

(reciting the Bill) returnable before us (such a Day, &c.) together with that Writ, that we might cause to be further done therein, as we should see was of Right to be done; yet for certain Causes now moving us in our Court before us (i.e. in B. R.) We command you, and every of you, that as well in the Plaint aforesaid, against the foresaid C. levied in our Court before you, or any of you, at the Suit of the foresaid A. as in the Attachment thereupon made in the Hands and Custody of E. F. with that Celerity you proceed, &c. our Writ of Certiorari aforesaid, to you formerly directed to the contrary, in any thing notwithstanding. Witness, &c.

Of Writs of Proclamation, &c.

THESE Writs of Proclamation are in order to an Outlawry, and founded on the Statute 31 Eliz. c. . . which Statute is recited in the Writ, viz.

Writs of Proclamation, in order to an Outlawry. See Theat. Brev. 173.

THE King to the Sheriff of N. Greeting. Whereas we had lately commanded our Sheriff of Middlesex, that he should cause to be demanded W. O. late of B. in thy County, Toman, from County to County, until according to the Law and Custom of England, he should be outlawed if he should not appear; and if he should appear, then to take and cause him to be kept safely, so that he might (should) have his Body before us (such a Return-Day) wheresoever we should be in England, to answer to W. Y. Gentleman, of a Plea, why with Force and Arms he had broken the Close of him A. &c. (as in the Exigent) We command thee, that by the Statute provided therein, in the 31st Year of the Reign of the Lady Eliz. late Queen of England, thou cause to be proclaimed the foresaid W. on three several Days, according to the Form of that Statute, whereof let one Proclamation be made at or near the most usual Church Door of the foresaid Parish of Wake, where the same W. is inhabiting, that he render himself to our Sheriff of Middlesex, so that the same Sheriff might have his Body before us at the foresaid Term (Time) to answer to the foresaid M. of the Plea aforesaid. And have thou there this Writ. Witness, &c.

A Writ of Proclamation on an Exigent in Replevin.

Proclamation
on in Re-
plevin.

THE King, &c. To the Sheriff, &c. Greeting. Whereas we had lately commanded our Sheriff of S. that justly and without Delay he should cause to be replevied the Beasts (Cattle, Heifers) Goods and Chattels of J. L. of, &c. which J. E. Knight and F. his Wife (Q.) did take, and have unjustly detained, as 'tis said; or that he should be before us at a certain Day now past, to show why he hath contemned to execute our Mandate so often to him therein directed. And our said Sheriff of S. at that Day returned to us, that the foresaid Beasts, Goods and Chattels were cloigned to Places to him unknown, so that he could by no Means replevy them to the foresaid J. L. whereupon it was commanded to the same Sheriff, that he should take in Withernam of the Beasts of the foresaid J. E. and F. (Q.) found in his Bailiwick, to the Value of the foresaid Beasts so first taken, and should deliver them to the foresaid J. L. to be detained by him, until the foresaid J. E. and F. would deliver to the foresaid J. L. the foresaid Beasts, Goods and Chattels by them before taken in the Form aforesaid. And how he had executed, &c. he should make known unto us on the Morrow, &c. (i. e. the Return-Day) And that he should put by Gage and safe Pledges, the foresaid J. E. and F. that they should be before us at the same Time, to answer as well to us of the Contempt aforesaid, as to the foresaid J. L. of the Damages and Injuries done to him in this Particular. Which said Sheriff at that Day returned to us, that the said J. E. and F.

has

had no Goods or Chattels in his Bailiwick, which could be taken in Withernam. Whereupon we lately commanded the same Sheriff, that he should cause them to be demanded from County to County, until, &c. if they should not appear; and if they should appear, then he should take and cause them to be safely kept, so that he should have their Bodies before us from, &c. (such a Return-Day) to answer as well to us of the Contempt aforesaid, as to the foresaid J. L. of the Damages and Injuries aforesaid. We command you, that by the Statute therein provided in the 31st Year, &c. (ante) you cause the foresaid Defendants to be proclaimed at three several Hustings, according to the Form of that Statute. Whereof let one Proclamation be made at, &c. (as above.)

There are also other Writs of Proclamation, as for proclaiming Fines, &c. But of these or the like I shall not here discourse, only beg Leave to take Notice that there are also Proclamations by Parol or the Voice only, as well as by Writ. And these Parol Proclamations seem to be founded on the Common Law, and the General Custom of the Realm. Of this Kind are all Proclamations for keeping the publick Peace, and the like; and so are Proclamations made at County-Courts, Courts-Leet, Courts-Baron, &c. by those formal Words, *Oyez, Oyez,* (Hear ye, Hear ye,) &c.

Parol Proclamations.

And hereto we may add that formal Proclamation which is always made the last Day of every Term at the Rising of the Court, viz.

Oyez!

Proclama-
tion the last
Day in Term.

Oyez ! Oyez ! Oyez ! Vous que plus icy
avez à faire per tout Angleterre, per Breif,
Bill, Roll, ou Paroll, venez avant tantost, &
vous sera deliveres ; & vous que riens avez,
a faire avoidex le Bar.

In English thus.

‘ Hear ye ! &c. You that have any more
‘ here to do, by Writ, Bill, (Plaint) Roll or
‘ Parol, come forth soon soon, and you shall
‘ be delivered, (dispatched) ; and you that
‘ have nothing (here) to do, avoid (de-
‘ part from) the Bar.

Of Writs of Prohibition and Consultation.

A Prohibition is a Writ issuing out of the *Prohibition,* Courts of Chancery, Kings Bench, or *what it is,* Common Pleas, and lies to prohibit any *and to what* Court Ecclesiastical, or other inferior Courts *Courts.* Temporal, from holding Plea of any Thing that does not properly belong to its Jurisdiction, and consequently lies to the Courts of all Archbishops, Bishops, Archdeacons, &c. the Courts of the Admiralty, Court of Honour, Dutchy-Court, County-Court, Court-Baron, &c. as is more particularly shewn in *Instit. Legalis* 500, 501, &c.

But this Writ is most usually sued where *Usually to* one is impleaded in the Court of an *Courts S; iri-* Archbishop, Bishop, &c. or other Courts *tual.* commonly called *Spiritual*, for any Matter belonging to the Cognizance of the King's *Temporal* Courts, whereby as well the Party there prosecuting, and his Counsel, as also the Judge and Register, and other Officers of such Courts are prohibited from proceeding any further in such Cause. See there 501. See also the *Law of Tithes*, chap. 9. touching Prohibitions and Consultations in Cases of Suits for Tithes in the Spiritual Courts.

As to the Forms of Prohibitions, there *Forms thereof.* are Multitudes of Precedents thereof to be found in all our Books of Entries, antient and modern, as the *Register*, *Fitzherbert*, *Rafial*, *Cook*, *Thompson*, *Vidian*, *Cliff*, *Lilly*, &c. but more especially in the *Thesaur. Brev.*
from

from pag. 174. to pag. 214. from which last mentioned Book I shall select some Instances.

A *Prohibition* to the Court of Admiralty, on a Suit there for Freight of a Ship.

To the Court of Admiralty. *TREASUR.* 17. *Bred.* 174. *Stat.* 13 R. 2. cap. 5. See *Co. Lit.* 260. 4 *Inf.* 135. 2 *Bulstr.* 323. 3 *Bulstr.* 205. 12 *Co.* 104. *Heb.* 11. 79. 196. 212. 19 H. 6, 7. *Dyer* 159. *Stat.* 15 R. 2. cap. 5.

THE King, &c. To the venerable and egrigious (chosen) Man, &c. Greeting. It is shewn unto us, from the heavy Complaint of E. G. (and others) that, Whereas in a Statute of the Lord Richard the second, late King of England, set forth in the Parliament held at Westminster, in the thirteenth Year of his Reign, it is among other Things contained, That the Admirals and their Deputies should in no wise intermeddle with any Thing done within the Realm, but only of a Thing done upon the High Sea, as in the Time of Edward the third, late King of England, Grandfather of the said Lord King Richard, had been used. And also, Whereas in a Statute of the said late King Richard, set forth in the Parliament held at Westminster, in the fifteenth Year of his Reign, it was among other Things declared, ordained and established, That of all manner of Contracts, Pleas and Plaints, and of all other Things done, arising within the Bodies of Counties, as well by Land as by Water; and also of Wreck of the Sea, the Court of Admiralty should in no wise have Cognizance, Power or Jurisdiction; but that all such Contracts, Pleas and Plaints, and all other Things arising within the Bodies of Counties, as well by Land as by Water, as is aforesaid, and also Wreck of the Sea should be tried, determined, discussed and remedied by the Laws of the Land, and

not

not before the Admiral, nor by the Admiral; nor by his Lieutenant in any wife. *And also* Stat. 2 H. 4. cap. 11. Whereas in a Statute set forth in a Parliament of the Lord Henry the fourth, late King of England, held at Westminster aforesaid, in the second Year of his Reign, it was among other Things contained, that the said Statute of the foresaid thirteenth Year should be firmly holden, and due Execution demanded (observed) as by the same Statute last recited is more fully clear (plain) and apparent. Yet certain W. B. and C. D. Proprietors (Owners) of a Ship called The Faith of London, not ignorant of the Pre-
The Suggestion.
 mises, contriving him the said G. and others, against the due Form of the Law of England, and against the Form and Effect of the Statutes aforesaid, unjustly to vex and disquiet the Cognizance of the Plea, which to us and our Regal Crown doth especially belong and appertain, to another Examen in the Court of Admiralty, have drawn them the said G. G. &c. the twenty-second Day, &c. at (such a Place) before
Charter-party made in London.
 you, of and for the Payment of the Sum of 67 l. for eighteen Months for Freight of the foresaid Ship called The Faith of London, for the Space of eighteen Months in a certain Voyage to Parts beyond the Seas, for the Use of them G. G. &c. before that Time supposed to be made, by Colour of a certain Agreement or Contract, by a Charter-Party Indenture, bearing Date, &c. between one T. B. and the said W. and C. of one Part, and the foresaid G. G. &c. of the other Part, supposed to have been duly made at London, to wit, in the Parish, &c. within the Body of the City of London; where against the Form of the Statutes aforesaid, they were drawn into Plea, by alled-
 ging

Averment
that the Con-
tract was not
made on the
High Sea.

The Admi-
ralty refuse
the Plea,
&c.

ging and supposing in the same Court of Admiralty (among other Things) that the said Agreement or Contract was made on the High Sea, and that the Ship aforesaid to have been conducted by them G. G. (and others) for (during) a certain Voyage on the High Sea, within the Jurisdiction of the Admiralty of England, as by the Libel of them W. and C. in the Court of Admiralty on that Part exhibited among other Things more fully appears; whereas in Truth the Contract aforesaid, for the foresaid Voyage in Form aforesaid; and the Indenture Charter-Party aforesaid, were made and sealed and delivered at London aforesaid, in the Parish and Ward aforesaid, and not upon the High Sea, nor within the Jurisdiction of the Admiralty aforesaid: Yet they the said W. and C. by Reason of the Premisses, have unjustly compelled them G. G. (and others) to appear and to answer to the Premisses before you in the Court of Admiralty aforesaid. And altho' they G. G. (and others) the said Matter above recited, and the Statutes aforesaid, and all and singular other the Matters above in this Suggestion particularly contained in the said Court of Admiralty before you have pleaded, and by inevitable Truth and Testimony have offered to prove the same: Yet you have altogether refused the said Plea, Allegation and Proof; and also that the foresaid W. and C. do daily contrive, and with their whole Force endeavour them the said G. G. (and others) to be condemned in the said Court of Admiralty before you, in the Premisses aforesaid; and by a definitive Sentence of the said Court, to pay to the same W. and C. not only a great Sum of Money for the Freight aforesaid, but also 200 l. for their Damages by them sus-
posed

posed to be (have been) sustained in that Particular (as 'tis said) in Contempt of us, and to the manifest Damage, Prejudice, impoverishment and Vexation of them G. G. (and others) and against the Form and Effect of the Statutes aforesaid. We willing the Rights of our Crown, and Custom of our Kingdom to maintain and defend, as by the Bond of our Oath we are bound, do prohibit you, and every of you, that you do not hold or attempt, nor any of you attempt to hold, any further Plea before you, against the foresaid G. G. (and others) upon (touching) the Premises (nor do any thing therein) which may turn to our Contempt, or to the Prejudice of them the said G. G. (and others) or to the Derogation of the Laws and Customs of England, in any Manner, under the Peril of incurring the Penalty due to the Violators of our Law. And we will that them G. G. (and others) if you on this Occasion have fulminated any Sentence (of Excom.) against them; you and every of you do release, and wholly absolve them from the same, on the Peril incumbent. Witness, &c.

The Grievance.

The Prohibition.

The Reader may, from the foregoing Precedent, observe the Prolivity of these Writs of Prohibition, as well as their Form; and therefore I shall here add only one Precedent more, under this Head of Prohibitions, and which contains all the Forms of Process therein, viz. the Suggestion, the Libel, the Prayer, the Declaration, Plea, &c.

A Suggestion for a Prohibition. where the Plaintiff was impleaded in the Spiritual Court for Tithes of Rabbits. See *Tbesaur. Brev. 195.*

The Grievance.

England ff. *Be it remembred, that on Thursday next after three Weeks of St. Michael in this same Term, came before the Lord the King at Westminster, J. P. of, &c. in his proper Person, and gave the Court of the said Lord the King here to understand and be informed, that whereas by the Law of the Land of this Part of the King of Great Britain called England, Tithes are not due, nor have been accustomed to be given or paid of Conies, or the like Beasts (Animals) which are wild and untamed by Nature, and taken and killed by Nets and other Artifices; yet one W. C. Clerk, Vicar of the Parish Church of Croydon, in the said County of S. being not ignorant of the Premisses, contriving him G. P. against the due Form of the Law of this Land, unduly to grieve, fatigue and oppress, and to draw the Cognizance of a Plea, which to the said now Lord the King and his Regal Crown doth belong, to another Examen in a Court Christian, before the venerable and egregious (select) Man, G. S. Knt. and Doctor of Laws lawfully constituted principal Official of the goodly Court of Canterbury of the Arches, London, or his Surrogate or Deputy, or other Competent Judge whatsoever in that Behalf, of and for the Substraction, and not paying the Tithes of 2000 Conies, wild and untamed by Nature, kept, brought forth, nourished and taken in a certain Warren of him G. within the foresaid Parish of Croyden, and the Bounds, Limits and Titbable Places of the same Parish, and there taken and killed by him G. by Nets and other Artifices, hath craftily and subtilly drawn him into Plea, by libelling against him G. in the Court Christian aforesaid. First, That*

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That the foresaid *W. C.* in the Months of *April*, *The Libel.*
May, *June*, &c. in such a Year then current,
 and in one or more of the same Months, and
 then at present was perpetual Vicar of the Pa-
 rish Church of *Croyden* afore said, &c. (as in the
 Libel) As by a Copy of the foresaid Libel read
 here in Court does more fully appear.—And hath
 unjustly compelled him *G. P.* to appear in the
 foresaid Court Christian, before the foresaid Spi-
 ritual Judge, and there to answer to the said
W. C. of and concerning the Premisses. And
 altho' within the Parish of *C.* afore said, and
 the Bounds and Limits, and Tithable Places of
 the same Parish, there is not, nor ever hath
 been any Custom for the Payment of Tithes of
 Conies, being brought forth or bred in the said
 Warren of him *G.* but that all and singular the
 Occupiers of the same Warren, from the Time
 whereof the Memory of Man is not to the con-
 trary, have been accustomed to be discharged from
 the Payment of Tithes of such Conies. And
 altho' the said *G. P.* hath pleaded and alledged,
 and by inevitable Testimony and Truth offered to
 prove against the same *W. C.* all and sin-
 gular the Matters by him above suggested and
 alledged, in Discharge of Payment of those Tithes
 so demanded by the said *W. C.* in the said
 Court Christian as afore said: Yet the said Spi-
 ritual Judge altogether refused to admit that Plea
 and Allegation. And the same *W. C.* with his
 whole Force endeavours, and daily contrives the
 foresaid *G. P.* to be condemned by a definitive
 Sentence of the said Court Christian, of and up-
 on (concerning) the Premisses afore said, in
 Contempt of us the said Lord the King, and to
 the manifest Damage, Prejudice and Grievance
 of him *G. P.* and against the Law and Custom
 of

The Aver-
 ment of a
 Custom,
 contra.

Refusal of
 the Plea.

Prohibition
prayed.

of England; and this he is ready to aver. Whereof the same G. P. by here humbly imploring the Aid and Munificence of the Court of the said Lord the King, prays a Remedy, and the Writ of the Lord the King, of Prohibition, to be directed to the said Judge Spiritual, and to any other competent Judge in this Particular to prohibit them, and every of them, that they, nor any of them do no further hold the foresaid Plea before them, or any of them, as to the Tithes of the Conies aforesaid.— And it is granted, &c.

A Declaration on a Prohibition touching a
Modus Decimandi, viz.

Declaration
on a Prohi-
bition for a
*Modus Deci-
mandi.*

Officin. Brez.
196.

The *Modus.*

Not said,
their Cows.

R. K. of M. in the County of B. Yeoman, who as well for the Lord the King as for himself, sues (follows) in this Behalf (Part) complains of G. H. Rector of the Parochial Church of M. in the said County of B. in Custody of the Marshal, &c. of a Plea, why he sues in the Court Christian against the Regal Prohibition to him before directed, and delivered to the contrary thereof; for that to wit, that whereas within the foresaid Parish of M. and the Bounds and Limits, and Tithable Places of the same Parish there is and from the Time whereof the Memory of Man is not to the contrary, hath been a Custom, that all and singular the Inhabitants within the said Parish of M. and the Bounds and Limits, and Tithable Places of the same, who have had and kept in the same Parish any Milch Cows upon their Tenements, within the same Parish, and the Bounds and Limits, &c. should pay, and by all the Time aforesaid have accustomed to pay to the Rector

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Reſtor of the Parochial Church of M. aforeſaid, for the Time being, or his Farmors or Aſſigns yearly, and every Year, 2 s. of lawful Money of England, for every Milch Cow, ſo by them de- paſtured, had and kept within the Pariſh afore- ſaid, in full and intire Payment and Satisfac- tion of all Tithes ariſing of the Cows aforeſaid; which ſaid 2 s. ſo as aforeſaid payable and paid, Or Compoſi- tion alledged.

all and every the Reſtors of the Pariſh Church of M. aforeſaid, for the Time being; or their Fermers or Aſſigns throughout the whole Time aforeſaid, have accepted, received and had of the ſaid Inhabitants, within the Pariſh of M. aforeſaid, in full Payment, Satisfaction and Diſcharge of all Tithes ariſing of the Cows a- aforeſaid; and have inviolably obſerved, through- out the whole Time aforeſaid, the Cuſtom and Manner of Tithing aforeſaid: Yet the aforeſaid Deſendant, Reſtor of the Pariſh Church of M. aforeſaid, as is aſſerted, being not ignorant of the Premiſſes (contriving) to grieve and op- preſs him R. being an Inhabitant of the ſaid Pariſh of M. againſt the due Form of the Laws of England, and againſt the Cuſtom and Man- ner of Tithing aforeſaid, for during the whole Time aforeſaid inviolably uſed, and to draw the Cognizance of a Plea which belongs to the Court of the ſaid Lord the King now here, to another Examen in a Court Chriſtian, hath craftily and ſubtily drawn him R. into a Plea before the venerable and egregious Man W. T. Kut. Doſtor of Laws, principal Official and Vi- car general in Spirituals of the Reverend Lord and Father in Chriſt Lord J. by divine Provi- dence Biſhop of S. lawfully conſtituted, or his Surrogate or other competent Judge whatſoever in this Behalf, of and for the Subſtraction, and

The Grava- men.

Theſaur. Brev. 196.

The Libel.

not paying of Tithes of his Cows, arising and happening within the foresaid Parish of M. in the Years of our Lord 1728, &c. and the Months current in the same Year, or some one or more of them, the same Robert being, for the whole Time aforesaid, an Inhabitant within the foresaid Parish of M. by libelling against the foresaid R. in the same Court Christian, among other Things, that the foresaid Plaintiff in the Years of the Lord, &c. (as in the Libel) and thereupon by the Occasions aforesaid, unjustly compelled him R. to appear in the Court Christian aforesaid, before the foresaid Judge Spiritual, and to answer to the same Defendant, of and in the Premisses: And altho' the same Plaintiff, always in the foresaid Years 1728, &c. and in every of them at M. aforesaid, was ready and offered to pay to the foresaid Defendant yearly, and every Year of the foresaid Years, 2s. according to the Form of the Prescription, and of the Manner of Tithing aforesaid, for every Milch Cow by him the said Plaintiff depastured, had and kept within the foresaid Parish of M. in the Years aforesaid, and in every of them, in Satisfaction of all the Tithes of the Cows aforesaid. And altho' the same Plaintiff pleaded and alledged all and singular the Premisses aforesaid in the said Court Christian, before the said Spiritual Judge, in Discharge for the not paying of the Tithes aforesaid, and offered to prove the same by inevitable Testimony: Yet the foresaid Judge Spiritual altogether refused such Plea, Allegation and Proof. And the said Defendant with his whole Force, endeavours and daily contrives to have the said Plaintiff condemned in the said Court Spiritual, and by a definitive Sentence of the

The Plea refused.

See before.

said Court, that the Tithes aforesaid so demanded by the said Defendant be paid to him, in Contempt of the said now Lord the King, and of his Laws, and to the Damage, Prejudice, Impoverishment and Grievance of him the Plaintiff, and against the Prescription, and the (Modus Decimandi) Manner of Tithing aforesaid. And that the said Defendant proceeded, &c. after the Prohibition delivered, &c. in Contempt of the King, &c. from whence the Plaintiff, Qui tam, &c. says he is worsted, prejudiced, &c. ad Damn. 20 l. Et inde tam pro Domino Rege quam pro seipso producit sectam, &c.

Proceedings after Prohibition.

Ad Dampnum.

And the foresaid Defendant by *A. B.* his Attorney comes and defends the Force and Injury, when, where, and in what Manner the Court of the Lord the King here shall think fit, and also every Contempt, &c. and whatsoever is against the Peace of the said Lord the King, and saith, that he hath not prosecuted the Plea in the Court Christian against the foresaid Defendant, after the Prohibition of the said Lord the King to him thereof delivered, in Manner and Form as the foresaid Plaintiff, *qui tam, &c.* by his foresaid Declaration supposes; and of this he puts himself on the Country; and the foresaid Plaintiff, *qui tam, &c.* likewise, &c. But for the Writ of the said Lord the King, of Consultation, to be issued in this Behalf, the same Defendant saith, that he at the fore-

Plea in Bar no Proceeding, &c. Theaur. Brev. 197.

And for a Consultation says.

(Not said
all Cows.)

That the
Tithes were
payable in
Kind.

And traverses
the Prescrip-
tion.

fendant further saith, that all and singular the Rectors of the Rectory of the said Church for the Time being, for all the Time aforesaid, and also from the Time whereof the Memory of Man is not to the contrary, have yearly had and received of all the Inhabitants within the foresaid Parish of *M.* Tithes of Cows happening within the foresaid Parish in their proper Specie, or every Inhabitant within the Parish aforesaid, hath yearly compounded with the same Rector, or his Termer of that Rectory for the Time being for the same Tithes; and for that the Plaintiff being, as is aforesaid, an Inhabitant within the foresaid Parish of *M.* subtracted (withdrew) from the same Defendant, the Tithes of Cows in the foresaid Declaration above specified, happening, renewing, increasing and arising in the Months and Years aforesaid, within the Parish aforesaid; he the said Defendant drew into Plea the same Plaintiff, as he lawfully might into the Court Christian before the foresaid Spiritual Judge, of and for the Substraction of those Tithes happening, increasing, renewing and arising within the Parish aforesaid, in the Months and Years aforesaid, before the Prohibition of the Lord the King was to him directed and delivered to the contrary, without that, *That within the foresaid Parish of M. and the Bounds, Limits, and Tithable Places of the same Parish, there is, and from the Time whereof the Memory of Man is not to the contrary, there hath been such a Custom, that all and singular the Inhabitants within the said Parish of M. and the Bounds, Limits and Tithable Places of the same, who have had and kept any Milch Cows*

Cows on their Tenements within the said Parish, and the Bounds, &c. of the same, have paid, and by all the foresaid Time been accustomed, &c. as by the foresaid Plaintiff in his Declaration is above supposed; and this he is ready to aver. Whereupon the same Defendant demands Judgment, and the Writ of the said Lord the King, of Consultation, to be granted to him in this Behalf.

And the foresaid Plaintiff, who pursues as well for the said Lord the King, as for himself, saith, that for any Thing by the Defendant above in pleading alledged, he ought in no wise to have the Writ of the said Lord the King, of Consultation, because he says, that within the foresaid Parish, &c. in Manner and Form as by the Declaration afore said is above supposed. And this he prays may be inquired by the Country, and the foresaid Defendant likewise, &c. Therefore, as well to try this issue, as the other Issues (if more be joined) between the Parties above mentioned, *Let the Juries come, &c.*

And if upon the Trial the Issue is found against the Plaintiff, or if the Suggestion be insufficient, or not proved within six Months, as the Stat. 1, 2 E. 6. directs, &c. a Writ of Consultation shall issue to the Spiritual or other inferior Court, giving them Leave to proceed, &c. (for as a Prohibition is a *Superseas*, so a Consultation is in Nature of a *Procedendo*) in this Form, *viz.*

A Consultation on a Suit for Tithes, for that the Suggestion is insufficient, &c.

THE King to R. M. Bachelor of Laws,
Official of the Consistorial Court of the Bishop of
Z. 4

Consultation
on an insuffi-
cient Sug-
gestion.
E. or

See Offic.
Brev. 186.

E. or to any other President whatsoever of the same Court, Greeting. Whereas W. B. Fermer of the Tithes of the Rectory of B. in the County of S. had lately impleaded R. W. in the Court Christian before you, for (of) that the same R. W. had refused to pay the Tithes of Hay, arising, happening and renewing within 200 Acres of Meadows and Pasture, with the Appurtenances called R. &c. in B. aforesaid, and of Right belonging to the same W. B. as Fermer of the Rectory aforesaid, and of all and singular the Tithes to the same Rectory belonging and appertaining, by libelling before you, that the foresaid R. in the Months of March, &c. (as in the Libel) Whereupon the foresaid R. in our Court before our Justices at Westminster, suggested, that one H. C. &c. (as in the Suggestion) And further the same R. in the same our Court before our Justices at Westminster aforesaid, suggested, that at the Time of the (subtracting, &c. or cutting down, &c. (as in the Suggestion) We giving Faith and Credence to the Suggestion of the said R. W. in this Particular, have granted at the Supplication of him R. our certain Prohibition, and caused it (such a Day and Year) of our Reign to be directed to you, to prohibit you from further prosecuting, or attempting to prosecute the foresaid Plea in the same Court Christian before you, against him R. W. by Virtue of which our said Prohibition, you thenceforth did defer, and hitherto have deferred to proceed in the foresaid Plea before you, against the said R. W. as by the Relation of the said lately (made) in our Court before our Justices at Westminster, we have received and are informed: And because, upon Examination of the foresaid Suggestion in our Court before

our

our said Justices at Westminster, in this Particular, it sufficiently appears of Record, that the foresaid Suggestion is not sufficient in Law to preclude him W. from having his foresaid Tithes against the foresaid R. W. and that the same R. W. hath not prosecuted his foresaid Writ against the foresaid W. B. as he ought to have prosecuted it, according to the Form of the Statute in such Case set forth and provided: We therefore being willing that Justice be exhibited to the foresaid Parties, according to the Form of the foresaid Statute as the Law doth perswade (direct) Do signify to you, that you may lawfully proceed in the foresaid Cause, as to the Tithes of Hay of the foresaid 200 Acres of Meadow and Pasture, before you (your selves). (But you are so to act (therein) that our Dignity, and the Laws, Statutes, and Customs of England may in that Part be (remain) altogether unhurt); And further to do what you shall know belongs to the Ecclesiastical Court, and not to us and our Dignity, our Prohibition therein to you formerly directed, or any Thing in the same contained to the contrary (thereof) notwithstanding. Witness, &c.

Another Prohibition and Consultation on Debt, &c. brought in the Spiritual Court.

THE King to T. W. Doctor of the Degrees, Another and Official of the Court of Canterbury, Greeting. Whereas J. C. Dean of the Cathedral Church of Lincoln, and the Chapter of the same Church, had lately impleaded in our Court before our Justices at Westminster, E. D. of L. &c. Clerk, of that, that he should render to them 20 l. which he ow'd to them, and unjustly detained, &c.

detained, as they said; the same Dean and Chapter contriving to disinherit us and our Regal Crown, have from Day to Day drawn him E. into Plea before you in the Court Christian, for certain Causes concerning the foresaid Debt; and on that Occasion have by your Ministers cited him, and with all their Might endeavour to make him appear and answer thereto, and propose to fulminate divers Sentences of Excommunication against him for the Premisses aforesaid, thereby contriving to draw that Plea which belongs to us, and not to you, into the Court Christian, to the grievous Damage of him E. and the Contempt of us, and manifest Danger of Disinheritance of our Regal Crown, and against the Law and Custom of England: We willing to defend and maintain the Rights of our Crown, as by the Bond of our Oath we are bound, and to protect our Lieges against such as violate the same, &c. Do prohibit you to hold Plea in any Manner before you, against the foresaid E. on the Causes aforesaid, by whatsoever Names the Parties aforesaid are propounded (named) and that you attempt nothing therein which may turn to his Prejudice, or to Derogation or Contempt of us, or of the Law or Custom of England, in any Manner, under the Peril of incurring the Sentence of Violators of our Law: And if you have fulminated any Sentence (of Excom.) against him on that Occasion, that ye release it, and altogether absolve him from the same.

Nota.

So far is a Recital of the Prohibition varied in its Moods and Tenses, and which I conceive is in its Form (tho' antient) much more eligible than the modern Precedents of

Prohi-

Prohibitions, which may be observed *supra*, to be pregnant of Tautology, and consequently very prolix, &c.

To which Prohibition may be subjoined a Consultation thus: *Whereupon you did defer, and hitherto have deferred to proceed any further in the Court Christian in the said Causes, to the great Damage of the said Dean and Chapter, and manifest Hurt of the Liberties of the Church: We not being willing that the Cognizance which belongs to the Ecclesiastical Court should be taken away, by such our Writ, do signify to you, that you may lawfully proceed in the foresaid Cause, and do therein according to what you shall know doth belong to the Ecclesiastical Court (Cognizance) in this Particular, our foresaid Writ of Prohibition to you directed notwithstanding. Witness. &c.*

Note; This last Precedent points us out an easy Method of reducing the Prolixity of the former.

Note also; If a Consultation be granted on a Prohibition in B. R. one can't have a new Prohibition on the first Libel, altho' the Suggestion in the New Prohibition be altered from what it was at first. *Mic. 33, 34 El. B. R. in one Skinner's Case. Offic. Brev. 187.*

Of Writs of Quare Impedit, (Why he hindered.)

A Quare Impedit defined.

A Writ of *Quare Impedit* lies where one has an Advowson, or the Presentation to a Church, and the Incumbent thereof dies or resigns, &c. and another presents his Clerk to the Bishop to be admitted, &c. or otherwise disturbs or hinders the Owner or Patron from presenting, then he shall have this Writ.

And if the King brings a *Quare Impedit* on a Lapse in the Vacancy of the Archbishoprick, the Form according to the Register is thus.

The Form for the King on the Vacancy of the Archbishoprick.
Reg. Orig. 30. b.

*THE King to the Sheriff, Greeting. Com-
mand W. Archbishop of Canterbury, and R.
that justly and without Delay they permit us to
present a fit Person to the Church of W. which
is void, and belongs to our Donation (or is in
our Gift) and by Reason of the late Vacancy of
the Archbishoprick of Canterbury is in our
Hands; and whereof the said Archbishop and R.
do unjustly hinder us, as 'tis said. And except
they do so, * summon by good Summoners the
foresaid Archbishop and R. that they be before
us, &c. (or before our Justices, &c.) to shew
why, &c. that justly and without Delay they
permit us to present to the Church of N. which
is void and in our Gift; and whereof the fore-
said A. complains (or hath supplicated us) &c.*

* Note no
*Si fecerit te
secur', &c.*
Where the
King is
Plaintiff.

Note this.

And note; this Writ is said in the Margin of the Register 30. b. to be indorsed thus: *A. ꝑ. sequitur pro Rege. (A. ꝑ. sues for the*

the

the King.) But many Writs are noted in the Register with (*conceditur sine Fine & Indorsetur*) which imports, as I conceive, that such Writs are to be granted, and indorsed by the Chancellor, without any Fine to be paid; and this seems to have been the Rule in all Original Writs of Course, in Consequence of *Mag. Charta, &c. We will sell to no Man, we will deny no man Justice or Right.*

But if other Persons have a joint Right with the King, they are to be joined with the King as Plaintiffs in a *Quare Impedit*, and the Writ is to be in this Form, *viz.——That justly and without Delay they permit us and W. E. and N. T. and M. his Wife, &c. to present a fit Person to the Church of B. which is void, and is in the Gift of us (by reason* of, &c.) and of them the said W. E. &c. and whereof they the said W. E. &c. have complained to us, &c.*

Where other Plaintiffs are joined with the King.

'Tis true *Fitzherbert* says 'twas the common Opinion in his Time, that the King in such a Case shall have the whole Presentment, and alone shall have this Writ. But methinks (says he) it stands with Reason, that the King and the other shall join; as in a popular Action the Party shall sue for the King and himself, wherein the Words of the Writ are, *who sues as well for the Lord the King as for himself*, as may be seen in Writs of Prohibition, Debt on Penal Statutes, &c. *ante.*

F. N. B.
32. G.
Note.

* Note; In the Register are expressed the several Reasons or Titles by which the King may claim a Presentment, and are to be express'd in the Writ.

The King and another, Tenants in Common.

To which may be added, that the Reason holds stronger in Suits for a Man's Property, than for recovering a Penalty. And the common Experience is, that a Man may hold Lands in Common with the King, and also Chattels may be so held; and by the same Reason the King and another may be Tenants in Common of an Advowson, and consequently join in this Writ, as aforesaid.

Quare Impedit in case of a common Person.

And if a Common Person be solely seiz'd of a *Parsonage*, and is disturbed in his presenting thereto the Writ shall be thus.

THE King to the Sheriff, &c. Command B. that he permit A. to present a fit Person to the Church of C. &c. For the Word Church is always intended of a Parsonage; and if it be a Vicarage, then to the Vicarage of such a Church, &c. and so of a Prebend; and if of a Chapel it must be expressed accordingly. Quere of Domestick Chapels, and note the Writ in the Register and F. N. B. for a Presentment to the Church (or Chapel) of the House of St. M. of Bristol; and the like of a Chapel belonging to a Hospital, &c. See there at large.

F. N. B.
33. G.

For Declarations, Pleadings and Arguments in Cases of *Quare Impedit*, Note the Cases in 3 *Levins* of Holt against the Bishop of *Winchester*, &c. *Reynolds* against the Bishop of *London*, &c. the King and Queen against the Bishop of *London* and Dr. *Lancaster*. The Entries whereof may be seen in *Levins's Entries*, pag. 138 to 151. but are too prolix for this Tract.

See *Register Judic.* 42. the Form of a Writ against a Bishop for a Contempt in refusing to admit the King's Clerk, &c.

Of Writs of Quo Warranto, (By what Warrant.)

A Ltho' we have no Form of a Writ of *Quo Writs of Quo Warranto* expressly inserted either in the *Register* or *F. N. B.* yet they both have incidently and expressly mentioned it as very antient, viz. A *Certiorari* directed to the Treasurer and Chamberlains of the Exchequer, to certify to the King in his Chancery, the Record and Proceedings of a Writ of *Quo Warranto* sued by the King's Ancestor King *Edward* the first, against the Abbot of *Westminster*, for certain Liberties claimed by the Abbot, &c.

antient.
See *F. N. B.* 246. G. and *Reg. Orig.* 263. b.

By collecting and comparing our antient Books, I find this Writ was formerly described to be a Prerogative Writ, and to lie for the King only, where any Person (or Persons) usurped or exercised any publick Franchise, Privilege or Authority, either where he had no Right thereto, or where he had forfeited such Right, in order to recover it into the King's Hands, and commanding the Claimant to shew by what Title he held it.

See 9 Co. 23. Finch 322, &c. *Crompt. Jurisd.* 144, 145.

And if the Party who claimed or exercised such Right, did not appear to prove his Right, such Franchise, &c. was to have been seized by the Sheriff, in Name of a Distress, and then the Party had a Time set him, to avoid the Seizure by a Replevin; and if he did not do it within the Time, he then lost his Franchise for ever.

Also this Writ was originally to have been brought and tried by a Jury of the proper County

Trial and Judgment therein.

County before the Justices in *Eyre*, or at the Assises, and not in the *superior Courts* at *Westminster*, as appears by the Stat. 18 E. 1. See *Instit. Leg.* 187. and if it were found that the Party used such Franchise, &c. without Title, the Judgment was, *That he should be ousted of the Franchise*; and if found that he had abused it, *that he should forfeit it*. But if neither were found, then the Justices aforesaid were to allow his Claim; and such Allowance bound the King. Yet 'tis said an Allowance in a Suit in C. B. would not bind him. *Sed Quere*, and note the Difference between claiming of Liberties, Franchises, &c. by Virtue of the *King's Charter*, and where they are claimed by *Custom*. For tho' some modern Judges have been of Opinion, that all our Liberties, Privileges, &c. did originally flow from the Grants or Concessions of our Kings; yet whoever will consider the Constitution of *Parliaments*, and the original Rights of our antient *Burroughs*, will find Ground to think, that those Rights were at least coeval, if not antecedent to the constituting of *Kingly Government*, &c.

Original of
Liberties.

Reg. Orig.
De Libertatibus
Allocandis.

'Tis true the several Writs in the *Register* for allowing of Liberties, &c. do generally recite such Liberties to have been founded on the King's Charters; but as those Writs were formed by the several *Chancellors* of those Times, 'tis no Wonder to find they endeavour to reduce all such Claims to Grants by Charter, they then, as some since, being exquisite Artists to advance their own Gain, a Qualification we read esteem'd by some Princes absolutely necessary to the Office of a *Chancellor*.

But

But it appears not only from the Rights and Privileges of the City of *London*, and the Customs and Usages of divers other antient Cities and Burroughs in this Kingdom always claimed, and held and enjoyed from Time to Time immemorial, even before the Conquest, that the Rights, Franchises, Privileges and Customs of such Cities and antient Burroughs were founded on a Right antecedent, and I may say superior to any Charter: And even at this Day in pleading to a *Quo Warranto* an Averment is allow'd, that such or such Privileges are claimed by *Prescription*, and such and such by *Charter*; See the Mirror pag. the Constitution of most Burroughs at this Instit. Leg. 188. Day consisting of Privileges of both Kinds. Tho' the very Nature and Essence of a Burrough was originally founded in *Prescription* till King *John* and some other Princes instructed their Tenants of antient Demeasns Towns (who were the *Villani Regis*) in the Method of purchasing the Privilege of being constituted *Burroughs* by *Charter*, whereby the King's Villeins (Slaves) became capable of being represented (if not the Peoples Representatives) in Parliament. Note.

I might here shew the several Steps and Degrees taken by the Advocates and Ministers of Regal Power, in order to invade the Subjects Rights, and oppress their Liberties by Means of Writs of *Quo Warranto*, from the Time of *H. 3.* down to that of *W. 3.* our late Deliverer. But having formerly drawn up a brief State of these Matters, and published the same in the *Institutio Legalis*, I Instit. Leg. 186 to 190. shall here only insert the Precedent of a *Quo Warranto Information*, with the Proceedings thereon

thereon, as it is translated from that Treatise
page 179.

The Form of a
Quo Warranto Infor-
mation.

Pleas (held) before our Lord the King at Westminster in Easter Term, in the sixth Year of the Reign of our Lord George, now King of Great Britain, &c.

Deven. ff. It is to be remembered, that *Nicholas Lechmere* Knt. late Attorney General of the Lord the King, who for the same Lord the King prosecutes in that Behalf, comes here in his proper Person into the Court of the said Lord the King, before the King himself at *Westminster* in the Term of *Saint Hillary* in the second Year of the said now Lord the King, and for the same Lord the King produces here in the Court of the said Lord the King, before the King himself then there, a certain Information against *J. L.* Gentleman, and others, which said Information follows in these Words, to wit, It is to be remembered, that *N. L.* Knt. Attorney General of the Lord the King, who for the same Lord the King prosecutes in this Behalf, comes, &c. (to) *Westminster*, on Saturday next after the Octaves of *St. Hillary* in the second Year of the said now Lord the King; and for the same Lord the King gives the Court here to be understood and informed, that *J. L.* of *B.* in the County of *D.* Gentleman, and *T. N.* and *E. W.* of the Town of *B.* in the County aforesaid, by the Space of two whole Years now last elapsed and more, had used, and yet do claim to have and use within the Manor and Parish of *B.* in the same County of *D.* without any

Warrant

Warrant or Regal Concession, the divers (several) Liberties, Privileges and Franchises following, that is to say (*here recite the Privileges claimed*) all and singular which said Liberties, Privileges and Franchises they the said *J. L. T. N.* and *E. W.* have for the whole Time aforesaid usurped, and do still usurp upon the said Lord the King, to the grievous Damage and Prejudice of the said Lord the King, and his Prerogative; whereupon the same Attorney General of the said Lord the King, for the same Lord the King, prays the Advice of the Court here in the Premises and the due Processes of Law against the foresaid *J. L. T. N.* and *E. W.* to answer to the said Lord the King by what Warrant they (or any of them) claim to have, hold, use and enjoy the Liberties, Privileges and Franchises aforesaid. Whereby (or whereupon) it was commanded to the Sheriff of the County of *D.* aforesaid, that he do not omit, &c. but that he cause them to come to answer, &c.

And now to wit, on *Wednesday* next after fifteen Days of *Easter* in this same Term, came before the Lord the King at *Westminster* the foresaid *J. L. T. N.* and *E. W.* by *R. S.* their Attorney, and Oyer (*bearing*, tho' it means a *Copy*) being had of the Information aforesaid, they say, that they nor any of them ever used (usurped) within the Manor and Parish of *B.* aforesaid, the Liberties, Privileges and Franchises aforesaid, upon the said now Lord the King, nor ever have usurped in Manner and Form, as by the Information aforesaid is thereof against them above supposed, but in (*or to*) the same they do

The Defendant's Plea.

altogether disclaim and disavow, and each (every) of them doth disclaim and disavow; whereupon they pray Judgment, and that they and every of them may concerning the Premises be by the Court here dismissed, &c. And the foresaid *J. L.* as to the Liberties, Privileges and Franchises afore said, in Form afore said, abovementioned, following, to wit, *To have and hold within the Manor afore said, &c.* (reciting the Privileges) he says, That he does not apprehend that the said Lord the King will, or ought to question or trouble him the said *J. L.* by Reason of the Premises in the Information afore said above specified, because he says, that he the same *J. L.* was by the Space of two Years and more next before the Exhibiting of the foresaid Information, and yet is seized of and in the Manor afore said, with the Appurtenances: And that from the Time whereof the Memory of Man is not to the contrary, there hath been within the same Manor such and such Customs, &c. (and so set forth the Privileges claimed by Prescription.) And by that Warrant the same *J. L.* by (thro') the whole Time in the said Information above specified, the Liberties, Privileges and Franchises afore said, by him above now claimed within the Manor afore said, and the Liberties and Precincts of the same, hath used, and yet doth use, as to the Manor afore said, with the Appurtenances belonging and appertaining, as he lawfully might, without that, that the foresaid *J. L.* hath usurped or doth usurp any of the said Liberties (Privileges) or Franchises upon the said now Lord the King, in Manner and Form as by the said Informa-
tion

*Privileges
claimed by
Prescription.*

tion against him is above supposed; all and singular which said Matters the said *J. L.* is ready to aver; whereupon he demands Judgment; and that all and singular the Liberties and Franchises aforesaid by him above claimed as aforesaid may be hereafter to the said *J. L.* allow'd and adjudg'd, and that he may concerning the Premises be by the Court here dismissed, &c. And as to all and singular other the Liberties and Franchises aforesaid in the Information above specified, by him the said *J. L.* no way claimed, the same *J.* saith that he never used nor doth use those Liberties or Franchises, nor any of them, but altogether (wholly) disclaims and disavows (all Right) in them, and in every of them: Whereupon he demands Judgment, and that he as to those Premises may be also by the Court here dismissed, &c.

To this Plea a Replication was made by the said Attorney General's Successor, viz.

And R. R. Knight, Attorney General of *The Repli-*
the now Lord the King, who prosecutes for *cation.*
the same now Lord the King, having had Oyer
(a Copy) of the Plea of the foresaid *J. L.* by
him above pleaded, For him the Lord the
King saith, that the said now Lord the King
by any thing by the foresaid *J. L.* above in
pleading alledged, ought not to be precluded
(barred) from having his Information afore-
said against him, because for the said Lord
the King he says, that the foresaid *J. L.* did
for the whole Time in the Information above
specified, usurp, and hitherto doth usurp
upon the said now Lord the King, the Li-
A 2 3 berties,

Traverse.

Infra. Ing.
182, 183.

erties, Privileges and Franchises aforesaid, and every of them, which in the Plea of him *ſ. L.* are above claimed or challenged, as by the Information aforesaid for the said Lord the King is above supposed; *Without that,* that the same *ſ. L.* and all those whose Estate the same *ſ. L.* now hath, of and in the Manor aforesaid, with the Appurtenances, have had and been accustomed to have, from the Time whercof, &c. within the said Manor, &c. (reciting the Privileges as in the Plea) as he the same *ſ. L.* hath above in pleading alledged: And this the same Attorney General of the said now Lord the King for the same Lord the King is ready to aver, as the Court, &c. whereupon he demands Judgment; and that the said *ſ. L.* of all and singular the Premises in the Plea of him *ſ. L.* by him above claimed and challenged as aforesaid, may be convicted, &c. (*Quere;* if this Prayer be proper.) And see there the Replication hereto, and the Issue joined thereon, &c. as also the Form of a *Quo Warranto* Information exhibited by the Master of the Crown-Office.

But note; these Informations being complain'd of in Parliament have been of late less frequent than formerly, and now a *Mandamus* instead of a *Quo Warranto* is the Instrument made Use of for regulating Corporations, &c. as we have before hinted.

Of Writs of Replevin, &c.

A Replevin is the Taking back of Goods or Cattle, or other Thing distrained; it is derived from the *Law Latin* Verb *Replegiare*, which is compounded of *Re* and *plegiare*; and signifies a Re-delivering of the Thing taken upon Pledges or Sureties found.

Replevin
defined, &c.Co. Lit.
145. b.

And note; Goods, &c. distrained, may be replevied two Manner of Ways, *viz.* 1. by Writ, and this is by the Common Law; or 2^{dly}; by Plaint in the Sheriffs Court, which is by the Stat. *West. 2. c. 2.* and (accordingly) the Sheriff ought to take of the Plaintiff two Manner of Pledges, *viz.* one at the Common Law, called *Plegii de prosequendo*, Pledges of prosecuting; the other is by the Statute, and called *Plegii de Retorno habendo*, *i. e.* Pledges of returning the Goods, &c. to the Distrainer, in Case he does not prosecute, &c. ¶ And see the Statute *supra*, as also my *Treatise of Replevins*.

Two Kinds
thereof.

The Form of a Writ of *Replevin*, according to the *Register* and *F. N. B.* if only one Beast be distrained or taken, is thus:

THE King to the Sheriff, &c. We command thee, that justly and without Delay thou cause to be replevied to B. his certain Horse (or his certain Heifer, or his certain Ox, &c.) and so name the thing in certain, which D. took and unjustly detains, as 'tis said; and cause him afterwards to be justly deduced (*i. e.* restored or possessed) thereof, so that we may hear no more

Form of the
Writ. F. N. B.
68.

Clamor thereof (thereon) for Default of Justice, Witness, &c.

But if more than one Beast is distrained or taken, the Form is thus:

We command, &c. That thou cause to be replevied to B. his Beasts, or if dead Things, say his Goods and Chattles, &c. Not saying what Beasts, or what Goods or Chattles they are in certain; tho' to me the better Way seems to be to mention the Beasts certainly in the Writ; for how else shall the Sheriff know what Beasts to replevy. And this is not a Writ whereon the Particulars may be ascertained by a subsequent Declaration. And the Beasts are to be delivered before any Avowry can be made. Ergo Quære.

And of Dead Things, if one only be taken, it ought to be certainly named in the Writ, as his certain Net, his certain Iron of a Mill, &c. But I know not why *Fitzherbert* inserts a *Swarm of Bees* among Dead Things. — Yet see there excellent Rules to be observed in the Return of *Replevins*, &c.

I shall here insert some modern Forms of Writs of *Replevin*, and of those consequent thereto, as *Recaption*, *Withernam*, &c. And first of a *Pluries Replevin* and *Non Omittas*, by which the Reader may easily collect the Form of the first Writ, and the *Alias* or other Writ, &c.

THE King to the Sheriff, Greeting. Whereas we have divers Times commanded thee, that justly and without Delay thou cause to be replevied

F. N. B.
68, 69.

Returns on
Replevins.

Pluries Replevin, see
Thesaur.
Erev. 215.

vied to H. H. his certain Cow which W. W. took and unjustly detained, as it was said; or that thou shouldst signify to us the Cause why thou wouldst not or couldst not execute our Mandates otherwhiles to thee therein directed: Yet thou despising (contemning) our foresaid Mandates, as we received, hadst not hitherto taken Care (either) to replevy to the foresaid H. his said Cow, or to signify to us the Cause why thou wouldst not or couldst not do it, in manifest Contempt of us and our foresaid Mandates, and to the no small Damage and Grievance of him H. at which we greatly wondered, and were moved: And we again commanded thee, by firmly injoining, that thou shouldst cause to be replevied to the said H. his foresaid Cow, according to the Tenor of our foresaid Mandates to thee formerly therein directed, or that thou thy self shouldst be before us, &c. wheresoever, &c. to shew cause why our foresaid Mandates to thee so often therein directed, thou hadst contemned to execute: And thou at that Day didst return to us, that for the Execution of the foresaid Writ thou hadst sent (Mandâsti) to the Bailiff of the Liberty, &c. who hath full Return of all our Writs and Warrants, and Execution of the same, within the Liberty aforesaid, to whom the Execution of the Writ did wholly belong, for that no Execution thereof could in any Manner otherwhere be done, out of the said Liberty within thy Bailiwick; which said Bailiff hath given to thee no Answer (thereon). Therefore we command thee, that thou dost not omit for any Liberty of the Liberty aforesaid, but that thou cause to be replevied to the said H. his foresaid Cow, according to the Tenor of our foresaid Mandates to thee formerly therein directed,

Return of Mandavi Ballivo.

directed, or that thou thy self be before us in (such a Return-Day) wheresoever, &c. to shew why our Mandates aforesaid so often to thee therein directed, thou hast contemned. And have then there this Writ. Witness, &c.

Of Writs of Return' habend. see Thefaur. Brev. 219, 220, &c.

Of Writs of Return' Habend', Recaption, Withernam, &c. Which Writs are consequent to a Replevin, and therefore inserted under the same Title.

A Return' Habend' where the Plaintiff makes Default in his Declaration.

GEORGE, &c. Whereas C. H. was lately in our Court before us summoned to answer to P. E. of a Plea, why he took the Beasts of him P. and those unjustly detained, against his Gage and Pledges. And the same P. afterwards in the same our Court before us made Default, whereby (or whereon) it was considered in the same our Court before us, that the foresaid C. should go therein without Day; and that the foresaid P. and his Pledges of prosecuting, should be in Mercy; and that the foresaid C. should have a Return of the Beasts aforesaid: Therefore we command thee, that thou dost without Delay cause to be returned to the foresaid C. the Beasts aforesaid, and that thou dost not deliver them, at the Plaint of the foresaid P. without our Writ, which shall make Mention of the foresaid Judgment. And how thou shalt have executed this our Writ, make known to us (such a Return-Day) wheresoever, &c. and have (then) there this Writ. Witness, &c.

See there divers other Forms of Writs of Return' habend'.

A Writ of Recaption is in this Form.

THE King, &c. Whereas J. B. (and others) have been summoned in our Court before us, in (such a Return-Day) wheresoever, &c. to answer to B. G. of a Plea, why they took the Beasts of him B. G. and unjustly detained them against the Gage and Pledges which thou hast caused to be replevied to the same J. B. as we have received (are informed) which said Plea between him B. G. and the foresaid J. B. (and others) does yet depend in our foresaid Court undetermined: Yet the said J. B. (and others) pending the Plea aforesaid, have again taken the Beasts of him B. G. on the same Occasion as they took them before, and do detain them as before: And because this is manifestly against the Law and Custom of England, We command thee, that if the foresaid B. G. shall make thee secure for prosecuting his Clamor, then put by Gage and safe Pledges the foresaid J. B. (and others) that they be before us such a Day wheresoever, &c. to answer as well to us, of (for) the Contempt aforesaid, as to the foresaid B. G. for the Trespass aforesaid; and that in the Interim (mean while) thou cause the said Beasts to be delivered to the same J. B. without Delay; and (being) so delivered, to keep them until the Plea aforesaid between them in our foresaid Court before us be more fully determined. And give thou there the Names of the Pledges and his Writ. Witness, &c.

Recaption.
Ibid. 214.

The Award of Process upon the Recaption, viz.

*Thesaurus
Brev. 214.*

It was commanded to the Sheriff of, &c. that whereas R. P. (&c.) had taken the Beasts of C. B. and unjustly detain'd them: And that the Sheriff of the County aforesaid, had at the Suit of him C. as the Manner is, replevied the Beasts to him C. and had given him Day to his next Court; and that he had attached the foresaid R. P. (&c.) to answer hereupon to the foresaid C. and that afterwards the King had commanded to the same Sheriff, that he should have the Record of the Plea aforesaid, before the said Lord the King (*from such a Day, &c.*) wheresoever, &c. And the same A. B. (pending the said Plea before the Lord the King) again took the Beasts of the foresaid C. on the same Occasion as he had taken them before, and did detain them as before; and in Contempt of the Precept of the Lord the King, would not permit himself to be justiced. And now at this Day, to wit, in the Octaves, &c. the foresaid C. came before the Lord the King at *Westminster*, by J. H. his Attorney: And the foresaid R. came not, and (thereupon) it was commanded to the Sheriff, that he should attach him, that he be here at this Day to answer to the Lord the King for the foresaid Contempt, and to the foresaid C. for the Trespass aforesaid: And the Sheriff hath now returned, that the foresaid R. was attached by Pledges J. and H. therefore they (are) in Mercy (amerced). And 'tis further commanded to the same Sheriff, for that, that the Beasts aforesaid were only six small Oxen,
one

one whereof died before the coming of that Writ, that he should cause to the foresaid C. five small Oxen, being the Residue of the foresaid six Oxen. 'Tis therefore commanded to the Sheriff, that he do *distrain* the foresaid R. by all his Lands, &c. (and of the Issues, &c.) so that he be before the Lord the King in the Octaves of St. Hillary wheresoever, &c. to answer as well to the Lord the King for the Contempt aforesaid, as to the said C. for the Trespass aforesaid, &c. *Distringas.*

The *Distring*' thereupon is thus:

THE King to the Sheriff, &c. We command thee, that thou distrain R. P. by all his Lands, &c. so that thou have him here, &c. in the Octaves of St. Hillary (next) wheresoever, to answer as well to us as to C. B. of a Plea, why the same R. pending a Plea in our Court, &c. between him C. and the foresaid R. for the Beasts of him C. taken and unjustly detained, hath again taken the foresaid Beasts on the same Occasion as he had taken them before; and in Contempt of our Precept, doth not permit himself to be justiced, and to bear his Judgment for (his) many Defaults, &c. And have thou, &c.

A *Certiorari* of a Plein in Replevin in an inferior Court.

GEORGE, &c. To the Mayor, Aldermen, Bailiffs, Burgeses and Commonalty (Community) of our Town of W. and M. 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 Plein or Plea, *Certiorari.*

in our Court of the Town aforesaid, 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 loded, as of the whole Record, and the Process of the same Plea or Plaint thereupon depending, do command you, that the foresaid Plea or Plaint, and also the Record and Process aforesaid, as fully and intirely, with all Things touching the same, as before you or any of you they reside, by whatsoever Names the Parties aforesaid are charged (named) in the same, you send distinctly and openly, under your Seals, before us, from the Day of St. Martin, in fifteen Days, wheresoever we shall then be in England, together with this Writ; and prefix (appoint) the same Day to the Parties aforesaid, that we may cause to be further done therein, as we shall see is of Right to be done. Witness Raymond.

A Capias in Withernam, on a Pluries Replevin.

Withernam. GEORGE To the Sheriff, &c. Where-
 as we divers Times commanded thee, that justly and without Delay thou shouldst cause to be replevied to R. C. his Cattle, to wit, &c. which T. T. and J. C. took, and have unjustly detained, as 'tis said, according to our Precept theretofore to thee directed; or, that thou thy self should be before in such a Return, wheresoever, &c. to shew why our foresaid Mandates so often to thee therein directed, thou hadst contemned to execute. And thou at that Day didst return to us, that the foresaid Cattle were eloigned by the foresaid T. T. and J. C. out of thy Bailiwick,

An Eloign-
 ment re-
 turned.

to Places unknown, so that thou couldst by no Means replevy them to the foresaid R. Therefore we command thee, that thou take in Withernam, as many Cattle of the foresaid T. T. and J. C. in thy Bailiwick, and cause them to be delivered to the foresaid R. to have (them) until they T. and J. will deliver to the said R. the Cattle aforesaid. And how this our Mandate shall be executed, make certain (known) to us in the Octaves, &c. wheresoever, &c. that we may cause to be further done therein as of Right, and according to the Law and Custom of England we shall see is to be done. We also command thee, that if the aforesaid R. shall make thee secure for prosecuting his Clamor, and for returning the Cattle aforesaid, if the Return of them be adjudged, then put thou by Gage and safe Pledges the said T. and J. that they be before us at the Term (Time) aforesaid, to answer to the foresaid R. of the taking and unjust detaining of the Cattle aforesaid. And have thou there then this Writ, &c.

Of

Of Writs of Scire Facias, (Cause thou to know.)

A Scire Facias defined.

A *Scire Facias* is said to be a Writ judicial, issuing upon some Matter of Record, as upon a Judgment, Statute, Recognizance, &c. of which we have formerly given some Instances, and many more may be found in the *New Thesaurus Brevium*, from Page 224 to 290.

Where it lies.

And it generally lies wherever a Judgment is recovered in *Assumpsit*, *Debt*, *Case*, *Covenant*, *Ejectment*, *Quare Impedit*, *Trespasse*, *Trover*, &c. in the King's Courts at *Westminster*, if he who recovers such Judgment does not sue Execution within the Year and a Day (or rather within five Terms) he may have this Writ, to warn or summon the Defendant to shew Cause why Execution should not be of such Judgment. And if the Defendant does not thereupon appear, or if he appears, and does not shew good Cause to the contrary, then shall issue one or more of the usual Writs of Execution, as the Plaintiff thinks proper, *viz.* either a *Fieri Facias* (cause thou to be made) or a *Capias ad Satisfaciendum* (take thou to satisfy) or an *Elect* (he hath elected).

Execution thereon.

But of these Writs of *Execution*, as also of *Scire Facias's*, &c. and of Proceedings therein, a more full Account may be expected, in a Book now preparing for the Press, being a *Second Part* of this *Work*, wherein the Practice of the several Courts of *B. R.* and *C. B.* and all the usual Processes and Forms of proceeding in

in those Courts will be exemplified and illustrated.

A *Scire Facias* will also lie against the Bail or Manucaptors on a Recognizance, or on an *Audita Quærela*, &c. It lies against Heirs, Executors, Tertenants, &c. to revive a Judgment; also on a Fine or Recovery, or to hear Errors on a Judgment, to have Restitution on Reversal of a Judgment, as also against those that gage Deliverance in *Replevin*, and in many other Cases which cannot be here particularly enumerated.

A *Scire Facias* against the Gagers of Deliverance in a *Replevin* brought before the Sheriffs of London, after a Removal of the Plaintiff into B. R.

GEORGE, &c. *To the Sheriffs of London, Greeting. Whereas the 23d Day of February, in the third Year of our Reign; in a Court held before A. B. Knt. one of the Sheriffs of the foresaid City of London, in his Compter, situate in the Parish of St. Mildred the Virgin, in the Poultry of the foresaid City; came J. T. and then and there, according to the Custom of the foresaid City, levied against F. D. his certain Plaintiff, of his Pence (Money) taken and unjustly detained, to wit, of three Bags with 240 l. in Monies; numbred, included in the same (Bags) and he then found Pledges of prosecuting, and of having (making) a Return, if a Return thereof should be adjudged, to wit, H. E. of St. Austin-Friars; Merchant, and D. D. of; &c. Gentleman, Citizens of the foresaid City. And thereupon, at the Petition of the foresaid J. T. to the Court aforesaid, ac-*

Scire Facias against the Gagers in *Replevin*, &c. See *Thesaur. Brev.* 274, 275.

Plaint in the Sheriff's Court. Pledges found.

Removal to
the Hustings.

Thence cer-
tified into
B. R.

Declaration
in B. R.

Conuzance
for Rent
arrear.

On Plaintiff's
Default.

According to the Custom of the said City, the Bags and Monies aforesaid were replevied and delivered to the foresaid J. T. which said Plaintiff, with all Things touching the same, were afterwards, to wit, at the Hustings of the Common Pleas of London, held in the Guildhall London, on Monday next after the Feast of St. Matthew the Apostle, in the foresaid third Year of our Reign, were in the Name of the foresaid J. T. sent and carried by the foresaid Sheriffs of London, according to the Custom of the said City: And (which) afterwards, to wit, in Easter Term, in the third Year aforesaid, by Virtue of our Writ, we caused to be certified before us, and now do remain of Record before us: And also, Whereas the foresaid J. T. in our Court before us declared, upon the foresaid Plaintiff against the foresaid F. D. of a Plea, why he took two Bags of the said J. with 100l. of lawful Money of England, in Monies numbred, in each of the same Bags included; and one other Bag of the said J. with 40l. (of like lawful Money also in Monies numbred) in the same Bag also included; and the same unjustly detained against (his) Gage and Pledges; which said taking of the Bags and Monies aforesaid, the same F. did acknowledge, as the Bailiff of one D. S. for a certain Rent then being in Arrear and (due and) payable by the said J. T. to the same D. as his Tenant for a Term of Years. And afterwards in Easter Term in the fourth Year of our Reign, likewise Process was That in our said Court before us, the said J. T. being solemnly demanded, did not come (appear) nor (further) prosecuted his Plea against the foresaid F. D. whereby (whereupon) it was considered in the same our Court here before us, that the fore-

foresaid F. should go from thence (thereof) without Day; and that the foresaid J. and his Pledges of prosecuting should be in Mercy (amerced). And that the foresaid Francis should have a Return of the Bags * and Monies aforesaid, as by the Record thereof before us now residing; does more fully appear. And whereas by our Writ we lately commanded you, that you should cause the said Bags and Money to be returned to the said F. D. without Delay; and that you should make certain (known) to us, how our foresaid Writ had been by you executed, from the Day of Holy Trinity, in three Weeks now last past, wheresoever we should then be in England: And you at that Day returned to us, that before the coming of the foresaid our Writ to you directed, the foresaid J. T. had eloigned the Bags with the Monies aforesaid, to Places to you altogether unknown, so that you could not return the Bags and Monies aforesaid, to the foresaid F. as by the Writ aforesaid, and the Return thereof filed in our Court before us appears (is) certain to us of Record.—And now in our said Court before us, on the Behalf of the foresaid F. D. we have received (are informed) that altho' Judgment be thereof rendred, yet Execution, as to the Return of the Bags and Monies aforesaid, yet remains to be made, whereof the same F. hath supplicated us for a congruous convenient Remedy to be provided for him in this Particular: And we in this Particular (herein) willing to be done what is just, do command you, that by honest (approved) and lawful Men of your Baiwick, you make known to the foresaid H. and D. (the Pledges) that they be before us from the Day of St. Michael in three Weeks, wheresoever we shall then be in England; to shew, if

Judgment for the Avowant.

* Note, in this Action and Trover, the Bags are the Principal.

An Eloignment return'd.

To shew why Execution should not be against the Pledges, &c.

any Thing they have or know to say for themselves, why the Goods and Chattels of them H. and D. to the Value of the Bags and Pence (Monies) aforesaid, so replevied and delivered to the same J. T. should not be re-delivered to the said F. D. if to them it shall seem expedient; and further to do and receive what our Court before us shall then and there in this Particular consider (adjudge) concerning them. And have you there then the Names of those by whom you have made (this) known to them, and this Writ. Witness Raymond at Westminster, the 18th Day of June, &c.

See the Pleadings hereon. *The same.* Brev. 275, 276, &c.

A Scire Facias against the Manucaptors in Debt on a Recognizance.

In Debt on a Recognizance. See *Instit. Leg.* 122.

GEORGE the Second, &c. To the Sheriff of D. Greeting. Whereas A. B. lately in our Court before us acknowledged, &c. (as in the Declaration, to) as it certainly appears to us on Record, and altho' Judgment be thereupon rendered, yet Execution of the foresaid Debt and Damages remains still to be done to him. And whereas E. F. of, &c. and G. H. of the same, Esquires, erewhiles, to wit, in the Term of St. Michael, in the fourth Year of our Reign, in the same our Court before us at Westminster, personally came and became Pledges and Manucaptors, and each of them by himself became Pledge and Manucaptor for the foresaid C. D. that if it happened, the foresaid C. D. to be convicted in the Plea aforesaid, then the same Manucaptors, and each of them, granted, that as well the Debt aforesaid, as all such Damages, Charges and Costs which should be adjudged to the said A. B. in that Particular, should be done (made) of their Lands and
Chattels,

Chattels, and of each of them, and be levied to the Benefit and Use of him A. B. if it should happen, the foresaid C. D. not to pay the said Debt and Damages, Charges and Costs, to the foresaid A. B. or that the said C. D. should render himself to the Prison of the Marshal of our Marshalsea before us. Tet the said C. D. hath not yet paid the foresaid Debt and Damages, Charges and Costs, unto the foresaid A. B. nor render'd himself to the Prison of the Marshal of our Marshalsea, as from the Insinuation (Information) of him A. B. in our Court before us we have received: Whereof the same A. B. hath supplicated us for a congruous convenient Remedy to be provided him in this Particular; and we in this Part willing to be done what is just, do command thee, that by honest and lawful Men of thy Bailiwick, thou cause the said E. F. and G. H. to know, that they be before us at Westminster (such a Return-Day) to shew (if any Thing they have or know to say for themselves) why the foresaid A. B. ought not to have his Execution against them of the Debt and Damages aforesaid, according to the Force, Form and Effect of the Recognizance aforesaid, if to them it shall seem expedient, and further to do and receive, &c.

A Scire Facias on a Quare Impedit after Judgment affirmed.

THE King. to the Sheriff, &c. Whereas A Scire Facias J. L. Gentleman, did lately in our Court before on a Quare R. E. Knt. and his Companions our Justices of Impedit. Thejaur. the Bench at Westminster, by our Writ, and Brev. 262. by the Judgment of the same Court, recover against G. E. Clerk, his Presentation to the

Church of N. and his Damages, to the Value of the Church aforesaid for half a Year, which amount themselves to 50l. and by the same Court it was considered (adjudged) that the foresaid J. F. should have a (our) Writ to W. then Archbishop of C. &c. (within which said peculiar Jurisdiction the foresaid Church of N. is) to be directed, notwithstanding the reclaiming of the foresaid G. E. altho' the same G. is admitted, instituted and inducted to the foresaid Church, he might remove the same G. E. from the same Church; and without Delay admit a fit Person to that Church at the Presentation of the foresaid F. Whereof he is convicted, as we by Inspection, &c. and now, &c. yet the Execution, &c. from whence, (whereon) &c. and we, &c. that he be, &c. from such a Day, &c. wheresoever, &c. to shew, &c. why the foresaid F. ought not to have his Execution of the foresaid Judgment against, according to the Force, &c. if he thinks fit, &c.

See Revis^r.
Judic. 62.

I shall add only one Precedent more under this Head, which I have selected from many, as shewing, that by the Common Law, ancient Demeas'n Lands, &c. were discharged from Tithes, or that the King might grant them to whom he pleased. See *The Law of Tithes*, chap. 6. and 7.

A Scire Facias for a Confulcation after a Prohibition.

A Sc. Fac.
for a Conful-
cation. See
Reg. Orig.
p. 71.

THE King to the Sheriff of Essex, Greeting. Whereas we lately, at the Prosecution of T. and R. to us suggesting the Chapel of R. to have been situated within the Manor of his T. and

T. and him R. to have held the Chapel aforesaid of the Advowson (Patronage) of the foresaid T. and him R. and all his Predecessors, Parsons of the Chapel aforesaid, and have Time out of Mind had and received all the Tithes both great and small, arising from the Demeasns Lands of him T. of the foresaid Manor, and of certain his Tenants of that Manor, by the Donation (or Gift) of the Ancestors of the said T. sometime (formerly) Lords of the same Manor; and (one) L. S. Parson of the Church of R. claiming those Tithes to belong to his Church aforesaid, to have drawn them T. and R. into Plea before the Official of the Bishop of Lincoln, in the Court Christian; and for that the Plea aforesaid, as 'twas said, touched us and our Crown and Dignity; for that the Advowson of the Chapel aforesaid, might devolve to us, by Reason of Wardship or Escheat; and also because we do confer (or grant) and hitherto (always) have been accustomed to confer (or grant) such Tithes in (certain) our Demeasns; and also, many great Men (of our Realm) of England, have in like Manner (been) accustomed to confer (grant) such Tithes in their Demeasns; We prohibited the said Official, that he should not hold that Plea in the Court Christian, nor attempt any Thing in this Part which might turn in Derogation of our Royal Dignity. By Pretence of which Prohibition the same Official, as we have received, hath hitherto deferr'd, and yet doth defer to proceed in that Cause, to the small Loss and Grievance of him L. and manifest Damage of the Disinherison of his said Church. And now we are supplicated on the Behalf of him L. that whereas in the Ar-

Note.