Defendants, as well without Process as by Process, and to have like Pleas, and like Advantages in all things (Disclaimer only except) as they might have done by the Order of the Common Law before the making of this Act.

The reason and cause of making this Statute March, 166. Stiles, 4. Moor. 870. II. 1 Leon. 301. Moor. 883. An Avowry may be made by the Lord upon the Land holden of him without naming his Tenant. 2 Mod. 103. Avowry in second Deliverance. 27 H. 8, f. 4, 20. 9 Co. 22, 36, 136. Co. Litt. 268 b. 312 a. III. The Avowant shall recover Damages and Costs of Suit. Dyer, 141. Bro. Damages, 16. 2 Roll. 37, 140, 212. March, 28. 1 Salk. 95. 2 Cr. 520.

IV. Like Pleas and Aid-prayers as at the Common Law.

V. Like Joinder in Aid as at the Common Law.

At common law it was necessary to name the person avowed on in order to enable him to pray in aid the tenant. Lord Coke, Co. Litt. 268 b, says that four points are to be observed upon this Statute. First, that the lord may still avow at common law. Second, albeit the purview of the Act be general, yet all necessary incidents *are to be supplied, and the **286** scope and end of the Act to be taken; and therefore, though he need not to make his avowry upon any person certain, yet he must allege seisin by the hands of some tenant in certain, within forty years. Third, that if the avowry be made according to the Statute, every plaintiff in the replevin, or second deliverance, be he termor or other, may have every answer to the avowry that is sufficient; and also have aid, and every other advantage in law (disclaimer only except); for disclaim he cannot, because in that case the avowry is made upon no certain person. Fourth, when the words of the Statute be, if the lord distrain upon the lands, &c., yet if the lord come to distrain, and the tenant enchase his beasts which were within view out of the land holden, and then the lord distrain, albeit the distress be taken out of his fee and seigniory in that case, yet it is within the said Statute. The effect of the Statute was discussed and the authorities referred to in Banks v. Angell, 7 A. & E. 843, where it was held that the Statute requires a seisin in fee in the landlord, and that an avowry, not shewing who was the defendant's tenant of the *locus in quo*, nor that the place was in lands or tenements, of which the defendant was seised as within his seigniory or fee, was not good. The avowry there stated that a person or persons to the defendant unknown held the *locus in quo* as tenant to the defendant under a demise from A. to B. at a certain rent, the said person or persons unknown being assignees of the estate of B. and that rent was in arrear from such person or persons unknown, and it was held not good, either under this Statute, or under 11 Geo. 2, c. 19, s. 22, *q. v.* It was bad under this Statute, because, although it dispenses with "the naming of any person certain to be tenant of the same," yet it requires the landlord to avow "taking as in lands or tenements within his fee, &c." And it was bad under 11 Geo. 2, c. 19, s. 22, because the defendant did not state generally a subsisting tenancy as allowed by that Statute, but alleged a demise by A. without shewing any connec-