

on a Voucher once lawfully executed, shall not be divested (a) Cr. Jac. 254. although the Title of the Demandant to the Land, which he 1 Rol. 328.
recover'd, be afterwards disaffirmed and evicted. (b) Co. Lit.

181. b 1 Rol.

3. It was resolved, That the Revocation by three, if no 329. Yelv. 25. Execution had been had, had been sufficient; for if three 26. Noy 47. (a) revoke, two do it; but if the Words of the Clause of Hurt. 127. Revocation had been by them jointly or severally, then two 1 Rol. Rep. 399. of them could not have done it, for that had been neither 2 Int. 38. jointly nor severally. And therewith agrees 35 H. 8. Dyer 27 H. 8. 6. b. 61, 62. & 27 H. 8. And so note a good (b) Difference. 1 Co. 92. a. 2 Rol. Rep. 101. 3 Bulstr. 210.

SE M A Y N E 's Case.

Co. Ent. 12.
pl. 11. Mo 668.
Yelv 28, 29.
Cr El. 908, 909.
2 Rol. Rep. 294.

Mich. 2 Jac. I.

In the King's Bench.

IN an Action on the Case by *Peter Semayne* Plaintiff, and *Richard Gresham* Defendant, the Case was such; The Plaintiff and one *George Berisford* were Jointenants of an House in *Black Fryars* in *London* for Years, *George Berisford* acknowledged a Recognizance in the Nature of a Statute-Staple to the Plaintiff, and being possessed of divers Goods in the said House died, by which the Defendant was possessed of the House by Survivorship, in which the Good continued and remained; the Plaintiff sued Process of Extent on the Statute to the Sheriffs of *London*; the Sheriffs returned the Convisor dead, on which the Plaintiff had another Writ to extend all the Lands which he had at the Time of the Statute acknowledged, or at any Time after, and all his Goods which he had at the Day of his Death; which Writ the Plaintiff delivered to the Sheriffs of *London*, and told them that divers Goods, which were the said *George Berisford*'s at the Time of his Death, were in the said House: And thereupon the Sheriffs, by Virtue of the said Writ, charged a Jury to make Inquiry according to the said Writ, and the Sheriffs and Jury *accederunt ad Domum praedictam ostio Domus praedicti aperto existen' & bonis praedictis in praedicta Domu tunc existen'*, and they offered to enter the said House, to extend the

Goods according to the said Writ ; and the Defendant *præmissorum non ignarus*, intending to disturb the Execution, *ostio præd' domus tunc aperio existen'*, *claudebat contra Vicecom' & Jurator' præd'* ; whereby they could not come, and extend the said Goods, nor the Sheriff seise them, by which he lost the Benefit and Profit of his Writ, &c. And in this Case these Points were resolved.

- (a) 3 Inst. 162. 1. That the House of every one is to him as his (a) Castle Cr. El. 753. and Fortres, as well for his Defence against Injury and Violence, as for his Repose; and altho' the Life of Man is a Thing precious and favoured in Law ; so that altho' a Man kills another in his Defence, or kills (b) one *per infortun'*, without any Stanf. Cor. 14. Intent, yet it is Felony, and in such Case he shall forfeit his Goods and Chatt', for the great Regard which the Law has (b) Co. I. 391. to a Man's Life ; but if Thieves come to a Man's (c) House a. Hale's Pl. to rob him, or murder, and the Owner or his Servants kill Cor. 32. Stanf. any of the Thieves in Defence of himself and his House, it Cor. 15. c. 16. d. is not Felony, and he shall lose nothing, and therewith agree Stanf. Cor. 14. a. 3 E. 3. Coron. 303, & 305. & 26 Ass. pl. 23. So it is held in 21 Cor. 192. 3 E. 3. H. 7. 39. every one may assemble his Friends and Neighb. (d) Br. Cor. 100. to defend his House against Violence : But he cannot assemble 1 Rol. Rep. 182. them to go with him to the Market (e), or elsewhere for his 22 H. 8. c. 5. (d) 11 Co. 82. b. Safeguard against Violence : And the Reason of all this is, Br. Riots, &c. i. because *domus sua cuique est tutissimum refugium*. 21 H. 7. 39. a. 2. It was resolved, When any House is recovered by any real Firz. Tresp. 246. Action, or by *Eject' firmæ*, the Sheriff may break the Houfe 2 Inst. 161, 162. (e) 11 Co. 82. b. and deliver the Seisin or Possession to the Demandant or 1 Rol. Rep. 182. Pl. for the Words of the Writ are, *Habere facias seisinam, or possessionem*, &c. and after Judgment it is not the House in Right and Judgment of Law of the Tenant or Defendant.

- (f) O. Benl. 112. 3. In all Cases when the K. (f) is Party, the Sheriff (if 1 Bolstr. 146. the Doors be not open) may break the Party's House, either to Cr. El. 908 909. Moor 606, 668. arrest him, or to do other Execut. of the K.'s Proces, if otherwise he cannot enter. But before he breaks it, he ought to signif. Cr. Car. 537. 3 Inst. 161. the Cause of his Coming, and to make Request to open the Dy. 36. pl. 40. Doors ; and that appears well by the Stat. of Westm. 1. c. 17. 12 Co. 131. (which is but an Affirmance of the Com. Law) as hereafter appears, for the Law without a Default in the Owner abhors the 4 Inst. 177. Goldsb. 79. 2 Jones 233 234. Destruet. or Breaking of any House (which is for the Habitat. 4 Leon. 41. and Safety of Man) by which great Damage and Inconveniencie 13 E. 4. 9. a. might ensue to the Party, when no Default is in him ; for perhaps he did not know of the Proces, of which, if he had Notice, it is to be presum'd that he would obey it, and that appears by the Book in 18 E. 2. (g) Execut. 252. where it is said, That the K.'s Officer who comes to do Execut. &c. may open the Doors which are shut, and break them, if he cannot have the Keys ; which proves, that he ought first to demand them, 7 E. 3.

- (h) 4 Inst. 157. (h) 16. If. beats R. so as he is in Danger of Death, If. flies, and thereupon Hue and Cry is made, If. retreats into the House of T. they who pursue him, if the House be kept and defended with Force (which proves that first Request ought

to be made) may lawfully break the House of *T.* for it is at the K.'s Suit. 27 *Aff.* p. 66. the K.'s Bailiff may distrain for Issues (a) in a Sanctuary. 27 (28) *Aff.* p. 35. by Force of a *Capias* (a) Br. Distres on an Indictm. of Trespass the Sher. may (b) break his House 35. Br. Tres- to arrest him; but in such Case, if he breaks the House when (b) Fitz. Tres- he may enter without Breaking it, (that is, on Request made, pass 151. Trespass 232. Br. or if he may open the Door without Breaking) he is a Tres- Trespass 248. passor, 41 *Aff.* 15. on Issue joined on a Traverse of an Office in Chancery, *Venire fac.* was awarded returnable in the King's Bench, without mentioning non (c) *omittas propter aliquam li-* (c) Br. Pre- bertat'; yet forasmuch as the K. is Party, the Writ of it self gative le Roy 109. Br. Fran- is *non omittas propter aliquam libertat'*, 9 *E. 4. 9.* that for Fe- chise 18. lony (d) or Suspicion of Felony, the K.'s Officer may break the Br. Process 102. House to apprehend the Felon, and that for 2 Reasons: 1. For Fitz. Pictoga- the Commonwealth, for it is for the Commonwealth to ap- tive 21. prehend Felons. 2. In every Felony the King has Interest, Fitz. Bar. 110. and where the King has Interest, the Writ is, *non omittas* + Inst. 177. *propter aliquam libertatem*; and so the Liberty or Privi- 1 Bulstr. 146. lege of an House doth not hold against the King. 2 Bulstr. 51.

4. In all Cases when the Door is (e) open the Sheriff may (e) 1 Brown 50. enter the House, and do Execut. at the Suit of any Subject, Cr. Iac. 486. either of the Body, or of the Goods; and so may the Lord in such Case enter the House (f) and distrain for his Rent or (f) Br. Tres- Service, 38 *H. 6. 26. a. 8 E. 2. Distr.* 21 *& 33 E. 3. Avowry* 256. Br. Issue 26. the Ld. may distrain in the House, altho' Lands are also held in which he may distrain. *Vide* 29 (g) *Aff.* 49. But the great (g) Br. Distrei- Question in this Case was, if by Force of a *Capias* or *Fieri* for 52. Fitz. *Aff.* 286. *fac'* at the Suit of the Party the Sheriff after Request made to open the Door, and Denial made, might break the Def.'s House to do Execut. if the Door be not opened. And it was objected, That the Sheriff might well do it for divers Cau- Lucas 290. ses: 1. Because it is by Procs of Law; and it was said, that it would be granted on the other Side, that a House is not a Liberty, for if a *Fieri fac'* or a *Capias* be awarded to the Sher. at the Suit of a common Person, and he makes a Mandate to the Baily of a Liberty who has Return of Writs, who *nullum dedit respons.* in that Case another Writ shall issue with *non omittas propter aliquam libertat'*; yet it will be said on the other Side that he shall not break the Defend.'s House, as he shall do of another Liberty; for whereas in the County of *Suffolk* there are 2 Liberties, one of *St. Edmund Bury*, and the other of *St. Etheldred of Ely*, suppose a *Cap'* comes at the Suit of *A.* to the Sheriff of *Suff.* to arrest the Body of *B.* the Sheriff makes a Mandate to the Bailiff of the Liberty of *St. Etheldred*, who makes no Answer, in that Case the Pl. shall have a Writ of *Non omittas*, and by Force thereof he may arrest the Def. within the Liberty of *Bury*, altho' no Default was in him: 2. Admitting it be a Liberty, the Defendant himself shall never take Advantage of a Liberty: As

Cases of Executions. PART V.

if the Bailiff of a Liberty be Def. in any Action, and Process of *Cap' or Fieri fac'* comes to the Sher. against him, the Sher. shall execute the Process against him; for a Liberty is always for the Benefit of a Stranger to the Action. 3. For Negligency the Sher. shall break the Def.'s House after such Denial as is afores. for at the Com. Law a Man should not have any Execut. for Debt, but only of the Def.'s Goods. Suppose then the Def. would keep all his Goods in his House, and so the Def. himself by his own Act would prevent not only the Pl. of his just and true Debt, but there would also be a great Imputat. to the Law, that there should be so great a Defect in it, that in such Case the Pl. by such Shift without any Default in him should be barred of his Execut. And the Book in 18 E. 2. (a) Execut. 252. was cited to prove it, where it is said, that it is not lawful for any one to disturb the K.'s Officer, who comes to Execute the K.'s Process; for if a Man might stand out in such Manner, a Man would never have Execution, but there it appears (as has been said) that there ought to be Request made before the Sheriff breaks the House. 4. It was said, that the Sheriff was an Officer of great Authority, in whom the Law reposed great Trust and Confidence, and were to be of Sufficiency to answer all Wrongs which should be done; and they had *custodiam Comitatum*, and therefore it should not be presumed that they would abuse the House of any one by Colour of doing their Office in Execution of the K.'s Writs against the Duty of their Office, and their Oath also: But it was resolved, That it is not lawful for the Sheriff (on Request made and Denial) at the Suit of a (b) common Person, to break the Defendant's House, &c. to execute any Process at the Suit of any Subject; for thence would follow great Inconven. that Men as well in the Night (c) as in the Day should have their Houses (which are their Castles) broke, by Colour whereof great Damage and Mischief might ensue; for by Colour thereof, on any feigned Suit, the House of any Man at any Time might be broke when the Defendant might be arrested elsewhere, and so Men would not be in Safety or Quiet in their own Houses? And altho' the Sheriff be an Officer of great Authority and Trust, yet it appears by Experience, that the King's Writs are served by Bailiffs, Persons of little or no Value: And it is not to be presumed, that all the Substance a Man has in his House, nor that a Man would lose his Liberty, which is so inestimable, if he has sufficient to satisfy his Debt. And all the said Books, which prove, that when the Process concerns the King, that the Sheriff may break the Male's Pl. Cor. House, imply that at the Suit of the Party, the House may not be broken; otherwise the Addition (at the Suit of the King) would be frivolous. And with this Resolution agrees the Book in (d) 13 E. 4. 9. and the express Difference there taken between the Case of Felony, which (as has been said) concerns the Commonwealth, and the Suit

(a) Yelv. 29.
Antea 91. b.
Moor 668.
Cr. El. 409.
Q. Benl. 121.

The Resolution of the Court.

(b) 1 Jones 429.
430. 1 Brownl.

50. 1 Bulstr. 146.
Cr. Jac. 557.

O. Benl. 121.
4 Inst. 177.

Palm 53. Dyer 36. pl. 41.

Moor 668.
Cr. Car. 537.

538. Cr. El. 908.
909. Yelv. 29.

Hob. 62, 263,
264. 4 Leon. 41.

11 Co. 82.
March 3. 4.

18 E. 4. 4. a.
Br. Execut. 100.

Br. Trespass 390.

(c) 9 Co. 66. a.
Cr. Jac. 280. 486.

Jenk. Cent. 291.
Male's Pl. Cor.

45. Owen 63.
(d) 13 E. 4. 9. a.

Antea 92. a.
Fitz. Bar. 110.

4 Inst. 177.

of any Subject, which is for the particular Interest of the Party, as there it is said in (a) 18 E. 4. 4. a. by Littleton and all his Companions it is resolved, That the Sheriff ^{909.} Yelv. 29. cannot break the Defendant's House by Force of a *Fieri facias*, but he is a Trespassor by the Breaking, and yet the pass ^{390.} Execution ^{Br. Execution 100.} Trespass ^{Br. Tres.} Execution which he then doth in the House is good. And it was said, that the said Book of (b) 18 E. 2. was but a short ^{(b) 18 E. 2.} Note, and not any Case judicially adjudg'd, and it doth not ^{Execution 252.} appear at whose Suit the Case is intended, but it is an Ob- ^{Yelv. 29.} servation or Collection (as it seems) of the Reporter. And ^{Moor 668.} if it be intended of a *Quo minus*, or other Action in ^{Cr. El. 909.} which the King is Party, or is to have Benefit, the Book ^{Antea 91. b.} is good Law. ^{92. b.} ^{(c) Plowd.}

5. It was resolved, That the House of any one is not a ^{208. a.} Castle or Privilege but for himself, and shall not extend to protect any (d) Person who flies to his House, or the Goods ^{(a) Cr. Car. 54.} of any other which are brought and conveyed into his House, to prevent a lawful Execution, and to escape the ordinary Process of Law; for the Privilege of his House extends only to him and his Family, and to his own proper Goods, or to those which are lawfully and without Fraud and Covin there; and therefore in such Cases after Denial on Request made, the Sheriff may break the House; and that is proved by the Statute of West. i. c. (e) 17. by which it is declared, That the Sheriff may break an House or Castle to ^{(e) 2 Inst. 192.} make Replevin, when the Goods of another which he has distrained are by him conveyed to his House or Castle, to prevent the Owner to have a Replevin of his Goods; which Act is but an Affirmance of the Common Law in such Points. But it appears there, that before the Sheriff in such Case breaks the House, he ought to demand the Goods to be deliver'd to him; for the Words of the Statute are, After that the Cattle shall be solemnly demanded by the Sheriffs, &c.

6. It was resolved, admitting that the Sheriff after Denial made might have broke the House, as the Plaintiffs Counsel pretend he might, then it follows that he has not done his (f) Duty, for it doth not appear, that he made (f) Stile 44. any Request to open the Door of the House. Also the Defendant, as this Case is, has done that which he might well do by the Law, *scil.* to shut the Door of his own House.

Lastly, the general Allegation, (g) *præmissum non ignoramus*, was not sufficient in this Case, where the Notice of the Premises is so material; but in this Case it ought to ^{286.} have been certainly, and directly alledged; for without Notice of the Process of Law, and of the Coming of the Sheriffs Jury to execute it, the shutting of the Door of his own House was lawful. And Judgment was given against the Plaintiff. See 6 Mod. 105, &c. ibid.