

which the same R. and S. shall make known to you, ye cause to come before them at the Place aforesaid the Record, &c. to Parties aforesaid. And have ye there this Writ. Witness, &c.

And if the Plaintiff in Error delays, or be non-profs'd, &c. there may issue a *Procedendo* for the inferior Court to proceed, in this Form, *viz.*

A *Procedendo*
on a Writ of
Error.

THE King to the Sheriffs of London, Greeting. Because in rendering Judgment of the Plea which is before you in our Hustings, London, without our Writ, between A. and B. of a certain Trespass done to the same A. by the foresaid B. as 'tis said, there hath been a long Delay, to the grievous Damage of him A. as from his Complaint we have received, we command you, that if it be so, then ye proceed to render Judgment (award Execution) thereof, with that Celerity (Dispatch) which of Right, and according to the Law and Custom of the foresaid City is (ought) to be done. Witness, &c.

A Writ of Error in B. R. on an Outlawry
in C. B.

A Writ in
B. R. for
Error in
C. B. See
Regist. 132. b.

THE King, &c. to his Justices assigned for (to) Pleas to be held before us wheresoever, &c. Greeting. Because in the Record and Process, and also in the Promulgation (proclaiming) of the Outlawry against B. S. of B. in the County of Middlesex, Gentleman, proclaimed in the same County, and returned before Sir R. E. Knight, and his Companions, our Justices of the Bench, which we have caused to come before us, by reason of Er-

ror intervening; and the same before us now reside, as 'tis said, there intervenes manifest Error, to the grievous Damage of him B. as from his Complaint we have received: We *Coram nobis* willing the (same) Error, if any be, to be corrected in a due Manner, and that full and speedy Justice be done to the same B. in this Particular, do command you, that inspecting the Record and Process aforesaid, that you further do, for annulling the foresaid Outlawry, as of Right and according to the Law and Custom of England is to be done. Witness, &c.

A Writ in B. R. of Error in C. B. where the Husband is outlawed, and the Wife waived.

THE King, &c. To his beloved and faithful Robert de Brabazon, (Esq.) Greeting. Because in the Record and Process, and also in the Proclamation of the Outlawry against J. F. and of the Waivery against M. his Wife, lately proclaimed in the County of S. and returned before you and your Companions our Justices of the Bench, as 'tis said, there intervenes manifest Error to the grievous Damage of them J. and M. as from their Complaint we have received: We willing the (same) Error, if any be, to be in due Manner corrected, and (full and speedy) Justice to be done to the same J. and M. in this Particular, do command you, that if the Outlawry and Waivery aforesaid remain returned before you and your said Companions, as is aforesaid, then the Record and Process of the same Outlawry and Waivery, with all Things touching the same, Send ye to us distinctly and openly under your Seal, and (also) this Writ, so that we may have the same, &c. in the Octaves

For Error in C. B. on an Outlawry of the Husband, and Waiver of the Wife. Ibid. and 133.

of St. Martin (next, &c.) wheresoever we shall then be in England, that inspecting the Record and Process aforesaid, we may further do therein what of Right, &c. (as above.)

And if it be of a Record before the Keepers (Justices) of the Peace, 'tis thus:

Of Error before Justices of the Peace.

THE King, &c. To his beloved and faithful W. B. (Etc.) Greeting. Because in the Record and Process, and also in the Proclamation of the Outlawry against J. D. (lately) proclaimed in the County of L. and returned before you and your Companions, Keepers of our Peace and our Justices, assigned to hear and determine divers Felonies, Trespasses and Malseasances (evil Acts) (for Misdemeanors is no proper Word) done in the County aforesaid, returned before you; as 'tis said, there intervenes manifest Error, &c. (as above.)

A Writ for correcting Error in Ireland.

Error in Ireland. See the *Regist.* 152. See *Quere* of the Form there, and note, 'tis to be granted without a *Fee*.

THE King, &c. To his beloved and faithful A. B. our Chief Justice (wheresoever, Etc. in our Kingdom of Ireland) Greeting. Because in the Record, &c. (to) do command you, that the Record and Process of the Plea aforesaid, with all Things touching the same, ye send to us distinctly and openly under your Seal, and this Writ; so that we may have them (here) before us (such a Day, Etc.) that inspecting the Record and Process aforesaid, We may further do therein what of Right is (shall be) to be done. And cause the foresaid S. to know, that he be then there to proceed in the foresaid Plea, and to do and receive what our (said)

Court

Court (before us here) shall consider (adjudge).
in the Premisses. Witness, &c.

A Writ of Error returnable in Parliament.

GEORGE the Second, &c. To our beloved Error re-
and faithful Robert Lord * Raymond, our turn'd in
Chief Justice for Pleas to be held before us Parliament.
wheresoever, &c. Greeting. Because in the See the old
Record and Process, and also in the rendering of Thesaur.
Judgment of the Plea which was in our Court Brev. 69.
before us at Westminster, by Original Bill in
the same Court, by one T. P. against R. S. of a
certain Trespass done to the same T. by the
foresaid R. at London, &c. as 'tis said, exhi-
bited and prosecuted by his Writ of Re-attach-
ment, there intervenes manifest Error, to the
grievous Damage of him R. as from his Com-
plaint we have received. And we willing the
Error, if any be, in due Manner to be corrected,
and full and speedy Justice to be done to the
foresaid Parties in this Particular, do command
you, that the Record and Process of the Plea
aforesaid, with all Things touching the same,
you send into our present Parliament, under
your Seal, distinctly and openly without Delay,
and this Writ, that so, inspecting the Record
and Process aforesaid, We by the Council and
Advice of the Lords Spiritual and Temporal,
and of the Commonalty in our foresaid Parlia-

* Note ; tho' it be said in our Books, that the King
in his Writs is to call no Man Lord or Master, I con-
ceive that Rule does not extend to the Direction of
Writs where the Title requires it ; and therefore the
above is directed, To Robert Lord Raymond, &c.

Note; by this it appears the Comons are Judges as well as the Lords, &c. *ment being, may cause to be further done for correcting that Error, what of Right and according to the Law and the Custom of England is (ought) to be done. Witness my self at Westminster, &c.*

Of Writs of Error to Counties Palatine, &c. see the Register 7, 17, 18, 133.

Of a Writ of Diminution by the Defendant in Error, see Old The-saur. Brev. 57, 58, &c. New The-saur. 84.

The above Examples may be sufficient to direct in most common Cases of Writs of *Error*. And for Writs of *Error* to reverse Recoveries in C. B. see the new *The-saurus Brevium*, pag. 99 to 110. But for that a Writ of *Diminution* is generally consequent, if not incident to a Writ of *Error*, I shall here add a few Words touching the same, *viz.*

It may be observed from the Forms *supra*, that the Writ of *Error* commands the Removal, not only of the Record and Process, but of *all things touching the same*. Now it frequently happens, that some Word or Part of the Process or other Matter is omitted in the Record of Removal, of which the Defendant in *Error* taking Advantage, alledges such Omission by Way of Plea; and this is called alledging or pleading of *Diminution*, and thereupon another Writ issues (in Nature of a *Certiorari*) to return the whole Record, &c. which when directed to the Chief Justice of C. B. is thus:

On Error in E. R. to C. B.

THE King, &c. to his beloved, &c. Whereas we lately receiving (Information) from the Complaint of J. N. Citizen and Pewterer of London. That in the Record and Process, and also in rendering of the Judgment of the Plea which was in our Court before you and your

Of Writs of Error.

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Companions of the Bench, by our Writ between T. F. and J. N. of a Debt of 20l. which the same T. F. demanded of the foresaid J. manifest Errors to have intervened, to the grievous Damage of him J. and we have caused that Record and Process to come before us, for correcting of such Error, and now in our Court before us, on the Part of the said J. we have received, that where, in the foresaid Record to us sent, it is among other Things contained thus; To have and to hold, and to occupy to the same J. and his Assigns, from the Feast, &c. And in that Record Diminution exists in this Word, next, between these Words, of the Virgin then, and these Words, past until; which said Word next is omitted out of the Record sent to us. And further the same T. says, that where in the foresaid Record sent to us, it is amongst other things likewise contained: And as to the underwritten 9l. 13s. 10d. Residue, the Jurors afore said say on their Oath, that J. N. owes the foresaid T. F. 9l. 13. s. and 10d. In that Record Diminution exists in this Word nine, between these Words T. F. and these Words Pounds 13. which said Word nine is also omitted out of the foresaid Record sent to us, which said Words next and nine still remain in your Custody, not yet sent to us (as 'tis said) And the said J. N. praying (hath prayed) our Writ to be directed to you, to certify the said Word next, and also the said Word nine, so remaining in your Custody, which is so granted: Therefore we command you, that ye search the 307th Roll of Michaelmas Term, in the fourth Year of our Reign; and if it be so, then you send to us wheresoever, &c. the foresaid Word next,

Omitted in the Original.

next, *and the said Word nine, and this Writ. Witnesses, &c.*

A Writ of *Diminution* also lies for the Plaintiff in Error thus:

Diminution by the Plaintiff in Error. See Old Tbesaur. 58.

THE King to H. Hobart, Knight and Baronet, Greeting. Whereas we by the Insinuation of G. Bishop of Chichester (and others) have received, that in the Record and Process of a certain Plea which was in our Court before you and your Companions our Justices of the Bench, between M. W. Knight and the same Bishop, &c. of that, that the same Bishop, &c. would permit the said M. to present a fit Person to the Parochial Church of, &c. which was void, and belonged to his Donation, as was said, by you lately sent before us, Diminution exists in this. (And so recite the Omissions which in that Precedent are various, and conclude at the Prayer of the said M. W. and others, &c.)

Error quod coram vobis residet.

There is also another Kind of Writ of Error called, *Error quod coram vobis residet*, which assigns Error in a Record in the same Court, and is not to remove the Record or Process, but only to review it. But having already extended this Head beyond its due Limits, I must refer the Reader for further Information herein, to the Books above cited, and proceed to another Species of Writs of Error.

For Returns on Writs of Error, see next Returns Brev. 253.

For Writs of *Execution*, see hereafter in the . . . Division, Title *Judgments*.

Of Writs of False Judgment.

AS a Writ of Error lies on a Judgment *The Nature of the Writ.* given in any inferior Court of Record, in order to remove the Record, Proceſs, &c. to ſome ſuperior Court at *Westminster*; ſo a Writ of *False Judgment* lies to remove an inferior Court not of Record, commanding them to record the Proceedings there, and tranſmit the ſame to ſuch ſuperior Court, in order to be reviewed; and if Error be found therein to reverſe the Judgment: And this Writ is an *Accedas ad Curiam*, or *Recordari facias loquelam* in its Nature. *Vide ante.*

And it appears by *Fitzherbert*, &c. that this Writ may be sued to the County-Court or Hundred-Court, or any other Court-Baron, which are no Courts of Record in any Plea, Real or Personal, by either Plaintiff or Defendant, if aggrieved by the Judgment there; and it ſhall iſſue out of Chancery. And if to the County-Court, 'tis in this Form, *viz.* *To what Court. F. N. B. 18.*

THE King to the Sheriff of Lincoln, Greeting. If A. ſhall make thee ſecure for proſecuting his Clamor, then in thy full County cauſe to be recorded the Plea which is in the ſame County, by our Writ of Right, between A. Demandant, and B. Tenant, of one Meſſuage and 100 Acres of Land, with the Appurtenances in C. whereof the ſame A. complains False Judgment to have been done to him in the ſame County. And have thou that Record before our Juſtices at Westminster (ſuch a Day, &c.) *To the County-Court.*
under

under thy Seal, and by four legal Knights of the same County, of those who at that Record were present: And summon by good Summoners the foresaid B. that he be then there to bear that Record. And have thou there the Summons, the Names of the four Knights, and this Writ. Witness, &c.

Also it there appears that this Writ lies to a Court of *antient Demeasn* thus:

To antient
Demeasn
Courts.

THE King to the Sberiff, &c. If A. shall make thee secure, &c. go thou to the Court (in Antient Demeasn) of B. at, &c. and cause the Plea to be recorded, which is in the same Court, by our Writ of Right, between A. Demandant, &c. and have there the Names of the foresaid four Men (not said Knights) and this Writ, and another (former) Writ, &c.

What is Error
therein, or not.

By which it seems 'tis not necessary that the four Men be Knights; and so is the Register. And in *Dyer 164.* the Writ was challenged because it was *to have the Record, Sub sigillo tuo & sigillis quatuor legalium boninum ejusdem Curie,* yet held good. 2.

And note, this Writ will lie to remove a Judgment had upon a Plea, as well as on a Writ.

But if the Judgment, &c. be recorded to be by Plea or Plea, where it ought to be by Writ, it is Error, but not void, or *Coram non judice*; but where the Judgment is of a Matter out of their Jurisdiction, it is altogether void; and *Coram non judice.* 2. *Br. Error, 120.*

And

Of Writs of False Judgment.

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And 'tis a Rule in the Register, if False Judgment be given in the County-Court, Court-Baron, or other Court not enfranchised (by Charter) which hath Cognizance of Pleas, (for such Courts may be by Prescription) he against whom the Judgment is given, may have a Writ to record the Plea before the Justices of C. B. or in Eyre. And this Rule extends as well to other Writs, as Writs of Right; and whether the Plea be by Writ, or without Writ. But to a Town or a City enfranchised, a Man shall have in such Case a Writ of Error, and not a Writ of False Judgment.—And see there divers other Special Rules touching Writs of False Judgment.

And by Fitzherbert, if False Judgment be given in another Court-Baron (Lord's Court) than the Sheriff's, it is called an *Accedas ad Curiam*, and is directed to the Sheriff thus:

To Courts-Baron.
F. N. B.
18. D.

THE King to the Shiriff of Lincoln, Greeting. If A. shall secure thee for prosecuting his Clamor, then taking with thee four discreet and legal Knights (Men) of thy County, Go thou in thy proper Person to the Court of B. at C. And in that full Court cause to be recorded the Plea which is in the same Court by our Writ of Right, &c. (or without) our Writ between A. Demandant (or Plaintiff) and B. Tenant (or Defendant) of one Messuage, &c. whereof A. complains False Judgment to have been done to him, &c. as above, only for Knights 'tis here said Men.

And if it be to a Hundred-Court, &c. either on a *Plaint* or by *Writ*, 'tis thus:

—Go

To Hundred
Courts, &c.

———Go thou, &c. to the Hundred of A. of (or, at) B. or to the Court of A. at C. and in full Hundred, (or Court) cause to be recorded the Plea which is in the same Hundred (or Court) by our Writ (or without our Writ) of that, that the same A. keep to the foresaid B. the Covenant (Conventionem) between them made, of one Messuage, with the Appurtenances, in F. whereof the same B. complains, &c. (as above.)

For Returns, &c. on Writs of False Judgment, see Rastal's Entries 347, Clift's Entries 339. 2 Lutw. 554, 951.

Of Writs of Fieri Facias, see hereafter in the Divisions of Process and Judgments.

Of Writs of Habeas Corpus (Habe
the Body.)

THESE Writs are various in their *Various in*
Kinds and Natures, and should I en- *their Kinds.*
large this Head as I might, it would swell
the present Tract to an immense Magnitude:
I shall therefore only mention some of those
particular Kinds, and give the Reader the
Forms of such only as are most usual.

The Kinds or Denominations of *Habeas*
*Corpus*es mentioned in our Books, are such as
these, *viz.* a *Habeas Corpus ad comparendum,*
ad respondendum, ad testificandum, ad faciendum,
ad subjiciendum, ad deliberandum, ad recipien-
dum, besides a *Habeas corpora juratorum,* for
bringing in the Bodies of Jurors, and divers
others.

But the most usual Writs of *Habeas Corpus* *1. Hab. Corp.*
are of three Kinds, *viz.* 1. a *Habeas Corpus* *ad subjicien-*
ad subjiciendum, which is granted on the *dum.*
Crown Side, and lies where one is imprison-
ed for some Criminal Matter. And coinci-
dent herewith are those others, *ad delibera-*
dum & *ad recipiendum,* whereby such Prison-
er is transferred from one Prison to ano-
ther, &c.

The 2d. Kind of *Habeas Corpus* is *ad com-* *2. Ad Com-*
parendum, or *ad respondendum.* This is a Civil *parendum,*
Process, and issuable out of the Pleas Side *or Respon-*
of B. R. for where one is arrested in any *dendum.*
Action at the Suit of another, and thereupon
imprisoned in the *Fleet,* or other Prison (ex-
cept the *King's Bench*) and a third Person
would sue such Prisoner in the *King's Bench,*
but

but cannot, because he is not in the Custody of the Marshal; he may remove such Prisoner from the Prison he is in, into the Court of *B. R.* by a *Habeas Corpus* returnable at a Day certain, to *appear* and *answer* to the Action in the King's Bench.

Also where a Person is in Custody in an inferior Jurisdiction, the Plaintiff may bring his *Habeas Corpus ad respondendum* returnable in *B. R.* and then the Defendant cannot nonsuit the Plaintiff, nor be bailed, but only by the Court of *B. R.* and if he is not bailed, he must stand committed to the Marshal of that Court.

3. Hab. Corp.
cum causa.

A 3d. Kind may be said to be a *Habeas Corpus cum causa*, which is a Writ to remove the Cause, as well as the Body of the Defendant; and in that respect answers the End of a *Certiorari*.——And note; of this later Kind are all such Writs of *Habeas Corpus*, as are brought by Prisoners themselves, in order to be bailed or discharged. See for this the several Writs of *Habeas Corpus* brought 3, 4, and 5 *Car. 1.* in the several Cases of Sir *Walter Earle*, Sir *John Haveningham*, Sir *Edward Handen*, Mr. *Strode*, Mr. *Selden* and others.

Mr. Stroud's
Habeas Cor-
pus.

Mr. *Stroud's Habeas Corpus*, according to my *MS.* was in this Form, *viz.*

Carolus Dei Gratia, &c. Charles by the Grace of God, King of England, Scotland, France and Ireland, Defender of the Faith, &c. to the Marshal of our Marshalsea in our Court before us, Greeting. We command thee, as at another Time we had commanded, that the Body of William Stroud Esq; detain'd in our Prison under thy Custody, as 'tis said, toge-
ther

ther with the Day and Cause of his taking and Detention, by whatsoever Name the foresaid ^{This was an alias.} William Stroud may be charged in the same, have thou before us at Westminster on Saturday next after a Month of Easter, to submit and receive those Things which our Court shall then and there happen to ordain, concerning him in this Particular; and this in no wise omit (to do) under the Peril incumbent. And have thou there this Writ. Witness my self at Westminster the seventh Day of May, in the fifth Year of our Reign.

By Rule of Court, L.

And the Return made thereupon was thus:

The Execution of this Writ directed to me, appears in a certain Schedule to this Writ annexed, ^{The Return of the Writ.} viz. ——— The Answer of Carew Reynells Esq; Marshal of the Marshalsea of the Lord the King.

I Carew Reynells Esquire, Marshal of the Marshalsea of the Lord the King, before the Lord the King himself being, To the most serene Lord the King, do certify, that before the coming of this Writ directed to me, and of (to) this Schedule annexed, to wit, the fourth Day of April, in the fourth Year of the Reign of our now Lord King Charles, William Stroud Esquire, was committed to me, by Virtue of a certain Warrant under the Hands of twelve Lords of the Privy Council of the Lord the King. The Tenor whereof follows in these Words.

You are to take Knowledge, That it is his Majesty's express Pleasure and Command, that you take

Of Writs of Habeas Corpus.

the Person of William Stroud Esquire, and him detain close Prisoner, until you shall have further Order from his Majesty, or from this Board. And for so doing this shall be your Warrant.

2 Aprilis 1629.

W. London, R. Weston, Conway, Manchester, Pembro. Montgomery, Suffolk, Holland, T. Edmonds, H. May, Kelly.

(Directed) *To the Marshal of the King's Bench*

He is also detained by Virtue of another Warrant directed to me by the Lord the King himself, under the Sign Manual of the said Lord the King; the Tenor of which follows in these Words :

CHARLES Rex. *Whereas you have in your Custody the Body of William Stroud Esq; committed by the Lords of our Privy Counsel, by your Special Command, You are to take Knowledge, that the same Commitment is for divers notable Contempts committed by him against us and our Government, and for stirring up Sedition against us; for which you are to detain him and keep him close Prisoner until our Pleasure be further known concerning his Delivery. Given at our Court at Greenwich, in the fifth Year of our Reign.*

(Directed) *To the Marshal of our Bench for the Time being.*

And these are the Causes of the taking and detaining of the foresaid *William Stroud*, detained in Prison under my Custody, whose
Body

Body I have nevertheless ready before the Lord the King, at the Day and Place within specified, as by the same Writ I am commanded (*mibi præcipitur.*)

I had no need here to mention the ill Consequences of these and other illegal Commitments of those Times, when even Acts of Parliament, *viz.* (the Petition of Rights, &c.) could not secure the Subject against the Incroachments and Excesses of Regal Power. But we may observe, that the Remembrance of these Exorbitancies induced the Parliament 31 Car. 2. to form the *Habeas Corpus Act*, whereby a more certain and ample Provision is made for the Liberty of the Subject. See the *Act*.

The Habeas Corpus Act. 31 Car. 2. c. 2.

I find no Writ under this Title in the Register of Original Writs, the Use being then it seems to free Persons from Imprisonment, by other Writs of like Kind, as Writs of *Homine Replegiando*, Writs of *Mainprise*, &c. But in the Judicial Register there are divers Writs of *Habeas Corpus*, and not much different from those above specified, as,

W. E. command thee, as we have divers Times Regr. Jud. 17.
commanded, that thou have before our Justices
at Westminster, in the Octaves of St. Michael,
the Bodies of J. R. and T. B. which thou hast
taken by our Precept, and dost detain in our
Prison, as to our Justices at Westminster thou
hast divers times returned (sent) to answer to Ad Respondend.
H. R. of a Plea, that they together with N. P.
and H. G. do render to him his reasonable Ac-
count from the Time wherein they were Recei-
vers of the Money of him H. and do thou certify
us, &c. and have there this Writ.

OF Writs of Habeas Corpus.

And see there pag. 33. a *Habeas Corpus* for such as are imprisoned on an Outlawry; and pag. 80, and 81. for others *Imprisoned*, &c.

And for divers Forms of *Habeas Corpora Juratorum*, see there pag. 24, 29, 30, 47, 74, 75.

And in the Appendix to the Register, we have these Forms, viz.

A *Habeas Corpus* with (or without Cause) &c.
(returnable in Chancery.)

THE King, &c. To the Sheriff, &c. (or to the Marshal of the Marshalsea, or any other Direction) Greeting. We command thee, as at another Time (erewhile) or (as divers Times) we have commanded, that the Body of A. B. by whatsoever Name or Addition of Name he may be named, or charged, in our Prison under thy Custody taken and detained, as 'tis said, together with the Cause or Causes of the (his) taking and Detention, have thou before us in our Court of Chancery in the Octaves, &c. where-soever then we shall be, to answer to us, as well of a certain Contempt; and then and there to do and receive what our said Court shall consider (adjudge) in this particular. And this do thou by no Means omit: And have there this Writ. Witnesses, &c.

A *Habeas Corpus* for one lately sick in Prison.

THE King, &c. to the Sheriff, &c. Greeting. Whereas we by our Writ lately to the Sheriff of the said County directed, had commanded him to attach A. B. so that he might have him
before

Of Writs of Habeas Corpus.

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before us in our Court of Chancery, at a certain Day in our said Writ contained, and he to us in the same our Court returned, That by Virtue of our foresaid Writ, he had taken the Body of the foresaid A. B. whose said Body was so languid in our said Prison, of the County aforesaid, under his Custody, that he could not have it ready at the Day aforesaid: Now (We) command thee firmly injoining, that the Body of the foresaid A. B. now detained under thy Custody, as 'tis said, do thou have before us in our said Chancery, in the Octaves, &c. wheresoever we shall then be, together with the Cause of the taking and detaining of him A. B. in the Prison aforesaid, to answer to us, as well of a certain Contempt done by the foresaid A. B. as 'tis said, as of those Things then there to be objected to him; and further to do and receive what our said Court shall consider (adjudge) in this Particular: And this in no wise omit, under the Peril incumbent. And have there this Writ. Witness, &c.

See also a Habeas Corpus cum causa returnable in Parliament, &c.

THE King, &c. To the Sheriff of London, Greeting. We command you firmly injoining, that the Body of J. S. by whatsoever Name he may be charged, taken, and in our Prison under your Custody detained, as 'tis said, you have before us, and the Lords Spiritual and Temporal in the present Parliament, being at Westminster on this Instant Saturday, to wit, &c. together with the Cause of the taking and detaining him R. in the Prison aforesaid.—Or thus: Have you before us in our Chancery such a Day now next coming, wheresoever we shall then be, together

together with the Cause, &c. And this, under the Pain of 1000 Marks, do ye in no wise omit. And have you there this Writ. Witnesses, &c.

Many other Forms of *Habeas Corpora's* may be produced from the Books of Entries, especially old *Thesaurus Brev. fol. 76. &c.* But the above will be sufficient to direct in most Cases. And for *Habeas Corpora Furator'*, see hereafter in the Divisions of *Process, &c.*

Of the Writs De Homine Replegiando, and of Mainprise.

THESE Writs were formerly used to the same Intent as a *Habeas Corpus* at this Day, *i. e.* to bail a Man out of Prison, the former empowering the Sheriff to replevy, and the later directing the Court to bail, &c. *Their Use formerly.*

But the Use of a *Homine Replegiando* at this Day is, where one conveys away secretly, or keeps in his Custody another Man against his Will, then upon Oath made thereof, and a Petition to the Lord Chancellor, he will grant a Writ of *Replegiari facias* for producing and delivering the Party, with an *Alias & Pluries*, upon which the Sheriff returns an *Elongatus* of Course, and thereupon issues a *Capias in Withernam* from the Filazer: And when the Detainer is thereupon taken, the Sheriff cannot take Bail for him. But the Court where the Writ is returnable may, if it thinks fit, grant a *Habeas Corpus* to the Sheriff to bring him into Court and bail him, or else remand him back to Prison. *Of a Hom. Repleg. at this Day.*

It appears by the Forms of this Writ in the Register and *F. N. B.* that if two or three Men be taken and imprisoned, they might all join in a Writ *De Homine Replegiando*, thus: *Forms of the Writ Reg. Orig. 77. b. &c.*

THE King to the Sheriff of Lincoln, Greeting. We command thee, that justly and without Delay, thou cause to be replevied A. B. and C. whom thou thy self didst take, and taken thy hold, as 'tis said, (or whom D. and E.

See F. N. B. 67. E. have taken, do hold, as 'tis said; or whom D. hath taken, and thou thy self dost hold, as 'tis said; or whom E. did take, and F. doth hold, as 'tis said) except they were taken by the special Precept of us, or of our Chief Justice, or for the Death of a Man, or for our Forest, or for some other Right (Retto) whereby, according to the Custom of England they are not replevisable; that we hear no more Clamor thereof for Default of Justice. Witness, &c.

And hereupon may follow an *Alias Hom. Repleg.* thus:

Alias.

WE command thee, as at another Time (erewhile) we commanded, that justly, &c. to Justice, or signify to us the Cause wherefore our Mandate to thee erewhile directed thereof thou wouldst not, or couldst not execute. Witness, &c.

And then a *Pluries* in this Form, viz.

Pluries.

See Regist. Crig. 11. 18.

THE King to the Sheriff, Greeting. Whereas we had divers Times commanded thee, that justly and without Delay thou shouldst cause to be replevied A. whom thou thy self didst take, and taken dost hold, as 'tis said, except he was taken, &c. (as above) and so was not repleviable; or that thou shouldst signify to us the Cause wherefore our Mandate to thee thereon (thereof) erewhile directed, thou wouldst not or couldst not execute; and thou contemning our foresaid Commands, as we have received, hast not hitherto taken care to replevy the said A. or indeed to signify to us the Cause, wherefore thou wouldst not or couldst not do it, in manifest Contempt of us and our Commands aforesaid, and to the no
small

small Damage and Trouble (gravamen) of him. A. at which we very much wonder, and are moved. We do still (adhuc) command thee, firmly injoining, that the said A. thou cause to be replevied, according to the Tenor of our Mandate to thee thereon (thereof) formerly directed, or that thou thy self be before us (such a Day) wheresoever we shall be in England, to shew why our Mandate aforesaid to thee so often thereon directed, thou hast contemned to execute. And have thou there this Writ. Witnesses, &c.

And after this an Attachment may issue against the Sheriff, directed to the Coroner thus :

THE King to his Coroners in the County of Lincoln, Greeting. If A. makes you secure, &c. then put by Gages and safe Pledges J. H. our Sheriff of the County aforesaid, that he before us (such a Day) wheresoever, &c. to shew why, whereas we had divers Times commanded the said Sheriff, that justly and without Delay he should cause to be replevied the foresaid A. whom the same Sheriff did take, and taken doth hold, as 'tis said, except he was taken by the special Precept of us, or of our Chief Justice, &c. to not replevisable, or that he should signify to us the Cause wherefore our Mandate, &c. he would not, or could not execute; or that he should be before us (such a Day) last past, wheresoever we should then be in England, to shew why our foresaid Mandate, so often to him therein directed, he had contemned to execute; and that he should have then there our Writ, to him therein directed: (Yet) the same Sheriff contemning (despising)

An Attachment thereon. See Reg. Orig. 78.

our foresaid Commands, hath not taken care to replevy the foresaid A. or indeed to signify to us the Cause, wherefore he would not or could not do it, or to come (appear) before us at that Day, or to return our Writ aforesaid, in manifest Contempt of us and our foresaid Mandate, and to the no small Damage and Vexation of the foresaid A. and have you there the Names of the Pledges and this Writ. And in the interim cause the foresaid A. to be replevied, according to the Tenor of our foresaid Mandates to him formerly therein directed. Witness, &c. — Or thus: And in the mean Time cause the said A. to be replevied, except any of the Causes aforesaid shall appear, for which, according to the Law and Custom of England, he is not replevisable. Witness, &c.

But if the Sheriff returns an *Elongatus* on the first or second Writ, *i. e.* that the Body to be replevied is eloigned, or carried away, or concealed, so that he cannot replevy it; then shall issue a *Capias in Withernam*, (which is an irreplevisable Writ) in this Form.

A *Capias* in
Withernam.
See *Riz.*
Orig. 79.

THE King to the Sheriff, Greeting. Whereas we had divers Times commanded thee, that justly and without Delay thou shouldst cause to be replevied M. whom H. did take, and taken held, Except, &c. to or couldst not execute, and thou thereon hadst returned to us, that the foresaid M. was eloigned out of thy County to unknown Parts, by the foresaid H. so that thou couldst not have a Sight (View) of the foresaid M. by which (Means) thou couldst not replevy the foresaid M. We willing to obviate
the

the Malice of him H. in this Particular, do command thee, that without Delay thou take him H. in Withernam, and detain him until thou shalt be able to replevy the foresaid M. according to the Law and Custom of England, as by the Tenor of our foresaid Mandates to thee formerly therein directed. Witneis, &c.

But altho' one taken in *Withernam* is not repleviable by the Sheriff, yet on good Cause and Sureties found, he may be delivered by this Writ, viz.

THE King to the Sheriff of N. Greeting. Whereas we lately had commanded thee, that justly, &c. thou shouldst cause to be replevied J. &c. whom H. took, &c. (receiving the Writ of Withernam, mutatis mutandis) and now on the Behalf of the said H. it is by a grievous complaining shewn unto us, that altho' the same H. did take, and taken hold him J. as his Native (born Slave) and Fugitive, and that (yet) he was ready to permit the same J. to be replevied by thee, according to the Tenor of our Writs so directed to thee thereupon, so that the same H. might have sufficient Security of the foresaid J. being restored to the same H. if he should be judged his Native, by the Common Law of this Land, that yet thou, having no Consideration of this, hast taken and imprisoned the said J. in contempt of our Writ of Withernam, and dost defer and refuse to deliver him from such Prison, to the no small Damage of him J. contrary to the Tenor of the same Writ. (2.) Whereupon he hath supplicated us, &c. We willing to do herein what is just, do command thee, that if

A Writ for delivering of one taken in Withernam.

the

the same H. shall permit the foresaid J. to be replevied by thee, according to the Form of our foresaid Writs, then without Delay thou cause him H. to be delivered from the Prison, wherein by the Occasion aforesaid he is detained, if by that Occasion and no other he is detained in the same; and do thou cause him J. to be replevied in the Form aforesaid.—— Provided always that the same J. do find before thee sufficient Security, for which thou wilt answer to us, of rendring himself without Delay to the foresaid H. if he, J. shall happen to be adjudged the Native and Fugitive of him H. according to the Law and Custom of England; and that he for proving his Liberty (Freedom) in this Particular, do prosecute speedily with Effect. And do thou certify us in our Chancery under thy Seal, &c. such Security when it shall be taken. Witness, &c.

One taken on a Capias in Withernam is bailable.

Note also; there are Writs in the Register for Deliverance of one taken and claimed as a Native Slave, and permitting him to go where he will, &c. on such Manucaptors or Sureties found.

See also the Case of *Turbet v. D'Assigny* in *Raymond's Rep.* and in *2d Shower* 221, 222. &c. where some Records are cited at large, to prove that one taken on a *Capias in Withernam* is bailable by the Court.

Of the Writ of Mainprise (or Bail by Manucaptors.)

THIS Writ, says *Fitzherbert*, properly lies where one is taken for Suspicion of Felony, or is indicted of Felony for a Matter which by the Law isailable, and he offers sufficient Sureties to the Sheriff or others who have Authority to bail him; and he or they refuse to admit him to Bail, he may thereon sue the following Writ.

See F. N. B. 249. G.
It lies on Indictments of Larceny, &c.

THE King to the Sheriff, &c. on the Behalf of A. taken and detained in our Gaol at Gloucester for a Larceny of a certain Horse at S. in that County, as 'tis said, committed, and whereof he his indicted before thee, by a certain Inquest taken by thy Office, as 'tis said; it is to us shewn, that altho' he hath frequently offered to thee sufficient Manucaptors, who him might mainprise, according to the Form of the Statute of Westminster of late set forth, wherein it is contained, that those, who of such Larcenies are indicted before the Sheriff or Bailiffs, by Inquests taken by their Office, are replevisable, so that they be of good Name: Yet thou hast hitherto delayed, and yet dost delay (refuse) to take those Manucaptors for the foresaid A. and to deliver him from the foresaid Gaol by such Mainprise, to the no small Damage (Expence) of the foresaid A. and manifest Peril of his Life, and against the Form of the Statute aforesaid. And because we are not willing any longer to detain the said A. in the Prison aforesaid, against the Form of the foresaid Statute, We

Dispendium.
command

Of the Writ of Mainprize.

command thee, that if the said A. be of good Name, &c. See the Form *F. N. B. 250.* where 'tis said, if the Party is indicted of Petit Larceny, &c. that Clause, *If the said A. be of good Name, &c.* shall not be put in the Writ.

In that other Cases it lies.

Note ; it there appears, that if a Man be indicted for other Trespases before Justices of Peace, &c. as for forestalling, &c. and thereon committed to Prison, he may have the like Writ; and so if imprisoned after Error brought on a Writ of False Judgment, &c.

F. N. B. 250. E.

And if a Man be taken by the Kings Commission, (or Warrant) and kept in Prison for a Felony or other Malfesance, he may by his Friends put in Sureties in the Chancery, that he will appear before the Justices, &c. and be of good Behaviour, &c. and that Body for Body; and thereupon he shall have a Writ to the Sheriff or Gaoler, &c. where imprisoned, to set him at Liberty, if imprisoned for that Cause and none other.

But this Writ is now rarely used, that of *Habeas Corpus* now answering all its Ends and Uses: The various Forms whereof may be seen in the Books cited *supra*; but more particularly in the *Officina Brevium*, from Page 110 to 118.

Of Writs of Mandamus (The command.)

A Writ of *Mandamus*, as it is in Use at this Day, seems to have been unknown to the Common Law, there being no Foot-steps of it to be met with in the *Register* or *Natura Brevium*, or any other antient Books of the Law; and in Truth could only take Place in such Cases where the King had a Right of nominating, placing or displacing Officers or Magistrates *ad Libitum*; as in Manors and Towns of antient Demeasn, &c. — From whence it may be said, that where a Town or Burrough has accepted the King's Charter, wherein Rules are prescribed for the electing, removing and swearing of its Officers, there this Writ may reasonably take Place, for that by the Acceptance of such Charter, they have put themselves under the Direction of the King's Court, &c. This I shall not now dispute.

Unknown to the Common Law, except in Cases of the King's own Tenants.

But at this Day 'tis generally held and practised, that a *Mandamus* lies in all Cases whatsoever, for the electing, admitting, swearing or restoring a Person to any publick Office, wherein the publick Government is concerned; which in Consequence gives the Crown as great a Latitude in the regulating and managing of Townships and Corporations, as the Practice of *Quo Warranto's* and other political Mandates did formerly. Nor is the Mischief lessen'd by saying, that this Writ is to issue out of the King's Bench, and out of the *Crown-Side* of that Court only, seeing the Practices of that

Where it lies at this Day.

Issues out of the Crown-Office.

that Office are too notorious to be mentioned, except in order to be redressed. See the Stat. 9 *Ann. cap. 20. Instit. Legalis* 195.

I shall here only add the Forms of two *Mandamus's*, and their Returns, thus rendred into *English, viz.*

Form of a
Mandamus
for swearing
a Capital
Burgess.

Devon. ff. GEORGE the second, by the Grace of God King of Great Britain, &c. To W. B. Bailiff of our Burrough of P. in our County of Devon, Greeting. Whereas R. T. was duly elected and advanced to the Place and Office of one of the Capital Burgesses of the Burrough aforesaid, and by thee ought to have been admitted and sworn into the Place and Office of one of the Capital Burgesses of the Burrough aforesaid: And whereas the same R. T. after such his Election aforesaid, was ready and offered himself before thee to take the Oath used (accustomed) in that Case, and did demand to be by thee admitted and sworn into the Place and Office aforesaid; yet thou, the Bailiff of the Burrough aforesaid, not ignorant of the Premisses, but lightly weighing the Duty of thy Office in this Particular, hast altogether refused, and as yet dost refuse to administer the Oath in that Case used unto the said R. R. and to admit and swear the same R. into the Place and Office aforesaid, in Contempt of us, and to the no small Damage and Grievance of him R. R. and to the manifest Hurt of his Estate, as from his Complaint we have received (Information) We therefore willing that due and speedy Justice be done in this Particular, as 'tis just (it should) do command thee by firmly injoining, that immediately after the Receipt of this Writ thou dost administer the Oath in that Case

Case used, unto the foresaid R. R. and that thou admit and initiate the same R. into the Place and Office aforesaid, together with all Liberties, Privileges and Franchises to the foresaid Place and Office belonging and appertaining; or that thou signify to us a Cause for the contrary thereof, lest by thy Default the Complaint should come to us repeated. And how this our Precept shall have been executed, make known to us at Westminster on Monday next after the Octaves of St. Hillary, then sending back (remitting) to us this Writ: And this in no wise omit, on the Peril incumbent. Witness Robert Lord Raymond at Westminster, the 20th Day of November, in the fourth Year of our Reign.

The Return of the said Writ endorsed thereon, viz.

The Answer of *W. B.* Bailiff of the Burrough of *P.* within mentioned.

I W. B. Bailiff of the Burrough of P. within mentioned, do most humbly certify to the most serene Lord the King, that the within named R. R. was not elected and advanced into the Place and Office of one of the Capital Burgeses of the Burrough aforesaid, as by the said Writ is within supposed; and that therefore I cannot administer to the same R. R. the Oath in that Case used (accustomed) nor ought I to admit and swear the same R. R. into the foresaid Place and Office, as by that Writ I am within commanded.

The Return.
Instic. Legal.
196.

W. B.

X

A Man-

A *Mandamus* for admitting one to the Office of Mayor, or to signify a Cause to the contrary.

For admitting a Mayor, &c. See *New Thesaur.* Brev. 159.

Note; the Custom is alleged in the Town, but the Right is claimed in the Burrough. Ergo *Quere*; For a Town and a Burrough are different in Law.

* Note; in the Original here is *nec* and *n.n.* and other Defects here supplied.

GEORGE the second, &c. To C. L. Mayor of the Burrough of T. in the County of C. Greeting. Whereas A. M. Esquire, hath been duly elected into the Place and Office of Mayor of the Burrough aforesaid, according to the Custom of the Town aforesaid hitherto used; in which said Place and Office of Mayor of the Burrough aforesaid, the foresaid A. ought to be admitted according to the Custom of the foresaid Town: Yet thou the foresaid C. L. Mayor of the Burrough aforesaid, being not ignorant of the Premises, hast not as yet admitted the foresaid A. M. into the Place and Office of Mayor of the Burrough aforesaid. * Nor administered to the same A. M. the Oath in that Case always used, but hast altogether (wholly) refused (and still dost refuse) to admit and swear the foresaid A. M. (into the said Place and Office) to the no small Damage and Grievance of him A. and to the manifest Hurt of his Estate, as from (by) his Complaint we are informed. We therefore willing that due and speedy Justice be done to the foresaid A. in this Particular, as 'tis just (it should) do command thee, by firmly injoining, that immediately after the Receipt of this Writ, thou dost admit without Delay the foresaid A. into the Place and Office of Mayor of the Burrough aforesaid; whereinto he was so duly elected, as aforesaid, with all Liberties, Privileges, Prebeminencies and Commodities to that Place and Office appertain-

ing and belonging; and that thou adminisier, or cause to be administred, the Oath, to the said A. according to the Custom hitherto used in that Case; or signify to us a Cause to the contrary, lest thro' thy Default a further Complaint should come to us. And how thou shalt have executed this our Precept, make known (certain) to us in the Octaves of St. Hillary (next) wheresoever we shall then be in England, remitting then to us this our Writ. Witness, &c.

The Execution of this Writ appears in a The Return. certain Schedule to this Writ annexed.

The Answer of C. L.

I C. L. Gentleman, do most humbly certify to the most serene Lord the King, in the Court of the said King, before him the King, that before the coming of this Writ to me, the foresaid C. L. directed, and also before the issuing of the same Writ, to wit, the second Day of October, &c. I the foresaid C. L. was removed from the Place and Office of Mayor of the Burrough of T. in the County of G. aforesaid; and one W. A. of the Burrough aforesaid, Gentleman, was on the same second Day of October, in the Year aforesaid, elected, constituted, admitted and sworn into the Place and Office of Mayor of the Burrough of T. in the County aforesaid; and from thence hitherto was, and yet is Mayor of the Burrough aforesaid: And by Reason of his Office, hath had from the Time of his foresaid Constitution and Admission, and now hath in his Custody the Common Seal of the foresaid Burrough of T. by Reason whereof

Of Writs of Mandamus.

I the foresaid C. L. could not swear (or admit) or restore the foresaid A. (to the said Place or Office) according to the Command of the foresaid Writ.

See also in *New Thesaur. Brev. 159.* another *Mandamus* for admitting a Capital Burges: But the Return thereof, which is very remarkable, consisting of four or five Folio Pages, is too long to be here inserted.

Of Writs of Privilege.

I Shall not in this Division inquire into the original Foundation of these Writs, but only briefly observe their several Kinds, and give some Forms or Precedents of each; and these in general may be divided into four Kinds, viz. *Writs of Privilege of four Kinds.*

1. Privilege of Parliament,
2. Privilege of Courts of Justice, Judges, &c.
3. Privilege of Officers, Attornies, &c.
4. Privilege of Suitors, &c.

And here in the first Place give me Leave to insert that superior, and as I may term it, *sovereign* Writ of Privilege, whereby King *Edward* the third confesses to have received his Crown and Regal Dignity from the Assent of the Prelates, Peers and Commons, as well as from his Father's Resignation. *1. Of Parliament.*

EDWARD *by the Grace of God, King of England, Lord of Ireland, Duke of Aquitain, &c. to the Sheriff of Kent, Greeting. Forasmuch as the Lord Edward late King of England, our Father, by the common Assent of the Prelates and Earls, and other great Men, and also of the Community of the whole Kingdom aforesaid, with a spontaneous Will, removed himself (in plain English, he was deposed) from the Government of the said Kingdom, willing and granting that we (as his first born Son and Heir) should assume the Rule and Government* *A Writ reciting King E. 3d's Succession to be by Consent of Parliament. See the Appendix to the Register, fol. 5.*

Of Writs of Privilege.

*of the Kingdom: We by the Counsel and Advice of the Prelates, Earls and * Barons aforesaid, consenting to our said Father's good Pleasure, have taken upon us the Government of the Kingdom, and have received the Fealty and Homage of the said Prelates and Great Men, as is the Custom. Therefore desiring for the Quiet and Tranquility of our People, that our Peace should be inviolably observed, We command thee straightly (statim) on Sight of these Presents, thou cause our Peace to be proclaimed to all and singular throughout thy Bailiwick, forbidding on our Part, under Pain and Peril of Disberison and Loss of Life and Member, That none presume to break or violate our said Peace; but every one may prosecute Actions and Suits, without any Restraint, according to the Laws and Customs of our Kingdom; for we are, and always shall be ready to exhibit full Justice in our Courts, to all and singular Complaints, as well to Poor as Rich. Witness my self the Calends of February, Sunday the Eve of the Purification.*

The next Writ to which proves the Election of a Conservator or Justice of the Peace, by the Sheriff and Commons of *Norfolk*; but in the next following the King himself, by the Advice of his Council, appoints one for *Northumberland*; but this seems to be by Reason of the neighbouring *Scots*, &c.

After which follows a Writ, which (as it seems on the Conclusion of a Parliament)

* The Word *Barons* at this Time seems to include the Commons. Q.

commands a Bishop (grown too much a Courtier, &c.) to repair to his Diocese, and attend his Pastoral Charge, &c.

Note; this seems to be directed to the fam'd *Adam Torleton*, but changing the Name may be apply'd to any other Bishop of the like Stamp; and therefore, and for its rare Elegance, I shall here present the same both in *Latin* and *English*, viz.

R. E. X. Episcopo Hereford' (haud venerabili Patri, &c.) Salutem. Pastores Gregibus præponuntur, ut diei noctisque vigilias exercendo oves famelicas in fertilitatis Pasqua introducant; Errantes vero per verbum salutis, & verber' correctionis in unius ovilis indissolubilem unitatem conservare studeant. Sed sunt nonnulli (Epi') qui hanc Doctrinam dampnabiliter contemnent, & sua ab aliis Pecora distinguere nescientes Lac, & Lanam tollunt qualiter Dominicus Grex alatur non curantes, temporalia rapiunt, & quis in Parochia sua Fame pereat, aut periclitetur in moribus, non attendunt. Qui non Pastores sed mercenarii potius dici promerentur; hoc siquidem dum hiis diebus ad disponendum de Regni nostri Præsidii in partes Marchiæ nos transferremus, In Ecclesia vestra Herefordensi (dolenter referimus nos invenisse) quam adeo invenimus Pastoris solatio destitutam, ut ne dum Episcopum, sed nec officialem haberet Vicarium aut Decanum qui quicquam spiritualitatis exercere possit in eadem.—Sed Ecclesia ipsa quæ olim (spiritualiter) deliciis fluere consuevit, & Canonicis qui ibidem nocturnis ac diurnis Officiis intendere, & opera charitatis exercere debent, eam deserentibus & longe negligentibus in Remotis stola jucunditatis exut:

A Writ for the Bishop of H. to attend his Flock, and if he does not, to seize his Temporalities, &c. See 2 Inst. 625. Append. Registr. p. 6.

cecidit in terram viduitatis suæ detrimenta deplorans, nec est qui consoletur ex omnibus causis (filiis) ejus, sane dum hæc vidimus & consideramus diligenter pietatis aculeus viscera nostra commovit, & compassionis gladius intima cordis nostri acrius vulneravit, ut tantam Ecclesiæ Matris nostræ injuriam, ulterius dissimulare non possumus, nec pertransire incorrectam; quapropter vobis mandamus firmiter injungentes quatenus ad Ecclesiam vestram prædictam occasione quibuscumque postpositis cum ea qua poteritis celeritate vos transferre curetis, commissum vobis in eadem cura pastoralis Officium personaliter Executur, &c. Alioqui scire vos volumus pro constanti quod si istuc facere non curaveritis, bona temporalia & omnia quæ ad Baroniam ipsius Ecclesiæ pertinent, quæ donatione constat eidem fuisse collata, & quæ hætenus colligi & salvo Custodiri præcipimus in commodum & utilitatem ipsius Ecclesiæ convertenda cessante jam causa, in manu nostra totaliter capiamus, nec ulterius sustinebimus quod Temporalia metat, qui Spiritualia, ad quæ ex Officii sui debito tenetur, irreverenter subtrahere non formidet, aut quod emolumenta percipiat qui incumbentia ejusdem onera subire recusat. Teste Rege apud Heref. primo die Junii Anno Regni sui quadregesimo Octavo.

*i. e. Non
Electione.*

Which I thus render in plain, but true English, as to its Sense, viz.

‘ THE King to the Bishop of Hereford,
 ‘ (he seems no venerable Father in Christ)
 ‘ Greeting.—Shepherds are set over their
 ‘ Flocks, that by watching over them Night
 ‘ and Day, they may take care the hungry
 ‘ Sheep

‘ Sheep have Plenty of Pasture, and by
‘ the Word of Truth and the Rod (Staff)
‘ of Correction, endeavour to keep such as
‘ stray, under one Fold, &c.—But there
‘ are many Bishops, who *damnably contemn-*
‘ *ing* this Doctrine, and not knowing their
‘ own from other Mens Cattle, *rob* them of
‘ their *Milk* and *Wool*, they *plunder* them of
‘ their *Temporals*, not caring how the Lord’s
‘ Flock are supply’d with *Spirituals*; nor do
‘ they regard who in their Diocese may be
‘ corrupted in their Morals, or perish through
‘ Want (Infidelity).—These do not deserve
‘ the Name of *Pastors* (*Shepherds*) but ra-
‘ ther of *Mercenary Hirelings*, as in the pre-
‘ sent Case, *viz.* When we lately came hi-
‘ ther to order the Forts of our Kingdom in
‘ these *Borders*, we found (’tis with Grief we
‘ can say, *to have found!*) Your Church of
‘ *Hereford* so destitute of all Pastoral Com-
‘ forts, that not only her Bishop was *eloped*,
‘ but she had neither Official Vicar or Dean,
‘ who could exercise any spiritual Function
‘ in her. Nay, the Church itself, which once
‘ abounded with Spiritual Delights, (her Ca-
‘ nons, formerly intent on Divine Offices and
‘ Acts of Piety (Charity) now strolling a-
‘ bout develtled of their sacred Habit, having
‘ deserted her) was fallen to the Ground,
‘ deploring the Calamities of her Widow-
‘ hood (*i. e.* the Absence of her Bishop)
‘ Nor was there any among all her Sons to
‘ comfort her. Oh God! While these Things
‘ we see, and intently consider, the Dart of
‘ Piety pierces our Bowels, and the Sword of
‘ Compassion so deeply wounds our Heart,
‘ that we can no longer dissemble the Injuries
‘ done

done to our Mother Church, nor pass them
 by uncorrected. Wherefore we command
 you, firmly injoining, that postponing all
 other Occasions, you take care to repair
 with all possible Speed to your said Church,
 there personally to execute your Duty in
 the Pastoral Charge committed to you, &c.
 otherwise we will have you to know for
 certain, that if you will not take Care to
 do so, the *Temporal Goods* and all that be-
 longs to the *Barony* of that Church, which 'tis
 certain were conferr'd on it by Donation, and
 which hitherto we have commanded to be
 collected and safely to be kept, to be convert-
 ed to the Profit and Utility of that Church,
*The Cause now ceasing (for which they were
 given)* we will take them intirely into our
 own Hands. Nor will we any longer bear,
*That he shall reap the Temporals, who dares
 so irreverently to substract Spirituals, to
 which he is bound, by the Duty of his Of-
 fice, or that he shall enjoy the Profits, (of
 the Church) who refuses to discharge the
 Duty incumbent of the same.* Witness the
 King at Hereford, &c.

Note.

A *Patern* for Modern Times, fit to be imi-
tated.

A Special Writ of Privilege for a Lord of
Parliament, sued in C. B.

Privilege of
a Peer in
C. B. *Moyl.*
71.

THE King to Sir R. E. *Knt.* Chief Justice
 of the Common Bench, and his Companions (or
 to our Justices of our Court of Common Bench,)
 Greeting. We command you, that if E. S. of
 D. in the County of L. Knight, be impleaded
 before you at the Suit of any one, in any Per-
 sonal

sonal (or other) Action, you cause such Process to be made against him, and no other (nor in other Manner) as ought to be made against Lords of Parliament, and Peers of the Realm of Great Britain, which ought to come to our Parliaments, upon Summons thereto, according to the Laws and Customs of Great Britain; because we have recorded the same E. S. to be one of the Barons of our Realm aforesaid, coming to Parliament. And this we notify to you and all who are interested to know the same. Witness my self at Westminster, &c.

Note; on reading and allowing the Writ in Court, it ought to be endorsed thus.—
Inrolled in the Bench in Hillary Term, in the Fourth Year of King George the second, Roll the Twentieth, &c. Or it may be filed among the Records of that Term *sine die*.

And if a Menial Servant of a Member of either House of Parliament, be arrested or impleaded in any Court, he may have his Writ of Privilege out of Chancery, testifying the same; and upon pleading the said Writ of Privilege, the Judges ought to surcease their Proceedings, and the Defendant to go without Day. But see the late Statutes for regulating Privilege of Parliament, viz. 12, 13 W. 3. c. 13. and 2, 3 Ann. c. 18.

Menial Servants of Peers and Commons.

But no Privilege is to be allow'd to one that has an Indictment preferred against him, although he be a Peer of the Realm: For this is at the Suit of the King against whom no Privilege is to be allow'd; for all Courts of Justice are his, and he may sue where he pleaseth.

No Privilege in Case of Indictments, &c.

And

2. *Privilege of the Courts.*

And as to the Privilege of those Courts we may observe, that no Person is to be arrested in Presence of the said Courts, but by *Batton* or *Tipstaff*, and by express Order of Court. So no Person who is going to, tarrying in, or returning from any of the said Courts, is to be arrested, but in Manner aforesaid.

In coming, staying and returning.

One coming to the Court to attend his Cause, was arrested by the Way, and compelled to put in Bail: But on a Motion, and shewing this Matter to the Court (by Affidavit) he and his Bail were both discharged: And the Party that arrested him had been also punished, had he not pretended that he knew not that he came about Business depending in Court; for the doing of this was an Affront to the Court, as well as an Injury to the Party arrested. And every Man ought to have free Access to the Courts of Justice. See further of Privilege of Courts, &c. in *Instit. Legalis*.

But I must not extend this Discourse beyond its due Limits, and therefore shall only add under this Head of *Privilege*, some few Precedents of Writs of Privilege for Officers and Ministers of the Courts, *viz.*

A Writ of Privilege for the Chief Clerk of B. R. directed to C. B.

For the Chief Clerk in B. R. See *Tthesaur. Error*. 171.

GEORGE, &c. *To our beloved and faithful R. E. Kn. Chief Justice of our Bench at Westminster, and his Companions (or to our Justices of the Bench at Westminster) Greeting. Whereas, as well by our Regal Dignity, as by antient Custom from antient Times hither-*

Of Writs of Privilege.

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to used and approved, it has obtained, that our Chief Clerk of the Pleas in our Court before us, ought not to be drawn or compelled to answer in any Plea or Suit (Pleas of Freehold) only excepted, elsewhere than in our said Court before us, nor by the whole Time aforesaid, were accustomed to be impleaded, elsewhere than in our said Court before us: And now in our Court here before us, on the Behalf of S. A. Knight, our Chief Clerk, assigned to inrol Pleas in our said Court before us, We are given to understand, that one T. L. of, &c. little regarding the Custom aforesaid, hath drawn into Plea the same S. A. by the Name of S. A. late of B. in the County of B. Knt. of a Plea, wherefore he entred, with Force and Arms, one Messuage, &c. with the Appurtenances in B. which M. E. Widow demised to the said S. A. for a Term not yet past, and ejected him from his Farm aforesaid, and did other Enormities to him, to his Damage, &c. and against our Peace, to the no small Hurt and Grievance of the said S. A. and manifest Infringment of the foresaid Liberties and Privileges in our Court before us, through the whole Time aforesaid used and approved. Whereupon we willing to provide him a fit and speedy Remedy, and that the Liberties and Privileges aforesaid, for so long Time used and approved, be observed, do command you, that you be altogether superseded from further holding Plea of the Plea aforesaid before you, or compelling him the said S. A. further to answer before you in the Plea aforesaid, you telling the said T. L. that he may come to our said Court before us, and have Justice there if he will.

Witness Robert Eyre at Westminster, the
4 eighth

eighth Day of November, in the fourth Year of our Reign.

A Writ of Privilege for a Six-Clerk in Chancery sued in C. B.

For a Six-Clerk in Chancery.
Moyl. 83.

THE King to his Justices of the Bench, Greeting. Whereas the Masters, Clerks and Officers of our Court of Chancery, both of us and our Progenitors late Kings and Queens of England and Great Britain, to answer in our Court before you, or before any of our Justices or Ministers, or other secular Judges whatsoever besides, before us in our Chancery aforesaid, upon any Writs, Causes or Complaints, Trespases, Actions or Demands, which concern not our Person (Pleas of Freehold, Felonies and Appeals only excepted) according to the Jurisdiction, Liberties, Privileges and Customs of our Chancery aforesaid (which from the Time whereof the Memory of Man is not to the contrary hath hitherto obtained) ought not to be drawn, compelled or imprisoned, nor hitherto have been wont. And now we understand, that W. S. Knt. doth implead in our Court before you S. B. Esq; one of the Six-Clerks of our foresaid Court of Chancery (contrary to the Liberties and Privileges of the said Court, and against the Custom aforesaid: We willing that the Jurisdiction, Liberties, Privileges and Customs aforesaid, be inviolably observed, do command you, that you be altogether superseded from further holding of the Plea aforesaid before you, against the said S. B. by whatsoever Name the same S. B. is (therein) reputed (charged) declaring to the said W. S. on our Behalf, that he follow

(pro-

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(prosecute) against the same S. before us in our Chancery aforesaid (and no where else) if so to him it seem expedient. Witness, &c. (Quære, if the King or the Chancellor.)

A Writ of Privilege for an Attorney of C. B. on his being arrested in B. R.

THE King, &c. To his Justices assigned to hold Pleas before us, Greeting. It is shewen unto us, on the Behalf of J. F. Gentleman, an Attorney of our Court of the Bench, that whereas he is a Common Attorney of the Bench aforesaid, and prosecutes and defends in the same Bench, divers Causes for many of our Leiges as their Attorney; And that the same F. and all other Attornies in the Bench aforesaid, while they so prosecute and defend any Causes in the same Bench, ought and are accustomed to be under our Protection, according to the Liberties and Privileges of our Court of the Bench aforesaid; yet certain evil minded Persons, not regarding (ignoscentes) the Privileges of our aforesaid Court, have obtained and prosecuted before you a certain Bill of a Trespass done by the aforesaid J. F. to one R. S. in the County of Middlesex, as 'tis asserted, in Contempt of us and of our said Court of the Bench; and as we are informed, to the no small Damage and Grievance of him J. and of others our Lieges, whose Attorney the same J. is in the Bench aforesaid. And therefore we command you, and every of you, that you be altogether superseded from proceeding against the said J. F. in all and all Manner of Pleas and Suits moved or to be moved before you (Pleas of Felonies and Appeals only excepted) you declaring, on our Behalf,

to

An Attorney of C. B. privileged against being sued in B. R. See *Officina Brev.* 173. But note, *ib.* 166. a better Form.

to the Parties in those Pleas and Suits, that they may prosecute their Pleas and Suits in our Court, before our Justices of the Bench aforesaid, if to them it seems expedient (or if they think fit.)

A Writ of Privilege for a common Person, to protect him from Arrests, Attachments, &c. in going to, tarrying in, and returning from the Court of C. B.

For a common Person in going and returning from Westminster Hall. See *Officina Brev.* 161, 162, 165, 169. See also *Tresaur.* Brev. Tit. *Supersedeas.*

GEORGE, &c. *To the Mayor, Aldermen and Sheriffs of London, and to every of them, Greeting. It is shewn unto us on the Behalf of A. L. that whereas he and every of our Leiges, in coming to the Court of our Bench, for prosecuting or defending of any Writ or Plea there, and also in tarrying there, and returning thence towards their own (Residence) ought and have been accustomed to be under our Protection, without any arresting of their Bodies, or any Attachment or Distress of their Goods, Chattels or Monies, or of any other Person in whose Hands and Possession they (the same) are, for which they by the Law of the Land are bound to answer by the Ministers (Officers) of any Court inferior to our said Court of the Bench aforesaid, in any Manner to be brought into them according to the Liberties and Privileges of the same Court of the Bench used and approved in the same, from Time beyond the Memory of Man: Yet certain evil-minded Persons, contriving him A. many ways to aggrieve, have this very Term, &c. caused the said A. to be arrested, as he was coming towards our Court aforesaid, for divers Sums of Money, and other Goods and Chattels in the Hands and Possession* of

of divers other Persons, for which he was bound to answer, have unjustly procured to be attached; whereupon he hath supplicated us to grant him a due and speedy Remedy. We willing to do herein what is just, &c. do command you and every of you, that if the said A. is arrested or attached by you, or any of your Ministers (Officers) for any Goods or Chattels, or Sums of Money of him A. in the Hands and Custody of any other Person or Persons, or any other Goods and Chattels, or Sums of Money of any other Person or Persons, being in his the said A.'s Hands and Possession, for which he is bound to answer: Then you are such a Day, &c. to certify to our Justices at Westminster of the Day, the Cause, the Quantity and Quality of such Attachments as the same resides before you, or any of you, by whatsoever Names the Parties in (to) the same, or any of them be reputed (charged) so that our said Justices being by you informed thereof, may be able to do what is just, according to the Law and Custom of England, and the Liberties and Privileges aforesaid: And have you there this Writ. Witness, &c.

See many other Forms of Writs of Privilege in the Books above cited, which by Reason of the Limits to which this Tract is confined, I am forced for the present to omit, &c. And for the same Reason must be more brief than I at first intended on the Writs which follow.

OF Writs of *Procedendo*, (Proceeding.)

Two Kinds
thereof.
1. *Proceden-
do ad Judi-
cium.*

THERE are in general two Kinds of Writs of *Procedendo*, viz. a Writ of *Procedendo ad iudicium*, which is an Original, and seems to have lain at Common Law, as well as by the Statute of Northampton, 2 E. 3. c. 8. whereby 'tis enacted, *That the King's Commandment be not either by the Great Seal, or the Petty Seal to delay common Right; but if such Commandment come (be sent) the Judges shall not surcease to do Right in any Point.* And to the same Purpose is the Stat. 14 E. 3. c. 14.

F. N. B.
240. D.

By these Statutes says Fitzherbert, it appears, that the Kings Justices shall proceed to Judgment according to Law, notwithstanding the King's Commands, directed and delivered to them (under the *Great Seal*, &c.) to the contrary. And if the Party thinks in his Conscience that such Command will be sent, he may sue forth a Writ on that Stat. commanding the Judges to proceed, notwithstanding such Command of the King, viz.

Form of the
Writ.

THE King to his beloved and trusty R. E. and his Companions, Justices of the Assises in the County of S. assigned, Greeting. Whereas in our Parliament at Northampton, called by us in the second Year of our Reign, it was agreed and appointed by the Prelates, Earls, Barons and other great Men, and the whole Commonalty of the Realm, in the same Parliament, that it shall not be commanded by our Great Seal, nor by our Privy Seal, to the hin-
ding

bring or delaying of the Common Law. And if such Command shall come, the Justices therefore shall by no Means surcease to do Justices as in the foresaid Stat. is more fully contained, We command you (therefore) that you by no Means surcease to do Justice to the Parties in the Assise of Novel Disseisin (between such and such) by Virtue of any Command of our Great Seal or Privy Seal to you directed or to be directed, against the Tenor of the said Stat. Witness.

But (says Fitzherbert) it seems to be in Vain to sue forth such Writ, if the Judges do consider their Oath, and their Duty to God and the King; but because some Judges are fearful, and will not do any thing that may create Displeasure, &c. therefore this Writ was ordained, as it seems, and for no other Cause; for the Statute (and I conceive the Common Law) was sufficient without this Writ.

Nota

And in the End of the Writ the Party may have these Words, viz. *But that you proceed in taking the same Assise (to Judgment) as of Right and according to the Law and Custom of England is to be done.* Witness, &c.

The other Kind of *Procedendo*, is rather a Measn Process than a Writ, and properly lies where a Suit or Action is removed from an inferior to a superior Court by *Habeas Corpus* or *Certiorari*. And if the Party, who sues out such *Habeas Corpus* or *Certiorari*, does not put in good Bail (where Bail is required) in Time, then this Writ shall issue for the inferior Court to proceed, notwithstanding such *Habeas Corpus* or *Certiorari*.

2. A *Procedendo* on a *Habeas Corpus* or *Certiorari*. Its Nature.

Of Writs of Proce^dendo.

And where a Cause by the Custom of *London* or other Place is actionable, but it will not bear an Action at Common Law, if on a *Habeas Corpus* or *Certiorari* brought to remove such Cause, it so appears to the superior Court, such Court ought to grant a *Proce^dendo* to the inferior Court.

A *Proce^dendo* to the Mayor, Aldermen and Sheriffs of *London* on a *Habeas Corpus*.

Form of a
Proce^dendo
receiving a
Habeas Corpus
Offic. Breu.
179.

GEORGE, &c. *To the Mayor, Aldermen and Sheriffs of London, and to every of them, Greeting. Whereas we lately commanded you by our Writ, that you should have before J. F. Just. one of our Justices of the Bench, at his Chambers in Serjeants-Inn in Fleet-street, London, immediately after the Receipt of the said Writ, the Body of R. W. detained in our Prison under your Custody, as 'tis said, together with the Day and the Cause of his taking and Detention, by whatsoever Name the same R. was charged (reputed) to do and to receive what the same our Justice should consider (ordain) concerning him in this Particular. Yet for certain Causes, especially moving our Justices of the foresaid Bench at Westminster in this Particular, We command you, and every of you, that in certain Pleas and Suits against him R. W. at the Suit of W. B. moved or depending in our Court before you, you proceed with Effect, according to the Law and Customs of England, and of the City aforesaid, notwithstanding any Writ lately directed to you to the contrary. Witness R. E. &c.*

A Pre-

A *Procedendo* to the Palace Court *Westminster*, on a *Habeas Corpus cum causa*, granted by the Chief Justice of C. B.

GEORGE, &c. To the Judges of the Court of our Palace at Westminster, and to every of them, Greeting. Whereas we had lately commanded you by our Writ, that you should have before R. E. Kit. our Chief Justice of the Bench, at his Chamber in Serjeants-Inn in Chancery-Lane London, immediately after the Receipt of the said Writ, the Body of T. R. &c. to do and to receive what our foresaid Chief Justice should consider concerning him in this Particular; yet for that it sufficiently appears to our Justices of the Bench at Westminster aforesaid, that the foresaid T. R. hath not prosecuted before our foresaid Justices at the Day and Place aforesaid, in due Manner, according to the Tenor of the same Writ; therefore we command you, that in all and singular Pleas or Suits, moved or depending in our Court before you or any of you, you and every of you, do proceed with Effect, according to the Law and Custom of England, and of the Court aforesaid, as shall be just, our foresaid Writ of Habeas Corpus to you therein lately directed, in any thing notwithstanding. Witness Robert Eyre, at Westminster, the 23^d Day of October, in the 4th Year of our Reign.

To the Palace Court Westminster. Offic. Brev. 183. See Inst. Legalis 115.

A *Procedendo* on a *Certiorari*.

GEORGE, &c. Greeting. Whereas we lately, for certain Causes, were willing to be certified of (concerning) a certain Original Bill

On a Certiorari. Inst. 1. Leg. 115.