, Waterman, &c. un-  
dertaking to carry Goods, &c. The Law says  
he promises to carry them *safely*; and there-  
fore if they are lost or damnified in the Car-  
riage, an Action will lie on this implied Pro-  
mise, tho' the Declaration therein is general-  
ly upon the Custom of the Realm also.

And in like Manner, if I employ any such  
Tradesman, or other Person to transact my  
Affairs, or to do any Kind of Business for me,  
and he does it accordingly, the Law raises an  
implied Promise, *viz.* That I promised to  
pay him so much as he deserved for his La-  
bour, Care or Skill, and this Writ will ac-  
cordingly lie against me, tho' in Fact I made  
no such Promise.

2. Express'd  
by Word, or in  
Writing.

Stat. 29 Car. 2.

F. N. B.  
145. G.

F. N. B.  
94. A.

See the Ori-  
ginal in  
F. N. B.

An express Promise is where the Promise is expressly made, as in the Case of all Purchases, Bargains, Contracts, &c. And this may be either by Word or in Writing, and the Breach of either will be a good Ground for this Writ. But here ought to be noted the Stat. of Frauds and Perjuries, as to Promises by Word how far they are binding on Bargains and Sales, without Earnest given, or the Goods or Part thereof delivered.

But before that Statute, if a Man had promised by Word to deliver such or such Goods, or to do such a thing for a certain Sum of Money, and had received Part of the Money, and a Day was appointed for Payment of the rest, if he did not deliver the Goods, or do the Thing agreed on, this Writ would lie against him on such a Promise by Word only.

So if a Man had taken upon him, or promised to make for another certain Carts (or Wheels) for Carriages, or to do any other thing, and took Money before Hand to do it, and did not afterwards make the same according to such Undertaking and Promise, the other might maintain an Action of the Case upon such Promise. And the Writ (says Fitzb.) shall be thus.

*If W. makes thee secure, &c. then put J. &c. That he be before us (or our Justices) such a Day, to shew why, whereas the same J. (tres currus, or rather Carras) which here must mean three Ships of Carriage, for carrying the Victuals and Harness of him W. over Sea for a certain Sum of Money, one Part in Hand by the said J. received, within a certain Time betwixt them agreed on, at S. had assumed (or undertaken*

*dertaken, or promised) to make; (yet) the same J. the Carrs (Vessels) aforesaid, did not take Care to make and fabricate within the Term aforesaid, whereby the same W. divers his Goods and Chattels to the Value of 100 Marks, which in the Carrs aforesaid ought to have been carried, for Default (Want) of the Carrs aforesaid he hath totally lost, to the grievous (heavy) Damage of him W. as 'tis said, and have thou there the Names of the Pledges, and this Writ. Witnesses, &c.*

And if a Man be lodged in an Inn, and any of his Goods be taken or stollen from thence by a Stranger, &c. he shall have a Writ on the Case against the Inn-keeper in this Form.

*Against an Inn-keeper.*

*The King to the Sheriff, &c. If A. shall make thee secure, &c. then put, &c. that he be, &c. to shew, &c. why, whereas according to Law and the Custom of that Part of our Realm of Great Britain called England, Hostlers (Inn-keepers, who keep common Inns to receive Men passing thro' the Parts where such Inns are, and in the same (Hospitantes) Lodging, and their Goods within those Inns being, are bound to keep by Day and by Night without Substraction; so that for Default of those Inn-keepers or their Servants, no Damage befall to the Guests in any Manner; (Yet) Some Malefactors a certain Horse of him A. of the Price of 5 l. and received within the Inn of the same A. at S. found, and for Default of him B. took and carried away, to the grievous Damage of him, A. &c.*

And



## Of a Writ of Assumpsit.

*Warranty.*

And if one Man sells to another a Horse, &c. and warrants it to be good and sound, if the Horse be lame or diseased, the other Person shall have a Writ on such Warranty or Promise. And so if one Man sells to another certain Pipes of Wine, and warrants them to be good, &c. and they are corrupted, he shall have the like Writ.

*Warranty.*

But in such Cases there must be an express Warranty or Promise; for if one buys a Horse or Wine, Cloth, &c. without such express Warranty, it is at his Peril; for his Eyes and his Taste ought to be the Judges in such Cases. And therefore a Warranty contrary to what is apparent is void; as where one warrants a Horse to have both his Eyes when he has lost one, or Wine to be Red when 'tis White, or Cloth to be Black when 'tis Blew; in these and the like Cases the Warranty is void, for the Buyer ought to use his own Senses.

*A Smith pricks  
my Horse.*

But if a Smith pricks my Horse in shoeing, or the like, I shall have a Writ or Action on the Case against him, without any Warranty or express Promise to do it well, upon the implied Promise in Law as aforesaid; and the Writ in that Case is thus, according to *Fitzbertert.*

F. N. B.  
94. D.

— To shew why he did fix a certain Nail into one of the Feet of a certain Horse of J. &c. at N. by which it became putrid, so that the same Horse for a great long Time could not labour; and the same J. for the same Time the Profit of his foresaid Horse lost to his Damage, &c.

For

For it is the Duty of every Artificer to exercise his Art aright, and truly as he ought. And every Man that publickly professes any Art or Science, promises to the Publick that he will do it in a right Manner.

An Original Writ on a Promise to cure a Horse. *Promise to cure a Horse.*

*THE King to the Sheriff, &c. If R. P. shall make thee secure, &c. Then put by Sureties and safe Pledges T. That he be (such a Day in Court) &c. to answer to the foresaid R. of a Plea, why, whereas the same T. for a certain Sum of Money between the said T. and P. before hand agreed, had undertaken (or promised) at L. &c. to cure a certain Horse of him P. of the Price of 8l. of a certain Infirmity wherewith he was seized (yet) the foresaid T. so negligently and improvidently employed his Cure (Cure) about the said Horse, that for Default of the due Care of him T. the foresaid Horse died (perished) to the Damage of him P. 10 l. &c.*

An Original Writ on a Promise to build and repair Houses. *Promise to build Houses, &c.*

*THE King, &c. ——— Put D. H. &c. to answer to T. B. of a Plea, Why, whereas the same D. certain Houses on the Manor of him T. B. within a certain Time now elapsed, for a certain Sum of Money between them before agreed on, well and sufficiently to new build, make and repair at E. had assumed, that the said D. the Houses aforesaid, within the Time aforesaid, took no Care for erecting or repairing the*

*See old The-  
saur. Brev. 88.*

*the foresaid Houses within the Time aforesaid, whereby the Timber of the said T. by Rain Waters, for Default of due Erection and repairing of the Houses aforesaid, became rotten, and could be of no Service in building or repairing the said Houses. So that the said T. the Profit, which of the Houses and Timber aforesaid, if the said Houses had been well and sufficiently within the Time aforesaid, made, erected and repaired, he might have received, he totally lost, to the Damage of the said T. &c.*

Note; in this Case it seems the Timber was the Plaintiff's own, and prepared before Hand, tho' not so clearly express'd in the Writ, the antient Method being to make one general Writ serve for many particular Purposes.

*The most usual Form of an Orig. in B. R. on a Promise by Word.*

But the Practice of former Times is now changed, and the most usual Method in order to ground an Action on a Promise by Word or Writing at this Day is, to lay several Counts in the *Original Writ*, as well as in the Declaration, as in the following Precedent, viz.

An Original in B. R. on a Promise to pay (at the Day of Marriage, &c.) for Goods sold and delivered.

See Institutio  
Legalis 93.

Middlesex Sess. *The King to the Sheriff, &c. If A. B. shall make thee secure, &c. then put, by Gages and safe Pledges C. D. in thy County, Taylor, of a Plea (to shew, &c.) why, Whereas the same A. (such a Day, Year and Place) at the special Instance and Request of the foresaid C. had bargained and sold to the fore-  
said*

said C. twenty Yards of Woollen Broad Cloth, <sup>1 Count.</sup>  
 at the Rate and Price of 15 s. for every Yard  
 thereof; And also other twenty Yards of other  
 Woollen Broad Cloth, at the Rate and Price of  
 10 s. for every Yard thereof; the foresaid C.  
 afterwards, to wit, the same Day, Year and  
 Place aforesaid, in the County aforesaid, in Con-  
 sideration thereof, assumed upon himself, and to  
 the same A. then and there faithfully promised,  
 that he the foresaid C. the foresaid Sum of  
 (Pence) Money for the same, in the whole a-  
 mounting to 25 l. of lawful Money of Great  
 Britain, to the same A. upon the Day of the  
 Marriage or Hour of the Death of him C.  
 (which of them should first happen) well and  
 faithfully would pay and content. And also,

Whereas the foresaid C. afterwards, to wit, <sup>2 Count.</sup>  
 the Day, Year and Place aforesaid, in the  
 County aforesaid, was indebted to the foresaid  
 A. in other 25 l. of lawful Money of Great  
 Britain, for other forty Yards of Woollen Broad  
 Cloth by him A. to the foresaid C. before that  
 Time sold and delivered; the foresaid C. in  
 Consideration thereof, then and there assumed  
 upon himself, and to the same A. faithfully  
 promised, that he the foresaid C. the foresaid  
 25 l. last mentioned to the same A. at or upon  
 the Day of the Marriage or Hour of the Death  
 of the foresaid C. which of them should first  
 happen, would likewise well and faithfully pay  
 and content. And the same A. in Fact saith,  
 that the foresaid C. afterwards, to wit, such  
 a Day and Year, and Place aforesaid, in the  
 County aforesaid, was married to one J. H. yet  
 the said C. his Promises and Assumptions aforesaid  
 no wise regarding, but contriving and frau-  
 dulently intending the same A. in this Part

Averment of  
 the Marri-  
 age.

(Par.



## Of a Writ of Assumpsit.

*(Particular) craftily and subtilly to deceive and defraud, the foresaid several Sums of Pence (Money) in the whole amounting to 50l. of lawful Money of Great Britain, to the same A. hath not yet paid, or any wise contented for the same. But to do this, the foresaid C. (altho' by the same A. he hath been often (thereto) requested) hath altogether refused, and hitherto doth refuse, to the Damage of him A. 100l. as it is said.*

To which ought to be added (*and have then there the Names of the Pledges and this Writ. Witness, &c.*) which shews the Day of the Return ought to be mentioned above at, *To shew, &c.* on such a Return in such a Term, *i. e.* the Day on which the Writ is returnable. But instead thereof the Attorney only delivers a Note to the Cursitor, thus:

*Original returnable in the Kings Bench in fifteen Days of Easter, (or eight Days of Hillary, &c. as the Return is) wheresoever, &c. (i. e. wheresoever the Court of B. R. sits) and signs it thus:*

*W. Brown, Attorney for the Plaintiff.*

And leaves it to the Cursitor to make out the Writ afterwards accordingly.

A Precedent of an original *Process* in C. B. on a *Promise* laid with several Counts, both in *Latin* and in *English*.

GEORGIUS *secundus Dei Gra. Magn. Note ; this*  
 Brit. Fran. & Hibern. Rex, *Fidei Defensor,* is an original  
 &c. *Vic. Middlesex salutem. Præcipimus tibi* Process, but  
 quod capias W. B. *nuper de Medio Templo, in* not an origi-  
 Com. tuo *Ar' si invent' fuerit in Balliva tua &* nal Writ, it  
 eum salvo *Custodias ita quod habeas corpus ejus* being *Teste*  
 coram *Justiciariis nostris apud Westminster a* *Roberto Eyre,*  
 die *Scæ' Trin' in tres Septi'an' ad respondend'* only, nor  
 J. R. *Gen. de plito' quare cum prædict' W.* can a *Capias*  
*decimo quarto die Martii Anno Dom. millesimo* in this Case  
*septingentesimo vicesimo septimo apud Westmin-* be by origi-  
*ster in Com. Middlesex prædict. indebitat'* nal Writ.  
*fuisse eidem Johanni in Quinq; Libr. bonæ &*  
*legalis monet. Magn. Brit. pro opere & labore*  
*ipsius Johannis per ipsum Johannem pro eodem* 1st Count.  
*Willielmo & ad special' Instanc' & requisition'*  
*ipsius Willielmi ante tempus ill' fact' & per-* Pro Opere,  
*format' & sic inde indebitat' existen' idem Wil-* &c.  
*lielmus in considerat' inde postea scil' eisdem*  
*die & Anno suprad' apud Westm' præd' super se*  
*assumpsit & eidem Johanni adtunc & ibidem fi-*  
*delit' promisit quod ipse præd' Willielmus præd'*  
*quinq; libr' ult' mentionat' præfat' Johanni*  
*cum inde postea requisit' esset bene & fidelit'*  
*solvere & contentare vellet Cumq; etiam præd'* 2d Count.  
*Willielmus postea scil' eisdem die & Anno su-* *Quantum*  
*præd' apud Westm. præd' in considerat' quod* *meruit.*  
*præd' Johannes ad similes special' instant' &*  
*requisition' ipsius Willielmi fecisset & perfor-*  
*masset pro eodem Willielmo al' opera & labores*  
*super se assumpsit & præfat' Johanni adtunc*  
*& ibidem fidelit' promisit quod ipse idem*  
 Willi-