

Chattels, and taking of Beasts des chateux & en prises des
 of Writ of *Capias*, and by Pro- avers par brief de *Capias* &
 cess of Exigend by the Sheriff's par proces dexigend par re-
 Return, as is used in a Writ of tourn de viscount sicome est
 Accompt. usee en brief dacompt.

21 H. 6, f. 42. 30 Ed. 3, f. 9. 7 Ed. 4, f. 9. Fitz. Process, 72, 115, 121,
 416. Regist. 81, &c. 2 Bulstr. 63. 1 Salk. 18. Rast. 149. 2 Leon. 85.

This Statute was in force so far as it gave the writ of *capias* in debt and detainee, and the *capias* in *withernam* in replevin, but not as to outlawry. In the two former cases it is now abolished, see Code, Art. 75, sec. 84.¹ The Act of 1856, ch. 112, sec. 20, abolished the *alias* and *pluries* writs of replevin and the *capias in withernam*.² But this part of that Act is itself repealed by the Code. Formerly when a *withernam* went and the goods of the defendant could not be found, a *capias ad respondendum* issued against him, on which he was arrested and confined until he found security to deliver up the property and paid a fine for his contempt. This of course is abolished also.

In *Swann v. Shemwell*, 2 H. & G. 283, the Court of Appeals said that the *capias in withernam* was not a proceeding in the replevin, but as a punishment on the taker or distrainer of the goods mentioned in the replevin for his improper conduct in putting them out of the way, so that the replevin cannot be proceeded in. If the defendant before the return of the *withernam* appears to the writ of replevin, and offers to plead *non cepit*, it will stay the *withernam*, as the defendant is not concluded by the return of an *elongavit*, the only return the sheriff can make where the goods cannot be found; the sheriff's being unable to find them not being, of itself, such proof that they were eluded by the defendant, (which could not be unless he also took them,) as to subject him to the irrepleviable distress by *withernam*, except when he holds out and will not appear to the writ of replevin to show that he did not take them, &c.

¹ Code 1911, Art. 75, sec. 144 (as now amended).

² *Evans' Practice*, 109 *et seq.*; *Poe's Practice*, secs. 426, 436.