

said King *Edward*; and the Form of the Commission is such,

GEORGE, &c. *To our beloved and trusty A. B. and C. greeting: By the grievous Complaint of D. we have received (Information) That E. P. and G. and certain other Malefactors, Perturbers of our Peace, upon him D. at N. with Force and Arms, an Assault made, and him did beat, &c. so that his Life was despaired, and other Things enormous to him did, to the grievous Damage of him D. and against our Peace. And because the same Trespass, if it were (otherwise) done, we will not leave unpunished, we assign you and two of you our Justices, to inquire by the Oath of honest and lawful Men of our County of Lincoln, by whom the Truth of the Matter may be better known, of the Names of the Malefactors aforesaid, who, together with the foresaid E. P. and G. that Trespass did, and of (or concerning) that Trespass more fully the Truth (to be informed) and the same Trespass to hear and determine, according to Law and the Custom of our Realm; and therefore we command you, that at certain Days and Places which you, or two of you thereto shall appoint, that Inquest ye make, and that Trespass done in the Form aforesaid, ye determine as to Justice belongs, according to Law and the Custom of our Realm, saving to us the Amerciaments and other Things to us thereof (thence) belonging. For we command the Sheriff of our County aforesaid, That at certain Days and Places which you, or two of you to him shall cause to be known, that he cause to come before you, or two of you, so many and such honest and*  
lawful

*Lawful Men of his Baliwick, by whom the Truth of the Matter in the Premisses may be better known and inquired. In witness of which Matter we have hereunto caused to be put our Seal, &c.*

*Note the Difference in the Teste between a Commission and a Writ, which is Teste me- ipso, or witness myself, &c.*

*And the Form of the Writ directed to the Sheriff thereupon; is thus:*

*See F. N. B. III.*

*GEORGE, &c. To the Sheriff of L. &c. By the grievous Complaint of D. &c. to We have assigned our beloved and trusty A. B. and C. and two of them our Justices, to inquire by Oath, of honest and lawful Men, &c. to to bear and determine according to the Law and Custom of our Realm: And therefore we command thee, that at certain Days and Places, which the same A. B. and C. to thee shall make known, thou cause to come before them, or two of them, so many and such honest and legal Men of thy Baliwick, by whom the Truth of the Matters in the Premisses may be better known and inquired; and have thou there this Writ. Witness my self at Westminster, &c.*

*The Writ to the Sheriff thereupon,*

*And the King may make a Writ of Association to the said Justices, to admit into their Company such Person as the King shall so associate to them, viz.*

*GEORGE, &c. To our beloved and trusty A. B. and C. greeting: Know ye that where- as lately, at the Plaint of D. to us suggesting, that E. F. and G. and other Malefactors and Disturbers of our Peace, &c. to unpunished,*

*The Writ of Association to the Justices.*

*We*

## Of the Writ

*We have assigned you and two of you our Justices, &c. unto to bear and determine according to Law and the Custom of our Realm, &c. We have assigned to you or to two of you our beloved and trusty H. the Premisses (aforesaid) with you or two of you to doe. Yet so, that if at certain Days and Places which you or two of you to this shall appoint, it shall happen him H. to be present, then him to this (Business) ye admit for a Companion in the Form aforesaid. For we command the same H. that together with you or two of you to this (Business) he do intend as is aforesaid. Witnesses, &c.*

And the Writ to the Party associated is thus.

The Writ to  
the Party  
associated.

**GEORGE, &c.** *To our beloved and trusty H. Greeting: Know that whereas lately at the Plaint of D. to us suggesting that E. F. and G. and certain other Malefactors, &c. (recite the Complaint) we have assigned our beloved, &c. A. B. and C. and two of them our Justices to inquire, &c. (as in the Commission to) to bear and determine according to Law, &c. We have associated you to the foresaid A. B. and C. and to two of them, the Premisses together with them or two of them to doe; yet so that if at certain Days and Places which the same A. B. and C. or two of them to this (Business) shall appoint, it shall happen you to be present, then let them to this (Business) admit you for a Companion; otherwise the said A. B. and C. or two of them, your Presence not expected, may proceed to do the Premisses; and therefore we command you that to the Premisses, together with the foresaid A. B. and C. you intend to doe in the Form aforesaid, &c. saving to us the*  
*Amer-*

*Note; The Associate was to take Care of the Amerciaments, &c.*

*Amerciaments, &c. For we command the same A. B. and C. that you to this (Business) for a Companion they admit, as is aforesaid.*

Also the King may send another Writ called a *Si non omnes*, directed as well to the said Associate as the said Justices, commanding them to proceed, tho' all of them do not appear at the Day appointed. But this seems needless, seeing the Commission it self impowers any two of them to proceed; but the Form thereof is thus:

GEORGE, &c. *To our beloved and trusty A. B. and C. and H. Greeting. Whereas lately at the Plaint of D. to us suggesting that E. F. and G. and certain other Malefactors, &c. unto against our Peace, we have assigned you the foresaid A. B. and C. and two of you our Justices, &c. unto To hear and determine according to Law and the Custom of our Realm; and afterwards we associated to you the foresaid A. B. and C. and to two of you, you the foresaid H. the Premisses to doe (Now) We command you, that if you all the Premisses to doe cannot commodiously be present, then you or three or two of you whom it shall happen to be present, may proceed to doe the Premisses according to Law. Witness my self, &c.*

The Writ of *Si non omnes*, (if not all.)

See F. N. B. 111. c. and 185, 186.

But note, the Writ of Association to the Justices, &c. shall be close; whereas the Writ directed to the Party or Parties associated must be patent. And if the Party associated dies, the King may make a new Writ of Association to other Persons; and so he may make Association after Association directed unto

F. N. B. 111. D. 113. c.

unto the first Commissioners, or to as many of them as are living, to continue the Proceedings, and to proceed to hear and determine the whole Matter, and that they do admit those he doth associate, or any one or more of them, to proceed upon the whole Matter they are authorized to by the first Commission. So that it appears the Matter shall not be discontinued by the Death of any of the Commissioners.

*See such a Writ in the Register.*

And if the like Trespafs be done to one in the Confine of two Counties, the Party injured may sue a Commission, &c. may be thereupon issued in this Form. *viz.*

A Commission on a Trespafs, &c. done in the Confine of two Counties.

GEORGE, &c. *By the grievous Complaint of D. we have received (Information) that G. the Goods and Chattles of him D. to the Value of 100l. at M. R. and N. which are in the Confine of the Counties of Norfolk and Suffolk found, with Force and Arms bath taken and carried away, &c. unto our Justices to inquire by the Oath of honest and lawful Men of the County aforesaid by whom, &c. For we command our Sberiffs of the Counties aforesaid, That at certain Days and Places in the Confine of the said Counties, which, &c. before them in the Confine of the same County, so many and such honest and legal Men, &c.*

And this Writ to the Sheriffs of the said Counties shall be close.

*In what Cases a Commission of Oyer and Terminer may be granted.*

A Commission of Oyer and Terminer was granted on a Rescous made upon the King's Bailiff where he had distrained (Cattle, &c.) for Debts or Amerciaments due to the King. F.N. B. 112. A.

See an *Oyer* and *Terminer* for a Ward ravished and Goods taken, and the Defendant thereon found guilty; and thereupon a *Scire Facias* issued. 29 E. 3. 37.

See the like Writ (or Commission) 26 Aff. 7. But *quære* there of the Words, *certain* other Malefactors, &c. because not indicted, &c. And note there a *Venire facias* ought to be awarded on such a Commission; but *quære* if the Return thereof ought to be shewn, &c. 29 E. 3. 30.

Venire facias.

The King may grant divers Commissions of *Oyer* and *Terminer* of divers Trespasses done by one Person at the Suggestion of divers, without naming any Complainant particularly. And then the Commission begins thus.

F. N. B. 112.  
A. Divers Commissions.

GEORGE, &c. By the clamorous Plaints of divers (faith-worthy or credible) Men (Persons) of the County of N. often pervenient (coming) to our hearing, that A. Bishop of Winchester (and other Malefactors) &c. many and divers Oppressions, &c. And there shall be a like Writ to return a (*Venire*) Panel (as before is said.)

Against a Bishop, &c.

Venire.

And if a Ship be broken by Tempest, and the Goods and Merchandizes thereof thrown on the Land, if any Person escapes alive, they are no *Wreck*. And if such Goods, &c. are taken by Malefactors unknown, &c. the Owner, &c. may have a Commission of *Oyer*, &c. directed to certain Persons to inquire of those who did the Trespass, and to hear and determine the same; and thereupon make Restitution to the Party. And a Writ to the Sheriff, to return a Jury of honest and good Men before the Justices, &c.

Unknown Persons Wreck.

Venire.

*Extortions,  
&c of Sheriffs, &c.*

*No suspected  
Person to be  
in Office.*

Also a Man may have the like Commission to inquire of Extortions, Oppressions, and other Misdemeanors of Under-Sheriffs, Escheators, Bailiffs, Clerks of the Market, and all other Officers upon the Complaint of any one that will sue; and a Writ to the Sheriff to return a *Jury*, as aforesaid. Also the King may (or ought to) direct his Writ to the Sheriff, or unto Mayors or Bailiffs, &c. to do as much as in them lies, and appertains to them, to remove such Persons from their Office against whom it is supposed that any one will complain, or that he doth not put (or admit) such or such into any Office, until Inquiry be made of their Carriage and Behaviour, &c. [So that common Fame seems to be a sufficient Ground for such an Inquiry, which doubtless rendred those Officers more careful of their Integrity, &c.]

*Goods wasted  
or eloined.*

And if a Man sues a Commission of *Oyer*, &c. against divers for taking his Goods and Chattels, who after the Taking waste, spend or eloin them, then the Party who sued out the Commission shall have a Writ to the Sheriff, reciting the said Matter, commanding him to stay the Goods, and to put them in safe Custody, until it be otherwise provided and adjudged by the said Justices of *Oyer* and *Terminer*, or others, &c. And upon such Commission of *Oyer*, &c. if it be found for the Plaintiff, the Justices may return the Goods to the Party, and give him Damages. And therefore it varies from an Action of *Trespas* sued before the Justices of *B. R.* or *C. B.*

And

And in the Vacation of a Bishoprick, if <sup>In Vacancy of</sup> any Person hunts in the Parks and Chases of <sup>a Bishoprick.</sup> the Bishop, the King may send his Commission of Oyer, &c. to certain Persons to hear and determine, and inquire thereof, viz.

GEORGE, &c. *To our beloved, &c.*  
*Know yee that we have assigned you, and two of you our Justices, &c. to inquire, &c. of the County, &c. by whom, &c. what Malefactors and Perturbers of our Peace, the Parks of S. H. and C. in our County aforesaid, after they came to our Hands, by reason of the Instant Vacation of the Bishoprick of Chichester, by Force and Arms broke, and in them without our Licence and Will, the Beasts thereof chased, took and carried away, and other things enormous to us there did, to our Loss and Contempt, and against our Peace, and of (concerning) that Trespass aforesaid more fully the Truth (to inquire) and those Transgressions to hear and determine according to Law, &c. And therefore we command you, that at certain Days, &c. yee make that Inquest, and that Trespass determine in the*  
*From aforesaid, &c. We command, &c. and to be inquired, &c. Witness my self, &c. (Quære.)*

*Make to doc;  
i. e. cause to  
be made.*

And if in the Vacancy of an Archbishoprick, any Person hunts in the Parks, or cuts down the Woods, or fishes in the Piscaries of the Archbishoprick; when the Archbishop is created, the King may grant or send a Commission of Oyer and Terminer, to inquire and determine the Trespass done in the Time of the Vacancy. And the Form thereof is thus.

*Of an Arch-  
bishoprick.*



GEORGE, &c. *To our beloved, &c. By (or, of) the grievous Complaint of the Venerable Pastor W. Archbishop of York, We have received (Information) that certain Malefactors, &c. the Parks, &c. (reciting in the Commission all the Trespasses specially that are to be tried, &c.) and other Things enormous, &c. to our manifest Contempt, and in Deterioration of the Archbishoprick aforesaid, and grievous Damage of the said Archbishop, and against our Peace. And because the Contempt and Trespass, &c. unpunished, &c. We have assigned, &c. unto the Contempt aforesaid, and these Trespasses as well at our Suit, as of the foresaid Archbishop, to hear and determine according to Law, &c. and therefore we command you, &c. as before.*

*Stat. Marlbr.  
c. 8. Quære.*

And it seems That by the Stat. of *Marlbr. c. 8.* the Bishop shall have an Action, and punish a Trespass done in the Vacancy of the Bishoprick; the Words there being, *If any Rapines are done to Abbots or other Ecclesiastical Prelates, &c.* And in the End of the Stat. are these; *But if into the Lands and Tenements of this Kind (of the Religious) whereof the Prelates died seized as of their Churches Right, any Persons shall intrude in Time of the Vacation, &c.* Which by *Fitzherbert* is as much as to say, The Bishop may punish a Trespass done in Time of Vacation of his Bishoprick, in cutting down of Trees, &c. For of Right the King himself cannot cut such Trees thereby as I conceive, implying that he can't sue for the Damage. But I think the King in that Case may prosecute criminally, it being a Crime against the Publick; and the Suc-

*F. N. B. 113.  
H.*

cessor may prosecute civilly, because of the Damage done to him and the *Freebold*.

But for Hunting in the Parks, Fishing in the Piscaries, &c. the King may have the Action for such Trespasses done in Time of the Vacancy. But if they destroy all the Fish in the Fishpools, or kill all the Deer in the Parks, &c. in Time of such Vacancy, there it seems reasonable by the said Stat. that the Successor should have an Action for such Trespass. And tho' *Fitzherbert* concludes this Point with a *Quere* of this Matter, yet I conceive it falls within the Rule and Reason of Waste and Dilapidations, and consequently that an Action was maintainable for such Trespasses even by the Common Law before the Stat. of *Mar'br*. F. N. B. 113.  
A.

After which *Fitzherbert* briefly touches upon the Duty of a King in granting such Commissions, &c. Note.

It is to be understood (says he) That the King of Right (*i. e.* by the *Common Law*) ought to keep and defend his Kingdom, as well against the Sea, &c. as against Enemies, that it be not drowned or wasted, and to provide Remedy for the same: And also to provide that his Subjects pass by all ways (*i. e.* by Land and by Water) through the Kingdom with Safety; and therefore if the Sea-Walls be broken, or the Sewers, Gutters or Ditches not scoured, so as the fresh Waters cannot have their (free) Passage or Courses, the King ought (*i. e.* is bound of Duty) to grant a Commission to inquire thereof, and to hear and determine the Defaults therein. He then gives us the Form of such a Commission, which being of excel-

lent Use in discovering some Points of our original Constitution, I shall here present the same both in *Latin* and in *English*, viz.

*An excellent  
Commission.*

REX dilect. A. B. & C. &c. Cum Wallæ,  
 Fossata, Gutturæ, Sueræ, Pontes, Calceta  
 Gurgites & Trenchæ in partibus *Hoiland*,  
 inter Crucem de *W.* & pontem de *E.* per  
 impetum Maris, & refluxus, & inundatio-  
 nem aquarum dulcium per diversa loca in  
 partibus prædict' adeo diruta sunt & con-  
 fracta quod quamplurima damna & inæsti-  
 mabilia, pro defectu reparationis earundem  
 Wallarum, Fossatorum, Gutturarum, Sue-  
 rarum, Pontium, Calcetorum & Gurgitum,  
 & obstructione Trenchearum prædict. tem-  
 poribus retroactis evenirent ibidem, major'  
 que processu temporis evenire timent nisi  
 super hoc celerius remedium adhibeatur  
 opportunum. Nos pro eo quod ratione  
 dignitatis nostræ Regiæ, ad providendum  
 Salvationi Regni nostri circumquaque fu-  
 mus astricti, volentes in hac parte con-  
 gruam & festinam Remedium adhiberi, as-  
 signavimus vos, &c. ad supervidendum  
 Wallas, Fossata, Gutturæ, Sueras, Pontes,  
 Calceta, Gurgites & Trenchæ, prædict.  
 & ad inquirendum per Sacramentum tam  
 Militum quam aliorum proborum & lega-  
 lium hominum de partibus prædict. tam in-  
 fra Libertates quam extra per quos Rei  
 veritas melius sciri poterit per quorum de-  
 fectum hujusmodi damna contigerint ibidem,  
 & quæ Terras & Tenementa tenent, seu  
 communiam pasturam aut piscariam in par-  
 tibus illis, vel etiam defensionem, commo-  
 dum, & Salvationem habent, vel qualiter-  
 cunque

cunque per Wallas, Fossata, Gutturatas, Sue-  
 ras, Pontes, Calcetas, & Gurgites, prædict.  
 habere poter. sed etiam Damna per Tren-  
 cheas prædict. sustinent vel sustinere poter.  
 Et ad omnes illos pro quantitate terrarum  
 & Tenementorum suorum sive per nume-  
 rum acrarum, sive per carucatas pro rata por-  
 tionum Tenuræ suæ, seu pro quantitate  
 Commun. Pasturæ vel Piscariæ suæ ibi-  
 dem distringendum, & per Amerciamenta  
 & alio modo prout melius videritis facien-  
 dum puniendum, unacum Ballivis liberta-  
 tum & aliorum de partibus illis ad hujus-  
 modi Wall. Foss. Gutt. Suer. Pont. Calc.  
 & Gurgites in Locis necessariis reparand.  
 & quotiescunque & ubi necesse fuerit de  
 novo faciend. ac Trencheas prædict. in Locis  
 necessariis obstruend. ita quod aliquibus  
 (omnibus) Tenent. Terrar. seu Tenemen-  
 tor. hujusmodi, seu Communiam Pasturæ  
 seu Piscariæ habentibus, divit. vel pauper.  
 aut al. cujuscunque fuerit conditionis status  
 aut Dignitatis, quam defensionem habere  
 poterint qualitercunq; per prædict. Wallas,  
 Fossata, Gutt. Suer. Pont. Calc. & Gurg.  
 seu etiam Damnum per Trencheas prædict.  
 sustinent vel poterint sustinere sive fuerint  
 infra Libertates vel extra, non procedant,  
 (parcatur) in hac parte. Et ideo vobis  
 Mandamus quod ad certos Dies & Loca  
 quos vos, &c. ad hoc provideritis prædict.  
 Wall. Foss. Gutt. Suer. Pont. Calc. Gur-  
 gites & Trencheas supervideatis, & præ-  
 missa omnia & singula faciatis & Expleatis in  
 forma prædicta, & omnia quæ per vos or-  
 dinari & fieri contigerit in hac parte tam  
 infra Libertates quam extra faciatis firmiter

## Of the Writ

6 observari Mandamus enim Vicecom. nostro  
 6 *Lincoln, &c.* quod Venire faciat, &c. tot  
 6 & tales tam Milites quam alios probos &  
 6 legales homines de com. præd. tam infra  
 6 Libertates quam extra per quos Rei veri-  
 6 tas melius Sciri poterit, &c.

The same Commission in *English*.

GEORGE, &c. *To our beloved A. B. and  
 C. &c. Whereas the Walls, Ditches, Gutters,  
 Sewers, Bridges, Causeys, Gorges and Trenches,  
 in the Parts of Hoiland (in Lincolnshire) be-  
 twixt the Cross of W. and the Bridge of E. by  
 the Violence of the Sea, und the Reflux and In-  
 undination of the fresh Waters through divers  
 Places in the Parts aforesaid, are so thrown  
 down and broken, that very many and inesti-  
 mable Damages (and Losses) for Default of  
 Reparation of the same Walls, Ditches, Gut-  
 ters, Sewers, Bridges, Causeys and Gorges,  
 and Obstruction of the Trenches aforesaid, have  
 in the Times past there happened, and more in  
 Process of Time are feared to happen, unless  
 very speedily hereupon opportune Remedy be ap-  
 plied. We, (for that, that by Reason of our  
 Dignity Royal, we are bound to provide  
 every where (i. e. by Land and Water) for  
 the Safety of our Kingdom) being willing that  
 in this Part (particular) a Congruous and speedy  
 Remedy be applied have assigned you, &c. to su-  
 pervise (oversee) the Walls, Ditches, Gutters,  
 Sewers, Bridges, Causeys, Gorges and Trenches  
 aforesaid; and to inquire by Oath as well of  
 Knights as of other honest and legal Men of the  
 Parts aforesaid, as well within Liberties as  
 without, by whom the Truth of the Matter and  
 Premiss:*

Premises aforesaid may be better known, by Default of whom such Damages have there happened, and who hold Lands or Tenements or (hath) Common of Pasture or of Piscary in those Parts, or else have or may have (any) Defence, Commodity and Safeguard, and of what Kind (or in what Manner) by the Walls, Ditches, Gutters, Sewers, Bridges, Causeys or Gorges aforesaid; and also Damages by the Trenches aforesaid, do sustain or may sustain; and all them (or every of those) for the Quantity of their Lands and Tenements, or by the Number of Acres, or by Carves or Hydes, according to the ratable Portion of his Tenure, or for the Quantity of his Common of Pasture or Piscary, to be distreined, and by Amerciaments and otherwise, as shall seem to you to be better to be done to be punished, together with the Bailiffs of Liberties and of others of those Parts to the repairing in necessary Places, such Walls, Ditches, Gutters, Sewers, Bridges, Causeys and Gorges, and as often and where it shall be necessary to make the same new, and the Trenches aforesaid in necessary Places to be stopped up, so that any Tenant of such like Lands or Tenements, or having Common of Pasture or Piscary, whether Rich or Poor, or of whatsoever other Condition, State or Dignity he be, who may have any Kind (Manner) of Defence by the foresaid Walls, Ditches, Gutters, Sewers, Bridges, Causeys and Gorges, or do or may sustain Damage by the said Trenches, whether they be within Liberties or without be not spared (Excused) in this Part (particular). And therefore we command you, that at certain Days and Places, which you, &c. to this shall appoint the foresaid Walls, Ditches, Gutters, Sewers, Bridges,

Venirefaciat.  
See before.

*Bridges, Cawseys, Gorses and Trenches you oversee, and all and singular the Premisses you doe and fulfil in the Form aforesaid. And all Things which by you shall happen to be done and ordained in this Part, as well within Liberties as without ye cause firmly to be observed. For we do command our Sheriff of Lincoln, &c. that he cause to come, &c. so many and such, as well Knights as other honest Men, &c. as well within Liberties as without, by whom the Truth of the Matter may be better known, &c. See before.*

Note.

And it appears from all the Instances in the Register and *Fitzherbert*, that no such Commission of Oyer and Terminer, or any other Delegation of Regal Judicial Power, could be executed without a Jury impanelled, who were to try the Right as well as the Fact in Question, and consequently were the proper Judges of both.

'Tis true in the Case of publick Nufances in Cities and Towns corporate, the King by the Common Law, as well as by the Stat. 12 R. 2. c. 13. &c. was enabled to send his Writ, or issue his Proclamation for the Removal of such Nufances, of which you have some Instances in *F. N. B.* and which see in the following Title *Nufance*. But I conceive no Man could be convicted of an Offence in any of these Cases, except he was found guilty by legal Procces, and a Jury return'd as aforesaid.

## Of Writs of Nufance.

FROM the subject Matter of the foregoing Section, we are naturally led to consider Writs of Nufances, *i. e.* such Writs as are issued for the Removal, Suppressing or Abatement, (*i. e.* pulling down or destroying) any thing erected, incroached, arisen, or happening to the Annoyance, Detriment, or even Inconvenience of the Publick; for the Law will rather permit an Injury or Damage to one or more particular Person or Persons, rather than any Nufance or Inconvenience shall arise to the Publick.

*Writ of Nufance, where it lies.*

Of these Writs of Nufance, some are said to be *Viscontiel*, *i. e.* properly determinable before the Sheriff in the County-Court, where the *Earl* of Old (*i. e.* when elective) and afterwards the *Sheriff* (who at first was also elected) sat as Judges; and under whose Cognifance fell all Nufances relating to Buildings, Houses, Gates, Fish-ponds, Gorfes, Mills, Bridges, and the like, according to that old Verse,

*The Kinds thereof.*  
*See Regist.*  
*199. F. N. B.*  
*185. b.*

*Fabrica, Furca, Porta, Domus, virgultum*  
*Gurges molendinum,*  
*Et Pons, Tradantur hæc vicecomitibus.*

Though I conceive this Rule was establish'd long after the Conquest; for it appears from the *Saxon* Laws, restored by *H. I.* and sworn to by him and his Successors, all Causes arising within the County at large, (and not within a City or Borough, who had always a Right

*But by Stat.*  
*R. 2. c.*  
*the Plaintiff*  
*may now chuse*  
*to have it be-*  
*fore the King's*  
*Justices or the*  
*Sheriff.*



a Right to try their own Causes) were not only triable, but determinable in the proper County Court; and that no Appeal or Writ of Error originally lay to the King's superior and ordinary Courts of Justice, but where the Cause was of very great Weight or Difficulty. Nay, in Cases of such Weight or Difficulty, it was rather by Way of Adjournment from the Earl's Court to the King's in *Parliament*, except it were in Cases that related to the King's Person, Crown or Dignity, or such of his Officers, Ministers or Tenants (as in ancient Demefn, &c.) over whom he had an entire and absolute Jurisdiction.

*Britton*, who writ his Book in the Time, and by Command of *E. 1.* gives a much larger Authority to the Sheriff, in Cases of Nufances, than the Rule *supra*.

*Writs of Affise, and Vicontiel Writs in F. N. B. 154.*

And *Fitzberbert*, discoursing of these Kind of Writs, has shewn in what Cases a *Vicontiel* Writ of Nufance will lie, and where a Writ of Assise of Nufance (*i. e.* a Writ determinable before the King's Justices of Assise) must be brought, and thereupon cites these other Verses,

*Fossatum stagnum sepe via, & diversi cursus aquarum,  
Pescunt assisam, Mercatum, Feria, Bancum.*

(*i. e.*) Ditches, Ponds, Inclosures, Ways and Water-courses, Markets and Fairs require an Assise in the Bench (*i. e.* the King's Court).

But

But I shall first take Notice of his *Vicontiel* Writs of Nufance, which from what is before hinted, may be well supposed to be much elder than Writs of Assise.

*THE King to the Sheriff, &c. A. hath complained to us, that B. hath unjustly levied (erected) or abated (cast down) a certain House, or stopped up a certain Gorse (Gutter, &c.) in N. to the Nufance of, &c. in the same Town [or it may be to Persons in another Town] \* after the first Passage of the King into Gascoigne, and therefore we command thee that thou bear that Plea, and afterwards thereupon thou cause the same to be justly deduced (i. e. brought to an End) so that no more Clamor thereof we bear, for want of Justice. Witness, &c.*

A Vicontiel Writ of Nufance.

\* This was only to shew it done within the Time of Limitation.

And in the same Form there may be a Writ on erecting, prostrating, &c. of a Sheepfold, a Gate, a ———, a Mill, a Hogsty, a House of Office, or the like. And these Writs may be removed by the Plaintiff or Defendant, into the Common Pleas, by a *Pone*, on a Cause shewn, *viz.*

*THE King to the Sheriff, &c. Put at the Suit of the Plaintiff, the Suit which is in thy County by our Writ, betwixt A. and B. of a certain House erected (or cast down) in C. by the said B. unjustly erected (or totally cast down) as it is said, and summon, &c. (as in a Pone of Cattel, &c. in a Replevin.)*

A Pone thereon.

And it is said in the Register 199. If he who erected or prostrated a House, Wall, or the like, dies, he to whose Nufance it is, or his

Quod Permittat. See after.

his Heir, may have a *Quod Permittat* against the Heir of him who did the Nufance.

And in a Writ of Nufance the Defendant may have the View, and be effoined; and if he afterwards make Default, a Distress shall be awarded against him to answer, &c. and he shall not save his Default. P. 42 E. 3. 9. Q. 50 E. 3. 1, 2.

And if a Writ of Nufance be removed out of the County, and the Sheriff return that the Defendant hath not any thing, &c. the Plaintiff shall have Attachment and Distress, (*infinite*) but no other Process, &c. because it toucheth *Freehold*. But in an *Affise of Nufance*, the Process is as in a Writ of *Novel Disseisin*.

*Affise of Nufance respects Freeholds.*

It is said a Man shall have an *Affise of Nufance* for building of a House higher than his House, and so near thereto, that the Rain which falls upon the Defendant's House, falls upon the Plaintiff's House. But in this Case I conceive it is necessary to maintain the *Affise*, that the Plaintiff have at least a *Freehold* in his House. Q. 18 E. 3. 22. F. *Nufance* 1.

46 E. 3, 23.  
contra of a  
*Vicontiel*, &c.

For a Man shall not have an *Affise of Nufance* of a Way, &c. if it be not appendant or appurtenant to his *Freehold*; as if a Man build a House over a Way which I have to my House, or to the Church, there an *Affise of Nufance* lies; but a *Vicontiel* Writ of Nufance, I conceive, lies, though it be not appendant to any *Freehold*.

F.N.B. 1S5.G.

And if one levies a Nufance to the House of another, who has therein only an Estate, or Term for Years, there he shall not have an *Affise of Nufance*, but an Action of the

Case (or a *Vicontiel* Writ) because he has no Freehold in the House, or he may enter and abate the Nufance. *Q. F. Assise*, 437.

Also Parishioners may pull down a Wall which is set up to their Nufance, in their Way to the Church. See *F. N. B.* 185. B.

And if the Ways be streightned, or the Streets, Allies or Lanes in any City or Borough, or Town-Corporate, be rendred Noisome by any Filth or Dung, or such Things, by Means whereof any Infection may arise, then he who will sue, may have a Writ to have them cleansed, &c. in the following Form,

*THE King to his Mayor and Bailiffs of Oxford, greeting: Because, (forasmuch) as we have received (Information) by the Testimony (of Persons) worthy of Credit, That by (Reason of) Dung and Dunghills, and also Hogsties, and the frequent Access of Hogs, and many other Filthinesses, which exist (lie) in the Ways and Lanes of the foresaid Ville (City) and Suburbs of the same, the Air there is so greatly corrupted and infected, that the Masters and Scholars in the same abiding, and other Persons there conversing and passing through, are stricken with an abominable Horror (thereat) the Benefit of the wholsom Air is hindred (obstructed) the Estate of Men grievously hurt, and other intollerable Discommodities, and many Dangers from such Kind of Corruptions are known to arise, to the great Annoyance of the Master and Scholars aforesaid, and of other Persons there conversing and repassing, and the manifest Danger of their Lives. And we being unwilling such enormous and intollerable Faults*

*any*

*Note; this and the following are Instances mentioned in the foregoing Title.*

any further (longer) there to endure, command you that all the Streets and Lanes in the Ville (Town or City) aforesaid, and the Suburbs thereof, from the Dung and Dungbills, and other Filthinesses aforesaid, you cause to be cleansed, without any Delay, and (the same) hereafter to be kept cleansed, so that by the Corruptions or Filthinesses aforesaid, no Damage or Peril may (shall) for the Future happen to any, through your Default, whereby we ought to take it grievously at you (your Hands) as the Contemners of our Mandate (Command). Witness my self, &c.

And upon this Writ there may be an *Alias*, a *Pluries* and *Attachment*, if they do not cleanse them.

But *Fitzberbert* says, That for Villages in the Country which are not Corporate, this Writ does not lie. *Quere*, if there be a Bailiff, &c.

*Writ on the Stat. 12 R. 2. c. 13. against casting Dung, &c. into Ditches, &c. F.N.B. 176.*

Also there is another Writ in *F. N. B.* founded on the Stat. 12 R. 2. c. 13. commanding Proclamation to be made, That none do cast any Filth or Dung into Ditches or Rivers, near Cities or Boroughs; and if any do cast Dung, Filth or Intraills of Cattel into Ditches, Waters or other Places, which are near any City, Borough or Town, he who will may sue forth a Writ directed unto the Mayor or Sheriff, or Bailiff of such Town, &c. commanding them that they make Proclamation that none so do, and that they cause those who have so done, to remove and carry the same away from thence, *viz.*

THE King to his Bailiff of his Town of Newcastle upon Tine greeting: Whereas in the Stat. in a Parliament held at Canterbury, in the 12th Year of our Reign, it was (enacted) published, and is therein, among other Things contained, That Proclamation shall be made, as well within the City of London, as in other Cities, Boroughs, Towns and their Suburbs where it shall be necessary, as well within Liberties as without, That all those who have cast or put Dung, Garbage, Intraills, and (or) other Filth, into Ditches, Rivers, Waters and other Places, within, about and nigh to divers Cities, Boroughs and Towns of our Realm of England, and the Suburbs of the same, that the same (Filths) they totally remove and carry away before the Feast of, &c. under the Pain of 20l. to be paid to us, and that the Mayors and Bailiffs of every City, Borough and Town, and also the Bailiffs of Liberties, shall compel them to do this under the like Pain. And moreover, That Proclamation shall be made, as well in the said City of London, as in other Cities, Boroughs, Towns, and other Places above-named, That no Man, of what Condition soever, should thenceforth cast or put such like Annoyances, Garbage, Dung, Intraills and Filth into (any) Ditches, Rivers, Waters and Places aforesaid. And if any shall do this he shall be called before the Chancellor, by Writ at his Suit, who will complain thereupon (thereof); and if he be found Guilty\* thereof, he shall be punished at the Discretion of the Chancellor, as in the fore-said Statute is more fully contained. And now of the Part of our beloved in CHRIST, the

Note; this Proclamation was only to put the Stat. in Execution, which Stat. I take to be in Aid of the Common Law, by enlarging the Penalty, &c.

\* Which must be by Verdict of a Jury, as I apprehend. Sed Quare.

## Of Writs of Nufance.

*Prior and Brethren, &c. of the said Town of Newcastle upon Tine, We have understood that very many Men of the same Town, have cast and put Dung, Garbage, Intrails, and other Filth in a certain Way which leads near the Mansion of the foresaid Prior and Brethren in the same Town, to the Annoyance of him and them, and of others conversant and passing there, and manifest Peril of the said Town, and against the Form of the Stat. aforesaid; We willing that Statute inviolably to be observed, do command you, strictly injoining, that in the Town aforesaid, you cause to be proclaimed, That no Man, of what Condition soever he shall be, shall cast or put any Annoyances, Garbage, Dung, Intrails or Filth whatsoever, in the Way aforesaid. And that all and every Person who shall have cast or put (any) such Annoyances there, the same shall remove and carry away, without Delay, according to the Form of the Statute aforesaid. Witness myself, &c.*

And it seems that the Chancellor (after the Party is found guilty) may award Process against him, as an Attachment, &c. to make him come before him in the Chancery, and there punish him according to his Discretion. And it also seems, that he who is grieved by such a Nufance, may have an Action on this Stat. against him who did the Nufance, and recover Damages for the same Nufance. *Quære.*

But by *Fitzherbert*, it is a certain Rule, That if any Person does a Nufance to my House or Land, wherein I have an Estate or Term for Years, there I shall have an Ac-

tion on the Case against him ; and if it be done to my Freehold, Life, or in Tail, or in Fee, there a Writ of Assise of Nufance lieth. See before of what an *Assise of Nufance* lies.

*Writ of Assise of Nufance.*  
F.N.B. 183. I.

And if a Nufance is done in one County, and the Land to which it is done lies in another County, there ought to be several Writs of Assise of Nufance to each Sheriff, and a Patent to certain Persons to be Justices therein, as in an Assise of Common of Pasture, or Turbary or Rent, &c. And the Form of the Writ is,

GEORGE, &c. *To the Sheriff of S. greeting: A. hath complained to us, That B. unjustly, and without Judgment, hath made a certain Pool in C. in thy County, to the Nufance of the Freehold of the said A. in L. in the County of D. after the first Transfretation, &c. and therefore we command thee, That if the foresaid A. shall secure thee for prosecuting his Clamor, that then thou cause twelve Freemen of that Venue (Neighbourhood) to see (view) that Pool, and their Names to be imbreviated, &c. as below.*

And the other Writ directed to the Sheriff, where the Lands lie, to which the Nufance is, shall say, *To see (view) that Tenement ; so that the Jurors, where the Land is, shall view the Land, and the Jurors in the other County shall view the Pool, &c. and in both Writs, after imbreviated, add, And summon them by good Summoners, that they be before our faithful and trusty B. and F. and those*



*which to them we shall associate at a certain Day and Place in the Confine of the County aforefaid, &c. ready, &c.*

And the Form of the Patent or Commiffion thereon is thus:

F. N. B. 183.  
M.

GEORGE, &c. *To his beloved, &c. Know ye (or rather ye may know) That we have constituted you our Juftices of Affife, to take which B. hath arraigned before you, by our Writ against N. of a certain Pool made in C. in the County of S. to the Nufance of his Freehold in L. in the County of H. and therefore we command you, &c. That at a certain, &c. [fee before in the Commiffion of Oyer, &c.] in the Confine of the Counties aforefaid, which to this (Business) you shall appoint, you take that Affife, to do (therein) what belongs to juftice, faving to us, &c. For we have commanded our Sheriffs of the Counties aforefaid, That at a certain Day and Place, in the Confine of the Counties aforefaid, which you shall cause them to know, they cause that Affife to come before you to Recognize, &c. In Testimony of which we have caused thefe our Letters to be made Patent. Witness, &c.*

Alfo, if a Man has a Way to his Land or Houfe (of Freehold) and another ftops the Way, he fhall have an Affife of Nufance; and if the Way be in one County, and the Land, &c. in another, he fhall have a Writ into each County, and a Patent thereon, as aforefaid.

And the Form of the Writ may be thus:

GEORGE,

GEORGE, &c. A. hath plained to us, That B. unjustly, and without Judgment, hath streightened a certain Way in D. in thy County, to the Nufance of his Frank-tenement Freehold in C. in the County of H. after the first Trans-  
A Way.  
 fretation, &c. and therefore We command thee to summon twelve, &c. and that they view that Tenement, and their Names to imbreviate, and summon, &c. at a certain Day, &c. in the Confine of the Counties aforesaid, which the same Tenement (or Way) have viewed, &c.

Also one may have this Writ. *Why Unjustly, and without Judgment, another hath raised or cast down a certain (Bank) Ditch in N. to the Nufance of his Freehold in N. &c. or levied or cast down, or exalted, or de-exalted a certain Pool, &c. or stopped up or streightned a certain Way, or diverted a Course of Water in N. to the Nufance of his Freehold in B. with a Command to view that Ditch, Bank, Pool, Hedge, Way, Course of Waters, &c. and also the Tenement, &c. and their Names to be imbreviated, and summon, &c. as above.*  
Water-course, &c.

And the Patent or Commission thereon must be varied accordingly, viz.

THE King to his beloved, &c. Know ye, (or you may know) &c. the Assise to take, which A. &c. against B. of a certain Ditch, or Bank, levied or cast down, or of a certain Pool, exalted or de-exalted in N. or of a certain Hedge, levied or prostrated in O. or of a certain Way streightened or obstructed in, &c. and therefore we command you, &c. as above.  
The Commission.

And if one sets up a Fair or Market to the Nufance of another Man's Fair or Market, he to whose Nufance this is done, shall have a Writ for so doing; shall have a Writ returnable in the King's Bench, (Common Pleas) in this Form:

Quere if not  
in C. B.

Fairs and  
Markets.

*THE King to the Sheriff of S. &c. If A. shall make thee secure for prosecuting his Clamor, then summon, &c. B. That he be before our Justices at Westminster, &c. to shew (ostensur) why he levied a certain Market, or a certain Fair in J. to the Nufance of the Free Market, or Free Fair of him A. in the same Town, (or in another Town) after the first Transfretation, &c. (as he saith) and have thou there the Summoners, and this Writ. Witness, &c.*

Quod Permittat.  
See before in  
Ad quod  
Damnam.

Also there is another Form of Writ for the like Purpose, which is a *Quod Permittat*, viz. *The King to the Sheriff of, &c. command P. that justly, and without Delay, he permit the Bishop of L. to put down a certain Market (or Fair) in Uppingham, which P. of M. Father of the foresaid P. whose Heir he is, unjustly, and without Judgment [i. e. no Writ of Ad quod Damnum being issued, &c.] levied, to the Nufance of C. lately Bishop of L. Predecessor of the foresaid Bishop in Luddington (as he saith) and unless he shall do (so) and if the foresaid Bishop shall make thee secure for prosecuting his Clamor, then summon the foresaid P. that he be, &c. to shew why, &c.*

F. N. B. 184.  
& vide ibid.  
125. A.

And Fitzherbert says, Such a Writ was granted by the Chief Justice and Clerks of the

the Chancery, whereby it seems a Man may, by a *Quod Permittat*, &c. disturb or restrain another from having or keeping a Fair or Market, to the Nufance of his Fair or Market.

And seeing I am incidently fallen upon this Writ of *Quod Permittat* (that he permit) I hope the Reader will permit me a few Words to shew the Nature and Forms of it, and in what Cases it will lie, or not.

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## Of the Writ Quod Permittat, (That he permit.)

*In what Cases it lies.*

*On a Disturbance of his Common, &c.*

*Nuisances, Fairs, &c.*

*1. In the County.*

*F. N. B. 123. G.*

*27 H. 8. 12.*

IT appears from divers Precedents in the Register and *Fitzb. Nat. Brev.* That this Writ lies where a Man is disturbed of his Common of Pasture, Turbary, Fishery, or reasonable Estovers against a Disseisor of a Disseisin made to the Plaintiff or his Ancestors, by a Defendant or his Ancestors. But *Fitzberbert* says, not in other Degrees; because in that Case he ought to have a Writ of Right in the *Debet* and *Solet* (he ought and used) *Quere.*

It also lies to permit his Tenants, &c. to do Suit at his Mill. So to permit one to reduce a Water-course, to remove a Nuisance, as a House, Wall, or the like. So where a Market or Fair is erected to my Nuisance, as aforesaid.

And note; This Writ may be sued by a *Justicies* in the County, or it lies in *C.B.* and if I am disturbed by a Stranger from using my Common, the Form by *Justicies* is thus:

*THE King to the Sberiff, &c. We command thee that thou Justice A. (i. e. adjudge A.) That justly and without Delay, he permit B. to have Common of Pasture in N. for one hundred Sheep (or one hundred Oxen, &c.) which he ought to have as it is said, as he (the Plaintiff) can reasonably shew that he (the Defendant) ought to permit, That no more Clamor thereof we bear for Default of Justice. Wit- nels*

# Of the Writ Quod Permittat. 57

ness myself, &c. [Or it may be] That A. Common permit B. to have Common of Pasture (without Number) in 100 Acres of him A. [Or thus] Common of Pasture in the Lands of him A. which therein he ought to have, as it is said, &c. sans Number.

And the Rule in the Register is, when Common of Pasture is claimed in the Land of any Person certain, the certain Number of the Cattle are not put in the Writ; for the Sheriff is to adjudge the Number according to the Evidence given, or it may be it is sans, or without Number.

But the Form in the Common Pleas is *2. in C. B.* thus:

THE King to the Sheriff, &c. Command A. Common of Pasture and Estovers. That justly, and without Delay he permit B. to have Common of Pasture in N. (and Estovers) in forty Acres of Wood, which he ought to have (and use) as it is said; and unless he shall do it; and if the said B. shall make thee secure of (for) prosecuting his Claim, then summon A. by good Summoners, &c.

And there is another Form for Common Appendant (which is in Nature of a Writ of Entry on a Disseisin of his Ancestor) thus: Common Appendant.

THE King to the Sheriff, &c. Command A. that justly, &c. he permit B. to have Common of Pasture in N. which belongeth to his Franktenement (Freehold) in the same Township, Ville (or in another Ville, naming it) which the same A. or the Father, &c. of the fore-said

## Of the Writ Quod Permittat.

*said A. whose Heir he is, unjustly, and without Judgment, disseised R. the Father of the foresaid B. whose Heir he is, after the first Passage of the Lord Henry, Son of King John, into Gascoign, as it is said; and unless, &c.*

And in Gros.

[But if it be Common in Gros, then these Words as belong to his Freehold, &c. are to be omitted.]

And the Form for a *Free Fishery* is thus:

Free Fishery.

F.N.B. 123.1.

*Command A. That, &c. he permit B. to have free Piscary (Fishery) in the Water of him A. N. (or in the Water in N. &c.) which in it he ought and useth to have as it is said; and unless, &c.*

Also a Parson, &c. may have a *Quod Permittat* of the Seisin of his Predecessor thus:

For a Parson, &c.

*Command A. That, &c. he permit B. Parson of the Church of C. &c. to have Common of Pasture in N. of which F. sometimes (formerly) Parson of C. aforesaid, was seised, as in the Right of his Church aforesaid, the Day in which he died, as it is said; and unless, &c.*

And thus a Right to any Kind of Common, as Pasture, Fishery, Estovers, Turbary, &c. may be laid in a *Quod Permittat*; and it is said F. N. B. 124. A. in the End of the Paragraph, That a Man shall not have a *Quod Permittat* of reasonable Estovers in a Wood, or in a Turbary, or in a Heath, and the like; (*Quere*) for this seems to be meant only where

*Quere.*

# Of the Writ quod Permittat. 59

where the Wood, Heath, &c. are not certainly shewn. F. N. B. 124.

Also a Man might formerly have a *Quod Permittat* against a Lord of a Manor, &c. commanding him to permit his Villeins (or Copyhold Tenants) to do Suit to the Plaintiff's Mill, &c. where it accrued by Usage or Prescription, as—*Command A. That, &c. he permit his Villeins (or Copyholders) of his Manor, &c. of C. to make Suit to the Mill of B. &c. and unless, &c. and if the foresaid B. shall make thee secure, &c. then summon, &c.*

*Against a Lord, &c. to permit his Tenants.*

And there is another Writ in F. N. B. in the ensuing Form,

*Command A. that he permit B. to grind his own demesne Corn of N. (i. e. as I conceive growing on his Farm of N.) at the Mill of him A. in N. quit of Multure, which at the same Mill he ought and useth (so) to grind, as he saith; and unless, &c. Or command A. That, &c. he permit B. to draw Water at the Well of him A. in N. as at that Well he ought, and useth to draw, as he saith. Or that he permit B. to water his Flock at the Water of him A. in N. as at that to water he ought, &c. Or that he permit B. to have (the Use of) his free Bull in N. as he ought, &c. Or that he permit B. to have a certain Way over the Land of him A. in N. which, &c. Or to have his Free-foldage in his the Defendant's Demesne Lands in L. which he ought and useth to have, &c. Or that he permit him to have free Passage over the Water of Humber, in the Ship (Ferry-boat, &c.) of him A. which in it he ought and useth to have, as he saith, &c. and unless, &c.*

*To grind at his Mill, &c.*  
*Water his Flock. &c.*  
*Free-foldage.*  
*Water Pas-*

It



*A Corrody.*

It also lies for a Corrody. See the Writ F. N. B. 124. A. and see there for divers other Matters.

*To remove a Nufance.*

Also, if a Man build a House or Wall, or other Thing which is a Nufance to the Freehold of another, and dies, he to whose Nufance it is shall have a Writ of *Quod Permittat* against the Heir of him who did the Nufance, in this Form, *viz.*

*Command A. That justly and without Delay, be permit B. to prostrate (cast down) a certain House or a certain Wall or Hedge, or Mill, or Ditch (Bank) in the Ville of D. &c. which R. the Father, or other Ancestor of the foresaid A. whose Heir he is, unjustly and without Judgment (i. e. on an Ad quod Damnum, &c.) levied to the Nufance of the Frank-tenement (Freehold) of C. the Father, or other Ancestor of the foresaid B. whose Heir he is, in the same Ville (Town) or in another Ville, &c. after the first Passage, &c. as it is said; and unless he shall do it, and if B. makes thee secure, then summon, &c. Or thus, That justly, &c. be permit B. to exalt (raise) or de-exalt (lower) a certain Pool (rather a certain Dam) which the foresaid A. hath unjustly raised or lowered to the Nufance of his Frank-tenement in N. &c. (Freehold) Or to the Nufance of the Freehold of C. the Father of the foresaid B. &c. Or That, &c. be permit B. to reduce the Course of a certain Water in L. &c. to its right and ancient Course, which C. the Mother of A. whose Heir he is, diverted, &c. Or That, &c. be permit B. to open a certain Way in N. which C. the Father of the foresaid A. whose Heir he is, unjustly, &c. stopped up (or streightned,) &c.*

*Note; Parishes were unknown to the Common Law; and therefore in all Writs, the Place where, is always said to be a Ville or Township. See before, &c.*

Also

Also if one levied on his own Land, a Nufance to another's Freehold, and he to whom the Nufance was done made a Feoffment in Fee of the Land *to which*, &c. and he who did the Nufance made a Feoffment of the Land *in which*, &c. yet the Feoffee of him to whom, &c. might have a Writ against the Feoffee of the other, to reform that Nufance, thus:

*Command A. That, &c. he permit B. to widen a certain Way in the Ville of N. &c. which the foresaid A. unjustly and without Judgment streightned, &c.*

And note a *Quod Permittat* of a Fair or Market sued in C. B. is thus:

*THE King to the Sheriff, &c. (See Bro. Tit. For a Fair, Demand 43. To the Bailiff, &c.) If A. shall make thee secure, &c. then summon, &c. B. That he be before our Justices, &c. to shew why he hath set up a certain Market, or a certain Fair in N. to the Nufance of the Free Market (or Free Fair) of him A. in the same Town (or in another Town) after the first Passage, &c. as he saith, and have thou there the Summoners and this Writ. Witness myself, &c.*

And the like Writ lay against the Heir, where the Father or other Ancestor levied the Fair or Market, or for the Heir against him or his Ancestor, who levied the Nufance.

And so I conceive an Action on the Case ought to lie at this Day, by or against the Heir for a Nufance done by or to the Ancestor, especially for that Writs of Nufances, *Quod Permittat*, *De Curia claudenda*, *Reparatione faciunda*, are now wholly turned into Actions of Trespass, on the Case, &c.

Of the Writ De Curia Claudenda, of inclosing his Court (Land) and for repairing Hedges, &c.

F. N. B.  
127. G.

HAVING in the precedent Section mentioned the several Writs of *Curia Claudenda* and *Reparatione facienda*, it may be proper in this Section to give you the Forms of either, especially for that they both bear some Analogy to such Writs as we have formerly discoursed of, touching *Nusances*, &c.

De Curia  
Claudenda,  
*where it lies.*  
2 H. 4. 11.

The Writ *De Curia Claudenda* lies where one ought to enclose his Land (Curtilage, Garden, &c.) from that of his Neighbour, and will not do it, and may be sued either by *Justicies* before the Sheriff in the County, or in the *Common Pleas*.

If the Writ be sued before the Sheriff, the Form is thus:

By Justicies.

*The King to the Sheriff, &c. Justice A. (i. e. compel A. by a Course of Justice) that he justly and without Delay inclose his Ground (Curtilage, &c.) in N. which open is, to the Nuisance of the Franktenement of B. in the same Town (or in another Town, &c.) which he ought and useth to inclose, as he saith, as he can reasonably shew That that he ought to inclose; that no more Clamor thereof we here for Default of Justice, &c.*

It lies only of  
a Freehold,  
&c. F. N. B.  
128.

See *Fitzb. Curia Claudenda* 5. and *Long* 5to E. 4. 100. that it ought to be in the *Debet & solet*, and yet a Tenant for Life shall have the Writ. And by *Long* 5to E. 4. 118, 119. one may have this Writ before he be damnified, *quia timet*. But

But a Tenant for Years shall not have it, nor any other who has not a Freehold. Nor does it lie but against him who hath a Land adjoining to the Plaintiff's Land, &c. and therefore a View lies therein.

Also if a Man has Common in a great Waste to him and his Heirs, or for Life, &c. and he who has the Land adjoining ought, but will not inclose, and his Cattle enter into the Waste, &c. yet the Commoner shall not have this Action for the Damage (tho' he may distrein the Cattle doing Damage on the Land which is his Common.) For this Writ supposes (suggests) it to be to the Nuisance of the Plaintiff's Freehold, which proves that the Plaintiff ought to have the Freehold of the Soil adjoining, if he will have this Action.

*Not for a  
Commoner.*

This Writ may be removed out of the County into the *Common Pleas* (by *Pone*, &c.) at the Plaintiff's Suit without Cause; but if the Defendant removes it he must shew Cause in the Writ of Removal; and in the End of the said Writ shall be this Clause, *viz.* *Let Execution be made of this Writ if the Cause be true, otherwise not.*

*Removal into  
C. B.*

And the Form of a *Curia Claudenda* in C. B. is thus:

*The King to the Sheriff, &c. Command A. that justly and without Delay he close his Ground, &c. in N. which is open, to the Nuisance of the Freehold of B. &c. as above, to be ought and useth to inclose; and unless he so do, and if A. makes thee secure, &c. then summon, &c.*

*Form of the  
Writ in C. B.*

**And**

*Process.*

And the Process in this Writ is Summons, Attachment and Distress. And if the Defendant appears and afterward makes Default, a *Distringas* shall go in the Place of a *Petit cape* (little Take) &c. and if he make Default at the Day of the Return of that Writ, the Plaintiff shall have a Writ to inquire of Damages, and also a Writ to distrein the Defendant to make the Reparations, &c.

*Judgment by Default, and Writ of Inquiry, &c.*

*The Court.*

In the Count or Declaration on this Writ, the Plaintiff ought to shew the Certainty of his Land, &c. adjoining to the Defendant's Land, and also the Certainty of the Defendant's Land adjoining thereto, which he ought to inclose, and likewise to alledge (aver) a Prescription of Inclosure, *i. e.* that the Defendant, &c. ought, and Time out of Mind have used to inclose. See the Book of *Entries*, fo. 32. For if it be by Indenture or Composition, &c. he shall be put to his *Writ of Covenant*, &c.

*Prescription.*  
22 H. 6. 8.  
*acc.*

*Plea.*

*Note*; by 27 H. 6. (*quære* 22 H. 6. 7, 8, 9.) *Non-Tenure*, or that the Plaintiff (or Defendant) is not Tenant of the Land, is a good Plea in a *Curia Claudenda*.

*Judgment.*

And by *Fineaux* 16 H. 7. 9. the Judgment therein is to recover the Inclosure and Damages.

Of the Writ De Reparatione facienda,  
(Of making Reparation.)

**T**HIS Writ (says Fitzherbert) lies in divers Cases. One Instance whereof is this: If there are three (or more) Tenants in Common, or Jointenants, or Tenants *pro Diviso*, as Parceners, &c. of a Mill, or of a House, &c. which falls to Decay, and one of them will repair, but the others not, he who would repair shall have this Writ against the rest: And the Form thereof in C. B. is thus: Where it lies.  
F. N. B. 127.

*The King to the Sheriff, &c. If A. shall make thee secure, &c. then summon, &c. B. and C. &c. that they be before our Justices, &c. such a Day, (i. e. the Return) to shew why, Whereas the same A. B. and C. &c. do hold a certain Mill in N. for individed (or as Tenants in Common, or as Parceners, &c.) and they do thereof take (receive) by equal Portions the Issues (from) thence provenient (arising) and to the Reparation and Sustentation of the same Mill are (equally) bound; and the same B. and C. &c. although they take (receive) the Portion of those Issues to them (respectively) coming, do (yet) notwithstanding, refuse to contribute to the Reparation or Sustentation of the foresaid Mill, to the no small Damage and Grievance of him the said A. as he says. And have (thou) there the Summoners and this Writ. Witness my self at Westminster, &c.* The Writ.  
  
For a Mill  
out of Re-  
pair.

F

And

*A House in  
Decay, &c.*

And if a Man have a House adjoining to my House, and he suffer his House to lie in Decay, to the Annoyance of my House, I may have this Writ commanding him to repair his House, &c. in this Form:

*The King, &c. Command A. &c. that justly and without Delay he cause to be repaired a certain House in N. which threatens falling, to the Nuisance of the Freehold of B. in the said Town, &c. which he ought and hath used to repair as he saith, &c. and unless he so do (and if B. makes thee secure, &c.)*

*A Bridge.*

So if I have a Passage over a Bridge which another ought to repair, who suffers the same to fall to Decay, I may have this Writ against him thus:

*Damm,  
Wall, &c.*

*The King, &c. Command A. &c. that justly &c. he (together with B. and C. his Coparceners) cause to be repaired a certain Bridge or a certain Pool (Damm) in N. which (with them) he ought and hath used to repair, as he (i. e. the Plaintiff) saith (or it may be read, ut dicitur as it is said) and unless, &c. (as above) And so it may be, of a certain Bridge, Pool or Damm which is fallen down, broken up, &c. to the Nuisance of the Freehold of B. in the said Town, which to make (erect, uphold, &c.) he ought and hath used, &c. And so it may be of the Ditches (Banks) Walls in N. which are thrown down to the Nuisance of the Freehold of B. and C. &c. which with them, he ought and hath used to repair, &c.*

F. N. B.  
127. E.

And if any Bridge, or Wall, or Sewer be *Publick Nuisances*, broken, to the Annoyance of the Country, on a Surmise made thereof by any Person in the Chancery, and that certain Persons ought to repair the same, he may have a Writ to the Sheriff to distrein such Persons (as are found ought) to repair it. And it appears by the Register, that the King shall send his (Writ or) Commission to the Sheriff, first to inquire who ought to make or repair such Bridge, and then to distrein them for that End. But by 28 E. 3. c. 9. no Commission shall be to the Sheriff to take an Indictment, &c. See the Statute.

And (on an Inquisition found and returned) the King may send unto the Sheriff to distrein those Persons who ought to make or repair such a Way, Cawsey or Pavement, and upon it an *Alias, Pluries* and Attachment, if it be not done; and if the Bridge or Way, &c. be in the Confine of divers Counties, there shall be several Writs to the several Sheriffs to distrein those in their (respective) Bailiwicks, that they with the Men of the other Counties shall make and repair the Bridge, Way, &c.

And *Fitzherbert* here cites another Writ *Ibid. F.* from the Register in this Form, *viz.*

*The King to the Mayor and Sheriffs of A. Greeting. On the Part (Behalf) of W. it is shewn unto us, That whereas he hath a certain Cellar with the Appurtenances in the foresaid Town of A. and J. has a certain Cellar, Solar with the Appurtenances, in the same Town, above the foresaid Cellar; which (Solar) is thrown (fallen) down and broken, to the Nuisance of*

Writ to the Mayor and Sheriffs, &c. of a Town.



*the Cellar of him W. and by the foresaid J. according to the Custom of the Town aforesaid, it ought to be repaired; yet the same J. refuseth to repair that Solar, as he saith (or as is said) to the grievous Damage of W. and against the Custom aforesaid; and because we will not that the same W. be injured in this Part (Particular) we command you, that having called before you the Parties, and heard severally their Reasons, you cause a speedy and due Accomplishment of Justice to be done to the same W. according to Custom, &c.*

And hereupon the Mayor and Sheriffs, or Bailiffs, &c. shall proceed and award Process against the Parties, &c. but yet I take it they ought to try both the Fact and the Right by a Jury. *Quere.*

---

Of the Writ De Leproso amovendo,  
(of removing a Leper,) &c.

AS the former Writs are for preventing or *Nature of*  
remedying publick or private *Nuisances*; *the Writ.*  
so this Writ *De Leproso amovendo* is for pre-  
venting a publick *Mischief* that may arise  
from any Person, who being tainted with an  
infectious Disease frequents Places of publick  
Assemblies, and lies (as I apprehend) in  
Cases of other infectious Distempers, as well  
as *Leprosy*.

And here we may observe that singular *The Reason*  
and especial Regard the Common Law had *thereof.*  
to the Safety and Security of the Peoples  
Lives and Health, by constituting this Pre-  
ventive and Preservative Writ, as a chief  
Means under God against the spreading of  
any Infection; which tho' it be not remedial  
nor issued in Pursuit of Damages, yet by the  
Words thereof it appears to be a Writ of *A Writ of*  
Right, and which the King was bound *Ex Right.*  
*debito Justitie* to issue.

This Writ (says *Fitzherbert*) lies where a *Where it lies.*  
Man is a Lazar or Leper, and dwelling or *F. N. B. 234.*  
residing in any Town, will come to Church, *D.*  
(&c.) or will go among his Neighbours (or  
other People) where they are assembled, to  
talk (or converse) with them to their An-  
noyance and Disturbance; then he or they  
(who are so annoyed) may sue forth this  
Writ to remove him from their Company,  
and the Form thereof is thus:

The Form.

*The King to the Sheriff and Mayor (Note the Sheriff here takes Place of the Mayor) of London, Greeting. Because we have received (Information) that J. of N. is Leprous (&c.) and yet commonly converseth among the Men (People) of the City aforesaid; and refuseth to be transferred, or to transfer himself to some solitary Place as the Manner is and to him belongeth (to do) to the grievous Damage of the Men (People) aforesaid, and to the manifest Danger (of their Lives) by Reason of the Contagion of the Disease aforesaid. (Now) We being willing (precavere) to foreguard against such Peril, as to us it belongeth (or as 'tis our Duty) and that what is just and customary (usual) should be done in the Premisses, do command you, that taking with you some discreet and lawful Men of the foresaid City, not suspected (of Partiality, &c.) who have the better Knowledge (both) of the Person of the said J. N. and (also) of such Disease, ye go to him (the said) J. and in the Presence of the aforesaid Men, cause him diligently to be viewed and examined. (i. e. by searching his Body, &c.) And if ye shall find him to be Leprous, (&c.) as is aforesaid, then ye cause him in the honestest (or most creditable) Manner ye can, to be removed from the Communication of the foresaid Men (People) and that ye cause him to be transferred (carried) to some solitary Place without Delay, and him to inhabit there as the Manner is, lest by such his common Conversation, any Damage or Peril may in any wise come (happen) to the Men (People of the City) aforesaid. Witness my self, &c.*

v

—And

And hereupon may issue an *Alias, Pluries* and *Process thereon*, Attachment against the Mayor, or him to whom the Writ is directed.

But it seems, tho' a Man be a Leper, &c. *Where it lies* yet if he will keep himself within his House, *not* and does not publickly converse with his Neighbours, &c. this Writ will not lie to remove him out of his House.

Also it seems there are divers Sorts of *Lepers, &c.* but this Writ lies only for those who appear upon the Sight of all Men that they are *Lepers, &c.* by their Voice, their Sores, and the Putrefaction of their Flesh; and by the Smell of them. But for those who are infected with that Disease, and it doth not outwardly appear upon their Bodies, *Quære* if this Writ will lie to remove them.

*Quære* also the Statute *Temp. Geo. 1.* for removing Persons infected with the Plague. But note; if a Man on Pretence of the said Disease, or for any other Cause, be eloynd or removed from the Converse and Society of his Friends and Acquaintance; if such Removal or Eloynement be without the King's Writ, &c. a *Homine Replegiando* lies; of which *perceaster*.

Of the Writ Ne exeat Regno, (That he go not out of the Kingdom.)

See F. N. B.  
85. Registr.

ALTHOUGH this Writ is not to be found by the above Title either in the Register or F. N. B. yet they both have the Form and Substance thereof under another Title, *viz.* *De Securitate invenienda, quod se non divertat ad partes externas sine Licentia Regis, i. e.* a Writ to find Security that one would not go to Foreign Parts without the King's Licence: Whereupon *Fitzberbert* thus remarks.

Dyer 163.

*The King may restrain his Subjects from leaving the Kingdom.*

By the Common Law every Man may go out of the Kingdom to merchandize, or for any other (lawful) Cause at his Pleasure, without the King's Leave, and shall not be punished for so doing. But because every Man is of Right (bound) to defend the King and his Kingdom, therefore the King may at his Pleasure, by his Writ, command any Man (Subject) that he go not beyond the Seas, or out of the Kingdom without Licence. And if he do the contrary, he shall be punished for disobeying the King's Command.

1. By Writ.

And it seems this Command may be signified either by Writ under the Great Seal, or by the Privy Seal, or by the King's Signet. For by the Law the Subject is bound to take Notice of every of the King's Seals in such Cases (as are lawful) as well as of the Great Seal.

And there are two Modes or Forms of such Writs, *viz.* one directed to the Party himself. (*Quære* if this is not usually by Privy Seal,

Seal; and if so then 'tis no Writ.) But the other is directed to the Sheriff, commanding him to find Security, that the Party go not out of the Kingdom without the King's Licence.

The Form of the Writ to the Party is thus:

*The King, &c. to J. of B. Greeting. Be- To the Party.*  
*cause we are given to understand that thou hast privately destined (designed) to divert (transport) thy self to the Parts beyond Sea without our Licence, and hast intended there to prosecute many Things prejudicial to us and our Crown, in Contempt and Prejudice of us, and against our Proclamations and Inhibitions often made thereupon: (Now) We being willing to meet with (obviate) such Contempt and Prejudice, do forbid thee strictly, under the Peril incumbent, That thou divertest not thy self in any Manner towards the Parts beyond Sea, without our special Licence; nor that thou dost attempt to prosecute or cause to be attempted any thing there, which may in any Manner fall out (happen) to our, or our said Crown's Prejudice, nor send any Person thither for that Cause. Witnesses my self, &c.*

The Form directed to the Sheriff is thus:

*The King, to the Sheriff of S. Greeting. Be- To the Sheriff.*  
*cause we are given to understand, that A. B. Clerk, purposeth to pass over towards the Parts beyond the Sea, (foreign Parts) there to prosecute very many Things prejudicial and hurtful to us and many of our People: We willing his Malice to resist in this Part (Particular) do command thee firmly injoyning, that thou cause*  
*the*

This proves the Practice of the Clergy of those Times.

*the foresaid A. B. to come corporally (personally) before thee, and him to find sufficient Mainperors, who him will mainprize under a certain Pain upon them, by thee to be reasonably imposed, for which thou wilt answer to us, &c.*

*Or thus: And compel him A. B. to find sufficient Sureties under the Pain of 100 l. (on every of them) to be paid to our Use, that he without our special Licence will not divert himself towards foreign Parts; nor that he there presume to prosecute, or cause to be prosecuted or attempted, which may fall out (avail) to our Contempt, or the Prejudice or Damage of our People, nor any Person or Persons send thither in any Manner for that Cause (Purpose). And if before thee he shall refuse to do this, then commit him A. B. to our next Gaol, to be safely kept in the same, until he will do this gratis (freely). And when that Security thou hast so taken, do thou distinctly and openly under thy Seal, certify us thereof into our Court of Chancery without Delay, or (otherwise) ascertain us without Delay, remitting to us this Writ. Witness my self at Westminster, &c.*

*Directed to  
Justices of  
Peace, &c.*

And this Writ may be directed to Justices of Peace, or unto the Sheriff, or unto both; and the Form may be as the Writ of *Supplicavit* (See the next Title) which is directed to the Sheriff and Justices of the Peace, to cause the Party to find Sureties, &c.

*How sued.*

And any Man, on a Surmise made to the Chancellor, may sue forth this Writ for the King: But then the Party, against whom 'tis sued, may come into Chancery and obtain a Licence by Letters Patent, or by Letters of Licence

Licence under the Privy Seal or the Signet; and such Licences in that Case are good, tho' they are not under the Great Seal, because such Letters will excuse his Contempt against the King. And such Licences are called Pass-ports.

But I conceive, if this Writ be issued at the Suit of a Subject in order to secure a Debt or Duty due to such Subject, which is now become usual, and in that Case is a Writ of Right, there the King cannot, by any Letters of Licence under the Privy Seal or Signet, dispense with the Command of the Writ, for that would be to do *Wrong*, which the King cannot do.

*Not to be superseded, &c.  
Note.*

And note; by Stat. 5 R. 2. c. 2. no Person is to pass out of the Realm without the King's Leave, except such as are mentioned in the Statute, upon which Statute that Opinion in *Dyer* seems to be founded, and which *Fitzherbert* has transcribed, *viz.* That the King by Proclamation may inhibit his Subjects, that they go not beyond Sea, or out of the Realm, without Licence; and this without sending any Writ or special Commandment to his Subject. For perhaps he can't find his Subject, or know where he is; and therefore the Proclamation is a sufficient Restraint in it self; and if a Subject does contrary thereto, it is a Contempt, and punishable to the King.

*B. 5. R. 2. c. 2.  
The King  
may restrain  
by Proclama-  
tion.*

*Dyer 296.*



*The Return of a Ne. exeat Regno (let him not leave the Kingdom) as translated from the new Returna Brevium, is thus.*

Warwick  
Session.

See the new  
Ret. Brev.  
pag. 28.

Kitch. 274.b.

Dalt. 298.

Wilk. 559.

Before the Coming of this Writ, and before any Execution of the same, *A. B. C. D. E. F.* and *G. H.* came before me *J. D.* Sheriff of *W.* and became Manucaptors before me the foresaid Sheriff for *L. M.* to wit, each of the Manucaptors aforesaid, under the Penalty of 10*l.* That the same *L.* on this Side of the Morrow of Souls next coming, shall not divert (pass) towards transmarine Parts for prosecuting or attempting any Prejudice or Damage there to the said Lord the King, or to any of the People of the said Lord the King: Nor shall prosecute (pursue or contrive) any thing there, that may turn to the Prejudice or Damage of the said Lord the King, or of his People, or to the overturning of the State of the Kingdom: Nor will send any (Person or Persons) thither for this (that) Cause. Which said Sum of 10*l.* the same Manucaptors have granted, and every of them for himself doth grant, to be levied of their Lands and Chattels to the Use of the said Lord the King, if the same *R.* shall do, or cause to be done, or attempt in any Manner, any thing against the Form of the Manucaption aforesaid. And this is the Tenor of the Security whereof within Mention is made; which unto the said Lord the King in his Chancery at (the Day and Place) &c. I (humbly) send.

Of Writs for Security of the Peace,  
Supplicavits, &c. and of the Sher-  
riff's Authority in executing them.

HAVING in the foregoing Section menti-  
oned a *Supplicavit*, which is a Writ is-  
sued out of Chancery, for keeping of the  
Peace, I think it proper here to treat of that  
Writ; but shall, in the first Place, premise  
a few Words touching other Writs, *De se-  
curitate Pacis* (of Surety of the Peace) *i. e.*  
such as lay at Common Law; for the *Sup-  
plicavit* was given by Stat. 1 E. 3. c. 6. *vide*  
*infra*.

*Surety of the  
Peace at Com-  
mon Law.*

*Supplicavit  
by Statute.*

The Writ for Surety of the Peace at Com-  
mon Law, lay where-ever a Man was in Fear  
or Doubt that another would beat or assault  
him; and now properly lies where one Man  
threatens another to kill him, beat him, or  
assault him; then may he come into Chance-  
ry, and pray to have this Writ, which being  
founded on the Common Law, must be di-  
rected to the Sheriff, and in this Form,

*Where the Writ  
at Common  
Law lies.*

F. N. B. 79.

*THE King to the Sheriff of Lincoln, greet-  
ing: Because A. of B. hath grievously com-  
plained to us, that C. of D. manifestly Mena-  
ces (threatens) him of his Body, We com-  
mand thee that thou cause the foresaid A. to  
have our firm Peace from the foresaid C. ac-  
cording to the Custom of England, so that thou  
be secure that Damage or Peril shall not hap-  
pen to the said A. of his Body, by the said C.  
or by his Procurement. Witness myself, &c.  
[Or it may be] For that C. had manifestly  
threatned*