

cause to be done what is to be done, according to the Form of the Statute aforesaid, notwithstanding the said Certificate by the said W. S. formerly made. Witness my self, &c.

*A Certiorari upon an Attachment in London.
(See the Return infra.)*

*On an Attachment, &c.
Thefaur.
Brev. 67.*

‘ THE King to the Mayor, Aldermen,
‘ Sheriffs, &c. Greeting. We willing for
‘ certain Causes to be certified as well of
‘ certain Original Bills or Plaints before you,
‘ or any of you levied or affirmed against
‘ T. P. Citizen, &c. at the Suit of G. P. of
‘ a Plea of Debt, as of all Attachments
‘ made thereupon of the Money, Goods or
‘ Chattels of the said T. P. in the Hands of
‘ the foresaid G. or of any other Person or
‘ Persons whatsoever, in our (your) Court
‘ before you or any of you levied or af-
‘ firmed : We command you, that the Plaints
‘ and Attachments aforesaid, with all things
‘ touching the same, you certify us at *West-*
‘ *minster* (such a Day or Return) as fully
‘ and wholly as in our (your) Court before
‘ you they reside, together with this Writ ;
‘ that we may further cause to be done
‘ thereupon as of Right we may see is to
‘ be done. *Witness, &c.*

*Note ; by the
London
Charters their
Courts appear
to be their
own. Ergo
Quere.*

The Return made thereupon, viz.

*W^E W. C. Knt. Mayor and Aldermen of
the City of London, and G. S. Sheriff of the
same City, to our most serene Lord, now King
of Great Britain at Westminster, do certify
that before the coming of the foresaid Writ to*

us directed, one E. C. a Merchant Stranger, in his proper Person, then came into the Court of the Lord the King, then held before us the foresaid Mayor and Aldermen in the Chamber of the Guilhald of the City of London aforesaid, according to the Custom of the City aforesaid, and then and there in the same Court, according to the Custom of the same City, affirmed against one W. M. Merchant, a certain Original Bill of a Plea of Debt, upon Demand of 100l. of lawful Money of England; upon which said Original Bill Process continued between the Parties aforesaid, until the foresaid W. M. afterwards, to wit (such a Day and Year of the King) was attached by divers Goods and Chattels, specified in a certain Schedule annex'd to the foresaid Original Bill, as of the proper Goods and Chattels of the foresaid W. being in the Hands and Custody of the foresaid F. B. in the foresaid Writ named, Attach. defensat. by one H. L. then one of the Serjeants at Mace of the said Mayor and Aldermen of the said City, and a Minister of the Court aforesaid, &c. which said E. C. afterwards, to wit (such a Day) in the Year aforesaid, did appear in the Court aforesaid, to the Attachment aforesaid, and then and there did put in his Place J. B. his Attorney, against the foresaid E. C. in the foresaid Attachment; and then and there by his said Attorney pray'd Licence of imparling thereon, &c. and had, &c. and so the Bills and Attachment aforesaid do yet depend undetermined in the Court aforesaid, &c. And these are the Original Bills and Attachments aforesaid, whereof Mention is made in the Writ aforesaid; which before the foresaid Lord the King at the Day and Place in the foresaid Writ

contained we send, as by the same Writ it is commanded, &c.

Before a
Judge.

A like Certiorari returnable before a Judge at his Chamber.

Tbesaur.
Brev. 67.

THE King to the Mayor, Aldermen and Sberiffs of London, Greeting. We willing for certain Causes to be certified, as well of a certain Plaint or Original Bill in our Court before you, or some or one of you levied or affirmed against J. L. Executor of the Testament, &c. at the Suit of J. S. in a Plea of Debt, as of a certain Attachment thereupon made of 40l. in Money numbred, as of the Pence of J. H. at the Time of his Decease, in the Hands and Custody of J. C. being attached, do command you and every of you, that the foresaid Plaint and the Original Bill and Attachment aforesaid, with all things touching the same, as before you or any of you they (now) reside, you send immediately after the Reception of this Writ before W. J. Knt. one of our Justices, assigned to hold Pleas before us in our Court (where-soever, &c.) at his Chamber, situate in Serjeants Inn in Fleetstreet, that the same our Justice may cause to be done in this Part, what of Right he may see is to be done: And bare there this Writ. Witness, &c. Or (if it be returnable in Court) say——— You send, &c. before us at Westminster such a Day, &c. together with this Writ, that we may further cause to be done in this Particular, what we may (shall) see is of Right to be done.

Et Court.

Another

Another Certiorari to the Custos Brevium to certify a Venire, &c.

THE King, &c. to our beloved and faithful H. T. Keeper of our Writs of the Bench, Greeting. We willing, &c. to be certified of a certain Writ of Venire facias, and of a certain other Writ of Habeas corpora, between J. T. Gent. Plaintiff, and J. R. late of, &c. Defendant, to A. D. the late Sheriff of the said County of S. directed, together with the Panel and their (respective) Returns, do command you, that you search our Writs of the County aforesaid, of the Terms of Easter, Trinity and Michaelmas (in such a Year) being in your Custody of Record; and whatsoever ye shall find of the foresaid Writs, the Returns and the Panel thereupon, or any of them, you certify to us, wheresoever we shall be in England, without Delay, as fully and intirely as they reside before you, together with this Writ, that we, &c.

To certify a Venire, & Hab. Corp. Furator. See Thesaur. Brev. 69.

Another to the same for a Superfedeas on a Writ of Exigent.

WE willing, &c. to be certified of a certain our Writ of Superfedeas upon a Writ of Exigent, which issued out of our Court of the Bench aforesaid, against E. W. late of, &c. at the Suit of S. M. of a Plea of Debt being in your Custody of Record, do command you, that you search our Writs of the City of London, of the Term of Easter (in such a Year of our Reign) &c. being in your Custody of Record; and what of the same Writ of Superfedeas,

For a Superfedeas, &c.

Ibid. 64.

Of Writs of Certiorari.

you shall find in (among) the same, you certify, &c. (as before).

To the Coroners to certify an Outlawry, for that the Sheriff had not returned the Writ of Exigent.

For an Outlawry. *ibid.*
69.

THE King, &c. To our Coroners of the County of N. Greeting. Whereas we had lately commanded, by our Writ, our Sheriff of N. that he should cause to be exacted (i. e. demanded or called at the County-Court) J. H. late of, &c. (and others) from County to County, until, &c. they should be outlawed if they had not appeared. And if, &c. (as in the Exigent) And altho' our Sheriff of the County of N. aforesaid, at the foresaid Octaves, &c. did not return our foresaid Writ of Exigent; yet in our Court before us, by the Relation of the said M. we have received, that the aforesaid J. H. and others, by Pretext of our foresaid Writ of Exigent, were outlawed at the County (Court) held in our said County of N. as by a Record thereof remaining before you will fully appear. And we willing to be certified by you or one of you, concerning the Outlawry aforesaid, do command you and every of you, that ye have the Record, &c. of the Outlawry aforesaid before us (such a Return-Day) wheresoever we shall then be in England, as fully and intirely as the same do reside of Record with you or any of you, that we may cause to be further done thereupon what of Right we shall see, &c.

To the King's Bench in Ireland, to certify a
Venire facias & Distringas Jurator.

THE King to our beloved and faithful G. S. For a *Venire*
 Knight, our Chief Justice assigned for Pleas in *& Distringas*
 our Court to be held before us in (our Kingdom. *Jur*.
 of) Ireland, Greeting. We willing, for cer-
 tain Causes to be certified, as well of a certain
 our Writ of *Venire faciend'* duodecim, &c.
 issuing out of our foresaid Court, between T. G.
 Plaintiff, and M. G. of a Plea of *Trespajs*
 and *Ejectment*, directed to our Sheriff of our
 County of Cork, and returnable, and to be re-
 turned before us in Ireland on Wednesday *Thesaur.*
 next after three Weeks of Holy Trinity, in the *Brev. 75.*
 fourth Year of our Reign; and of the Panel of
 the Jurors Names, to the same our Writ of *Ve-*
nire facias annex'd, and with the same return-
 ed, being in your Custody of Record; and (also)
 of a certain, our Writ of *Distringas* of the *Ju-*
rors aforesaid, between the Parties aforesaid, of
 (concerning) the foresaid Plea, to the said our
 Sheriff of our said County of Cork in like Man-
 ner directed, and returnable and returned in our
 foresaid Court in Ireland, on Wednesday next
 after, &c. in the abovesaid fourth Year of our
 Reign; and of the Panel of the Jurors Names
 to the same Writ of *Distringas Jurator' annex'd*,
 and with the same Returned, being likewise in
 your Custody of Record: Which said several
 Writs and Panels are omitted in a certain Re-
 cord between the Parties aforesaid, of the Plea
 aforesaid, lately sent by you to us in England,
 by Virtue of a certain Writ of Error to be cor-
 rected; and as 'tis said do yet (still) remain in
 your Custody of Record not yet sent to us. We
 Q. A. command.

Of Writs of Certiorari.

Q. command you that you search our Writs of Venire faciatis duodecim, &c. of our said County of Cork, of the Term of Holy Trinity in the fourth Year abovesaid, and the Panels to the same annexed being in your Custody of Record; and also our Writs of Distringas Jurator' of our foresaid County of Cork, of the Term of St. Michael in the fourth Year abovesaid, and the Panels of the Jurors Names annexed to the same, being likewise in your Custody of Record; and what (soever) you shall find in the same of the several Writs and Panels aforesaid, together with the intire Returns of the same; and the several Panels of the Jurors Names to the same respectively annexed, as fully and intirely as they remain in your Custody, you certify and send to us (Quare if under Seal, &c.) without Delay, wheresoever we shall be in England, together with this Writ. Witness, &c.

To the Custos Brevium in Ireland, to certify a Distringas Jur' and a Decem Tales.

Distringas
Jur' & de-
cem Tales.
Tresaur.
Brev. 75.

TO our beloved and faithful H. A. Esq; Keeper of the Writs, Rolls, Indictments, Processes, Certificates, Memorandums and other our Records in our Court before us in Ireland, Greeting. We willing for certain Causes to be certified of a certain our Writ of Distringas Jurator', and for putting Ten of the like between C. G. Plaintiff, and O. A. of a Plea of Trespass and Ejectment, and of the Indorsement and Return thereof; and of the Names of the Jurors in a certain Panel annexed to the same Writ of our County of Galloway, being in thy Custody of Record; do command thee, that you search our Writs of Distringas Jurator', and of Decem

Decem Talium to be put; and of the Indorsements and Returns thereof, and of the Panel of the Jurors Names annex'd to the same Writ of the Terms of, &c. in the third Year of our Reign, of our said County of Galloway in Ireland, being in thy Custody of Record; and what (soever) you shall find in the same, or in any of them of the Writ aforesaid, and of the Indorsement and Return thereof, and of the Panel of the Jurors Names annex'd to the same Writ, between the Parties aforesaid, concerning the Plea aforesaid, certify us, wheresoever we shall be in England, without Delay, as fully and intirely as they remain in your Custody; together with this Writ. Witness, &c.

To the Court of Common Pleas to certify Continuances, &c. on Error, *Coram vobis*.

—Because in the Record and in the Process, and also in rendring of the Judgment of the Plea, which was before you and your Companions our Justices of the Bench, by our Writ between J. C. Plaintiff, and T. B. in a certain Plea, &c. manifest Error has intervened (happened) to the great Damage of him T. B. as from his Complaint we have received: We for correcting the Error, have caused that Record and Process to come before you, and which before you do still reside: In which said Record and Process Mention is made, that upon the Declaration in the Plea aforesaid, between the Parties aforesaid, no Continuance is made; and (that) so the Proceedings that Declaration and all the Process thereon are wholly discontinued as the foresaid T. B. before us for revoking the Judgment aforesaid hath assigned for Error:

And

To C. B. on Error *Coram Vobis*. Ibid. 70.

Of Writs of Certiorari.

Diminution
alleged.

And that the foresaid J. C. for Support of the foresaid Judgment hath said (alleged) that of the Continuance between the Parties aforesaid, in the Record and Process aforesaid, there is a total Omission made (in the Writ of Error) and that the same still remains before us (you) unseent; and because it is necessary and expedient before we proceed in this Particular any further, that we should be certified by you of the whole (intire) Record and Process (before you) We command you, that if any Continuance between the Parties in the Plea aforesaid, do still remain before you of Record not yet sent, ye send to us under your Seal the same Continuance without Delay, remitting (also) this our Writ, that we may be able more advisedly to the Examination of the Record and Process aforesaid, for correcting the Errors assigned in the same, as of Right we ought, &c.

To the Chief Justice of C. B. to certify an
Exigent, Capias, &c.

To certify
an Exigent
Capias, &c.
ibid. 71.

THE King, &c. to our beloved and faithful J. B. Knt. chief Justice of our Bench, Greeting. Whereas W. C. late of R. in the County of S. otherwise called, &c. together with C. D. &c. by our Writ issuing out of our Court, before you and your Companions, at the Suit of R. W. of B. &c. in a Plea of Debt directed to the Sheriff of the County of S. was put in Exigent (Demand) to be outlawed; and by that Occasion (Reason thereof) was afterwards, to wit, at the County (Court) of S. held at S. outlawed, as by the Certification of J. W. and T. J. two of our Coroners in the same County of S. by Pretext of our Writ to them thereof

thereof directed, and sent to us in our Court before us, manifest appears and remains (there) of Record—And now in our Court before us, we understand that the Record of Adjudication (awarding) of our said Writ of Exigend, and also of the Original Writ of Capias thereupon, do remain in our Court, before you and your Companions in your Custody of Record; and we willing to be certified thereof, do command you, that you search the Rolls and other Memorandums of the Writs aforesaid of the said County of S. of the Terms of Easter, Trinity and Michaelmas, in the second Year of our Reign, being in your Custody of Record; and whatsoever thereupon concerning the Premisses you find therein, you certify us fully without Delay, wheresoever we shall be in England, together with this Writ. Witness, &c.

Another to the same to certify a Warrant of Attorney.

———To our beloved and faithful H. Hobart, Knight and Baronet, our Chief Justice of the Bench, Greeting. We willing for certain Causes to be certified, whether A. B. Widow, did make J. C. her Attorney against R. H. late of London, Knight and Alderman, &c. of a Plea of Debt before you of Record, or not, do command you that you search the Rolls and other Memorandums of Warrants of Attorney for the said City of London of Easter Term, in the tenth Year of our Reign, being in your Custody of Record; and what thereof (thereon) you shall find in the same, you certify to us without Delay, wheresoever we shall then be in England, together with this Writ. Witness, &c.

To certify a Warrant of Attorney. *Ibid.* 68.

Of

Of Certioraries to Cities and Towns
Corporate.

Note; herein you must regard the true Name of Incorporation and Title of the City, Burrough or Town, according as they are constituted or denominated by Prescription or Charter; for which see the *Direction of Writs* hereafter.

To the Mayor, &c. of *Exeter*, to have Execution on a Record.

To *Exeter*.
Ibid. 68.

GEORGE, &c. *To the Mayor and Bailiffs of our (the) City of Exeter, and to every of them, Greeting. Whereas N. M. Executor, &c. in the Court of our said City of Exeter, before you, according to the Custom of the foresaid Court, had impleaded J. P. late of N. in the County of D. Gentleman, and Alderman (of the said City of Exeter) of a Plea of a Debt upon Demand of 100 l. and thereupon in our same Court before you, had Judgment against the foresaid J. And we now for certain Causes being willing to be certified by you of that Record, do command you, that the Record of the Recovery aforesaid, with all things touching the same, you send to us at Westminster, such a Day, &c. distinctly and openly under your Seals, as fully and intirely as before you it resides, and this Writ; so that we may be able to proceed in that Behalf to the Execution of the Judgment aforesaid, on the Part of the said N. M. as we shall see is of Right to be proceeded. Witness, &c.*

To the Mayor, &c. of Bristol, &c. for Removal of all Plaints, &c. there.

GEORGE, &c. To the Mayor, Aldermen To Bristol. and Sheriffs of the City of Bristol, and to the Ibid. Mayor and Constable of the Staple of the same City; and also to the Bailiffs, Mayor and Community of the same City of B. of the Court of the Tolley there; and to the Bailiffs of the said Mayor and Community of the same City in their Court of Pye-Powder, and to every of them, Note this uncommon Direction, and Quere. Greeting. We willing, for certain Causes, to be certified, as well of all Plaints in our Court before you, or any of you, against W. D. at the Suit of W. C. levied or affirmed, as of whatsoever Attachments on those Plaints, or on any of them, in the Hands of A. and B. &c. or any of them made, do command you and every of you, that the Plaints aforesaid, and the Attachments aforesaid, and every of them, with all things touching them, or any of them, you send before us at Westminster, such a Day after such a Return, as fully and intirely as before you or any of you they reside, together with this Writ, that we may cause to be further done thereupon, what we shall (may) see is of Right to be done. Witness, &c.

To the Bailiffs of Shrewsbury, to certify Diminution in a Verdict.

GEORGE, &c. To the Bailiffs of the To Shrewsbury. Town of Salop, Greeting. We willing for certain Causes to be certified, of and upon the Receipt of a certain Verdict in a certain Plea, which was in our Court of the Town aforesaid (held) See Ibid. 70.

Of Writs of Certiorari:

(held) according to the Custom of the same Town, without our Writ, before T. F. and G. H. Gentlemen, late Bailiffs of the said Town, between M. M. Administrator of the Goods, &c. which were of R. M. who died intestate; and J. S. in a certain Plea of Trespass on the Case, for not performing of a certain Promise and Undertaking by the said J. to the foresaid R. in his Lifetime made; which said Plea and Processes by Virtue of our Writ for correcting Errors were lately had and sent before us, and there of Record do now reside (the Errors assigned in the Plea aforesaid, being as yet undiscuss'd) do command you, that the Reception (Taking) of the Verdict aforesaid on the said Plea, as fully and intirely as in the Record and Memorandums before you they reside, you send to us under your Seals distinctly and openly, in the Oathes, &c. wheresoever, &c. together with this Writ, &c. as above.

To Weymouth and Melcom Regis, on a Plaint and Replevin.

To Weymouth
and Melcom.
Ibid. 77.

GEORGE, &c. To the Aldermen, Bailiffs, Burgesses and Community of our Town of Weymouth and Melcom Regis, in the County of Dorset, and to every of them Greeting. We willing for certain Causes to be certified, as well of a certain Plaint or Plea in our Court of the foresaid Town before you, or any of you, without our Writ, between M. B. Plaintiff, and B. A. the younger, of a Plea of the taking and unjust detaining of the Goods and Chattels of him M. as 'tis said, lately lewyed, as of the whole Record and Process of the same Plea or Plaint thereupon depending, do command you, that the

Plea

Plea or Plaint aforesaid, and also the Record and Process aforesaid, as fully and entirely with all things touching the same, as before you or any of you they reside, by whatsoever Names the Parties aforesaid are therein called (reputed) you send before us in fifteen Days from the Day of St. M. wheresoever we shall then be in England, under your Seals distinctly and openly, together with this Writ: And prefix to the Parties the same Day, &c. that we may cause to be further done thereupon, &c. (supra.)

**Certioraries to Justices of the Peace,
 &c. viz.**

To certify Indictments, &c.

GEORGE, &c. *To the Keepers of our Peace, and our Justices assigned to hear and determine divers Felonies, Trespasses and other Misdemeanours in the County of B. and to every of them, Greeting. We willing for certain Causes to be certified of all and singular the Indictments of whatsoever Transgressions against the Statutes published of Riots, Routs, unlawful assemblies, forcible Entries, and other Articles and Offences, wherupon W. H. A. W. &c. in the same Indictments named, are indicted before you, do command you and every of you, that all the Indictments aforesaid, with all Things touching the same, by whatsoever Names the same W. H. A. W. &c. are named in the same, you send before us at Westminster, &c. under your Seals, or the Seal of one of you, together with this Writ, that we may cause to be*

To Justices of the Peace for Indictments, &c.

further

furthier done thereupon, what of Right, and according to the Law and Custom of England we shall see (find) is to be done. Witness, &c.

Another, to certify whether the Defendant, in an Action of Conspiracy, was one of the Jurors for indicting the Plaintiff.

To certify in
Conspiracy.
See *Treasur.*
Brev. 72.

GEORGE, &c. (as above to) Greeting.
Whereas J. C. had lately in our Court before us, by our Writ, impladed J. H. and others in the same Writ named, for that they on Monday, &c. at the City of Worcester, had conspired to indict the foresaid J. C. of that, that he, together with, &c. in the Night of Friday, &c. five Sheep of the Price of 30 s. the Property of W. S. and J. S. of, &c. at D. in the County aforesaid found, did feloniously take and carry away; to which the foresaid J. H. and others, in Exclusion of the foresaid J. C. from having his Action in this Particular, have alledged, that they the Day, &c. in the Year, &c. at, &c. before you——together with other Jurors, were sworn to inquire before us of all Felonies, Trespasses and other Malfesances (Misdemeanors) perpetrated in the same County, and him J. C. they then and there indicted of the Felony aforesaid, according to the Form of Law; and this they avow to be of Record, before you in your Rolls. And the said J. C. in replying, hath said, that there is not had any such Record thereof before you, whereupon in our Court before us it was said to the foresaid J. H. that he have that Record thereof before us at Westminster, such a Day, if to him it shall seem expedient. But for that he cannot then have the foresaid Record before us without our Writ;
He

2.

Of Writs of Certiorari.

241.

We command you and every of you, that you search the Rois and other Memorandums of your said Court-Sessions; and whatsoever ye shall find concerning the said Indictment, &c. (as before).

To a Bishop, to certify the Legality of a Marriage. To a Bishop.

GEORGE, &c. To the Venerable Father Lawful
in Christ J. Bishop of Salisbury, Greeting. Marriage.
Whereas J. who was the Wife of T. S. hath in our Court before our Justices at Westminster (lately) demanded the third Part of the Manor of S. with the Appurtenances, as the Dower of her J. of the Endowment of the foresaid T. her late Husband; and the same R. hath come into our same Court, and said, that the same J. ought not to have Dower thereof, for that she was never coupled (joined) in lawful Matrimony to the foresaid T. whereto the same J. by replying in our (said) Court, hath said, that she ought not to be precluded (barred) to have (from having) her (said) Dower, because she said, that she at H. in the County of W. in the Parish Church of H. was joined in lawful Matrimony to the foresaid T. And because the Cognizance (Knowledge) of such Cause belongs to the Ecclesiastical Court, We command you, that calling before you, such as are to be called, you diligently inquire the Truth of the Premises; and what thereof (thereon) you shall find, do you certify to our Justices at Westminster, in one Month from the Day of Easter, by your Letters Patent, together with this Writ, that we may further proceed in this Particular, as of Right, and according to the Law and Custom
R Persons, Partners, &c.
of

of England we may find is to be proceeded.
Witness, &c.

Not.

By this and many other Precedents it appears, that a *Certiorari* lies not only to inferior Courts not of Record, but also to particular Persons, to certify any Proceedings or Transactions which are pleaded or drawn in Issue in the King's superior Courts. And as a *Certiorari* would lie to a Bishop to certify the Legitimacy of a Marriage, Bastardy, &c. (*wherein with good Reason the Law is now somewhat altered*) I see no Reason why it ought not to lie to the Lord or Steward of a Manor, to certify the Deaths, Surrenders and Admissions of Copyhold Tenants, and other Matters transacted and enrolled in the Manor Courts, which I conceive would save a vast Expence to the Owners of such Lands, in proving their Titles on Trials, &c. *But inquire for better Reasons.*

'Twould be endless to give all the several Forms of *Certioraries* that are found in our Books and Records: The above may be sufficient to direct in most Cases; and therefore I shall only add one more from the Register, *viz.*

Antient Demeasrn. See Registr. Orig. 14. b.

For certifying whether a Manor be *antient Demeasrn.*

THE King, &c. To his Treasurer and Chamberlains (of his Exchequer) Greeting.
Because for some certain Causes, we will (*would*) be certified whether the Manor of S. in the County of N. be of the antient Demeasrn of the Crown of England or not; We command

you, that searching our Book, which is called Domesday, what thereof therein you find, you tender us in our Chancery more certain, distinctly and openly, under the Seal of our Exchequer without Delay, remitting to us this Writ. Witness, &c.

To be granted without Fine, and indorsed.

To which Writ there is added in the Register, the Marginal Note *supra*, and also that which follows.

Note, That the Book of Domesday^r was made in the Time of Saint Edward the King; and all the Lands which were in the Hands of the said St. Edward, at the Time that that Book was made, are ancient Demean; and the Lands which were then in other Hands, are Frank fee.

Note.

Quere; Where then were Copyholds?

Of Writs of Champarty, Conspiracy, &c. see hereafter Writs on Statutes.

Of Writs of Covenant.

Of this Writ,
&c. in Brief.

HAVING treated of the preceding Writs more largely than I at first intended, I shall in this and most of those that follow be more brief, by giving only their several Forms, and inserting some few Remarks; and the rather for that the Reader will find them more particularly and at large treated of in the *Institutio Legalis*, and the last Edition of Fitzherbert's *Natura Brevium*.

A Note in the
Register ex-
plained.

But here I think my self obliged to take Notice of a Mistake in *Fitz. Nat. Brev.* 145. *A.* in transferring a Note from the Register 165. *b.* which says, *That a Writ of Covenant ought not to be by the Law Merchant (i. e. cannot be founded on mere personal Contracts, either by Note or Parol) because a Plea of Covenant cannot be without a Deed (i. e. under Hand and Seal) and every Man ought to be judged according to his Deed (i. e. by the Common Law) and not by another Law, i. e. an Action on such a Deed cannot be determined according to the Custom of Merchants, as those on Promissory Notes and Parol Contracts of Laying and selling may; yet 'tis said, that by Custom, as in London, &c. Covenant will lie on a Parol Contract.*

Diversity of
Covenants,
&c.

Writs of Actions of Covenant are diverse in their Kinds, as being founded on Covenants either Real or Personal, expressed or implied, affirmative or negative, executed or executory on a Deed Poll or Indenture, inherent or collateral, joint or several; of all which see the *Institutio Legalis* 424, 425, &c. where

where may be also seen the Difference between Covenants and Conditions, and what Covenants are good or not, &c.

The several Forms of Writs of Covenant in Fitz. Nat. Brev. and the Register, are these, viz.

A Writ of Covenant on an Indenture of Apprenticeship.

THE King to the Sheriff, &c. Command A. that justly and without Delay, he keep to (with) B. his Covenant and Agreement of Damages and Losses, done to (or suffered by) him B. by the Infidelity and Default of W. the Son of R. Apprentice of the foresaid B. within the Space of six Years (last past) to be repaired to the said B. and unless he do this (summon him A. by good Summoners, that he be) &c.

On an Indenture of Apprenticeship.
Reg. 165. b.
E. N. B. 145.

There is another Form on such an Indenture, brought by the Executors, viz.

—Command J. that justly, &c. he keep (with) A. B. and C. Executors of the Testament of N. the Covenant made between him and the same N. and W. of E. that him W. with the foresaid N. in the Manner of an apprentice for seven Years should abide; and after that Term completed, to serve the same for so much Time as the same W. should within the said Term elaigne (absent) himself from the Service of the same N.—Which Covenant the same W. by his Deed (or Writing, under Hand and Seal) obliged himself to fulfil and perform. And unless he do this, summon the W. and the foresaid Executors, &c.

Another Form by Executors.
Ibid.

Another against Executors on the like Indenture.

———Command A. and B. the Executors of the Testament of C. that justly, &c. they hold to B. the Covenant made between him and the foresaid C. of that, that the same C. would teach or cause to be taught the same B. after the Manner of an Apprentice, the Art of a Skinner, for seven Years; and during the foresaid Time would find or cause to be found to the said B. (sufficient) Meat, Drink (washing) and Lodging. And unless, &c.

Another for repairing a Messuage, Mill, &c.

To repair a Mill, &c.

See Reg. Orig. 166.

———Command H. J. and E. T. that justly, &c. they hold to W. N. the Covenant made between them, of a Messuage and a Mill with the Appurtenances in N. leased to the foresaid B. for the Term of twenty Years, for sustaining and upholding the same, and the Timber thereof during the said Term, by repairing the same as often as should be necessary, at the Costs of the said A. and leaving the same in as good State as he found it at the End of the said Term. And unless, &c.

And see there divers Forms of other Writs on Personal Covenants.—But

The Form against Executors on a Covenant real is thus:

Against Executors on a Covenant Real.
Ibid.

———Command A. and R. Executors of the Testament of E. &c. that justly, &c. they keep
to

to W. and P. his Wife, the Covenant made betwixt her P. and the foresaid E. of that, that the same E. his Heirs or Executors, should make (yeild) to C. the Son and Heir of J. when the same C. should come to his full Age, his reasonable Account (of the Issues and Profits) of all the Lands and Tenements which the foresaid J. had in the Town of N. in the County of N. the Wardship of which the same E. had of the Demise, which the foresaid P. to whom the Wardship of the Lands and Hereditaments aforesaid belonged, because the foresaid J. held that Land in Socage; and the same P. who was the next Heir of him J. made thereof a Grant to E. And unless, &c. supra.

Q.

By which Writ it appears a Guardian in Socage may grant over his Estate (or Interest.) Q.

But note; these Personal Writs of Covenant are now turned into the first Processes of *Latitans* and *Clausum fregits*, which see in Title *Process*.

Note.

The Forms of Writs of Covenant to levy Fines, in F. N. B. are these, viz.

THE King, &c. to the Sheriff of the County of D. Greeting. Command A. &c. that justly and without Delay he hold to (or, keep with) B. his Covenant betwixt them made of the Manor of N. with the Appurtenances in M. &c. Or thus: Of one Messuage and one Acre of Land, with the Appurtenances in N. &c. And unless (or, except) &c.

Covenant to
levy a Fine.
F. N. B.
146. F.

And note, these Writs are usually (if not always) returnable in C. B. where the Party

that acknowledges the Fine, ought to appear in Court in Person, on the Return of the Writ. But if he cannot there appear for Sickness, or other reasonable Cause, then before such Writ of Covenant is returned, there ought to issue a *Dedimus potestatem* (we have given Power) which reciting the Writ of Covenant, if to a Judge of C. B. is directed thus:

A *Dedimus potestatem* thereon, to a Judge of C. B.

THE King, &c. to his beloved and trusty W. R. Knt. Greeting. Whereas our Writ of Covenant (now) dependeth before you and your Companions, our Justices of the Bench, between A. of, &c. and B. of, &c. and C. his Wife, of one Messuage, &c. with the Appurtenances in N. &c. to levy a Fine thereof (or thereupon) between them, before you and your said Companions, according to Law and the Custom of our Realm aforesaid.—And the foresaid A. B. and C. are so impotent, that without very great Danger to their Bodies, they are not able to travel to Westminster at the Day in the foresaid Writ contained (to make) the Recognizances (Acknowledgments) which in this Part are required to be made: We compassionating in this Part (Particular) the Estate of the same A. B. and C. have given you Power to receive the Cognitions (Acknowledgments) which the foresaid A. B. and C. will make before you in the Premises. And therefore we command you, that you going personally to the foresaid A. B. and C. do receive their foresaid Cognitions; and when those you shall have received, you do ascertain your foresaid Companions thereof; distinctly and openly, that then that

Fine

Fine may be levied before you and your Companions, in the same Bench, between the Parties aforesaid, of the Tenements aforesaid, according to Law and the Custom aforesaid; and have there this Writ. Witnesses, &c.

But if the *Dedimus* be to a Judge of B. R. the Form is thus :

THE King, &c. to our beloved, &c. R. our chief Justice, or our Justice, &c. whereas the Warden of the House of the Vicarage of the Church of the blessed Peter of York, hath brought our Writ of Covenant against H. P. Knt. of the Advowson of the Church of F. to levy a Fine thereof (thereon) between them before our Justices of the Bench, according to Law and the Custom of England; and the same Warden and H. P. are so impotent, &c. (as above to) and when those you shall have received, you do ascertain our foresaid Justices thereof, &c. that then that Fine may be there levied before the same Justices, &c. and send to the same Justices this Writ. Witnesses, &c.

A Ded. Pot. to a Judge of B. R.

And by *F. N. B.* it seems that if a Man who acknowledges a Fine, labours under any particular Incapacity, or if a Woman be great with Child, &c. the same ought to be express'd in the *Dedimus Potestatem*, as in the ensuing Form; yet *Quere*, for I doubt many Fines are levied at this Day, without taking any Notice of such particular Inability in the *Dedimus*.

THE

*Dedimus for
a Woman
pregnant.*

THE King, &c. Whereas A. hath brought our Writ of Covenant against W. B. and J. his Wife, &c. as above; and the foresaid J. is big with Child; and the foresaid B. and W. languish, and are unable to travel, &c. whereby the foresaid W. cannot come to (be at) Westminster, at the Day in the Writ contained: And the foresaid J. and B. at the same Day and Place, are not able to travel, to make the Acknowledgments, &c.—(And) We willing to bestow on the said W. a special Favour in this Particular; and also compassionating the State (Condition) of the said J. and B. in this Particular, have given you Power, &c.

And if one would have levied a Fine of Lands held of the King in chief, he ought to have had a special Writ to the Justices of C. B. in the ensuing Form.

*A special
Writ for
Lands in
Capite. See
Vide ante, Ad
quod Dam-
num.*

THE King to his Justices of the Bench. Whereas by our Letters Patent, we of our special Grace have granted to J. that he may enfeoffe W. and Y. &c. of his Manors of M. and N. (reciting the Charters to them, as in our foresaid Letters Patent is more fully contained. And our Writ of Covenant (thereon) depends before you in the Bench aforesaid, betwixt the said J. and W. &c. to levy a Fine thereupon of the Manors aforesaid, according to the Law and Custom of England, as we have received (Information): We command you, that you permit that Fine to be levied before you in the same Bench, betwixt the Parties aforesaid, of the Manors aforesaid, according to the Tenor of our Letters aforesaid.

But

But from what we have before observed, under the Head of Writs *Ad Quod Damnum*, the levying of a Fine of Lands held *in capite*, without such Writ preceded, was illegal and void, and consequently the Judges Obedience to the Writ *supra*, would involve them within the Guilt of *Perjury*.

Note.

I could say much on this Head, but forbear till——

Of Writs of Debt.

Their Nature. WE are now come to Writs of *Debt*, under which Term are comprehend- ed more Suits and Actions than any in the Law, next to those on the *Case*.

This Writ lying in most Cases wherever a certain Debt or Duty accrues or grows due by way of Render, or where Money or o- ther thing is to be paid in Specie.

Form,

It is called a Writ of Debt from the Word *Debet* (he owes) therein, tho' if the Writ be for Goods or Chattels, as Wheat, Barley, Lead, Iron, &c. which are *dead* Things; or for living Things, as Sheep, Oxen, &c. it is never said, *debet* (he owes) but *detinet* (he detains); and even where Money is due, if the Writ be brought by or against an Execu- tor or Administrator, the Writ must say that he *detains*, and not that *he owes*.

Note also, where the Writ is for Chattels or *dead* things, you say of such a *Value*; but if it be for living Cattle, you say of such a *Price*, &c. as will appear from the Prece- dents *infra*.

and Use.

These Writs lie for the Recovery of any certain Debt or Duty in *Specie* as aforesaid, whether the same arises by an express or im- plied Contract, as may appear from the fol- lowing Instances.

Where it lies.

It will lie upon an Act of Parliament, as Debt for Tithes, &c. So upon other Records, as Judgments, Statutes, Recognizances; so upon a Specialty or Writing under Hand and Seal, as Bonds, Obligations, Leases, Covenants;

Covenants; sometimes by other Writings, as Accounts signed, Arbitraments, &c. sometimes upon Parol Contracts, as Bargains and Sales, Arrears of Rents, Loans, Receipts, &c. and sometimes upon other Matters, as Fines and Amerciaments in Court-Leets, &c. But this seems by Custom; and *Quære* if it will lie for an Amercement in a Court-Baron.

And tho' in some of those Cases an Action of the Case or Debt will lie at the Plaintiff's Election (as an *Indebitatus Assumpsit*, or Debt, will lie on a Promissory Note, or Debt, or Account, &c. on Money delivered to Account, &c.) yet if a certain Sum of Money be due by a Specialty, an Action of Debt only lies, and not Account, or Assumpsit, or other Action.

Debt or other Action.

But for a fuller Declaration of the Nature, End and Use of this Writ, see *Institutio Legalis* 432 to 465. where Actions of Debt are largely treated of.

This Writ, says *Fitzherbert*, may as well be sued in the County by *Justicies* before the Sheriff in the Court of Common Pleas; and the Form of the Writ is sometimes in the *Debet & Detinet*, and sometimes in the *Detinet* only; and if it be in the *Debet* it shall abate. It shall always be in the *Debet & Detinet*, where it is for *Money* payable to him who brings the Action; and therefore, if by a Bond or Specialty, Money is made payable to a Man and his Executors, &c. there after the Obligee's Death, the Executors, &c. may well have this Writ in the *Debet & Detinet*, notwithstanding the general Rule, that Executors, &c. can't have this

F. N. B. 119.
G. See 2 Keb.
420. That
Debt for
Tithes lies not
by Justicies.

this Writ in the *Debet*, but in the *Detinet* only.

Debet, &c.

And it has been adjudged, that in Debt by a Successor in respect of an Obligation made to the Predecessor, the Writ shall be in the *Debet & Detinet*. See 47 E. 3. 23. 40 E. 3. 16. 9 E. 4. 41. gr. 22 H. 6. 56. 13 H. 7. 3. and yet 'tis said if the Heir brings Debt, it shall be in the *Detinet*. 47 E. 3. 23. I conceive, if by an Obligation or other Specialty the Money be made payable to the Heir, he may well maintain the Writ in the *Debet & Detinet* as aforesaid; and see the *Register* 140. accordant.

Detinet.

But I admit, that in all Cases where the Demand is of Goods or Chattels, whether living or dead, there the Writ shall be only in the *Detinet*, as aforesaid.

The Form of the Writ sued by Justices in the County before the Sheriff, is thus:

F. N. B.
119. H.
For Money.

THE King, &c. to the Sheriff of Surrey, Greeting. We command thee that thou Justices A. that justly and without Delay be render to B. 40 s. which to him (Debet) he owes, as 'tis said, as he (i. e. B.) can reasonably shew, that he ought to render to him: That we hear no more Clamour thereof for Default of Justice.

But if the Writ be for other Goods and Chattels, and not for Money, it is to be in the following Form, *i. e.* in the *Detinet* (he detains, &c.) *viz.*

*THE King, &c. to the Sheriff. We com- For Goods.
mand thee, that thou Justice A. that justly and
without Delay be render to B. a certain Book,
or a certain Cup of such a Value; or a certain
Horse, or two Lambs, &c. of such a Price,
&c. which from him be unjustly detains, as 'tis
said, &c. See the Register 139 b. but this
Rule is not always observed in the Register
it self.*

And if this Writ be brought in the Coun- *Causes for re-
ty before the Sheriff by Justices, the Plain- moving the
tiff may remove the Plea into the Common Plea into C. B.
Plea by a Pone, without shewing Cause in
the Writ: But the Defendant can't remove
it without shewing Cause. And in the End
of the Pone, it shall be said, Let Execution be
made of this Writ if the Cause be true, and
the Defendant desire it, otherwise not. And
the Causes wherefore the Defendant may re-
move the Plea into C. B. are such as these,
viz.*

If the Defendant pleads a Foreign Plea, *See before
which cannot be tried in the County; or pag. 113.
if he shews that the Sheriff, or he before
whom the Plea is depending, doth maintain
or favour the Plaintiff; or that the Plaintiff
is his Servant or Dependant, or any other
Cause that may induce Partiality or Favour.*

And a Pone to remove the Cause at the *Pone at the
Plaintiff's Suit, is in this Form, viz. Plaintiff's
Suit.*

*THE King to the Sheriff, Greeting. Put Regist. 141.
at the Petition of the Plaintiff before our Justices
at Westminster (such a Day) the Plea which
is in thy County, by our Writ between A. and B.
of*

2.

of a Debt of ten Pounds, which the same A. demands from the foresaid B. Or thus: That the same B. do render to the foresaid A. Goods and Chattels (to such a Value.) Or thus: Between A. and B. Executors of the Testament of C. and D. of that, that the same D. do render to the foresaid Executors (so much Money, or Goods, &c. to such a Value) and summoned by good Summoners the foresaid D. that he be then there to answer to the foresaid A. and B. (or to the foresaid Executors. And have thou there the Summoners, this Writ, and the other Writ. Witness my self, &c. (Or, That he render to the foresaid Executors, two Writings obligatory, which from them he unjustly detains, &c.) But this later seems more properly in Detinue than in Debt; but the Register is so. Ergo Quære.

A Poze at the Defendant's Suit is thus:

At the Defendant's Suit.

The Cause.

THE King, &c. Put before our Justices at Westminster, &c. the Plea, &c. to such a Value, &c. Or thus: Between R. the Executor of the Testament of A. and J. the younger, and C. his Wife, the Co-executrix of the foresaid R. and H. of that, that the same H. render to the foresaid Executors and J. 5 l. And say to the foresaid Executors, that they be then there to prosecute, if they will, their Plea against the foresaid H. and have there this Writ and the other Writ. Witness, &c. (After which the Cause is added thus.) Because the foresaid B. in pleading in the County aforesaid asserted him A. to have impleaded by our Writ the foresaid B. in our Court before our Justices of the Bench, and to have recovered the same 5 l. by
Judg.

Judgment of the same Court, as it is said. Let Execution be made, &c. as above.

Or thus: Because the foresaid B. in pleading in the County aforesaid, hath alledged, that he ought not to be charged with the foresaid Debt, for that he had a certain Writing of Acquittance of the same Debt. Or thus: For that the same B. at the Time of making of the said Writing, whereby the foresaid A. asserts him B. to be bound to him in the said Debt, was detained by the foresaid A. in Prison at N. in the County of L. as 'tis said, by reason whereof that Plea cannot be determined in the same thy County, according to the Law and Custom of England: Let Execution be made, &c.

Or thus: Because J. B. the Bailiff of the Hundred of the Earl of Derby of his Honour of N. in the County aforesaid, before whom that Plea depends by the Return of our Writ, hath undertaken to maintain the foresaid Plea, for having Part of the said 5l. For which Cause the same Bailiff favours him A. in the Plea aforesaid, as 'tis said. Let Execution, &c.

Mainten-
ance.

And if the Sheriff or Bailiff of a Liberty, &c. offers to proceed after a Pone delivered, an Attachment may be issued against him in this Form, viz.

THE King to the Sheriff of Essex, Greeting. If T. the Executor of the Testament of N. of London, &c. and P. and K. his Wife, Co-executrix of the said Testament of the foresaid N. shall make the secure, then put by Gages and good Pledges J. the Bailiff of H. Earl of H. of his Honour of M. in the County

S

afore-

Attachment
on a Pone.
See the
Registr. 142.

aforsaid (or of the Wapentake of N.) that he be before our Justices at W. such a Day, &c. to answer as well to us as to the foresaid Executors and N. Why whereas we had lately commanded thee by our Writ, that thou shouldst put before our foresaid Justices at W. at (a certain Day) now last past, the Plea which was in thy County by our Writ between J. and the foresaid Executors and N. of that, that the same Executors might (should) render to the foresaid J. 10 l. which said Plea was by thee returned to be impleaded in the Court of the foresaid Earl of his Honour aforsaid, in the foresaid County, according to the Liberty granted to the same Earl. And altho' thou hadst, by Virtue of our said Mandate, put that Plea (depending) in the same Court, before our foresaid Justices at the Day aforsaid, and hadst given the same Day to the foresaid Parties in the same Plea: Nevertheless (yet) the same Bailiff afterwards held the same Plea in the same Court, and rendered Judgment thereon against the foresaid Executors, and hath caused Execution to be made of that Judgment, in Contempt of us and our Mandate, and to the no small Damage and (gravamen) Vexation of the foresaid Executors and N. And have thou there this Writ. Witness, &c.

But the Form of a Writ of Debt in C. B. (as 'tis in the Register) is thus.

Writ of Debt in C. B. *THE King to the Sheriff of L. Greeting. Command A. that justly and without Delay he render to B. 100 s. which he owes to him, and unjustly detains as he says (or as 'tis said) and*
 Regist. 139. b.
 For Payment of Money.

and except he does it; and (if) the foresaid B. shall make thee secure for prosecuting his Clamor (Claim) then summon by good Summoners the foresaid A. that he be before our Justices at Westminster, from the Day of Easter in fifteen Days (i. e. on the fifteenth Day after Easter) to shew why he has not done it. And have there the Summoners and this Writ. Witness, &c.

Which brief and pregnant Form served, and may still serve for all Purposes in Debt for the Payment of Money, let such Debt arise by any of the Ways aforesaid, viz. by Act of Parliament by Matter of Record, by Specialty or otherwise.

But if the Debt be for the Payment of Goods or Chattels, the Writ is to be in this Form:

*THE King, &c. That he render to B. Chat- For Chattels.
tels to the Value of 5 l. which from him he un-
justly detains, as he says; and except, &c. Or,
Chattels to the Value of 5 l. and a certain Box
with Deeds, Writings, and other Muniments
contained in the same Box, which from him he
unjustly detains, as he saith. And except, &c.*

Or the Writ may be for both Money and Chattels thus:

*THE King, &c. That he render to B. and For both.
C. 100 Marks, which he owes to them, and
unjustly detains; and Chattels to the Value of
40 s. which he unjustly detains, as they say, &c.*

Of Writs of Debt.

As for other Matters relating to Writs or Actions of Debt, I shall refer the Reader to the *Register*, the *Natura Brevium*, and the *Institutio Legalis*, in the several Pages above cited: And in the next Place proceed to shew the Nature and Form of another Species of Writs of Debt, viz. Writs of *Detinue*.

Of Writs of Detinue.

justly and without Delay render to B. a certain Box, Chest, (Horse) &c. of such a Value (or Price) which he from him unjustly detains, as 'tis said, as he (the Plaintiff) can reasonably shew he ought to render; so that we hear no further Clamour thereof, &c.

But the Form of the Writ in C. B. is thus set down by *Fitzherbert, viz.*

*Form in C. B.
See F. N. B.
138.*

THE King to the Sheriff, &c. Command A. that justly and without Delay he render to B. one Box, with three Writings Obligatory in the same Box contained, under the Seal of the said A. signed, &c.

But note, all the Precedents of Writs of *Detinue* in the *Register* and *Fitzherbert*, are of *Detinue* of Charters, or Boxes, or Trunks with Writings. And the Rule in the *Register* is, that in a Writ for Charters to be rendred, the certain Number of the Charters or Writings ought always to be inserted in the Writ; But a Man may have *Detinue* for one Charter only.

*Wager of
Law in B. R.*

I might here conclude this almost unnecessary Section, but having on this Occasion just mentioned *Wager of Law*, I shall here shew how that is to be transacted and performed in B. R.

When an Issue of *Nil debet* (or *Nil Detinet*) *per Legem* (that he owes nothing, or detains nothing, by Law) is entred on the Roll, the Secondary appoints a Day for the Defendant to appear in Court to wage his Law; and if he appears he must bring his Compurgators with him, which by the old Rules

Rules ought to be eleven besides himself, it being antiently called *Lex de duodena Manu*, or the Law of twelve Mens Oaths; and by the Laws of *Hoel Dha* seems of *British* Original. The Defendant being to swear directly that he did not detain, nor ever did detain the Thing demanded; or that he did not owe the Sum demanded, nor any Part (Penny) thereof; and the eleven Compurgators were to swear severally, that they believed in their Consciences that the Defendant swore Truth. But this swearing of the Compurgators is now in a Manner omitted, only the Court has sometimes ask'd the Defendant if he has any such, and how many, &c. and the Defendant's Oath alone is generally accepted. To which End he appears at the Bar towards the Right Hand of the Judges, and then the *Secondary* having the Record ready in Court, calls the Defendant by his Name, and asks him whether he will wage his Law; and if he answers yes, sometimes admonishes him to take Care and consider of the Danger of a false Oath; but if he persists to wage his Law, this formal Dialogue passes.

Q. You *A. B.* you owe to *C. D.* 40 s. (or as the Case is) why don't you pay him?

Ans. I owe him nothing.

Q. Did not you buy such Goods, &c. of him?

Ans. No.

Q. Will you take your Oath of it?

Ans. Yes.

Then the *Secondary* bids the Crier call the Plaintiff; and if he appears, he bids the Defendant say after him, *viz.* *This hear ye*

The Oath.

Justices, that I A. B. do not owe to C. D. the 40s. he demands of me, nor any Penny thereof, in Manner and Form as he hath declared against me, so help me God, and by the Contents of this Book. And if it be an Action of Account, the Words are, That I never was Bailee to C. D. of the Goods, Wares or Merchandizes of the said C. D. nor of any Part or Parcel thereof, in Manner and Form, &c.

But note; before the Defendant swears, the Plaintiff is called thrice by the Crier; and if he does not appear, he becomes *Non suit*, and the Defendant for that Time goes without taking any Oath. But then the Plaintiff may bring a new Action; whereas if the Plaintiff appears, and the Defendant performs his Law, and swears, &c. the Plaintiff is for ever barred.

Also note; the Defendant is not to be admitted to wage his Law after *Imparlance*, but may before; and then the Plaintiff can't be nonsuited, tho' the Defendant perfects his Law. But if he wages his Law after *Imparlance*, the Plaintiff may be nonsuited. See further of this *titit. Legalis* 157, 302; and *Quere* the Case of *James and Dix*, *Paf.* 33 *Car.* 2. in *B. R.*

Of Writs of Ejectment.

A Writ of Ejectment at this Day somewhat *Original End* varies from its original End and Institu- *of Ejectments.* tion; for it is now made use of to try the Right and Title even of Freeholds and Inheritances, and accordingly supplies the Place of many real Writs formerly in Use, to try such Rights or Titles; whereas in its first Institution it lay only in Cases where a Man was ousted or dispossessed of a Term for Years; for thus says *Fitzherbert.*

F. N. B. 220.

This Writ lies where a Man leases Lands for Years, and afterwards the Lessor or a Stranger doth eject the Lessee from his Term. And the Form thereof is thus:

THE King to the Sheriff, &c. If A. shall *Form of the*
make thee secure, &c. then put B. by Gages *Writ.*
and good Pledges, that he be before our Justices
at Westminster (such a Return-Day) to shew
why with Force and Arms he hath entred the
Manor of J. (or such and such Lands) at G.
in thy County, which the said B. (or T. or D.)
to the foresaid A. demised, for a Term not yet
past. And the Goods and Chattels of the same
A. to the Value of, &c. found (or being) in
the same Manor (or Lands) hath taken and
carried away, and him A. from his foresaid
Farm ejected, and done other enormous things to
him, to the grievous Damage of him A. and a-
gainst our Peace, as 'tis said. And have thee
this Writ. Witness, &c.

And there is another Form of this Writ thus.
 ———To

See F. N. B.
ibid.

— *To shew why J. with Force and Arms the Manor of B. (or such Lands) in thy County, which the said J. demised to the foresaid A. for the Term of seven Years, within that Term entred; and that (the same) for a great (long) Time occupied, and hindred him A. so that he could not take the Issues (or Profits) of the Manor (or Lands) aforesaid, according to the Form of the Demise aforesaid; and the Goods and Chattels of him A. &c.*

And by these Writs he should recover his Term again, if it were not ended, and the Process thereon was Attachment, Distress, and a proceeding to *Outlawry*, &c.

*Practice at
this Day.*

But the Practice of Ejectments at this Day in the King's Bench, is to file a Bill of *Middlesex*, or a *Latitat*, if the Lands lie in another County; and in the Common Pleas, a *Chusum fregit*, which, tho' only Mandates of the chief Justices, do now serve in those respective Courts in lieu and stead of original Writs.—*Vide infra.*

*Observations
thereon.*

And whereas formerly the Possession of Terms for Years, was only recoverable in Ejectment, the Practice for about 60 or 80 Years past, has been to try Titles to Inheritances by this Writ, upon a suppos'd Lease made to the Plaintiff's feigned Nominee. Which tho' in its primary View, it is only to recover the *Possession*, yet in its ultimate Design and End, it highly affects, and sometimes transfers the *Inheritance* from the rightful Owner.

For, granting that by this Writ the *Possession* only is recovered, yet hereby perhaps
the

the rightful Owner is *ousted*, and put to the labouring Oar of an Actor, *i. e.* he is forced to become Plaintiff for the Recovery of his Right, wherein he often suffers two or three Nonfuits; and at last, except the Evidences of his Title be very clear, a Verdict passes against him, it being an established Maxim in Law, that the Defendant's *Possession* shall secure him against all Men; but he who can evidence the real Right to be in himself; so that if he that has the *real Right*, is defective in any Part of the Evidence to prove it, he will find his *real Right* to be an empty Name, and the other's Possession to have more than eleven Points of the Law to support it.

But for further Satisfaction in the Modern Practice and Proceedings in Ejectments, I must refer the Reader to the before mentioned *Institutio Legalis*, pag. 136 to 144; and 288 to 292, 469, &c. and shall here only add some *Forms* of Proceedings in this Action in *English*.

The Form of a *Capias* in Ejectment in B. R.

GEORGE, &c. *To the Sheriff of M.* A *Capias* in Ejectment in B. R.
 Greeting. *We command thee, that thou take*
G. H. of, &c. Esquire, if he may be found in
thy Bailiwick, and keep him safely, so that
thou hast his Body before us, wheresoever we
shall be in England (on such a Return-Day) to
answer to A. B. of a Plea, wherefore with Force
and Arms he entred three Messuages, fifty Acres
of Land, &c. in O. (in thy County Q.) which
J. C. demised to the same A. B. for a Term of
Years which is not yet past, and ejected him from
his

See *Thesaur.*
Ev. 38.

his Farm aforesaid. And have then there this Writ. Witness myself, &c.

Note; the *Capias* must bear *Teste* the same Day the Original is returnable.

The Form of a Declaration thereon is thus:

Declaration
in Ejectment
in B. R.
See *Instit.*
Legal. 138.

Middlesex ss. A. B. (*by such a one his Attorney, &c.*) complains of C. D. in Custody of the Marshal of the Marshalsea, &c. for that to wit, that whereas E. F. Gent. (*such a Day*) in the 4th Year of our Reign, at W. in the County aforesaid, had demised, granted, and to Farm letten to the foresaid A. three Messuages, &c. with the Appurtenances, situate, lying and being in the Parish of H. in the County aforesaid, to have and to hold the Tenements aforesaid, with the Appurtenances, to the foresaid A. and his Assigns from (*such a Day*) then last past, to the full End and Term of five Years from thence next ensuing (*following*) and fully to be compleat and ended; by Virtue of which said Demise (Lease) the same A. entred into the Tenements (Messuages, &c.) aforesaid, with the Appurtenances, and was thereof possessed, until the foresaid C. afterwards, to wit, the same — Day of — in the fourth Year aforesaid, with Force and Arms, &c. entred on the Tenements (Messuages) aforesaid, with the Appurtenances, into and upon the Possession thereof of him A. (or upon the said A.'s Possession thereof) and ejected, expelled and removed him A. from his Farm aforesaid, his foresaid Term therein not yet ended; and hath held, and yet doth hold him out of the Possession there-

thereof; and did other Enormities then and there to him against the Peace of the said now Lord the King, and to the Damage of him A. 10 l. and thereof he brings his Suit, &c.

The Rule by Assent made thereupon.

Michaelmas, the fourth Year of King GEORGE the second.

It is ordered by Assent of the Attornies of both Parties, that J. S. be made Defendant, instead of the now Defendant C. D. and that he appear without Delay, at the Suit of the now Plaintiff, and put in Common Bail, and receive a Declaration in a Plea of Trespass and Ejectment, for the Tenements in Question; and shall plead *not guilty* thereto without Delay; and upon the Trial of the Issue shall confess Lease, Entry, and actual Ouster (Ejection) and insist only upon the Title, otherwise Judgment to be entred for the Plaintiff against the now Defendant C. D. by Default. And if upon Trial of the Issue aforesaid, the same J. shall not confess Lease, Entry, and actual Ejection, whereby the Plaintiff shall not be able further to prosecute his Bill against the foresaid J. then no Costs or Charges shall be adjudged on such *Non pros*, but the foresaid J. shall pay to the foresaid Plaintiff the Costs or Charges to be taxed thereupon: And it is further ordered, that if upon Trial of the foresaid Issue, a Verdict shall be given for the Defendant J. S. or if it happens that the foresaid Plaintiff shall no further prosecute his

Order by Consent.
Write in the Margin the Parties Names, the Quantity and Parcels of Land, the Place and County where, and by whom leased, as directed in Int. Leg. 139.

his said Bill for any other Cause than for not confessing the Lease, Entry, and actual Ejection aforesaid, the Plaintiff shall pay to the foresaid 7. the Costs and Charges in that Behalf to be adjudged.

But note; the above is the Form of the Rule, when the Proceedings are by Way of first Procefs on a *Latitat* or *Clausum fregit*, as aforesaid. But if the Rule is founded on the Proceeding by Original, it varies somewhat from the former, as may be seen in the *Institutio Legalis* 141.

The Form of a *Præcipe* or first Procefs (commonly called an *Original*) in Ejectment, in *B. R.* is thus:

An Original
or first Pro-
cess in E-
jectment.

Middlesex ss. GEORGE, &c. If A. shall make thee secure, &c. then put B. late of J. in thy County, Gentleman, &c. of a Plea, why with Force and Arms he entred thre Mes- suages, with the Appurtenances in J. aforesaid, which W. B. to the same A. demised for a Term which is not yet past, and ejected him from his Farm aforesaid; and did to him other Enormities, to the great Damage of him A. and against our Peace, &c.

See the new *Returna Brevium* 227, 228.

Of Writs of Error, &c.

A Writ of *Error* properly lies where an erroneous Judgment is given in any inferior Court of Record, and is generally brought to remove such Judgment, and the whole Record thereof from such inferior to a superior Court, in order to have the Judgment and Record re-examined; and (if Error be found therein) to reverse the Judgment.

A Writ of Error in general.

So that a Writ of Error is in its Nature an Appeal from an inferior to a superior Jurisdiction, and lies in the first Instance from any inferior Court of Record in any County, City, Town corporate, or other Place (as the *Marshalsea*, &c.) where they have Power to hold Pleas of Record, either by Charter or by Prescription, in any Sum in Debt or Trespass above the Sum of 40 s. &c.

From what Courts, F.N.B. 20. D.

And if a false or erroneous Judgment be given in *London*, or other City or Place, as aforesaid, the Party against whom 'tis given, may have this Writ returnable into the Court of Common Pleas, or the King's Bench, at his Election.

Returnable in C. B. and B. R. &c. when in Parliament.

Also Error lies from the Common Pleas to the King's Bench, and from the King's Bench in some Cases to the Exchequer, and from thence into Parliament, which in all Cases is to be the *Dernier Resort*, or *last Appeal*.

And note; If a Suit be commenced in the King's Bench by *Original Writ*, if Error be brought thereon, it must be in the next Parliament, or not at all. But if a Suit be commenced there by Way of first Process, as
Bill

Bill of *Middlesex, Latitat, &c.* there your Writ of Error must first be in the Exchequer, and after Judgment affirm'd or revers'd there, a Writ of Error lies in Parliament.

*Now directed
To C. B.
F. N. B.
20. D.*

Also if a Writ of Error is directed to the Court of Common Pleas, the Form is, *To Sir Robert Eyre; Knt. Chief Justice in the Bench at Westminster, and his Companions there*; so that it is not directed to the Chief Justice alone, for that the Records there are not before him alone, but before him and his Companions of that Court, whereof the *Custos Brevium* seems to be one; yet the Practice seems now *contra*. *Quere*, how it came to be altered.

*To B. R.
See Reg. 133.
contra.*

But in the King's Bench the Writ is directed *To Robert Lord Raymond our Chief Justice, assigned to hold Pleas before us where-soever, &c.* For in that Court the Chief Justice has the sole Custody of the Records, &c. *Quere* of this, for the Register is otherwise; *vide infra*.

To the Exchequer Court.

24 H. 6. 27.

Also in the Exchequer Court, Writs of Error, *Certioraries, &c.* are not directed *To the Treasurer and Barons*, but to the Barons only, for neither the Treasurer nor the Chancellor have the Custody of the Records there; and yet see before a *Certiorari* directed *To the Treasurer and Chamberlains of the Exchequer*; but that was to certify a special Record, *viz. Domesday Book*, which is kept under their particular Custody.

*Exchequer
Chamber.*

Also a Record may be removed by Writ of Error out of the Exchequer Court (or B. R.) into the Exchequer Chamber, but that is by Statute (31 E. 3. 12.) and seems
contrary

contrary to the Course of the Common Law; and when Judgment is there affirmed, the whole Record shall be sent back to the Court from whence it came, to have Execution awarded thereupon. And so, as I apprehend, is the Course when a Record is removed by Error into Parliament, the Chief Justice carries both the Record and a Transcript thither; but after the Transcript is there examined, he brings back the Original Record; and on affirming the Judgment by the Lords, Execution is to be awarded by the Court of B. R. *In Parliament.*

But touching Proceedings on Writs of Error, and of assigning Errors, and of *Scire Facias's* to hear Errors, &c. see the several Books of Practice published thereon, especially *F. N. B.* pag. 20. to 25. and *Institutio Legalis* 105, 169 to 177, 235, &c. *Proceedings thereon.*

There are divers Forms of Writs of Error on Judgments given, to be found in antient and modern Books of Entries; but as the best established Forms are in the *Register* and *Fitzherbert*, I shall translate the following from thence, *viz.* *Forms thereof.*

A Writ of Error on a Judgment on a Plaint in *Trespas* in London.

THE King to the Mayor and Sheriffs of London, Greeting. Because in the Record and Process, and also in the giving Judgment of a Plea which was in our Court of the City aforesaid, before you the foresaid Sheriffs, without our Writ, according to the Custom of the same City, between H. A. and R. B. of a certain *Trespas* done to the same H. by the foresaid

To the Mayor, &c. of London. See Reg. 130. F.N.B. 23. C. Note, this was on a Plaint without Writ.

T said

Of Writs of Error.

said R. as 'tis said, there hath manifest Error intervened, to the grievous Damage of him R. as from his Pleint we have received: We willing the Error, if any be, to be corrected, in due Manner, and that full and speedy Justice be done to the foresaid Parties in this Particular, do command you, that if Judgment be thereupon given, then (you cause) the Record and Process of the foresaid Plea, with all things touching the same, to come before you in our next Hustings of the same City, and those to be recited and diligently examined, in the Presence of the foresaid Parties, who as to this, are by you the foresaid Sheriffs to be forewarned, and the Error, if any be, or shall intervene in this Particular, to be corrected in a due Manner; and full and speedy Justice to be done thereupon to the Parties aforesaid, as of Right, and according to the Custom of the foresaid City is (or ought) to be done. Witness, &c.

Letters Patent to certain of the Judges for correcting Errors in London.

A Commission for correcting Errors in London. Regis. 150. b. Note, this and the following Form seem compos'd when the King claim'd that illegal Power of making a Custos or Warden of the City.

THE King, &c. To his beloved and faithful R. and S. Greeting. Because on the Part (Behalf) of B. we have received, that in the Record and Process, and also in the giving of Judgment of a Plea which was before the Warden, or Mayor and Sheriff of London, in our Hustings there without our Writ, between C. and the foresaid B. of a certain Trespas, &c. done, as 'tis said, manifest Error intervenes: We in Default of the same Mayor and Sheriffs, willing the Error, if any be, to correct in a due Manner; and that a Complement of Justice be made to the Parties thereupon, Have assigned you our Justices,

Justices, together with those whom you shall associate to you, to examine the foresaid Record and Process, and to correct the Error, if any shall happen to be in them, or in the rendering of the Judgment of the Plea aforesaid, and to do full and speedy Justice thereon to the Parties, according to the Custom of the City aforesaid. And therefore we command you, that at a certain Day, which to this (Business) you shall appoint, you go to St. Martin the Great, London; and in Default of the foresaid Warden, Mayor and Sheriffs, do ye the Premises to be done in the Form aforesaid, according to Right and the Laws of our Kingdom, and the Customs of the foresaid City, saving to us the Amerciements, &c. We have also commanded the same Warden (or Mayor) and Sheriffs, that at a certain Day which ye shall make known to them, they cause to come before you at the Place aforesaid, the Record and the Process of the foresaid Plea, with all things touching the same, as also the Parties aforesaid. In Witness

See the
Regist. 131.

And the said Writ to the Mayor, &c. is in the following Form (but seems of Special Grace.)

THE King to the Mayor (or Warden) and Writ to the Sheriffs of London, Greeting. Because on the Part (Behalf) of B. we have received, that in the Record and Process, &c. (unto) we have assigned our beloved and faithful R. and S. our Justices, together with those whom they should associate to them, to examine, &c. (unto) St. Martin the Great, London.—And therefore we command you, that at a certain Day

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which