

threatned the Burning of A.'s Houses, we command thee, &c. so that, &c. to the said A. by such Burning of his Houses by the said C. &c.

And one may have it for the Safety of his Body, and against Burning of his Houses, all in one Writ—And may have an *Alias*, a *Pluries* and *Attachment* against the Sheriff, if he does not his Office, &c.

To be had on Oath made, &c.

in Chancery.

And by the ancient, and I conceive present Course, the Party that sues out this Writ in Chancery, ought first to take an Oath before a Master there, that he sues it merely for the Preservation of his Person, House, &c. Though *Fitzberbert* says, in his Time, many Plaintiffs sued out such Writs by their Friends, without Oath; which he justly censures as ill done; for that they were many times sued more for Vexation than for any good or just Cause.

And in B. R. Justices of Peace. Note.

But the Judges in *B. R.* will not grant any Writ for Surety of the Peace, without making Oath of his being in Fear of corporal Hurt, &c. And the Justices of Peace ought not to grant any Warrant at the Suit of any one, to find Sureties of the Peace, if the Party who requires it, will not take his Oath accordingly, and that he requires the same not out of Malice or Hatred, but merely for the Safety of his Body.

F. N. B. So. Attachment pro pace.

And if a Man has su'd such a Writ against one directed to the Sheriff, and the Sheriff takes Security of him to keep the Peace, and he afterwards breaks it against him who demanded the same, he who demanded it shall have an Attachment against him to find Sureties, &c. in this Form:

THE

THE King to the Sheriff, &c. If A. shall make thee secure, &c. then put (by good Pledges, &c.) That he be before our Justices at W. (such a Day, &c.) to shew why, whereas the foresaid B. menaced (threatned) the foresaid A. of his Body, and the foresaid A. by that Occasion had brought to thee our Writ of the Peace thereon; and the same B. although he gave Security to thee, that by him or his procuring Damage, or Peril to the said A. of his Body should not come, (yet) nevertheless the said B. hath made an Assault with Force and Arms upon the foresaid A. at W. &c. and him hath beaten, &c. manifestly in Contempt of us, and to the grievous Damage of him A. and against our Peace; and have thou there the Pledges and this Writ. Witness myself, &c.

And upon this Writ the Plaintiff shall recover Damages, and the Defendant be fined for his Contempt,—*i. e.* if found guilty. *Damages and Fine.*

If one will sue for Surety of the Peace against a Person residing within the Cinque Ports, a Writ shall be issued out of Chancery, directed to the Constable of Dover, and to the Warden of the Cinque Ports, thus: *Writ to Dover, &c.*

THE King to his beloved and trusty N. Constable of his Castle of Dover, and to the Warden of the Cinque Ports greeting: We command you, That hearing the Complaint of A. of that, That B. who is of the Liberty of the Cinque Ports, &c. hath manifestly menaced (threatned) him of his Body, and calling before you the Parties aforesaid, and hearing their Reasons severally, (on both Sides) you cause to be done to the said A. there-

A. thereupon, a due and speedy Complement of Justice, as of Right, and according to the Law and Custom of our foresaid Ports is (ought) to be done; and as at other Times, in the like Case hath been accustomed to be done. Witness, &c.

F. N. B. So.
but see SI.
contra.

And note; by *Fitzherbert*, it is the common Opinion, That the Security which the Sheriff is to take on such Writ of the Peace, ought to be by Bond (and not by Recognizance, &c.) But the usual Practice of the Chancery and B. R. is to take it by Recognizance.

Supplicavit
by Stat. 1 E. 3.
c. 6.

By the Stat. 1 E. 3. c. 6. certain Persons (since called Justices of the Peace) were to be assigned in the Court of Chancery, by the Chancellor, &c. for the Keeping of the Peace, &c. and thereupon other Forms of Writs have been invented, unknown to the Common Law, and in particular the Writ called a *Supplicavit*, (he hath beseeched) issuing out of that Court, which is sometimes directed to the Sheriff, or Justices alone, but more often to the Justices of Peace and Sheriff, in the ensuing Form:

To the Justices and Sheriff, &c.

THE King to his beloved and trusty J. and his Companions, our Justices assigned to keep our Peace in the County of S. (and to our Sheriff of the same County) greeting: [Or thus] To the Keepers of our Peace in the County of S. &c. and to the Sheriff of the same County, and to every of them greeting: [Or thus] To the Sheriff of S. greeting: A. hath supplicated us, That whereas he is grievously and manifestly Menaced of Life and Mutilation of Members,
(as

(as also of the burning of his Houses) we would for the Surety (Security) of him A. in this Part (particular) provide, We yielding to the Supplication aforesaid, command you (or thee) firmly injoining, That you cause the foresaid E. Bodily to come before you (or thee) and him to find sufficient Mainpernors, who him will Mainprise under a certain Pain on them by you (or thee) reasonably to be imposed for which to us they or ye will answer. [Or thus] And him E. to find sufficient Sureties under the Pain (Penalty) of 100l. to be paid to our Use; or if divers, And that ye (or thou) compel them the said, &c. and every of them under the Pain, &c. That he (or they) shall not do any Damage or Hurt to the same A. in his Body (or Houses by such burning) nor procure to be done in any Manner; and if he shall refuse to do this before you (or thee) then do ye (or thou) commit him E. (or them, &c.) to our next Gaol, to be safely kept in the same, until he will do this (it) freely; and when this Surety (Security) ye shall (or thou shalt) have taken, then to make us more certain, certify ye (or thou) us forthwith thereupon into our Chancery, under your (or any of your) Seals (or thy Seal) distinctly and openly, without Delay, remitting ye (or thou) to us this Writ. Witness, &c.

And if the Husband threatens to beat or kill his Wife, she shall have this Writ, viz.

A. the Wife of B. hath supplicated us, For a Wife That she is grievously and manifestly menaced by against her the said B. of her Life and Mutilation of her Husband. Members, &c. as above to will answer, compel ye, That he the foresaid A. well and honestly

restly shall intreat and govern; and shall not do, nor in any Manner procure to be done any Damage or Hurt to the same A. in her Body, otherwise than what doth lawfully and reasonably belong to him as her Husband, by Cause (Reason) of ruling and correcting of her his Wife, &c.

In other Cases.

And if a Man, being at Variance with others, is in Doubt (Dread) that Damage or Hurt will come to him or his Servants, or Goods, by Reason of such Variance, he may have a Special Writ directed to the Sheriff, That he cause them to find Security, That they do not any Damage or Hurt to the other in his Body or Servants, or Goods, in a certain Sum, &c. And if they will not find such Security, that then he arrest them, and keep them in Prison, until they will find Sureties; and that the Sheriff certify all that is done thereupon into the Chancery, on a Penalty, &c. which Security it is said, ought to be by Recognifance. *Vide infra.*

F. N. B. S^r.

But after one has purchased such Writ of *Supplicavit*, directed to the Justices of Peace, or the Sheriff, or both, as aforesaid, yet he against whom the Writ is sued, may come into Chancery, and there find Sureties that he will not do Hurt or Damage to him who sued the Writ, &c. And thereupon he shall have a Writ of *Superfedeas* out of Chancery, directed to the said Justices or Sheriffs, or one of them, reciting that he hath found Sureties in Chancery, according to the Writ of *Supplicavit*, and what Kind or Sort of Security he hath found, and the Sum wherein they are bound; and thereby commanding the

A Superfedeas to the Supplicavit.

the Justices and Sheriff, that they surcease to arrest him, &c. or compel him to find Sureties, &c. and that if they have arrested him for that Cause, and for no other, then they deliver him, &c. See the Form hereof in the *Register*. *By the Party;*

And if the Party who ought to find Sureties, cannot come Personally into Chancery for that End, any Friend of his may there purchase a *Supersedeas* for him, reciting the *Supplicavit*; and that such a one and such a one are bound for him in Chancery, in such a Sum, that he shall keep the Peace according to the *Supplicavit*, &c. and such *Supersedeas* shall be directed to the Justices of Peace and Sheriff, That they or some of them take Sureties (also) of the Party himself, for to keep the Peace, &c. according to the Writ of *Supplicavit*; and that then they surcease to arrest him; and if they have arrested him for that Cause, (only) that then they deliver him. *By his Friends.*

And if the *Supplicavit* be returnable in Chancery at a Day certain, and the Justices do not at the Day return the Writ, nor the Recognizance, and the Security taken, then the Party may have a Writ of *Certiorari* directed to the Justices of P. to certify the Writ of *Supplicavit*, and what they have done thereon, and the Security which is found, &c. and so the Party may have such *Certiorari* to the said Justices to certify the Security by them taken on the *Supplicavit*, although such *Supplicavit* be not returnable in Chancery, &c. *Certiorari of the Recognizance, &c.*

Also where Sureties of the Peace are demanded against any Man in the County, and Sureties are there found before the Justices, &c. he who demanded the Security may have a *Certiorari* directed to the said Justices, to remove the said Security and the Recognisance taken thereon; and to certify the Recognisance and Security so taken, under their Seals or the Seal of one of them.

And if the *Certiorari* be sued on a Writ of *Supplicavit*, it must recite the *Supplicavit*.

But if it be on Sureties taken in the County, without a *Supplicavit*, the Form is thus:

A *Certiorari*,
without a
Supplicavit.

These Words
seem added
to the origi-
nal Form.

THE King to the Keepers of his Peace (i. e. the Sheriff, Constables, &c. originally elective) and to every of them greeting: We being willing, for certain Causes, to be certified of the Tenor of a certain Surety of the Peace, lately Ex officio, (i. e. by Duty of Office) taken before R. B. and his Companions, Keepers of our Peace, (and our Justices assigned to hear and determine divers Felonies, Trespasses and Misdeeds) in the County of L. taken of R. of W. for that that he shall not do nor procure to be done, any Damage or Hurt to B. of E. or to any of our People, which said Surety of the Peace remaineth with you, as it is said, We command you that distinctly and openly, without Delay, you certify us thereupon (thereof) in our Chancery, under the Seals of you, or one of you, remitting to us this Writ. Witness, &c.

And note; when the *Supplicavit* is directed to the Sheriff, the *Certiorari* shall be also directed to him, to make Return of the Security, &c. if he has taken any, &c.

And

And if one finds Sureties to keep the Peace against certain Persons before the Sheriff (or other Conservator of the Peace) without any Writ of Supplicavit sued to cause the Sheriff, &c. (which it seems was of old the usual Form) the Party who demanded the Surety may have a *Certiorari* to the Sheriff, to certify the Security into the Chancery, &c. without making Mention in the *Certiorari* of any Writ for causing the Sheriff to take such Security; for the Sheriff being by the Common Law a Conservator of the Peace, might *Ex Officio*, &c. as aforesaid, cause the Party to find Sureties to keep the Peace. Therefore if any one pray'd the Sheriff to take such Surety, the Sheriff might bind them thereto by Recognizance, and certify the same into Chancery on a *Certiorari*. See *F. N. B.* 81. *D.* and see 12 *H.* 7. 17. By *Fineaux*. By the Common Law the Sheriff is Conservator *Pacis*, &c. And hence it appears that this Security so taken by the Sheriff, ought to be by Recognizance; for if he certify only an Obligation or Bond, such Certificate could not make the Bond or Obligation to be a Matter of Record; and the Party cannot be bound to the King but by Matter of Record, except he will himself come into Court and confess the same to be his Deed, and pray that the same may be enrolled and so made a Record. See also the Stat. 33 *H.* 8. c. 39. that the Sheriff is not to take Security by Bond, but by Recognizance.

Sheriff's Authority.

See Lamb. 10, 11.

Note also; it appears by the Sheriff's Commission at this Day, that he has the Custody of the County for the Time he is Sheriff, the Words thereof being, *Commisimus vobis*

Judge of Record, &c.

vobis Custodiam Comitatus, We commit to you the Custody of our County, &c. And by that he now takes his Authority, which being a Matter of Record, constitutes him a Judge of Record, and consequently gives him Power to bind by Recognizance.

Justices of Peace, their Commission, &c.

So in the Case of Justices of Peace, their Commission gives them Authority to enquire, hear and determine of all those Things that are done against the Peace; and by Reason of that Commission only, they have Power to bind to the Peace by Recognizance. And yet there is no express Authority in such Commission to take Recognizances; but it follows of Consequence, that seeing they have thereby an express Authority to cause Men to keep the Peace, and to hear and determine Offences against the Peace, therefore they have by Implication a Power to bind Men by Recognizance so to do. For every Thing they have done by Virtue of their Commission, ought to be taken as Matter of Record. And by the same Reason in Case of the Sheriff. For that by his Patent, which is of Record, he is constituted Conservator of the Peace in every Place within his County, therefore every Obligation which he takes to keep the Peace, shall in Law be taken to be a Recognizance (especially when it is certified into Chancery by *Certiorari*.)

*See 7 H. 4 34
Accord.
Crompt. 125.*

But yet all the Pleas which are holden before the Sheriff in the County, are not of Record, nor are any Pleas held before him by Justices taken to be Matters of Record (at this Day, *Quære* if formerly) For those Pleas are held before him by Reason of the Courts which he hath by Reason of his Office,

vice, as the County-Court, the Hundred-Court, &c. But the *Leets* and *Torns* which were instituted for the Commonwealth, as for keeping the Peace, &c. these are Courts of Record, and consequently as to keeping of the Peace, the Sheriff is a Judge of Record, and may *ex officio* (by the Duty of his Office) take Recognizances for keeping of the Peace. But if he do so on a *Supplicavit*, or other Writ directed to him, it is the stronger; yet give Credit to better Reasons (when they are given.)

Of Lands or Goods forfeited to the King.

And seeing we have mentioned the Sheriff's Duty in executing Writs that regard the publick Peace, it may not be amiss in the next Place briefly to consider his Duty, with respect to Lands or Goods forfeited to the King on an Attainder of Felony, &c. especially for that some think the Law to have been of late mistaken in the Case of a very remarkable Conviction of *Rape*, and the over hasty (not to say illegal) Seizure made thereupon. F. N. B. 144.

And first, I find it clear from all the Writs of *Escheat* in the *Register* and *F. N. B.* that before the King could seize any Lands on such *Escheat*, it must be found by a Jury or Inquest what those Lands, &c. were.

And 'tis expressly averr'd by *Fitzherbert*, that in the case of an Attainder of Felony, the Course in the *Register* appears to be, for the King to send a Writ to the *Sheriff*, to inquire what Lands and Tenements, &c. he had, and which Lands he held of the King, and which

F. N. B. ibid.
H. See also
F. N. B. 254.
D.

of other Landlords; and by what Services, and what they were worth by the Year beyond Reprisals; and thereupon the *Sheriff* was to certify the same.

And tho' this Course was somewhat altered by the Stat. 28 *Eliz.* 3. c. 9. which is, That a Commission be not made to the *Sheriff* to take an Indictment (Inquest) *Quare*. Yet 'tis conceived an Inquest ought to be made, or the King's Warrant for a Seizure ought to issue, before any Seizure on such a Conviction can legally be made.

Also there is another Writ appointed by the Register, directed to the *Sheriff*, to inquire whether such a House or Land, which *W.* had, who was attainted of Felony, were seized into the King's Hand for a Year and a Day, or not, and of whom they were holden, and who had the Year, Day and Waste, and ought to answer the King for the same; and that he send (*Quare* if by *Mittimus Certiorari*, &c.) the same before the King, &c. And now (says *Fitzherbert*) in place of those Writs there ought to be a Commission directed to certain Persons to inquire thereof by Virtute of the Statute aforesaid; which proves *an Inquiry is to be made and returned before any Seizure can be thereof.*

Also, if a Man be attainted of Felony, and another enters into the Land, and takes the Profits, and it be afterwards found by Commission, that such a Man who was attainted of Felony had such Lands and Tenements; and that the same ought to have been in the King's Hands for a Year and a Day. And that *B.* hath taken the Profits for that Year and Day, and hath also had the Waste thereof,

of, and that the Lands are holden of F. thereupon F. may have a Writ to the Sheriff to deliver him Seizure of the Lands, &c. *Saving the Right of every Man, &c.*

And he who has taken the Profits for the said Year and Day, shall answer to the King for the same. And thereby it appears, that the King shall not have but the next Year and Day, which comes next after the Attainder. And that whoever takes the Profits for that Year, shall answer to the King for the same.

But still it may be queried, whether such *Note.* Inquiry ought to be extended to the Goods and Chattels of a Person attainted of Felony; and I conceive it ought, except the same Jury who convicted the Felon, will also find what Goods and Chattels he was possess'd of at the Time of his Conviction, *as they well may.* But if they do not so find, I conceive a Commission of Inquiry ought first to issue, and the Felons Goods and Chattels thereby found, with a *Saving of the Right of every Man, &c.* and a Warrant to issue thereupon before any Seizure can be made.

Of the Writ De Idiota inquirendo & examinando, (Of inquiring and examining an Ideot.)

How the Lands of Ideots are vested in the King.

AND seeing we have mention'd the King's Right to the Lands of one attainted of Felony, which appears to have been on an Inquisition found only for one Year and a Day, and the Waste (*i. e.* he might in that Time cut down the Trees, pull down the Houses, &c.) it may be proper in the next Place (for with Treason I shall not intermeddle) to see by what Means the Lands of other Persons may be vested in the King, and especially the Lands of *Ideots* and *Lunaticks*; and I conceive it clearly appears from all the Precedents in the *Register* and *F. N. B.* That the King could not, by the Common Law, intermeddle with the Lands of either, till after a Writ of Inquisition found and return'd. And though in the Case of an *Ideot*, after such Inquest found and returned, he or his Committee might enter upon the Lands, and take the Profits to his own Use, during the Ideot's Life, allowing him only a reasonable Maintenance thereout. Yet in the Case of a *Lunatick*, though the King might after an Inquest so found, enter and seise, and take the Profits, yet the Law did not vest any Property in him or his Committee, further than that after such Entry and Seisure, they were said to be seised to the Use of the *Lunatick*; and were therefore, when ever he became of sane Memory, accountable to him.

Of Lunaticks.

And

And as, by the Common Law, the King was bound of Right to defend his Subjects and their Goods and Chattels, Lands and Tenements: So by the same Law, every Subject was bound to the King in Duty and Allegiance, which made the Bond between the King and his Subjects reciprocal. And hence it is, That in the Eye of the Law, every loyal Subject is said to be under the King's Protection; and if he be put out of the King's Protection, for any Offence, any Man may do to him as against the King's Enemies; and he has no Remedy for the same by the King's Laws.

See Calvin's Case.

F. N. B. 232.

And because every Subject is esteemed to be within the King's Protection, therefore an Ideot, who cannot defend nor govern himself, nor order his Lands, Tenements, Goods or Chattels, the King of Right, ought to have both him and them in his Custody, as appears by the Stat. *De Prærogativa Regis*, cap. 8.

Stamf. 34.
Fitz. Sci. Fa.
10.

And therefore when the King is informed that one who hath Lands or Tenements, &c. is an Ideot, and has been a natural Fool from his Birth, the King may award his Writ to the Escheator, or the Sheriff of the County, where such Ideot is, to enquire thereof; and the Writ to the Escheator is thus:

T H E King to his Escheator of D. greeting: *Because we have received (Information) That J. of B. is a Fool and an Ideot, so that to the Government of his Lands and Tenements, Goods, and Chattels, he is not sufficient (capable); and that he in his Foolishness hath aliened a great Part of his Lands and Tenements; and*

A Writ of Idiocy to the Escheator.

also

also dissipated a great Part of his Goods and Chattels to his Disberison, and our manifest Pre-
judice; (now) We, willing to provide for his
Indempnity in this Part (particular) do com-
mand you, that in your proper Person you go to
him J. and do ye circumspectly examine him by
such Ways and Means, whereby you may be the
better informed of his Estate; (Condition)
and nevertheless, by the Oath of honest and le-
gal Men of your Bailiwick, by whom the Truth
of the Matter may be better known, do you di-
ligently enquire if the same J. be a Fool or Idiot,
as is aforesaid or not; and if he be, then whe-
ther from his Birth or from another Time; and
if from another Time, then from what Time,
and in what Manner, and how; and if he en-
joys any lucid Intervals; and if the same J.
being (whiles) in the same State, hath aliened
any Lands or Tenements, or not; and if so,
then what Lands and Tenements, and where to
whom, and in whose Hands the Lands and Te-
nements so alienated (now) are, and in what
Manner (Q.) and how, and what Lands and
Tenements do yet remain to him, and of whom,
as well the Lands and Tenements so aliened, as
the Lands and Tenements so retained to him are
held, and by what Service, and in what Man-
ner (Q.) and how, and what the yearly Value
of them is in all Issues, and who his next Heirs
is, and of what Age; and the Inquisition there-
upon, distinctly and openly made, send you to us
in our Chancery, under your Seal, and the Seals
of those by whom you shall make this Inquiry,
and this Writ. Witness myself, &c.

F. N. B. 232.

Note.

And

And the Form of the like Writ, directed to the Sheriff, is thus:

THE King to the Sheriff, &c. We command thee, that by the Oath of honest and lawful Men, thou diligently inquire whether J. of B. Brother and Heir of T. of B. hath been from his Birth hitherto, a pure (and natural) Idiot, for which the Custody of his Lands and Tenements in C. to us ought to belong; or (if) by Misfortune or otherwise, he into such Infirmitie afterwards fell, for which such Custody ought not to belong to us; and if by Misfortune or otherwise, then by what Misfortune, and in what Manner, (Q.) and how; and of what Age he is, and of whom the Lands and Tenements are immediately held, and by what Services, and who now holdeth them; and what their yearly Value is in all Issues, and who in the mean Time hath taken the Issues, and the Inquisitions thereupon distinctly, &c. as before.

The like Writ to the Sheriff.

There is also a Writ of *Idiocy* in the Register, directed to the Sheriff, which is much in the same Form with that directed to the Escheator, before recited.

But all those ancient Writs of *Idiocy*, &c. are now turned into Commissions, directed to the King's Nominees; the Forms whereof may be seen *infra*.

But though a Man be found an Idiot before the Sheriff, or before the Escheator, (or before the King's Commissioners, which is now the Practice) on his Inspection and Examination taken, &c. And that finding, &c. be returned into the Chancery, yet he who

is

Of the Writ De Idiota

is so found an Idiot may either in Person or by his Friends, come into Chancery before the Chancellor and the King's Council, and shew the Truth of the Matter, and pray that he may be examined thereupon, before the Chancellor and the King's Council, whether he be an Idiot or not; or he may sue a Writ out of Chancery, directed to certain Persons to bring him, who is so found an *Idiot* before the King and his Council (to *Westminster*, &c.) to be there examined; and if he be brought thither and examined, and found to be no Idiot, then the Inquisition found before the Sheriff, or the Escheator, (or the said Commissioners) and all the Examinations, Depositions, &c. taken therein, shall be void, and of no Effect, and stand so vacated without any other Traverse, as it seems, (2.)

The Writ to bring the Party (so found an Idiot) before the King and Council is thus:

To bring the Idiot before the King and Council.

THE King to J. of T. greeting: Because we are given to understand that R. thy Brother, Son and Heir of B. thy Father, deceased, is an Idiot, and of unsound Memory (Mind, &c.) so that to provide for the Government of himself or his Lands, he is not sufficient; We, willing to be certified of the Estate of the foresaid R. thy Brother, do command thee, firmly enjoining, that forthwith, at the Sight of these Presents, the foresaid R. being in thy Custody, as it is said, thou cause to be brought before us and our Council, at Westminster, without Delay, so that he be there on this Instant Thursday, there to be examined before our said Council, and to be done with according to what by the Advice of

our Council hereupon we shall think fit to ordain; and this by no Means do thou omit, under the Pain of one hundred Pounds. Witnesses, &c.

And note; He who shall be said to be a Sot and Idiot from his Birth, is such a Person who cannot account or number twenty Pence, nor tell who was his Father or Mother, nor how old he is, &c. so as it may appear he hath no Understanding of Reason to distinguish what shall be for his Profit, or what for his Loss. But if he have so much Understanding as to know or name his Letters, or to read by Teaching or Information of another Man, then it seems he is not a Sot or a natural Idiot.

See Co. Lit.

But seeing, as we have above observed, these Writs *De Idiota Inquirendo* are now turned into Commissions of Idiocy, &c. I shall here so far anticipate the Title *Commission*, which see hereafter, as to present the Reader with the Form of such a Commission, with the Return thereof, both in *Latin* and in *English*; as also with the several Steps taken in obtaining the same, *viz.*

Proceedings on a Modern Commission of Idiocy.

About the Beginning of *Michaelmas* Vacation, 1706. by the Contrivance of some Court-Ladies (as was said) it was agreed a Commission of Idiocy should be taken out against *Richard* Lord Viscount *Wenman*, a Person of a large Estate, but of mean Understanding, whose Mother, the then Countess Dowager of *Abingdon*, having then lately married one *Wroughton*, her Page or Servant, was also reported to have designed a Marriage between her said Son and the said

The Lord Wenman's Case.

Wrough-

Of the Writ De Idiota

Wroughton's Sister, (a poor Girl) and which in Fact after happened. But before this later Marriage, Application was made to the then Lord Keeper, by the following Petition.

To the Right Honourable *William* Lord *Cooper*, Baron of *Wingham*, Lord Keeper of the Great Seal of *England*,

The Humble Petition of Lewis Young,
Gent.

SHEWETH,

*The first Pe-
tition.*

THAT the Right Honourable the Lord
Viscount *Wenman* of *Caswel*, in the
County of *Oxon*, now of the Age of nine-
teen Years or thereabouts, is and from the
Time of his Nativity hath been so very
weak in his Reason, Memory and Under-
standing, that he is thought to be a perfect
Idiot, and altogether unfit and unable to
govern himself, or to give any Direction
for the due ordering or managing of his E-
state, which by Reason of his said Inca-
pacity is in Danger to be greatly impair-
ed—To prevent which, and to the End
the said Lord Viscount *Wenman* may be
carefully look'd after and provided for ac-
cording to his Quality and Estate, and as
his Condition doth require—Your Petition-
er most humbly prays, That your Lord-
ship will be pleased to order a Commission
in the Nature of a Writ *De Idiota inqui-*
rendo to issue out of this honourable Court,
directed to such Persons as your Lordship
shall

shall think fit to inquire of the Ideocy of the said Lord Viscount *Wenman*.

And your Petitioner shall ever pray, &c.

20 Decembr. 1706.

Let a Commission issue as is desired, directed to Sir Robert Dashwood Bart. Sir Thomas Wheat Bart. Peter Perhouse, Robert Thompson Esquires; Timothy Langley; Matthew Wilkins, Edward Clive Gent. or any three or more of them, the said P. P. or E. C. to be one.

Answer.

Cowper C. S.

And accordingly a Commission issued with an Intent to be executed in *Oxfordshire*, but was rendered ineffectual by the Means mentioned in another Petition again presented in the Name of *Lewis Telling*, and answered a few Days after, viz.

SHEWETH,

THAT your Lordship was lately pleased, on your Petitioner's humble Petition, to order, That a Commission in the Nature of a Writ *De Idiota. inquirendo* should issue out of this honourable Court, to inquire into the Ideocy of the Right Honourable the Lord Viscount *Wenman*, as by the said Petition, and your Lordship's Order thereon hereunto annexed it appears, — That on the 21st of this Instant *December*, such Commission passed the Great Seal, and was made out into *Oxfordshire*, where your Petitioner understood the said Lord Viscount *Wenman* then was. But he

A second Petition.

H

being

Of the Writ De Idiota

' being since brought up to *London*, with a
 ' Design (as your Petitioner hath great Rea-
 ' son to believe) to frustrate the Intent of
 ' the said Commission: And your Petitioner
 ' being advised, That whilst the said Lord
 ' Viscount *Wenman* is kept here in Town,
 ' the said Commission cannot effectually be
 ' executed in *Oxfordshire* as was intended:
 ' Your Petitioner therefore most humbly
 ' prays, that your Lordship will be pleased
 ' to grant another Commission, directed to
 ' such Persons as your Lordship shall think
 ' fit to inquire of the Ideocy of the said
 ' Lord Viscount *Wenman*; and that the same
 ' may issue into the County of *Middlesex*:
 ' And to order that a Clause may be inser-
 ' ed in such Commission, to empower the
 ' Commissioners, or any three or more of
 ' them, to call or cause to be brought before
 ' them the said Lord Viscount *Wenman*, to
 ' the End they may be the better informed
 ' of his Capacity and Condition.

And your Petitioner shall ever pray, &c.

24 Decembr. 1706.

And Answer. *Let a Commission issue as is desired, directed
 to Sir Robert Dashwood Bart. Sir H. Dutton
 Colt Bart. Peter Pershouse, Robert Thomp-
 son and James How Esquires, T. Langley
 and E. C. Gent. or any three or more of them
 whereof P. P. or E. C. to be one.*

Cowper C. S.

Whereupon a second Commission issued in-
 to the County of *Middlesex*, as was prayed
 by the Petition, and the Commissioners sat
 there

thereupon, and heard Counsel and examin'd Witnesses divers Times at the Church House near St. Clements Church in the Strand; but the Person of the Lord *Wenman* being kept in *London* (whereto this Commission did not extend) or secreted in some other Place; whereof no Evidence could be given; this Commission (as the former) was rendred ineffectual, and at length, on the Petition of the said Countess Dowager of *Abingdon*, the Queen granted a *Supersedeas* thereto.

But about two Years and half afterwards the same Project was again revived, and a Petition exhibited for a new Commission, viz.

To the Right Honourable *William* Lord *Cowper*, Baron of *Wingham*, Lord High Chancellor of *Great Britain*;

The humble Petition of John Terry,
Gent.

SHEWETH,

THAT in *December 1706. L. Y. Gent. A Third Pe-*
 preferred his Petition to your Lord-*tion.*
 ship, setting forth, That the Right Honour-
 able *Richard* Lord Viscount *Wenman*, of
Tuam in the Kingdom of *Ireland*, then of
 the Age of nineteen Years, was, and from
 the Time of his Nativity had been, &c. (as
 in the former Petition) for Prevention
 whereof, &c. he humbly prayed your Lord-
 ship, That a Commission in *Nax' &c.*
 which your Lordship was pleased to order
 accordingly.——That upon a Petition to
 her Majesty by the Countess of *Abingdon*,

Of the Writ De Idiota

the said Lord *Wenman's* Mother, setting
 forth that in case he should be found an I-
 deot, it would hinder the Preferment of
 her Daughters and his Sisters in Marriage,
 her Majesty was pleased to order the said
 Commission to be superseded.—That af-
 ter the said Commission was so superseded,
 the said Countess publickly owned what she
 had before concealed, *viz.* her Marriage
 with a Servant of her late Husband the
 Earl of *Abington*, one Mr. *Francis Wroughton*,
 who having thereby the Controul of
 and Power over the said Lord *Wenman* and
 his Estate, hath by himself and his Agents
 committed great Cruelties on the Person of
 the said Lord *Wenman*, and now treats him
 as an Idiot, tho' he is arrived at full Age,
 is designing to marry him to his the said
Wroughton's own Sister, a Woman of mean
 Parentage and no Fortune, and hath lately
 marked a great Quantity of Timber of
 many Thousand Pounds Value, growing on
 the said Lord *Wenman's* Estate, in order to
 be felled.—That the said Lord *Wenman's*
 Sisters are likewise married since to Persons
 of small Estates, and very unequal to their
 Fortunes; so that the Ends of her Ma-
 jesty's Grace and Favour to the Family, by
 superseding the said Commission, are whol-
 ly frustrated.—That since the said Lord
Wenman has been an Ideot from his
 Birth, and is incapable of governing, pro-
 tecting or managing himself or his Affairs;
 and hath been (and is in Danger of being
 further) so notoriously abus'd by the said
 Mr. *Wroughton* in his Person and Estate.—
 Your Petitioner humbly prays, That your
 Lordship will be pleased to order a new
 Com-

Commission in the Nature of a Writ *De*
Idiota inquirendo, to issue out of this honoura-
 ble Court, directed to such Persons as your
 Lordship shall think fit, to inquire of the
 Idiocy of the said Lord *Wenman*; and that
 your Lordship will be pleas'd to grant an
 Order to take the said Lord *Wenman* into
 Custody, and to bring him before the said
 Commissioners, in regard that your Petiti-
 oner is informed that his Lordship is kept
 private in *London*, in order to be sent into
Holland upon the least Notice of a Com-
 mission issuing. And that the said *Francis*
Wroughton, and those Persons who have his
 Lordship in their Custody, may be ordered
 to deliver him to a Messenger, to be sent for
 that Purpose, and to send his Lordship's
 Servant who usually attends him, in order
 to take the better Care of him.

And your Petitioner shall, &c.

2 Jun. 1709.

John Terry.

Let a Commission issue as is desired, directed to And Answer.
 William Peer Williams, John Brown, P. Per-
 house, Clinton Dowse and Rob. Thompson,
Esqs; Tho. Dowse, Hen. Bendish, Nat. Hunt,
 Edward Clive, and Timothy Langley, Gent.
or any four or more of them; whereof the said
 William Peer Williams, J. B. P. P. and T. L.
or either of them, to be one; and let a Clause be
inserted in the said Commission to authorize the
said Commissioners to convene the said Lord
Wenman before them at the Time of the Exc-
cutation of the said Commission.

And a Commission was accordingly issued, *A Third*
 directed to the said Commissioners; but Mr. *Commissioner*
Peer Williams (and I think Mr. *Brown*) re-
 fusing

fusing to act therein, the same was cancelled, and a fourth Commission was issued, directed to *Edward Whitacre Esq;* (afterwards Serjeant *Whitacre*) and others as followeth.

A Fourth
Commission.

ANNA Dei Gratia Mag. Brit. Fran. & Hib. Regina, &c. Dilectis sibi Edwardo Whitacre, Whitlock Bulstrode, Petro Perhouse, Clinton Dowse & Roberto Thompson Armigeris T. D. H. B. N. H. R. Y. and T. L. Gen. Salutem. Quia datum est nobis intelligi quod præhonorabilis Richardus Dominus Vicecomes Wenman de Tuam in Regno nostro Hiberniæ Fatuus & Idiota existit ita quod de Regimine sui ipsius terrarum tenementor^{um} Bonorum & Catallorum suorum non sufficit, & quod ipse in Fatuitate sua magnam partem Terrarum & Tenementor^{um} suor^{um} alienavit, ac etiam magnam partem bonorum & Catallorum suorum dissipavit in Exhæredationem suam & nostrum præjudicium manifestum. Sciatis quod nos indemnitat^{ur} prædicti Richardi Domini Vicecomitis Wenman, in hac parte prospicere volentes ac de fidelitatibus & providis Circumspectionibus vestris in hac parte quamplurimum confidentes assignavimus vos vel quatuor vel plures vestrum quorum præfat. E. W. vel B. W. vel P. P. vel T. L. unum esse volumus, ad inquirend. per Sacramentum proborum & legalium hominum de civitate nostra London (or de com^o nostro M.) tam infra Libertates quam extra per quos Rei veritas melius sciri poterit utrum prædictus R. Dominus Vicecomes Wenman Fatuus & Idiota existit sicut prædictum est necne. Et si sit tunc utrum a Nativitate sua aut ab alio tempore. Et si ab alio tempore tunc a quo tempore qualiter & quomodo. Et si lucidis gaudeat intervallis. Et si
idem

idem Richardus Dominus Vicecomes Wenman in eodem statu existen^r Terras aut Tenementa (sua) aliqua alienavit necne & si sic, quas Terras & quæ Tenementa ubi & cui vel quibus & in cuius vel quorum manibus Terræ & Tenementa sic alienat^r existunt & qualiter & quomodo, & quæ Terræ & Tenementa bona & Catalla adhuc sibi remanent & de quo vel de quibus tam Terr^r & Tenementa sic alienat^r quam Terr^r & Tenementa sibi retent^r (remanen^r) teneantur, & per quæ Servic. & qualiter & quomodo, & quantum valeant per Annum in omnibus exitibus & quis propinquus Hæres ejus sit & cuius ætatis. Et pro meliori Inquisitione de Idiocio prædicti R. Dom. Vic. Wenman Datus per præsentis vobis tribus vel plur. v^rum quorum præfat. E. W. vel W. B. vel P. P. vel T. L. unum esse Volumus plenam potestatem & auctoritatem ad dies & loca quos ad hoc providetis ad convocand. & duci causand. coram vobis vel quatuor vel plur^r v^rum quorum præfat. E. W. vel, &c. unum esse volumus præd^r Richardum Dom. Vic. W. si vobis vel quatuor vel pluribus vestrum quor^r præfat. E. W. vel, &c. unum esse volumus, viderit expediri ac eundem Ric. Dom. Vic. W. viis & modis quibus super statu suo Melius informari poteritis toties quoties sicut in vestris gravibus Judiciis equum videbitur diligenter & circumspecte Examinatis. Et ideo vobis quatuor vel plur. vestrum quorum præfat. E. W. &c. (ut ante) Mandamus quod ad certos Dies & Loca quos ad hoc provideritis diligenter super præmissis faciatis Inquisitionem & eam distincte & aperte factam nobis in Canc. n^ram sub sigillis vestris quatuor vel plur^r vestrum quorum, &c. (ut supra) & sigillis eorum per quorum Sacramentum fact^r fuerit sine dilatione mittatis &

has Literas Patentes. Mandamus enim Tenore presentium Vic. Civit. London prædict. quod ad certos Dies & Loca quos eis sciri feceritis venire faciant coram vobis quatuor vel plur. vestrum quor. præfat. E. W. &c. unum esse Volumus tot & tales probos & legales homines de Balliva tua (sua) tam infra Libertates quam extra per quos Rei veritas in premissis melius sciri poterit & Inquiri. In cujus Rei Testimonium has Literas nostras fieri fecimus patentes Teste me ipso apud W. 4to die Junii Anno Regni nostri 8vo.

Thompson

The same Commission in English.

‘ ANNE by the Grace of God, Queen
 ‘ of Great Britain, France and Ireland, &c.
 ‘ To her beloved Edward Whitacre, W. B.
 ‘ P. P. C. D. and R. T. Esquires, T. D. H. B.
 ‘ N. H. R. T. and T. L. Gentlemen, Greet-
 ‘ ing. Because (Forasmuch as) We are
 ‘ given to understand that the Right honour-
 ‘ able Richard Lord * Viscount Wenman of
 ‘ Tuam in our Kingdom of Ireland, is a Fool
 ‘ and an Ideot, so that he is not sufficient
 ‘ (capable) of the Government of himself
 ‘ (or) of his Lands, Tenements, Goods and
 ‘ Chattels; and that he in his Foolishness
 ‘ hath aliened great Part of his Lands and
 ‘ Tenements, and also dissipated (wasted)
 ‘ great Part of his Goods and Chattels to
 ‘ his Dishonour and our manifest Prejudice.
 ‘ Know ye, that we willing to provide for
 ‘ the Indemnity of the said Richard Lord
 ‘ Viscount Wenman in this Part (Particular)
 ‘ and very much confiding in your Fidelities
 ‘ and

* Tho’ the
 King in his
 Writ is to call
 no Man Lord,
 yet it seems o-
 therwise in
 his Commissi-
 ons.

and provident Circumspections in this Part
 (Particular) have assigned you, or four or
 more of you (whereof the beforeſaid *E. W.*
 or *B. W.* or *P. P.* or *T. L.* we will to be
 one) to inquire by the Oath of honeſt and
 lawful Men of our City of *London* (or of
 our County of *M.* if to be executed there)
 as well within † Liberties as without, by
 whom the Truth of the Matter may * bet-
 ter be known, whether the foreſaid
Richard Lord Viſcount *Wenman* be a Fool
 and an Idiot, as is aforeſaid, or not: And
 if he be, then whether (he was ſo)
 from his Birth, or from any other Time;
 and if from another Time, then from
 what Time, and how and in what
 Manner, and if he enjoys lucid Intervals.
 And if the ſame *Richard* Lord Viſcount
Wenman being in the ſame State (Condi-
 tion) hath aliened any his Lands or Tene-
 ments or not; and if ſo, what Lands and
 Tenements, where and to whom, and in
 whoſe Hands the Lands and Tenements ſo
 aliened do exiſt, and how and in what
 Manner, and what Lands and Tenements,
 Goods and Chattels do yet remain to him;
 and of whom (what Perſon or Perſons) as
 well the Lands and Tenements ſo aliened,
 as the Lands and Tenements remaining to
 him are held, and by what Services, and
 how and in what Manner, and of what
 yearly Value in all their Iſſues (Profits)
 and who is his next Heir, and of what
 Age. And for the better Inquiſition of the
 Idiocy of the foreſaid *Richard* Lord Viſ-
 count *Wenman*, We give by theſe Preſents
 to you, or to four or more of you (where-

† Quære of
 theſe Words if
 proper for
 London.
 * i. e. better
 than by the
 Commissioners.

of

Of the Writ De Idiota

*This seems
needless.*

of the foresaid *E. W.* or *&c.* we will to be
 one) full Power and Authority to convoke
 (call) and cause to be brought before you,
 or four or more of you (whereof, *&c.*) at
 such Days and Places as ye shall thereto ap-
 point, the said *Richard* Lord Viscount *W.*
if to you or four or more of you (whereof,
&c.) it shall seem to be expedient; and the
 same *Richard* Lord Viscount *Wenman*, do
 you diligently and circumspectly examine,
 by (such) Ways and Means, whereby you
 may be the better able to be informed,
 touching his State (Condition) as often as
 in your grave (weighty) Judgments it shall
 seem just. And therefore to you or four
 or more (whereof, *&c.*) We command,
 that at certain Days and Places which here-
 to you shall appoint, you diligently make
 an Inquisition touching the Premisses; and
 the same distinctly and openly made
 under your Seals, or of four or more of
 you (whereof, *&c.*) And the Seals of those
 by whose Oath it shall be made, send to us
 in our Chancery without Delay, and also
 these Letters Patent. For we command
 by the Tenor of these Presents, the Sheriffs
 of the City of *London* afore said, That at
 certain Days and Places which you shall
 make known to them, they cause to come
 before you, or four or more of you (where-
 of, *&c.* so many and such honest and law-
 ful Men of their Bailiwick (*as well within*
Liberties as without) by whom the Truth
 of the Matter in the Premisses might bet-
 ter be known and inquired. In Testimony
 whereof we have caused these our Letters
 to be made Patent, *&c.*

Quare.

About

About two Months after the Issuing of this last Commission, and after divers Sittings of the Commissioners at the *Guildhall* in *London*, Examination of Witnesses and hearing Arguments of Counsel, &c. the Commissioners and Jury made the following Return.

Executio hujus Commissionis patet in quadam *The Return:*
 Inquisitione huic Commission' annex. Sign'd
Whitl. Bulstrode, P. P. R. T. &c.

London ff. *Inquisitio indentat. capt. apud Guildhall civitat' London predict. in Parochia St. Michaelis Bassishaw, in Warda de Bassishaw London, præd. 29 die Julii Anno Regni Domine nostræ Annæ Dei Gra. Mag. Brit. Fran. & Hib. Regine, &c. 8vo. Coram E. W. W. B. P. P. &c. Armigeris, & T. D. &c. Generosis Commissionariis dictæ Domine Regine Virtute Commissionis suæ sub magno sigillo suo Magnæ Britannicæ eisdem Commissionariis (& cuidam * Nathanieli Hunt Gen.) in eadem Commissione nominat' direct. & huic Inquisitioni annexat. in natura brevis dictæ Domine Regine de Idiota inquirendo ad inquirend' (inter alia) de Idicia præhonorabilis Richardi Domini Vicecomitis Wenman de Tuam in Regno Hiberniæ per Sacramentum Jacobi Hallet Mil. Randolphi Knipe Mil. Johannis Scot Mil. Roberti Dunckley Mil. Alexandri Pitfield, Ar. Jacob Dolliff, Johannis Fellows, Johannis West, Tho. Clark, Micajah Perry, Johannis Page, Johannis Dickenson & Richardi Cock, Gen. Proborum & legalium hominum de civit. London præd. Qui jurat. & onerat. existen. ad inquirendum de articulis Materiis & Circumstan-*

* He did not act in the Commission.

tiis in eadem Commissione mentionat. dicunt super Sacramentum suum quod prædictus Richardus Dominus Vicecomes Wenman tempore captionis hujus Inquisitionis non Idiota existit Ita quod regimini sui ipsius Terrarum Tenementor. honor. & Catallor. suor. non sufficit prout per Commission' præd. supponitur. In cujus Rei Testimonium tam Commissionar. præd. quam juratores præd. manus & sigilla sua huic Inquisitioni apposuer. Die Anno & Loco primo supradict.

Then follow the Hands and Seals of thirteen Jurors and six Commissioners.

The Purport of which Return in English is,

That the Jurors above named, honest and lawful Men of the City of London aforesaid, who being sworn and charged to inquire of the Articles, Matters and Circumstances in the same Commission mentioned, do say upon their Oath, *That the foresaid Richard Lord Viscount Wenman at the Time of taking this Inquisition, is no Ideot, so that he is not sufficient for the Government of himself, his Lands, Tenements, Goods and Chattels, as by the Commission aforesaid is supposed. In Testimony whereof as well the Commissioners aforesaid as the Jurors aforesaid, their Hands and Seals to this Inquisition have set, the Day, Year and Place first aforesaid.*

See more of Commissions under their proper Title.

And

And thus having gone thro' such *Constitutional* and *Political Writs* as I at first intended, I shall now proceed to those that are of a more practical and particular Nature; I mean such as are now in Practice for the Decision of personal and private Rights, *viz.* Writs of *Accedas ad Curiam*, *Account*, *Assumpsit*, *Case*, *Covenant*, *Debt*, *Ejectment*, &c. in an alphabetical Order, and first,

Of the Writ Accedas ad Curiam, (Go to the Court.)

What it is.

THIS Writ seems to be the same which by another Name is called a *Resalo*, i. e. *Recordari facias loquelam*, or cause the Pleint to be recorded, &c. as may appear by the Words of

Where it lies.

the Writ *infra*, and properly lies for removing a Pleint or Suit depending in an inferior Court not of Record, to a superior Court of Record, and thereby making the Proceedings which before where no Record, to become a Record in such superior Court.

And to what End.

And note ; this Writ is to be distinguished from a Writ of *Recordare*, properly so called, (tho' *Fitzberbert* in his *Natura Brevium*, fol. 70, 71, seems to have confounded them) for that lies only to an inferior Court of Record, i. e. to remove the Cause and the Record to a superior Court of Record.

How distinguished from a Recordare.

The Form of an *Accedas ad Curiam* or *Resalo*, is thus :

F. N. B. 70.

GEORGE, &c. *To the Sheriff of Lincoln, Greeting. We command thee, that taking with thee four discreet and legal Knights of thy County, thou go in proper Person to the Court of W. C. and in that full Court thou cause to be Recorded the Plea (Pleint) which in the same Court without our Writ is (depending) between A. and B. and have thou that Record under thy Seal, and under the Seals of four legal Knights of that Court (who were) present at that Record (such a Return-Day at Westminster,*

minster, &c.) and prefix the same Day to the Parties, that they be then there to proceed in that Plea as just it shall be. And have thou then there the Names of the foresaid four Knights and this Writ. Witnesses, &c.

But these four need not now be Knights, Note. provided they have sufficient Estates in Land, i. e. Freeholders of 20 l. per Ann.

And in like Manner an *Accedas ad Curiam* F. N. B. 71. or *Resalo* may be to the Manor-Court of any other Lord; and so it may to a Court of *antient Demesne*, &c. and the Writ shall say, *Recordari facias Loquelam & processum* (Thou cause to be recorded the Pleint and Proceſs, &c. and have thou there that Pleint and Proceſs, &c. But the Register ſays that Record. Note.

Note also, after the *Teſte* (or *Witness*, &c.) of all theſe Writs, if the Pleint, &c. be removed by the Defendant, the Cause of Removal is to be inserted in the Writ (I think it may be endorsed) as the Cause assigned in the foregoing Writ is thus.—*Because the foresaid A. (the Plaintiff) is Bailiff (Steward) of the foresaid W. C. of his Court aforesaid, and holdeth the Pleas of the same Court, and ought not to be judge in his own Cause.* (And then add) Let Execution be done of this Writ, if the Cause be true, (otherwise not). The Cause to be shown in the Writ.

But to give a clearer Idea of this Writ, I shall here add a Translation of an Entry and Proceedings on the like Writ, where the Cause assigned was, That the Steward was favourable to the Plaintiff, from whom he received an annual Pension; and the Sheriff's Return, that he had caus'd the Pleint to be recorded, &c. *viz.* Officina Bre- vium 1.

Somers.

The Writ.

Somers. ff. The King sent to the Sheriff of the County aforesaid, his Writ closed in these Words. GEORGE, &c. *To the Sheriff of S. Greeting. We command thee, that taking with thee, &c. thou go in thy proper Person to the Court of W. H. Clerk, Vicar of the Vicarage of F. and that thou cause to be recorded in that full Court, the Plea (or Complaint) that is (depends) in the same Court, without our Writ, between W. N. and Mary his Wife, Demandants, and H. M. Tenant of one Messuage, &c. with the Appurtenances in F. and have thou that Record, &c. (as above) and*

The Cause.

after the Teste add——Because T. G. is the Steward, and holds the Pleas of the same Court, and has an annual Pension of 8 s. from the said W. and M. for which Reason he favours the foresaid W. and M. in the Plea (or Complaint) aforesaid; as 'tis said.——Let Execution be made of this Writ, if the Cause be true, and the foresaid H. M. doth require it, otherwise not.——At which Day the Plea (or Complaint) aforesaid was adjourned to the Morrow of Souls, &c. By Virtue of which said Writ E. W. Esquire, Sheriff of the County aforesaid, now here at the said Morrow of Souls, sends (his Answer) that taking with him A. B. C. and D. four discreet and lawful Knights of his County, he in proper Person hath gone to the foresaid Court held there the second Day of September, in the third Year of the now King, and in that full Court hath caused to be recorded the Plea (or Complaint) which was (depending) in the same Court, without the Writ of the said King, between the Parties aforesaid; and that Record is as followeth, &c. (and so recite it in the Return).

Adjournment.

Sheriff's Return.

Another

Another Entry of an *Accedas ad Curiam*, with the Proceedings thereon; and a *Procedendo* awarded, &c. I find in this Manner.

The Lord the King sent to the Sheriff of Lincoln his Writ, closed in these Words. *JAMES by the Grace of God, &c. to the Sheriff of Lincoln, Greeting. We command thee, that taking with you four discreet and lawful Knights of thy County, thou go in thy proper Person to the Court of E. D. Knight, of his Soke or Manor of H. and in full Court there cause to be recorded the Plaint which is in the same Court without our Writ, between J. &c. and W. in a certain Trespais upon the Case, to the same J. by the same W. done as 'tis said; and have that Record before our Justices at Westminster, in a Month of Easter (next) under thy Seal, and the Seals of four lawful Men of the same Court, who shall be present at that Record; and do thou prefix the same Day to the Parties, that they be then there to proceed in the same Plaint as shall be just, and have thou the Names, &c. Witness, &c.*—Because the same Defendant, for the Favour which the same Plaintiff hath in the same Court, cannot have Justice, as it is said. Let Execution be done upon this Writ, if the Cause be true, and the same Defendant shall desire it, otherwise not.—And now here at this Day, to wit, at the same Month of Easter, J. L. Knight, Sheriff of the County aforesaid, returned, That he by Virtue of the Writ aforesaid, took with him J. D. R. R. P. D. and E. F. four discreet and lawful Men of his County, in his proper Person came (did go) to the Court of E. D. aforesaid,

An Accedas, in Trespais, &c.

Note, 'tis not here said, 4 Knights.

The Cause.

Sheriff's Return.

Of the Writ

said, and in full Court did there cause to be recorded the Plaint, whereof Mention is made in the same Writ; and the Record thereof (now) hath before the said Justices here at the same Month of Easter, under his Seal, and the Seals of J. H. T. S. J. N. and W. S. four lawful Men of the same Court, who were present at that Record; and prefixed the same Day to the Parties, that then they should be here to proceed in the Plaint aforesaid, as should be just. (The Record whereof follows, viz.) *Horncastle cum soca ff.* At the Court of Pleas, of E. D. Knight, Tenant or Farmer of the Reverend Father in Christ, H. Bishop of, &c. held such a Day and Year, &c. T. H. complaineth against W. T. late of, &c. of a Plea of Trespass upon the Case, Pledges to prosecute J. Doe, R. Roe. And now here at this Day came the same T. by R. O. his Attorney, and giveth the Court here to understand, and he informed that the Damages to the said T. in that Plaint supposed to be sustained, do not amount unto 40 s. and for that Cause prayeth the Writ of our Lord the King *De Procedendo* (of proceeding) in this Behalf to be granted (unto) him. And because the same W. or any other on the Behalf of the said W. came (appeared) not, nor alledged any thing in the Court here to the contrary, the Justices here for certain Causes them thereunto especially moving; and chiefly for that the Damages which the same T. supposed himself to have sustained in the same Plaint, do not amount to 40 s. in which Case it belongeth not to the Court here to hold Plea thereof. *It is considered,*
 That

Proceedings in the Manor Court.

Pledges to prosecute.

Procedendo prayed for that the Damages exceed not 40 s. of which C. B. can't hold Plea.

That the Steward and Suitors of the Soke of the Manor aforesaid, may further proceed in the Plaint aforesaid, between the Parties aforesaid. Therefore it is *considered* (*i. e.* ad- *Judgment.* judged that the Stewards and Suitors of the Soke of the Manor aforesaid, that they further proceed in the Plaint aforesaid, according to the Law and Custom of the Soke of the Manor aforesaid; the same Writ of the said Lord the King before (heretofore) therein to the same Sheriff directed notwithstanding. And that they exhibit full and speedy Justice therein to the Parties aforesaid, according to the Law, and as by the Custom of the Soke of the Manor aforesaid has used to be done, &c. See *Officina Brevium*, p. 1, 2, 3.

Or there may be a Nonfuit entred on the Non-appearance of the Defendant (who sued the Writ of *Accedas*) *viz.* after a Recital of the Sheriffs Return, which concludes thus. And this is the Answer of me *W. B.* In *Nonfuit,* *Testimony of which Thing the said J. H. T. S. and J. N. three of the said four lawful Men who were present at that Record, have put their Seals to the same Record the Day and Year aforesaid, whereupon the said Plaintiff appeared at the Day of the Return. And the said H. the Defendant being solemnly called (exacted) came not, nor further prosecuted his Querel (Plaint) aforesaid, Therefore it is considered, that he and his Pledges of prosecuting be thereupon in Mercy, &c. and that the foresaid R. may go thereof without Day, &c. It is also considered, That the foresaid R. shall recover against the said H. 28 s. for his Costs and Charges by him in this Part sustained, to the said R. according to the Form of the Statute, &c. by the Court here adjudged, &c.*

Of Writs of Account.

Account,
what it is,

and where it
lies.

Pract. Reg.
30, 31.

A Writ of *Account* is properly that which lies where a Bailiff or Receiver of Rents, or other Person, who ought to render an Account, refuses to give an Account thereof; and it lies only where the Sum demanded is uncertain; for if the Debt or Duty be reduced to a Certainty, an Action of Debt or *Indebitatus assumpsit* (he indebted promised) lies, and not *Account*. Yet 'tis said, if Money be delivered to *B.* to deliver over, Account will lye if not so delivered; but I rather think an Action of the Case for so much Money had and received to my Use, will be more proper. See 1 *Danvers* 215.

Also an Action of Debt, or on the Case on an *Infirmul computassent* (they had accounted together) will lie at the Election of the Plaintiff, against one for receiving Money of a third Person for the Plaintiff's Use, altho' he had no Authority given him to receive it; for 'tis the Interest the Plaintiff has in Money paid for his Use, that gives him a Title to an Action to recover it; and it is the Receipt of the Money that makes the other Party liable to the Action, and it matters not by what Authority he receiv'd it. And so, if I pay Money *wrongfully* to another, I may have an Action against him for so much Money had and received by him to my Use. And if on the Trial he can't make it appear that he received it for some Debt due by me to him, or that he paid it over by my Order, a Verdict must be against him.

If one delivers Money to you to pay to me, I shall have an *Account* against you for this. And in this Case you are liable to two Actions (*i. e.* both by me and the Deliverer) conditionally; but only his Action shall proceed which is first commenced. So if a Man by Obligation acknowledges that he has received a Sum to make Profit thereof, and to *account* for it, the Obligee may have *Account* for it if he will, or he may sue as in *Debt* upon the Obligation.

See 1 Danv.

215.

Election.

But although *Account* generally lies not for a Sum certain; yet if there be a Condition or Qualification annex'd to the Payment (as in the Cases of paying it over *supra*) it will lie. So if *A.* delivers a Sum of Money to *B.* on Condition that if *B.* makes an Assurance of Lands by a Day certain, then he shall have the Money; and if not, then to deliver back the Money to *A.* In this Case if *B.* does not make the Assurance, *A.* may have a Writ of *Account* for the Money.

Also if *A.* delivers 10*l.* to *B.* to *Merchandise* with, he shall not have an Account of the 10*l.* *Quære.* But 'tis admitted he shall have *Account* for the Profits. (And this is said to be one Reason why it will not lie for Arrears of Rent, &c.)

1 Danv. 215.

2 Brownl. 76.

If one charges me as *Bailee* of his Goods to be merchandized, I shall answer for the Increase, and shall be punished (in Damages) for my Negligence. But if he charges me as his Receiver (of Money or Things) to be accounted for, I shall be answerable only for the bare Money or Thing delivered. 2 Leon. Case 145.

Baylee, to Merchandize, &c.

Rent.

Note; an Action on an *Insimul computassent* (or they had *accounted* together) does not lie for Rent (alone) due and in Arrear, because the Rent (or Sum demanded) is certain. But if, besides the Rent arrear, other Things are also mixed with it, an *Insimul computassent* may well be brought for both of them together, because it is uncertain upon the whole Matter how much is due to the Plaintiff.

Pract. Reg. 50.

Stat. of Limitations.

The Statute of Limitation of Actions, 21 Jac. 1. c. 16. doth not bar a Plaintiff who is a Merchant, from bringing an *Account render* for Merchandize at any Time, it being excepted out of the Statute. But where a Merchant brings an *Indebitatus assump.* or *Insimul comp.* for Monies due in the Way of Merchandize on an Account stated, such Actions are not within the Exception of the Statute, which extends only to Accounts current. And the Reason thereof was, because it often happens that the Merchants who hold Correspondence in several Parts of the World, may have Accounts current between them for many Years, before they have an Opportunity of conferring together for stating their Accounts. 2 Sand. 124. 1 Mod. 70, 270.

2 Mod. 511.

Stat. 4 & 5 Ann. c. . . .
Account
lies against
Executors and
Administrators
of Guardians,
Bailiffs and
Receivers,
Jointenants,
&c.

By the Stat. 4 & 5 Ann. c. . . 'tis enacted, That Actions of Account may be brought against the Executors and Administrators of every *Guardian, Bailiff* and *Receiver*, and by one *Jointenant* or *Tenant in Common*, his Executors and Administrators against the other as *Bailiff* or *Receiver*, if he receives more than comes to his just Share and Proportion, and against the Executors and Administrators of such *Jointenant* or *Tenant in Common*. And the

the Auditors appointed by the Court where such Action shall be depending, are impowered to administer an Oath, and examine the Parties touching the Matters in Question: And for their Pains and Trouble in auditing and taking such Accounts, they shall have such Allowance as the Court shall think fit to be paid by the Party on whose Side the Balance of the Account shall appear to be. *Auditors to examine, &c.*

In an Account against one as *Bailiff*, if adjudged for him, he shall have Allowance of his Costs and Expences, which shall not be allowed to one sued as *Receiver*. *Co. Lit. 172. Quære now the Stat. sup.*

A *Bailiff* can't be charged as *Receiver*, because if he be charged as *Bailiff*, he shall upon his Account be allowed his Charges and Expences, &c. *1 Roll. Abr. 119.*

A Man receives the Rent due to me from my Lessee or Tenant for Life, &c. an *Account* lies against him as *Receiver*. See *Fitzh. Account, 47, 49.*

If my *Bailiff* or *Receiver* make a Deputy, I shall have *Account* against such *Bailiff* or *Receiver*, but not against the Deputy. *F. N. B. 119. B. 4 Leon. 32.*

Account lies not against *Guardian* in *Socage Guardians* for Copyhold Lands. *Cro. Car. 229.*

But if the Lord of a Manor appoints a *Guardian* for Copyhold Lands, he shall be accountable. And all kinds of *Guardians* may be obliged in Chancery to *Account*, &c.

Parishioners cannot bring an Action of *Account* against their Church-wardens: But they may make other Church-wardens, who may have *Account* against their Predecessors. *Bro. Account 71. Church wardens.*

The Writ.

The Writ in *Account* against a Receiver^{is} to be General, viz. *De tempore quo fuit Receptor Denarius* (From the Time wherein he was Receiver of the Pence) without saying by whose Hands the Receipt was; but that must be shewn in the Count. *Co. Lit.* 126. a. But it is not so if against a Bailiff, for there the Writ must express by whose Hands. See *Co. Lit. ibid.* and 172. a.

Pleas, &c.

In *Account* to plead that he was never his Bailiff, or never his Receiver, is well. 21 *Ed.* 3. 60. *Keilw.* 114. In *Account* for twenty Pigs of Lead, the Defendant pleads, never his Receiver thereof, and held well, 2 *Mod.* 145. One pleads before Auditors, that he was robb'd by Felons, &c. and 'twas doubted if a good Plea. But admitted that he was robbed of the Goods without his Default or Negligence, was good, 1 *Roll. Abr.* 125.

*before Audi-
tors.*

And so it seems where a Factor sells his Masters Goods to Persons in Credit (and without Fraud) who after break, &c. this Matter may be a good Plea before Auditors.

In *Account, ne unques Receptor*, or never Receiver, was pleaded and found against him, and then before Auditors he pleads an *Arbitrament* of all Accounts before the Action brought, whereby he was awarded to pay 10 l. which he had paid; and 'twas held no Plea before Auditors; but it ought to be pleaded in Bar. *Cro. Car.* 161.

Plea in Bar.

The Defendant after Judgment, *quod computet* (to account) appears and enters into the Account, and the Plaintiff did not proceed. Here can be no *Nonsuit*, because 'tis after Judgment. But a *Discontinuance* must be entered; and if the Plaintiff will afterwards

*Discontin-
ance.*

wards proceed, he must have a *Scire Facias* (a Make known) on this Record or Judgment *To account, &c. Cro. Eliz. 19.*

The Jury assessed Damages in an Account *Verdict.* against one as *Receptor Denarior'* (Receiver of the Pence) and adjudged good, 3 *Leon. c. 211.* and so it was also against one as *Bailiff, ibid.*

Account was brought for the third Part of *Judgment.* 28 Ton of Wines, which *A.* an Intestate, *B.* the Defendant, and one *C.* had occupied in Common; and that the same were by Assent of the Intestate and *C.* put into the Hands of the Defendant to merchandize for their common Profit. And after *Verdict* moved (in Arrest, &c.) that he demanded a third Part of the Goods where he alone ought not to demand the Account, but to join the others with him: But this was not allowed; for he may sue the Account, though his Companions would not. *Cro. Jac. 410.*

In *Assumpsit* Plaintiff declares that the Defendant about going beyond Sea, he deliver'd him a Box and Goods, which he promised to dispose of for him, and to give him an *Account* thereof at his Return. The Defendant pleads in Abatement that he was the Plaintiff's Bailiff, and merchandized the said Goods, and that he ought to bring *Account* and not an Action on the Case. But this Objection was not allow'd, for the Action being grounded on an express Promise, *Assumpsit* (he promised) lies as well as *Account*, and the Plaintiff has his Election to bring either. Note; the (Reason of) the Objection was, that in Account against the Defendant as Bailiff he would have Allowances, &c. *Holt, Ch. Just.* said, there is some Inconvenience in giving a long

*Wilkin a-
gainst Wil-
kin. 1 Salk. 94*

Assumpsit.

Election.

long rambling *Account* in Evidence to a Jury; but wherever one acts as *Bailiff* he promises to render an *Account* (and consequently *Assumpfit* lies as well as *Account*.)

Poulter *against* Cornwall, *ibid.*
Tr. 5 Annæ.

Note.

In *Indeb. Assump.* (he indebted promised) for Money receiv'd to *Account*, a Verdict was for the Plaintiff; and 'twas moved in Arrest of Judgment, that this Action did not lie, but *Account*. For if a Man receives Money to a special Purpose as to *Account*, or to Merchandize, 'tis not to be demanded of the Party as a Duty, 'till he has neglected or refused to apply it according to the Trust under which he received it; and the Declaration must shew a Misapplication or Breach of Trust. And *per Cur.* The Verdict has aided this Declaration, for it must be intended there was Proof given to the Jury that the Defendant refused to *Account*, or had done somewhat that rendred him an absolute Debtor.

Note; it appears by *Fitzherbert's Natura Brevium*, that this Writ of Account formerly was sued and sent to the Sheriff of the County as a *Justicies*, whereby he was commanded to bring the Defendant to Justice, &c. in this Form.

The Form of a
Justicies to
Account, see
F. N. B. 117.
C. . . .

Note this and
see like Justi-
cies for the
original of the
County-Courts,
and where their
Determinations
shall be of
excellent Use.

GEORGE the Second, by the Grace of God, King of Great Britain, &c. To the Sheriff of the County of L. greeting. We command thee that thou Justicies A. (compel A. by a Course of Justice) that justly, and without Delay, he make unto B. his reasonable Account for the Time wherein he was his Bailly of the County-Courts, and where their Determinations shall be of excellent Use.

in N. and Receiver of the Pence of him (the said) B. as he can reasonably shew, that he (the Defendant) ought to yield to him, that no more thereof Clamour we hear for Defect of Justice. T. (Witness,) &c.

And if for Executors, thus. *That he make (or yield) unto B. and C. Executors of the Testament of D. his reasonable Account for the Time wherein he was Bailiff of him (the said) D. in N. and Receiver of the Pence of him the deceased, as they can reasonably shew (i. e. charge him with,) &c.*

Where two Merchants occupy Goods, &c. in Common, or to their common Profit, one of 'em may have a Writ of *Account* against the other, either in the *County* or *Common Pleas*, which to the County is thus.

GEORGE the Second, by the Grace of God, &c. to the Sheriff of Middlesex, Greeting. *We command thee that thou Justice A. Merchant, that justly he make (or yield) to B. Merchant, a reasonable Account for the Time he was Receiver of the Pence of him B. from whatever Cause and Contract to the common Profit of them A. and B. proceeding (or arising) as by the Law of Merchants he may reasonably shew, that he the Defendant ought to yield to him (the Plaintiff) &c. And these Words, From whatsoever Cause and Contract, ought to be put in this Writ, whether it be sued in the Common Pleas, or in the County.*

Note, in a Writ of Account, which says, *From the Time wherein he was Receiver of his Pence, &c.* the Defendant shall not say that

he hath accounted from such a Time to such a Time, but he ought to shew in certain for what Things (or Sums) he hath accounted; otherwise where the Writ says, *From the Time wherein he was Bailiff, &c.*

The Form of the Writ in C. B. is thus.

Forms of
Writs in C. B.

GEORGE the Second, &c. To the Sheriff of D. Greeting. Command A. that he yield unto B. a reasonable Account from the Time wherein he was Receiver of the Pence of him A. (or Bailiff of him A.) in N. and except he does it, and if the said A. makes thee secure for prosecuting his Claim, then summon the foresaid B. that he be before our Justices at Westminster, in the Quindene of Easter, &c. to shew wherefore he hath not done it. And have thou there the Summoners and this Writ, &c.

Another.

F. N. B. 117.
E.

Command A. that he yield to J. Master of the Hospital (or to the Prior, &c.) of S. a reasonable Account from the Time he was Bailiff of G. formerly Master of the said Hospital (or Prior of the said Priory) of S. Predecessor of the said J. and Receiver of the Pence of the said G. &c. See Fitzh. Account, 97, 124. and 25 E. 3. 45. In a like Action the Defendant pleads that he was not Receiver of the Predecessor, and admitted good. And Fitz. Account 78. Account lay against an Abbot, tho' the Receipt was by the Predecessor.

There is also a Writ in the Register and F. N. B. thus.

Command

Command A. that he yield to the Community of the Town of B. his reasonable Account from the Time wherein he was Receiver of the Pence of the same Community in B. And except he does it ; and if the foresaid Community make thec secure, &c.

And note, the Writ of Account sued in the County, might at the Plaintiff's Suit have been removed into the Common Pleas by a *Pone*, without any Cause shewed in the Writ, but could not be so removed by the Defendant without Cause shewn in the *Pone*, (or *Put*) &c. As if the Defendant had pleaded a foreign Release, then it might be alledged thus. *Because the foresaid Defendant in pleading in our Court in N. in which the (Loquela) Plea hangs, by the Return of our Writ, hath produced a certain Writing of Acquittance under the Name of him A. containing in it. The foresaid A. all Actions which against the foresaid B. the Defendant, by Reason of the Account aforesaid he had, unto the same B. to have remised (released) in the County of Lincoln made as 'tis said, which said Writing the foresaid A. altogether hath denied, by Reason whereof that (Loquela) Plea in the Court aforesaid ought not further to be deduced. Let Execution of this Writ be made if the Cause be true, and otherwise not.*

F. N. B. *ibid.*
Removal by
Pone into
C. B.

N. B. The
Word *Lo-*
quela, tho'
here transla-
ted *Plea*, yet
properly

signifies no more than a parol Discourse, which may hint the Original Manner of pleading there ; and if any Kind of Writing were there drawn in Question, 'tis plain from this Writ, they ought not to proceed.

There

See F. N. B.
117. H. and
Regr. Orig.

Monstravit,
or be hath
shewn on
Stat. Marib.
c. 23.

There is another Kind of Writ of Account founded on the Stat. of *Marlbr. c. 23.* which lay where one ought to render an Account as Bailiff or Receiver, but hath no Lands or Tenements whereby he might be distreined, and became Vagrant skulking in secret Places, &c. then the Plaintiff might by Virtue of that Stat. have had a Writ of Account, called a *Monstravit*, to arrest the Defendant's Body, &c. And it seems the first Instance of Arrests in Civil Actions, which Writ, tho' now out of Use, because a later Stat. *viz. Westm. 2. c. 12.* has given Process of Outlawry in the like Case; yet seeing the penning of the Writ is remarkable, as 'tis founded on a Stat. and in some Measure shews the Original of Latitats and Arrests, I shall here insert it.

Latitat, &c.

GEORGE the Second, &c. To the Sheriff of D. Greeting, bath shewn to us the honourable H. Viscount M. &c. That whereas A. hath been his Bailiff in K. and of all his Things and Goods there, the Care and Administration having, the same A. his Account not being rendred, seeking Subterfuges, skulks (or hides) himself in thy Bailiwick, nor can be found and (not) distreined to render to the said H. his Account aforesaid. And because of the Common Council of our Realm, it is provided, That if Bailiffs who account to their Lords ought to make, withdraw themselves, and Lands and Tenements have not, by which they may be distreined, they by their Bodies shall be attached; so that the Sheriff in whose Bailiwick they are found, shall cause them to come to render their Account. We command thee, That if the said H. Viscount M. shall

shall make thee secure for prosecuting his Clamour, then do thou attach the foresaid A. so that thou mayst have him before our Justices at Westminster, &c. such a Day, to render to the foresaid H. his Account aforesaid as he can reasonably shew, that he ought to yield (or make) unto him, &c. and have thou there this Writ.

Fecerit Te securum de clamore suo prosequendo.

The Form of a Monstravit directed to the Sheriff of London, is thus.

GEORGE the Second, &c. To the Sheriff of London Greeting. Hath shewn unto us A. that whereas B. hath been the Receiver of the Pence of him A. and his Bailiff in N. the same B. his Account not being discharged, seeking Subterfuges, skulks (hides) himself in your Bailiwick, &c. and because, &c. we command you, that if the foresaid A. shall make you secure for prosecuting his Clamour, then you attach the foresaid B. so that you have him before the Mayor of our City of London, and you, in your next Hustings in London, To render unto the foresaid A. his Account aforesaid, as he can reasonably shew, &c. and have you there this Writ, &c. Witness my self at Westminster this Day of, &c.

Note; None arrested in London could be brought to Westminster Hall.

Which Form shews how Receivers and Bailiffs may be put in the same Writ, as Receiver of the Pence of him A. and his Bailiff in N. But if the Writ be sued in the Common Pleas, then the Bailiff must be put (first.) As his Bailiff and Receiver of the Pence of him A. in N.

See the Regr. 137. Gulston's Survey, 41.

See Fitzb. Account 60. In Account against one as Bailiff and Receiver, the Defendant pleads he was Guardian in Socage and not his