

These Articles were in Derogation of the Common Law.

Articles lately granted to the Prelates and Clergy of our Kingdom of England; it is contained, That in Tithes, Oblations, Obventions and Mortuaries, when propounded under these Names, the Regal Prohibition shall not have Place. We willing to order our said Writ of Prohibition to be revoked, and to reach (extend) our Writ of Consultation unto the foresaid Official to proceed in the Cause' aforesaid: We willing to do what is just in the Premisses to the Parties aforesaid, do command thee, that thou cause the said T. and R. to know, that they be in our Chancery on the Morrow of the Epiphany next coming, wheresoever it (the Chancery) shall then be; to shew (if any thing for themselves they have or know to say) why our said Writ of Prohibition to be revoked, and our other Writ of Consultation to the foresaid Official, to proceed in the Cause aforesaid, ought not to be reached, and further to do and receive what our Court shall consider in this Part; and have there the Names of those by whom thou hast caused him to know, and this Writ, &c.

See a *Supersedeas* to this or the like Writ, *Regist. Judic.* 72.

Of Writs of Superfedeas, (Sur- cease thou.)

WE have before, under Title *Prohibiti-* A Superfedeas
described.
on, hinted at the Similitude there is
between *Prohibitions* and *Superfedeas's*, which
will further appear from a Definition or De-
scription of this later Writ, *viz.*

A *Superfedeas* is a Writ prohibiting the if-
suing out or executing of some other Writ
or Procefs. And this as the former is multi-
farious in its Forms: For which see Reg.
Orig. 5, 11, and *Judic. per tot. Thesaur. Brev.*
290 to 301, *Officina Brev.* 364 to 383, &c.
But the most usual *Superfedeas's* are *Superse-*
deas's of Privilege; as for a Clerk or Attor-
ney of the Court, or to set aside an errone-
ous Procefs or Judgment.

Some of those Forms are in the *Institutio*
Legalis, which we shall here translate; but
many more may be found in the Books a-
bove cited.

A *Superfedeas* of Privilege for a Clerk of the
Chief Clerk in B. R.

GEORGE the Second, &c. To the Mayor, A Superfedeas
of Privilege.
See Instit.
Leg. 125.
And Tit.
Privilege.
ante.
Aldermen and Sheriffs of London, Greeting.
Whereas, as well from our Royal Dignity (Pre-
rogative) as from antient Custom pursuant to the
same in Times past used, and hitherto approved,
it has been shewn, that all and singular our
Chief Clerks, assigned to inrol Pleas in our
Court before us, and their Clerks for the Time
being, ought not, nor for (during) the whole
Time

Time aforesaid have been accustomed to be drawn or compelled to answer before any secular Judges, otherwhere than in our Court before us, upon any Pleas or Plaints, Pleas of Freehold only excepted. And now of the Part of T. G. Gentleman, one of the Clerks of E. V. Esq; our Chief Clerk for inrolling Pleas in our said Court before us, we have received, that notwithstanding the Dignity (Prerogative) and Custom aforesaid, certain evil minded Persons, lightly weighing the Dignity and Custom aforesaid, have drawn into Plea in our Court before you the foresaid T. G. by Pretext of divers Plaints levied before you against the same T. G. in Contempt of our Dignity, the manifest Hurt and Enervation of the Custom aforesaid, and to the no small Expence and Grievance of him T. G. which Thing if permitted to others might hereafter turn to a pernicious Example: Therefore we command you, by firmly injoining, that you do surcease, and that every of you do altogether (wholly) surcease from further proceeding before you, or any of you, in the Plaints aforesaid, you saying to the Parties prosecuting those Plaints before you in the Form aforesaid, that they may come to our Court before us to follow (seek) for Justice there in that Particular, if to them it shall seem expedient (if they shall think fit). Witness, &c.

Surcease.

A Superedeas on a Latitat.

On a Latitat.
Infit. Leg.
126.

GEORGE, &c. To the Sheriff of D. Greeting. Whereas we lately commanded thee, that thou shouldst take A. B. if he was found in thy Bailiwick, and safely keep him so, that thou shouldst have his Body before us at Westminster, such a Day, to answer to C. D. of a Plea of Trespass: Yet because the same A. B. hath now
appeared

appeared in our Court before us, and hath put in Bail to answer to the foresaid C. D. of the Plea aforesaid: Therefore we command you, that from the taking, arresting and imprisoning of the foresaid A. B. for the Occasion aforesaid, you altogether surcease. And if the same A. for that Occasion and none other, you shall have taken, and in Prison detained, then from the Prison where he shall so for that Occasion, if for that Occasion and none other, be detained, you do cause him to be delivered without Delay, on the Peril incumbent. Witnesses, &c.

A Superfedeas on a Habeas Corpus after a Pro- cedendo.

GEORGE, &c. To the Mayor, Aldermen and Sheriffs of London, Greeting. Altho' we lately by our Writ commanded you, that the Body of A. B. in our Prison under your Custody, as 'tis said, detained under safe and secure Conduct, together with the Day and Cause of his taking and detaining, by whatsoever Name the same A. was charged in the same (Prison) you should have before our beloved and faithful R. E. Knt. one of our Justices assigned to hold Pleas in our Court before us, at his Lodgings (Chambers) at Serjeants Inn in Chancery-Lane, London, immediately after the Receipt of that Writ, to do and receive all and singular those Things which our said Justice should then and there consider (adjudge Q.) concerning him. And altho' for certain Causes us in our Court specially moving, we lately commanded you and every of you, that in certain Plaints against him A. at the Suit of E. F. levied or affirmed in your Court before you, or any of you now (depending) undetermined,

On a Hab.
Corp. after a
Procedendo.
Ibid. 127.

A Judge
can't judge
at his Cham-
ber or else-
where in
private.

Of Writs of Superedeas.

determin'd, you should proceed with what Celerity you could, in such Manner as you should see was to be proceeded according to the Law and the Custom of England, and of our City of London, our foresaid Writ of having the Body to you before, to the contrary thereof directed, in any Manner notwithstanding. And because the foresaid Writ of Procedendo improvidently issued; and because the same A. in our Court before us hath found sufficient Mancaptors to answer to the foresaid E. F. in the Plaints aforesaid; Therefore we command you, that you altogether (wholly) surcease from all further proceeding in the foresaid Plaints (before you) by Virtue of the foresaid Writ of Procedendo, on the Peril incumbent. Witness, &c.

Of Writs upon Statutes.

WE have already exhibited in several *Writs on Statutes.* Parts of this Treatise, divers Writs founded on Statutes, and therefore shall be the more brief under this Head. See *Scandalum Magnat.* in Title Case, and pag. 160, &c.

The Form of a Writ on the Statute of *Magna Charta* against wrongful Imprisonments.

GEORGE, &c. Command D. C. late of; *On the Stat. of Magna Charta, 1 H. 3. c. 29, Officin. Brevis. 400.*
 &c. to answer to a Plea, that whereas in the great Charter of the Liberties of England, set forth and provided in the ninth Year of the Reign of the Lord Henry the third, late King of England, (Progenitor of the Lord the King that now is) it is among other Things ordained and established, That no Freeman should be taken, imprisoned or disseised of his Freehold, or of his Liberties and Free Customs, or outlawed, or in any Manner destroyed: Nor that the same Lord the King would pass upon him (i. e. by Judgment) nor that it should be sent upon him (i. e. no Writ of Execution should be against him*) but by lawful Judgment of his Peers, or by the Law of the Land (i. e. where it allow'd another Manner of Trial) as in the same Stat. is more fully contained. And whereas the foresaid A. B. is a Free Man, and ought to use and enjoy the fore-

* See 2 Inst. 46. &c. this otherwise expounded, but without Ground, as I conceive.

said Liberties and Free Customs, and not to be disquieted, disturbed therein, contrary to the Form of that Stat. (yet) the foresaid C. D. not ignorant of the Premisses, but maliciously purposing the Enervation of the Liberties foresaid, and intending him A. B. should in no wise use the same (or intending to deprive him A. B. from using or enjoying the same) certain Letters of the now Lord the King, under the Seal of the said Lord the King's Privy Seal, by the special Labour of the said C. D. formed and prosecuted, and directed to the said A. B. and at the Town of Newcastle upon Tine, within the County of the same Town (such a Day and Year) caused to be delivered to him A. B. commanding him to appear before the Council of the said Lord the King, wheresoever he should then be, within fourteen Days next after the Delivery of the foresaid Letters; touching the taking, carrying away and detaining of a certain Vessel of the Goods and Chattels of the foresaid C. D. by the same A. B. at the foresaid Town of Newcastle supposed to be taken; whereas the same C. D. in such a Case might have had his Action of Detinue or Trespass by Original Writ, according to the Law of the Land; and thereupon on the Accusation of him C. D. the same A. B. was sent (for) before W. L. then Dean of the Chapel of the now Lord the King, and T. W. (Lord) Almoner of the same Lord the King, to the Town (City) of Westminster, in the County of M. to answer (the Premisses) And for having his Discharge in that Behalf, expended a great Sum of Money, to wit, 40 l. and (suffered) many other Labours and Expences, and is also much fatigued and depressed
by

by the Labour and Inquietude of his Body, contrary to the Liberties and free Customs aforesaid.

A Writ on the Statute 26 H. 6. against an
Undersheriff for Extortion.

GEORGE, &c. Command T. C. late of, &c. to answer to R. R. who sues as well for the said Lord the King, as for himself, of a Plea, that he render to them 40 l. which to the same Lord the King, and to the same T. C. he owes, and unjustly detains: And whereof the same T. C. complains, that whereas in the Statute set forth in the Parliament held at Westminster, in the County of M. in the twenty-sixth Year of the Reign of Henry the sixth, late King of England, it is among Things ordain'd and established, That no Sheriff, Under-Sheriff, or their Clerks, Coroner, Steward, Bailiff of a Franchise, Keepers of Prisons, &c. (and so recite the Statute as to the Offence and Penalty) and that the King is to have one Moiety to be applied to the Use of his House, and in no other Manner, and the Person who will prosecute, the other Moiety, as in the same Statute is more fully contained: Yet the foresaid T. C. the ninth Day of September, in the third Year of the Reign of the now Lord the King, being then Under-Sheriff, to L. M. Esquire, at that Time Sheriff of the foresaid County of S. by Colour of his foresaid Office, did at W. in the foresaid County, extorsively take from the foresaid R. R. six Shillings, to his own proper Use, for making of a certain Panel, upon a certain Writ of the said Lord

For Extortion in an Under-Sheriff. *ib.* 392.

Lord the King of Venire Facias duodecim (do thou cause twelve to come) &c. at that Time directed to the said Sheriff of S. in a Plea of Debt between the same R. R. and one W. F. Plaintiffs, and J. F. against the Form of the said Statute, whereby an Action is accrued to the same R. R. who sues as well for the said Lord the King, &c. to demand and have from the foresaid T. C. as well for the said Lord the King, as for himself, the foresaid 40 l. yet the foresaid T. C. altho' often thereto required, hath not rendered to the said R. R. who sues as well, &c. the foresaid 40 l. but hitherto hath refused, and as yet doth refuse to render that (it) to him, to the Damage of him R. R. &c. (as 'tis said). Witnesses, &c.

A Writ on the Statute of Maintenance.

On the Stat. of Maintenance. See Offic. Brev. 389.

THE King to the Sheriff, Greeting. We command thee, that thou take B. D. late of; &c. to answer to E. W. of a Plea why, whereas in a Statute set forth (made) in a Parliament held at Westminster, in the County of M. in the Thirty-second Year of the Reign of the Lord Henry the Eighth, it was among other Things enacted by the Authority of the same Parliament, That no Person or Persons of whatsoever State, Degree or Condition, he or they might be (were of) should from thence following unlawfully maintain, cause or procure, &c. (See the Stat.) And also, That no Person or Persons, of whatsoever State, Degree or Condition he or they were of, should from thence following, unlawfully retain, &c. as in the Clause against Imbracers;

braceors, &c. on Pain of forfeiting for every such Offence Ten Pounds, whereof one Moiety should be to the said Lord the King, &c. the other Moiety to such as would sue for the same by Action of Debt, Bill, Plaint or Information, in any Court of the said Lord the King, in which Action no Es-join, Protection, Wager in Law, or Injunction shall be allow'd, as in the same Statute more fully appears. Yet the foresaid B. D. no way regarding the Statute aforesaid, nor fearing the Penalty in the same Statute contained, did, on the sixth Day of November, in the third Year of our Reign; and on the eighth Day of February, in the fourth Year of our Reign at B. in the said County of M. unlawfully maintain and sustain a certain Plaint in a certain Cause which was (then depending) in the Court of the Lord the King, before the King here, to wit, at Westminster, between the said E. W. and one R. O. of a Plea of Trespass and Ejectment, on the Part and Behalf of the said R. O. to the manifest hindring and Disturbance of Justice, and in Contempt of the said Lord the King, and to the great Damage of the same E. W. who sues as well, &c. and against the Form of the Statute aforesaid; for which the foresaid B. D. ought to satisfy to us, and to the said E. W. who sues as well, &c. 20l. to wit, for each Offence 10l. whereby an Action is accrued to the said E. W. who sues as well, &c. to demand and have of the foresaid B. D. as well for us as for himself, the foresaid 20l. yet the foresaid B. D. altho' often thereto required, &c. (as above).

N.B. This Conclusion seems better than the former.

Here is an Error in the Original.

Of Writs upon Statutes.

These Precedents, with what is before said, may be sufficient to shew the Nature and Forms of Writs on penal Statutes, wherein you are chiefly to take Care, that the Statute be truly recited; for the least material Mistake or Error therein, will abate or make void the Writ.

See and Note *Officia. Brev.* 386 to 404. where may be seen Variety of Forms of Writs on Penal and other Statutes.

OF WRITS OF TRESPASS.

WE have already under the Titles of *Writs of Trespass.* Writs for *Nuisances*, and Writs on *Their Nature* the *Case*, hinted at the Nature, and shewn *and Kinds.* some of the Forms, of Writs of *Trespass*, &c. But we may here further observe, that there being, as is there shewn two Kinds, of Writs of *Trespass*, *viz.* *Trespass* in general, and *Trespass* on the *Case*; this latter is *vicontiel*, empowering the Sheriff to be Judge therein, and is not returnable, nor has it usually the Words *vi & armis* (with Force and Arms) therein. But the former, of which we now come to Treat, is to be sued in the Kings Bench, or Common Pleas, and hath always *those* Words therein, as may appear from the following Precedents.

An original Writ in Assault and Battery.

GEORGE, &c. *To the Sheriff of Cornwall Greeting. If F.M. shall make thee secure for prosecuting his Clamour, then put by Gages and safe Pledges, J.R. late of, &c. in thy County, Gentleman, that he be before us in 15 Days from the Day of St. Martin, wheresoever we shall then be in England, to shew why (wherefore) he with Force and Arms on him F. at W. made an Assault and him beat, wounded and evilly treated, so that of his Life it was despaired, and other enormities did to him, to*

Assault and Battery. Thef. Brev. 168.

C c 2 the

the great Damage of him F. and against our Peace; and have (thou) then there the Names of the Pledges and this Writ. Witness myself. &c.

Pledges of Prosecuting John Doe and Richard Roe.

Return

The within named J. R. has nothing in my Bailiwick whereby he may be attached.

The Answer of T. J. and J. U. Sheriffs.

The Entry of which Writ and Return, and the Award of a Capias (take thou) thereon, is thus.

CORNWAL SESSION. And the aforesaid F. M. offered himself here the fourth Day against the said J. R. late of, &c. of a Plea, why he with force of Arms, &c. on him F. at W. made an Assault, and him beat, &c. to against the Peace, &c. and he (the Defendant) cannot. And it was commanded to the Sheriff that he attach him, &c. and the Sheriff now sends (Returns) that he has nothing, therefore let him be taken, that he be before the Lord the King, on the Morrow of holy Trinity, wherefoever, &c.

A Capias awarded.

An original Writ, for a Trespafs in his Free Warren

T H E King, &c. to the Sheriff of S. Greeting: If R. P. shall make thee secure, &c. then put by Gage and safe Pledges W. H. late of, &c. that he be before us in three Weeks from after the Day of St. M. to shew why he with Force and Arms the free Warren of him R. entred, and therein without his Licence and Will

Trespafs in Free Warren old. Trespafs. 79

Will be pursued, (hunted) and his Hares, Conneys, Pheasants and Partridges, took and carried away, and other Enormities did to him, to the great Damage of him R. and against our Peace, and have (thou) then there, &c.

For driving and biting Cows with Dogs, &c.
the Writ is thus:

T H E King, &c. to shew why he with Force and Arms, six Cows of him J. at G. &c. with certain Dogs, drove (hunted) and incited those Dogs to bite the Cows aforesaid, so far, that by the driving, (hunting) and biting of the said Dogs, four Cows of the Price of 8 l. of the said six Cows perished, (died) and the Residue of the said Cows being big with Young cast their Calves abortive, and other Enormities did to him, to the great Damage of him, &c. (as above.)

Driving Cows, &c.
Ibid. 90.

For a Trespafs in digging in and drowning his Meadow, &c.

T O shew why they with Force and Arms, &c. the close of him R. to wit, one Acre of Meadow planted with Oziers, and called the Ozier Hope in B. in the said County of D. lying near and abutting on a certain Rivulet, there running and flowing on the North Side, did break and Enter, and the Soil of that Close with Spades, Mattocks and other Instruments did Dig, and 50 Cart-loads of that Soil so Dugg to the Value of 25 l. did take and carry away by reason whereof the same R. not only a great Part of his Close, to wit, nine Perches in Length, and ten Feet of Assize in Breadth, totally lost,

Digging and drowning his Meadow. Ibid. 91.

but also the whole Residue of that Close, by reason of the violent Course of the Water of the Rivulet aforesaid, thereupon running and flowing with greater Force than before against, upon and over the Banks of the same Close, became in great Danger of being totally mudded, wasted and lost; and other Enormities, &c.

For Precedents of Declarations and Pleadings on these Writs, see the *Inst. Legalis* and the Compleat *English Attorney*, &c.

How the Jurisdiction of B. R. came to be extended to civil Suits.

'Twas under Colour of this Writ of Trespafs, that the Court of King's Bench first exercised a Jurisdiction in *civil* Causes and Actions between Subject and Subject; for whereas, by the common Law every Court was allotted its proper Limits in the Cognizance of Causes, so thereby only criminal Cases and their Dependants, as Breaches of the Peace and Trespafses were cognizable in that Court, and all Matters of controverted Rights between Subject and Subject were to be determined either in the Country Courts, or (if the Matters were of Importance in their Nature or Value) in the Court of *Common Pleas*, which therefore by the common Law, (before *Magna Charta*) was fix'd in some certain Place, (as *Winchester*, *Westminster*, &c.) whereas the *King's Bench* was always ambulatory, and followed the King's Person, *wheresoever he was in England*, as appears by the Form of all Writs returnable in that Court. But that Court soon found the Way of encroaching on the Jurisdiction of the *Common Pleas*, and the Subjects Liberty; at first by *original Writ*, charging the Defen-

dant

dant to have *with Force and Arms* broken the *Peace*, in committing a *Trespafs*, &c. whereby they were enabled to bring such Defendant into that Court in Custody of the King's Marshal; and having him so in Custody, to charge him with any other personal Action whatsoever. For the *King's Bench*, by having Possession of the Person, excluded all other Courts from having any Jurisdiction over him.

Note, Tho' the King's Marshal could arrest in such Case, yet the Sheriff could not but on Security to indemnify him, &c.

After this, when the Method of proceeding by Original Writ was thought to be inconvenient to that Court, because it very much restrained the bringing of Actions, by forcing Plaintiffs to pay a Fine to the King on suing out the Writ, and also to give good Security to the Sheriff that their Claims or *Clamors* were just (for so is that Clause *si fecerit se securum*, &c. to be understood) and after all that the Defendant's Body could not be arrested, but only summoned, &c. another Method was introduced, and which is practised at this Day, *viz.* To Arrest the Body by Bills of *Middlesex* and *Latitat*, which was introduced thus :

The Chief Justice of that Court claiming, by Virtue of his Office, to be chief *Conserver* of the *Peace* under the King, within the County where that Court for the Time being resided, (which is now *Middlesex*) necessarily drew with it a Power to take any Person into Custody for a *Trespafs* or Breach of the *Peace*, by his Precept or Warrant (now called a Bill of *Middlesex*) in the following Form.

The Original of Bills of Middlesex.

Form of a
Bill of Mid-
dlesex.

Middlesex ff. *It is commanded to the Sheriff that he do take A. B. if he be found in his Bailiwick, and that he do keep him in Safety, so that he may have his Body before the Lord the King at Westminster, on Thursday, &c. next after such a Return, to answer to B. of a Plea of Trespafs; and let him have there then this Precept.*

By Bill. Ventrif.

Only a Reci-
tal of a Com-
mand, and
tested only by
the Clerk.

So that this Precept properly speaking, is only the Recital of a Command, and is so far from being in the Name of the King or the Chief Justice, that 'tis only attested by the chief Clerk on the Plea Side of that Court, tho' it supposes a Matter of Crime, viz. a Trespafs, &c. and yet on this Foundation is all the civil Jurisdiction of that Court erected.

All Latitans
founded there-
on.

And hence it is, that in the *Latitat*, or first Process to any other County than *Middlesex*, this Bill of *Middlesex* is always recited to have first issued to, and been returned by the Sheriff there, *that the Defendant could not be found in that County: And that it having been testified in Court, that the Defendant lay hid, &c. in some other County, therefore this Process of Latitat issued to take him in such other County; which was as a recenter Processus to take such supposed Criminal in such other County, for that he had fled from Justice in the County of Middlesex, where the original Precept issued as aforesaid; and, thus by this Process of Bill of Middlesex, Latitat, (which always suppose a Crime committed)*

the

the Subject became liable to Arrests, tho' the true Cause of Action was only Debt or Covenant, or Contract, &c.

And when the Parliament of 13 Car. 2. *The Clause endeavoured to restrain Arrests, &c. to 20l. ac etiam or upwards, the Courts at Westminster soon found a way to evade that Act, by introducing the acetiam Bille Clause into their Processes: Sed de hoc alibi.* *Billa, &c.*

The Form of a *Latitat* at this Day is in English thus :

GEORGE, &c. *To the Sberiff of D. Greeting: Whereas we had lately commanded to our Sberiff of Middlesex, that he should take A. M. and C. N. if they might be found in his Bailywick, and keep them safely, so that he had their Bodies before us at Westminster, at a certain Day now past, to answer to B. D. of a Plea of Trespafs*. (And also the separate Bill of him B. against the aforesaid A. and C. for 10 l. of Debt, Covenant, &c.) to be exhibited before us according to the Custom of our Court †.) And our said Sberiff of Middlesex at that Day returned to us, that the aforesaid A. and C. were not found in his Bailywick: Whereupon on the Behalf of the said B. it was sufficiently attested in our Court before us, that the aforesaid A. and C. Seulk and Strole in thy County; therefore we command thee that thou take them if they may be found in thy Bailywick, and safely keep them, so that thou have their Bodies before us at Westminster, (such a Return-Day) to answer to the aforesaid B. of the Plea (and Bill) aforesaid, and have there then this Writ. Witness Raymond, &c.*

Form of a *Latitat.* See *Instit. Legalis* 46.

* Thus far the Recital is generally false, &c.
† If the Action be only Trespafs, this Clause is omitted. See p. 396.

OF Writs of Trover and Conversion.

*Writs of Tro-
ver, &c.
their Nature.
See Instit.
Leg. 487.*

A Writ of Trover, &c. may well be said to be in its own Nature, only a special Writ on the Case, for that the Nature and Circumstance of the Case are to be specially set forth therein ; and lies against a Person, who has gotten another's Goods into his Possession, and refuses to deliver them upon Demand. And wherever any Man has my Goods in his Possession, tho' it be by Delivery or otherwise, (if the Property is not altered by Sale or Exchange, &c.) and he sells them, or makes Use of them, without my Consent, or refuses to re-deliver them, &c. in all these Cases Trover lies ; wherein I shall recover the Thing itself, if it may be had ; or if not, the Value in Damages for the Conversion : And Note, a Denial or Refusal to re-deliver them on Demand is now esteem'd in Law to be an actual Conversion ; and this on good Reason.

*Wager of
Law. See
Deuina.*

Note ; There is little Difference between this Action and an Action of *Detinue*, whereof we have treated in its proper Title, only for that in *Detinue Wager of Law* is allowed ; (See there the Form) which is not in this Action ; and as either *Detinue*, *Replevin* or *Trover*, will lie of a Bag of Money, so the Writ and Declaration in all those Actions do suppose the Bag to be the Principal, and the Money only as an Appendix. See before *Tit. Replevin*.

And

And in forming your Writ herein, you are to pursue the Substance of your Declaration (as in *Case, &c.*) according to the following Form, *viz.*

THE King to the Sheriff, &c. If A. B. shall make thee secure, then summon C. D. by good Summoners, that he be before us, &c. such a Day, &c. to shew why, whereas the same C. was possessed of one Leathern Bag, of the Value of 6 d. and of 100 l. in Monies, numbred, in the same contained, as of the proper Bag and Monies of him C. and being so possessed thereof, the same C. casually lost out of his Hands and Possession the same Bag, and the same Money, to wit, 100 l. in the same Bag contained; which said Bag and the said Monies therein so contained, afterwards at such a Place came to the Hands and Possession of the foresaid A. B. by finding; yet the foresaid A. knowing the said Bag and the said Monies therein contained, to be the proper Bag and Monies of him C. and of Right to belong and appertain to him C. and contriving to deceive and defraud him C. of the same Bag and Monies, afterwards, to wit, at N. aforesaid, he the said C. disposed and converted the same Bag and Monies to his own proper Use, as 'tis said, to the great Damage of him A. and against our Peace: And have thou then there the Names of the Summoners, and this Writ. Witness, &c.

Form of the Writ.
See the Treatise of Trover, 141.

And the like Writ (*mutatis mutandis*) may be formed in any other Action of Trover. But we are to note, that in this and all other personal Actions, the Method now is not to proceed by Way of Original Writ, but only

Process of *Latitat*, and *Clausum* by *Fregit*.

Latitat
ante 395.

by first Process, viz. by Bill of Middlesex or Latitat in B. R. and by a Clausum fregit in C. B. in which Processes there is an *Acetiam* (And also) Clause inserted, which shews the Nature of the Action; which in Trover, viz.

In Trover.

And also for converting and disposing of the Goods and Chattels of him B. (the Plaintiff) to the Value of 100 l. 1 Keb. 598.

In Trespass.

If in Trespass, say, For taking and carrying away the Goods and Chattels of him B. to the Value of, &c. Q. ante 393.

In Debt.

If in Debt, say, For Ten Pounds (or other greater Sum) due and owing to the said B. &c.

On a Promise.

If in Assumpsit or Promise say, For not performing his Promise and Assumption (Undertaking) to the Damage of the said B. 20 l.

And the like in other Cases, according to the Rules laid down in *Institutio Leg.* 45. But note, in B. R. they add, According to the Custom of the Court of the said Lord the King, before the King himself to be exhibited. And have thou then there this Precept. Witness Raymond.

Per Bill. Ventris.

On which the Attorney's Name must be indorsed, and the Day when sued out.

See the late Stat. for regulating Attornies.

Of the Writ De Ventre Inspiciendo,
(of inspecting the Body.)

THIS is a Writ provided by the *Common Law* (in Imitation of the antient *Roman Law*) to prevent the Damage that may arise to true and lawful Heirs, from false and supposititious Births. For (says my Anthor) in old Time Women used now and then to feign themselves with Child, and have owned borrowed Brats, to deprive the right Heir of his Inheritance.

A Writ De Ventr. Inspic. what it is, &c.

See, Lex Spurioꝝ, pag. 112.

Bracton in his second Book, *cap. 32.* has a large Discourse concerning supposititious Births, and recites no less than nine or ten several Writs used on that Occasion; and says, that the like Writ was issued in 5 *H. 3.* to the Sheriff of *Norfolk*, in the Case of one *Mariel*, the Widow of *Will. de Manton*, in that County, and that she was found guilty of this Kind of Fraud, &c.

See Bract. fol. 69, &c.

And the like Course against false Births may be found in *Fleta, lib. 1. cap. 15.* and in *Britton, cap. 66. fol. 165, 166.*

Fleta. Britton 165, &c.

And in the *Register of Original Writs*, the Form of the Writ is thus:

Reg. Orig. 227.

THE King to the Sheriff, Greeting. A. hath shewn unto us, that whereas R. who was the Wife of C. is not pregnant (with Child) she falsly saith, that she is pregnant by the said C. to the Disberison of him A. of such Land, which was the Land of the same C. and ought to descend to him A. by Hereditary Right, as Brother and Heir of him C. if the foresaid R. shall

shall have no Issue by him. And because we are willing to binder (obstruct) so great a Malice, if it be intended, We command thee, that taking with thee twelve discreet and lawful Knights*, and twelve discreet and lawful Women of thy County, thou go in thy proper Person to the foresaid R. and before the foresaid Knights cause her to be viewed, and diligently to be examined and handled by her Breasts and Belly, by all the Means whereby thou mayst be better certified whether she be impregnated (with Child) or not. And if those Women shall find her the said R. impregnated, then thou shalt diligently inquire from (by) them of the Time when they believe she will bring forth (be delivered) and the Inquisition which thou shalt make thereof, cause thou to know (be known) to our Justices at the first Assises (or to our Justices at Westminster) evidently and distinctly by thy Letters sealed, and by two Knights of those who were present at that Inquisition, that so knowing the Truth thereof, we may do what is just. And have thou there the Names of the Knts. and Women, and this Writ. Witnesses, &c.

See Co. Lit.
8. l.

And that several of these Writs have, from Time to Time been issued. See Cro. Eliz. 566. Willoughby's Case, Moor's Rep. 123. N^o. 692. Cro. Jac. 685, 686. and Officin. Brov. 409. And note a very remarkable Precedent of an Entry thereon, in Moyle's Entries.

Note also; 'tis commonly said that this Writ is only triable at the Assises, or in C. B. and not in B. R. but *Quære Bracton, supra.*

* It seems not necessary they should be Knights tho' the Writ is so.

Of Writs of Waste.

THIS Writ properly lies where either Tenant for Years, Tenant for his own or another's Life, Tenant in Dower, or Tenant by the Curtesy do commit Waste, by pulling down of Houses, or suffering them to fall for Want of Repairs, or in cutting down of Timber, or digging of the Ground, &c. then he in Reversion shall have this Writ. And by the Stat. of Gloucester shall recover the Place wasted, and treble Damages. See *Instit. Leg.* 492 to 500, where 'tis shewn for what Wastes this Writ lies.

Waste,
where it lies,
&c.

Stat. Glouc.
6 Ed. 1. c. 5. 6.
See Westm. 2.
c. 14.

A Writ of *Waste* against Tenant for Life or Years, on the said Statute, is thus.

Against Te-
nant for Life
or Years.

Reg. Orig.

THE King to the Sheriff, Greeting. If A. shall make thee secure for prosecuting his Clamour, then summon thou by good Summoners B. of, &c. to appear before us, &c. such a Day, to shew Cause why, whereas of (by) the Common Council of England, it was provided, that it is not lawful for any (Person) to do (make) Waste, Sale (Spoil) or Destruction in Lands, Houses, Woods or Gardens, demised, leased to him for a Term of Life, or of Years: Yet the same B. in certain Lands (Houses, or Woods, or Gardens) in L. &c. which the foresaid A. leased to him for the Life of the said B. (or another's Life, or for a certain Term of Years) hath done Waste: Or thus: which F. the Father, or G. the Mother (or other Ancestor) of the foresaid A. whose Heir he is, leased to the foresaid B. for the Life of him B. or for a cer-
tain

73.

tain Term of Years, hath done Waste, Spoil and Destruction, to the Disherison of him A. and against the Form of the Condition aforesaid, as 'tis said. And have thou then there this Writ. Witness, &c.

And note; the Ground or Cause of the Writ whereon the Issue is to arise, is always express'd with (*as 'tis said*) for no such Fact ought to be positively averr'd in a Writ.

This Writ will also lie against a Tenant by *Elegit*, in the following Form.

Against Tenant by Elegit.

See Reg. Orig. 75.

THE King to the Sheriff, &c. If W. B. shall make thee secure, &c. then summon by good Summoners R. S. that he be, &c. to shew why, of Lands, Houses, Woods and Gardens in S. delivered to the said R. by our Writ of Elegit, to hold, until 20 l. adjudged to the said R. (in such a Plea in such a Court, &c.) should be levied of the same Lands (Houses, Woods, Gardens, &c.) the said R. S. had made Waste, &c. to the Disherison, &c.

See many other Forms of Writs of Waste in the Reg. 72, 73, 74, &c.

Against a Tenant in Dower. See F. N. B. 75. C.

But says *Fitzherbert*, the Form of a Writ of Waste against Tenant in *Dower*, doth vary from the Forms against other Tenants, it being in this Form, *viz.*

THE King to the Sheriff, &c. If A. shall secure thee, &c. then summon by good Summoners B. who was the Wife of C. that she be before our Justices at Westminster, in the fifteenth (Day after) Trinity (next) to shew why she made Waste, Spoil, Destruction and Exile in

the Lands, Houses, Woods, Gardens and Men, which she holds in Dower of the Inheritance of the foresaid A. in N. to the Disberison, &c.

And if it be against a Tenant by the Curtesy, the Form is thus:

Against Tenant by the Curtesy. See Reg. Orig. 13. a.

THE King, &c.—To shew why, whereas by the Common Council (Parliament) of England, it was provided, that it should not be lawful for any one to make Waste, Sale (Spoil) or Destruction in Lands, Houses, Woods or Gardens, demised to him for a Term of Life or Years, or in those which are held by the Law (Curtesy) of England: Yet the same B. in such or such Lands (Houses, &c.) which he holds by the Law (Curtesy) of England, of the Inheritance of the foresaid A. in M. hath made Waste, &c. to the Disberison of him A. and against the Form of the Provision (Provisio) aforesaid, as 'tis said; and have thou, &c.

For the Form of a Writ of *Witheriam*, see before in *Tit. Replevin*.

Thus far I have treated of the Nature and Forms of *Writs*, and should next proceed to the second operative Word in the before recited Statute, *viz. Processes*. But having already incidently shewn the most usual Forms of *Original Processes*, and the abundant Matter requisite to illustrate the same, thro' all their Branches requiring a larger Discourse than this Tract will admit, I must at present *postpone* the Consideration thereof, and therefore shall proceed to the third Operative Word in the said Act, *viz. Returns, &c.*

Of the Returns of Writs.

Returns of Writs.

THE Return of a Writ is properly the Answer that is made thereto by the Sheriff, Officer, or other Person to whom it is directed, shewing how far he has obeyed or executed the King's Command therein contained.

General and Special.

And this Answer or Return, if *general*, is usually endorsed on the Writ it self; but if it be *special* (as oftentimes it is) 'tis commonly engrossed in a distinct *Schedule* or Piece of Parchment, and annex'd to the Body of the Writ, and at the same Time, endorsing these Words on the Writ, *viz.*

Indorsed on the Writ.

The Execution of this Writ appears in a certain Schedule hereto annexed. A. B. Sheriff.

Or if by an *Escheator* } C. D. *Escheator.*
 or *Coroner*, &c. thus. } E. F. } *Coroners.*
 { O. P. &c. }

For it seems all the Coroners of the County are to be named (*sed Quære*); and so of Sheriffs, where there are more than one.

And in like Manner is a Commission returned, *viz.*

The Execution of this Commission appears, &c. } G. H. } *Commissioners.*
 { J. K. }
 { L. M. }

General Returns.

I shall here give some Forms of General Returns, and afterwards of such as are special

A General Return on an Original in *Debt*, &c. is either *nihil habet*, he has nothing, *non est inventus*, - he is not found; *sumonitus fuit*, he hath been summoned; or if the Defendant resides in a Liberty, *Mandavi Ballivo*, I have sent to the Bailiff, &c.

The Return of *Nihil* on an Original in *Debt*, *Covenant*, *Contract*, is thus:

Pledges of prosecuting are, John Doe, and Richard Roe, (i. e. no body).

The within named A. B. (the Defendant) has nothing in my Bailiwick, whereby he may be summoned. *Nihil Habet; in Debt, Covenant, &c.*
D. E. Esq; Sheriff.

Which Return supposes the Defendant *insufficient*, but in Fact 'tis often made when the Sheriff declines (perhaps in Favour to the Defendant) the Execution of the Writ; so that the Plaintiff is often forced to take an *Alias* and a *Pluries*, and perhaps a *Pluries Pluries* before he can get the Sheriff to summon the Defendant, in order to compel him to appear; and the chief Remedy he has for this Neglect is to get the Sheriff amerced, &c. which in the Manner now practised, is a Remedy worse than the Disease. *See beneath, the Return of a Summons in Covenant.*

And if the Writ (or Process) against the Defendant be a *Capias*, or a Command to take his Body, then the Sheriff usually returns in like Manner, and for like Purposes, a *non est inventus*; or, he is not found, thus. *Non est inventus.*

Pledges of prosecuting, John Doe; and Richard Roe.

Of the Returns of Writs.

The within named A. B. (and C. D.) is (or either of them are) not found in my Bailiwick
D. E. Esq; Sheriff.

And if there be three Defendants in the Writ, 'tis thus:

A. B. and the other Defendants within named, or any of them, are not found within my Bailiwick.
D. E. Esq; Sheriff.

Sumonitus.

But if no Favour is shewn to the Defendant, or he is willing to appear to the Action, then there is a Return of his being summoned, endors'd on the Writ thus:

The within named A. B. hath been summoned, and the Summoners are,
John Denn
and
Richard Fenn.
The Answer of D. E. Esq; Sheriff.

And these feigned *Summoners*, as well as the *Pledges* of prosecuting, are by the Practices of Sheriffs and Attornies, and the Connivance of Courts, &c. become *Essentials* in *Law*, tho' mere *Nullities* in *Fact*, whereby the very End and Intent of the *Common Law*, as to *Pledges* and *Summoners*, is utterly subverted. See before pag. 2, 3.

Nihil Habet
in Trespasses
and Torts.

The above Method is used in Returns on Writs of *Debt*, *Covenant* or *Contract*; but if the Original Writ be founded on a *Trespass* or *Tort* (*i. e.* a Wrong with Force, &c.) and the Defendant is insufficient, or the Sheriff does not think fit (for Reasons known to himself) to return *Pledges* for his Appearance, the Return is thus:

The within named A. B. (and C. D.) is (or either of them) have nothing in my Bailiwick, whereby he (they or either of them) may be attached, nor are they or either of them found in my Bailiwick.

D. E. Esq; Sheriff.

And if there be three or more Defendants in such Writ, then thus:

A. B. and the rest of the Defendants within named, have nothing in my Bailiwick, whereby they or any of them may be attached.

Attachiatus.

D. E. Esq; Sheriff.

But if the Defendant is sufficient, and willing to appear by Pledges or Bail (for Arrests in Trespasses *Vi & armis* were ever allowed, as I have before shewn) then the Sheriff returns the Pledges (or Bail) taken thus:

The Pledges for the within written J. R. (i.e. the Defendant) are,

John Mann
and
Rich. Rann.

Pledges for Appearance.

But if the Defendant be arrested, and does not give Bail for his Appearance, then the Sheriff must return a *Cepi Corpus* (I have taken the Body) for his own Indemnity, which is usually endorsed on the Writ thus:

By Virtue of this Writ to me directed, I have taken the Body of the within A. B. whose Body I have ready (to bring) before the Justices at the Day and Place within contained, as I am within commanded.

Cepi Corpus.

D. E. Esq; Sheriff.

Sheriff
amerced.

Note; wherever the Sheriff returns a *Cepi Corpus*, and has not the Body ready to appear at the Day, he may be amerced; *i. e.* on divers Affidavits and Motions, &c. which often prove of more Damage than Benefit to the Plaintiff.

Writ against
divers.

Or if the Writ be against divers Defendants, whereof one or more are arrested, and the rest not, the Sheriff is to return it thus.

Cepi and
Non invent.

By Virtue of this Writ I have taken the Bodies of the within named A. B. and C. D. and I have their Bodies ready to be before the Justices within mentioned, (or before the Lord the King wheresoever, &c.) at the Day and Place within contained, as I am within commanded; and I further certify to the said Justices (or to the said Lord the King, &c.) that the rest of the Defendants are not found in my Bailiwick.
D. E. Esq; Sheriff.

Attached by
Pledges.

But where the Writ is an *Attachias*, as in Cases of *Trespases*, *Torts*, &c. the Sheriff may return, that he has attached the Defendant, either by Pledges (as is above shewn) or by his Goods and Chattels: And 'tis said in *Dalton's Office of Sheriffs* 208. that if he attaches by Pledges, the Return must be thus:

See Ret.
Brev. 158.

The within named A. B. is attached by { P. R.
Pledges, viz. { J. W.

But the Sheriff may not return it thus:

The Pledges of the within named A. B. { S. B.
are, { R. R.

For

For this seems no good Return for want of the Word *attached*. And if the Sheriff returns, *That the Defendant has nothing within his Bailiwick, whereby he can be attached,* he must also add, *That he is not found in the same,* which I conceive shews, That if he has nothing to be attached by, he may be arrested, &c. Also it seems reasonable, that a *Non inventus* is not good alone without a *Nihil habet*, or that *he has nothing whereby he can be attached,* for the like or a stronger Reason.

And by Goods and Chattels.

See Officin. Brev. 198.

When the Sheriff attaches one by his Goods, he must in his Return set down the Certainty of the Goods in Specie, as also their *Price or Value*; the Rule whereof is thus:

The Price or Value to be express'd.

Where the Attachment is made of a living Thing or Things, or of a single Dead Thing, the Words of the *Price* must be used, as two Hogs, or six Sheep, &c. or one Brass Kettle, &c. of such a Price. But if the Attachment be of Dead Things in the *Plural* Number, say, to the *Value*, as four Casks (or three Silver Plates, or ten Books,) &c. of such a *Value*.

Therefore where the Sheriff returns an Attachment of live Things, 'tis thus.

Of live Things.

The within named A. B. is attached by one Ox of the Price of 40 s. or by one Gelding of the Price of 4 l. or by ten Sheep of the Price of 8 l.

The *Form* whereof, where there are divers Defendants, in *Officina Brevium* is thus:

Offic. Brev. 202.

Of the Returns of Writs.

*T*H*E* within named A. B. is attached by one Cow of the Price of 30s. and the within named W. O. is attached by one Gelding of the Price of 3l. and the within named J. M. is attached by three Hogs, the Price of each of which is two Shillings and six Pence. And the Rest of the Execution of this Writ appears in a certain Schedule to this Writ annexed.

D. E. Esq; Sheriff.

An Appraisment annexed.

Note; Here it seems the Sheriff took the Price by *Appraisment*, (which doubtless is a fair Method) and annex'd the same to his Return. But the Courts of *Westminster* say, that is needless.

Officin. Brev. 197.
Summons in Covenant.

The Return of a Summons in *Covenant* is thus (as in *Debt ante*).

Pledges for prosecuting, John Doe and Richard Roe.

The Summoners of the within named C. D. are John Denn and Richard Fenn.

R. O. Esq; Sheriff.

Returns in Covenant.

'Tis also noted, that in a Writ of *Covenant* no Writ of *Attachment* ought to issue, because the Party Defendant ought to appear personally in Court. *Reg. Orig. 165.*

But as I conceive, if after the Summons returned he stands in Contempt, and refuses to appear, in such Case an *Attachment* may be issued against him.

Summoned.

In a Writ of *Covenant* the Sheriff may summon the Defendant by his Person, *Bro. Summons*; and if so, may doubtless make a Return accordingly. *Quere* if in *Debt*.

'Tis

'Tis also said, that the Sheriff may return, that the Defendant is a beneficed Clerk, &c. viz.

The within named A. B. is a beneficed Clerk, having no Lay Fee nor Lay Goods in my Bailiwick, whereby he may be summoned. Q. No Lay Goods.

The Return of a *Mandavi Ballivo* is where the Defendant resides within a Liberty, where there is a proper Bailiff or Officer for the Execution and Return of Writs, exclusive of the Sheriff; whereupon the Sheriff sends his Precept to such Bailiff or Officer, directing him to execute the Writ; which if not done the Sheriff usually makes this Return, viz. Mandavi Ballivo, to arrest.

By Virtue of this Writ to me directed, I have sent to the Bailiff of the Liberty of T. Bishop of E. to take and arrest, &c. the within named A. B. in the Manner within written, who hath the full Return of all Writs and Precepts, and the Execution of the same, within the Liberty aforesaid, so that no Execution of this Writ can be made by me within the said Liberty, which said Bailiff has as yet given me no Answer.

(Or thus:) Which said Bailiff hath answered to me, *That the within named J. S. is not found in his Bailiwick, (or) That he hath taken the Body of the within named J. S. whose said Body he hath ready, at the Day and Place within contained, to do all those Things which this Writ doth in it self demand and require.*

D. E. Esq; Sheriff.

And

Of the Returns of Writs.

the Sher-
iff must aſſeſs.

And it is ſaid, the Sheriff in this Caſe can make no other Return but what ſuch Bailiff, &c. ſhall certify to him: But in *Re-diſſeiſin* and *Waste*, and other *Vicontiel Writs*, wherein the Sheriff himſelf is Judge, there he muſt enter the Liberty or Franchiſe, and make Execution of the Writ, and cannot return a *Mandavi Ballivo*.

Non omittas.

Alſo wherever the Return of a Writ doth properly belong to the Bailiff of the Liberty; yet the Sheriff himſelf may enter in Perſon and execute this Writ: But then the Lord of ſuch Liberty may have an Action on the Caſe againſt him, *Finch 52.* and therefore 'tis ſafeſt for the Sheriff to have a *Non omittas* before he enter, which is now uſually taken out with the firſt Writ, and which in *B. R.* is in this Form, *viz.*

The Form.

GEORGE *the Second, &c.* To the Sheriff of D. Greeting. We command thee, that thou doſt not omit for any Liberty within thy County, but that thou take the Body of A. B. if he may be found in thy Bailiwick, and that thou keep him ſafely; ſo that thou haſt his Body before us, at Weſtmiſter, ſuch a Return-Day, to answer to C. D. of a Plea of Trespas; and alſo to a ſeparate Bill of him C. againſt the ſoreſaid A. for 40l. in Debt, according to the Cuſtom of our Court before us to be exhibited. And have thou then there this Writ. Witness Raymond, at Weſtmiſter, ſuch a Day and Year of our Reign.

Ventris.

And by Virtue of this Writ the Sheriff's Officer may with a Warrant thereon, enter
any

any Liberty within that County, and make Execution thereupon.

But the Return of a *Mandavi* for the Dutchy Liberty is thus.

I have sent to W. B. Esq; Bailiff of the Honor (or Lordship, &c.) of T. Parcel of the Dutchy of Lancaster, who has the full Return of all Writs, and the Execution of the same within the Liberty aforesaid; and to whom the Execution of this Writ doth wholly belong to be made; and that no Execution thereof within my Bailiwick, can be made out of the Liberty aforesaid, which said Bailiff hath as yet, &c. (as before.)

Mandavi in the Dutchy Liberty.

Or if to a Bailiff of a Hundred, &c. it may be thus:

For the Execution of this Writ to me directed to be made, I have sent to the Bailiff of the Liberty of the Hundred of B. in my County, who hath the full Return of all Writs, Warrants, Mandates and Precepts to be executed within the Liberty aforesaid, and also the Return of the same; within which Liberty the Execution of this Writ doth wholly remain to be done; which said Bailiff, to wit, J. W. Knight, hath as yet given me no answer thereto.

In a Hundred. See New Ret. Erev. 187.

And this is where the Bailiff hath made no Return, or an insufficient Return: But if he return that he hath taken the Body, then the Sheriff returns thus:—

—Which said Bailiff hath answered to me, that he hath taken the Body of the within named

On a Copy by the Bailiff.

named A. B. whose Body be both ready to be before the Lord the King, (or before the Justices within mentioned) at the Day and Place within contained, as by this Writ it is commanded.

But if the Writ is properly to be executed by the Sheriff, but came so late to his Hands, that he had not a reasonable Time to execute it before 'twas returnable, then he returns a *Tarde* thus:

Tarde, on a Capias, &c.

This Writ was so lately delivered to me, that by reason of the Shortness of the Time, I could not make Execution thereof, as I am within commanded: Or, as it is within commanded to me.

D. E. Esq; Sheriff.

On a Distringas.

But if *Tarde* be returned on a common *Distringas*, thus:

As to the Distringas within written, that A. B. should be before the Justices within mentioned, at the Day and Place within contained, this Writ was so lately delivered to me, that by reason of the Shortness of the Time, &c.

On a Distringas Jurator.

And if on a *Distringas* against *Jurors*, thus:

As to the distraining of the within named, and the rest of the Jurors also within named; this Writ came so lately, &c. (as above, adding) and as to the rest of the Execution of this Writ, it appears in a certain Panel annexed to this Writ.

D. E. Esq; Sheriff.

But

But this is a *special* Return, of which here-
 under. And we may here note, that on a
 common *Distringas*; there are several Forms
 of general Returns (besides *Tarde*) as in the
 Cases of Summons and Attachments *supra*, *Nihil*.
 a *Nihil* may be returned thus:

General Re-
 turns on a
Distringas:

*The within named A. B. has nothing (or has
 not any Lands or Tenements) within my Bailly-
 wick, by which he may be distrained; or where-
 with I can distrain him.*

D. E. Sheriff.

But if the Defendant is sufficient, &c. then
 Manucaptors are return'd, endorsed on the
 Writ thus:

Manucaptors.

The Manucaptors of the { Tho. Dun, of, &c.
within named A. B. are } Geo. Rice, of, &c.
The Issues are 13 s. 4 d.

D. E. Esq; Sheriff.

Or if the Sheriff has thereon distrained
 Goods, &c. he returns thus:

The within named A. B. is distrained by one *Distringas* *of*
Gelding, of the Price of 5 l. and likewise, the Goods, &c.
within named C. D. is distrained of one Piece of
Woollen Cloth, to the Value of 20 s.

*The Manucaptors of the said A. B. } John Doe
 and C. D. and of each of } and
 them for himself, are } Rich. Roe.*

And it seems such Manucaptors (not *in Manucaptors*
rerum Natura) are held necessary to be re- *and Distress.*
 turned, tho' the Sheriff has also return'd a
 Distress,

Distress; for that 'tis said, the Manucaptors are only for the Defendant's Appearance, but the *Distress* is for the Costs of the Writ, &c. *Quere.*

And if the *Distringas* is against Executors, the Form of the Return is thus.

Issues 40 d. 40 d. 40 d.

Dist. against
Executors.

A. who was the Wife of B. R. within writ-
ten, Executrix of the Testament of the said B.
J. S. another Executor of the said Testament of
the foresaid B. and T. S. a third Executor of
the said Testament of the foresaid B. are di-
strained, and every of them is severally by him-
self distrained, according to the Form of this
Writ, whereon the Issues are, as doth appear a-
bove over their Heads; and every of them is
mainprized by himself, to wit, by four Manu-
captors, named C. D. E. F. G. H. J. K. and
there are no other Executors of the Testament of
the same B. nor are his Heirs within my County,
as far as I can at present be by any Means as-
certained.

See New
Ret. Brev.
209. Dalt.
Sber. 225.

The Distress is by Chattels to the Value of
40 d. each.

The Pledges of the Prosecution are J. D.
R. R.

Pledges and
Issues.

Here we see the Pledges of the Prosecuti-
on return'd, but no Manucaptors. And yet
my Author says, the Defendant must find
Manucaptors for his Appearance; and also
notes, that in the *Distringas supra*, the She-
riff must always return Issues on the Defen-
dants, to compel them to appear. (*Quere*, if not
on

on the Manucaptors also?) which Issues must be more than the Costs of the Plaintiff's Writ of *Distringas*, yet they ought to be reasonable. See *Fitz. Amercement*, 3 Bro. 120. Yet note *Fitzb. Return* 120. where the Sheriff returned *Manucaptors*, but (said) that there were no Issues, yet held Good.

The above Precedents may suffice to shew the Nature and Forms of *General Returns of Writs*; and I should now proceed to give Examples of *special Returns* on the like Writs of Debt, Covenant, Trespass, &c. but first I think it necessary to add here some few Forms and Observations to what I have before delivered, touching Writs of *Accedas ad Curiam*, *False Judgment*, *Pones*, *Recordari's*, &c. generally used for removing of Causes from inferior to superior Courts of Justice.

An *Accedas ad Curiam* is an Original Writ issuing out of Chancery, on a Plaint sued, or a Judgment supposed to be given in the Hundred-Court, Court-Baron, or other Court of some Lord within his Liberty or Franchise, being no Court of Record, commanding the Court* to make a Record of the same Suit, and to return and certify the same, under the Seal of the Steward, and four of the Suitors of the Court.

Accedas ad Curiam.
Vide ante.

But if it be directed to the County-Court, 'tis then called a Writ of *False Judgment*. See *Dalton's Office of Sheriffs* last published, p. 200.

False Judgment.

And in an *Accedas ad Curiam* 'tis said, nothing but the Plaint shall be removed, tho'

Note the Difference.

* See the Directions of Writs hereafter.

the Parties are at Issue: But the Writ of *False Judgment* is to remove all the Process of the Suit into C. B. to be examined; and if found erroneous, reversed, *ibid.* 242.

A Poine.

A *Poine* is always to remove such Suits as are depending before the Sheriff by Writ of *Justicies* (i. e. by a *Vicontiel Writ*) and not by a *Plaint* only.

Recordari.

A *Recordari* is to remove a Suit that is before the Sheriff, &c. by *Plaint* only, without any such Writ of *Justicies* into the King's Bench or Common Pleas, and yet nothing shall be removed but the *Plaint* only; so that herein it partakes of the Nature of an *Accedas ad Curiam*, as before is shewn, towards the Beginning of this Treatise.

The Precept on an Accedas.

Upon the Receipt of an *Accedas*, the County-Clerk is to make a Precept or Warrant to the Steward or Bailiff of the Court-Baron, &c. in this Form.

See Directions of Writs hereafter.

Instead of *Krigots*.

York ff. I W. B. Sheriff of the County aforesaid, to the Steward and Bailiff of the Court of the Honour of P. Greeting. By Virtue of a Writ of the Lord the King to me directed, (Mando) I charge you, that taking with you four discreet and lawful Free Tenants of the County aforesaid, you go to the Court of the said Manor, &c. and have (bring) with you this Precept, dated, &c.

D. E. Esq; Sheriff.

Whereupon a Return of the Precept, *Plaint*, &c. is made by the Steward and Suitors thus:

Honor

Honor of P. ff. *At the Court Baron of* Return of
G. S. &c. held at Pontfract, for the said Ho- the Precept.
nor of P. the fifteenth Day of June, in the
fourth Tear of the Reign of GEORGE the second,
King of Great Britain, &c.

R. S. complains against J. N. of a Plea of The Plaintiff.
Trespass on the Case, to his Damage 30 s. (and
then it follows) By Virtue of this Precept to
me directed, at the Court aforesaid, held the
Day and Tear aforesaid, I have caused to be
recorded, in full Court there, the Plea whereof
Mention is within made, which Plea appears a-
bove written: And that Record I have here re-
turned, sealed with my Seal, and the Seals of
the foresaid four lawful Men, who in the same
Court were present at that Record: And I have
prefix'd a Day to the Parties aforesaid, in the
Writ specified, that they be then ready to pro-
ceed, as shall be just in the Plea aforesaid, as
it is within commanded to me (or) as I am with-
in commanded).

W. O. Steward.

J. H. T. F. }
 G. H. R. D. } Suitors.

Whereupon the Sheriff makes a Return of
 the whole to the Court, by endorsing on the
 Writ of *Accedas*, as follows.

BY Virtue of this Writ to me directed in the Another
Form within written, I have been (acceded) to Return.
the Court within written, and have in full Court
caused to be recorded the Plea within written;
and that Record, (as appears in a Schedule to
this Writ annexed) I have (here ready) before
the Justices of the Lord the King, at the Day
and Place within contained, under my Seal, and
 E e the

the Seals of J. H. T. F. &c. four lawful Men of my County, of those who were present at that Record: And to the Parties within written I have prefix'd a Day in the Writ specified, that they be then ready to proceed in the Plea as shall be just, as I am within commanded.

The Answer of D. E. Esq; Sheriff.

Or it may be thus, *viz.*

Another.

BY Virtue of this Writ to me directed, &c. In my proper Person taking with me J. H. T. H. &c. four good and lawful Men of my County, I have gone to the Court-Baron of G. S. &c. hold at P. for the Honor of P. and have caused the Plea aforesaid to be recorded at the Day and Place within contained, as I am within commanded. Whereupon the Suitors of the same Court at P. aforesaid, in their full Court aforesaid, did altogether (deny) refuse to let me, the Sheriff, execute the said Writ, or in any Manner to intermeddle in the Plea aforesaid, whereby I am not able to make Execution of this Writ, &c.

No Court held.

See also *Reg. Judic.* 263. where the Sheriff returns, that he went to the Court, and desired the Plea to be recorded, &c. which the Suitors refused, &c.

And other Forms, *ibid.* 233. *Officina Breu.* 195. *Dait. Sher.* 200. and *ibid.* 566. that the Lord would not hold this Court, &c.

But it seems the Sheriff can't return, that no Court was held, except he also return, that he requested the Lord to hold one.

No Plaintiff.

But if there is no Plaintiff pending in such Court, the Return is thus:

I do hereby certify to the Justices within written, that there is not, nor on or since the Day of issuing of this Writ has there been, any such Plea in my County between the Parties within written, as is within mentioned.

As to the Forms of Returns to Writs of False Judgment among some others, I have also met with the following Precedent, *That the Steward and the Suitors refused to deliver the Record, viz.*

On a False Judgment. See Kitch. 257.

BY Virtue of this Writ to me directed, taking with me P. M. D. G. &c. four honest and lawful Men of my County, I have been in proper person at the Court of T. M. &c. held at N. (such a Day and Year) and there in full Court there, I demanded (required) of A. B. &c. Suitors of the same Court, and R. M. the Steward there, the Record of the Plea which is in the same Court, by the little Writ (of the Lord the King) of Right, between J. P. Demandant, and N. S. Tenant, to be made and delivered to me; which said Steward and Suitors would not deliver to me that Record; for which Cause I could in no wise make Execution of this Writ, &c.

Offic. Brev. 196. Reg. Judic. 264.

Or (if in a County-Court) it may be in the following Form, viz.

BY Virtue of this Writ (taking with me D. G. J. W. &c. four discreet and lawful Men of my Bailiwick) I have gone in my proper Person to the Court of GEORGE the Second, King of Great Britain, &c. of O. held (at such a Place

Another Form. Dalt. Sher. 242.

Of the Returns of Writs.

on such a Day, &c.) and in that full Court I have caused to be recorded the Plea, whereof Mention is within made. And I have that Record before the Justices within specified, at the Day within contained, (which Record is (consut') sewed or annexed to this Writ) under my Seal, and the Seals of W. C. &c. four lawful Men of the same County, who were present at that Record, &c.

But if the Plea is recorded in a Hundred or Court-Baron, the Sheriff returns thus :

Another on a Hundred or Court-Baron. See Dalton 201.

By Virtue of the Writ of the Lord the King to this Schedule annexed (taking with me B. C. &c. four lawful Men of my said County) I have in my proper Person gone to (such a Hundred, or such a Court-Baron) and in that full Hundred (or full Court) have caused to be recorded the Plea within written : And I have ready that Record before the Justices within written, at the Day and Place within contained, under my Seal, and the Seals of four lawful Men of the same Hundred (or Court) who were present at that Record, which is to this Writ annexed. And I have prefixed a Day to the Partics named in the said Writ, that they be then there (ready) to proceed in that Plea, as shall be just, according as this Writ does in it self demand and require, &c.

And note, 'tis said, that reading the Writ in Court is a sufficient Warning for the Parties to be before the superior Court at the Day appointed.

But if the Sheriff sends his Mandate to the Bailiff for Execution of the Writ, the Form is thus :

FOR Execution of this Writ to me directed, I have sent to the Bailiff of the Liberty of Philip Earl of A. of his Hundred of L. in the County of N. who hath full Execution of all Writs and Precepts to be executed within that Liberty, and also the Return of the same, to whom the Execution of this Writ doth wholly belong to be made; for that that Execution thereof cannot otherwise be made thereof in my Bailiwick, out of the said Liberty; which said Bailiff hath answered me thus: That he taking with him J. D. E. H. &c. four discreet and lawful Men of the County aforesaid, hath in his proper Person gone to the Hundred within written; and in that full Hundred hath caused the Plea to be recorded, which is in the same Hundred, without the Writ of the Lord the King, &c. which said Record he hath sent to me, and which I herewith certify to the Justices of the Lord the King, within mentioned, at the Day and Place within contained, under my Seal, and the Seals of the foresaid J. D. E. H. &c. four lawful Men of the same Hundred, of those who were present at that Record: And I have prefixed the same Day to the Parties, that they be there to proceed in that Plea as shall be just: And that the Residue of this Execution appears in a certain Schedule to this Writ annexed.

Another on a Mandavi Bailivo.

D. E. Esq; Sheriff.
T. S. Gent. Bailiff.

Note.

The Schedule here mentioned is the Return made by the Bailiff to the Sheriff; and 'tis that Return as I conceive ought to be sealed by the Bailiff and four lawful Men, and not this of the Sheriff. *Vide post* 424.

Returns of
Pones.

The Return of a *Pone* for Removal of a Suit is in this Form:

See Dalt.
Sber. 269.

By Virtue of this Writ to me directed, I have put before the Justices of the Lord the King, of the Bench at Westminster, the Plea which is in my County by the Writ of the Lord the King of Justices, between A. B. and C. D. of a Plea of Debt, as 'tis said, as appears in a certain Schedule to this Writ annexed, &c.

Schedule.

The Schedule thereto annex'd is thus:

York ff. *At my County held at the Castle of York in the County aforesaid, on Monday the twelfth Day of August in the fourth Year of the Reign of the now Lord GEORGE the second, King of Great Britain, &c.——— A. B. complains against C. D. of a Plea of Debt.———In Witness whereof R. L. S. R. T. O. and S. D. four lawful Men of those who were present at that Record, have in full Court severally put their Seals the Day and Year aforesaid, &c.*

And we may here note, that if a Plea be removed by *Pone*, at the Instance of the Defendant (or by the Plaintiff) and they afterwards proceed below, and give Judgment, and award Execution, &c. the Party against whom such Judgment is, shall have an *attachment* against the Sheriff, directed to the
Coroner,

Coroner, to answer as well to the King for the Contempt, as to the Party for his Damages, *as we have before shewn.*

Another Form of a Return to a Pone is *Another Form.* thus :

BY Virtue of this Writ directed to me, in the Form within specified, I have put the Plea within written, at the Day and Place within contained, as I am by this Writ commanded; the Record of which said Plea appears in a Schedule sewed to this Writ, with another Writ whereof Mention is hereunder made.

*Summoners T. P. J. D.
D. E. Esq; Sheriff.*

AT my County held at C. (such a Day and Year) — T. P. complains against H. E. of a Plea of the taking and unjustly detaining of Beasts (Cattle) and there are Pledges of Prosecution, and having Return, if a Return shall be adjudged thereof (thereupon) to wit, J. M. and W. F. — In witness whereof J. K. B. C. &c. four lawful Men of those who were present at that Record, have in full Court put their Seals severally to that Record, the Day and Year above said.

And note, there are many other Forms of these Returns; see the *Returna Brev.*

But if the Plaintiff below has suffered a *Non suit*, then it seems nothing is to be re- *On Non suit.* moved. — But the Sheriff may return, *that at the next County, &c. the Plaintiff was non-suit, and so no Plea was there depending.*

But notwithstanding the Plea is discontinued in the County, yet it may be removed by *Discontin- uance.*

Of Returns on Recordaries. a Writ of *Recordari faciās loquelam*, called a *Resalo*, as before is shewn: But on this Writ nothing is to be removed, but the Plaint. (as in the other Forms *supra*) altho' the Parties are at Issue. And this is returnable either in *B. R.* or *C. B.* and hereupon the Sheriff is to summon the other Party to be in that Court (into which the Plaint is to be sent) at a Day certain; and of all this he is to make a *Certificate* under his own Seal, and the Seals of four Suitors of the same Court, *thus*.

Return'd by Certificate.

BT Virtue of a Writ to me directed, I have in my full County held at E. in the County of D. within written (such a Day and Year) caused to be recorded the Plea which is in the same County between the Parties within written, and whereof Mention is within made; which said Plea appears in a certain Schedule to this Writ annexed. And that Record I have before the Justices within written, at the Day and Place within contained, under my Seal, and the Seals of W. H. T. R. &c. four good and lawful Men of the same County, of those who were present at that Record; and I have prefixed that Day to the Parties, that they be then there to proceed in the Plea as shall be just, as I am within commanded.

D. E. Esq; Sheriff.

The Schedule.

The Schedule hereto annexed is thus:

The Plea

Devon ff. At my County held at E. in the County aforesaid (such a Day and Year) before H. W. S. S. &c. four Suitors of the Court aforesaid, it is contained thus: R. S. complains against T. B. of a Plea of taking and unjustly detaining

detaining his Beasts (against Gage and Pledges, &c.) and there are Pledges of the Prosecution, and also of having a Return, if the Return (of them) shall be adjudged.

Pledges of the Prosecution are J. D. of, &c. and R. F. of, &c.

In Witness whereof, &c. as above. See *Officina Brev.* 195, 217, &c.

And by *Dalton*, altho' upon an *Accedas*, the Sheriff must take with him four Men of the same County, yet it need not be done on a *Recordari*, also tho' the *Recordari* bears Date before the Pleint be entered in the County-Court, yet the Sheriff may well remove it; and when the Pleint is removed the Plaintiff is to declare on the same *De Novo*.

Dalt. Sher.
272. *Ret. Br.*
148.

There are also divers other Forms of Returns to *Recordari*'s, besides that above specified. I shall Instance some, one whereof is somewhat Breif, *viz.*

BT Virtue of this Writ to me directed, I have caused the Plea to be recorded, which was in my Court, between the Parties within written: And I have prefix'd a Day to the Parties, of being before the Justices within written, at the Day and Place within contained, as this Writ does in itself demand and require, which said Plea appears in a certain Schedule sewed to this Writ.

Another Form.

A. B. complains against C. D. of a Plea, of the taking and detaining of his Beasts, (Cattle.)

Pledges of the Prosecution are, &c. (as above.)

Another