Process in a Writ of Admeasurement of Dower or Pasture. Fitz. Admeasur. 3, 4, 5, 9, 10, 13, 17. 7 Ed. 4, 22. 18 Ed. 3, 30. Regist. 171, 297. 2 Inst. 367.

Excessive or fraudulent assignment of dower.—It appears from the 2nd Inst. 308, and the case of Stoughton v. Leigh, 1 Taunt. 401, that where the heir being of full age makes an excessive assignment of dower, he has no remedy at law to recover the excess. Under this Statute, however, if the heir were within age at the time of the excessive endowment, whether he himself assigned it or it was done in his right, (for a guardian in socage could not assign dower, Co. Litt. 35 a,) or if the guardian in chivalry endowed the widow of more than she was entitled to, the heir at full age might have a writ to admeasure the dower, and to recover the surplus. If the heir were within age, and had no guardian, and assigned more dower than he ought, he might have an admeasurement of dower within age, for he could not enter. And if too much were assigned by the heir within age, or his guardian, and the heir died, *his* heir might have the writ, 2 Inst. 367. By the express words of the Act, if the guardian had prosecuted against the wife feignedly or by collusion, the heir was not barred of his admeasurement against her on attaining full age, and in pleading he might allege the same generally, 2 Inst. 368.

*This writ is said to be vicontiel, i. e. it is not returnable, but the **113** Sheriff must make the admeasurement finally. In England the plaintiff may without showing any cause, and the defendant on cause shewn, remove the case, like a replevin, into the Court of Common Pleas; and process goes out by summons, attachment, &c.; on which the duty of the Sheriff is to extend the lands particularly, and upon his return thereof, the judges themselves will make the admeasurement, 2 Inst. 370.

The excessive value of the dower assigned must exist at the time of the assignment, for if by her industry and policy the widow make the dower land of greater value afterwards, no admeasurement lies for the improvement, 2 Inst. 368. It is said in F. N. B. 149 C. to be doubtful whether if an open mine of coal or lead were assigned by the infant heir in the widow's share, so as to make her one-third of greater value than the rest, the writ would lie. And it seems that it would lie, for the yearly value of these mines ought to have been estimated as part of the value of the whole estate, 1 Roper, H. & W. 410; see Hoby v. Hoby, 1 Vern. 218.

Excessive assignment by sheriff.—If the Sheriff make an excessive assignment, inasmuch as he assigns it by award of Court and by the inquest of twelve men, he is no wrong-doer, and the heir can therefore have no action against him nor an admeasurement, but must apply to the Court for a new inquest, and therefore must call in the tenant in dower by *scire facias*, and have an asisgnment *de novo*, Bac. Abr. Dower, N.; Stoughton v. Leigh, 1 Taunt. 401. And this is the rule, whether the heir were above or under age at the time. In the case of Hoby v. Hoby, *supra*, a bill was entertained in equity to be relieved against a fraudulent and partial assignment of dower by the Sheriff. And in Sneyd v. Sneyd, 1 Atk. 442, the Court set aside an assignment of dower by the Sheriff for partiality, lands not liable to dower having been estimated upon the writ of inquiry for ascertaining