

Citation: 4 Statutes of the Realm 1547-1624

Content downloaded/printed from HeinOnline (<http://heinonline.org>)  
Sat Dec 13 17:06:09 2008

-- Your use of this HeinOnline PDF indicates your acceptance of HeinOnline's  
Terms and Conditions of the license agreement available at:  
<http://heinonline.org/HOL/License>

-- The search text of this PDF is generated from uncorrected OCR text.

uttred bartredd or solde by way of Marchandyse or otherwise; upon payne of forfeiture of all suche Skynnes or Peltes bought laden shipped or transported contrary to the [tenor and'] true meaning of this Acte or the value of them, and also ij s. vj d. of lafull Money of Englande for every Fell Shorlyng Mortlyng Pelte or Skynne aforesaid bought laden shipped or transported contrary to the teno' and true meaning of this present Acte; The Moietie of all w<sup>ch</sup> forfeitures shall bee to our Soveraygne Ladye the Quenes Ma<sup>tie</sup> her Heyres and Successoures, and thother Moietie to him or them that will sue for the same, by Action Bill Playnt ( ' ) or otherwise in any of the Quenes Ma<sup>ties</sup> Court<sup>s</sup>, in w<sup>ch</sup> Action no Essoigne Protec<sup>cion</sup> or Injunction shalbe admitted or allowed.

PROVIDED always, That yt shall and may be lafull to the Marchantes of the Staple, the Marchantes of Newe Castle upon Tyne Hartilpoole and Barwike, theyr Servantes Factoures and Attourneis and everie of them, to carry and transporte all suche lafull Wares as heretofore they have been accustomed and lafully might; Any thing in this Acte to the contrarie notw<sup>th</sup>standing.

III.  
Proviso for  
Merchaunts of  
the Staple, &c.

### CHAPTER XXIII.

#### AN ACTE for the due Execu<sup>cion</sup> of the Writ De excommunicato capiendo.

FORASMUCHE as dyvers psons offending in many greate Crines and Offences, apperteyning merely to the Jurisdic<sup>cion</sup> and Determina<sup>cion</sup> of Theecclesiasticall Courtes and Judges of this Realme, arr many tymes unpunished for lack and want of the good and due execu<sup>cion</sup> of the Writte De excommunicato capiendo, directed to the Sheriffe of any Countie, for the taking and apprehending of suche Offendours; the greate Abuse wherof as yt should seme hathe growen, for that the sayd Writte ys not returneable into anye Courte that might have the Judgement of the well executing and serving of the said Writt, according to the Contentes therof, but hitherto have been lefte onely to the discretion of the Sherifes and their Deputies, by whose Neccligences and Defaultes for the most parte, the said Writt ys not executed upon thoffendo' as yt ought to bee; By reason wherof suche Offendoures bee greatly encoraged to contynue theyre synnefull and crymynous Lyef, muche to the Displeasure of Almyghty God, and to the greate Contempe of the Ecclesiasticall Lawes of this Realme: Wherefore for the Redresse therof, Bee it enacted by the Quenes most excellent Ma<sup>tie</sup> w<sup>th</sup> thassent of the Lordes Sp<sup>uall</sup> and Temporall and the Cōmons in this p<sup>nt</sup>e Pliament assembled and by thauctoritie of the same, That from and after the first daye of Maye next cōming, every Writt of Excommunicato Capiendo that shalbe graunted and awarded out of the Highe Courte of Chancerye agaynst any pson or psons w<sup>th</sup>in the Realme of Englande, shalbee made in the tyme of the Terme, and returneable before the Quenes Highnes her heires and successoures, in the Courte cōmonly called the King<sup>e</sup> Benche, in the Terme nexte after the Teste of the same Writt, and that the same Writt shalbee made to conteyne at the least Twentye Days betwen the Teste and the Returne therof; And after the same Writte shalbee so made and sealed, that then the said Writt shalbee foorthew<sup>th</sup> brought into the said Courte of the Kinges Benche, and there in the presence of the Justices shalbee opened and delyvered of Recorde to the Sheriff or other Officer to whom the serving and executyon therof shall apperteyne, or to his or their Deputie or Deputies; And yf afterwarde it shall or maye appeare to the Justices of the same Courte for the tyme beyng, that the same Writt so delyvered of Recorde bee not duly returned before them at the daye of the Returne therof, or that anye other Defaulte or Negligence hathe been used or hadd in the not well serving and executing of the sayd Writt, that then the Justices of the said Courte shall and maye by auctoritee of this Acte, assesse suche Amerciamment, upon the said Sheriff or other Officer in whom suche Defalte shall appeare, as to the discretyon of the sayd Justices shalbee thought meete and convenient, w<sup>th</sup> Amerciamment so assessed shalbee extreated into the Courte of Thexchequer as other Amerciammentes have been used.

For remedying  
the Evils resulting  
from not duly  
executing Writs  
De excommunicato  
capiendo;

All such Writs,  
awarded out of  
Chancery, shall be  
made in Term-time,  
returnable in the  
ensuing Term into  
the King's Bench,  
and shall be there  
openly delivered,  
of Record, to  
the Sheriff; who  
shall be amerced in  
case the Writ is not  
duly returned.

AND bee it further enacted by thauctoritee aforesayd, That the Sheriffe or other Officer to whom suche Writt of Excommunicato Capiendo, or other Proces by vertue of this Acte, shalbee directed, shall not in any wise bee compelled to bring the bodye of suche pson or psons as shalbee named in the sayd Writt or Proces, into the said Courte of the King<sup>e</sup> Benche, at the daye of the Returne therof; but shall onely returne the same Writt and Proces thither, w<sup>th</sup> declara<sup>cion</sup> breffly howe and in what maner he hathe served and executed the same, to thintent that therupon the said Justices may then further therein procede according to the Teno' and Effecte of this p<sup>nt</sup>e Acte; And yf the said Sheryff or other Officer to whom the execu<sup>cion</sup> the sayd Writt shall so appertayne, doo or shall returne that the p<sup>tie</sup> or p<sup>ties</sup> named in the said Writt cannot bee founde w<sup>th</sup>in his Baleefweek, that then the said Justices of the King<sup>e</sup> Benche for the tyme beyng, upon every suche Returne, shall awarde one Writ of Capias against the said pson or psons named in the said Writt of Excōmunicato Capiendo, returneable in the same Courte, in the Terme tyme, Two monethes at the least next after the Teste therof; w<sup>th</sup> a Proclama<sup>cion</sup> to be conteyned w<sup>th</sup>in the said Writt of Capias, that the Sheriff or other Officer to whom the same Writt shalbee directed, in the full Countie Courte or elles at the Generall Assises and Gaole Delyverie to bee holden w<sup>th</sup>in the same Countie, or at a Quarter Sessions to bee holden before the Justices of Peace w<sup>th</sup>in the same Countie, shall make open Proclama<sup>cion</sup> Tenne dais at the least before the Returne that the p<sup>tie</sup> or p<sup>ties</sup> named in the said Writt, shall w<sup>th</sup>in Sixe Days next after suche Proclama<sup>cion</sup>, yelde his or theyr Body or Bodyes to the Gaole and Pryson of the said Sheriff or other suche Officer, there to remayne as a Prysoner according to the

II.  
At Return-day of  
Writ, Sheriff not  
compellable to  
bring in the Body;  
but on Return of  
*non est inventus*,  
Capias shall issue,  
returnable in Term-  
time Two Months  
after the Teste,  
with Proclamations  
against the Party,  
to surrender under  
Forfeiture of £10;  
and on his Default  
such Forfeiture  
shall be estreated,  
and a fresh Capias  
with like  
Proclamation, to  
surrender on  
Forfeiture of £20.  
and so continually  
until the Party  
shall surrender.

<sup>1</sup> O. omits.

<sup>2</sup> Informa<sup>cion</sup> O.

teno' and effecte of the first Writ of Excomunicato Capiendo, upon payne of forfeiture of Tenne Poundes; And therupon after suche proclamaçõn had and the said sixe daies paste and expired, then the said Sheriff, or other Officer to whom suche Writ of Capias shalbee directed, shall make Returne of the same Writ of Capias into the said Courte of the Kinge Benche, of all that hee hathe doone in thexecuçõn therof, and whether the ptie named in the said Writ have yelded his Bodie to Prison or not: And yf upon the Returne of the said Sheryff yt shall appeare that the ptie or pties named in the said Writ of Capias, or any of them, have not yelded theyr Bodies to the Gaole and Pryson of the said Sherif or other Officer, according to theeffecte of the same Proclamaçõn, that then every suche pson that so shall make Defaulte, shall for every suche Defaulte forfaite to the Quenes Highnes her heyres and successours Tenne poundes, whiche shall lykewise bee extreated by the said Justices into the said Courte of Exchequer in suche maner and fourme as Fines and Amerciamentes there taxed and assessed arre used to bee: And therupon the said Justices of the Kinges Benche shall also awarde forthe one other Writ of Capias against the pson or psons that so shalbee returned to have made Defaulte, w<sup>th</sup> suche like Proclamaçõn as was conteyned in the first Capias, and a payne of Twenty poundes to bee inentioned in the said seconde Writte and Proclamaçõn; And the Sheriff or other Officer to whom the said [Writt of seconde Capias<sup>1</sup>] shalbee so directed, shall serve and execute the same seconde Writ in suche like maner and fourme as before ys expressed for the serving and executing of the said first Writte of Capias; And yf the Sheryff or other Officer shall returne upon the said seconde Capias that he hathe made the Proclamaçõn according to the teno' and effecte of the same Writt, and that the ptie hathe not yelded his body to Pryson according to the teno' of the said Proclamaçõn, that then the said ptie that so shall make Default shall for suche his Contempe and Defaulte forfaite to the Quenes Highnes her heyres and successours the sõme of Twentye poundes; w<sup>th</sup> sayd sõme of xx ii. the said Justices of the Kinges Benche for the tyme being shall likewise cause to bee extreated into the said Courte of Exchequer, in maner and forme aforesaid: And then the said Justices shall likewise awarde foorthe one other Writt of Capias agaynst the said ptie, w<sup>th</sup> suche lyke Proclamaçõn and Payne of Forfeiture as was conteyned in the said seconde Writ of Capias; And the Sheriff or other Officer to whom the said thirde Writ of Capias shall so bee directed, shall serve and execute the said third Writt of Capias in suche like maner and forme as before in this Acte ys expressed and declared for the serving and executing of the said first and seconde Writtes of Capias: And yf the Sheriff or other Officer to whom thexecuçõn of the said third Writt shall appertayne do make Returne of the said thirdd Writ of Capias that the ptie upon suche Proclamaçõn hathe not yelded his bodye to pryson according to the teno' therof, that then everie such ptie for everie suche Contempt and Defaulte shall likewise forfaite to the Quenes Ma<sup>tie</sup> her heires and successours other Twenty powndes; w<sup>th</sup> sõme of xx ii. shall likewise bee extreated in the said Courte of Thexchequer in maner and fourme aforesaid; and therupon the said Justices of the Kinges Benche shall likewise awarde foorthe one Writ of Capias against the said ptie, w<sup>th</sup> like Proclamaçõn and like payne of forfeiture of xx ii. And [that also<sup>2</sup>] the said Justices shall have auctoritee by this Acte infinitely tawarde suche Proces of Capias, w<sup>th</sup> suche like Proclamaçõn and payne of forfeiture of xx ii. as ys before limited against the said ptie that so shall make Defaulte in yelding of his body to the pryson of the Sheriff, until suche tyme as, by Returne of some of the said Writtes before the said Justices, yt shall and maye appeare that the said ptie hathe yelded hymself to the custodye of the said Sherif or other Officer according to the teno' of the said Proclamaçõn: and that the ptie upon every Default and Contempt by him made agaynste the Proclamaçõn of any of the said Writtes so infinitely to bee awarded agaynst hym, shall incurre like payne & forfeiture of xx ii. w<sup>th</sup> shall likewise bee extreated in maner and fourme aforesaid.

III.  
Party surrendering shall be kept in Custody, as under Writ De excom. cap.

AND bee it further enacted by thauthorite aforesayd, That when any psone or psons shall yelde his or their Bodye or Bodyes to the Handes of the Sheriff or other Officer upon any of the said Writtes of Capias, That then the same ptie or pties that shall so yelde themselves shall remayne in the pryson and custodye of the said Sheriff or other Officer, w<sup>th</sup>out Bayle Baston or Maynepryse, in suche like maner and fourme to all Intentes and Purposes as he or they shoulde or ought to have doone yf he or they hadd been apprehended and taken upon the said Writt of Excomunicato capiendo.

IV.  
Penalty on Sheriff for false Return of Default, £40. to the Party.

AND bee it further enacted by thauthoritee aforesaid, That yf any Sheryff, or other Officer by whom the said Writte of Capias or any of them shalbee returned as ys aforesaid, doo make an untrewre Returne upon any of the said Writtes, that the ptie named in the said Writt hathe not yelded his Bodye upon the said Proclamaçõns or any of them, where indede the ptie dyd yelde himself according to Theeffect of the same, That then every suche Sheryff or other Officer for every suche false and untrewre Returne shall forfaite to the ptie greved and dampnified by the said Returne, the sõme of fourty poundes; for the w<sup>th</sup> sõme of xl ii. the said ptie greved shall have his Recoverye and due Remedye by Actyon of Debt Bill Playnte or Informaçõn in any of the Quenes Courtes of Recorde, in w<sup>th</sup> Action Bill Playnte or Informaçõn no Essoigne Protecçõn or Wager of Lawe shalbee admitted or allowed for the ptie Defendante.

V.  
Saving for Authority of the Bishop, &c. to receive Submission of the Party excommunicated, &c.

SAVING and reserving to all Archebishops and Bishops, and all others having auctoritee to certefie any pson excommunicated, like auctoritee taccept and receyve the submission and satisfacçõn of the said pson so excommunicated in maner and fourme heretofore used, and him tabsolve and release, and the same to signifie as heretofore hathe been accustomed to the Quenes Ma<sup>tie</sup> her Heires and Successours into the Highe Courte of Chancerye; and therupon to have suche Writtes for the delyverance of the said pson so absolved and released from the Sheriffes Custodye or Pryson, as heretofore they or any of them had or of right ought or might have hadd; Any thing in this presente Statute specyfied or conteyned to the contrarye hereof in any wise notwithstanding.

<sup>1</sup> seconde Writt of Capias O.

<sup>2</sup> so further O.

(<sup>1</sup>) PROVIDED alwayes, That in Wales, the Counties Palatines of Lancaster Chester Durham and Elye, and in the Cinq, Portes, being Jurisdiccōns and Places exempte wher the Quenes Ma<sup>tes</sup> Writt dothe not rūne, and Proces of Capias from thense not returnable into the sayd Courte of the Kinges Benche, after any Significavit being of Recorde in the sayd Courte of Chancerie, the teno<sup>r</sup> of suche Significavit by Mittimus shalbee sent to suche of the head Officers of the said Countrey of Wales, Counties Palatines and Places exempte, w<sup>hin</sup> whose Offices Chardge or Jurisdiccōn Thoffendo<sup>r</sup> shalbee resiaunt, That ys to saye, To the Chancello<sup>r</sup> or Chamberlayne for the said Countie Palatyne of Lancaster and Chester, and for the Cynq, Portes to the Lorde Warden of the same, and for Wales and Elye and the Countie Palatyne of Durham, to the Cheif Justice or Justicer ther; And thereupon every of the sayd Justices and Officers, to whom suche tenour of Significavit w<sup>th</sup> Mittimus shalbee directed and delyvered, shall by vertue of this Estatute have Power & Auctoritee to make like Proces to thinferiour Officer and Officers to whom thexecu<sup>cōn</sup> of Proces there doothe apperteayne, returneable before the Justices there at their next Sessions or Courtes twoo monethes at the least after the Teste of every suche Proces; so allways as in every degree theye shall proceed in their Sessions and Courtes against Thoffendo<sup>r</sup> as the Justices of the sayd Courte of Kinges Benche are lymitted by the tenor of this Acte in Terme tymes to doo and execute.

PROVIDED also and bee yt enacted, That any pson at the tyme of any Proces of Capias (afore mentyoned) awarded beyng in Pryson, or out of this Realme in the pties beyonde the Sea, or w<sup>hin</sup> Age, or of non sane memorie, or Woman Covert, shall not incurre any of the paynes or forfaitures afore mentioned, whiche shall growe by any Returne or Defaulte happening duryng suche tyme of Nonage Imprysonement beyng beyonde the Sea or non sane memorie; And that by vertue of this Estatute the ptie greved may pleade every suche cause or matter in barre of and upon the Distres or other Proces that shalbee made for levyng of any of the sayd paynes or forfaitures: And that yf the Offendo<sup>r</sup> against whom any suche Writt of Excōmunicato capiendo shalbee awarded, shall not in the same Writt of Excōmunicato capiendo have a sufficient and lafull addition according to the fourme of the Statute of Primo of Henrye the Fifthe, in cases of certayne Suites wherupon Proces of Exigent are to bee awarded, Or yf in the Significavit yt bee not conteyned that Thexcōmunicatyon dothe proceade upon some Cause or Contempte of some originall Matter of Heresie, or refusing to have his or their Childe baptysed, or to receive the Holy Cōmunyon as yt cōmonlye ys nowe used to bee receyved in the Churche of Englande, Or to come to Dyvnye Service nowe cōmonlye used in the said Churche of Englande, or Errour in Matters of Religyon or Doctryne nowe receyved and allowed in the sayd Churche of Englande, Incontinencye Usurye Symonye Perjurye in the Ecclesiasticall Courte or Idolatrye, That then all and every paynes and forfaitures lymitted agaynst suche psons excōmunicate by this Estatute, by reason of suche Writ of Excomunicato capiendo wanting sufficient addicōn, or of suche Significavit wanting all the Causes afore mentioned, shalbee utterly voyde in Lawe, and by waye of Plea to bee allowed to the ptie greved: And yf the addicōn shalbee with a Nuper of the Place, then in every suche case, at thawarding of the firste Capias w<sup>th</sup> Proclama<sup>cōn</sup> according to the fourme afore mentioned, one Writt of Proclama<sup>cōn</sup> (w<sup>thout</sup> anye payne expressed) shalbee awarded into the Countie where the Offendo<sup>r</sup> shalbee most cōmonly resiant, at the tyme of thawarding of the said first Capias withe payne in the same Writt of Proclama<sup>cōn</sup>, to bee returneable the day of the Returne of the said first Capias w<sup>th</sup> payne, and Proclama<sup>cōn</sup> therupon at some one suche tyme and Courte as ys prescribed for the Proclama<sup>cōn</sup> upon the said first Capias withe payne: And yf suche Pclama<sup>cōn</sup> bee not made in the Countie where Thoffendo<sup>r</sup> shalbee most cōmonly resyant, in suche Cases of addicōns of Nup, That then suche Offendo<sup>r</sup> shall susteyne no payne or forfeiture by vertue of this Estatute for not yelding his or her Body accordyng to the tenour afore mentioned; Any thing before specified to the contrarye hereof in anye wyse notwithstanding.

VI.  
Process against  
Offenders in Wales,  
Counties Palatine,  
&c. on Tenor of  
Significavit into  
Chaucery being  
sent by Mittimus  
to the Head  
Officers in Wales,  
&c.

VII.  
Proviso for  
Prisoners, Infants,  
Femes Covert, and  
other disabled  
Persons.

Addition of the  
Party as required  
by 1 H. V. c. 5.

Causes of  
Excommunication  
to be specified in  
the Significavit;

Where Addition is  
with a *nuper*, a Writ  
of Proclamation  
without Penalty  
shall issue into the  
County where the  
Party dwells.

#### CHAPTER XXIV.

AN ACTE for the revivynge of a Statute made An<sup>o</sup> 23<sup>o</sup> Hen<sup>r</sup> Octavi, towching the making of Gaoles.

WHERE in the Parliament begūne and holden at London the thirde day of November in the xxj<sup>th</sup> yere of the Reigne of the late King Henry Theight, and from thence adjourned to Westm̄ and there holden and continued by proroga<sup>cōn</sup> untill the xv<sup>th</sup> day of January in the xxij yere of the Reigne of the said late King Henry Theight, there was then in that Session of Pliament one Acte and Statute made and established for the making of Gaoles in dyvers Shyres of this Realme; whiche Acte was then made to continue and endure for one yere nexte after the ende of the same Plyament; as by the same Acte more playnely appeareth: And Where also the said Acte and Statute at dyvers Pliamentes holden and kepte after the making therof in the tyme of the said late King Henry the Eight, was contynued and kepte in full force and strengthe untill the Deathe of the said late King, as by the same Actes of contynuaunce more plainly may appeare: And Where in the Pliam<sup>t</sup> begune and holden at Westm̄ the fifthe (<sup>1</sup>) of October in the first yere of the Reygne of our late Sovereigne Ladye Quene Marye, and there upon P<sup>r</sup>oga<sup>cōn</sup> contynued and kepte untill the vj<sup>th</sup> day of December then next folowing, the said Acte and Statute and all Clauses and Sentences therein contened was then made to continue and endure untill thende of tenne yeres next ensuing thende of the same Pliam<sup>t</sup>; as by the same Acte more plainly dothe appeare: And Forasmuche as the sayd Acte for the making of Gaoles made in the said xxij<sup>th</sup> yere of the Reigne of the said late King Henry Theight ys verye good and profitable for the Cōmonwelthe of this Realme; Bee it therefore enacted and established by thauctorite of this p<sup>n</sup>te Pliament,

St. 23 H. VIII. c. 2.  
for making Gaols  
in certain Shires,  
last continued by  
1 Mary, St. 2. c. 14.  
further continued  
for Ten Years.

<sup>1</sup> The following Provisoes are annexed to the Original Act in one separate Schedule.

<sup>o</sup> daye O.