

2 Inst. 139.
Glanvil, lib. 12. c. 12.
Marlbr. cap. 21.
W. 1. c. 16, 17. W. 2. c. 39.

Doc. Pla. 314.
21 H. 6.
Return de Vic. 17.
Post 161. a.
[a] W. 2. cap. 2.

F. N. B. 68.

[b] 33 E. 3. Replev. 43.
42 E. 3. 18. 9 H. 6. 25.
F. N. B. 69. F. 6 H. 7. 9.
19 E. 3. Replev. 32.

[c] 42 E. 3. 18. 11 H. 4. 17.
23. 47 E. 3. 12. 43 E. 3. 20.
7 H. 4. 17.
Ante 118. b.
2 Rol. 430. Plow. 524.
Marlbr. cap. 22.
[d] 30 E. 3. 22. 31 E. 3.
Replev. 35.
7 H. 4. 26. 28. 31 H. 6.
Prop. prob. 5.
21 E. 4. 64.
21 E. 4. 66.

F. N. B. 77. e.
[e] 11 H. 4. 4.
34 H. 6. 47.

5 Co. Pilkington's Case.
f. 76.
31 E. 3. Gage Deliver. 5.

Braet. lib. 4. f. 233. a. & b.
Dr. & Stud. 130.
Post 282. b.

23 E. 3. 92.
34 H. 6. 37. 2 E. 4. 23.
Regist. fol. 133.
W. 1. cap. 11.
F. N. B. 66. b.
Doc. Pla. 315.

¶ Son Replegiare. Littleton spake immediately before of un brief dannuity, but here he saith, Son Replegiare, because Goods may be replevied two Manner of Ways, viz. by Writ, and that is by the Common Law, or by the Plaintiff, and that is by the Statutes, for the more speedy having again of their Cattle and Goods. A Replegiare lieth, as Littleton here teacheth us, where Goods are distrained and impounded, the Owner of the Goods may have a Writ De replegiari facias, whereby the Sheriff is commanded, taking Sureties in that Behalf, to redeliver the Goods distrained to the Owner; or upon Complaint made to the Sheriff, he ought to make a Replevy in the County. Replegiare is compounded of Re and plegiare, as much as to say, as to redeliver upon Pledges or Sureties; and in the Statute of Marlebridge, Deliberare is used for Replegiare. [a] And the Sheriff ought to take two kind of Pledges, one by the Common Law, and they be plegii de prosequendo, and another by the Statute, viz. Plegii de retorno habendo. Vide Sect. 58. what Things may lawfully be distrained, whereupon a Replegiare may be sued. The Forms of the Writ you shall read in the Register and F. N. B.

It is a general Rule, That the Plaintiff must have the Property of the Goods in him at the Time of the Taking. [b] But yet if the Goods of a Villein be distrained, the Lord of the Villein shall have a Replevy, because the Bringing of the Replevy amounts to a Claim in Law, and vests the Property in the Plaintiff. But in that Case, if the Goods of the Villein be taken by a Trespass, the Lord shall have no Replevy, because the Villein had but a Right. [48]

[c] But there be two Kind of Properties: A general Property, which every absolute Owner hath; and a special Property, as Goods pledged or taken to manure his Lands, or the like: And of both these a Replegiare doth lie.

And albeit it be provided by the Statute of Marlebridge, cap. 22. quod vicecomes post querimoniam inde sibi factam, ea sine impedimento vel contradictione ejus qui dicta averia ceperit deliberare possit, &c. [d] yet where the Defendant claims Property, the Sheriff cannot proceed: For it is a Rule in Law, that Property ought to be tried by Writ. And therefore in that Case where the Trial is by Plaintiff, the Plaintiff may have a Writ De proprietate probanda directed to the Sheriff to try the Property; and if thereupon it be found for the Plaintiff, then the Sheriff to make Deliverance; (for so be the Words of the Writ) and if for the Defendant, he can no farther proceed, but that is but an Enquest of Office: And therefore, if thereby it be found against the Plaintiff, yet he may have a Writ of Replevy to the Sheriff; and if he return the Claim of Property, &c. yet shall it proceed in the Court of Common Pleas, where the Property shall be put in Issue and finally tried. And the Sheriff may take a Plaintiff upon the said Writ out of the County, and make Replevin presently, for it should be inconvenient for the Owner to forbear his Cattle till the County-day.

[e] It is to be noted, That a Man cannot claim Property by his Bailiff or Servant: [49] And the Reason is, for that if the Claim fall out to be false, he shall be fined for his Contempt, which the Lord cannot be, unless he maketh Claim himself; for Nemo punitur pro alieno Delicto.

In a special Case a Man may have a Replevin of Goods not distrained; as if the Mesne put in his Cattle in Lieu of the Cattle of the Tenant paravail, that he is bound to acquit, he shall have a Replevin of those Cattle that never were distrained.

If a Man by his Deed grant a Rent with Clause of Distress, and grant farther, that he shall keep the Goods distrained against Gages and Pledges, until the Rent be paid; yet shall the Sheriff replevy the Goods distrained: For it is against the Nature of such a Distress to be irrepleviable, and by such an Invention the Current of Replevins should be overthrown, to the Hindrance of the Common Wealth; and therefore it was disallowed by the whole Court, and awarded that the Defendant should gage Deliverance, or else go to Prison. And Braeton is of the same Opinion, for he saith, Eodem modo de via obstructa, per breve quod justiciet propter communem utilitatem, ne transeuntes ire diu impediatur, quia hoc esset commune damnum, & in hoc vicecomes & justiciarii faciant sicut super detentionem averiorum contra vadium plegii, propter communem utilitatem, ne animalia diu inclusa pereant: Which in my Opinion is an excellent Point of Learning.

If the Beasts of divers several Men be taken, they cannot join in a Replegiare, but every one must have a several Replevin: And so in a Replevin it is a good Plea to say, that the Property is to the Plaintiff and to a Stranger, and where there be two Plaintiffs, that the Property is to one of them.

There is also a Writ De homine replegiando. But Littleton is ready to give you farther Instruction, therefore hear him.

¶ Et avow le prise, &c. en court de record. Here it appeareth, that an Avowry in a Court of Record, which is in Nature of an Action, is a Determination of his Election before any Judgment given. And this is a good Proof of that which hath been formerly said of the Writs of Annuity and Wife.